



EMPLOYMENT AGENTS REGISTRATION ACT 1993

No. 69 of 1993

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ELIZABETHAE II REGINAE

A.D. 1993

No. 69 of 1993

An Act to regulate employment agents; to repeal the Employees Registry Offices Act 1915; and for other purposes.

[Assented to 9 September 1993]

The Parliament of South Australia enacts as follows:

PART 1 PRELIMINARY

Short title

1. This Act may be cited as the *Employment Agents Registration Act 1993*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Interpretation

3. In this Act, unless the contrary intention appears—

“the Director” means—

- (a) the person for the time being holding, or acting in, the office of the Chief Executive Officer of the Department of the Minister to whom the administration of this Act is committed; 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 this definition by the regulations;

“employment contract” means—

- (a) a contract of service under which one person (the worker) is employed by another (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 this definition by the regulations;

“fee” includes any remuneration, commission or other consideration;

“inspector” means an inspector appointed under the *Industrial Relations Act (S.A.) 1972*;

“licence” means a licence under this Act;

“manager” means a person nominated under this Act to be the manager of a business carried on by an employment agent;

“registered premises” means premises under section 16;

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

Exemptions

4. (1) The Minister may, by notice in the *Gazette*, confer exemptions from specified provisions of this Act—

- (a) on specified persons or persons of a specified class; or
- (b) in relation to specified premises or premises of a specified class.

(2) An exemption under subsection (1) may be granted by the Minister on such conditions as the Minister thinks fit.

(3) The Minister may, at any time, by further notice in the *Gazette*—

- (a) vary or revoke an exemption under subsection (1);
- (b) vary or revoke a condition under subsection (2).

(4) A person who contravenes or fails to comply with a condition of an exemption is guilty of an offence.

Penalty: Division 5 fine.

Non-derogation

5. (1) The provisions of this Act are in addition to and do not derogate from the provisions of any other Act.

(2) Except as expressly provided, this Act will not be taken to limit or derogate from any civil remedy at law or in equity.

**PART 2
LICENSING SCHEME**

DIVISION 1—LICENSING OF AGENTS

Requirement to be licensed

6. A person must not—

- (a) carry on business as an employment agent; or
- (b) hold himself or herself out as an employment agent,

unless that person holds a licence under this Division.

Penalty: Division 5 fine.

Application for a licence

7. (1) An application for a licence must—

- (a) be made to the Director; and
- (b) be in writing in a form approved by the Minister; and
- (c) be accompanied by at least two character references—
 - (i) which are supplied by persons who are not disqualified under the regulations; and
 - (ii) which comply with the requirements prescribed by the regulations; and
- (d) be accompanied by the prescribed fee.

(2) An applicant for a licence must furnish the Director with such further information (verified, if the Director so requires, by statutory declaration) as the Director may require.

(3) Where an applicant is a body corporate, the applicant must furnish the Director with the name of a natural person who is a resident of the State and is to act as the manager of the business that is to be conducted in pursuance of the licence, and with such other information relating to that person as the regulations may require.

(4) An applicant for a licence must cause the application to be advertised in the prescribed manner.

(5) Any person may, within 10 days from the date on which an application is advertised pursuant to subsection (4), lodge with the Director a written objection to the application setting out the grounds of objection (which grounds must be relevant to the matters set out in subsection (11)).

(6) The Director may, on the application of an interested person, in his or her absolute discretion and subject to such conditions as the Director thinks fit, extend the period for lodging objections.

(7) Where—

- (a) an objection is lodged under subsection (5); or
- (b) the Director does not propose to grant an application on the basis of documentary material alone,

the Director will conduct a hearing of the application after giving the applicant and any objector at least seven days notice of the date of the hearing.

(8) The regulations may specify the time within which the Director should decide an application for a licence (subject to the qualification that that time will be extended by such time as the applicant may take to furnish any information under subsection (2) and by such time (if any) as may be allowed on an extension of the period referred to in subsection (6)).

(9) If the Director does not decide an application within the prescribed time, the applicant may, by notice in writing served on the Director, require the Director to determine the application within a period (being a period of not less than one month) specified by the applicant in the notice.

(10) The Director is taken to have refused an application that is not decided within the period specified under subsection (9).

(11) The Director must, subject to this Act, grant a licence to an applicant if satisfied—

(a) that—

(i) in the case of an applicant who is a natural person—

- (A) the applicant is a fit and proper person to hold a licence; and
- (B) the applicant, or a person employed by the applicant to act as the manager of the business that is to be conducted in pursuance of the licence, has sufficient knowledge and experience for the purpose of properly operating or managing the business of an employment agent;

(ii) in the case of an applicant which is a body corporate—

- (A) every person who is, in the opinion of the Director, in a position to control or influence substantially the affairs of the body corporate is a fit and proper person to exercise such control or influence in respect of a body corporate that is the holder of a licence; and

(B) the person nominated by the applicant to act as the manager of the business that is to be conducted in pursuance of the licence has sufficient knowledge and experience for the purpose of properly managing the business of an employment agent; and

(b) that the applicant has made suitable arrangements to fulfil the obligations that may arise under this Act.

(12) Where the Director grants a licence, the licence does not come into force until the prescribed licence fee is paid.

(13) Where the Director refuses an application for a licence, the Director must notify the applicant in writing of—

(a) the refusal; and

(b) the reasons for the refusal; and

(c) any appeal rights that the applicant may have under this Act.

Term of licence

8. Subject to this Act, a licence remains in force for such period (not exceeding two years) as is stated in the licence.

Application for renewal of a licence

9. (1) An application for the renewal of a licence must—

(a) be made to the Director; and

(b) be in writing in a form approved by the Minister; and

(c) be accompanied by the prescribed fee.

(2) An application for renewal must be made not less than the prescribed number of days before the date of expiry of the licence.

(3) The Director may, in the Director's discretion, determine a late application for renewal provided that the applicant pays the prescribed late application fee.

(4) The Director must, by notice in writing served on the applicant, give a decision on an application for the renewal of a licence before the date of expiry of the licence and, in the case of a decision refusing an application, state in the notice—

(a) the reasons for the refusal; and

(b) any appeal rights that the applicant may have under this Act.

(5) The Director may refuse to renew a licence on any ground on which a licence may be cancelled (*see section 13*).

Licence conditions

10. (1) A licence is subject to—

- (a) any condition prescribed by the regulations; and
- (b) any condition imposed by the Director.

(2) The Director may impose licence conditions with respect to such matters as are contemplated by this Act or as the Director considers necessary or expedient for the purposes of this Act.

(3) Conditions of a licence imposed by the Director—

- (a) —
 - (i) if imposed at the time of grant or renewal of the licence—must be included in the licence itself; or
 - (ii) if imposed during the currency of the licence—must be imposed by notice in writing served on the holder of the licence; and
- (b) may be varied or revoked at any time by notice in writing served on the holder of the licence.

(4) The holder of a licence who contravenes, or fails to comply with, a condition to the licence is guilty of an offence.

Penalty: Division 6 fine.

Appointment of a manager

11. (1) Where—

- (a) the holder of a licence is not directly involved in the management of the relevant business; or
- (b) the holder of a licence 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 and is approved by the Director in accordance with this Act.

(2) If a business is not managed as required by subsection (1) for a period exceeding 14 days, or such longer period as may be allowed by the Director, the holder of the licence is guilty of an offence.

Penalty: Division 6 fine.

Transfer and surrender of licences

12. (1) An application may be made to the Director for the transfer of a licence.

(2) An application for the transfer of a licence must—

- (a) be in such manner and form as is determined by the Minister for the purposes of this section; and
- (b) be accompanied by the prescribed fee.

(3) An applicant must furnish the Director with such further information (verified, if the Director so requires, by statutory declaration) as the Director may require.

(4) The Director must, on due application under this section and payment of the prescribed fee, transfer the licence to the proposed transferee if the Director is satisfied that the proposed transferee would be a suitable person to be granted a licence under this Division.

(5) The holder of a licence may, at any time, surrender the licence, and the licence then ceases to be of force or effect.

Cancellation of licences

13. (1) The Director may cancel a licence if satisfied, on reasonable grounds—

- (a) that the licence has been obtained improperly; or
- (b) that the holder of the licence has contravened, or failed to comply with, a condition of the licence; or
- (c) that the holder of the licence has contravened, or failed to comply with, a provision of this Act; or
- (d) that the holder of the licence is no longer a fit and proper person to hold a licence or, in the case of a body corporate, that a person who has gained or is in a position to control or influence substantially the affairs of the body corporate is not or has ceased to be a fit and proper person to exercise such control or influence in respect of a body corporate that is the holder of a licence.

(2) Before the Director acts under this section, the Director must—

- (a) notify the holder of the licence in writing of the proposed cancellation of the licence; and
- (b) allow the holder of the licence at least 28 days within which to make submissions in relation to that proposed action.

Person not entitled to fees, etc., if acts as agent in contravention of Division

14. Where a person acts as an employment agent in contravention of a provision of this Division—

- (a) the person is not entitled to recover any fee for so acting; and

- (b) if the person has received any fee for so acting, a court convicting the person of an offence in respect of the contravention may, on the application of the prosecutor, order the person to repay the amount or value of the fee.

DIVISION 2—LICENSING APPEALS**Appeal against a decision**

15. (1) A right of appeal to the Magistrates Court lies against any decision of the Director under Division 1.

(2) An appeal must be commenced within 28 days after the appellant receives notice of the decision appealed against unless the Magistrates Court, in its discretion, allows an extension of time.

(3) The Magistrates Court may, on the hearing of the appeal, do one or more of the following, according to the nature of the case:

- (a) affirm, vary or quash the decision appealed against or substitute, or make in addition, any decision that the Court thinks fit;
- (b) remit the subject matter of the appeal to the Director for further consideration;
- (c) make any further or other order as to any other matter that the case requires.

(4) Where the Director or the Magistrates Court is satisfied that an appeal against a decision of the Director has been commenced or is intended, the Director or the Court may suspend the operation of the decision until the determination of the appeal.

(5) Without derogating from the operation of subsection (4), if an appeal relates to a decision of the Director—

- (a) to refuse to renew a licence; or
- (b) to refuse to transfer a licence; or
- (c) to cancel a licence,

the Director or the Magistrates Court may order that the licence remain in force until the determination of the appeal.

(6) The Director or the Magistrates Court may, in acting under subsection (4) or (5), impose such conditions as the Director or Court thinks fit.

(7) If a person contravenes, or fails to comply with, a condition imposed under subsection (6)—

- (a) the Director or the Magistrates Court may revoke any suspension to which the condition relates; and
- (b) the person is guilty of an offence.

Penalty: Division 6 fine.

DIVISION 3—SUPPLEMENTARY PROVISIONS**Registered premises**

16. (1) Subject to this section, the holder of a licence must not carry on business as an employment agent except at premises registered under this section.

Penalty: Division 7 fine.

(2) An application for registration must be made to the Director in a form approved by the Minister.

(3) The Director may, on application, permit an employment agent on a day, or over a period, specified by the Director, to carry on business at a place (other than the registered premises of the agent) specified by the Director.

(4) An employment agent must, within 14 days after ceasing to carry on business at registered premises, notify the Director in writing of that fact.

Penalty: Division 7 fine.

Notice to be displayed

17. A person carrying on business as an employment agent in pursuance of a licence must maintain in a conspicuous position at any registered premises a notice clearly showing—

- (a) the name of the agent as it appears in the licence or a registered business name in which the agent carries on business as an agent and of which the Director has been given prior notice in writing; and
- (b) if a manager has been appointed, the name of the manager of the business.

Penalty: Division 11 fine.

Death of licensee

18. Where the holder of a licence dies, the personal representative of the deceased, or some other person approved by the Director, is to be taken to be the holder of the licence (on the same conditions as were applicable to the former holder of the licence) as from the date of death until the expiration of six months from that date or until such later date as may be fixed by the Director.

PART 3
PROVISIONS APPLYING TO EMPLOYMENT AGENTS

Display of information at registered premises

19. (1) An employment agent must maintain in a conspicuous place at any registered premises a notice clearly showing the scale of fees for the time being chargeable by the agent in respect of his or her business.

(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 accordance with the regulations.

(3) If a preceding provision of this section is not observed, the employment agent is guilty of an offence.

Penalty: Division 6 fine.

Responsibilities to workers

20. (1) Subject to this section, an employment agent must not demand or receive any fee from a person by virtue only of the fact that—

- (a) the person is listed with the employment agent as a person who is seeking employment; or
- (b) the employment agent is seeking employment for the person.

(2) Subsection (1) does not—

- (a) prevent an employment agent requiring a person to pay a deposit before the employment agent begins to seek employment for the person but, if such a deposit is paid, the deposit must be held by the employment agent until—
 - (i) employment is found for the worker—in which case the deposit can be applied by the employment agent towards any fee payable by the person; or
 - (ii) the person ceases to be listed with the employment agent as a person who is seeking employment—in which case the deposit must be repaid to the person; or
 - (iii) the employment agent and the person agree to the repayment of the deposit; or
 - (b) prevent any payment of a kind authorised by the regulations.
- (3) An employment agent must not—
- (a) charge a worker a fee which is calculated on a recurring basis;
 - (b) charge a worker a fee if the employment agent hires or engages the worker to work for the employment agent.

(4) Where an employment agent procures employment for a person, the employment agent must ensure that the person is given (for retention by the person) a statement in the prescribed form containing the following information:

- (a) the name and business address of the employer; and
- (b) where the person must first attend for the purposes of the employment; and
- (c) whether the *Workers Rehabilitation and Compensation Act 1986* will apply in relation to the person and details of any other insurance arrangements that will apply in respect of the employment (including who will be responsible for the payment of any premium); and
- (d) the arrangements (if any) that will apply for the payment of income tax; and
- (e) the name of any award that applies in relation to the employment; and
- (f) details of any occupational superannuation to which the person will be entitled; and
- (g) details of any entitlements to paid leave that will accrue during the employment; and
- (h) details of any expenses (or kinds of expenses) which will be reimbursed or otherwise paid for by the employer.

(5) If a preceding provision of this section is not observed, the employment agent is guilty of an offence.

Penalty: Division 6 fine.

Responsibilities to employers

21. (1) Subject to this section, 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.

(2) Subsection (1) does not—

- (a) 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—
 - (i) a fee becomes chargeable under subsection (1); or

- (ii) 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
- (iii) the employment agent and the person agree on the repayment of the deposit; or

(b) prevent any payment of a kind authorised by the regulations.

(3) An employment agent must not charge an employer a fee which exceeds the rate of payment set out in the scale of fees displayed at the agent's registered premises and applicable to the particular case.

(4) If a preceding provision of this section is not observed, the employment agent is guilty of an offence.

Penalty: Division 6 fine.

Records, etc., to be kept

22. (1) An employment agent must keep or cause to be kept fully and correctly a record system which contains—

- (a) the name of each client of the agent's business; and
- (b) details of any deposit paid to the employment agent; and
- (c) prescribed information as to any employment arranged by or through the employment agent; and
- (d) details of any fee paid to the agent in connection with the hiring or engagement of any worker; and
- (e) such other information as may be prescribed by the regulations.

(2) An employment agent must keep such other prescribed records, accounts and documents in relation to his or her functions as an employment agent.

(3) An employment agent must cause the records, accounts and documents required under subsection (1) and (2) to be kept on his or her registered premises for the period of one year after their making.

(4) If a preceding provision of this section is not observed, the employment agent is guilty of an offence.

Penalty: Division 7 fine.

**PART 4
MISCELLANEOUS**

Inspections

23. (1) An inspector may, for any purpose connected with the administration or enforcement of this Act—

- (a) at any reasonable time enter and inspect premises;
- (b) require any person to produce any records, accounts or documents relating to the business of an employment agent;
- (c) examine, copy and take extracts from any records, accounts or documents so produced;
- (d) require a person who the inspector reasonably suspects has committed an offence against this Act to state the person's full name and usual place of residence;
- (e) require a person who the inspector reasonably suspects has knowledge concerning any matter relating to the administration of this Act to answer questions in relation to those matters;
- (f) require a person holding or required to hold a licence under this Act to produce the licence for inspection.

(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 necessary to enable the powers conferred by this section to be exercised.

Penalty: Division 6 fine.

(4) Subject to subsection (5), a person who—

- (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
- (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 he or she is an inspector,

is guilty of an offence.

Penalty: Division 6 fine.

(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 him or her of an offence.

- (6) An inspector, or a person assisting an inspector, who—

- (a) addresses offensive language to any other person; or
(b) without lawful authority hinders or obstructs or uses or threatens to use force in relation to any other person,

is guilty of an offence.

Penalty: Division 6 fine.

Prohibition against assisting a person falsely to pretend to be an employment agent, etc.

24. No person (whether licensed under this Act or not) must supply or lend any document or form or provide any other assistance to another person for the purpose of enabling that other person falsely to pretend to be a licensed employment agent, or a person who, in the course of a business, performs any of the functions of an employment agent.

Penalty: Division 9 fine.

Liability of agents for acts or omissions of employees, etc.

25. 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.

False or misleading information

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

Penalty: Division 6 fine.

Offences by bodies corporate

27. Where a body corporate is guilty of an offence against this Act, every member of the governing body of the body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless it is proved that the member could not by the exercise of reasonable diligence have prevented the commission of that offence.

Commencement of prosecutions

28. (1) Proceedings for an offence against this Act must be commenced within three 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.

Delegation by Director

29. (1) The Director may, by instrument in writing, delegate to any person engaged in the administration of this Act any of his or her powers or functions under this Act.

(2) A delegation under subsection (1)—

(a) is revocable at will; and

(b) does not prevent the Director from acting personally in any matter.

(3) 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.

Regulations

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

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

(a) exempt, either absolutely or subject to prescribed limitations or conditions, any person or premises, or classes of persons or premises, from this Act or specified provisions of this Act;

(b) provide for and prescribe the form of any notice under this Act;

(c) provide the manner in which any notice may or must be given;

(d) provide for and regulate the display of licences and notices at any premises;

(e) require the provision of returns and other forms of information to the Director by employment agents;

(f) require the provision of information to persons who deal with employment agents;

(g) prescribe fees for the purposes of this Act (including annual fees payable by the holders of licences under this Act);

(h) prescribe penalties, not exceeding a division 7 fine, for breach of, or non-compliance with, any regulation.

(3) Any regulations made under this Act may be of a general or limited application and may vary according to the persons or classes of persons, the times, the places or the circumstances to which they are expressed to apply.

Repeal and transitional provisions

31. (1) The *Employees Registry Offices Act 1915* is repealed.

(2) On the repeal of the *Employees Registry Offices Act 1915*—

- (a) a licensee under that Act will be taken to be the holder of a licence under this Act (and the Director must issue an appropriate licence to that licensee); and
- (b) licensed premises under that Act will be taken to be registered premises under this Act; and
- (c) a person holding an appointment as a manager under that Act will be taken to be approved as a manager under this Act.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

ROMA MITCHELL Governor