

(Reprint No. 6)

SOUTH AUSTRALIA

**INDUSTRIAL AND EMPLOYEE RELATIONS (GENERAL)
REGULATIONS 1994**

These regulations are reprinted pursuant to the Subordinate Legislation Act 1978 and incorporate all amendments in force as at 23 October 1997.

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being

No. 132 of 1994: *Gaz.* 4 August 1994, p. 380¹

as varied by

No. 158 of 1995: *Gaz.* 13 July 1995, p. 99²

No. 171 of 1995: *Gaz.* 24 August 1995, p. 525³

No. 199 of 1997: *Gaz.* 4 September 1997, p. 642⁴

No. 215 of 1997: *Gaz.* 23 October 1997, p. 1089⁵

¹ Came into operation 8 August 1994: reg. 2.

² Came into operation 17 July 1995: reg. 2.

³ Came into operation 31 August 1995: reg. 2.

⁴ Came into operation 4 September 1997: reg. 2.

⁵ **Came into operation 23 October 1997: reg. 2.**

N.B. The following regulations have been disallowed:
No. 138 of 1997: *Gaz.* 29 May 1997, p. 2764 see *Gaz.* 31 July 1997, p. 237.

NOTE:

- Asterisks indicate repeal or deletion of text.
- Entries appearing in bold type indicate the amendments incorporated since the last reprint.
- For the legislative history of the regulations see Appendix.

**PART 1
PRELIMINARY**

Citation

1. These regulations may be cited as the *Industrial and Employee Relations (General) Regulations 1994*.

Commencement

2. These regulations will come into operation on 8 August 1994.

Interpretation

3. In these regulations, unless the contrary intention appears—

"the Act" means the *Industrial and Employee Relations Act 1994*.

Declared employer for public employees

4. The following are declared to be employers of public employees for the purposes of paragraph (a) of the definition of "**employer**" in section 4(1) of the Act:

- (a) in respect of employees of the Bank of South Australia Limited—that body;
- (b) in respect of employees of the Country Fire Service—that body;
- (c) in respect of employees of ETSA Corporation—that body;
- (d) in respect of employees of the Lotteries Commission of South Australia—that body;
- (e) in respect of employees of the South Australian Asset Management Corporation—that body;
- (f) in respect of employees of the South Australian Housing Trust—that body;
- (g) in respect of employees of the South Australian Meat Corporation—that body;
- (h) in respect of employees of the South Australian Metropolitan Fire Service—that body;
- (i) in respect of employees of the South Australian Totalizator Agency Board—that body;
- (j) in respect of employees of TransAdelaide—that body;
- (k) in respect of other public employees—the person for the time being holding or acting in the position of the Commissioner for Public Employment.

Employment excluded from Act

5. (1) Pursuant to section 6(b) of the Act, employment which consists of part-time or casual employment performed in or about a private residence is excluded from the ambit of the Act provided that the work is wholly or mainly performed for a domestic purpose.

(2) In this regulation work is performed for a "**domestic purpose**" if it is not performed for the purpose of the employer's trade or business.

**PART 2
ENTERPRISE AGREEMENTS**

Notice to be given by association

6. (1) Pursuant to section 75(2) of the Act, an association which proposes to enter into an enterprise agreement on behalf of a group of employees must give notice of that proposal to the group of employees in accordance with this regulation.

(2) The association must take reasonable steps to ensure—

(a) that a written notice is given to each employee currently constituting the group proposed to be bound by the enterprise agreement; and

(b) where practicable, that a written notice is displayed at the employees' workplace.

(3) A notice prepared under this regulation—

(a) must be expressed in plain english; and

(b) must state the full name of the association; and

(c) must provide the name and the phone number of an officer of the association who can be contacted for further information in relation to the proposed enterprise agreement; and

(d) must identify the group of employees who would or might be bound by the proposed enterprise agreement with enough particularity to enable an employee to determine whether or not they are or might be in the group; and

(e) must contain a statement advising employees in the group—

(i) that if the association is authorised by a majority of the employees constituting the group to negotiate on their behalf, the association may enter into an enterprise agreement under the Act which would bind all members of the group; and

(ii) that any employee within the group who is a member of the association will be taken to have given an authorisation for the purposes of the Act unless the employee, by written notice to the association, withdraws the authorisation; and

(f) must provide details of the means by which an employee within the group who is not a member of the association may give an authorisation to the association for the purposes of the Act; and

(g) must be signed by or on behalf of the association.

(4) The association should, so far as is reasonably practicable, ensure that a notice displayed in a workplace under this regulation is in such languages as are appropriate for a significant number of the employees to whom the notice is addressed.

(5) If an employee reasonably requests that a notice given to the employee under this regulation be supplied in a language other than english, the association must take reasonable steps to provide the employee with a copy of the notice in the language requested.

Notice to be given by employer

7. (1) Pursuant to section 76(1) of the Act, an employer must give notice in accordance with this regulation that negotiations for an enterprise agreement are about to begin.¹

(2) The employer must take reasonable steps to ensure—

- (a) that a written notice is given to each employee currently constituting the group proposed to be bound by the enterprise agreement; and
- (b) where practicable, that a written notice is displayed at the employees' workplace.

(3) A notice prepared under this regulation—

- (a) must be expressed in plain english; and
- (b) must include a statement that the employer proposes to begin negotiations on the terms of an enterprise agreement and propose a date and place for the commencement of those negotiations; and
- (c) must identify the group of employees who would or might be bound by the proposed enterprise agreement with enough particularity to enable an employee to determine whether or not they are or might be in the group; and
- (d) may outline the employer's proposed procedure for negotiations on the terms of the enterprise agreement, including the anticipated time frame for the negotiations and any proposed consultative arrangements; and
- (e) may outline matters that the employer proposes to be subject to negotiations for an agreement; and
- (f) must be signed by or on behalf of the employer.

(4) Subject to subregulations (5) and (6), a notice under subregulation (3) may take the form of the notice set out in schedule 1 of these regulations.

(5) The employer should, so far as is reasonably practicable, ensure that a notice displayed in a workplace under this regulation is in such languages as are appropriate for a significant number of the employees to whom the notice is addressed.

(6) If an employee reasonably requests that a notice given to the employee under this regulation be supplied in a language other than english, the employer must take reasonable steps to provide the employee with a copy of the notice in the language requested.

Requirements for signing an enterprise agreement

8. (1) Pursuant to section 77(1)(g) of the Act, an enterprise agreement must be signed—

- (a) on behalf of an employer, by—
 - (i) the employer; or

¹ Under section 76(1) of the Act notice is not required if the agreement is negotiated to settle an industrial dispute, or the Commission determines that there is good reason in the circumstances of the case to exempt the employer from this requirement.

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- (ii) a person duly authorised by the employer to sign on the employer's behalf;
- (b) on behalf of the employees, by—
- (i) those employees currently constituting the group proposed to be bound by the enterprise agreement and who approve of the agreement; or
 - (ii) an authorised officer of an association which has been authorised to enter into the agreement on behalf of the employees under section 75(2) of the Act; or
 - (iii) a person duly authorised by those employees currently constituting the group proposed to be bound by the enterprise agreement, and who approve of the agreement, to sign the agreement on their behalf.

(2) If an enterprise agreement contains a provision authorised under section 77(1)(d) of the Act, the agreement must also be signed by an authorised officer of the association of employees that has been given the right to represent the industrial interests of the employees to the exclusion of another association of employees.

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**PART 3
MISCELLANEOUS**

Exclusion from unfair dismissal provisions

10. (1) Pursuant to section 105A of the Act, the following classes of employees are excluded from the operation of Part 6 of Chapter 3 of the Act:¹

- (a) employees serving a period of probation or a qualifying period of employment, providing the period—
 - (i) is determined in advance; and
 - (ii) is reasonable having regard to the nature and circumstances of the employment; and
 - (iii) does not exceed 12 months;
- (b) employees engaged on a casual basis for a short period except where—
 - (i) the employee has been engaged by the employer on a regular and systematic basis extending over a period of at least nine months; and
 - (ii) the employee has, or would have had, a reasonable expectation of continuing employment by the employer;
- (c) employees whose terms and conditions of employment are governed by special arrangements giving rights of review of, or appeal against, decisions to dismiss from employment which, when considered as a whole, provide protection that is at least as favourable to the employees as the protection given under Part 6 of Chapter 3 of the Act;
- (d) employees of small business employers, except where—
 - (i) the employee was first employed by the employer prior to 1 September 1997; or
 - (ii) the employee has been employed by the employer—
 - (A) for at least 12 months; or
 - (B) on a regular and systematic basis extending over a period of at least 12 months.

(2) In subregulation (1)—

"small business employer" means an employer who employs not more than 15 employees (disregarding any casual employees who do not work for the employer on a regular and systematic basis).

(3) For the purposes of subregulation (1)(d), the question of whether the employer of an employee is a small business employer is to be determined—

- (a) if the employee was given notice of termination of the employee's employment—at the time the notice was given; or

(b) in any other case—at the time the employee's employment was terminated.

¹ Note that other categories of employees may be excluded from the ambit of Part 6 of Chapter 3 of the Act by other legislation—see, for example, the *Vocational Education, Employment and Training Act 1994* in relation to the termination or suspension of contracts of training (which include apprenticeships and traineeships).

Exclusion from notice of termination provisions

10A. Pursuant to section 105A of the Act, the following classes of employees are excluded from the operation of section 108(2) of the Act to the extent that the provision requires the Commission to have regard to the requirement that an employee be given a period of notice of termination of employment or compensation instead of notice:

- (a) casual employees (other than those excluded from the operation of the whole of Part 6 of Chapter 3 of the Act);
- (b) daily hire employees—
 - (i) performing work in the building and construction industry (including work in, or in connection with, the erection, repair, renovation, maintenance, ornamentation or demolition of buildings or structures); or
 - (ii) performing work in the meat industry in, or in connection with, the slaughter of livestock;
- (c) employees whose employment is regulated by Schedule X (*Marine Cooks, Marine Stewards and Seamen's Engagement System Schedule*) of the award known as the *Maritime Industry Seagoing Award 1983*, as in force on 16 November 1994;
- (d) weekly hire employees performing work in, or in connection with, the meat industry, whose termination of employment is determined solely by seasonal factors.

Fees for unfair dismissal applications

10B. (1) For the purposes of section 106(4) of the Act, the fee that must accompany an application for relief under Part 6 of Chapter 3 of the Act is \$50.

(2) The Registrar may exempt a person from the requirement to pay a fee under subregulation (1) on the basis that payment would cause serious hardship.

(3) A fee paid under subregulation (1) must be refunded if the application for relief is discontinued at least 2 days before the day on which a conference of the parties is to be held under section 107 of the Act.

Awards relating to disabled workers

11. (1) Pursuant to section 113(1)(c) of the Act, the bodies or organisations listed in schedule 2 are declared to be recognised organisations for the purposes of section 113 of the Act.

(2) Pursuant to section 113(3) of the Act, an award under section 90 of the Act cannot regulate the wages or salary payable to a person to whom section 113 of the Act applies.

(3) For the purposes of subregulation (2), wages or salary do not include—

- (a) amounts payable by way of penalty rates or shift premiums; or
- (b) amounts payable for overtime; or

- (c) allowances.

Continuous service

12. (1) Pursuant to section 1(3) of schedule 8 of the Act, in ascertaining whether an employee's period of service is continuous the following events or matters are to be disregarded:

- (a) a—
 - (i) suspension, stand down or other interruption; or
 - (ii) termination,
by the employer of the employee's employment for the purpose of avoiding the employer's obligations under section 1 of schedule 8 of the Act;
- (b) an absence from work by the employee on authorised leave;
- (c) subject to subregulation (2), an absence from work by the employee due to—
 - (i) the employee's illness; or
 - (ii) an accident to the employee;
- (d) subject to subregulation (3), an absence from work by the employee, if there was reasonable cause for the absence;
- (e) subject to subregulation (4), an absence from work by the employee due to concerted or collective industrial action;
- (f) any other absence from work, unless notice is given under subregulation (5) in relation to that absence.

(2) Subregulation (1)(c) does not apply to an absence from work unless—

- (a) if the employee is required by the terms of an award or order of a court or tribunal that has power to fix wages and other terms and conditions of employment, or an agreement certified or approved by such a body, to—
 - (i) notify the employer of an absence from work; and
 - (ii) substantiate the reason for that absence,
the employee complies with those terms; or
- (b) in any other case—the employee informs the employer within 24 hours after the commencement of the absence, or within such longer period as is reasonable in the circumstances, as to—
 - (i) the employee's absence and inability to attend work; and
 - (ii) whether the absence is due to illness or accident; and
 - (iii) the likely duration of the absence.

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(3) Subregulation (1)(d) does not apply to an absence from work unless—

(a) if the employee is required by the terms of an award or order of a court or tribunal that has power to fix wages and other terms and conditions of employment, or an agreement certified or approved by such a body, to—

(i) notify the employer of an absence from work; and

(ii) substantiate the reason for that absence,

the employee complies with those terms; or

(b) in any other case—the employee informs the employer within 24 hours after the commencement of the absence, or within such longer period as is reasonable in the circumstances, of—

(i) the employee's absence and inability to attend work; and

(ii) the reason for the absence; and

(iii) the likely duration of the absence.

(4) Subregulation (1)(e) does not apply to an absence from work if the Commission has determined that, for the purpose of determining the employee's entitlement to notice of termination of the employee's employment or to compensation instead of notice, the absence is to be taken as breaking the employee's continuity of service.

(5) For the purposes of subregulation (1)(f), the employer may give to the employee notice in writing in accordance with subregulation (6) that the absence from work is to be taken as breaking the employee's continuity of service with the employer.

(6) A notice under subregulation (5) (if any) must be given—

(a) by delivering it to the employee personally or posting it to the employee's last known address; and

(b) during, or within 14 days after the end of, the period of absence.

(7) A notice given by an employer under subregulation (5)—

(a) may be withdrawn by the employer; and

(b) if withdrawn, is taken not to have been given.

SCHEDULE 1

Regulation 7—Notice by employer

*NOTICE OF INTENTION TO NEGOTIATE ENTERPRISE AGREEMENT
UNDER THE INDUSTRIAL AND EMPLOYEE RELATIONS ACT 1994*

TO ALL EMPLOYEES

1. **TAKE NOTICE** that *(name of employer)*
proposes to begin negotiations for an enterprise agreement.

2. (a) The proposed date for commencement of negotiations¹ is
 (b) The proposed place for commencement of negotiations is

3. It is proposed that the enterprise agreement will bind the following employees: *(insert here the names, categories or classes of employees—the description used should be sufficiently precise to allow employees to determine whether or not they are in the group that the employer proposes will be bound)*

4. Employees have the right to be represented in the negotiation of, and in any proceedings for approval of, the enterprise agreement by the Employee Ombudsman, an employee association, or another agent of your choice.²

5. *(The following paragraph need only be completed where employees conditions of employment are currently governed by an award.³)*

Employees to be involved in these negotiations can gain access to copies of the industrial awards which currently regulate their employment in the following manner: *(insert here the name of the relevant award and the proposed method of access to the award in the workplace eg. insert the name of a person who employees can contact to examine a copy of the award)*

AWARD

HOW TO OBTAIN ACCESS

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.....

Employees should note that under the *Industrial and Employee Relations Act 1994* your employer is bound to provide you with a copy of your award upon request unless you have previously requested a copy of the award in the last 12 months or your employer has been relieved of the obligation to provide a copy of the award by the Industrial Relations Commission of South Australia.

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6. Additional information:

(An employer may here, for example, outline the employer's proposed procedure for negotiations on the terms of the enterprise agreement including the anticipated time frame and proposed consultative arrangements, or may outline matters that may, according to the employer's proposals, be subject to negotiations for an agreement or any other appropriate information—add annexure if required)

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7. Signature of employer or authorised person

Date

NOTES

¹ Under section 76(1) of the Act this date cannot be less than 14 days from the date that this notice is given to employees.

² Under section 76(2) of the Act an employer is required to inform employees of their right to representation in the negotiation and proceedings for approval of an enterprise agreement.

Employers should also note that under section 76(3) of the Act an employer who is aware that an employee is a member of an association must take reasonable steps to inform the association that negotiations for an enterprise agreement are about to begin.

³ Under section 76(4) of the Act an employer is required to ensure that employees have reasonable access to any applicable award.

SCHEDULE 2

Recognised Organisations

ORGANISATION OR BODY	PRINCIPAL LOCATION
Autism Association of South Australia Incorporated	3 Fisher Street MYRTLE BANK SA 5064
Barkuma Incorporated (except for that part known as Personnel Employment (SA) a Division of Barkuma Incorporated)	188 Fullarton Road DULWICH SA 5065
Barossa Enterprises Incorporated	55 Basedow Road TANUNDA SA 5352
Bedford Industries Rehabilitation Association Incorporated	615 Goodwood Road PANORAMA SA 5041
Bordertown Handy Help	63 Farquhar Street BORDERTOWN SA 5268
Community Vocational Support	409 Marion Road PLYMPTON SA 5038
Endeavour Supported Abilities (Adelaide Central Mission)	469 Torrens Road KILKENNY SA 5009
Excel Enterprises Incorporated	45 Cudmore Terrace WHYALLA SA 5600
Fleurieu Work Scheme Incorporated	77 Hill Street PORT ELLIOT SA 5212
Gambier Contracts Incorporated	37 Helen Street MT. GAMBIER SA 5290
Heritage Industries Incorporated	Jubilee Highway East MT. GAMBIER SA 5290
Invicta Services Ltd.	56 Beulah Road NORWOOD SA 5067
LEPSH Incorporated	22 Edinburgh Street PT. LINCOLN SA 5606
Melaleuca Centre Incorporated	Princess Highway MENINGIE SA 5264
Millicent Work Option Centre Incorporated	30 Davenport Street MILLICENT SA 5280
Minda Incorporated	King George Avenue BRIGHTON SA 5048
Muscular Dystrophy Association of S.A. Incorporated	251 Morphett Street ADELAIDE SA 5000
Ngeringa Association Incorporated	Williams Road MT. BARKER SA 5251
Orana Incorporated	770 South Road GLANDORE SA 5037
Phoenix Society Incorporated	18 Ashwin Parade TORRENSVILLE SA 5031

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Pride Industries Incorporated	Grand Junction Road GILLES PLAINS SA 5086
Product Action Incorporated	64 O.G. Road KLEMZIG SA 5087
Royal Society for the Blind of South Australia Incorporated	Blacks Road GILLES PLAINS SA 5086
SA Group Enterprises Incorporated	4 Iris Street MELROSE PARK SA 5039
Strathmont Centre	Grand Junction Road GILLES PLAINS SA 5086
Tatiara Treats	63 Farquhar Street BORDERTOWN SA 5268
Wirrawee Incorporated	46 Taylor Street KADINA SA 5554

APPENDIX

LEGISLATIVE HISTORY

(entries in bold type indicate amendments incorporated since the last reprint)

Regulation 4:	substituted by 158, 1995, reg. 3; varied by 215, 1997, reg. 3
Regulation 6(1):	varied by 171, 1995, reg. 3(a)
Regulation 6(3):	varied by 171, 1995, reg. 3(b)
Regulation 9:	revoked by 171, 1995, reg. 4
Regulation 10:	substituted by 199, 1997, reg. 3
Regulations 10A and 10B:	inserted by 199, 1997, reg. 3