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The Recruitment, Consulting and Staffing Association (RCSA) Submission to the Employment Agents Bill 2024 and Reforming Employment Agents Legislation 2024 Discussion Paper

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Introduction

The Recruitment, Consulting and Staffing Association (RCSA) welcomes the opportunity to provide comment to the *Employment Agents Bill 2024* and *Reforming Employment Agents Legislation 2024 Discussion Paper* reviewing the current framework around employment agents licensing.

The RCSA is the peak body representing the recruitment and staffing industry in Australia and New Zealand. Our members are responsible for sourcing, placing, and managing both permanent and temporary workforces across nearly every industry in the region, providing support to private and public organisations with their professional, skills, and labour needs.

RCSA represents over 1000 corporate and individual members who source, place, and manage permanent and temporary workforces across almost every industry in the country, supporting both private and public organisations with their professional, skills and labour demands.

We commend moves by the Government to remove licensing for Employment Agents operating in South Australia. RCSA has previously shared its view with Government that Employment Agents Licences in South Australia and other jurisdictions are no longer relevant within the context of technological advancements and the modern-day workforce.

The introduction of Employment Agents licensing schemes in the late 1990s and early 2000s aligned with the closure of the Commonwealth Employment Service in 1998 and the contracting out of the services it had previously provided. During that period, there were several new employment agents entering the market and significant change in the composition of the industry. It was also a period during which candidates' reliance on employment agents in finding and being placed into work was more nuanced.

Advancements in technology and e-commerce over the past 20 years has supported significant evolution in the recruitment and staffing sector. In addition to activity becoming less constrained by geographic boundaries, candidates now have greater control over the job seeking and hiring process. Candidates can view employment opportunities far more easily and more directly, including via a broad range of accessible and well-subscribed online job advertising and matching platforms.

It is now a simple process for candidates to apply for a range of jobs that are accessible at their fingertips, as well as to review potential employers on online forums. As such, this has changed the way in which candidates—and businesses—use employment agents.

The ACT removed its Employment Agents Licensing scheme on 1 July 2024, and schemes established in New South Wales in 1996 and in Queensland in 1983 were removed in 2003 and 2005 respectively.

We support the move by South Australia to replace its licensing scheme with a Code of Conduct governing behaviour in the sector. As a peak industry body with an enforceable Code of Professional Conduct endorsed by the Australian Competition and Consumer Commission (ACCC), we commend and share your continued commitment to upholding high standards of practice across our industry. We believe this is a far more appropriate approach to regulating behaviour within the modern recruitment landscape.

That being said, we note that while Queensland did replace its Employment Agents Licence with a legislated Code of Conduct some 20 years ago, other jurisdictions did not see the same need to regulate the sector's behaviour in a modern context, including those removed most recently.

No Code of Conduct was created in NSW or in the ACT, where it is recognised that State/Territory and Commonwealth Consumer and Trading laws are sufficient to regulate behaviour of businesses, including recruitment businesses.

While RCSA is a staunch advocate and champion for professionalism across the recruitment industry, we do not believe that formally regulating behaviour of the recruitment sector is necessary or particularly relevant within the broader job seeking context and environment.

Technology has not only evolved beyond the regulatory boundaries of licensing schemes established 20 years ago, but also beyond the regulatory boundaries outlined in this code of conduct. Online job-matching platforms have never traditionally been licenced in the jurisdictions where Employment Agents regimes existed, despite their function being to find workers for employers and work for people seeking employment. There is little to no regulation relating to job matching platforms which can sometimes pose greater risks for work seekers. Some require workers to be engaged contractors, removing employer responsibilities from the platform and removing certainty for workers around things like work health and safety, and minimum rates of pay.

We would simply note that while we support the ambitions of professional practice outlined in the code of conduct, to formally regulate recruiters through a legislated code addresses just one small element of the activity around job placement in the modern workforce context. It skews regulation more heavily toward the segment of workforce mobility that is already more established and professional in the manner in which it operates.

We appreciate however, that the Government's discussion paper seeks comment on the approach of replacing the Employment Agents License with a legislated Code of Conduct. As such, our submission below seeks to respond directly to the proposed legislation and address any issues or potential unintended consequences that may flow from the proposed requirements in the Bill.

Specific comments on the proposed legislation

The Code of Conduct proposed in the legislation is broadly consistent with what would reflect professional practice in the recruitment industry and in is line with similar legislated codes in other jurisdictions. That being said there are a number of reasons where we believe the proposed measures should be reviewed and improved for greater relevance and reduction of red tape;

Regulation 11—Referrals

RCSA does not believe this regulation is necessary. The market dictates that recruitment firms respond promptly and appropriately to their client's needs, failure to do so will damage the reputation of their firm and see clients go elsewhere. It is not something that requires regulation.

Regulation 12 – Keeping work seeker informed

RCSA agrees that there should be an onus on employment agents to provide genuine feedback on request from candidates. We are concerned that the multitude and diverse options available for contacting firms and recruitment consultants in the modern workplace means a statutory 7-day response period may not be appropriate. For example, it would not be unusual for a candidate to directly message a recruiter – either via text, on LinkedIN or via email - as opposed to going through the firm's main contact point. In that scenario, should the recruitment consultant be on annual leave, it may not be possible to respond within 7 days. This will be especially relevant in the context of recent changes to establish employees' *Right to Disconnect* as part of the Closing Loopholes legislation. Likewise, direct contact with a recruiter could result in missed communications, as opposed to any deliberate decision to not share genuine feedback. We think it would be more appropriate to require employment agents to respond and provide genuine feedback, as opposed to setting penalties based on a statutory timeframe. Penalties should apply where a firm or a recruiter refuses to share feedback.

RCSA also shares concerns expressed by AiGroup in its submission, around the breadth of documentation that should be made available to job seekers on request. We don't believe that job seekers should have access to any documentation about the position in the agent's possession at the relevant time. Fees paid to employment agents for their services are commercial in confidence and not relevant to any candidates ongoing work or placement. Once a candidate has been successfully placed into a role, information about other applicants or an employment agents assessment of those applicants is not relevant to them or their new role, nor is it relevant in an anti-discrimination context, given they have been successful in their bid for the position.

RCSA supports AiGroup's position that consideration be given to removing or narrowing 12 (c).

Regulation 13 – Information Statements

The process of providing an information statement will be relatively easily operationalised by employment agents, and many already provide the information indicated in this regulation. That being said the requirement that information be provided in a form approved by the Director (and with explicit content requirements) means it is vital businesses is supported to comply with this regulation. The lack of communication and resources allocated historically to enforcing and promoting Employment Relations licenses in South Australia resulted meant many firms were not aware of the requirement to be licensed. Indeed, RCSA spent much time and resources educating its own membership around licensing requirements in South Australia. If the government intends to

require work seekers to be provided with an information statement, it is important the template, form and content should be set centrally and clearly outlined for employers. In addition, RCSA believes the government should invest in ensuring there is an education and awareness program to inform the industry about the requirement and ensure that information about this requirement be promoted through all SA business regulation information programs.

Employment agents are all keen to ensure their processes are designed to support regulatory compliance. The government must ensure this new requirement is simple and clear to support them in that endeavour. It is also unclear how the government intends to police this requirement. It would help businesses if it was made clear what evidence they are expected to keep – or records they must hold - to demonstrate their compliance with this measure. For example, is it sufficient for an employment agent to simply demonstrate that a link to the statement is provided systematically to people who apply for roles, or would they need to keep evidence of every email sent back to a jobseeker demonstrating the link was provided to a particular individual? If the latter, RCSA believe the administrative burden would be unduly burdensome and create substantial unnecessary red tape for recruitment firms.

Regulation 16—Dealing with work seekers from overseas

RCSA is concerned that requirements applying penalties where employment agents refer a work seeker to a client in Australia that is not legally entitled to work in Australia do not adequately consider the complexity of Australia's migration system nor of the nature of the industry and client needs.

We agree with AiGroup that immigration law is complex and there is scope for error and misunderstanding.

Moreover, we understand that sometimes employment agents are unable to source the talent clients are looking for locally and need to look overseas to address workforce need. In those scenarios, employment agents will work with clients and support them to ensure that should an appropriate candidate be identified overseas, immigration processes are initiated with professionals operating in that space and appropriately managed to, where possible, facilitate transition of that candidate to a role in Australia.

We believe the regulation would be better worded as follows:

"If an employment agent is aware a work seeker is not legally entitled to work in Australia, or there is a basis known to the employment agent for concerns regarding the person's entitlement to work in Australia they must make it clear to the client that is the case before referring the candidate."

Regulation 18—Display of information at business premises

The requirement to conspicuously display notice showing fee structures for at any premises with the employment agent carries on business is challenging on a number of fronts. In the first instance, employment agents subject to this code of conduct will not necessarily have physical premises located in South Australia. Many will hub out of offices in other jurisdictions. Moreover, the concept of displaying information in a physical form seems dated and not fit for purpose in the modern context. The prevalence of online interviewing and meetings mean few clients and candidates actually attend the physical office of an employment agent any longer.

Perhaps more concerningly, this regulation reflects a significant lack of understanding around the operations of the recruitment industry and the way its fee structures operate in market. Fees are

specific to the commercial arrangement between employment agents and their clients. These arrangements are commercial in confidence and are not disclosed to or relevant for candidates, who have no relationship to their payment, nor their terms. The concept of a simplistic 'schedule of fees' lacks understanding of how the recruitment sector operates in practice. Fees will vary substantially and change constantly for a range and variety of reasons including but not limited to industry type, seniority or type of role, service level required by a client and a range of other factors. Moreover, fees vary constantly in line with labour market dynamics. The work required to source and place candidates for a skills-short role is significantly different than the work involved in placing candidates with skills readily available in market. The types of roles in short supply vary and change with market dynamics so the idea of displaying a set 'schedule' is as unrealistic and unattainable as it is commercially confidential.

A far more relevant and appropriate approach would be to delete 18 in its entirety and just rely on the requirements in regulation 21 that an employment agent be required to agree fees with a client in advance of performing that service. We believe up-front fee agreement is reflective of strong professional practice across the sector and far more relevant and achievable that publication of a fee structure that is commercial in confidence, incredibly complex and varied and in some industries changing on a monthly basis.

Regulation 21—Responsibilities to employers

Per our previous comments, we believe the requirement to agree fees with clients up front is important to include in the code of conduct. In line with concerns expressed above however, we would suggest the following change to Regulation 21 (in line with our recommendation to remove 18)

21—Responsibilities to employers (1) An employment agent is not entitled to recover from a person who uses the services of the agent a fee for finding workers for the person, unless, before providing the service, the agent— (a) notifies the person of the agent's fee for the service; and (b) gives the person a written notice confirming the amount of the agent's fee for the service. Maximum penalty: $5 000. Expiation fee: $315. (2) ~~An employment agent must not charge a person who uses the services of the agent for finding workers for the person a fee which exceeds the rate of payment set out in the scale of fees displayed at the agent's place of business and is applicable to the particular case. Maximum penalty: $5 000. Expiation fee: $315.~~ (3) Subject to this clause, 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. Maximum penalty: $5 000. Expiation fee: $315. (4) Subclause (3) does not 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— (a) a fee becomes chargeable under subclause (3); or GP 297 SG/ 15.7.2024 12:58 PM 7 Prepared by Parliamentary Counsel Employment Agents Regulations 2024 Draft Schedule 1—Code of conduct for employment agents (b) 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 (c) the employment agent and the person agree on the repayment of the deposit.

PART 5: Regulations 22-26—Registers and correspondence

Advice from RCSA members is that existing Commonwealth law already requires the collection and storage of the types of information outlined in Regulations 22-24. It seems unnecessary and unduly burdensome to require multiple regulations on the capture and storage of essentially the same information around clients, candidates and placements. The potential that discrepancies might between legal requirements around collection and storage of this data creates complexity for businesses in complying with their requirements where multiple laws exist regulating essentially the same information.

We recommend a thorough review of laws that currently exist relating to collection and storage of candidate, client and placement data prior to introducing something that could create new regulation where it already exists. RCSA will happily work with the Government and our members to explore existing obligations and understand whether or where they are insufficient for the purposes of this legislation.

Should Government be determined to apply a specific regulation within a South Australian context, it is important to clarify who can access the information on the register. Much of the data stored on the register would be subject to obligations under privacy laws as well as being commercial in confidence. It would be worth clarifying the limitations around who can access that data. We don't believe an employment agency should be required to provide register information to anyone other than an inspector.

The need for deregulation across all Australian jurisdictions

The role of employment agents in matching labour demand and supply is critical in today's dynamic workforce environment. Although most jurisdictions agree that Employment Agents licenses are no longer relevant within a modern context, the different approaches by State and Territory governments make navigating delivery of a service that operates nationally unnecessarily challenging. Most employment agents now operate nationally, irrespective of their physical location. Job advertisements run Australia-wide and our workforce (and jobseekers) are increasingly mobile. Parochial differences and inconsistencies across States and Territories create unnecessary administrative burden for businesses and dampen labour mobility and adaptability.

Western Australia still maintains its Employment Agents License requirements. Queensland replaced its Employment Agents License requirement with a legislated code of conduct and South Australia is now proposing to do the same. NSW and ACT removed requirements for licensing of employment agents and left existing consumer and trading laws as guidance for behaviour in market. The Northern Territory, Victoria and Tasmania never instigated specific regulation for Employment Agents, satisfied that existing consumer and trading laws provided sufficient regulation of market behaviour for the sector.

Existing consumer protection laws, such as the Australian Consumer Law and Fair-Trading Acts, offer robust safeguards against unethical practices that licensing systems were originally designed to address. These comprehensive regulations effectively protect job seekers and employers from deceptive conduct, unjustified fees, and other unfair practices. For instance, Commonwealth Consumer Law tackles issues like misleading advertising and unfair trading, ensuring that employment agents adhere to high ethical standards without the need for state-based regulatory frameworks. Similarly, Fair-Trading Acts reinforce protections against charging job seekers fees for securing employment and prevent deceptive practices.

RCSA supports a harmonised approach to Employment Agent regulation across jurisdictions and believes that existing State and Commonwealth Consumer and Fair-Trading legislation is sufficient to regulate market behaviour of businesses, including recruitment businesses.

About RCSA

RCSA appreciates the opportunity to provide feedback on the South Australian *Employment Agents Bill 2024* and the accompanying *Reforming Employment Agents Legislation 2024 Discussion* and is available to work with the South Australian Government beyond this submission to further explore and consider issues outlined in this document.

RCSA is the peak body for the recruitment and staffing industry in Australia and New Zealand.

RCSA promotes and facilitates professional practice within the recruitment and staffing industry. It sets the benchmark for industry standards through representation, education, research and business advisory support to our member organisations and accredited professionals who are bound by the Australian Competition and Consumer Commission (ACCC) authorised RCSA Code for Professional Conduct.

RCSA is also a proud member of the World Employment Confederation (WEC), the voice of the recruitment and staffing industry across 50 countries, and the Australian Chamber of Commerce and Industry (ACCI).