

South Australia

Employment Agents Regulations 2024

under the *Employment Agents Act 2024*

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1—Short title

These regulations may be cited as the *Employment Agents Regulations 2024*.

2—Commencement

These regulations come into operation on the day on which the *Employment Agents Act 2024* comes into operation.

3—Interpretation

In these regulations—

Act means the *Employment Agents Act 2024*.

4—Employment agent

An organisation or association is excluded from the definition of employment agent in section 3 of the Act insofar as it administers a group training scheme jointly funded by the Commonwealth and State Governments for—

- (a) the procurement of apprentices or trainees for persons who desire to employ or engage such persons in any kind of work; or
- (b) the procurement of employment for apprentices or trainees.

5—Employment contract

A contract, arrangement or understanding (not being a contract of service) for the engagement of a worker by an employer to perform remunerated work for the employer during a financial year is excluded from the definition of employment contract in section 3 of the Act if the yearly remuneration payable to the worker in is not less than the high income threshold, within the meaning of the *Fair Work Act 2009* of the Commonwealth, applying under that Act for that financial year.

6—Code of conduct

Pursuant to section 4 of the Act, the code of conduct set out in Schedule 1 is prescribed.

Schedule 1—Code of conduct for employment agents

Part 1—Preliminary

1—Interpretation

In this code—

employer register—see clause 23;

placement register—see clause 24;

worker register—see clause 22;

work seeker means a person seeking work.

2—Object of code of conduct

The object of this code of conduct is to establish a framework that—

- (a) promotes ethical conduct by employment agents in their dealings with work seekers and others as part of the business of an employment agent; and
- (b) encourages the provision by employment agents of high quality placement and recruitment services for work seekers and persons looking for workers.

3—Compliance with code of conduct

- (1) This code of conduct contains provisions with which an employment agent must comply.

Note—

Contravention of a provision of this code of conduct is a ground for—

- (a) if a maximum penalty is stated for a contravention of the provision, starting proceedings for a charge of an offence; or
 - (b) for obtaining an injunction under Part 3 of the Act.
- (2) This code of conduct applies despite an instruction or request that does not comply with the code made by a work seeker or a person looking for workers or, if an employment agent is an employee, the agent’s employer.

Part 2—General rules of conduct

4—Knowledge of Act, code of conduct and relevant Acts

- (1) An employment agent must have a reasonable knowledge of the Act, this code of conduct, and any other Act or law relevant to the employment agent’s business.
- (2) For the purposes of this regulation, a reference to an Act relevant to an employment agent’s business will be taken to include the following Acts:
 - (a) *Equal Opportunity Act 1984*;
 - (b) *Fair Trading Act 1987*;
 - (c) *Fair Work Act 2009* of the Commonwealth;
 - (d) *Fair Work Act 1994*;
 - (e) *Privacy Act 1988* of the Commonwealth;
 - (f) *Return to Work Act 2014*;
 - (g) *Work Health and Safety Act 2012*.

5—Honesty, fairness and professionalism

- (1) An employment agent must act honestly, fairly and professionally in the conduct of the agent’s business.

- (2) Without limiting subclause (1), an agent must treat work seekers and persons looking for workers honestly and fairly.

6—Skill, care and diligence

An employment agent must exercise reasonable skill, care and diligence in the conduct of the agent’s business.

7—Ensuring employees comply with Act and code of conduct

- (1) An employment agent must take reasonable steps to ensure the agent’s employees comply with the Act and this code of conduct.
- (2) An employment agent must promote—
- (a) compliance with all relevant legislation and industrial instruments applying to work seekers and persons looking for workers; and
 - (b) ongoing training and skills development in the industry of employment agents.

Part 3—Dealings with work seekers

8—Ethical representation of work seeker

An employment agent must represent a work seeker in an ethical and professional way.

9—Preservation of work seeker’s potential

An employment agent—

- (a) must not do anything that may unfairly jeopardise a work seeker’s current work or future work opportunities; and
- (b) must ensure a work seeker’s right to maximise the work seeker’s potential for career development is preserved.

10—Advice about employment and placement options

An employment agent must give a work seeker accurate advice about employment and placement options, including current labour market information.

11—Referrals

An employment agent must promptly give a person looking for workers information about a work seeker on the basis of the work seeker’s suitability for a vacant position.

12—Keeping work seeker informed

An employment agent must, on request by a work seeker, give the work seeker whichever of the following is relevant within 7 days of the request:

- (a) if the work seeker is not referred as a candidate for a particular vacancy—genuine reasons the work seeker was not referred as a candidate for the vacancy;
- (b) advice on the work seeker’s application for a vacancy;

- (c) if the work seeker is placed in a position—a copy of any documents about the position in the agent’s possession at the relevant time.

Maximum penalty: \$5 000.

Expiation fee: \$315.

13—Information statements

- (1) Before an employment agent provides a service for a work seeker, the agent must give the work seeker a statement (an *information statement*) in a form approved by the Director.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (2) An information statement must include the following information:

- (a) that an employment agent must not charge fees in contravention of this code of conduct;
- (b) that the agent and the agent’s employees have a working knowledge of State and Commonwealth legislation affecting the placement and employment of persons seeking work;
- (c) that the agent will make all placements as required under the relevant legislation;
- (d) where the person may obtain information about action that may be taken if the person believes an employment agent has acted illegally, inappropriately or in a false and misleading way.

14—Information about work seeker not to be disclosed

- (1) An employment agent must not, without the work seeker’s written permission, disclose the work seeker’s identity or other details to a person looking for workers.

Maximum penalty: \$2 500.

Expiation fee: \$210.

- (2) Except as contemplated under subclause (1), an employment agent must not disclose a work seeker’s identity or other details unless the disclosure is required or authorised by law.

Maximum penalty: \$5 000.

Expiation fee: \$315.

15—Information about work seeker not to be improperly used

An employment agent must not use information about, or provided by, a work seeker—

- (a) for a purpose other than finding work for the work seeker; or
- (b) in a way that is contrary to the terms of any permission given by the work seeker about the use of the information.

Maximum penalty: \$5 000.

Expiation fee: \$315.

16—Dealing with work seekers from overseas

An employment agent must not refer a work seeker to a person in Australia who is looking for workers if the work seeker is not legally entitled to work in Australia.

Maximum penalty: \$5 000.

Expiation fee: \$315.

17—Dealings with overseas placements

An employment agent must not refer a work seeker to a person in another country who is looking for workers if the work seeker—

- (a) is not entitled to work in the country; or
- (b) does not have a reasonable prospect of obtaining permission to work in the country.

Maximum penalty: \$5 000.

Expiation fee: \$315.

Part 4—Fees**18—Display of information at business premises**

- (1) An employment agent must maintain in a conspicuous place at any premises at which the employment agent carries on business as an employment agent a notice clearly showing the scale of fees for the time being chargeable by the agent in respect of the agent's business.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (2) A copy of the scale of fees, and a copy of any alterations to such a scale, must be lodged with the Director in a manner approved by the Director.

Maximum penalty: \$5 000.

Expiation fee: \$315.

19—No fee for work seeker as condition of finding work

An employment agent must not seek or accept a fee, deposit or bond—

- (a) from, or on behalf of, a work seeker in Australia as a condition of finding or attempting to find work for the work seeker outside Australia; or
- (b) from, or on behalf of, a work seeker residing, or intending to reside, temporarily in Australia as a condition of finding or attempting to find work for the work seeker in Australia.

Maximum penalty: \$5 000.

Expiation fee: \$315.

20—No fee for work seeker for particular services

An employment agent must not, as a condition of finding or attempting to find work for a work seeker—

- (a) charge the work seeker a fee for services or resources provided by the agent;
or

- (b) require the work seeker to use services or resources provided by or through a supplier nominated by the agent; or
- (c) accept a financial benefit from a supplier nominated by the agent for the provision of services or resources by the nominated supplier because of a requirement mentioned in paragraph (b).

Examples—

- 1 The preparation of a resume or portfolio.
- 2 Assistance, advice or training in interview preparation.

Maximum penalty: \$5 000.

Expiation fee: \$315.

21—Responsibilities to employers

- (1) An employment agent is not entitled to recover from a person who uses the services of the agent a fee for finding workers for the person, unless, before providing the service, the agent—
 - (a) notifies the person of the agent’s fee for the service; and
 - (b) gives the person a written notice confirming the amount of the agent’s fee for the service.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (2) An employment agent must not charge a person who uses the services of the agent for finding workers for the person a fee which exceeds the rate of payment set out in the scale of fees displayed at the agent's place of business and is applicable to the particular case.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (3) Subject to this clause, an employment agent must not demand or receive any fee from a person in respect of seeking or obtaining another to work for the person unless—
 - (a) the worker (or prospective worker) has made contact with the person about that employment; or
 - (b) the fee is payable pursuant to a written agreement between the person and the employment agent.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (4) Subclause (3) does not prevent an employment agent requiring a person to pay a deposit before the employment agent begins the search for a worker but, if such a deposit is paid, the deposit must be held by the employment agent until—
 - (a) a fee becomes chargeable under subclause (3); or

- (b) the person ceases to be listed with the employment agent as a person who is seeking a worker—in which case the deposit must be applied towards any fee payable by the person to the employment agent, or otherwise paid in accordance with a written agreement between the person and the employment agent; or
- (c) the employment agent and the person agree on the repayment of the deposit.

Part 5—Registers and correspondence

22—Worker register

- (1) An employment agent must keep a register of persons looking for work through the employment agent (a *worker register*) that complies with subclause (2).
Maximum penalty: \$5 000.
Expiation fee: \$315.
- (2) The worker register must include the following particulars for each person who looks for work through the employment agent:
 - (a) the person’s name, address, age, gender and occupation;
 - (b) the type of work the person is looking for;
 - (c) the date the particulars mentioned in a preceding paragraph are entered in the register.
- (3) The employment agent must not make or cause to be made in the worker register an entry that the person knows to be false.
Maximum penalty: \$5 000.
Expiation fee: \$315.

23—Employer register

- (1) An employment agent must keep a register of persons who use the services of the agent for finding workers (an *employer register*) that complies with subclause (2).
Maximum penalty: \$5 000.
Expiation fee: \$315.
- (2) The employer register must include the following particulars for each person included on the register:
 - (a) the person’s name and place of business;
 - (b) the type of work the person is offering and the number of persons wanted for the work;
 - (c) the date the particulars mentioned in a preceding paragraph are entered in the register;
 - (d) details of any deposit paid to the employment agent by the person.
- (3) The employment agent must not make or cause to be made in the employer register an entry that the person knows to be false.
Maximum penalty: \$5 000.
Expiation fee: \$315.

24—Placement register

- (1) An employment agent must keep a register of placements (a *placement register*) that complies with subclause (2).
Maximum penalty: \$5 000.
Expiation fee: \$315.
- (2) The placement register must include the following particulars for each person the employment agent places into work with an employer:
 - (a) the person's name;
 - (b) the employer's name;
 - (c) the type of work the person will do for the employer;
 - (d) the date the particulars mentioned in a preceding paragraph are entered in the register;
 - (e) details of any fee paid to the agent in connection with each placement.
- (3) The employment agent must not make or cause to be made in the placement register an entry that the person knows to be false.
Maximum penalty: \$5 000.
Expiation fee: \$315.

25—How long registers must be kept

An employment agent must keep the agent's worker register, employer register and placement register in the agent's possession for at least 6 years after the end of the year to which the last entry in the register relates.

Maximum penalty: \$5 000.
Expiation fee: \$315.

26—How long correspondence must be kept

- (1) An employment agent must keep all relevant correspondence received by the employment agent for at least 6 years after the day the correspondence was received.
Maximum penalty: \$5 000.
Expiation fee: \$315.
- (2) An employment agent must keep all relevant correspondence sent by the employment agent for at least 6 years after the day the correspondence came into existence.
Maximum penalty: \$5 000.
Expiation fee: \$315.
- (3) In this clause—
relevant correspondence means correspondence that relates to the conduct of the employment agent's business as an employment agent.

Part 6—Miscellaneous

27—False information

An employment agent must not—

- (a) publish false information in the course of carrying on the business of an employment agent; or
- (b) make, or knowingly permit an employee of the agent to make, a false statement to a work seeker about—
 - (i) the nature or availability of any work; or
 - (ii) the Act; or
 - (iii) this code of conduct; or
 - (iv) any Act relevant to employment or workplace health and safety; or
 - (v) any relevant industrial instrument.

Maximum penalty: \$5 000.

Expiation fee: \$315.

28—Availability of code of conduct

An employment agent must—

- (a) ensure a copy of this code of conduct is always available at the employment agent's place of business for inspection on request; or
- (b) if a copy is not available at the employment agent's place of business—immediately tell a person who asks to see the code of conduct where the person can obtain a copy.

Maximum penalty: \$5 000.

Expiation fee: \$315.

Editorial note—

As required by section 10AA(2) of the *Legislative Instruments Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

Made by the Governor

with the advice and consent of the Executive Council
on

No of 2024