

South Australia

Employment Agents Registration Regulations 2010

under the *Employment Agents Registration Act 1993*

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Legislative history

1—Short title

These regulations may be cited as the *Employment Agents Registration Regulations 2010*.

3—Interpretation

In these regulations—

Act means the *Employment Agents Registration Act 1993*;

domestic partner means a person who is a domestic partner within the meaning of the *Family Relationships Act 1975*, whether declared as such under that Act or not;

spouse—a person is the spouse of another if they are legally married.

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 is excluded from the definition of *employment contract* in section 3 of the Act if the yearly remuneration payable to the worker is—

- (a) for the financial year ending on 30 June 2011—not less than \$113 800; and
- (b) for each subsequent financial year—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—Application for licence

- (1) Pursuant to section 7(1)(c)(i) of the Act, the following persons are disqualified from giving a character reference for an applicant for a licence:
 - (a) a person who has, within the previous 5 years, been convicted of an offence—
 - (i) in connection with the promotion, operation or management of a business; or
 - (ii) involving fraud or dishonesty; or
 - (b) a person who is an associate of the applicant.
- (2) For the purposes of subregulation (1)(b), a person is an associate of an applicant if—
 - (a) they are partners; or
 - (b) they are both involved in the same business; or
 - (c) they are both directors of the same company; or
 - (d) they are both trustees or beneficiaries of the same trust, or 1 is a trustee and the other is a beneficiary of the same trust; or
 - (e) 1 is a spouse, domestic partner, parent, grandparent, child or grandchild of the other.
- (3) Pursuant to section 7(3) of the Act, an applicant that is a body corporate must furnish 2 character references for the natural person who is to act as the manager of the relevant business.
- (4) A character reference must be in the form set out in Schedule 1 Form 1.
- (5) For the purposes of section 7(4) of the Act, an application for a licence must be advertised at least once in a newspaper circulating generally throughout the State.
- (6) For the purposes of section 7(8) of the Act, the period of 1 month is prescribed.

7—Application for renewal of licence

For the purposes of section 9(2) of the Act, the prescribed number of days is 14.

8—Notice of employment agent's scale of fees

The form of a notice under section 19(1) of the Act is as set out in Schedule 1 Form 2.

9—Prescribed form for statement

The prescribed form for a statement under section 20(4) of the Act is as set out in Schedule 1 Form 3.

10—Exemption of premises from Act

Premises that are—

- (a) located at a place of business of an employer in order to facilitate the employment of people to work at that place; and
- (b) used by an employment agent on a temporary basis only, or that are only staffed by an employment agent on a part-time or casual basis,

are exempted from the operation of sections 16, 17 and 19 of the Act.

11—Fees

The fees payable for the purposes of the Act are set out in Schedule 2.

Schedule 1—Forms

Form 1—Character reference

Employment Agents Registration Act 1993, section 7

This reference relates to an application for a licence as an employment agent under section 7 of the *Employment Agents Registration Act 1993*.

Name of applicant for licence:

Describe how you know the applicant and your relationship to him or her (if any):

The applicant is required (under section 7 of the Act) to be a fit and proper person to hold a licence. Specify any details within your knowledge relating to the applicant's conduct and character that you consider may be relevant to this requirement:

The applicant or a person employed by the applicant is required (under section 7 of the Act) to have sufficient knowledge and experience for the purpose of properly operating or managing the business of an employment agent. Specify any details within your knowledge relating to the applicant's knowledge and experience that you consider may be relevant to this requirement:

Specify any other details that you consider may be relevant to the application:

Your details:

Name:

Address:

Occupation:

Signature:

Date:

Note to person completing this form: Please make sure you are not disqualified from providing a character reference for an applicant (see regulation 6(1) of the Employment Agents Registration Regulations 2010).

Form 2—Notice of employment agent's scale of fees

Employment Agents Registration Act 1993, section 19

Name of employment agent:

The fees to be charged by this employment agent in procuring workers for a person who desires to employ or engage others in any kind of work are as follows: *[specify scale of fees]*

The fees to be charged by this employment agent in procuring employment for a person who desires to be employed or engaged by others in any kind of work are—

- (a) as follows *[specify scale of fees]**; or
- (b) as negotiated between the employment agent and the person*.

Signature of employment agent**:

Date:

**Delete whichever of paragraph (a) or (b) is not applicable.*

***If the employment agent is a body corporate, the signature must be that of the natural person acting as the manager of the business carried on by the employment agent.*

Form 3—Prescribed form for statement

Employment Agents Registration Act 1993, section 20(4)

Name and business address of employer*:

**"Employer" is defined in the Act as 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.*

Location at which worker must first attend for purposes of employment:

Indicate whether the *Workers Rehabilitation and Compensation Act 1986* will apply in relation to the worker YES/NO

Indicate whether the following types of insurance will be paid by the employer in relation to the worker:

Workers compensation YES*/NO

Public liability YES*/NO

Car insurance YES*/NO

Other YES*/NO

** If "YES", please specify details*

Indicate whether the worker will pay income tax through the employer (ie PAYE) YES/NO *[if "NO", please specify details of arrangements]*

Indicate whether the worker will be covered by the following kinds of awards or agreements:

Federal award YES*/NO

State award YES*/NO

Enterprise agreement YES*/NO

** If "YES", please specify name of award or agreement*

Indicate whether superannuation benefits will be paid by the employer YES/NO [if "YES", please specify details of scheme including whether it is a Commonwealth or State scheme]

Indicate whether the worker will be entitled to any of the following types of paid leave that will accrue during the employment:

Annual leave YES*/NO

Sick leave YES*/NO

Parental leave YES*/NO

Other YES*/NO

* If "YES", please specify details including yearly entitlement

Indicate whether any expenses will be reimbursed by the employer in relation to the worker YES/NO [if "YES", please specify details including amounts]:

Details of person completing this statement:

Name:

Signature:

Date:

Note to worker: It is recommended that you verify the information contained in this statement with your employer.

Schedule 2—Fees

The following fees are payable:

| | | |
|---|---|---------|
| 1 | Application for licence (section 7(1)(d) of Act) | \$15.10 |
| 2 | Application for renewal of licence (section 9(1)(c) of Act) | \$15.10 |
| 3 | Late application fee (section 9(3) of Act) | \$15.10 |

Legislative history

Notes

- Variations of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of these regulations (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Legislation revoked by principal regulations

The *Employment Agents Registration Regulations 2010* revoked the following:

Employment Agents Registration Regulations 1995

Principal regulations and variations

New entries appear in bold.

| Year | No | Reference | Commencement |
|-------------|------------|---------------------------------------|----------------------|
| 2010 | 183 | <i>Gazette 12.8.2010 p4032</i> | 1.9.2010: r 2 |
| 2011 | 111 | <i>Gazette 9.6.2011 p2218</i> | 1.7.2011: r 2 |
| 2012 | 128 | <i>Gazette 31.5.2012 p2480</i> | 1.7.2012: r 2 |
| 2013 | 137 | <i>Gazette 6.6.2013 p2351</i> | 1.7.2013: r 2 |
| 2014 | 136 | <i>Gazette 19.6.2014 p2659</i> | 1.7.2014: r 2 |
| 2015 | 148 | <i>Gazette 18.6.2015 p2779</i> | 1.7.2015: r 2 |
| 2016 | 121 | <i>Gazette 23.6.2016 p2324</i> | 1.7.2016: r 2 |
| 2017 | 136 | <i>Gazette 22.6.2017 p2366</i> | 1.7.2017: r 2 |
| 2018 | 146 | <i>Gazette 21.6.2018 p2400</i> | 1.7.2018: r 2 |
| 2019 | 148 | <i>Gazette 13.6.2019 p2093</i> | 1.7.2019: r 2 |

Provisions varied

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

| Provision | How varied | Commencement |
|------------|--|-----------------|
| <i>r 2</i> | <i>omitted under Legislation Revision and Publication Act 2002</i> | <i>1.7.2011</i> |
| Sch 2 | substituted by 111/2011 r 4 | 1.7.2011 |
| | substituted by 128/2012 r 4 | 1.7.2012 |
| | substituted by 137/2013 r 4 | 1.7.2013 |
| | substituted by 136/2014 r 4 | 1.7.2014 |

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|--------------|--|-----------------|
| | substituted by 148/2015 r 4 | 1.7.2015 |
| | substituted by 121/2016 r 4 | 1.7.2016 |
| | substituted by 136/2017 r 4 | 1.7.2017 |
| | substituted by 146/2018 r 4 | 1.7.2018 |
| <i>Sch 3</i> | <i>omitted under Legislation Revision and Publication Act 2002</i> | <i>1.7.2011</i> |

Historical versions

1.7.2011
1.7.2012
1.7.2013
1.7.2014
1.7.2015
1.7.2016
1.7.2017