

Queensland



PRIVATE EMPLOYMENT AGENTS ACT 1983

**Reprinted as in force on 10 May 2002
(includes amendments up to Act No. 9 of 2002)**

Reprint No. 2A

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Information about this reprint

This Act is reprinted as at 10 May 2002. 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.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 have been made to use aspects of format and printing style consistent with current drafting practice (s 35).

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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PRIVATE EMPLOYMENT AGENTS ACT 1983

[as amended by all amendments that commenced on or before 10 May 2002]

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

PART 1—PRELIMINARY

1 Short title

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

5 Definitions

The dictionary in the schedule defines particular words used in this Act.

5A Meaning of “private employment agent”

(1) A person is a “**private employment agent**” if the person, in the course of carrying on business and for gain—

- (a) offers to find—
 - (i) casual, part-time, temporary, permanent or contract work for a person; or
 - (ii) a casual, part-time, temporary, permanent or contract worker for a person; or
- (b) negotiates the terms of contract work for a model or performer; or
- (c) administers a contract for a model or performer and arranges payments under it; or
- (d) provides career advice for a model or performer.

(2) However, a person is not a “**private employment agent**” only because the person publishes—

- (a) for someone else, an advertisement about employment opportunities; or
- (b) an advertisement offering employment opportunities with the person.

(3) Also, an employer is not a “**private employment agent**” if, for an agreed rate of payment to the employer—

- (a) the employer makes an employee of the employer available to perform work of a temporary nature for a client of the employer; and
- (b) the employee works under the client’s direction; and
- (c) the employer is solely responsible for performing obligations owed by an employer for the employee, including paying the employee for the work.

PART 2—ADMINISTRATION

6 Licensing officer

(1) There is to be a licensing officer (“**licensing officer**”).

(2) The licensing officer is to be an officer of the department appointed by the chief executive.

7 Delegation by licensing officer

(1) The licensing officer may delegate the licensing officer’s powers under this Act to an appropriately qualified public service employee.

(2) In this section—

“**appropriately qualified**” includes having the qualifications, experience or standing appropriate to the exercise of the power.

Example of ‘standing’—

The level at which a person is employed within the department.

8 Evidence of authority

(1) In exercising a power under this Act in relation to a person, an inspector must—

- (a) identify himself or herself as an inspector under this Act and the *Industrial Relations Act 1999*; and
- (b) produce the inspector's identity card as an inspector under the *Industrial Relations Act 1999* for the person's inspection before exercising the power or have the identity card displayed so it is clearly visible to the person when exercising the power.

(2) However, if it is not practicable to comply with subsection (1), the inspector must, at the first reasonable opportunity—

- (a) identify himself or herself as required under subsection (1)(a); and
- (b) produce the identity card for the person's inspection.

9 Powers and duties of inspectors

(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 agent 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

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- (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 performing the functions of the licensing officer, and an officer charged with the administration of this Act must 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 is 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 must 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.

10 Powers of persons acting in aid

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

11 Offences relating to inspectors etc.

A person must 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.

Maximum penalty—14 penalty units.

PART 3—LICENCES

17 Business to be carried on subject to licence

(1) A person must 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 agent unless the person is the holder of a licence.

Maximum penalty—27 penalty units.

(1A) Subsection (1) does not apply to a member of a partnership that carries on the business of a private employment agent 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).

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

- (a) in the 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.

Maximum penalty for subsection (3)—27 penalty units.

18 Applying for licence

(1) An individual, a group of individuals or a corporation may apply to the licensing officer for a licence.

(2) The application must be made in the approved form accompanied by the fee prescribed under a regulation.

19 Licensing officer to grant licence

(1) On receiving an application, the licensing officer must promptly consider the application and grant the licence to the applicant.

(2) However, if after considering the application, the officer reasonably believes—

- (a) the applicant—
 - (i) has contravened—
 - (A) this Act or the *Industrial Relations Act 1999*, section 408D(1) or (2); or
 - (B) a corresponding law to this Act or the *Industrial Relations Act 1999*, section 408D(1) or (2);¹ or
 - (ii) has not paid a person an amount the applicant is required to pay under an order made under the *Industrial Relations Act 1999*, section 408E, 408F or 408G² or a corresponding law to the section; or

1 *Industrial Relations Act 1999*, section 408D (When fees are or are not payable to private employment agent)

2 *Industrial Relations Act 1999*, section 408E (Magistrate may order repayment of fees received by private employment agent in criminal proceedings), 408F (Commission may order repayment of fees received by private employment agent) or 408G (Magistrate may order repayment of fees received by private employment agent in civil proceedings)

- (b) the applicant has been convicted, in Queensland or elsewhere, within the preceding 5 years of a serious offence;

the officer must refer the application to the committee for its advice on whether or not the officer should grant the licence.

20 Licensing officer must give documents or information to committee

If under section 19 the licensing officer refers an application to the committee, the officer must when referring the application give the committee any documents or information the officer has that are relevant to the applicant or the application.

21 If committee advises licensing officer to grant application

If after considering the application the committee advises the officer to grant the licence, the officer must promptly grant the licence to the applicant.

22 If committee advises licensing officer to refuse to grant application

(1) If after considering the application the committee advises the officer to refuse to grant the licence, the officer must consider the advice and may grant the licence or refuse to grant the licence.

(2) If the officer decides to grant the licence, the officer must promptly give it to the applicant.

(3) If the officer decides to refuse to grant the licence, the officer must promptly give the applicant signed notice (“**decision notice**”) of the decision.

(4) The decision notice must state the following particulars—

- (a) the decision;
- (b) the reasons for the decision;
- (c) the applicant may appeal to an industrial magistrate against the decision within 28 days after the notice is given to the applicant.³

3 See part 3B (Appeals).

23 Licence particulars

A licence must state each of the following particulars—

- (a) the licence number;
- (b) the holder's name;
- (c) if the business is operated under a business name—the business name;
- (d) the place where the holder is authorised to carry on the business of a private employment agent.

24 Duration of licence

(1) Unless a licence is sooner cancelled or surrendered, the licence ends when this Act expires.

(2) In this section—

“**licence**” means—

- (a) an existing licence renewed under part 5; or
- (b) a licence granted under section 19, 21 or 22 after the commencement of this section.

25 Voluntary surrender of licence

(1) A holder of a licence may surrender the licence by signed notice given to the licensing officer.

(2) The surrender takes effect—

- (a) on the day on which the notice is given; or
- (b) if a later day is stated in the notice—on the later day.

26 Referral of matters to committee

(1) If the licensing officer receives a complaint about the holder of a licence, the officer may refer the complaint to the committee—

- (a) to attempt to resolve the complaint in an informal way; or
- (b) if the committee is not able to resolve the complaint, to recommend to the officer the action, if any, the officer may take

about the complaint including cancelling the holder's licence if there are grounds for cancelling it.

(2) Also, the officer may refer any other matter arising under this Act or the *Industrial Relations Act 1999*, section 408D⁴ to the committee for its help or advice.

26A Published list of licensed holders

As soon as is practicable after 1 June in each year the licensing officer must publish 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.

27 Grounds for cancelling licence

Each of the following is a ground for cancelling a licence—

- (a) the licence was obtained because of incorrect or misleading information;
- (b) the holder of the licence has contravened—
 - (i) this Act or the *Industrial Relations Act 1999*, section 408D(1) or (2); or
 - (ii) a corresponding law to this Act or the *Industrial Relations Act 1999*, section 408D(1) or (2);⁵
- (c) the holder has not paid a person an amount the holder is required to pay under an order made under the *Industrial Relations Act 1999*, section 408E, 408F or 408G⁶ or a corresponding law to the section;

4 *Industrial Relations Act 1999*, section 408D (When fees are or are not payable to private employment agent)

5 *Industrial Relations Act 1999*, section 408D (When fees are or are not payable to private employment agent)

6 *Industrial Relations Act 1999*, section 408E (Magistrate may order repayment of fees received by private employment agent in criminal proceedings), 408F (Commission may order repayment of fees received by private employment agent) or 408G (Magistrate may order repayment of fees received by private employment agent in civil proceedings)

- (d) the holder has been convicted, in Queensland or elsewhere, within the preceding 5 years of a serious offence.

28 Procedure for cancelling licence

(1) This section applies if the licensing officer believes a ground exists to cancel a licence.

(2) The officer must give the holder of the licence a notice (the “**show cause notice**”) that—

- (a) states that it is proposed to cancel the holder’s licence; and
- (b) states the grounds for proposing to cancel the licence; and
- (c) outlines the facts and circumstances that form the basis for the officer’s belief; and
- (d) invites the holder to make representations, within a stated time of not less than 28 days, why the licence should not be cancelled.

(3) If, after considering all representations made within the stated time, the officer still believes the ground exists to cancel the licence, the officer may cancel the licence.

(4) The officer must give the holder notice (“**decision notice**”) of the officer’s decision.

(5) The decision notice must state—

- (a) the reasons for the decision; and
- (b) that the holder may appeal against the decision to an industrial magistrate within 28 days after the date of the notice.⁷

(6) The decision takes effect on the later of the following—

- (a) the day on which the decision notice is given to the holder;
- (b) the day stated in the decision notice.

29 Return of cancelled licence

(1) If the licensing officer cancels a holder’s licence, the officer may give the holder a notice requiring the holder to return the licence to the officer within a stated period of not less than 14 days.

⁷ See part 3B (Appeals).

(2) The holder must comply with the notice, unless the holder has a reasonable excuse.

Maximum penalty for subsection (2)—14 penalty units.

PART 3A—EMPLOYMENT AGENTS ADVISORY COMMITTEE

Division 1—Establishment and functions of committee

30 Establishment of the committee

The Employment Agents Advisory Committee is established.

31 Functions of committee

(1) The committee has the functions given to it under this Act.

(2) The committee's functions include the following—

- (a) formulating a draft code of conduct that includes each of the following matters regulating private employment agents after the expiry of the Act—
 - (i) the type of work arrangements and commercial operations covered by the code;
 - (ii) standards of competence and training for private employment agents;
 - (iii) disciplining private employment agents who contravene the code;
 - (iv) the records that private employment agents must keep;
- (b) if an application for a licence or the renewal of an existing licence is referred by the licensing officer to the committee for its advice on whether or not the officer should grant or renew the licence—advising the officer on whether or not the officer should grant or renew the licence;

- (c) if asked by the licensing officer—attempting to resolve, in an informal way, a complaint made by a person to the officer about the holder of a licence;
 - (d) reporting to the licensing officer on whether or not a complaint mentioned in paragraph (c) is resolved and if not, recommending to the officer the action, if any, the officer may take about the complaint including cancelling a holder’s licence if there is a ground for cancelling it;
 - (e) if asked by the licensing officer—otherwise helping or advising the officer with any matter arising under this Act or the *Industrial Relations Act 1999*, section 408D.⁸
- (4) In performing its functions, the committee—
- (a) may—
 - (i) consult with anyone the committee consider appropriate; or
 - (ii) ask the licensing officer to give the committee any information, including copies of departmental records, about a matter; and
 - (b) may do all things necessary or convenient to be done for, or in connection with, the performance of its functions.

Division 2—Membership of committee

31A Membership of committee

- (1) The committee consists of 6 members.
- (2) The members are—
 - (a) 2 persons representing the private employment agents industry; and
 - (b) 2 persons representing employee organisations; and
 - (c) 1 person independent of industry or employee organisations (“**independent person**”); and
 - (d) 1 officer of the department appointed by the chief executive.

⁸ *Industrial Relations Act 1999*, section 408D (When fees are or are not payable to private employment agent)

(3) The members mentioned in subsection (2)(a) to (c) are to be appointed by the Minister.

31B Chairperson

The independent person is the chairperson of the committee.

31C Term of office

A member is appointed until this Act expires.

31D Vacation of office

The office of a member becomes vacant if—

- (a) the member ceases to be a person who may become a member; or
- (b) the member is absent from 3 consecutive meetings of the committee, without the committee's leave and without reasonable excuse; or
- (c) the member resigns from office by signed notice of resignation given to the Minister.

Division 3—Meetings of committee

31E Presiding at meetings

(1) The chairperson is to preside at committee meetings.

(2) However, if the chairperson is absent from a meeting, the members present must choose a member present to preside.

31F Quorum

A quorum exists at a committee meeting if 4 or more members are present.

31G Conduct of meetings

(1) The committee is to meet regularly to perform its functions.

(2) The meetings are to be—

- (a) called by the chairperson; and
- (b) held when the chairperson decides.

(3) The committee may otherwise conduct its business, including its meetings, in the way it considers appropriate.

Division 4—Other provisions about committee

31H Conflict of interest

(1) A member must not take part in a discussion about, or vote on, an issue in which the member has a direct or indirect interest.

(2) A member is taken to have an interest in an issue if, because of the issue, a benefit will, or is likely to, be gained by—

- (a) the member; or
- (b) an associate of the member.

(3) However, the member does not have an interest in an issue only because the member belongs to—

- (a) an industrial organisation of employees representing a person involved in the issue, unless the member was involved personally in representing the person; or
- (b) an association of private employment agents involved in the issue, unless the member was involved personally in the issue.

(4) In this section—

“**associate**”, of a member, means any of the following—

- (a) a member of the member’s family;
- (b) a person who—
 - (i) enters into a business arrangement or relationship with the member; or
 - (ii) is employed by, or employs, the member.

31I Entitlements of committee members

A member is entitled to be paid the fees, allowances and expenses decided by the Minister.

31J Chief executive to help committee

The chief executive is to give the committee reasonable help to perform its functions.

PART 3B—APPEALS**31K Appeal to Industrial Magistrates Court**

(1) An applicant for a licence may appeal to an Industrial Magistrates Court against the licensing officer's decision to refuse to grant the licence.

(2) The holder of a licence may appeal to an Industrial Magistrates Court against the licensing officer's decision—

- (a) to refuse to renew the licence; or
- (b) to cancel the licence.

31L How to start an appeal

(1) The appeal is started by—

- (a) filing a written notice of appeal (“**appeal notice**”) with the registrar of the court; and
- (b) giving a copy of the appeal notice to the licensing officer.

(2) The appeal notice must be filed within 28 days after the appellant receives the decision notice for the decision.

(3) However, the Industrial Magistrates Court may, at any time, extend the period for filing the appeal notice.

(4) The appeal notice must state fully the grounds of the appeal.

31M Stay of operation of decision

(1) An Industrial Magistrates Court may stay a decision appealed against.

(2) A stay—

- (a) may be given on conditions the court considers appropriate; and
- (b) operates for the period fixed by the court; and
- (c) may be revoked or amended by the court.

(3) The period of a stay must not extend past the time when the court decides the appeal.

(4) An appeal against a decision affects the decision, or carrying out of the decision, only if the decision is stayed.

31N Hearing procedures

(1) In deciding an appeal, the Industrial Magistrates Court—

- (a) is not bound by the rules of evidence; and
- (b) must observe natural justice.

(2) An appeal is by way of rehearing, unaffected by the licensing officer's decision.

31O Powers of court on appeal

(1) In deciding an appeal, the Industrial Magistrates Court may—

- (a) confirm the decision appealed against; or
- (b) vary the decision; or
- (c) set aside the decision and substitute another decision; or
- (d) set aside the decision and return the issue to the licensing officer with directions the court considers appropriate.

(2) In varying a decision or substituting another decision, the court has the same powers as the licensing officer.

(3) If the court varies a decision or substitutes another decision, the varied or substituted decision is taken, for this Act, other than this part, to be a decision of the licensing officer.

31P Appeal to Industrial Court on questions of law only

A party dissatisfied by the decision of an Industrial Magistrates Court on an appeal under this Act may appeal to the Industrial Court, but only on a question of law.

PART 4—MISCELLANEOUS PROVISIONS

32 Recovering fees from employer

(1) A private employment agent is not entitled to recover a fee from an employer for the agent's services in finding a worker for the employer unless—

- (a) the agent first notifies the employer of the agent's fee for the service; and
- (b) the fee agreed between the agent and the employer is confirmed by the agent in writing given to the employer.

(2) In this section—

“**employer**” means a person who asks a private employment agent to find a worker for the person.

“**fee**” includes charge, expense and reward.

33 Records to be kept and retained

(1) A holder of a licence must keep the following registers—

- (a) a register of persons looking for work (“**worker register**”);
- (b) an employer register (“**employer register**”);
- (c) a placement register (“**placement register**”).

Maximum penalty—14 penalty units.

(1A) The holder of the licence must regularly record in the registers the particulars required under subsection (1B) to (1D) for the relevant register.

Maximum penalty—14 penalty units.

(1B) The worker register must include the following particulars for each person who looks for work through the holder of the licence—

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- (a) the person's name, address, age, gender and occupation;
- (b) the type of work the person is looking for;
- (c) the date the particulars mentioned in paragraphs (a) and (b) are entered in the register.

(1C) The employer register must include the following particulars for every employer—

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

(1D) The placement register must include the following particulars for each person the holder of the licence places into work with an employer—

- (a) the person's name;
- (b) the employer's name;
- (c) the type of work the person will do for the employer;
- (d) the date the particulars mentioned in paragraphs (a) to (c) are entered in the register.

(2) The holder of a licence must 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 agent 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.

Maximum penalty—14 penalty units.

(3) The holder of a licence must 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).

Maximum penalty—14 penalty units.

(4) The licensing officer may, by signed notice, require the holder of a licence to give the officer within the reasonable time stated in the notice, being at least 14 days, a written return of the particulars stated in the notice from the registers.

(5) The holder of a licence must not contravene a requirement under subsection (4) unless the holder has a reasonable excuse.

Maximum penalty—14 penalty units.

(6) In this section—

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

“**holder**”, of a licence, means a holder whose activities under the licence are, or include, the activities mentioned in section 5A(1)(a).⁹

34 False information not to be published

The holder of a licence must not—

- (a) publish any false information in the course of the business of a private employment agent carried on by the holder; or
- (b) make or permit to be made to a person who is looking for work through the agent a false statement concerning the nature or availability of any work.

Maximum penalty—14 penalty units.

35 Identification of agent in publications

The holder of a licence must ensure that every publication published by, or for, the holder includes the following particulars—

- (a) the name stated in the licence under which the business of private employment agent is carried on;
- (b) the place where the business is carried on;
- (c) the telephone number of the business.

Maximum penalty—14 penalty units.

⁹ Section 5A (Meaning of “private employment agent”)

36 Responsibility for acts or omissions of representatives

(1) This section applies in a proceeding for an offence against this Act.

(2) If it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show—

- (a) the act was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority; and
- (b) the representative had the state of mind.

(3) An act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.

(4) In this section—

“representative” means—

- (a) of a corporation—an executive officer, employee or agent of the corporation; or
- (b) of an individual—an employee or agent of the individual.

“state of mind”, of a person, includes—

- (a) the person's knowledge, intention, opinion, belief or purpose; and
- (b) the person's reasons for the intention, opinion, belief or purpose.

37 Executive officers must ensure corporation complies with Act

(1) The executive officers of a corporation must ensure that the corporation complies with this Act.

(2) If a corporation commits an offence against a provision of this Act, each of the executive officers of the corporation also commit an offence, namely, the offence of failing to ensure that the corporation complies with the provision.

Maximum penalty—the penalty for the contravention of the provision by an individual.

(3) Evidence that the corporation has committed an offence against a provision of this Act is evidence that each of the executive officers

committed the offence of failing to ensure that the corporation complies with the provision.

(4) However, it is a defence for an executive officer to prove that—

- (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence—the officer took all reasonable steps to ensure the corporation complied with the provision; or
- (b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.

(5) For subsection (4)(a), it is sufficient for the executive officer to prove that the act or omission that was the offence was done or made without the officer's knowledge despite the officer having taken all reasonable steps to ensure the corporation complied with the provision.

39 Proceedings for offences

(1) A prosecution for an offence against this Act must 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 must be commenced within the later of the following—

- (a) 1 year after the offence is committed;
- (b) 6 months after the commission of the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.

(3) Subsection (2) does not apply to a prosecution for an offence committed before the commencement of the subsection.

40 Application of Industrial Relations Act 1999

The *Industrial Relations Act 1999* and the rules made under that Act apply, with necessary changes, in relation to—

- (a) summary proceedings before an industrial magistrate under section 39(1); and

- (b) proceedings for an appeal before the Industrial Court under section 31P;

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

43 Evidentiary provisions

In proceedings under this Act—

- (a) it is not 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 must 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 is 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 is 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 must be presumed in the absence of evidence to the contrary.

44 Protection from liability

(1) An indemnified person is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.

(2) If subsection (1) prevents a civil liability attaching to the person, the liability attaches itself to the State.

(3) In this section—

“**indemnified person**” means any of the following—

- (a) the Minister;

- (b) a member of the committee;
- (c) the chief executive;
- (d) an officer or employee of the department.

45 Regulation-making power

(1) The Governor in Council may make regulations under this Act.

(2) Without limiting subsection (1), a regulation may be made about the following—

- (a) fees payable under this Act;
- (b) imposing a penalty for a contravention of a regulation of not more than 14 penalty units.

46 Approval of forms

The chief executive may approve forms for use under this Act.

47 Numbering and renumbering of Act

In the next reprint of this Act produced under the *Reprints Act 1992*, the provisions of this Act must be numbered and renumbered as permitted by the *Reprints Act 1992*, section 43.

PART 5—TRANSITIONAL PROVISIONS FOR PRIVATE EMPLOYMENT AGENCIES AND OTHER ACTS AMENDMENT ACT 2002

48 Existing applications

(1) This section applies if a person has applied for a general licence before the commencement of this part (“**commencement**”) and the application has not been finally decided.

(2) The application is taken to have been made—

- (a) in the approved form; and

- (b) on the day of the commencement; and
- (c) for a licence under section 18 as in force on that day.¹⁰

(3) No further fee is payable on the application.

(4) If a notice of objection to the application has been lodged before the commencement, the licensing officer must disregard the objection except to the extent that it relates to a matter mentioned in section 19(2)(a) or (b)¹¹.

(5) All action, including an inquiry, under section 20¹² as in force immediately before the commencement, to dispose of the application is to stop.

(6) The other provisions of this Act as in force after the commencement apply to the application and any licence the licensing officer grants on the application.

49 Holder of existing licence

If an existing licence is held by a person as nominee for a partnership or a corporation, at the commencement of this part the licence is taken to be held in the names of all partners in the partnership or in the name of the corporation.

50 Duration of existing licence

Unless an existing licence is sooner cancelled or surrendered or renewed under this part, the licence continues in force as a licence under section 18 until 31 May 2002.

51 Renewal of existing licences

(1) The holder of an existing licence may apply to the licensing officer to renew the licence as a licence under section 18.

(2) The application must be made—

- (a) in the approved form accompanied by the fee prescribed under a regulation; and

10 Section 18 (Applying for licence)

11 Section 19 (Licensing officer to grant licence)

12 Section 20 (Licensing officer must give documents or information to committee)

(b) before 31 May 2002.

(3) Section 24¹³ provides for the duration of an existing licence that is renewed under this part.

52 Application of declared sections to renewal of existing licence

(1) Each declared section applies, with necessary changes, to the renewal of an existing licence in the same way it applies to the application for the grant of a licence after the commencement of this part.

(2) In this section—

“**declared section**” means section 19, 20, 21, 22(1) and (2) or 23.¹⁴

53 Procedure if licensing officer decides to not renew licence

If the licensing officer decides not to renew a licence, the procedure under section 28 for cancelling a licence applies, with necessary changes, to the non-renewal of the licence in the same way that it applies to a cancellation of a licence.¹⁵

54 Duration of temporary licence

(1) A temporary licence issued under repealed section 15 and in force immediately before the commencement of this part continues in force as a licence under this Act, but only until it would have ended under repealed section 15.

(2) In this section—

“**repealed section 15**” means section 15 as in force immediately before the commencement of this part.

13 Section 24 (Duration of licence)

14 Section 19 (Licensing officer to grant licence), 20 (Licensing officer must give documents or information to committee), 21 (If committee advises licensing officer to grant application), 22 (If committee advises licensing officer to refuse to grant application) or 23 (Licence particulars)

15 Section 28 (Procedure for cancelling licence)

PART 6—EXPIRY OF ACT

55 Expiry of Act

(1) This Act expires 2 years after the commencement of the *Private Employment Agencies and Other Acts Amendment Act 2002*, part 2.

(2) However, the committee may recommend in writing to the Minister that the expiry be postponed by no longer than 1 year.

(3) If the Minister accepts the recommendation, a regulation may postpone the expiry by no longer than 1 year.

SCHEDULE**DICTIONARY**

section 5

“committee” means the Employment Agents Advisory Committee established under section 30.¹⁶

“corresponding law”, to this Act or a provision of the *Industrial Relations Act 1999* mentioned in this Act, means a law of another State that provides generally for the same matter as this Act or the provision.

“executive officer”, of a corporation, means a person, by whatever name called and whether or not the person is a director of the corporation, who is concerned, or takes part, in the management of the corporation.

“existing licence” means a general licence issued under this Act and in force immediately before the commencement of the *Private Employment Agencies and Other Acts Amendment Act 2002*, part 2.

“holder”, of a licence, means the individual, group of individuals or corporation to whom the licence is granted.

“inspector” means an inspector under the *Industrial Relations Act 1999*.

“licence” means a licence granted under this Act.

“licensing officer” see section 6.

“model” means a person whose work is to—

- (a) pose for a painter, photographer, sculptor or other artist; or
- (b) put on articles of clothing or accessories, including, for example, jewellery, hats and shoes, and display them to customers, the public or for advertising purposes; or
- (c) display a hairstyle or other personal body ornamentation or decoration.

“performer” means a person whose work is to act, dance, mime, perform, play, sing or speak in advertising or entertainment.

¹⁶ Section 30 (Establishment of the committee)

SCHEDULE (continued)

“private employment agent” see section 5A.¹⁷

“publish” includes—

- (a) publish in writing or in any other form of media; and
- (b) cause to be published.

“serious offence” means any of the following offences punishable by 3 or more years imprisonment—

- (a) an offence involving stealing, fraud, receiving or other dishonesty;
- (b) an offence involving the trafficking of drugs;
- (c) an offence involving the use or threatened use of violence;
- (d) an offence of a sexual nature;
- (e) extortion;
- (f) arson;
- (g) unlawful stalking.

¹⁷ Section 5A (Meaning of “private employment agent”)

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 10 May 2002. Future amendments of the Private Employment Agents 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**

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

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
2	to Act No. 5 of 2000	5 May 2000

5 Tables in earlier reprints

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Table of obsolete and redundant provisions	1
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6 List of legislation

Private Employment Agents Act 1983 No. 40 (prev Private Employment Agencies Act 1983)

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)

exp 26 April 2004 (see s 55 as ins 2002 No. 9 s 23)

amending legislation—

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

**Private Employment Agencies and Other Acts Amendment Act 2002 No. 9
ss 1, 2(2), pt 2**

date of assent 19 April 2002

ss 1–2 commenced on date of assent

remaining provisions commenced 26 April 2002 (2002 SL No. 87)

7 List of annotations**Title** amd R1 (see RA s 7(1)(k)); 2002 No. 9 s 4**Short title**

s 1 amd 2002 No. 9 s 5

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)

Definitions

s 5 **Note**—prev s 5 contained definitions for this Act. Definitions are now located in the schedule—Dictionary. Annotations for definitions contained in prev s 5 are located in annotations for the schedule.
pres s 5 sub 2002 No. 9 s 6

Meaning of “private employment agent”

s 5A ins 2002 No. 9 s 6

Licensing officer

s 6 sub 2002 No. 9 s 7

Delegation by licensing officer

s 7 sub 2002 No. 9 s 7

Delegation of powers and functions of licensing officer

s 7A ins 1985 No. 76 s 3

om 2002 No. 9 s 7

Evidence of authority

s 8 sub 2002 No. 9 s 7

Powers and duties of inspectors

s 9 amd 2000 No. 5 s 373 sch 2; 2002 No. 9 s 3 sch

Powers of persons acting in aid

s 10 amd 2002 No. 9 s 3 sch

Offences relating to inspectors etc.

s 11 amd 2002 No. 9 ss 8, 3 sch

Answers and information given under compulsion

s 12 om 2002 No. 9 s 9

Annual report

s 13 om 2002 No. 9 s 9

PART 3—LICENCES

pt hdg amd 2002 No. 9 s 10

Private employment agents and agencies

s 14 om 2002 No. 9 s 11

Types of licences

s 15 om 2002 No. 9 s 9

Conditions for issue of licence

s 16 om 2002 No. 9 s 9

Business to be carried on subject to licence

s 17 amd 2002 No. 9 ss 12, 3 sch

Applying for licence

s 18 sub 2002 No. 9 s 13

Licensing officer to grant licence

s 19 sub 2002 No. 9 s 13

Licensing officer must give documents or information to committee

s 20 sub 2002 No. 9 s 13

If committee advises licensing officer to grant application

s 21 sub 2002 No. 9 s 13

If committee advises licensing officer to refuse to grant application

s 22 sub 2002 No. 9 s 13

Licence particulars

s 23 sub 2002 No. 9 s 13

Duration of licence

s 24 sub 2002 No. 9 s 13

Voluntary surrender of licence

s 25 sub 2002 No. 9 s 13

Referral of matters to committee

s 26 sub 2002 No. 9 s 13

Published list of licensed holders

s 26A amd 2002 No. 9 ss 14, 3 sch

Grounds for cancelling licence

s 27 sub 2002 No. 9 s 15

Procedure for cancelling licence

s 28 sub 2002 No. 9 s 15

Return of cancelled licence

s 29 amd 1985 No. 76 s 5
 sub 2002 No. 9 s 15

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pt hdg ins 2002 No. 9 s 16

Division 1—Establishment and functions of committee

div hdg ins 2002 No. 9 s 16

Establishment of the committee

s 30 amd 1985 No. 76 s 6(b)
 sub 2002 No. 9 ss 15–16

Functions of committee

s 31 prev s 31 om R1 (see RA s 38)
 pres s 31 ins 2002 No. 9 s 16

Division 2—Membership of committee

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s 31A ins 2002 No. 9 s 16

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s 31B ins 2002 No. 9 s 16

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s 31C ins 2002 No. 9 s 16

Vacation of office

s 31D ins 2002 No. 9 s 16

Division 3—Meetings of committee

div hdg ins 2002 No. 9 s 16

Presiding at meetings

s 31E ins 2002 No. 9 s 16

Quorum

s 31F ins 2002 No. 9 s 16

Conduct of meetings

s 31G ins 2002 No. 9 s 16

Division 4—Other provisions about committee

div hdg ins 2002 No. 9 s 16

Conflict of interest

s 31H ins 2002 No. 9 s 16

Entitlements of committee members

s 31I ins 2002 No. 9 s 16

Chief executive to help committee

s 31J ins 2002 No. 9 s 16

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Appeal to Industrial Magistrates Court

s 31K ins 2002 No. 9 s 16

How to start an appeal

s 31L ins 2002 No. 9 s 16

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s 31M ins 2002 No. 9 s 16

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s 31N ins 2002 No. 9 s 16

Powers of court on appeal

s 31O ins 2002 No. 9 s 16

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s 31P ins 2002 No. 9 s 16

Recovering fees from employers 32 amd 1985 No. 76 s 7
sub 2002 No. 9 s 17**Order for repayment of amounts unlawfully received**s 32A ins 1985 No. 76 s 8
om 2002 No. 9 s 17**Records to be kept and retained**

s 33 amd 2002 No. 9 ss 18, 3 sch

False information not to be published

s 34 amd 2002 No. 9 ss 19, 3 sch

Identification of agent in publications

s 35 sub 2002 No. 9 s 20

Responsibility for acts or omissions of representatives

s 36 sub 2002 No. 9 s 20

Executive officers must ensure corporation complies with Act

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s 41 amd 1999 No. 33 s 747 sch 3
om 2002 No. 9 s 22

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s 51 ins 2002 No. 9 s 23

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ins 2002 No. 9 s 23

Note—definitions for this Act were originally located in prev s 5.def “**applicant employee**” om 2002 No. 9 s 6def “**applicant employer**” om 2002 No. 9 s 6def “**award**” ins 1985 No. 76 s 2(a)

sub 1999 No. 33 s 747 sch 3

om 2002 No. 9 s 6

def “**committee**” ins 2002 No. 9 s 24def “**corresponding law**” ins 2002 No. 9 s 24def “**Director-General**” ins 1990 No. 73 s 3 sch 2

om R1 (see RA s 39)

def “**executive officer**” ins 2002 No. 9 s 24def “**existing licence**” ins 2002 No. 9 s 24def “**holder**” sub 2002 No. 9 ss 6, 24def “**industrial magistrate**” om R1 (see RA s 39)def “**inspector**” sub 2002 No. 9 s 24def “**licence**” sub 2002 No. 9 ss 6, 24def “**licensing officer**” ins 2002 No. 9 s 24def “**manager**” ins 1985 No. 76 s 2(b)

om 2002 No. 9 s 6

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

om 2002 No. 9 s 6

def “**Minister**” om R1 (see RA s 39)def “**model**” ins 1985 No. 76 s 2(c)

amd 1990 No. 88 s 3 sch

sub 2002 No. 9 ss 6, 24

def “**performer**” ins 2002 No. 9 s 24def “**private employment agent**” ins 2002 No. 9 s 24def “**publish**” ins 2002 No. 9 s 24def “**serious offence**” ins 2002 No. 9 s 24def “**theatrical performer**” ins 1985 No. 76 s 2(e)

amd 1990 No. 88 s 3 sch

om 2002 No. 9 s 6

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

8 List of forms**Form PEA. 1—Version 1—Application for a Private Employment Agent Licence**

pubd gaz 26 April 2002 p 1526

Form PEA. 2—Version 1—Renewal of a Private Employment Agent Licence
pubd gaz 26 April 2002 p 1526

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