

Queensland



**PRIVATE EMPLOYMENT
AGENCIES AND OTHER ACTS
AMENDMENT ACT 2002**

Act No. 9 of 2002

Queensland



PRIVATE EMPLOYMENT AGENCIES AND OTHER ACTS AMENDMENT ACT 2002

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**OTHER CONSEQUENTIAL AMENDMENTS OF PRIVATE
EMPLOYMENT AGENCIES ACT 1983**

Queensland



**Private Employment Agencies and Other Acts
Amendment Act 2002**

Act No. 9 of 2002

**An Act to amend the *Private Employment Agencies Act 1983*, and for
other purposes**

[Assented to 19 April 2002]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

1 Short title

This Act may be cited as the *Private Employment Agencies and Other Acts Amendment Act 2002*.

2 Commencement

(1) Part 4 commences on assent.

(2) The remaining provisions commence on a day to be fixed by proclamation.

PART 2—AMENDMENT OF PRIVATE EMPLOYMENT AGENCIES ACT 1983

3 Act amended in pt 2 and sch

This part and the schedule amend the *Private Employment Agencies Act 1983*.

4 Amendment of title

Title, ‘**agencies**’—

omit, insert—

‘**agents**’.

5 Amendment of s 1 (Short title)

Section 1, ‘*Agencies*’—

omit, insert—

‘Agents’.

6 Replacement of s 5 (Interpretation)

Section 5—

omit, insert—

‘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.'.

7 Replacement of ss 6 to 8

Sections 6 to 8—

omit, insert—

'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.’.

8 Amendment of s 11 (Offences relating to inspectors etc.)

Section 11, as a penalty—

insert—

‘Maximum penalty—14 penalty units.’.

9 Omission of ss 12 and 13

Sections 12 and 13—

omit.

10 Amendment of pt 3 hdg (Licences and licensees)

Part 3, heading, ‘AND LICENSEES’—

omit.

11 Omission of ss 14 to 16

Sections 14 to 16—

omit.

12 Amendment of s 17 (Business to be carried on subject to licence)

(1) Section 17(1), as a penalty—

insert—

‘Maximum penalty—27 penalty units.’.

(2) Section 17(2)—

omit.

(3) Section 17(3)(a), '(whether' to 'name)'—

omit.

(4) Section 17(3), as a penalty—

insert—

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

(5) Section 17(4)—

omit.

13 Replacement of ss 18 to 26

Sections 18 to 26—

omit, insert—

'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); 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 408G¹ or a corresponding law to the section; or

- (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—

1 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)

-
- (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.²

‘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.

² See part 3B (Appeals)

‘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 408D³ to the committee for its help or advice.’.

14 Amendment of s 26A (Published list of licence holders)

Section 26A, from ‘person for’ to ‘functions of the’—

omit.

15 Replacement of ss 27 to 30

Sections 27 to 30—

omit, insert—

‘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);
- (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*

3 Section 408D (When fees are or are not payable to private employment agent)

1999, section 408E, 408F or 408G⁴ or a corresponding law to the section;

- (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.⁵

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

4 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)

5 See part 3B (Appeals)

- (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.

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

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

16 Insertion of new pts 3A and 3B

After section 29, as inserted by this Act—

insert—

‘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 408D⁶.
- ‘(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.

6 Section 408D (When fees are or are not payable to private employment agent)

‘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.

‘(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) as 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.’.

17 Replacement of ss 32 and 32A

Sections 32 and 32A—

omit, insert—

‘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.’.

18 Amendment of s 33 (Records to be kept and retained)

(1) Section 33(1)—

omit, insert—

‘(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—

- (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.⁷

(2) Section 33(2), as a penalty—

insert—

‘Maximum penalty—14 penalty units.’.

(3) Section 33(3), as a penalty—

insert—

‘Maximum penalty—14 penalty units.’.

(4) Section 33(4)—

omit, insert—

‘(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).⁷’.

19 Amendment of s 34 (False information not to be published)

(1) Section 34(a), ‘or cause to be published’—

omit.

(2) Section 34(b)—

⁷ Section 5A (Meaning of “private employment agent”)

omit, insert—

- ‘(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.’.

20 Replacement of ss 35 to 38

Sections 35 to 38—

omit, insert—

‘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.

‘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.’

21 Amendment of s 39 (Proceedings for offences)

Section 39(2)—

omit, insert—

‘(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.’.

22 Replacement of ss 40 to 42

Sections 40 to 42—

omit, insert—

‘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*.’.

23 Replacement of ss 43A to 45

Sections 43A to 45—

omit, insert—

‘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.⁸

‘(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)⁹.

‘(5) All action, including an inquiry, under section 20¹⁰ 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.

8 Section 18 (Applying for licence)

9 Section 19 (Licensing officer to grant licence)

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

‘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

(b) before 31 May 2002.

‘(3) Section 24¹¹ 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 23.¹²

‘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.¹³

11 Section 24 (Duration of licence)

12 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)

13 Section 28 (Procedure for cancelling licence)

‘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.

‘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.’.

24 Insertion of schedule

After part 6, as inserted by this Act—

insert—

‘SCHEDULE

‘DICTIONARY

section 5

“**committee**” means the Employment Agents Advisory Committee established under section 30.¹⁴

“**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.

14 Section 30 (Establishment of the committee)

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

“private employment agent” see section 5A.¹⁵

“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.¹

PART 3—AMENDMENT OF INDUSTRIAL RELATIONS ACT 1999

25 Act amended in pt 3

This part amends the *Industrial Relations Act 1999*.

26 Amendment of s 273 (Commission’s functions)

Section 273(1)(j)(i), after ‘section 278’—

insert—

‘or 408F’.

¹⁵ Section 5A (Meaning of “private employment agent”)

27 Amendment of s 292 (Magistrate's jurisdiction)

(1) Section 292(1)(b)(ii)—

omit, insert—

‘(ii) a claim for—

(A) wages; or

(B) the repayment of a fee received by a private employment agent in contravention of section 408D(1) or (2);’.

(2) Section 292—

insert—

‘(3) In this section—

“fee” includes charge, expense of any kind and reward.’.

28 Amendment of s 293 (Magistrates' jurisdiction is exclusive)

(1) Section 293(2)—

insert—

‘(e) a claim for the repayment of a fee received by a private employment agent in contravention of section 408D(1) or (2).’.

(2) Section 293—

insert—

‘(3) In this section—

“fee” includes charge, expense of any kind and reward.’.

29 Amendment of s 319 (Representation of parties)

(1) Section 319(2)(b), after ‘section 278’—

insert—

‘or 408F’.

(2) Section 319(2)(c), after ‘section 278(6)’—

insert—

‘or 408F(5)’.

30 Amendment of s 320 (Basis of decisions of the commission and magistrates)

Section 320(1)(a), after ‘section 278’—

insert—

‘or 408F’.

31 Amendment of s 336 (Recovery of amounts under orders)

Section 336(5), after ‘section 278’—

insert—

‘or 408F’.

32 Insertion of new ch 11A

After chapter 11—

insert—

**‘CHAPTER 11A—FEES CHARGED BY PRIVATE
EMPLOYMENT AGENTS**

‘408A Definitions for ch 11A

‘In this chapter—

“**fee**” includes charge, expense of any kind and reward.

“**manager**” see section 408C.

“**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.

“private employment agent” see section 408B.

“publish” includes—

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

‘408B 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.

'408C Meaning of "manager"

'(1) A private employment agent is a **"manager"** of a model or performer if the agent, under a written agreement with the model or performer, provides for the model or performer at least 4 of the management services mentioned in paragraphs (a) to (f) of the definition **"management service"** in subsection (4).

'(2) A private employment agent may be a **"manager"** of a model or performer whether or not any agreement between them states that the agent is the sole provider of management services for the model or performer.

'(3) However, a private employment agent is not a **"manager"** of a model or performer only because of a written agreement under which the agent helps the model or performer find modelling or performing work.

'(4) In this section—

"management service" includes any of the following services—

- (a) handling business affairs for the model or performer;
- (b) providing accounting advice for the model or performer;
- (c) publicising and promoting the model or performer;
- (d) providing services ancillary to a performance by the model or performer;
- (e) providing continuing career or artistic advice for the model or performer;
- (f) representing the model or performer in negotiations with media, entertainment industry workers or the public;

but does not include a service mentioned in section 408B(1)(a) to (c).

‘408D When fees are or are not payable to private employment agent

‘(1) A private employment agent must not directly or indirectly demand or receive from a person, other than a model or performer, looking for work (a “**work seeker**”) a fee for finding, or attempting to find, the person work.

Maximum penalty—16 penalty units.

‘(2) A private employment agent must not directly or indirectly demand or receive from a model or performer looking for work (also a “**work seeker**”) a fee for finding, or attempting to find, the model or performer work unless—

- (a) the agent gives the model or performer a written notice stating the particulars prescribed under a regulation; and
- (b) the fee payable is not more than the percentage prescribed under a regulation of the gross amount payable to the model or performer, excluding any allowances or payments prescribed under a regulation, for the work; and
- (c) the amount payable to the model or performer is at least the amount payable under an applicable industrial instrument.

Maximum penalty—16 penalty units.

‘(3) Subsection (2) does not apply if the private employment agent is also the manager of the model or performer and the fee is payable under a written agreement between the manager and the model or performer.

‘(4) In this section—

“**industrial instrument**” includes an award or agreement made under the Commonwealth Act.

‘408E Magistrate may order repayment of fees received by private employment agent in criminal proceedings

‘(1) A magistrate who hears and decides a complaint for an offence against section 408D(1) or (2)—

- (a) must, if the magistrate finds the defendant guilty, order the defendant to repay to the work seeker the fee, if any, the magistrate finds, on the balance of probabilities, to have been received in contravention of section 408D(1) or (2), if—
 - (i) the fee has not been repaid to the work seeker; and

- (ii) the defendant is not liable to repay the fee to the work seeker under an existing order under section 408F or 408G; or
 - (b) may, if the magistrate does not find the defendant guilty, order the defendant to repay to the work seeker the amount the magistrate finds, on the balance of probabilities, the defendant has received from the work seeker.
- ‘(2) The magistrate may make the order—
- (a) despite an express or implied provision of an agreement to the contrary; and
 - (b) on the terms the magistrate considers appropriate.

‘408F Commission may order repayment of fees received by private employment agent

‘(1) An application may be made to the commission for an order for the repayment of a fee received by a private employment agent in contravention of section 408D(1) or (2) from a person (“**claimant**”) for finding or attempting to find the claimant work.

‘(2) An application can not be made to the commission if the total fee claimed under subsection (1) is more than \$20 000.

‘(3) The application may be made by—

- (a) the claimant; or
- (b) an employee organisation of which the claimant is a member, acting for the claimant; or
- (c) a person authorised by the claimant to make the application, acting for the claimant; or
- (d) an inspector.

‘(4) The application must be made within 6 years after the claimant gave the agent the fee.

‘(5) The commissioner administrator may, either before or after the start of a hearing, remit the application to a magistrate if the commissioner administrator considers the application could be more conveniently heard by a magistrate, having regard to—

- (a) the difficulty or expense of producing witnesses; or

(b) another good and sufficient reason, for example, cost.

‘(6) A magistrate may hear and decide the application as if it had been brought before the commission and the magistrate’s decision and order is taken to be a decision and order of the commission.

‘(7) On hearing the application, the commission or magistrate—

(a) must order the agent to repay to the claimant the amount the commission or magistrate finds to be the fee the agent has received from the claimant in contravention of section 408D(1) or (2) if—

(i) the fee has not been repaid to the claimant; and

(ii) the agent is not liable to repay the fee to the claimant under an existing order under section 408E or 408G; and

(b) may make an order for the repayment despite an express or implied provision of an agreement to the contrary; and

(c) may order the repayment to be made on the terms the commission or magistrate considers appropriate; and

(d) may order 1 party to pay costs to another party in an amount assessed by the commission or magistrate.

‘(8) A person can not make an application under this section if an application has been made under section 408G about the same matter.

‘408G Magistrate may order repayment of fees received by private employment agent in civil proceedings

‘(1) An application may be made to a magistrate for an order for the repayment of a fee received by a private employment agent in contravention of section 408D(1) or (2) from a person (“**claimant**”) for finding or attempting to find the claimant work.

‘(2) The application may be made by—

(a) the claimant; or

(b) an employee organisation of which the claimant is a member, acting for the claimant; or

(c) a person authorised by the claimant to make the application, acting for the claimant; or

(d) an inspector.

‘(3) The application must be made within 6 years after the claimant gave the agent the fee.

‘(4) On hearing the application, the magistrate—

(a) must order the agent to repay to the claimant the amount the magistrate finds to be the fee the agent has received from the claimant in contravention of section 408D(1) or (2) if—

(i) the fee has not been repaid to the claimant; and

(ii) the agent is not liable to repay the fee to the claimant under an existing order under section 408E or 408F; and

(b) may make an order for the repayment despite an express or implied provision of an agreement to the contrary; and

(c) may order the repayment to be made on the terms the magistrate considers appropriate; and

(d) may order 1 party to pay costs to another party in an amount assessed by the magistrate.

‘(5) A person can not make an application under this section if an application has been made under section 408F about the same matter.

‘408H Enforcement of magistrate’s orders

‘(1) This section applies if, under section 408E or 408G, a magistrate orders—

(a) a private employment agent to repay a fee received by the agent in contravention of section 408D(1) or (2) to a work seeker mentioned in section 408E or to a claimant mentioned in section 408G; or

(b) costs in the application under section 408G of a party.

‘(2) The order is enforceable under the *Justices Act 1886* as an order for payment of money made by a magistrate under that Act.

‘(3) Also, an amount ordered to be paid to the work seeker or claimant by the agent may be recovered by the work seeker or claimant from the agent as a debt.

‘(4) For subsection (3), the order requiring payment may be filed in the registry of a Magistrates Court under the *Magistrates Courts Act 1921*, and on being filed—

- (a) is taken to be an order properly made by a Magistrates Court; and
- (b) may be enforced as a money order made by the Magistrates Court.’.

33 Amendment of s 669 (Offence to offer or accept premiums)

Section 669(1), ‘*Agencies Act 1983*’—

omit, insert—

‘*Agents Act 1983* and section 408D’.

34 Amendment of sch 5 (Dictionary)

Schedule 5—

insert—

‘“**fee**”, for chapter 11A, see section 408A.

“**manager**”, for chapter 11A, see section 408A.

“**model**”, for chapter 11A, see section 408A.

“**performer**”, for chapter 11A, see section 408A.

“**private employment agent**”, for chapter 11A, see section 408A.

“**publish**”, for chapter 11A, see section 408A.’.

PART 4—AMENDMENT OF TRADING (ALLOWABLE HOURS) ACT 1990

35 Act amended in pt 4

This part amends the *Trading (Allowable Hours) Act 1990*.

36 Amendment of s 33 (Anzac Day a holiday for all employees)

Section 33(2)(c)—

omit, insert—

‘(c) at an office or agency of a holder of a race wagering licence under the *Wagering Act 1998*; or’.

SCHEDULE

OTHER CONSEQUENTIAL AMENDMENTS OF PRIVATE EMPLOYMENT AGENCIES ACT 1983

section 3

- 1 Sections 9(1)(d), 17(1) and (1A), 33(2) and 34(a), ‘agency’—**
omit, insert—
‘agent’.
- 2 Sections 9(2), 9(6), 11, 17(1), 17(3), 33(2), 33(3), 34, 39(1), 43(b) and 43(e), ‘shall’—**
omit, insert—
‘must’.
- 3 Section 9(4A), ‘shall be sufficient’—**
omit, insert—
‘is’.
- 4 Section 10, ‘shall have’—**
omit, insert—
‘has’.
- 5 Section 26A, ‘shall cause to be published’—**
omit, insert—
‘must publish’.

SCHEDULE (continued)

6 Section 43(a), ‘shall not be’—

omit, insert—

‘is not’.

7 Section 43(c) and (d), ‘shall be’—

omit, insert—

‘is’.