

South Australia

Fair Work (Representation) Regulations 2009

under the *Fair Work Act 1994*

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Legislative history

Part 1—Preliminary

1—Short title

These regulations may be cited as the *Fair Work (Representation) Regulations 2009*.

2—Commencement

These regulations will come into operation on 1 September 2009.

3—Interpretation

In these regulations, unless the contrary intention appears—

Act means the *Fair Work Act 1994*;

business day means any day except Saturday, Sunday or a public holiday;

recognised advocate means—

- (a) a person who is an officer or employee of an association and whose registration as a registered agent under the Act is supported by that association; or
- (b) a person whose registration as a registered agent under the Act is supported by an employer of public employees.

Part 2—General right of representation

4—Party may be represented by any person

A party or intervener may be represented in proceedings before the Court or Commission by a person of his or her choice provided that the person is not acting for fee or reward.¹

Note—

- 1 This regulation is intended to state a general principal and does not derogate from the provisions regarding representation contained in sections 151 and 152 of the Act.

Part 3—Registered agents

5—The register

The register of registered agents maintained under section 152(1) of the Act will be divided into 2 parts—

- (a) 1 part relating to persons who are recognised advocates; and
- (b) the other part relating to other registered agents.

6—Qualifications and experience

- (1) Subject to subregulation (2), the following qualifications and experience are prescribed for the purposes of section 152(2)(a) of the Act:
 - (a) extensive experience in industrial relations;
 - (b) a high level of written and oral communication skills;
 - (c) a sound understanding of the human, social and political factors which influence industrial relations;
 - (d) experience in undertaking negotiations in the industrial relations field;
 - (e) experience in appearing as an advocate before industrial authorities;
 - (f) experience in the interpretation and implementation of awards, industrial agreements and industrial relations policies;
 - (g) reasonable knowledge of the legislative framework within which industrial relations operate.
- (2) A person who is a recognised advocate will be taken to have the qualifications and experience necessary to obtain registration.

7—Application for registration

- (1) An application by a recognised advocate for registration as a registered agent must be made in writing to the Registrar and, if the Registrar is satisfied that the application is duly made under these regulations, the Registrar must register the person as a registered agent (on that part of the register relating to recognised advocates).
- (2) An application by any other person for registration as a registered agent must—
 - (a) be made to the Registrar; and

- (b) contain the information set out in Schedule 1; and
 - (c) be accompanied by 2 references—
 - (i) which are supplied by persons who are actively involved in industrial relations; and
 - (ii) which provide information relating to the applicant's qualifications and experience for the purposes of section 152(2)(a) of the Act; and
 - (d) be accompanied by the appropriate fee fixed under these regulations; and
 - (e) be accompanied by a statutory declaration from the applicant that he or she has read and understands the code of conduct established by these regulations, and that he or she agrees to abide by that code.
- (3) A person who has applied for registration as a registered agent under subregulation (2) must, within 3 business days after the day on which the application is made, cause notice of the application to be advertised in a newspaper circulating generally throughout the State.

8—Disqualification

- (1) A person is disqualified from registration as an agent if the person—
- (a) is an undischarged bankrupt, or a person whose affairs are being administered under the laws relating to bankruptcy; or
 - (b) has, within the preceding period of 5 years, been convicted or found guilty of an offence involving dishonesty or been a director or officer of a body corporate so convicted or found guilty during that period; or
 - (c) has, within the preceding period of 5 years, been convicted or found guilty of contempt of court or has been the subject of a finding of unprofessional conduct by a court or tribunal; or
 - (d) has, within the preceding period of 5 years, been found by the Court to have breached the code of conduct established under these regulations or a code of conduct established under a corresponding previous enactment.
- (2) Subregulation (1)(d) does not apply to a recognised advocate.
- (3) For the purposes of section 152(2)(b) of the Act a person who applies for registration or renewal of registration must satisfy the Registrar that he or she is not disqualified in accordance with this regulation.

9—Person ceasing to be a recognised advocate

If—

- (a) in relation to a person who is registered as a registered agent under paragraph (a) of the definition of *recognised advocate*—
 - (i) the person ceases to be an officer or employee of the relevant association; or
 - (ii) the relevant association ceases to support the person's registration;
- (b) in relation to a person who is registered as a registered agent under paragraph (b) of the definition of *recognised advocate*—the relevant employer of public employees ceases to support the person's registration,

the person ceases to be entitled to be registered on that part of the register relating to recognised advocates (but the person may, if he or she thinks fit, apply for registration as a registered agent in his or her own right).

10—Code of conduct

- (1) The code of conduct set out in Schedule 2 is established under section 152(5) of the Act.
- (2) However, Part 1 of the code of conduct does not apply to recognised advocates.

11—Fees

- (1) The fees payable for the purposes of registration as a registered agent are fixed by Schedule 3.
- (2) No fee is payable by a recognised advocate.
- (3) The fees are payable to the Industrial Relations Court of South Australia.
- (4) If a renewal fee prescribed by Schedule 3 is not paid as required by the Schedule, the Registrar may serve on the relevant person a notice in writing to the effect that his or her registration as an agent under the Act will lapse if the fee is not paid within 14 days after the notice is served.
- (5) The Registrar may extend (and further extend) the period within which a renewal fee must be paid.
- (6) Subject to an extension under subregulation (5), if a renewal fee is not paid within the time that applies under subregulation (4), the person's registration as an agent under the Act is automatically cancelled.

12—Penalty

A person who breaches, or fails to comply with, a regulation is guilty of an offence.
Maximum penalty: \$2 500.

Schedule 1—Application for registration as an agent (not being a recognised advocate)

Fair Work (Representation) Regulations 2009—regulation 7(2)

An application form required by regulation 7(2) must contain the following information:

- 1 Full name:
- 2 Address:
Post Code:
- 3 Address for service of notices:
Post Code:
- 4 Contact telephone number:
- 5 Details of relevant qualifications and experience required under the Act and the regulations:

- 6 Are you, or have you ever been, a bankrupt or a person whose affairs have been or are being administered under the laws relating to bankruptcy? If "yes", give details and include relevant dates.
- 7 Have you within the last 5 years been convicted or found guilty of any offence involving dishonesty or have you been a director or officer of a body corporate so convicted or found guilty, or are any such proceedings pending? If "yes", give details of the offence, the relevant court and the penalty. If proceedings are pending, give details of the nature of the allegations, the present position of the proceedings, the relevant court and the date of the hearing of the proceedings. If applicable, give details of your position in any body corporate so convicted or found guilty or in respect of which such proceedings are pending.
- 8 Have you within the last 5 years been convicted or found guilty of contempt of court or been the subject of a finding of unprofessional conduct by a court or tribunal, or are any such proceedings pending? If "yes", give details of the circumstances and the relevant court or tribunal. If proceedings are pending, give details of the nature of the allegations, the present position of the proceedings, the relevant court or tribunal and the date of the hearing of the proceedings.
- 9 I declare that I am not a person—
 - (a) whose name has been struck off the role of legal practitioners; or
 - (b) who, although a legal practitioner, is not entitled to practise the profession of law because of any disciplinary action taken against me; or
 - (c) who is disqualified by regulation from registration.

Date:

Signed:

Information

Address should show an address of premises (not a post office box).

The applicant should attach copies of any documentation relating to his or her qualifications or experience which he or she is able to provide.

The application must be accompanied by 2 references, the relevant application fee, and a statutory declaration from the applicant (see regulation 7).

The application must be lodged with the Registrar.

Schedule 2—Code of conduct to be observed by registered agents

Part 1—Duties to the community

1—Trust money

- (1) A registered agent who receives money for or on behalf of a person must, subject to any lien or lawful claim of the registered agent, hold the money in trust for the person and must, subject to the terms of the trust, pay or disperse the money as the person directs.

- (2) A registered agent must, as soon as practicable after receipt of trust money, deposit the money in a trust account.
- (3) A registered agent must not withdraw or permit trust money to be withdrawn from a trust account established under this clause except as authorised by this code, or for the purpose of satisfying a lien or lawful claim of the registered agent on that money.
- (4) This clause does not prevent or render unlawful the withdrawal from the trust account of trust money in accordance with the order of a court or the Commission.
- (5) A registered agent must keep detailed accounts of all trust money that he or she receives, and of disbursements or other dealings with that money, so as—
 - (a) to accurately disclose the state of the trust account and dealings with money deposited in the trust account; and
 - (b) to enable the accounts to be conveniently and properly audited.

2—Trust accounts to be audited

- (1) A registered agent or partnership of registered agents, must, by 1 March in each year, have his, her or their trust account audited up to 31 December in the preceding year by a chartered accountant at the agent's own cost or expense.
- (2) A registered agent must, within 7 days of a request in writing by an auditor, produce to the auditor all books, papers and accounts which the auditor may require to carry out an audit under this code.

3—Filing of auditor's certificate

A registered agent must, by 31 March in each year, file with the Registrar a certificate from the auditor which certifies that the trust account has been properly kept and that all money received or paid into that account has been properly and lawfully dealt with and paid to the persons entitled to the money.

4—Removal of agent's name from register

If—

- (a) a registered agent fails or refuses to file a certificate from an auditor within the stipulated time; or
- (b) the certificate filed by a registered agent does not certify to the matters required by this code; or
- (c) a registered agent breaches a clause of this code,

the registered agent is liable to have his or her name removed from the register of registered agents.

Part 2—Duties to clients

5—Agent to act on client's instructions

A registered agent must use all proper available legal means to advance a client's interests as the client instructs.

6—Agent must advise client of basis for calculating charges

Before performing work for a client a registered agent must advise the client of the basis that will be used for calculating the agent's charges.

7—Confidentiality

- (1) Subject to this clause, a registered agent must not disclose information which has come to him or her in the course of handling a matter.
- (2) This clause does not apply to—
 - (a) communications authorised by an Act or law;
 - (b) communications that are incidental to the normal conduct of a matter;
 - (c) communications that have been specifically authorised by the client.
- (3) This clause applies whether or not a registered agent's services have been terminated.

8—Disclosure of interest

- (1) A registered agent must make a full and frank disclosure to his or her client of an interest he or she may have in a transaction or matter in which he or she is acting for that client.
- (2) If an interest disclosed by a registered agent under this clause, is or might be, adverse to the interests of the agent's client, the agent must terminate his or her services unless specifically instructed by the client to continue to act.

9—Disclosure of potential conflict of interest

A registered agent must at all times make a full and frank disclosure to his or her client of a matter or thing which could reasonably be regarded by the client as raising a conflict of interest on the part of the registered agent.

10—Agent may act for more than 1 party

A registered agent may act for more than 1 party provided that all parties are informed he or she is so acting and there is no conflict of interest in his or her so acting.

11—Agent to work in timely fashion

A registered agent must use reasonable endeavours to complete work for a client in a competent manner and within a reasonable time.

12—Agent to apprise client of developments

A registered agent must keep a client apprised of significant developments in a matter entrusted to him or her by the client unless the client has instructed the registered agent to do otherwise.

13—Agent must not give advice to advance illegal purpose

A registered agent must not tender advice to a client if the registered agent knows that the client is requesting the advice to advance an illegal purpose.

14—Agent may decline to act in certain circumstances

If an instruction of a client is such as to prevent the proper performance by a registered agent of his or her duties, the registered agent must decline to act further and he or she must advise the client accordingly.

15—Agent to assist new agent after termination of instructions

- (1) If a client has terminated a registered agent's instructions in a matter, the registered agent must offer such assistance, advice or information as may be necessary to enable another registered agent or a legal practitioner to take over the conduct of the matter, and to take such matter in hand promptly and expediently.
- (2) Nothing in this clause affects a lien which may be lawfully imposed by a registered agent on documents which he or she holds for or on behalf of a client.

Part 3—Duties to court and commission

16—Agent must not make untruthful statement

A registered agent must not make a statement of fact, or purported fact, to the Court or the Commission unless the registered agent has previously established the truth of the statement for himself or herself, or has material in his or her possession that would lead a reasonable person to believe that the statement was true.

17—Agent must distinguish between statements of fact and statements based on instructions

A registered agent must clearly distinguish to the Court or the Commission between—

- (a) statements that are intended to be statements of fact made by the registered agent; and
- (b) statements that are made on the instructions that the registered agent has received from his or her client and which depend on the credit of that client.

18—Imputations against character prohibited

A registered agent must not make allegations or imputations to the Court or the Commission against the character of a person unless—

- (a) the allegation or imputation is relevant to the issues in the case; and
- (b) is supported by written material in the possession of that agent or the instructions given to him or her by the party whom that agent represents.

19—Duty to guard against becoming conduit for certain questions

A registered agent has a duty to guard against being made the channel for questions that are only intended to insult or annoy a witness or other person, and to exercise his or her own judgment both as to the substance and the form of the questions that he or she puts.

20—Undertaking must be carried out

A registered agent must ensure that an undertaking given by him or her to the Court or Commission is carried out.

21—Duty relating to discovery of documents

A registered agent whose client has been directed by the Court or Commission to make discovery of books, documents, or other writings which are in his or her possession or control and which relate to the matters in issue between the parties, must examine those books, documents or other writings as far as possible to ensure that the order for discovery is complied with and that all books, documents and other writings, even if adverse to the interests of the client, have been properly discovered.

Part 4—Duties to others

22—Agent not to communicate with another's client without permission

A registered agent must not directly or indirectly communicate with a client of a legal practitioner, a registered organisation or another registered agent in the same transaction, except with the express approval of that legal practitioner, registered organisation or other registered agent.

23—Observation of party allowed

- (1) Subject to this clause, a registered agent may instruct another person to make observations of an opposing party if those observations are directed towards the ascertainment of evidence which might be tendered at the hearing of a matter.
- (2) A registered agent must not instruct another person—
 - (a) to communicate with an opposing party with a view to obtaining admissions contrary to the interests of that party; or
 - (b) to commit illegal conduct; or
 - (c) to do anything which would be improper for the registered agent to do themselves.

Schedule 3—Fees

1	On lodging an application for registration as a registered agent—for each year of registration	\$192
2	Renewal fee (during the continuation of registration)—for each year of registration	\$192

Schedule 4—Revocation of *Industrial and Employee Relations (Representation) Regulations 1994*

The *Industrial and Employee Relations (Representation) Regulations 1994* are revoked.

Legislative history

Notes

- 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.

Principal regulations

Year	No	Reference	Commencement
2009	53	<i>Gazette 30.4.2009 p1658</i>	1.9.2009: r 2