



Government
of South Australia

SafeWork SA

Licence to carry on the business of an employment agent

Guidance Notes

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Introduction

The following legislation regulates licensing of employment agents in South Australia:

- *Employment Agents Registration Act 1993* (the Act)
- *Employment Agents Regulations 2010* (the Regulations).

When you need a licence

If you carry on the business of an employment agent, or hold yourself out as an employment agent, you need to hold a Licence to Carry on the Business of an Employment Agent.

Scope

A person is required to be licensed as an employment agent if that person is, for monetary or other consideration:

- carrying on the business of acquiring workers for persons who desire to employ or engage others in any kind of work, or
- acquiring employment for persons who desire to be employed or engaged by others in any kind of work.

The following organisations are excluded from the definition of an employment agent and are not required to hold a licence:

- A charitable organisation carrying on its activity on a non-profit basis.
- An organisation or association that administers a group training scheme jointly funded by the Commonwealth and State Government, for the purpose of obtaining apprentices or trainees for persons who desire to employ or engage such persons in any kind of work or obtaining employment for apprentices or trainees.
- An organisation that operates a labour hire business. A labour hire arrangement is one where a labour hire company or agency provides individual workers to a client or to a host, where the workers are under the host company's direction; however, the labour hire company remains ultimately responsible for the worker's (their employee's) remuneration.

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.

Who may apply for a licence?

An application for a licence may only be made by an individual or a body corporate (company). An application for a licence cannot be made by a trust, however it may be made

by a trustee of a trust where the trustee is either a natural person or a body corporate. An application for licence cannot be made by a partnership, however it may be made by individual partners of a partnership.

Duration of licence

The licence remains in force for such period as is stated on the licence, for a maximum period of two years.

Recognition of interstate licences

A corresponding licence which has been granted by and has effect in another State or Territory is not recognised in South Australia. A person holding an interstate licence wishing to operate as an employment agent in South Australia must apply for a licence under the Act.

How to apply for licence

Accessing the application form

The application form for the licence and all associated prescribed forms can be accessed online at <https://safework.sa.gov.au>.

Appointment of a manager

Where the applicant is not directly involved in the management of the business or is a body corporate, the business conducted in pursuance of the licence must be under the personal supervision of a natural person who is a resident of South Australia and is approved by SafeWork SA.

To obtain approval of a manager, the applicant must provide SafeWork SA with the name of the natural person who is to act as the manager together with at least two character references and a Statutory Declaration on prescribed forms (see below).

Please note that if the applicant or the manager have been previously approved under the Act, and the Statutory Declaration of their approval has not exceeded five years, a new Statutory Declaration and new character references are not required.

Character references

The applicant needs to provide two character references on the prescribed form. If the applicant is a body corporate, character references must be supplied for the nominated manager of the business. The following persons are disqualified from providing a character reference for an applicant for a licence:

- a person who has been convicted within the previous five years of an offence in connection with the promotion, operation or management of a business, or involving fraud or dishonesty, or
- a person who is an associate of the applicant by being involved in the same business, company, or trust; or is the spouse, domestic partner, parent, grandparent, child or grandchild of the applicant.

Public notice

Intention to apply for a licence must be advertised in a newspaper circulating throughout South Australia. A copy of the public notice that was published in the newspaper must accompany the application. Please see the application form for an example of a public notice. The public notice copy provided must clearly show the date that it was advertised in the paper.

Statutory Declaration

The applicant 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.

Lodging the application

The application and the supporting documentation may be lodged by:

Email: licensing.safework@sa.gov.au

Post: SafeWork SA, Licensing Unit, GPO Box 465, Adelaide, South Australia, 5001.

Fees

Please see the SafeWork SA website for current fees: <https://safework.sa.gov.au>.

Granting of Licence

What does SafeWork SA take into account when deciding whether to grant or renew the licence?

A licence will be granted or renewed once SafeWork SA is satisfied that the applicant is a fit and proper person to hold a licence, or that the manager of the business has sufficient knowledge and experience for the purpose of properly operating or managing the business of an employment agent.

In the case of an applicant that is a body corporate, SafeWork SA must be satisfied that every person in a position to control or substantially influence the affairs of the body corporate is a fit and proper person to exercise such control or influence in respect of a body corporate holding the licence.

Granting or renewal of a conditional licence

A licence may be subject to any conditions imposed by the Act or the Regulations or that are considered necessary by SafeWork SA.

If a condition is imposed on the licence, it will be included in the licence itself when it is granted. If a condition is imposed when the licence is already in effect, the licence holder will be served with a written notice.

Licence conditions may be varied or revoked at any time by a written notice to the licence holder.

Refusing to grant or renew a licence

If the application for licence is refused, the applicant will be notified in writing of the refusal, of the reasons for refusal and any appeal rights that the applicant may have.

Cancellation of a licence

The licence may be cancelled if SafeWork SA is satisfied on reasonable grounds that:

- the licence has been obtained improperly, or
- the holder of the licence has contravened, or failed to comply with, a condition of the licence or a provision of the Act, or
- the holder of the licence (or if the licence holder is a body corporate, the person in control of the body corporate) is no longer a fit and proper person.

If the licence is cancelled for any of the reasons listed above, the licence holder is not entitled to recover any application or renewal application fees.

The decision to cancel the licence is subject to an internal or external review.

Application for review of decision

Before a licence is cancelled, the licence holder will be advised in writing of the proposed cancellation and will be given 28 days in which to state in writing why the proposed action should not be taken.

A right of appeal to the Magistrates Court lies against any decision of SafeWork SA under Division 1 of the Act. This includes provisions relating to new or renewal licence applications;

licence conditions; appointment of a manager; transfer, surrender or cancellation of licences; and non-entitlement to fees when in contravention of Division 1.

An appeal must be commenced within 28 days after the person receives the decision that they wish to appeal.

SafeWork SA will give the applicant written notice of the decision on the internal review and the reasons for the decision within 14 days of making the decision [Regulation 681].

An application for an internal review does not affect the operation of the original decision or prevent the taking of any lawful action to implement or enforce the decision, though once the decision on internal review is made if a new decision is substituted then that new decision takes effect [Regulation 682].

Further information

For further information and assistance to complete the form please contact SafeWork SA:

Visit: safework.sa.gov.au

Call: SafeWork Licensing Unit on 1300 365 255

Email: licensing.safework@sa.gov.au.

Legislation

The Employment Agents Registration Act 1993 (SA) and the Employment Agents Regulations 2010 (SA) can be found on the SafeWork SA website at safework.sa.gov.au.

List of Jurisdiction Contacts

Jurisdiction	Name of regulator	Telephone	Website
South Australia	SafeWork SA	1300 365 255	safework.sa.gov.au
New South Wales	SafeWork NSW	13 10 50	safework.nsw.gov.au
Victoria	WorkSafe Victoria	1800 136 089	worksafe.vic.gov.au
Queensland	WorkSafe Queensland	1300 362128	worksafe.qld.gov.au
Western Australia	WorkSafe WA (Department for Mines, Industry Regulation and Safety)	1300 307 877	dmirs.wa.gov.au
Australian Capital Territory	WorkSafe ACT	13 22 81	worksafe.act.gov.au
Tasmania	WorkSafe Tasmania	1300 366 322 (inside Tasmania) (03) 6166 4600 (outside Tasmania)	worksafe.tas.gov.au
Commonwealth	Comcare	1300 366 979	comcare.gov.au
Northern Territory	NT WorkSafe	1800 019 115	worksafe.nt.gov.au

Checklist

Checklist for applying for a Licence to Carry on the Business of an Employment Agent		
1.	Application form is complete.	
2.	If the business is conducted by a body corporate, a manager has been nominated on the application form.	
3.	Two character references for the applicant or manager are attached to the application, and have been supplied by persons who are not disqualified under the Regulations.	
4.	A copy of the public notice published in the newspaper with state-wide circulation, which also shows the date on which the paper was published, is attached to the application.	
5.	A Statutory Declaration signed by the applicant and witnessed by a Justice of the Peace is attached to the application.	
6.	The application is accompanied by the current fee.	