



Queensland

# Private Employment Agents (Code of Conduct) Regulation 2015

## Subordinate Legislation 2015 No. 93

made under the

*Private Employment Agents Act 2005*

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**1 Short title**

This regulation may be cited as the *Private Employment Agents (Code of Conduct) Regulation 2015*.

**2 Commencement**

This regulation commences on 1 September 2015.

**3 Code of conduct**

The code of conduct in schedule 1 is the code of conduct about private employment agents prescribed for section 6 of the Act.

**4 Declared provisions for Act, pt 6**

Sections 14 to 23, 26, 29 and 32 of the code of conduct are declared to be provisions to which part 6 of the Act applies.

**5 Approval of forms**

The chief executive may approve forms for use for the purposes of the code of conduct.

**6 Repeal**

The Private Employment Agents (Code of Conduct) Regulation 2005, SL No. 71 is repealed.

# Schedule 1      Private Employment Agents Code of Conduct

section 3

## Part 1              Preliminary

### 1            Title

This code of conduct may be cited as the *Private Employment Agents Code of Conduct*.

### 2            Object

The object of this code is to establish a framework that—

- (a) promotes ethical conduct by private employment agents in their dealings with work seekers and others as part of the business of a private employment agent; and
- (b) encourages the provision by private employment agents of high quality placement and recruitment services for work seekers and persons looking for workers.

### 3            Definitions

In this code—

*employer register* see section 22.

*fee*, for part 2, division 3, includes advantage and benefit.

*placement register* see section 23.

*worker register* see section 21.

*work seeker* means a person seeking work.

## **4 Compliance with code**

- (1) This code contains provisions with which a private employment agent must comply.

*Note—*

Contravention of a provision of this code is a ground for starting a proceeding for a charge of an offence if a maximum penalty is stated for a contravention of the provision or for obtaining an injunction under part 6 of the Act.

- (2) This code applies despite an instruction or request that does not comply with the code made by a work seeker or a person looking for workers or, if the private employment agent is an employee, the agent's employer.

# **Part 2 General rules of conduct**

## **Division 1 General responsibilities**

### **5 Knowledge of Act and code**

A private employment agent must have a reasonable knowledge of the Act, this code, and any other Act relevant to the private employment agent's business.

*Examples of relevant Acts—*

- *Anti-Discrimination Act 1991*
- *Fair Trading Act 1989*
- *Fair Work Act 2009 (Cwlth)*
- *Further Education and Training Act 2014*
- *Industrial Relations Act 1999*
- *Information Privacy Act 2009*
- *Privacy Act 1988 (Cwlth)*
- *Right to Information Act 2009*
- *Workers' Compensation and Rehabilitation Act 2003*

- *Work Health and Safety Act 2011*

## **6 Honesty, fairness and professionalism**

- (1) A private employment agent must act honestly, fairly and professionally in the conduct of the agent's business.
- (2) Without limiting subsection (1), an agent must treat work seekers and persons looking for workers honestly and fairly.

## **7 Skill, care and diligence**

A private employment agent must exercise reasonable skill, care and diligence in the conduct of the agent's business.

## **8 Ensuring employees comply with Act and code**

- (1) A private employment agent must take reasonable steps to ensure the agent's employees comply with the Act and this code.
- (2) Also, a private employment agent must promote—
  - (a) compliance with all relevant legislation and industrial instruments applying to work seekers and persons looking for workers; and
  - (b) ongoing training and skills development in the private employment agents industry.

## **Division 2 Dealings with work seekers**

### **9 Ethical representation of work seeker**

A private employment agent must represent a work seeker in an ethical and professional way.

### **10 Preservation of work seeker's potential**

A private employment agent—

- (a) must not do anything that may unfairly jeopardise a work seeker's current work or future work opportunities; and
- (b) must ensure a work seeker's right to maximise the work seeker's potential for career development is preserved.

## **11 Advice about employment and placement options**

A private employment agent must give a work seeker accurate advice about employment and placement options, including current labour market information.

## **12 Referrals**

A private employment agent must promptly give a person looking for workers information about a work seeker on the basis of the work seeker's suitability for a vacant position and disregarding irrelevant considerations.

*Example of an irrelevant consideration—*

a prohibited ground of discrimination under the *Anti-Discrimination Act 1991*

## **13 Keeping work seeker informed**

A private employment agent must, if a work seeker asks, give the work seeker whichever of the following is relevant within 7 days of the request—

- (a) if the work seeker is not referred as a candidate for a particular vacancy—genuine reasons the work seeker was not referred as a candidate for the vacancy;
- (b) advice on the work seeker's application for a vacancy;
- (c) if the work seeker is placed in a position—a copy of any documents about the position in the agent's possession at the relevant time.

Maximum penalty—14 penalty units.

**14 Information about work seeker not to be disclosed**

- (1) A private employment agent must not, without the work seeker's written permission, disclose the work seeker's identity or other details to a person looking for workers.

Maximum penalty—14 penalty units.

- (2) Also, a private employment agent must not otherwise disclose a work seeker's identity or other details other than as required by law.

Maximum penalty—14 penalty units.

**15 Information about work seeker not to be improperly used**

A private employment agent must not use information about, or provided by, a work seeker—

- (a) for a purpose other than finding work for the work seeker; or
- (b) in a way that is contrary to the terms of any permission given by the work seeker about the use of the information.

Maximum penalty—14 penalty units.

**16 Dealing with work seekers from overseas**

A private employment agent must not refer a work seeker to a person in Australia who is looking for workers if the work seeker is not legally entitled to work in Australia.

Maximum penalty—14 penalty units.

**17 Dealings with overseas placements**

A private employment agent must not refer a work seeker to a person in another country who is looking for workers if the work seeker—

- (a) is not entitled to work in the country; or



- (b) does not have a reasonable prospect of obtaining permission to work in the country.

Maximum penalty—14 penalty units.

## **Division 3                      Fees**

### **18            No fee as condition of finding work**

Other than as provided by the *Industrial Relations Act 1999*, section 408D, a private employment agent must not seek or accept a fee, deposit or bond—

- (a) from, or on behalf of, a work seeker in Australia as a condition of finding or attempting to find work for the work seeker outside Australia; or
- (b) from, or on behalf of, a work seeker residing, or intending to reside, temporarily in Australia as a condition of finding or attempting to find work for the work seeker in Australia.

Maximum penalty—14 penalty units.

### **19            No fee for particular services**

Other than as provided by the *Industrial Relations Act 1999*, section 408D, a private employment agent must not, as a condition of finding or attempting to find work for a work seeker—

- (a) charge the work seeker a fee for services or resources provided by the agent; or
- (b) require the work seeker to use services or resources provided by or through a supplier nominated by the agent; or
- (c) accept a financial benefit from a supplier nominated by the agent for the provision of services or resources by the nominated supplier because of a requirement mentioned in paragraph (b).

Maximum penalty—14 penalty units.

*Examples of services—*

- preparation of a resume or portfolio
- assistance, advice or training in interview preparation

## **20 Recovering fee for providing services for employer**

- (1) A private employment agent is not entitled to recover from an employer who uses the services of the agent a fee for finding workers for the employer, unless, before providing the service, the agent—
- (a) notifies the employer of the agent's fee for the service; and
  - (b) gives the employer a written notice confirming the amount of the agent's fee for the service.

Maximum penalty—14 penalty units.

- (2) In this section—

*employer* means a person who asks a private employment agent to find someone to do work for the person.

## **Division 4 Registers and correspondence**

### **21 Worker register to be kept**

- (1) A private employment agent must keep a register that complies with subsection (2) (a *worker register*) of persons looking for work.

Maximum penalty—14 penalty units.

- (2) The worker register must include the following particulars for each person who looks for work through the private employment agent—
- (a) the person's name, address, age, gender and occupation;
  - (b) the type of work the person is looking for;
  - (c) the date the particulars mentioned in paragraphs (a) and (b) are entered in the register.

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- (3) The private employment agent must not make or cause to be made in the worker register an entry that the person knows to be false.

Maximum penalty—14 penalty units.

## 22 Employer register

- (1) A private employment agent must keep a register of employers (an *employer register*) that complies with subsection (2).

Maximum penalty—14 penalty units.

- (2) The employer register must include the following particulars for each employer—

- (a) the employer's name and place of business;
- (b) the type of work the employer is offering and the number of persons wanted for the work;
- (c) the date the particulars mentioned in paragraphs (a) and (b) are entered in the register.

- (3) The private employment agent must not make or cause to be made in the employer register an entry that the person knows to be false.

Maximum penalty—14 penalty units.

- (4) In this section—

*employer* means a person who asks a private employment agent to find someone to do work for the person.

## 23 Placement register

- (1) A private employment agent must keep a register of placements (a *placement register*) that complies with subsection (2).

Maximum penalty—14 penalty units.

- (2) The placement register must include the following particulars for each person the private employment agent places into work with an employer—

- (a) the person's name;
  - (b) the employer's name;
  - (c) the type of work the person will do for the employer;
  - (d) the date the particulars mentioned in paragraphs (a) to (c) are entered in the register.
- (3) The private employment agent must not make or cause to be made in the placement register an entry that the person knows to be false.

Maximum penalty—14 penalty units.

- (4) In this section—

*employer* means a person who asks a private employment agent to find someone to do work for the person.

## **24 How long registers must be kept**

A private employment agent must keep the agent's worker register, employer register and placement register in the agent's possession for at least 6 years after the end of the year to which the last entry in the register relates.

Maximum penalty—14 penalty units.

## **25 How long correspondence must be kept**

- (1) A private employment agent must keep all relevant correspondence received by the private employment agent for at least 6 years after the day the correspondence was received.

Maximum penalty—14 penalty units.

- (2) A private employment agent must keep all relevant correspondence sent by the private employment agent for at least 6 years after the day the correspondence came into existence.

Maximum penalty—14 penalty units.

- (3) In this section—

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*relevant correspondence* means correspondence that relates to the conduct of the private employment agent's business as a private employment agent.

## **Division 5                      Other provisions**

### **26            False information**

A private employment agent must not—

- (a) publish any false information in the course of carrying on the business of a private employment agent; or
- (b) make, or knowingly permit an employee of the agent to make, a false statement to a work seeker about—
  - (i) the nature or availability of any work; or
  - (ii) the Act; or
  - (iii) this code; or
  - (iv) any Act relevant to employment or workplace health and safety; or
  - (v) any relevant industrial instrument.

Maximum penalty—14 penalty units.

### **27            Identification of agent in publications**

A private employment agent must ensure that each publication published by, or for, the agent includes the following particulars—

- (a) the name under which the agent carries on the business of a private employment agent;
- (b) the address at which the agent carries on business;
- (c) the telephone number of the business.

Maximum penalty—14 penalty units.

## **28 Availability of code**

A private employment agent must—

- (a) ensure a copy of this code is always available at the private employment agent's place of business for perusal on request; or
- (b) if a copy is not available at the private employment agent's place of business—immediately tell a person who asks to see the code where the person can obtain a copy.

Maximum penalty—14 penalty units.

## **29 Information statements**

- (1) Before a private employment agent provides a service for a work seeker, the agent must give the work seeker a statement (an *information statement*) in the approved form.

Maximum penalty—14 penalty units.

- (2) The approved form must include the following information—
  - (a) that a private employment agent must not charge fees in contravention of the *Industrial Relations Act 1999*, section 408D;
  - (b) that the agent and the agent's employees have a working knowledge of State and Commonwealth legislation affecting the placement and employment of persons seeking work;
  - (c) that the agent will make all placements as required under the relevant legislation;
  - (d) the name and other contact details of the department from whom the person may obtain information about action that may be taken if the person believes a private employment agent has acted illegally, inappropriately or in a false and misleading way.

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## **Part 3**                      **Particular rules of conduct for dealings with models and performers**

### **30**      **Who this part applies to**

- (1) This part applies to private employment agents—
  - (a) whose business includes seeking work for models and performers; or
  - (b) who are managers of models and performers.
- (2) A private employment agent to whom this part applies must comply with this part and part 2.
- (3) In this section—

*manager* means a manager within the meaning of the *Industrial Relations Act 1999*, section 408C.

### **31**      **Provision of written notice about engagements**

- (1) Within 5 days after a private employment agent receives from a person looking for workers any information mentioned in subsection (2) in relation to a model or performer's placement in work, the agent must give the model or performer a written notice about the placement stating the information.

Maximum penalty—14 penalty units.
- (2) The information is—
  - (a) the work conditions; and
  - (b) the nature of the work to be undertaken; and
  - (c) the rates of payment for the work; and
  - (d) the pay arrangements.

### **32**      **Provision of financial statements**

- (1) As soon as practicable, but no later than 10 days after receiving an amount payable to a model or performer, a

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private employment agent must give the model or performer a statement—

- (a) giving particulars of the amount received; and
- (b) showing the amount paid to the model or performer for the engagement.

Maximum penalty—14 penalty units.

- (2) A private employment agent who receives an amount from someone else on behalf of a model or performer must—

- (a) hold the amount exclusively for the model or performer; and
- (b) pay the amount to the model or performer within 7 days after receiving the amount.

Maximum penalty—14 penalty units.

- (3) The private employment agent must pay the amount to the model or performer personally or deposit the amount into an account nominated by the model or performer at a nominated financial institution.

Maximum penalty—14 penalty units.

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ENDNOTES

- 1 Made by the Governor in Council on 20 August 2015.
- 2 Notified on the Queensland legislation website on 21 August 2015.
- 3 The administering agency is Queensland Treasury.

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Authorised by the Parliamentary Counsel