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Ms Rachel Webber
General Manager
Self Insurers of SA

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Dear Ms Webber

Work Health and Safety (Review Recommendations) Amendment Bill 2024

At the 2022 State Election, the Government committed to undertake an independent review of the practices and processes of SafeWork SA.

The purpose of this review was to improve workplace safety, deliver prompt action on safety concerns, support improved physical and mental wellbeing in workplaces, and ensure a genuine voice for workers in complaint and resolution processes.

The Independent Review was conducted by Mr John Merritt, former executive director of WorkSafe Victoria, in late 2022. The review received feedback from a wide range of stakeholders and involved dozens of meetings with employer organisations, trade unions, safety professionals, and the families of victims of workplace accidents.

The Independent Review was publicly released in early 2023 and made several recommendations for legislative reforms to the *Work Health and Safety Act 2012*. Those recommendations were the subject of further public consultation between September and November 2023.

The Government has considered the recommendations of the Independent Review and public feedback provided through this consultation process, and now encloses a consultation draft of the *Work Health and Safety (Review Recommendations) Amendment Bill 2024*.

Also enclosed are several fact sheets outlining key features of the draft bill.

The draft bill implements law reform recommendations from the Independent Review, making important amendments in relation to civil dispute resolution processes for work health and safety matters, right of entry, and to improve fairness for victims and families affected by serious workplace accidents.

If you wish to give feedback on the bill, this can be provided via email to AttorneyGeneral@sa.gov.au by Wednesday 7 February 2024.

The Government will carefully consider all feedback received from stakeholders before settling a final bill for introduction to Parliament.

I look forward to your considered feedback.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Kyam Maher', with a long, sweeping flourish extending to the right.

Hon Kyam Maher MLC
Minister for Industrial Relations and Public Sector

Enc: Draft – *Work Health and Safety (Review Recommendations) Amendment Bill 2024*
Fact sheet: Fairness for victims and families
Fact sheet: Civil dispute resolution
Fact sheet: Right of entry

South Australia

Work Health and Safety (Review Recommendations) Amendment Bill 2024

A BILL FOR

An Act to amend 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 *Work Health and Safety (Review Recommendations) Amendment Act 2024*.

2—Commencement

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

Part 2—Amendment of *Work Health and Safety Act 2012*

3—Amendment of section 4—Definitions

10 (1) Section 4—before the definition of *approved code of practice* insert:

advisory committee means the *SafeWork SA Advisory Committee* established under Division 5;

(2) Section 4, definition of *Consultative Council*—delete the definition

- (3) Section 4, definition of *employer organisation*—delete the definition and substitute:

employer organisation means—

- (a) an employer organisation that is registered, or taken to be registered, under the *Fair Work (Registered Organisations) Act 2009* of the Commonwealth; or
- (b) an association of employers that is registered or recognised as such an association (however described) under a State or Territory industrial law;

- (4) Section 4, definition of *health and safety duty*—delete "—see section 30" and substitute:

means a duty imposed under Part 2 Division 2, 3 or 4

- (5) Section 4, definition of *representative*—delete the definition and substitute:

representative—

- (a) in relation to a person conducting a business or undertaking, means—
- (i) an employer organisation representing the person conducting the business or undertaking; or
- (ii) any other person that the person conducting the business or undertaking authorises to represent them; and
- (b) in relation to a worker, means—
- (i) the health and safety representative for the worker; or
- (ii) a union representing the worker; or
- (iii) any other person that the worker authorises to represent them; or
- (iv) in relation to a deceased worker—the personal representative of the deceased worker;

4—Insertion of Part 1 Division 5

After section 12 insert:

Division 5—SafeWork SA Advisory Committee

12A—Establishment of committee

- (1) The *SafeWork SA Advisory Committee* is established.
- (2) The advisory committee consists of 15 members of whom—
- (a) the following will be ex officio members:
- (i) the Minister;
- (ii) the regulator;
- (iii) the person for the time being holding, or acting in, the position of Chief Executive of the Department;

(iv) the person for the time being holding, or acting in, the position of Chief Executive Officer of RTWSA; and

(b) the following will be appointed by the Minister:

(i) the presiding member;

(ii) 4 members who, in the opinion of the Minister, are suitable to represent the interests of employees (following consultation with the United Trades and Labour Council of South Australia);

(iii) 4 members who, in the opinion of the Minister, are suitable to represent the interests of employers (following consultation with the South Australian Employer's Chamber of Commerce and Industry and other associations representing the interests of employers);

(iv) 1 member who, in the opinion of the Minister, is suitable to represent the interests of victims and their families;

(v) 1 member who, in the opinion of the Minister, is suitable to represent the interests of work health and safety professionals.

(3) Subject to subsection (4), 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.

(4) A member of the advisory committee (other than the Minister) may only appoint someone under subsection (3) with the approval of the Minister.

12B—Terms and conditions of office

(1) Subject to this section, an appointed member of the advisory committee will be appointed for a term not exceeding 3 years and will, on the expiration of a term of office, be eligible for reappointment.

(2) A member of the advisory committee is entitled to fees, allowances and expenses approved by the Governor.

(3) A member may be removed from office by the Minister if the member—

(a) becomes mentally or physically incapable of carrying out satisfactorily their functions; or

(b) is guilty of neglect of duty or dishonourable conduct; or

- (c) 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.
- 5 (4) The office of an appointed member becomes vacant if the member—
 - (a) dies; or
 - (b) completes a term of office and is not reappointed; or
 - (c) resigns by written notice addressed to the Minister; or
 - (d) is removed from office under subsection (3).
- 10 (5) On the office of an appointed member becoming vacant, a person must be appointed in accordance with this Act to the vacant office.

12C—Functions

- (1) The advisory committee has the following functions:
 - 15 (a) to provide advice and recommendations on work health and safety matters to the regulator and the Minister, either on its own initiative or on request;
 - (b) to consider and advise on ways to improve communication, consultation and collaboration between work health and safety stakeholders;
 - 20 (c) to consider and advise on compliance and education campaigns by the regulator;
 - (d) to make recommendations in relation to approved codes of practice;
 - 25 (e) any other functions determined by the Minister or prescribed by the regulations.
- (2) For the purpose of performing its functions, the advisory committee may, with the approval of the Minister—
 - 30 (a) establish subcommittees (which may, but need not, consist of or include members of the advisory committee) to advise the advisory committee on any aspects of its functions, or to assist in the performance of its functions; and
 - (b) conduct public meetings, discussions and inquiries on questions arising before the committee,and may do any other thing that is necessary for, or incidental to, the
35 performance of its functions.

12D—Procedures at meetings

- (1) The presiding member (or their alternate member appointed under section 12A(3)) will preside at meetings of the advisory committee or, in their absence, a member chosen by those present will preside.
- 40 (2) Subject to subsection (3), the advisory committee may act notwithstanding vacancies in its membership.

- (3) 8 members constitute a quorum of the advisory committee and no business may be transacted at a meeting of the committee unless a quorum is present.
- (4) Each member present at a meeting of the advisory committee is entitled to 1 vote on a matter arising for decision at the meeting and, in the event of an equality of votes, the person presiding is entitled to a second, or casting vote.
- (5) A decision carried by a majority of the votes cast by the members present at a meeting of the advisory committee is a decision of the committee.
- (6) Subject to this Act, the advisory committee may determine its own procedures

12E—Conflict of interest

A member of the advisory committee will not be taken to have a direct or indirect interest in a matter for the purposes of the *Public Sector (Honesty and Accountability) Act 1995* by reason only of the fact that the member has an interest in a matter that is shared in common with employees generally or employers generally, or a substantial section of employers or employees.

12F—Confidentiality

A member of the advisory committee who, as a member of the committee, acquires information that—

- (a) the member knows to be of a confidential nature; or
- (b) the committee classifies as confidential information,

must not disclose the information without the approval of the Minister.

12G—Use of staff and facilities

- (1) The advisory committee may, with the agreement of the Minister, make use of the services of the staff, equipment or facilities of the Department.
- (2) The advisory committee may, with the agreement of a relevant agency or instrumentality, make use of the services of staff, equipment or facilities of any other agency or instrumentality of the Crown.

5—Repeal of section 30

Section 30—delete the section

6—Amendment of section 80—Parties to an issue

Section 80(1)(d)—delete paragraph (d) and substitute:

- (d) the worker or workers affected by the issue or their representative.

7—Insertion of section 82A

After section 82 insert:

82A—Referral of issue to SAET

- 5
- (1) This section applies in relation to an issue if—
- (a) reasonable efforts have been made to achieve an effective resolution of the issue in accordance with the relevant agreed procedure, or if there is no agreed procedure, the default procedure prescribed in the regulations; and
- 10 (b) the regulator has been requested to appoint an inspector to attend the workplace to assist in resolving the issue under section 82; and
- (c) at least 24 hours have elapsed since the making of that request; and
- (d) the issue has not been resolved.
- 15 (2) Subject to subsections (3) and (4), if this section applies, a party to an issue may apply to SAET (constituted as an industrial relations commission) for the resolution of the issue.
- (3) Any parties to the issue described in paragraphs (c) and (d) of the definition of *parties* in section 80(1) may only apply to SAET under
- 20 this section if they reasonably believe that—
- (a) the issue involves a contravention of a health and safety duty; and
- (b) that contravention involves, or will involve, a serious risk to the health and safety of a person.
- 25 (4) An application may not be made to SAET under this section in relation to an issue involving a person conducting a business or undertaking that employs fewer than 15 employees.
- (5) For the purposes of subsection (4), when calculating the number of employees employed by a person conducting a business or
- 30 undertaking at a particular time, the person conducting the business or undertaking and any associated entities are taken to be 1 entity.
- (6) The application must be made within 6 months after the day on which the alleged contravention of a health and safety duty first occurred.
- 35 (7) SAET may deal with the issue as it considers appropriate including by any of the following:
- (a) conciliation or mediation;
- (b) making a recommendation or expressing an opinion;
- 40 (c) if all the parties to the issue consent to arbitration—arbitration.

- (8) If SAET deals with an issue by arbitration in accordance with subsection (7)(c), a person must not contravene any orders made by SAET for that purpose.

WHS civil penalty provision.

Maximum penalty:

- (a) in the case of an individual—\$10 000;
 (b) in the case of a body corporate—\$100 000.

- (9) If SAET is satisfied that all reasonable attempts to resolve the issue have been, or are likely to be, unsuccessful then SAET must issue a certificate to that effect to the parties.

- (10) SAET may dismiss an application under this section if it considers that the issue would more appropriately be dealt with by another tribunal, court, person, or statutory process with jurisdiction in relation to the subject matter of the proceedings.

- (11) For the avoidance of doubt, a party may not commence an application under this section in relation to a health and safety issue that is already the subject of an industrial dispute notified to SAET under the *Fair Work Act 1994*.

- (12) In this section—

associated entity has the same meaning as it has in the *Corporations Act 2001* of the Commonwealth.

8—Insertion of section 89A

After section 89 insert:

89A—Resolution of disputes over cessation of unsafe work

- (1) This section applies if—
- (a) a worker has ceased work under this Division; and
- (b) reasonable efforts have been made to achieve an effective resolution of the issue in accordance with the relevant agreed procedure, or if there is no agreed procedure, the default procedure prescribed in the regulations; and
- (c) the regulator has been requested to appoint an inspector to attend the workplace to assist in resolving the issue under section 89; and
- (d) at least 24 hours has elapsed since the making of that request; and
- (e) the issue has not been resolved.
- (2) If this section applies, the health and safety representative, the person conducting the business or undertaking, the worker or a representative of any of those parties may apply to SAET (constituted as an industrial relations commission) for resolution of the issue.

(3) SAET may deal with the issue as it considers appropriate including by—

- (a) conciliation or mediation; or
- (b) making a recommendation or expressing an opinion,

5 but may only arbitrate the issue if SAET is satisfied that all reasonable attempts to resolve the dispute (other than by arbitration) have been, or are likely to be, unsuccessful (and any such arbitration should only relate to the issue of whether the worker should resume normal duties unless all of the parties consent to the arbitration of other related issues).

10 (4) If SAET deals with an issue by arbitration in accordance with subsection (3), a person must not contravene any orders made by SAET for that purpose.

WHS civil penalty provision.

15 Maximum penalty:

- (a) in the case of an individual—\$10 000;
- (b) in the case of a body corporate—\$100 000.

9—Amendment of section 117—Entry to inquire into suspected contraventions

(1) Section 117(6)—delete "under subsection (5)" and substitute:

20 in accordance with a policy under subsection (4)

(2) Section 117(6)(a)—delete "must" and substitute:

may

(3) Section 117(6)(b)—delete paragraph (b) and substitute:

(b) on the receipt of a report under paragraph (a), the regulator must—

- 25 (i) give consideration to what action (if any) should be taken on account of any suspected contravention of this Act outlined in the report; and
- (ii) if any such action is taken—advise the WHS entry permit holder of the action taken.

30 (4) Section 117—after subsection (6) insert:

(7) The following provisions apply (despite subsections (3) and (6)) in relation to a WHS entry permit holder who is an official of a union, or of a branch of a union, that is subject to a probationary declaration under section 143A:

- 35 (a) the WHS entry permit holder must not exercise a power of entry under this section unless they have given notice to the regulator about the proposed entry in order to provide an opportunity for an inspector to attend at the workplace at the time of entry;

- 5
- (b) if the WHS entry permit holder exercises a power of entry under this section without being accompanied by an inspector who has attended at the workplace in accordance with a policy under subsection (4), the WHS entry permit holder must, within 14 days after exercising the power of entry, furnish a report on the outcome of their inquiries at the workplace to the regulator in accordance with the regulations;
- 10
- (c) on the receipt of a report under paragraph (b), the regulator must—
- (i) give consideration to what action (if any) should be taken on account of any suspected contravention of this Act outlined in the report; and
- 15
- (ii) if any such action is taken—advise the WHS entry permit holder of the action taken.

10—Amendment of section 118—Rights that may be exercised while at workplace

Section 118(1)—after paragraph (a) insert:

- 20
- (ab) take measurements and make sketches or recordings (including photographs, films, audio, video, digital or other recordings) relevant to the suspected contravention;

11—Amendment of section 138—Application to revoke WHS entry permit

Section 138—after subsection (4) insert:

- 25
- (5) If—
- (a) the WHS entry permit holder is an official of a union, or of a branch of a union, that is subject to a probationary declaration under section 143A; and
- (b) SAET is satisfied, on an application under this section, that the WHS entry permit holder has contravened Part 7,
- 30
- the WHS entry permit should be revoked, unless SAET is satisfied that—
- (c) the WHS entry permit holder had a reasonable excuse for the contravention; or
- 35
- (d) the contravention arose from a minor procedural or technical error.

12—Amendment of section 143—Contravening order made to deal with dispute

- (1) Section 143, penalty provision, (b)—delete "\$50 000" and substitute:

\$100 000

- (2) Section 143—at the foot of the section insert:

Note—

In relation to liability of a body corporate see also sections 244 and 256.

13—Insertion of section 143A

5 After section 143 insert:

143A—Probationary declarations

- 10 (1) A person affected by the contravention of an order under section 142(3) may apply to SAET (constituted as an industrial relations commission) for a declaration (a *probationary declaration*) under this section.
- 15 (2) SAET may make a probationary declaration in relation to the union, or in relation to the branch of a union, involved in the contravention if satisfied that the union or branch (as the case may be) has a significant record of refusing or failing to comply with obligations applying to workplace entry by WHS entry permit holders.
- (3) The application must be made within 6 months after the day on which the contravention occurred.
- (4) In determining whether to make a probationary declaration, SAET must have regard to the following:
- 20 (a) findings made by a court or tribunal that the union or branch has, or officials of the union or branch have, contravened—
- (i) Part 7 of this Act; or
- (ii) Chapter 3 Part 3-4 of the Fair Work Act where the contravention relates to the exercise of entry rights under Part 7 of this Act;
- 25 (b) if there are any such findings—
- (i) the number of contraventions; and
- (ii) the seriousness of the contraventions; and
- 30 (iii) whether the contraventions arose from a deliberate and systematic pattern of conduct; and
- (iv) any action taken by the union to rectify the contraventions
- (5) However, SAET—
- 35 (a) must not have regard to any findings made by a court or tribunal that relate to conduct occurring before the commencement of this section; and
- (b) must not make a probationary declaration if satisfied that it would be contrary to the public interest.

- (6) A probationary declaration will automatically expire after a period of 2 years unless, on application by a party affected by the contravention of an order under section 142(3), SAET determines it is appropriate to extend the declaration (in which case this subsection will apply to the probationary declaration as so extended).

14—Insertion of section 152A

After section 152 insert:

152A—Right of regulator to intervene in proceedings

The regulator is entitled to intervene in any proceedings before SAET under this Act.

15—Amendment of section 222—Proceeding for alleged contravention

Section 222—after subsection (4) insert:

- (5) In this section—

proceedings in relation to a contravention or alleged contravention of this Act include criminal proceedings for an offence against this Act and proceedings against a person for a contravention of a WHS civil penalty provision.

16—Amendment of section 223—Which decisions are reviewable

Section 223—after subsection (1) insert:

- (1a) A reference in the table in subsection (1) to a person conducting a business or undertaking or to a worker includes a representative of such a person or worker.

17—Amendment of section 231—Procedure if prosecution is not brought

- (1) Section 231(1)—delete subsection (1) and substitute:

- (1) This section applies if—

- (a) a person—

(i) reasonably considers that the occurrence of an act, matter or thing constitutes an industrial manslaughter offence, a Category 1 offence or a Category 2 offence; or

(ii) reasonably considers, from a coronial report or the proceedings at a coronial inquiry or inquest, that an industrial manslaughter offence, a Category 1 offence or a Category 2 offence has been committed; and

- (b) no prosecution for the offence has been brought.

- (1a) The person may make a written request to the regulator that a prosecution be brought.

- (1b) The request may only be made—
- (a) if subsection (1)(a)(i) applies—at least 6 months, but no more than 24 months after the act, matter or thing occurs; or
 - (b) if subsection (1)(a)(ii) applies—within 6 months after the report is made or the inquiry or inquest ends.

Note—

See section 232 in relation to the limitation period for prosecutions.

- (2) Section 231—after subsection (2) insert:

- (2a) If, under subsection (2)(a)(i), the regulator advises the person that the investigation is not complete, the regulator must—
- (a) until the investigation is complete, give the person a written update about the investigation at least every 3 months; and
 - (b) when the investigation is complete, give the person a written notice stating—
 - (i) whether a prosecution will be brought; and
 - (ii) if a prosecution will not be brought—the reasons why.

- (3) Section 231(3)—after "advises the person" insert:

under subsection (2) or (2a)

18—Amendment of section 232—Limitation period for prosecutions

Section 232(1)—after paragraph (b) insert:

- (ba) if a matter has been referred to the Director of Public Prosecutions under section 231(3)(b), within 1 month after the Director provides the regulator with advice under section 231(4) as to whether the Director considers that a prosecution should be brought;

19—Insertion of section 233A and 233B

After section 233 insert:

233A—Frivolous, vexatious or improper proceedings

- (1) A party to proceedings under this Act may only be ordered to pay costs incurred by another party to the proceedings if SAET (constituted as the South Australian Employment Court) is satisfied that—
- (a) the party instituted the proceedings vexatiously; or
 - (b) the party's unreasonable act or omission caused the other party to incur costs.
- (2) Despite subsection (1), the regulator cannot be ordered to pay any costs incurred by another party to the proceedings.

- (3) If SAET is satisfied that—
- (a) a party has instituted proceedings vexatiously; and
 - (b) it is in the interests of justice for the party to incur a penalty in respect of their conduct in instituting the proceedings,
- 5 SAET may, in addition to making an order for costs under subsection (1), order the party to pay a monetary penalty up to a maximum amount of \$25 000.
- (4) If, on application by the regulator or any other interested person, SAET (constituted as the South Australian Employment Court) is
- 10 satisfied that a person, other than the regulator, has persistently instituted vexatious proceedings under this Act, SAET may make either or both of the following orders:
- (a) an order prohibiting the person by whom the vexatious proceedings were instituted from instituting further

15 proceedings under this Act without permission of the court;

 - (b) an order staying proceedings under this Act already instituted by that person.
- (5) An order under this section remains in force (subject to variation by the court)—
- (a) if a period for the operation of the order is fixed—until the expiration of that period or the revocation of the order (whichever first occurs);
 - (b) if no such period is fixed—until revocation of the order.
- (6) For the purposes of this section, proceedings are *vexatious*—
- (a) if instituted to harass or annoy, to cause delay, or for any other ulterior purpose; or
 - (b) if instituted without reasonable ground; or
 - (c) if the proceedings are otherwise an abuse of process.
- (7) This section is in addition to, and does not derogate from, any other powers of SAET in respect of proceedings.
- (8) In this section—
- proceedings* means a proceeding instituted under section 82A, 89A, 138, 142, 260A, or 260B.

233B—Payment and recovery of monetary penalty

35 If SAET orders a person to pay a monetary penalty in proceedings under this Act (other than criminal proceedings)—

- (a) SAET may order that the person pay the monetary penalty (or any part of the monetary penalty) to the State or to a particular person or organisation; and

40

- (b) the State, person or organisation (as the case may be) may enforce the order as if it were a judgment of the court.

20—Amendment of section 254—When is a provision a WHS civil penalty provision

Section 254—before subsection (1) insert:

(a1) Each health and safety duty is a *WHS civil penalty provision*.

Maximum penalty:

(a) in the case of an individual—\$10 000;

(b) in the case of a body corporate—\$100 000.

21—Amendment of section 255—Proceedings for contravention of WHS civil penalty provision

Section 255—after "SAET" insert:

(constituted as the South Australian Employment Court)

22—Amendment of section 259—Proceeding for a contravention of a WHS civil penalty provision

Section 259(2)—after "specified under" insert:

section 254(a1),

23—Amendment of section 260—Proceeding may be brought by the regulator or an inspector

Section 260—delete "Proceedings" and substitute:

Except as provided in sections 260A and 260B, proceedings

24—Insertion of sections 260A, 260B and 260C

After section 260 insert:

260A—Proceeding may be brought by a party to a health and safety issue

(1) If a certificate has been issued by SAET under section 82A in relation to an issue involving an alleged contravention of a health and safety duty, proceedings may be brought in SAET against a person conducting a business or undertaking for the contravention of the relevant WHS civil penalty provision by a party to the issue (within the meaning of Part 5 Division 5).

(2) However a union or branch of a union that is subject to a probationary declaration under section 143A may not bring proceedings under this section.

(3) Proceedings under this section must be instituted within 1 month after the issue of the certificate under section 82A.

(4) The Registrar of SAET must ensure that a copy of an application made under this section is provided to the regulator.

260B—Proceeding may be brought by a party for contravention of certain orders relating to arbitrations

- 5
- (1) If an order made for the purposes of arbitration under section 82A(5)(c), 89A(3) or 142(3) is contravened, proceedings may be brought in SAET against a person for the contravention of the relevant WHS civil penalty provision by a person affected by the contravention of the order.
- (2) Proceedings under this section must be instituted within 1 month after the day on which the contravention of the order first occurred.
- 10 (3) The Registrar of SAET must ensure that a copy of an application made under this section is provided to the regulator.

260C—Course of conduct

- 15 (1) 2 or more contraventions of a WHS civil penalty provision will be taken to constitute a single contravention of that provision for the purposes of this Division if the contraventions—
- (a) were committed by the same person; and
- (b) arose out of a course of conduct by the person.
- (2) However, if SAET has imposed a penalty on a person for contravention of a WHS civil penalty provision and the person subsequently contravenes that WHS civil penalty provision, subsection (1) does not apply to the contraventions.
- 20

25—Repeal of section 262

Section 262—delete the section

26—Amendment of section 264—Criminal proceedings during civil proceedings

- 25 (1) Section 264, heading—after "proceedings" insert:
etc
- (2) Section 264—after subsection (2) insert:
- 30 (3) The regulator may apply to SAET for proceedings against a person for a contravention of a WHS civil penalty provision to be stayed (for a period specified by the court or until further order) if—
- (a) the regulator is conducting an investigation into conduct that is substantially the same as the conduct alleged to constitute the contravention of the WHS civil penalty provision; and
- 35 (b) it is within the period specified in section 232 as the period during which proceedings for an offence against this Act could be brought in respect of the conduct.

27—Substitution of section 265

Section 265—delete the section and substitute:

265—Criminal proceedings after civil proceedings

- 5
- (1) Subject to subsection (2), criminal proceedings may be commenced against a person for conduct that is substantially the same as conduct constituting a contravention of a WHS civil penalty provision.
 - (2) Criminal proceedings for the conduct may not be commenced if an order has been made against the person under section 259 in respect of the WHS civil penalty provision.

10 **265A—Civil proceedings after criminal proceedings**

If a person has been convicted of a criminal offence under this Act in respect of any conduct, proceedings may not be commenced against the person for contravention of a WHS civil penalty provision in relation to conduct that is substantially the same as the conduct that constituted the offence.

15

28—Amendment of section 271—Confidentiality of information

Section 271(3)—after paragraph (c) insert:

- (ca) that is authorised under section 271A; or

29—Insertion of section 271A

20 After section 271 insert:

271A—Additional ways that regulator may disclose information

- 25
- (1) Subject to this section, the regulator or a person authorised by the regulator may disclose information relating to an incident to—
 - (a) a person injured in the incident, or their representative; or
 - (b) a family member of a person who is deceased as a result of the incident who is seeking to understand the circumstances of the death of the person; or
 - (c) a family member or other person who is empowered to make decisions on behalf of a person who is incapacitated due to serious injury as a result of the incident who is seeking to understand the circumstances of the serious injury of the person; or
 - (d) an interested party who has a direct connection to the incident to which the information relates, if the regulator reasonably believes that disclosing the information would assist in the administration or enforcement of this Act.
 - (2) Subsection (1) does not apply to information that—
 - (a) is subject to legal professional privilege; or
 - (b) is commercial information of a confidential nature; or
- 30
- 35

(c) is subject to a confidentiality requirement under any other Act or law; or

(d) relates to an ongoing investigation which may be jeopardised if the information were to be disclosed.

5 (3) A disclosure under subsection (1)—

(a) may not be made to a person who is, or who may reasonably be expected to be, required to give evidence as part of an investigation or prosecution relating to the incident; and

10 (b) may only be made in relation to information which relates to an incident that occurs after the commencement of this section.

(4) The regulator must establish and maintain a policy, published on the regulator's website, that relates to the circumstances in which information may be released under subsection (1).

15 (5) In this section—

family member in relation to a person means the following:

(a) a spouse of the person;

20 (b) a domestic partner of the person within the meaning of the *Family Relationships Act 1975*, whether declared as such under that Act or not;

(c) a parent, step-parent or grandparent of the person;

(d) a sibling or step-sibling of the person;

(e) a child, step-child or grandchild of the person;

25 (f) a person who, according to Aboriginal or Torres Strait Islander kinship rules, is a member of a culturally recognised family group of the person;

interested party in relation to an incident means the following:

(a) the person conducting the business or undertaking or their representative;

30 (b) the worker or workers affected by the incident or their representative;

(c) if the worker or workers affected by the incident are in a work group, the health and safety representative for the work group;

35 (d) the person bringing the incident to the attention of the regulator.

30—Amendment of section 274—Approved codes of practice

Section 274—delete "Consultative Council" wherever occurring and substitute in each case:

40 advisory committee

31—Amendment of Schedule 2—Local tripartite consultation arrangements

Schedule 2, clause 12(2)(a)—delete "Consultative Council" and substitute:
advisory committee

32—Amendment of Schedule 5—Provisions of local application

5 Schedule 5, clause 1(1)—delete "Consultative Council" and substitute:
advisory committee

Schedule 1—Transitional provisions and review

1—Interpretation

In this Schedule—

10 *principal Act* means the *Work Health and Safety Act 2012*.

2—Applications to SAET under new inserted provisions

An application may only be made to SAET under the following sections of the principal Act (as inserted by this Act) in respect of an issue or alleged contravention occurring after the commencement of the relevant section:

- 15
- (a) section 82A;
 - (b) section 89A;
 - (c) section 143A;
 - (d) section 260A;
 - (e) section 260B.

20 **3—Application of section 233A of principal Act**

Section 233A of the principal Act (as inserted by this Act) only applies in relation to proceedings commenced before SAET after the commencement of that section.

4—Application of section 260C of principal Act

25 Section 260C of the principal Act (as inserted by this Act) only applies in relation to proceedings commenced before SAET in respect of an alleged contravention of a WHS civil penalty provision occurring after the commencement of that section.

5—Review

- (1) The Minister to whom administration of the principal Act is committed must cause a review of the amendments effected by this Act to be conducted.
- 30 (2) The review must—
 - (a) be commenced 2 years after the commencement of this clause and be completed within a period of 6 months; and
 - (b) include an assessment of the following matters:
 - 35 (i) the extent to which amendments have contributed to improved health and safety of workers and workplaces;

- 5
- (ii) the extent to which there has been an improvement in communication between the regulator and parties affected by workplace incidents, including victims and their families;
 - (iii) the extent to which dispute resolution processes have assisted in the settlement of disputes over health and safety issues, the cessation of unsafe work, and right of entry;
 - (iv) the extent to which amendments have been effective in avoiding or minimising frivolous, vexatious or improper proceedings;
 - (v) any other matter the Minister considers to be relevant to the review.
- 10
- (3) A report on the results of the review must be provided to the Minister and the Minister must—
- (a) cause a copy of the report to be laid before each House of Parliament within 12 sitting days after receiving the report; and
 - (b) publish a copy of the report on a website determined by the Minister.



Government
of South Australia

SafeWork SA

Review Recommendations Bill

Fact Sheet: Fairness for victims and families

What is changing?

The *Work Health and Safety (Review Recommendations) Amendment Bill 2024* (the Bill) amends the *Work Health and Safety Act 2012* (the Act) to implement law reform recommendations made by the [Independent Review of SafeWork SA](#).

The Bill follows [initial public consultation](#) on these recommendations conducted between September and November 2023.

Fact sheets covering the main amendments in the Bill can be found [on the SafeWork SA website](#). This fact sheet summarises amendments relating to improving processes for victims and their families.

Reforming secrecy provisions

- The Independent Review endorsed the earlier [report by Hon John Mansfield AM KC](#) on SafeWork SA's investigation into the death of Gayle Woodford and related matters, which found that current confidentiality requirements in the Act prevent SafeWork SA from keeping people informed about what action is being taken in response to a workplace incident. This has exacerbated the frustration and suffering of victims and their families.
- **Disclosure of information:** A new exemption to current confidentiality requirements will be created to give SafeWork SA the discretion to disclose information relating to a workplace incident to persons directly affected by the incident (such as businesses and workers), as well as the family of victims in the event of death or incapacitation. SafeWork SA will be required to publish a policy outlining the circumstances when information may be disclosed.

- **Protecting integrity of investigations:** Disclosure of information will remain subject to strict requirements to protect the integrity of the investigation process. This includes that information cannot be disclosed if it is subject to legal professional privilege, is commercially confidential, or may jeopardise an ongoing investigation. Information also cannot be disclosed to a potential witness in a criminal prosecution.

A better process for prosecution requests

- The Act currently allows a person to request that SafeWork SA bring a prosecution if a criminal offence has been committed. SafeWork is required to provide an update to the person on the status of the investigation, and advise whether a prosecution will be brought and why. If no prosecution is brought the Director of Public Prosecutions (DPP) may review that decision.
- **Fixing timeframes:** Timeframes for a prosecution request will be amended so the request can be made at any time during the 2-year limitation period for most criminal prosecutions under the Act. This ensures victims and their families can make a request even if they are only advised of a decision not to prosecute very late in the limitation period.
- **Ensuring opportunity for DPP review:** SafeWork SA will be permitted to commence a prosecution within 1 month after receiving advice from the DPP on whether a prosecution should be commenced. This ensures that if a request is made late in the limitation period, the DPP will still have a proper opportunity to fully consider the evidence.

Improving stakeholder consultation

- **SafeWork SA Advisory Committee:** The Bill will formalise the establishment of a new tripartite advisory committee to provide advice to SafeWork SA and the Minister for Industrial Relations and Public Sector on health and safety issues. This committee will include representatives of business, unions, health and safety professionals, and victims and their families.

When will these changes come into effect?

These proposals are subject to passage of legislation by Parliament.



Government
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SafeWork SA

Review Recommendations Bill

Fact Sheet: Civil dispute resolution

What is changing?

The *Work Health and Safety (Review Recommendations) Amendment Bill 2024* (the Bill) amends the *Work Health and Safety Act 2012* (the Act) to implement law reform recommendations made by the [Independent Review of SafeWork SA](#).

The Bill follows [initial public consultation](#) on these recommendations conducted between September and November 2023.

Fact sheets covering the main amendments in the Bill can be found [on the SafeWork SA website](#). This fact sheet summarises amendments relating to dispute resolution processes for health and safety and cessation of work disputes.

Resolving health and safety issues

- The Independent Review recommended giving the South Australian Employment Tribunal (SAET) – the state’s independent industrial umpire – a stronger role in helping resolve disputes about health and safety issues.
- **Priority on workplace discussions:** Parties to a health and safety dispute (such as a business, worker, or health and safety representative) must make genuine efforts to resolve the issue at a workplace level before they can seek SAET’s help. The parties must notify SafeWork SA of the dispute so the regulator can consider sending an inspector to the workplace to help resolve the issue, and must provide at least 24 hours for that to occur.

Workers and their representatives cannot seek SAET’s help unless they reasonably believe the dispute involves a breach of a health and safety duty, which involves a serious risk to the health and safety of a person. This is intended to avoid the escalation of disputes over minor or trivial issues.

- **Exemption for small businesses:** A health and safety dispute cannot be referred to SAET if it involves a small business employing fewer than 15 employees. It is appropriate that small businesses such as these receive focussed support from SafeWork SA in resolving health and safety issues.
- **A stronger role for the independent umpire:** If a dispute about health and safety cannot be resolved through discussions at a workplace level, a party to the dispute can ask the SAET to help resolve the dispute.

This process will feature a strong focus on alternative dispute resolution, with SAET able to assist through conciliation and mediation, or making a recommendation or expressing an opinion. SAET may also make a binding decision if the parties all agree to arbitration of the dispute.

- **Civil penalties for WHS breaches:** If a dispute cannot be resolved through processes above, a party may apply for the SAET to impose a civil penalty for a breach of a work health and safety duty under the Act.

SAET will be able to consider all the relevant facts to determine if there has been a breach of the Act. If so, SAET can determine a fair penalty having regard to all the circumstances of the case, including the size of the business involved and any history of similar contraventions. The maximum penalty will be \$100,000 for a body corporate and \$10,000 for an individual.

Resolving cessation of work disputes

- The Act currently gives workers the right to refuse work if they have a reasonable concern the work would expose them to a serious risk to health and safety. However, the Act does not provide a clear dispute resolution mechanism if a worker exercises that right. This can leave both workers and businesses at an impasse to resolve cessation of work disputes.
- **Getting back to work:** A similar dispute resolution process to the above will be available for disputes about the cessation of unsafe work. SAET will be able to help resolve disputes through conciliation and mediation, or making a recommendation or expressing an opinion.

SAET will have the power to arbitrate whether a worker is required to return to their normal duties if all other dispute resolution options have been unsuccessful. Unlike health and safety disputes, SAET will not be able to impose civil penalties for cessation of work disputes.

Preventing vexatious claims

- The Bill includes significant safeguards against parties using dispute procedures unreasonably or vexatiously, including where proceedings are baseless or have been instituted to harass or annoy another party.
- **Striking out proceedings:** SAET will retain its existing powers to dismiss an application if it is satisfied the application has been made with no reasonable basis, or is otherwise an abuse of process.
- **Costs orders:** A party may be ordered to pay other parties' legal costs if the dispute has been instituted vexatiously, or if their unreasonable actions have caused other parties to incur costs. Unreasonable behaviour may include conducting proceedings with no real legal or factual basis, or refusing to accept reasonable settlement offers. In cases of serious vexatious conduct SAET may also impose a financial penalty of up to \$25,000 in addition to an order for legal costs.
- **Vexatious litigants:** If a party has a record of persistently instituting vexatious proceedings, SAET may prohibit them from commencing further proceedings without obtaining prior permission. This is similar orders that can currently be made against vexatious litigants by the Supreme Court.

When will these changes come into effect?

These proposals are subject to passage of legislation by Parliament.



Government
of South Australia

SafeWork SA

Review Recommendations Bill

Fact Sheet: Right of entry

What is changing?

The *Work Health and Safety (Review Recommendations) Amendment Bill 2024* (the Bill) amends the *Work Health and Safety Act 2012* (the Act) to implement law reform recommendations made by the [Independent Review of SafeWork SA](#).

The Bill follows [initial public consultation](#) on these recommendations conducted between September and November 2023.

Fact sheets covering the main amendments in the Bill can be found [on the SafeWork SA website](#). This fact sheet summarises amendments relating to WHS right of entry.

Ensuring responsible behaviour by unions and permit holders

- **Civil penalties:** The maximum civil penalty for breaching orders of the South Australian Employment Tribunal (SAET) resolving a right of entry dispute will increase to \$100,000. A person affected by a breach (such as a business or employer organisation) will have standing to apply to SAET for a civil penalty to be imposed on the person responsible for the breach. SAET will have a discretion to make any penalty payable to the party affected by the breach.
- **Probationary declarations:** SAET will be given the power to make a “probationary declaration” if a union has a significant record of refusing or failing to comply with obligations applying to WHS right of entry. A declaration will remain in effect for 2 years. While a probationary declaration is in effect:
 - The union will be prohibited from applying to SAET for a civil penalty order in relation to a breach of health and safety duties by a person conducting a business or undertaking, acknowledging that the union has failed to comply with its own legal obligations.

- Officials of the union will be required to always notify SafeWork SA before exercising a right of entry to investigate suspected WHS contraventions, and will also be required to provide a written report to SafeWork within 14 days detailing the outcome of their investigation.
- If an official of the union is involved in a breach of WHS right of entry obligation while a probationary declaration is in effect, there will be an automatic presumption that SAET should revoke the official's WHS entry permit.

Investigating suspected WHS contraventions

- **Reporting workplace entries:** The Act will retain existing requirements for entry permit holders to notify SafeWork SA before entering a worksite to investigate suspected contraventions (to enable SafeWork to consider arranging for an inspector to attend).

Permit holders will no longer be required to automatically provide a written report to SafeWork after entry (unless a probationary declaration is in effect in relation to their union). If a permit holder chooses to provide a written report to SafeWork, the regulator will be required to advise them of any action taken in response to the report.

- **Measurements and recordings:** When a permit holder enters a workplace to investigate suspected WHS contraventions, they will be allowed to take measurements and make sketches or recordings relevant to the suspected contravention. Any information gathered using these powers will be subject to existing confidentiality requirements in the Act, and misuse of these powers will be subject to existing penalties for acting in an improper manner.

When will these changes come into effect?

These proposals are subject to passage of legislation by Parliament.