

South Australia

Employment Agents Bill 2024

A BILL FOR

An Act to regulate employment agents, to repeal the *Employment Agents Registration Act 1993* and for other purposes.

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Schedule 1—Repeal of *Employment Agents Registration Act 1993*

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Employment Agents Act 2024*.

2—Commencement

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

3—Interpretation

In this Act—

code of conduct—see section 4;

10 *convicted*, of a contravention of a declared provision or of a serious offence, means being found guilty of a contravention of a declared provision or of a serious offence, on a plea of guilty or otherwise, whether or not—

- 15 (a) a conviction was recorded; or
- (b) the finding of guilt was before or after the commencement of this section; or
- (c) for a finding that an employee or executive officer was guilty of a contravention of a declared provision or of a serious offence—the finding was before the employee or executive officer became an employee or executive officer;

20 *corresponding law*, to this Act or a provision mentioned in this Act, means a law of the Commonwealth, or of another State or Territory, that provides generally for the same matter as this Act or the provision;

Court means the South Australian Employment Tribunal established under the *South Australian Employment Tribunal Act 2014* constituted as the South Australian Employment Court;

declared provision means—

- 25 (a) a provision of this Act or a corresponding law to this Act; or
- (b) a provision of the code of conduct included within the ambit of this definition by the regulations; or
- (c) a provision under any other Act included within the ambit of this definition by the regulations;

30 *Department* means the administrative unit of the Public Service that is, under a Minister, responsible for the administration of this Act;

Director means—

- 35 (a) the person for the time being holding, or acting in, the office of the Chief Executive Officer of the Department; or
- (b) any other person directed by the Minister to exercise the powers of the Director under this Act;

employer means a person by whom a worker is employed under an employment contract, or for whom work is done by a worker under an employment contract;

employment means work done under an employment contract;

employment agent means a person who, for monetary or other consideration, carries on the business of—

- (a) procuring workers for persons who desire to employ or engage others in any kind of work; or
- (b) procuring employment for persons who desire to be employed or engaged by others in any kind of work,

but does not include—

- (c) a charitable or benevolent organisation which carries on any such activity on a non-profit basis; or
- (d) an organisation or association of a class excluded from the ambit of this definition by the regulations;

employment contract means—

- (a) a contract of service under which a person (the worker) is employed by another person (the employer); or
- (b) a contract, arrangement or understanding (not being a contract of service) under which one person (the worker) is engaged by another (the employer) to perform remunerated work for the employer, other than where—
 - (i) the work is ancillary to—
 - (A) the supply of goods by the person performing the work; or
 - (B) the use of goods that are the property of the person performing the work; or
 - (C) the conveyance of goods by means of a vehicle provided by a person other than the employer; or
 - (ii) the contract, arrangement or understanding is of a class excluded from the ambit of this definition by the regulations;

fee includes any remuneration, commission or other consideration;

inspector means an inspector under section the *Fair Work Act 1994* appointed to be an inspector by the Minister under section 219A(1)(a) of that Act;

serious offence means—

- (a) an offence against any of the following provisions of the *Criminal Law Consolidation Act 1935* for which the maximum penalty includes a penalty of at least 3 years imprisonment:
 - (i) Part 3;
 - (ii) Part 3A;
 - (iii) Part 3B;
 - (iv) Part 4;

- (v) Part 5;
- (vi) Part 6;
- (vii) Part 6A;
- (viii) Part 6B;
- 5 (ix) Part 7;
- (x) Part 7B (being an offence consisting of aiding, abetting, counselling or procuring the commission of an offence referred to in a preceding subparagraph);
- 10 (xi) section 270A (being an offence consisting of attempting to commit an offence referred to in a preceding subparagraph);
- (xii) section 270AB;
- (xiii) section 270B;
- (xiv) section 270C;
- (xv) section 270D; or
- 15 (b) an offence against any of the following provisions of Part 5 of the *Controlled Substances Act 1984* for which the maximum penalty includes a penalty of at least 3 years imprisonment:
- (i) Division 2 (other than Subdivision 4);
- (ii) Division 3;
- 20 (iii) Division 4 (other than section 33I(2), 33K or 33L);
- (iv) Division 4A;
- (c) any other offence prescribed by the regulations (being an indictable offence for which the maximum penalty includes a penalty of at least 3 years imprisonment); or
- 25 (d) an offence against a law of the Commonwealth, or of another State or Territory, corresponding to an offence referred to in a preceding paragraph;

worker means a natural person by whom work is performed under an employment contract.

Part 2—Code of conduct for employment agents

4—Code of Conduct

- 30 (1) The Governor may, by regulation, prescribe a code of conduct for employment agents.
- (2) The code of conduct, may (without limitation)—
- (a) set conduct standards for private employment agents; and
- (b) establish principles for fair trading; and
- 35 (c) provide for a system of complaint resolution; and
- (d) specify the type of work arrangements and commercial operations covered by the code or specified provisions of the code; and

- (e) set recommended standards of competence and training for private employment agents; and
- (f) provide for disciplining private employment agents who contravene the code; and
- 5 (g) specify records that employment agents must keep; and
- (h) fix penalties, not exceeding \$5 000, for offences against the code; and
- (i) fix expiation fees, not exceeding \$315, in respect of offences against the code.

Part 3—Injunctions

5—Injunctions

10 On application made by the Director, the Court may, subject to this Part, grant an injunction against an employment agent restraining the employment agent from either or both of the following:

- (a) engaging in specified conduct;
- (b) acting as an employment agent.

15 6—Grounds for injunction

- (1) The Court may grant an injunction if the Court is satisfied that an employment agent—
 - (a) has engaged, or is proposing to engage, in conduct that constitutes or would constitute—
 - 20 (i) a contravention of a declared provision; or
 - (ii) an attempt to contravene a declared provision; or
 - (iii) aiding, abetting, counselling or procuring a person to contravene a declared provision; or
 - (iv) inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene a declared provision; or
 - 25 (v) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of a declared provision; or
 - (vi) conspiring with others to contravene a declared provision; or
 - (b) has been convicted of a contravention of a declared provision or convicted of a serious offence; or
 - 30 (c) has knowingly employed, or continued to employ, a person who has been convicted of—
 - (i) a contravention of a declared provision; or
 - (ii) a serious offence;
- 35 in relation to an activity performed for the employment agency that it is inappropriate for the person to perform, having regard to the nature of the contravention or serious offence; or

(d) has not paid an amount the employment agent is required to pay under an order of a court (whether under this Act or a corresponding law) in relation to the repayment of a fee charged to a person by the employment agent in the course of acting as an employment agent.

5 (2) However, the Court may grant an injunction only if the Court is satisfied that having regard to the nature of the conduct complained of and, if the conduct complained of is a contravention of a declared provision or is a serious offence, the circumstances of the contravention or offence—

(a) the conduct complained of should be restrained; or

10 (b) the person is not an appropriate person to act as an employment agent.

7—Court’s powers for injunctions

(1) The power of the Court to grant an injunction restraining a person from engaging in conduct (however described) may be exercised—

15 (a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; and

(b) whether or not the person has previously engaged in conduct of that kind.

(2) An interim injunction may be granted pending final determination of the application.

(3) A final injunction may, by consent of the parties, be granted without proof that proper grounds for the injunction exist.

20 (4) The Court may revoke or vary an injunction at any time.

8—Terms of injunction

(1) The Court may grant an injunction under this Part in the terms the Court considers appropriate.

25 (2) Without limiting the Court’s power under this Part, an injunction may be granted restraining a person from engaging in stated conduct or acting as an employment agent—

(a) for a specified period; or

(b) except on specific terms and conditions.

30 (3) Subsection (2) applies whether or not engaging in stated conduct or acting as an employment agent is part of, or incidental to, the carrying on of another business.

(4) In addition, the Court may grant an injunction requiring a person to take stated action, including action to disclose information or publish advertisements, to remedy any adverse consequences of the person’s conduct.

9—Undertakings as to costs

35 If the Director applies for an injunction under this Part, no undertaking as to damages or costs may be required or made.

Part 4—Inspectors

10—Inspections

- (1) An inspector may, for any purpose connected with the administration or enforcement of this Act—
- 5 (a) at any reasonable time enter and inspect premises; and
- (b) require any person to produce any records, accounts or documents relating to the business of an employment agent; and
- (c) examine, copy and take extracts from any records, accounts or documents; and
- 10 (d) take photographs, video recordings or audio recordings; and
- (e) require a person who the inspector reasonably suspects has committed an offence against this Act or the code of conduct to state the person's full name and usual place of residence; and
- (f) require a person who the inspector reasonably suspects has knowledge
- 15 concerning any matter relating to the administration of this Act to answer questions in relation to those matters.
- (2) In the exercise of powers under this section an inspector may be assisted by such persons as may be reasonable in the circumstances.
- (3) The person in charge of premises at the relevant time must give to an inspector or a person assisting an inspector such assistance and provide such facilities as are
- 20 necessary to enable the powers conferred by this section to be exercised.
- Penalty: \$10 000.
- (4) Subject to subsection (5), a person who—
- 25 (a) without reasonable excuse, hinders or obstructs an inspector, or a person assisting an inspector, in the exercise of powers conferred by this section; or
- (b) uses abusive, threatening or insulting language to an inspector, or a person assisting an inspector; or
- (c) without reasonable excuse, refuses or fails to comply with a requirement or direction of an inspector; or
- 30 (d) without reasonable excuse, fails to answer, to the best of the person's knowledge, information and belief, a question put by an inspector; or
- (e) falsely represents, by words or conduct, that they are an inspector,
- is guilty of an offence.
- Penalty: \$10 000.
- 35 (5) A person is not required to answer a question put by an inspector, or to produce a document, if the answer, or the contents of the document, would tend to incriminate the person of an offence.

11—Power to seize evidence

- (1) An inspector may seize a thing at premises the inspector enters under this Part if the inspector reasonably believes—
- (a) the thing is evidence of an offence against this Act; and
 - (b) the seizure is necessary to prevent the thing being hidden, lost or destroyed or used to continue or repeat the offence.
- (2) In addition, an inspector may seize a thing at premise the inspector enters under this Part if the inspector reasonably believes the thing has just been used in committing an offence against this Act.
- (3) Having seized a thing, an inspector may—
- (a) move the thing from the premises where it was seized (the *place of seizure*); or
 - (b) leave the thing at the place of seizure but take reasonable action to restrict access to it.
- (4) If an inspector restricts access to a seized thing, a person must not tamper, or attempt to tamper, with the thing or something restricting access to the thing without an inspector's approval.
Maximum penalty: \$10 000.
- (5) As soon as practicable after an inspector seizes a thing, the inspector must give the person from whom it was received a receipt for the thing that describes generally the thing seized and its condition.
- (6) However, if it is not practicable to comply with subsection (5), the inspector must leave the receipt in a conspicuous position and in a reasonably secure way at the place of seizure.
- (7) Subsections (5) and (6) do not apply to a thing if it is impracticable or would be unreasonable to give the receipt required by the section, given the thing's nature, condition and value.
- (8) Until a seized thing is forfeited or returned under section 12, an inspector must allow its owner to inspect it and, if it is a document, to copy it (unless it is impracticable or would be unreasonable to allow the inspection or copying).

12—Forfeiture and return of seized thing

- (1) A seized thing is forfeited to the State if the inspector who seized the thing—
- (a) can not find its owner after making reasonable inquiries; or
 - (b) can not return it to its owner, after making reasonable efforts; or
 - (c) reasonably believes it is necessary to keep the thing to prevent it being used to commit an offence against this Act or the code of conduct.
- (2) An inspector is not required to make inquiries under subsection (1)(a) if it would be unreasonable to make inquiries to find the owner.
- (3) An inspector is not required to make efforts under subsection (1)(b) if it would be unreasonable to make efforts to return the thing to its owner.

- (4) If an inspector decides to forfeit a thing under subsection (1)(c), the inspector must tell the owner of the decision and the reasons for the decision by written notice.
- (5) Subsection (4) does not apply if—
- (a) the inspector can not find its owner, after making reasonable inquiries; or
 - (b) it is impracticable or would be unreasonable to give the notice.
- (6) In deciding whether, and if so what, inquiries or efforts are reasonable, or whether it would be unreasonable to give notice about a thing, regard must be had to the thing's nature, condition and value.
- (7) If a seized thing has not been forfeited, the inspector must return it to its owner—
- (a) at the end of 6 months following the seizure; or
 - (b) if proceedings for an offence involving the thing are started within 6 months following the seizure, at the end of the proceedings and any appeal from the proceedings.
- (8) However, unless a thing has been forfeited, the inspector must immediately return the thing seized as evidence to its owner if the inspector stops being satisfied its continued retention as evidence is necessary.

Part 5—Miscellaneous

13—False or misleading information

A person must not, in furnishing any information required under this Act, make a statement that is false or misleading in a material particular.

Maximum penalty: \$10 000.

14—Commencement of prosecutions

- (1) Proceedings for an offence against this Act must be commenced within 3 years after the date on which the offence is alleged to have been committed.
- (2) Proceedings for an offence against this Act must not be commenced by a person other than the Director or an inspector except with the consent of the Minister.
- (3) An apparently genuine document purporting to be a certificate of the Minister certifying that the Minister has consented to the commencement of proceedings for an offence against this Act will, in the absence of proof to the contrary, be accepted as proof of the matter so certified.

15—Liability of agents for acts or omissions of employees etc

For the purposes of this Act, an act or omission of a person employed by an employment agent (whether under a contract of service or otherwise) will be taken to be an act or omission of the employment agent unless the employment agent proves that the person was not acting in the course of the employment.

16—Protection from liability

- (1) No civil liability will attach to a person for an act or omission in good faith—
 - (a) in the exercise or discharge, or purported exercise or discharge, of a power or function under this Act; or

(b) in the carrying out, or purported carrying out, of any direction or requirement given or imposed, or purportedly given or imposed, in accordance with this Act.

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

17—Delegation by Director

(1) The Director may delegate a function or power of the Director under this Act to—

(a) a specified person; or

(b) a person for the time being holding or acting in a specified office or position.

(2) A delegation—

(a) must be by instrument in writing; and

(b) may be made subject to conditions or limitations; and

(c) does not derogate from the ability of the delegator to act in any matter; and

(d) is revocable at will.

(3) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

(4) An apparently genuine document purporting to be a certificate of the Director containing particulars of a delegation under this section will, in the absence of proof to the contrary, be accepted as proof of those particulars.

18—Regulations and fees notices

(1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.

(2) Without limiting the generality of subsection (1), the regulations may—

(a) prescribe penalties, not exceeding \$5 000, for offences against the regulations; and

(b) prescribe an expiation fee, not exceeding \$315, in respect of any offence against the regulations; and

(c) be of general application or limited application; and

(d) make different provision according to the matters or circumstances to which they are expressed to apply; and

(e) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister, the Director or any other specified person or body; and

(f) make provisions facilitating the proof of matters in proceedings under this Act; and

(g) make provisions of a saving or transitional nature consequent on the enactment of this Act or on the commencement of specified provisions of this Act or on the making of regulations under this Act; and

- (h) apply or incorporate, wholly or partially and with or without modification, a code, standard, policy or other document prepared or published by the Minister or another specified person or body.
- 5 (3) The Minister may prescribe fees for the purposes of this Act by fee notice under the *Legislation (Fees) Act 2019*.
- (4) A fee notice may provide for the waiver, reduction or remission of fees.
- (5) If a code, standard or other document is referred to or incorporated in the regulations—
- 10 (a) a copy of the code, standard or other document must be kept available for public inspection, without charge and during ordinary office hours, at an office or offices specified in the regulations; and
- (b) evidence of the contents of the code, standard or other document may be given in any legal proceedings by production of a document apparently certified by the Minister to be a true copy of the code, standard or other document.
- 15

19—Review of Act

- (1) The Minister must cause a review of the operation of this Act to be conducted, and a report on the review to be prepared and submitted to the Minister, after this Act has been in operation for a period of 5 years.
- 20 (2) The Minister must cause a copy of a report submitted under subsection (1) to be laid before both Houses of Parliament within 12 sitting days after receiving the report.

Schedule 1—Repeal of *Employment Agents Registration Act 1993*

The *Employment Agents Registration Act 1993* is repealed.