



Government
of South Australia

SafeWork SA

Reforming Employment Agents Legislation

Discussion Paper

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Introduction

The [Employment Agents Registration Act 1993](#) and [Employment Agents Regulations 2010](#) currently govern the manner in which employment agents conduct business in South Australia.

Employment agents that operate externally to South Australia (nationally and internationally) have expressed concern that current legislative arrangements are onerous, outdated, do not reflect the needs of the modern labour market.

Following consideration of these concerns, the Government is pleased to release a draft *Employment Agents Bill 2024 (the Bill)* and *Employment Agents Regulations 2024 (draft Regulations)* for comment.

The framework established by the draft legislation maintains the essence of the current legislation by retaining and enhancing relevant compliance measures and protections for employers and workers through an enforceable code of conduct established within the draft regulations.

These changes will enable improved labour mobility across borders, whilst providing strong consumer protections within the industry beyond what the current licencing scheme currently does and will align the employment agent industry in South Australia with the advancements in technology and e-commerce which have enabled greater flexibility in recruitment.

This discussion paper is released alongside the draft legislation to explain how the new legislation would operate.

How can I provide feedback?

SafeWork SA are seeking the views of stakeholders and the public in relation to the Bill and Regulations. In preparing a submission, it is recommended that you consider the Bill, the Regulations and this discussion paper.

If you are responding to a specific section of the Bill or Regulations please include the reference to enable easy identification of responses. Where possible, your submission should provide reasoning for the position that is advocated and examples or evidence that supports the position.

This feedback will be used to shape the final Bill and Regulations, prior to introduction of a Bill into Parliament.

Submissions can be emailed to SWSAPolicy@sa.gov.au or sent to:

Employment Agents Discussion
SafeWork SA
Strategic Policy and Legislative Services
GPO Box 465
Adelaide, SA 5001

The closing date for submissions is Friday, 23 August 2024.

Please be aware that any submissions or feedback provided will be subject to the *Freedom of Information Act 1991*. While efforts will be made to keep material confidential where this is requested, in some circumstances submissions be required to be disclosed under that Act. Where disclosure of information may identify you, attempts will be made to consult with you before any documents are disclosed.

Frequently Asked Questions

1. How are Employment Agents currently regulated?

An employment agent is a person or business that finds workers for a person or business or finds employment for a person that is looking for work.

There are varied approaches to the regulation of employment agents across Australian jurisdictions, including: a requirement for employment agents to be licensed; compliance with a code of conduct; providing protections in fair trading laws; and no specific regulatory requirements.

The manner in which employment agents are to conduct their business in South Australia is governed by the *Employment Agents Registration Act 1993 (the Act)* and the *Employment Agents Regulations 2010 (the Regulations)*.

The Act sets out the responsibilities of employment agents in respect to workers and to employers and includes requirements with regard to record keeping and the way that they can charge fees.

Employment agents carrying on business in South Australia must be licenced and can only carry out their business at a registered premises. Where the licence holder is a body corporate the business conducted in pursuance of the licence must be managed under the personal supervision of a natural person who is a resident of the State. A licence can be cancelled if it has been improperly obtained or the licence holder fails to comply with all requirements.

South Australia, Western Australia and the Australian Capital Territory are currently the only Australian jurisdictions that require employment agents to be licenced.

Whilst the licence fee is low, currently \$17.60 for a two-year licence, the application process may be viewed as lengthy and burdensome. The intention to apply for a licence must be advertised by the applicant in a newspaper circulating throughout South Australia, a copy of which must accompany the application. In addition, applicants must provide a Statutory Declaration with the prescribed form, declaring that they have not been convicted of an offence in the last five years in connection with the promotion, operation or management of a business, or involving fraud or dishonesty. The Statutory Declaration must be signed by the applicant and witnessed by a Justice of the Peace.

Certain organisations are excluded from the definition of an employment agent and are not required to hold a licence. In addition, the Minister for Industrial Relations may exempt an organisation under section 4 of the Act from holding the licence on such conditions as the Minister thinks fit.

SafeWork SA is responsible for the administration and enforcement of the Act, including processing licence applications and exemptions, conducting compliance checks on licensees, and investigating complaints received regarding employment agents.

2. What changes are proposed?

Over recent years, especially following COVID-19, the nature of employment has changed; geographical boundaries are less relevant, many businesses, including employment agents operate remotely. With advancements in technology, employers and workers now have greater control and oversight over the job-seeking and hiring process through online platforms.

Employment agents that operate externally to South Australia (nationally and internationally) have expressed concern that the Act is onerous, outdated, does not reflect the needs of the modern labour market, and does not account for technological advancements.

The Bill and draft Regulations have been developed following extensive research into the regulation of the employment agency industry operating in other jurisdictions to identify the best model for South Australia.

The Bill eliminates the requirements for employment agents to hold a licence, maintain and operate solely from a registered premises in South Australia or be under the supervision of a manager who is a resident of the State of South Australia, resulting in a significant reduction in red tape and regulatory burden, creating efficiencies through modern, easy to understand laws.

The draft Regulations prescribe standards of conduct and service required of employment agents; compliance with the code will be enforceable and existing protections for employers and workers will be maintained.

The draft legislation mirrors the approach Queensland (Qld) has adopted in the *Private Employment Agents Act 2005* (Qld), which establishes the *Private Employment Agents (Code of Conduct) Regulation 2015*.

The benefit of the Queensland approach, and the reason it is considered the best model to reform the employment agent industry, is that it establishes a framework that promotes ethical conduct and the provision of high-quality placement and recruitment services from employment agents, whilst also providing for regulatory monitoring and enforcement for breaches of the code of conduct.

3. What is a Code of Conduct within Regulation?

A code of conduct within regulation is considered to be the most appropriate way to set mandatory standards of conduct and behavioural standards that are enforceable in the courts, as opposed to industry-led codes are voluntary and only apply to industry participants who sign up to them.

The code of conduct for employment agents, provided at Schedule 1 of the draft Regulations, establishes a mandatory framework that promotes ethical conduct by employment agents in their dealings with people seeking work, and with others as part of the business of an employment agent.

The code of conduct encourages the provision of high-quality placement and recruitment services by employment agents for people looking for work by setting general standards for the profession and covers issues such as:

- General knowledge of the Act, code of conduct, and other relevant legislation,

- Honestly, fairness and professionalism,
- Skill, care and diligence,
- Ensuring employees of employment agents comply with Act and Code of Conduct.
- Responsibilities to work seekers, including requirements to give an information statement to a work seeker regarding the employment agent's obligations to the work seeker and the work seeker's rights.
- Requirements and restrictions in relation to charging of fees.
- Records to be kept by an employment agent, including registers and correspondence.
- Prohibitions against publishing false information or making false statements.

4. How will the new legislation be enforced?

The Bill provides for the enforcement of the legislation through an inspectorate scheme and provides the South Australian Employment Tribunal constituted as the South Australian Employment Court with the power to grant an injunction restraining a person from engaging in conduct, including from acting as an employment agent.

The grounds for injunction include engaging in conduct that contravenes a declared provision of the Act, the code of conduct, or corresponding law, or convictions for specified serious criminal offences.

5. What will current employment agents be required to do?

Following commencement of the new legislation employment agents will no longer be required to hold a licence to operate as an employment agent, rather they will be required to comply with the provisions of the new legislation.

Current holders of an employment agent licence will be kept updated in relation to the progress of the draft legislation.

6. Will people seeking employment be impacted?

It is anticipated that persons seeking employment will not be impacted by this proposal; the changes are intended to maintain and strengthen protections for job seekers via an enforceable code of conduct that will promote ethical conduct and the provision of high-quality services from employment agents.

7. How are employment agents currently regulated in other jurisdictions?

There are varied approaches to the regulation of the employment agent industry across Australian jurisdictions:

Western Australia

The *Employment Agents Act 1976* (WA) establishes a licensing system for employment agents and governs the manner in which licensed agents conduct their business. A person applying for an employment agent's licence is required to be fit and proper and of good character, and the Commissioner for Consumer Protection (the Commissioner) must be satisfied that adequate management and supervision will be provided to safeguard the interests of jobseekers.

The fee to apply for an employment agent licence is \$1,114 for a three-year licence, and the renewal fee is \$788 for a three-year duration.

Once licensed, an employment agent must comply with the conduct requirements contained within the Act. A key requirement is that employment agents are prohibited from charging fees to job seekers. Other conduct requirements include maintaining financial and other records, and submitting a scale of fees chargeable to employers to the Commissioner for approval.

The Department monitors the employment agent industry through its compliance program. It conducts checks on licensees to ensure they are complying with the requirements under the Act, and investigates any complaints received from the public regarding employment agents.

Australian Capital Territory

The *Agents Act 2003* (ACT) provides for the regulation of employment agents. Under the Agents Act, a person is defined as an employment agent if they provide, or offer to provide, an employment agent service for a principal for reward.

An employment agent service is considered as the finding, or helping to find, a person to carry out work for a principal. It does not matter whether the work or employment is to be carried out under a contract or not, or if the work or employment is to be carried out in or outside of the ACT. If you are a licenced employment agent in another state or territory, you may be eligible to work in the ACT under the Automatic Mutual Recognition Scheme.

The Agents Act also provides that employment agents must be licensed in the ACT. A person commits an offence if they carry on business as an employment agent without a licence or pretends to be a licensed employment agent.

The application for an employment agent licence is \$902 for one year, or \$2,713 for three years.

New South Wales

The Requirements of employment agents are contained in section 49 of *the Fair Trading Act 1987* (NSW), after being inserted in 2002. This provides protection against fees charged to job seekers, and protections offered under Australian Consumer Law such as against deceptive or misleading business practices.

Queensland

Queensland (Qld) has established the *Private Employment Agents Act 2005* (Qld), which establishes the *Private Employment Agents (Code of Conduct) Regulation 2015*. The Code sets requirements for employment agents, and covers issues such as:

- the general responsibilities of an employment agent, including responsibilities to work seekers;
- fee charging restrictions;
- record keeping;
- prohibitions against an employment agent publishing false information or making false statements;
- the requirement of an employment agent to give an information statement to a work seeker; and
- particular rules of conduct for dealings with models and performers.

The Act allows for enforcement of the code of conduct through an inspectorate scheme and provides for injunctions to be made against private employment agents for breaches of the code.

Victoria, Tasmania, and Northern Territory

Victoria, Tasmania, and the Northern Territory do not have any legislation or code of conduct regulating employment agents.

When will these changes come into effect?

Following public consultation, the Government's preliminary intention is that the Bill will be introduced to Parliament in 2024.

Whilst commencement timeframes are subject to the passage of a Bill through Parliament, it is anticipated that the Bill and Regulations will come into operation from 1 January 2025.