

Queensland



# PRIVATE EMPLOYMENT AGENCIES ACT 1983

**Reprinted as in force on 5 May 2000  
(includes amendments up to Act No. 5 of 2000)**

**Reprint No. 2**

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# Information about this reprint

This Act is reprinted as at 5 May 2000. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

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ACT 1983**

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# PRIVATE EMPLOYMENT AGENCIES ACT 1983

[as amended by all amendments that commenced on or before 5 May 2000]

**An Act to provide for the licensing and conduct of private employment agencies and for related purposes**

## PART 1—PRELIMINARY

### Short title

1. This Act may be cited as the *Private Employment Agencies Act 1983*.

### Interpretation

5. In this Act—

“**applicant employee**” means a person who seeks employment through a private employment agency.

“**applicant employer**” means a person who seeks to employ labour through a private employment agency.

“**award**” means an award, industrial agreement, certified agreement or QWA under the *Industrial Relations Act 1999*.

“**holder**”, in relation to a licence, means the person to whom the licence is issued and includes a person to whom is issued a licence for a private employment exchange under the *Labour and Industry Act 1946* while such a licence continues in force as prescribed by this Act.

“**inspector**” means an inspector for the purposes of this Act and includes any person who under this Act has and may exercise all or any of the powers of an inspector.

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**“licence”** means a general licence, a probationary licence or a temporary licence provided for by this Act and includes a licence for a private employment exchange issued under the *Labour and Industry Act 1946* while such licence continues in force as prescribed by this Act.

**“manager”** means a person in charge of the business affairs of another person.

**“model”** means a person employed—

- (a) to pose for a photographer, or for a painter, sculptor or other artist; or
- (b) to put on articles of apparel to display them to customers or the public.

**“theatrical performer”** means any actor, ballet member, chorus member, dancer, disc jockey, fashion compere, fashion host, general compere, musician or performer of any kind employed to act, dance, sing, speak, play or perform, in any theatre, music hall or place, where public entertainment is presented or recorded.

## **PART 2—ADMINISTRATION**

### **Administration**

**6.** This Act shall be administered by the Minister and, subject to the Minister and the chief executive, by the commissioner for training appointed for the purposes of the Industry and Commerce Training Act 1979<sup>1</sup> and the inspectors and other officers charged with the administration of this Act.

### **Licensing officer and inspectors**

**7.(1)** The functions and powers of the licensing officer under this Act shall be performed and may be exercised by the person who for the time being holds or is acting in the office of the commissioner for training

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<sup>1</sup> The Industry and Commercial Training Act 1979 was repealed by 1988 No. 85 s 4 sch.



appointed for the purposes of the Industry and Commerce Training Act 1979.

(2) A person who holds an appointment as the commissioner for training, welfare officer, training consultant or commission inspector for the purposes of the Industry and Commerce Training Act 1979 shall, without further appointment, be an inspector for the purposes of this Act.

### **Delegation of powers and functions of licensing officer**

7A.(1) The person for the time being performing the functions of the licensing officer under section 7(1) (the “**delegator**”) may, either generally or otherwise as provided by the instrument of delegation, by signed writing, delegate to any person (the “**delegate**”) all or any of the powers and functions under this Act except this power of delegation.

(2) A delegation under subsection (1) may be to the holder of an office, specifying the office but without naming the holder, in which case each successive holder of that office and each person who for the time being occupies or performs the duties of that office may exercise or, as the case may be, perform such delegated powers and functions as are specified in the instrument.

(3) A power or function so delegated, if exercised or performed by the delegate, shall be exercised in accordance with the instrument of delegation.

(4) A delegation may be made subject to such terms or limitations as the delegator thinks fit including a requirement that the delegate shall report to the delegator upon the exercise or performance of the delegated power or function.

(5) The delegator may make such and so many delegations of the same power or function and to such number of persons or holders of office as the delegator considers necessary or desirable.

(6) A delegation is revocable at the will of the delegator and does not prevent the exercise of a power or the performance of a function by the delegator.

### **Evidence of authority**

8.(1) Every inspector shall be issued with evidence of the inspector’s

authority in the form prescribed.

(2) An inspector shall produce to a person whom the inspector wishes to interview and question the evidence of the inspector's authority upon demand made by that person.

### **Powers and duties of inspectors**

9.(1) An inspector may—

- (a) subject to subsection (3), enter any place that the inspector has a bona fide interest in entering for the purposes of this Act; and
- (b) make with respect to any place such examination or inquiry as the inspector considers to be necessary to ascertain whether the provisions of this Act are being complied with; and
- (c) interview any employee found in any place entered by the inspector, in the presence of the licensee or other person or alone; and
- (d) search for and require the production of any register, record, book, document, correspondence or other writing with respect to the business of a private employment agency and inspect, examine and make copies of or extracts from any such register, record, book, document, correspondence or other writing; and
- (e) seize and retain any register, record, book, document, correspondence or other writing found by the inspector or produced to the inspector that the inspector considers will afford evidence as to the commission of an offence against this Act suspected by the inspector on reasonable grounds to have been committed; and
- (f) question an employer or person in charge in any place entered by the inspector for the purposes of this Act, with respect to matters to which this Act applies and require that employer or person to answer every question concerning such matters put to the employer or person; and
- (g) ask anyone the inspector considers can help, to help the inspector exercise the inspector's powers.

(2) An inspector, if the inspector is not the person for the time being

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performing the functions of the licensing officer, and an officer charged with the administration of this Act shall report to the person for the time being performing the functions of the licensing officer every contravention of or failure to comply with a provision of this Act as soon as is practicable after it comes to his or her knowledge.

(3) The power of an inspector to enter any place does not extend to entering any premises that are used or any part of premises that is used exclusively as a dwelling house unless the inspector has—

- (a) obtained from the occupier of those premises or that part his or her permission to the inspector's entry; or
- (b) obtained from a justice a warrant to enter those premises or that part.

(3A) For the purposes of subsection (3) premises used as a dwelling house do not include the curtilage of any premises.

(4) A justice who is satisfied upon the complaint of an inspector that there is reasonable cause to suspect that—

- (a) in any place there is a register, record, book, document, correspondence or other writing or anything that would assist in establishing whether an offence against this Act has been, is being or is likely to be committed; or
- (b) in any place an offence against this Act has been, is being or is likely to be committed;

may issue the justice's warrant, directed to that inspector, to enter the place specified in the warrant for the purpose of exercising therein all or any of the powers conferred on an inspector by this Act.

(4A) For 1 month from the date of its issue a warrant shall be sufficient authority for the inspector to whom it is directed and to all persons acting in aid of the inspector—

- (a) to enter the place specified in the warrant; and
- (b) to exercise therein all or any of the powers conferred on an inspector by this Act.

(5) For the purposes of gaining entry to any place that the inspector is authorised by or under this Act to enter an inspector and all persons acting in aid of the inspector may use such force as is necessary.

(6) Subject to subsection (7), an inspector shall not disclose to any person information that the inspector has acquired in the exercise of the inspector's powers or the performance of the inspector's duties.

(7) Subsection (6) does not operate to prevent the disclosure of information—

- (a) for the purposes of this Act and in the performance of an inspector's duties under this Act; or
- (b) with the prior permission of the Minister; or
- (c) ordered by a court or other tribunal duly constituted pursuant to any law to be disclosed for the purposes of a proceeding before that court or tribunal.

### **Powers of persons acting in aid**

10. A person who is acting in aid of an inspector for the purposes of this Act shall have and may exercise all or any of the powers conferred on an inspector by this Act.

### **Offences relating to inspectors etc.**

11. A person shall not—

- (a) assault, threaten, obstruct, hinder, abuse, insult or intimidate or attempt so to do an inspector or other person who is performing functions or duties or exercising powers under this Act or is attempting so to do; or
- (b) fail to answer any question asked of the person for the purposes of this Act by an inspector or furnish a false or misleading answer to any such question; or
- (c) when required by or under this Act to furnish information—fail to do so or furnish information that is false or misleading; or
- (d) when required by an inspector to produce any register, record, book, document, correspondence or other writing, such as is referred to in section 9(1)—fail to do so; or
- (e) fail to allow an inspector to make a copy of or an extract from any register, record, book, document, correspondence or other

writing, such as is referred to in section 9(1); or

- (f) prevent or attempt to prevent, directly or indirectly, a person from appearing before and being questioned by an inspector; or
- (g) fail to comply with a requisition of an inspector made under this Act.

### **Answers and information given under compulsion**

**12.** A person is not entitled to refuse to comply with a requisition directed to the person—

- (a) to answer a question on any matter to which this Act applies; or
- (b) to produce any register, record, book, document, correspondence or other writing;

on the ground that the answer or production would tend to incriminate the person but any answer made by the person or matter produced by the person after objection taken on that ground shall not be admissible in evidence against the person in proceedings taken against him or her for an offence.

### **Annual report**

**13.(1)** As soon as practicable after the end of each financial year and not exceeding in any case a period of 3 months thereafter the person for the time being performing the functions of the licensing officer shall cause a report on the operation of this Act throughout that year to be prepared and furnished to the Minister.

**(2)** A report prepared pursuant to subsection (1) shall include such statement of account and other financial and other relevant information as is prescribed.

**(3)** The Minister shall lay every report furnished to the Minister pursuant to subsection (1) before the Legislative Assembly within 14 sitting days after its receipt by the Minister.

## **PART 3—LICENCES AND LICENSEES**

### **Private employment agents and agencies**

**14.(1)** For the purposes of this Act and subject to this section, a person who—

- (a) holds himself or herself out to be an agent ready, for reward, to procure—
  - (i) employment for persons seeking it; or
  - (ii) employees for persons seeking to employ others; or
- (b) holds himself or herself out to be an agent ready, whether for reward or not, to place persons in employment and in respect thereof to charge the person placed in employment or the employer of that person an entrance fee or any other fee or charge by whatever name called;

shall be taken to carry on the business of private employment agency and to be a private employment agent.

**(2)** The provisions of subsection (1) do not apply to the publisher of any newspaper or other publication that provides a service as an intermediary between persons seeking employment and persons seeking to employ others if the newspaper or other publication is not published, solely or principally, for the purpose of providing that service.

**(3)** The provisions of subsection (1) do not apply to a person being an employer of any person by reason only of providing the services of his or her employee to another person to perform a task of temporary duration in return for a payment at a predetermined rate agreed upon between the employer and that other person if—

- (a) the employer remains solely responsible for the payment of wages to his or her employee and the performance of all other lawful obligations owed by the employer as employer to his or her employee; and
- (b) no fee or charge is payable by the employee in relation to his or her performance of such task.

**Types of licences**

**15.(1)** The licences that may be granted under this Act are—

- (a) a general licence; and
- (b) a probationary licence; and
- (c) a temporary licence.

**(2)** A general licence shall be authority for the holder thereof to carry on the business of a private employment agency and to be a private employment agent throughout the State or, where a part of the State is specified in the licence as the area within which the licence is to have effect, throughout that part of the State.

**(3)** A probationary licence shall be authority for the holder thereof to carry on business as prescribed by subsection (2) but only for a period not exceeding 12 months from the date of its issue.

**(4)** A temporary licence shall be issued only as a substitute for a general licence or a probationary licence held by a person who—

- (a) has died;
- (b) is out of Queensland;
- (c) is unable from any other cause, to carry on the business of a private employment agency under the authority of the general licence or, as the case may be, probationary licence;

and shall be authority for the holder thereof to carry on the business of a private employment agency and to be a private employment agent for a period not exceeding 3 months or until the time at which the licence for which it is a substitute would expire by effluxion of time, whichever period is the shorter, at or from premises at or from which the holder of the licence for which it is a substitute is or was authorised to carry on that business.

**Conditions for issue of licence**

**16.(1)** A licence shall not be issued to any person unless—

- (a) he or she is a natural person; and
- (b) the premises where he or she proposes to carry on the business of private employment agency is situated in the State and conforms

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with all requirements prescribed for such premises.

(2) A general licence shall not be issued to any person unless—

- (a) the person has resided in the State for a period of not less than 6 months immediately preceding the date of his or her application for a licence; and
- (b) the person has complied with all other requirements prescribed for an applicant for a general licence.

(3) If an applicant for a general licence can not be issued with a general licence by reason only that the applicant lacks the residential qualification prescribed by subsection (2) he or she shall be entitled to be issued with a probationary licence.

**Business to be carried on subject to licence**

17.(1) A person shall not—

- (a) carry on; or
- (b) advertise that he or she carries on; or
- (c) hold himself or herself out as carrying on;

the business of a private employment agency unless the person is the holder of a licence.

(1A) Subsection (1) does not apply to a member of a partnership that carries on the business of a private employment agency who is not the holder of a licence if any other member of the partnership is the holder of a licence and the business carried on under the authority of the licence is carried on in accordance with subsection (3).

(2) A person shall not advertise, notify or publish a statement to the effect that the business of a private employment agency is carried on by or on behalf of any body corporate or partnership unless a person who is the holder of a licence issued to him or her as the nominee of that body corporate or partnership is—

- (a) an officer of that body corporate; or
- (b) a member of that partnership; or
- (c) an employee of that body corporate or partnership.



(3) The holder of a licence shall carry on the business of a private employment agency—

- (a) in the name (whether his or her name, the name of a body corporate or a partnership of which he or she is a nominee or a business name) specified for that purpose in the licence and in no other name;
- (b) at or from a place of business specified for that purpose in the licence and no other place;
- (c) during the period for which the licence remains in force and at no other time.

(4) A person who contravenes any provision of this section commits an offence against this Act and is liable to a penalty not exceeding \$2 000.

### **Application for licence**

**18.(1)** An application for a licence shall be made in the prescribed form and manner to the person for the time being performing the functions of the licensing officer and shall be accompanied by the prescribed fee.

(2) A person who has made an application for a licence other than a temporary licence shall, within 14 days after the person has made the application, publish in a newspaper that circulates throughout Queensland and, if the person for the time being performing the functions of the licensing officer so requires it, in a newspaper that circulates throughout the district in which are situated the premises at or from which the business of a private employment agency is to be carried on under the authority of the licence, notice of the person's application in the prescribed form that specifies—

- (a) the full name and residential address of the proposed holder of the licence; and
- (b) where the application is made by or on behalf of a body corporate or partnership—the name in which that body corporate or partnership carries on business and the address of its principal place of business; and
- (c) the location of the premises at or from which the business of a private employment agency is to be carried on under the authority

of the licence; and

- (d) that objections to the person's application may be lodged in accordance with section 19; and
- (e) an address at which objections to the person's application may be served on the person personally; and
- (f) such other particulars as are prescribed;

and shall lodge with the person for the time being performing the functions of the licensing officer a copy of the newspaper or newspapers in which the notice of the person's application has been published.

### **Objections to issue of licences**

**19.(1)** A person who wishes to object to the issue of a licence, other than a temporary licence, to an applicant or intending applicant shall, within 14 days after publication of the notice referred to in section 18, lodge with the prescribed person a notice in writing of his or her objection, which shall particularise the grounds for the objection in sufficient detail to enable the applicant or intending applicant to know what is the allegation that the applicant has to answer, and shall cause a copy of that notice to be given to the applicant or intending applicant and to the person for the time being performing the functions of the licensing officer.

**(1A)** A notice of objection that does not contain the matter required by subsection (1) shall be of no effect and shall be disregarded.

**(2)** In subsection (1)—

**“the prescribed person”** means the clerk of the court for the Magistrates Court district in which are situated the premises where the business of a private employment agency is to be carried on and where in respect of any such district there is more than 1 such clerk, means the clerk of the court for that district who is stationed nearest to the premises where the business of a private employment agency is to be carried on.

### **Disposal of applications**

**20.(1)** Every application for a licence, other than a temporary licence, shall be referred to the clerk of the court for the Magistrates Court district in which are situated the premises where the business of a private employment

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agency for which the licence is sought is to be carried on.

**(1A)** Where an objection against the issue of a licence, other than a temporary licence, in a particular case has been lodged with a clerk of the court in accordance with section 19 the application for a licence in that case shall be referred to the same official.

**(2)** The clerk of the court to whom an application for a licence is referred shall—

- (a) request the officer in charge of police at the police station nearest to the location of the residential address or, where the application is made by or on behalf of a body corporate, the principal place of business of the applicant for the relevant licence, to forward a report to the clerk of the court on the character, reputation and previous conduct of the applicant;
- (b) as soon as practicable after the clerk of the court has received the report referred to in paragraph (a), arrange with an industrial magistrate a suitable time and place at which an inquiry into the matter of the application will be held and shall give notice in writing of that time and place to—
  - (i) the applicant; and
  - (ii) the person for the time being performing the functions of the licensing officer; and
  - (iii) where an objection has been duly made in relation to that application—the objector;
- (c) deliver the police report to that industrial magistrate.

**(2A)** It is the duty of any police officer who receives a request pursuant to subsection (2)(a) to comply with that request as soon as practicable.

**(3)** At the time and place so notified and at any other time and place to which the inquiry is from time to time adjourned (whether before or after commencement of the inquiry) and of which notice has been given to the parties the industrial magistrate shall inquire—

- (a) whether the applicant or, where there is more than 1 applicant, each of them is a fit and proper person to be the holder of a licence, having regard to the police report referred to in subsection (2) and all objections (if any) duly lodged in relation to

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the applicant or any of them; and

- (b) where the application is made by an applicant as a nominee of a body corporate or partnership—whether the body corporate or partnership is a fit and proper person or body to be associated with the carrying on of the business of a private employment agency, having regard to the police report referred to in subsection (2) and all objections (if any) duly lodged in relation to it.

**(3A)** Each of the following persons—

- (a) an applicant;
- (b) an objector;
- (c) the person for the time being performing the functions of the licensing officer;

shall be taken to be a party to such inquiry and shall be entitled to be present and to be heard.

**(4)** The industrial magistrate shall furnish to the person for the time being performing the functions of the licensing officer the industrial magistrate's determination upon the inquiry.

**(4A)** If the industrial magistrate determines that the applicant, or any of them, is not a fit and proper person to be the holder of a licence or to be associated with the carrying on of the business of a private employment agency, a licence shall not be issued upon the application and in that case the prescribed fee paid upon the application shall be refunded to whomsoever paid it.

**(5)** In a case to which subsection (4A) does not apply the person for the time being performing the functions of the licensing officer shall issue to the applicant the appropriate licence if he or she is satisfied that the provisions of this Act relevant to the application in question or to the applicant have been complied with.

### **Procedure for licence on behalf of body corporate or partnership**

**21.(1)** Where it is proposed that a business of a private employment agency be carried on by a body corporate or a partnership a natural person shall be appointed by that body corporate or the members of that partnership

to be the holder of a licence as the nominee of that body corporate or partnership.

(2) The application for a licence in any such case—

- (a) may be made by the proposed holder of the licence or by or on behalf of the body corporate or partnership concerned; and
- (b) shall state the name and principal place of business of the body corporate or partnership concerned; and
- (c) shall state the name and principal place of business of the proposed holder of the licence and any other place or places of business of the proposed holder of the licence; and
- (d) shall specify such other particulars as are prescribed.

(3) For the purpose of the application of sections 18, 19 and 20 in a case referred to in this section it shall be deemed that the application is made by each of them—

- (a) the proposed holder of the licence sought and the body corporate whose nominee the proposed holder is; or
- (b) the proposed holder of the licence sought and the members of the partnership whose nominee the proposed holder is.

(4) However, subsection (3) shall not be construed to require publication by more than 1 person of the notice referred to in section 18.<sup>2</sup>

### **Licences issued for use by body corporate or partnership**

**22.(1)** Any licence issued upon an application referred to in section 21 shall be issued to and in the name of the natural person appointed pursuant to section 21(1) who shall become and be the holder of the licence.

**(1A)** Every such licence shall specify therein the name of the body corporate or partnership of which the holder of the licence is nominee.

**(2)** A licence may be issued to each of 2 or more persons as nominees of the same body corporate or partnership.

**(3)** Where the holder of a licence issued upon an application referred to in

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<sup>2</sup> Section 18 (Application for licence)

section 21 was at the time of its issue an employee of the body corporate or partnership of which the holder is nominee the licence may be transferred by the person for the time being performing the functions of the licensing officer, with the approval only of that body corporate or the members of that partnership, to any person appointed by that body corporate or those members to be the holder of the licence if that person has been approved pursuant to section 20<sup>3</sup> as a fit and proper person to be holder of a licence.

(4) Upon such transfer the transferee shall become and be the holder of the licence as nominee of the body corporate or partnership concerned in place of the person who was the holder immediately prior to the transfer.

### **Duration of licence**

23. Unless it sooner ceases to operate by reason of cancellation or suspension a licence shall continue in force until 31 May next following the date of its issue.

### **Renewal of licence**

24.(1) The holder of a licence, other than a temporary licence, who wishes to renew it shall submit the holder's application for renewal thereof to the person for the time being performing the functions of the licensing officer no later than 1 March in each year.

(1A) In the case of a licence held by a person as nominee of a body corporate or partnership the provisions of section 21(2), (3) and (3A)<sup>4</sup> shall apply in relation to an application for its renewal as they applied to an application for its issue in the first instance.

(2) An application for renewal of a licence shall be in the prescribed form, shall contain the prescribed information and shall be accompanied by the prescribed fee.

(3) Upon receipt of an application for renewal that complies with this Act the person for the time being performing the functions of the licensing officer may renew the licence without further investigation unless in the

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<sup>3</sup> Section 20 (Disposal of applications)

<sup>4</sup> Section 21 (Procedure for licence on behalf of body corporate or partnership)

person's opinion—

- (a) there is evidence that warrants a further investigation; or
- (b) there is sufficient reason to refuse the application.

(4) Where the person for the time being performing the functions of the licensing officer proposes not to renew a licence the person shall give notice in writing to the applicant and therein specify the reasons for his or her decision.

### **Referral of application to clerk of the court**

**25.(1)** Within 28 days from the day on which a notice referred to in section 24(4) is received or is to be deemed to have been received by the applicant, and no later, an applicant for renewal of a licence may by notice in writing require the person for the time being performing the functions of the licensing officer to refer the application for renewal of the licence to the clerk of the court for the Magistrates Court district in which are situated the premises at or from which the business of a private employment agency was carried on under the authority of the licence or, where in respect of any such district there is more than 1 such clerk, to the clerk of the court for that district who is stationed nearest to such premises.

(1A) A requisition duly made under subsection (1) shall be complied with.

(2) The provision of section 20(2), (3), (3A), (4) and (4A) shall with all necessary modifications apply in respect of an application referred to a clerk of the court pursuant to subsection (1).

### **Duration of renewed licence**

**26.** A renewal of a licence shall be deemed to take effect on 1 June next following the making of application for renewal and unless it sooner ceases to be in force by reason of cancellation or suspension a licence renewed shall continue in force until 31 May next following the date of its renewal.

### **Published list of licensed holders**

**26A.** As soon as is practicable after 1 June in each year the person for the

time being performing the functions of the licensing officer shall cause to be published in the gazette a list of the names of all persons who hold licences as at 1 June last preceding and of the places of business at or from which business is or is to be carried on by such holders under the authority of the licences.

### **Replacement licence**

**27.(1)** The person for the time being performing the functions of the licensing officer may, upon the request of the holder of a licence and payment of the prescribed fee, if the person is satisfied that the licence issued has been lost or destroyed, issue a replacement licence to the same holder.

**(2)** A replacement licence shall bear the same endorsement as the licence that has been lost or destroyed and shall for all purposes replace that licence, which shall cease to be in force upon the issue of the replacement licence.

### **Cancellation and suspension of licence**

**28.(1)** Where—

- (a) the holder of a licence has been convicted of an offence against this Act; or
- (b) it appears to the person for the time being performing the functions of the licensing officer that the holder of a licence may not be a fit and proper person to carry on the business of private employment agency;

the person for the time being performing the functions of the licensing officer may, by notice in writing given to the holder of the licence, call upon the holder to show cause to the person at a time and place specified in the notice why the licence should not be cancelled.

**(2)** Where the holder of a licence, other than a temporary licence, has died the person for the time being performing the functions of the licensing officer may, by notice in writing given to the holder's legal personal representative or to such other person as in that person's opinion has an interest in maintaining the licence, call upon the legal personal representative or such other person to show cause to the person for the time being



performing the functions of the licensing officer at a time and place specified in the notice why the licence should not be cancelled.

(3) If the holder of a licence, legal personal representative or other person called upon under this section fails to show cause (sufficient in the opinion of the person for the time being performing the functions of the licensing officer) at the time and place so specified or at any time and place to which the matter may have been adjourned and notified to him or her, the person performing the functions of the licensing officer may by his or her order cancel the licence or suspend it for a specified period.

(3A) Cause may be shown for the purposes of subsection (3) by the person called upon to show cause in person or in writing.

(4) Subject to section 29, a licence cancelled by order made under subsection (3) shall cease to be in force and a licence suspended by order made under subsection (3) shall cease to be in force for the period of such suspension.

### **Appeal against cancellation or suspension**

29.(1) Where an order for cancellation or suspension of a licence has been made under section 28 the person for the time being performing the functions of the licensing officer shall give notice in writing to the person called upon to show cause and shall specify in the notification the reasons for making the order.

(2) An order made under section 28 shall not take effect until 28 days from the day on which the notification referred to in subsection (1) is received or is to be deemed to have been received by the person called upon to show cause (whichever is the earlier) and, if a requisition referred to in subsection (3) is duly made in relation to that order, shall not then take effect unless and until it is confirmed by order of the industrial magistrate who hears the reference instituted under this section pursuant to the requisition.

(3) Within 28 days from the day on which a notification referred to in subsection (1) is received or is to be deemed to have been received by the person called upon to show cause, and no later, the person called upon to show cause may by notice in writing require the person for the time being performing the functions of the licensing officer to refer the matter of the order in question to the clerk of the court for the Magistrates Court district in which are situated the premises at or from which the business of a private

employment agency is or was carried on under the authority of the licence to which the order relates or, where in respect of any such district there is more than 1 such clerk to the clerk of the court for that district who is stationed nearest to such premises.

**(3A)** A requisition made under subsection (3) shall be complied with.

**(4)** A clerk of the court to whom a matter is referred under subsection (3) shall arrange with an industrial magistrate a suitable time and place at which an inquiry into the matter of cancellation or suspension will be held and shall give notice in writing of that time and place to—

- (a) the person who has required the reference; and
- (b) the person for the time being performing the functions of the licensing officer;

each of whom shall be taken to be a party to such inquiry and shall be entitled to be present and to be heard.

**(4A)** Every such inquiry shall be conducted *de novo* at the time and place so notified and at any other time and place to which the inquiry is from time to time adjourned (whether before or after commencement of the inquiry) and of which notice has been given to the parties.

**(5)** The industrial magistrate, having regard to such matters as are raised by or on behalf of each party to the inquiry, may—

- (a) confirm the order made under section 28;<sup>5</sup> or
- (b) quash the order made under section 28; or
- (c) vary the order made under section 28;

as the industrial magistrate thinks fit.

**(6)** Where an order made under section 28 is varied pursuant to this section the order as so varied shall be deemed to be the order made under section 28 and shall take effect forthwith.

### **Industrial magistrate's decision final**

**30.** A decision of an industrial magistrate upon an inquiry concerning—

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<sup>5</sup> Section 28 (Cancellation and suspension of licence)

- (a) the issue or renewal of a licence; or
- (b) the cancellation or suspension of a licence;

shall be final and conclusive and shall not be appealed against, called in question or be made subject to a prerogative writ on any account whatever.

## **PART 4—MISCELLANEOUS PROVISIONS**

### **Recovery of fees and charges**

**32.(1)** Subject to this Act, a private employment agent shall not demand or receive, either directly or indirectly, any entrance fee or other fee or charge, by whatever name called, or any expenses or reward of or from an applicant employee as a condition for that agent procuring or attempting to procure employment for the applicant employee.

**(1A)** Subject to subsections (1B), (1C) and (1D), it is lawful for a private employment agent who has procured employment for an applicant employee as a theatrical performer or as a model to demand or receive a fee or charge, and the expenses incurred in relation to that procurement provided that—

- (a) the agent has given to the employer and the applicant employee concerned a notice in relation to the employment, that sets out clearly—
  - (i) the name of the employer; and
  - (ii) the place of employment; and
  - (iii) details of the employment; and
  - (iv) the period of employment; and
  - (v) the gross amount of money payable by the employer to the applicant employee; and
  - (vi) an itemised list of the fees or charges, and expenses payable by the applicant employee to the agent; and
  - (vii) the net amount of money that will be received by the

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applicant employee after payment of the fees, charges and expenses of the agent; and

(viii) whether or not a rate of payment is provided for under an award and if so details of that award rate;

(b) the total amount of fees or charges and expenses referred to in paragraph (a)(vi) does not exceed 10% of the gross amount referred to in paragraph (a)(v);

(c) the net amount of money referred to in paragraph (a)(viii) is not less than the award rate referred to in paragraph (a)(vii).

**(1B)** Where the total period of employment referred to in subsection (1A)(a)(iv) is made up of—

(a) a period of 28 days; and

(b) a further period thereafter;

it shall not be lawful for a private employment agent to demand or receive any fees or charges, or any expenses in respect of the last mentioned period.

**(1C)** Where—

(a) a private employment agent procures employment for an applicant employee as a theatrical performer or model; and

(b) that agent is at the time of that procurement the manager of the applicant employee;

it shall not be lawful, in relation to that procurement—

(c) for the agent to demand or receive fees or charges, or expenses, as a private employment agent in addition to demanding or receiving fees or charges, or expenses, by whatever name called, in the agent's capacity as such manager; or

(d) for the agent to demand or receive fees or charges, or expenses, by whatever name called, in the agent's capacity as such manager in addition to demanding or receiving fees or charges, or expenses, as a private employment agent.

**(1D)** In the event of the private employment agent electing, pursuant to subsection (1C), to demand or receive fees, charges or expenses for a procurement in the agent's capacity as manager, it shall not be lawful for the agent to demand or receive a total amount of fees, charges and expenses that

exceeds the total amount that the agent would have received had he or she elected to demand or receive fees, charges and expenses for that procurement in his or her capacity as a private employment agent.

(2) A private employment agent shall not be entitled to recover any fee, charge, expenses or reward in respect of his or her procurement of an employee for an applicant employer unless—

- (a) the agent has brought to the notice of the applicant employer a scale of fees and charges relevant to such procurement, which scale accords with subsection (3); and
- (b) the amount of the fee, charge, expenses or reward agreed to by the applicant employer has been confirmed by the private employment agent in writing furnished to the applicant employer.

(3) A scale of fees and charges shall set out clearly—

- (a) the maximum amount that is to be chargeable or the formula by which the maximum amount is to be assessed;
- (b) where different rates of charge are relevant in different circumstances—the rates that are relevant in each case;
- (c) the time for payment of the fees and charges;
- (d) where the scale provides for payment of expenses—
  - (i) the fee or charge; and
  - (ii) the basis on which the expenses are to be assessed with particulars of any ancillary or administrative services to be charged for.

### **Order for repayment of amounts unlawfully received**

**32A.(1)** Where a private employment agent has received any amount by way of fee, charge, expenses or reward from an applicant employee in contravention of section 32, an industrial magistrate may, upon application made to the industrial magistrate by that applicant employee, order the private employment agent to pay to the applicant employee the amount so received.

(1A) The industrial magistrate may by the order impose such terms and conditions with respect to payment of the amount ordered to be paid and

may award costs in the industrial magistrate's discretion and access the amount of cost so awarded.

(2) Upon conviction of a private employment agent for an offence that involves the receipt by the agent from an applicant employee of any fee, charge, expenses or reward in contravention of section 32, the industrial magistrate may, in addition to imposing a penalty, order payment by the defendant to the applicant employee concerned of any fee, charge, expenses or reward so received.

(3) An order made by an industrial magistrate in accordance with this section whether upon application or by way of a proceeding for an offence shall be enforceable as if it were an order made by an industrial magistrate sitting as a Magistrates Court and the provisions of the *Justices Act 1886* shall apply and extend accordingly.

### **Records to be kept and retained**

**33.(1)** The holder of a licence shall keep—

(a) a register in which shall be entered the—

- (i) name;
- (ii) place of residence;
- (iii) age;
- (iv) sex;
- (v) usual trade or occupation;

of every applicant employee and the nature of the employment sought by the applicant employee and such other particulars as are prescribed; and

(b) a separate register in which shall be entered the—

- (i) name; and
- (ii) place of business;

of every applicant employer and the nature of the employment offered by the applicant employee and such other particulars as are prescribed; and

(c) a separate register of all engagement of labour secured through the

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private employment agency conducted by the holder and of such other particulars as are prescribed.

(2) The holder of a licence shall retain in his or her possession all registers kept by the holder pursuant to subsection (1) and all correspondence received or entered into by the holder in the course of the business of a private employment agency carried on by the holder for a period of 2 years at least after—

- (a) in the case of a register—the expiration of the year to which the register relates; or
- (b) in the case of correspondence—
  - (i) the date it came into existence, where the correspondence was prepared by the holder; or
  - (ii) the date it was received by the holder, where the correspondence was prepared by another person.

(3) The holder of a licence shall not make or cause to be made an entry that the holder knows to be false in a register kept by the holder pursuant to subsection (1).

(4) Upon being required in writing so to do by the person for the time being performing the functions of the licensing officer the holder of a licence shall furnish to that person, within the time specified in the requisition, a return of particulars entered in a register kept by the holder pursuant to subsection (1).

**False information not to be published**

**34.** The holder of a licence shall not—

- (a) publish or cause to be published any false information in the course of the business of a private employment agency carried on by the holder; or
- (b) make or permit to be made to any applicant employee a false statement concerning the nature or availability of any employment.

**Identification of agency in publications**

**35.(1)** Every publication put out or authorised by or on behalf of a private employment agency shall contain the full name under which the agency is conducted and the address or telephone number of the premises at or from which the business of the agency is carried on.

**(2)** Where a publication that does not comply with this section is put out or authorised by or on behalf of a private employment agency the holder of a licence who carries on the business of that agency shall be deemed to have put out or authorised the publication and to have thereby committed an offence against this Act.

**Premises to conform to standard**

**36.** The holder of a licence shall ensure that the premises where the business of a private employment agency is or is to be carried on conforms with the provisions of rule 1—the general rule under the Factories and Shops Act 1960.<sup>6</sup>

**General penalty**

**37.(1)** A person who contravenes or fails to comply with any provision of this Act commits an offence against this Act.

**(2)** A person guilty of an offence against this Act is liable, if a specific penalty is not provided for by any other provision of this Act, to a penalty not exceeding \$1 000.

**(3)** A person who attempts to commit an offence against this Act commits an offence against this Act and is liable to the same penalty, whether prescribed by this or any other provision of this Act, as if the person had actually committed the offence that the person has attempted.

**(4)** An industrial magistrate who convicts a person of an offence against this Act may, instead of forthwith imposing a penalty in respect thereof, order that the matter of penalty be adjourned for a time specified in the order.

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<sup>6</sup> The Factories and Shops Act 1960 was repealed by 1995 No. 12 s 3 sch. The general rule (rule 1) was repealed industrial gazette 29 July 1989, pp 569–719.



(5) Where an order of adjournment is made under subsection (4), the industrial magistrate who made the order may, upon the application of the person convicted, from time to time enlarge the time specified in the order or that time as last so enlarged if the industrial magistrate thinks there is good reason for so doing.

(6) Upon the expiration of the time specified in the order of adjournment or of that time as last enlarged pursuant to subsection (5) whichever is appropriate, unless an enlargement or further enlargement has been duly granted, and upon notice in writing of the time and place of hearing being given to the person convicted, the matter of imposition of penalty shall be brought before the industrial magistrate who made the order of adjournment for the industrial magistrate's determination and upon such determination—

- (a) where it appears to the industrial magistrate that the matter of complaint has been rectified—the industrial magistrate shall discharge the person convicted without imposing any penalty; or
- (b) in any other case—the industrial magistrate shall impose such penalty as appears to the industrial magistrate to be just;

and in either case, the industrial magistrate may make such order as to costs as the industrial magistrate thinks fit.

### **Responsibility for employees**

**38.(1)** Where the holder of a licence who has committed an offence against this Act holds the licence as a nominee of a body corporate or partnership and is an employee of that body corporate or partnership, the body corporate and each member of its board of management at the time the offence is committed or, as the case may be, each member of the partnership at the time the offence is committed shall be deemed to have committed the offence and to be the holder of the licence and proceedings may be brought against it or each or any of them accordingly in respect of the offence, whether or not the actual holder of the licence is prosecuted for the offence.

(2) It is a defence to a charge laid against any person by reason of subsection (1) if it is shown that the offence occurred without its, his or her knowledge and without negligence on its, his or her part.

(3) This section shall not be construed so as to relieve the actual offender of liability for his or her offence.

### **Proceedings for offences**

**39.(1)** A prosecution for an offence against this Act shall be by way of summary proceedings before an industrial magistrate.

(1A) Jurisdiction is hereby conferred on every industrial magistrate to hear and determine such proceedings.

(2) A prosecution for an offence against this Act shall be commenced—

- (a) by complaint of an inspector or of any person authorised by the Minister or by the person for the time being performing the functions of the licensing officer; and
- (b) within 1 year after the matter of complaint arose or within 6 months after the matter of complaint came to the knowledge of the complainant, whichever period is the later to expire.

### **Appeals from industrial magistrates**

**40.(1)** Subject to section 30,<sup>7</sup> a person aggrieved by any order of an industrial magistrate made in a proceeding under this Act who desires to appeal shall appeal to the Industrial Court.

(2) Jurisdiction is hereby conferred on the Industrial Court to hear and determine such an appeal.

### **Application of Industrial Relations Act**

**41.** The provisions of the *Industrial Relations Act 1999* and of the rules of court made under that Act shall apply, subject to this Act, according to their tenor in relation to—

- (a) proceedings before an industrial magistrate under this Act; and
- (b) proceedings before the Industrial Court under this Act;

as if those proceedings were under the *Industrial Relations Act 1999*.

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<sup>7</sup> Section 30 (Industrial magistrate's decision final)

**Consequences of convictions on licences**

**42.(1)** Whenever the holder of a licence is convicted of an offence against this Act the holder's licence shall be endorsed with the following particulars—

- (a) the fact of the conviction;
- (b) the date of the conviction;
- (c) the nature of the offence concerned.

**(2)** Upon being required in writing by the person for the time being performing the functions of the licensing officer so to do the holder of a licence that is to be endorsed in accordance with subsection (1) shall produce the holder's licence to that person or otherwise as required by the requisition.

**Evidentiary provisions**

**43.** In proceedings under this Act—

- (a) it shall not be necessary to prove the appointment for the person for the time being performing the functions of the licensing officer or of any other inspector;
- (b) a signature purporting to be that of the Minister, the person for the time being performing the functions of the licensing officer or any other inspector shall be taken to be the signature that it purports to be until the contrary is proved;
- (c) a document or writing purporting to be a duplicate or copy of a requisition issued or made or a notice issued by an inspector under this Act shall be primary evidence of the original thereof and in the absence of evidence to the contrary, conclusive evidence of the matters contained therein;
- (d) a document or writing purporting to be made by an inspector and to be a copy of or an extract from a register kept pursuant to this Act shall be primary evidence of the particulars in the register of which it purports to be a copy or extract;
- (e) the authority of a person to accept service of documents on behalf

of another shall be presumed in the absence of evidence to the contrary.

### **Representation of parties at hearings**

**43A.(1)** Subject to subsection (2), a party to any proceeding or inquiry under this Act may be represented at the hearing and determination thereof by the party's agent duly appointed in writing in that behalf.

**(2)** Unless the parties thereto so agree, a party to a proceeding or inquiry under this Act shall not be represented by counsel or solicitor.

### **Protection of things done under Act**

**43B.** A person shall not incur any liability on account of anything done bona fide and without negligence for the purpose of this Act for damage or inquiry alleged to arise by reason thereof.

### **Service of documents**

**44.(1)** A requisition in writing or notice in writing required or authorised by this Act to be given to any person shall be taken to have been duly given if—

- (a) it is served personally on the person to whom it is directed or on a person authorised by that person, either generally or in a particular case, to accept service of documents on his or her behalf;
- (b) it is left at the place of residence or business of the person to whom it is directed last known to the person who gives it;
- (c) it is sent by post to the place of residence or business of the person to whom it is directed last known to the person who gives it.

**(2)** A requisition or notice shall be deemed to have been received by the person to whom it is directed—

- (a) where it has been given in the manner referred to in subsection (1)(a)—on the day it is served in accordance with that paragraph;

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- (b) where it has been given in the manner referred to in subsection (1)(b)—on the day next following the day it is left at the place specified therein;
- (c) where it has been given in the manner referred to in subsection (1)(c)—unless the contrary is proved, at the time when it would be delivered in the ordinary course of post.

**Regulations**

**45.** The Governor in Council may make regulations not inconsistent with this Act prescribing with respect to—

- (a) fees payable under this Act and the purposes for which they are payable; and
- (b) the form of and the manner of keeping registers required by this Act to be kept; and
- (c) the form of returns required by or under this Act to be made and the nature of the particulars to be shown therein; and
- (d) penalties for contraventions or failures to comply with the regulations, not exceeding \$200 in any case, and in the case of a contravention or failure to comply of a continuing nature prescribing a penalty not exceeding \$10 for each day on which the contravention or failure continues after an offender has been convicted in respect thereof; and
- (e) all matters required or envisaged by this Act to be prescribed; and
- (f) all matters that in the opinion of the Governor in Council are necessary or convenient for the proper administration of this Act or to achieve the objects and purposes of this Act.

**ENDNOTES****1 Index to endnotes**

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**2 Date to which amendments incorporated**

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 5 May 2000. Future amendments of the Private Employment Agencies Act 1983 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
amdt	=	amendment	prov	=	provision
ch	=	chapter	pt	=	part
def	=	definition	pubd	=	published
div	=	division	R[X]	=	Reprint No.[X]
exp	=	expires/expired	RA	=	Reprints Act 1992
gaz	=	gazette	reloc	=	relocated
hdg	=	heading	renum	=	renumbered
ins	=	inserted	rep	=	repealed
lap	=	lapsed	s	=	section
notfd	=	notified	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
om	=	omitted	SIA	=	Statutory Instruments Act 1992
orig	=	original	SIR	=	Statutory Instruments Regulation 1992
p	=	page	SL	=	subordinate legislation
para	=	paragraph	sub	=	substituted
prec	=	preceding	unnum	=	unnumbered
pres	=	present			
prev	=	previous			

### 4 Table of earlier reprints

#### TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	to Act No. 88 of 1990	20 February 1996
1A	to Act No. 33 of 1999	27 August 1999

### 5 Tables in earlier reprints

#### TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Table of changed names and titles	1
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## 6 List of legislation

### **Private Employment Agencies Act 1983 No. 40**

date of assent 22 April 1983

ss 1–2 commenced on date of assent (see s 2(1))

remaining provisions commenced 1 June 1983 (proc pubd ind gaz 14 May 1983 p 59)

as amended by—

### **Private Employment Agencies Act Amendment Act 1985 No. 76**

date of assent 23 October 1985

commenced on date of assent

### **Public Service (Administrative Arrangements) Act 1990 No. 73 s 3 sch 2**

date of assent 10 October 1990

commenced 24 November 1990 (proc pubd gaz 24 November 1990 p 1450)

### **Statute Law (Miscellaneous Provisions) Act 1990 No. 88 s 3 sch**

date of assent 6 December 1990

commenced on date of assent

### **Industrial Relations Act 1999 No. 33 ss 1, 2(2), 747 sch 3**

date of assent 18 June 1999

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1999 (1999 SL No. 159)

### **Police Powers and Responsibilities Act 2000 No. 5 ss 1–2(1)–(2), 373 sch 2**

date of assent 23 March 2000

commenced on date of assent

## 7 List of annotations

**Long title** amd R1 (see RA s 7(1)(k))

### **Commencement**

**s 2** om R1 (see RA s 37)

### **Repeals**

**s 3** om R1 (see RA s 40)

### **Arrangement of Act**

**s 4** om R1 (see RA s 36)

### **Interpretation**

**s 5** def “award” ins 1985 No. 76 s 2(a)

sub 1999 No. 33 s 747 sch 3

def “Director-General” ins 1990 No. 73 s 3 sch 2

om R1 (see RA s 39)

def “industrial magistrate” om R1 (see RA s 39)

def “manager” ins 1985 No. 76 s 2(b)

def “member of the Police Force” om R1 (see RA s 39)



- def “**Minister**” om R1 (see RA s 39)
- def “**model**” ins 1985 No. 76 s 2(c)  
amd 1990 No. 88 s 3 sch
- def “**theatrical performer**” ins 1985 No. 76 s 2(e)  
amd 1990 No. 88 s 3 sch
- def “**the Industrial Court**” amd 1985 No. 76 s 2(d)  
om R1 (see RA s 39)
- def “**the Under Secretary**” amd 1985 No. 76 s 2(d)  
om 1990 No. 73 s 3 sch 2

**Administration**

- s 6 amd 1990 No. 73 s 3 sch 2

**Delegation of powers and functions of licensing officer**

- s 7A ins 1985 No. 76 s 3

**Powers and duties of inspectors**

- s 9 amd 2000 No. 5 s 373 sch 2

**Disposal of applications**

- s 20 amd 1985 No. 76 s 4

**Appeal against cancellation or suspension**

- s 29 amd 1985 No. 76 s 5

**Industrial magistrate’s decision final**

- prov hdg amd 1985 No. 76 s 6(a)
- s 30 amd 1985 No. 76 s 6(b)

**Transitional provisions concerning existing licences**

- s 31 om R1 (see RA s 38)

**Recovery of fees and charges**

- s 32 amd 1985 No. 76 s 7

**Order for repayment of amounts unlawfully received**

- s 32A ins 1985 No. 76 s 8

**Appeals from industrial magistrates**

- s 40 amd 1985 No. 76 s 9

**Application of Industrial Relations Act**

- s 41 amd 1999 No. 33 s 747 sch 3

**Representation of parties at hearings**

- s 43A ins 1985 No. 76 s 10

**Protection of things done under Act**

- s 43B ins 1985 No. 76 s 10