

Western Australia

## **Employment Agents Act 1976**

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## Employment Agents Act 1976

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## Employment Agents Act 1976

**An Act to make provision for the regulation of employment agents, and for incidental purposes.**

**1. Short title**

This Act may be cited as the *Employment Agents Act 1976*<sup>1</sup>.

**2. Commencement**

This Act or any provisions of this Act shall come into operation on a date or dates to be fixed by proclamation<sup>1</sup>.

[3. *Omitted under the Reprints Act 1984 s. 7(4)(f).*]

**4. Interpretation**

(1) In this Act, unless the contrary intention appears —

**Commissioner** means the person for the time being designated as the Commissioner under section 9A;

**Department** means the department of the Public Service principally assisting in the administration of this Act;

**employee** includes a person seeking employment and a person sought for employment;

**employment** includes —

- (a) employment by way of professional engagement or under a contract of service or a contract for service; and
- (b) an arrangement whereby a person is to assist in the domestic work of a household in consideration of receiving hospitality with or without further or other remuneration;

**engagement** means an employment which has been entered into by the employee;

**firm** means an unincorporated body of persons (whether consisting of individuals or of bodies corporate or partly of individuals and partly of bodies corporate) registered under the *Business Names Act 1962*, and includes the several persons constituting that body;

**licence** means a licence granted pursuant to this Act;

*[Definition of “the repealed Acts” omitted under the Reprints Act 1984 s. 7(4)(e)]; and*

**transaction** includes the relationship between the employment agent and the person for whom he is acting and any negotiations entered into by the employment agent in endeavouring to procure an engagement.

- (2) Where a meaning is assigned to any term by this section cognate expressions used in this Act, unless a contrary intention appears, have a corresponding meaning.

*[Section 4 amended by No. 70 of 1990 s. 4; No. 57 of 1997 s. 39(10); No. 55 of 2004 s. 276; No. 28 of 2006 s. 92.]*

## **5. Employment agents**

- (1) Any person who —
- (a) for reward follows, either wholly or from time to time or part time, the calling of an agent for procuring engagements for persons seeking to be employed, or for procuring employees for persons seeking to employ such persons; or
  - (b) whether or not for reward, places persons in employment and levies from either the employee or the employer an entrance fee, a periodical contribution or any other charge for his services in effecting the placement,

is deemed for the purposes of this Act to be carrying on the business of an employment agent.

- (2) A newspaper or other publication not published wholly or mainly for the purpose of acting as intermediary between persons seeking employment and prospective employers shall not be deemed to be carrying on the business of an employment agent.
- (3) A person who, as principal, is the employer responsible for the payment of wages or other lawful obligations to an employee and who, as such employer, provides to other persons the services of his employees to perform tasks of a temporary nature on the basis of predetermined rates agreed between those other persons and himself as such employer, no fee or expense being incurred by the employee in or in relation to the performance of such tasks, shall not be deemed by reason only of that fact to be an employment agent.

[6. *Omitted under the Reprints Act 1984 s. 7(4)(e).*]

#### **7. Application of this Act**

- (1) Subject to the provisions of section 9, this Act does not apply to or in relation to the placing of persons in employment as members of the crew of a vessel engaged in maritime navigation.
- (2) The provisions of this Act do not apply to or in relation to the placement of any person in employment by any department or instrumentality of the Commonwealth or of the State.
- (3) The Governor may by Order in Council declare that this Act, or any provision of this Act specified in the Order, shall not apply to any class of business or service either generally or when conducted in any specified circumstances or part of the State, and may by subsequent Order in Council from time to time revoke or vary any such Order.

#### **8. Exemptions**

- (1) The Governor may by Order in Council grant to any person or class of persons an exemption from the provisions of this Act,

or any such provision, on such terms and conditions as the Governor thinks fit, and may by subsequent Order in Council revoke or vary any such exemption.

- (2) Where a person is granted an exemption under this section subject to a condition and that condition is not observed in relation to any circumstances, that exemption shall be deemed not to have taken effect in relation to those circumstances and any transaction connected therewith.

**9. Employment of seamen**

Any person, not being a person authorised by any other law to act in the engagement of seamen, who acts as an employment agent in placing any other person in employment as a member of the crew of a vessel engaged in maritime navigation, commits an offence.

**9A. Commissioner**

- (1) The Minister is required, by notice published in the *Gazette*, to designate a person who is an executive officer of the Department as the Commissioner for the purposes of this Act.
- (2) The Commissioner may be referred to by a title specified by the Minister by notice published in the *Gazette*.
- (3) In this section —  
*executive officer* has the meaning given by section 3(1) of the *Public Sector Management Act 1994*.

*[Section 9A inserted by No. 28 of 2006 s. 93.]*

**10. Administrative arrangements**

- (1) Subject to any specific or general direction given by the Minister, this Act shall be administered by the Commissioner.
- (2) The costs and expenses incurred in the administration of this Act shall be defrayed out of the moneys provided by Parliament for that purpose.



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*[Section 10 amended by No. 98 of 1985 s. 3; No. 70 of 1990 s. 6.]*

**10A. Application of *Financial Management Act 2006* and *Auditor General Act 2006***

- (1) The provisions of the *Financial Management Act 2006* and the *Auditor General Act 2006* regulating the financial administration, audit and reporting of departments apply to and in respect of the Department for the time being responsible for the administration of this Act<sup>2</sup> and its operations under this Act.
- (2) The annual report of the Department in which the Commissioner is employed is to include details of —
  - (a) the number, nature, and outcome, of —
    - (i) investigations and inquiries undertaken by, or at the direction of, the Commissioner for the purposes of this Act; and
    - (ii) matters that have been brought before the State Administrative Tribunal under this Act;
  - (b) the number and nature of matters referred to in paragraph (a) that are outstanding;
  - (c) any trends or special problems that may have emerged;
  - (d) forecasts of the workload of the Commissioner in performing functions under this Act in the year after the year to which the report relates; and
  - (e) any proposals for improving the performance of the Commissioner's functions under this Act.

*[Section 10A inserted by No. 98 of 1985 s. 3; amended by No. 55 of 2004 s. 277; No. 77 of 2006 s. 17.]*

*[11. Repealed by No. 55 of 2004 s. 278.]*

**s. 11A**

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**11A. Officers**

There shall be appointed under and subject to Part 3 of the *Public Sector Management Act 1994* such officers and other persons as are necessary for the administration of this Act.

*[Section 11A inserted by No. 70 of 1990 s. 5; amended by No. 32 of 1994 s. 3(2).]*

*[11B-11D. Repealed by No. 55 of 2004 s. 279.]*

**11E. Conduct of proceedings**

Any proceedings for an offence against this Act may be instituted and conducted by the Commissioner or any person appointed by the Commissioner to institute and conduct proceedings on his behalf.

*[Section 11E inserted by No. 70 of 1990 s. 5; No. 55 of 2004 s. 280.]*

**12. Employment agents to be licensed**

- (1) Subject to this Act no person shall carry on, or advertise, notify or state that he or it acts as, or carries on the business of, an employment agent, or that he or it is willing so to act or carry on business, unless —
  - (a) being a natural person, he is the holder of a licence under this Act; or
  - (b) in the case of a firm or body corporate, a natural person who is —
    - (i) a member of that firm;
    - (ii) an officer of the body corporate; or
    - (iii) an employee of that firm or body corporate, is the holder of a licence under this Act granted to him on behalf of that firm or body corporate.
- (2) A licence under this Act shall be granted only to a natural person and not to any body of persons or body corporate.

- (3) In accordance with the provisions of section 22 and section 24, a licence may be granted to a natural person on behalf of a firm or body corporate of which he is a member, officer, or employee, and within the limits to which the licence extends any business under that licence may be transacted in the name of that firm or body corporate.
- (4) The holder of a licence, and any firm or body corporate on behalf of which it was granted, shall carry on business under this Act —
- (a) in the name or trade name or names or trade names specified in that licence and under no other description;
  - (b) at or from the place or places of business specified in that licence;
  - (c) subject to section 25(5), during the period for which that licence remains in force;
  - (d) in relation to the class or classes of business specified in or authorised by that licence; and
  - (e) in accordance with any conditions, limitations or restrictions specified in that licence,
- and not otherwise.
- (5) Any person who contravenes any provision of this section commits an offence.  
Penalty: \$500.

**13. Duration of licences**

- (1) On granting a licence, other than an interim licence, the Commissioner shall fix a period, not exceeding the period prescribed, during which the licence is to have effect.
- (1a) Subject to section 25, unless sooner surrendered a licence, other than an interim licence, shall have effect for the period fixed under subsection (1).

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- (1b) A licence, other than an interim licence, may be renewed from time to time for the period prescribed.
- (2) Where an application is made for the renewal of a licence after, but within 3 months of, the date on which that licence expired, and any amount prescribed by way of penalty for a late application is paid, the Commissioner may renew that licence and in that event the renewal of the licence shall be deemed for all purposes to have taken effect on the day immediately succeeding the date on which the previous licence expired.
- (3) Except where the licence was granted on behalf of a firm or corporation, in the event of the death of the holder of a licence, the licence shall be deemed to have been granted to his legal personal representative and shall, unless it is transferred to some other person or cancelled or surrendered, remain in force until the end of the period of 3 months beginning with the death and shall then expire, so however that the licence may be extended or further extended by the Commissioner for the purpose of winding up the deceased's estate.

*[Section 13 amended by No. 56 of 1995 s. 12; No. 55 of 2004 s. 294.]*

**14. Kinds of licence**

- (1) The licences that may be granted under this Act are —
  - (a) a general licence;
  - (b) a restricted licence; and
  - (c) an interim licence.
- (2) A general licence authorises the holder to act as, and carry on the business of, an employment agent throughout the State in relation to all classes of business to which this Act applies.
- (3) A restricted licence authorises the holder to act as, and carry on the business of, an employment agent only —
  - (a) in the part or parts of the State; and
  - (b) in relation to the class or classes of business,

which may be therein specified.

- (4) An interim licence authorises the holder to carry on the business of an employment agent for such period not exceeding 3 months as is therein specified on behalf of the licensed employment agent named therein during the period of incapacity or other circumstances to which it relates.

**15. Classes of business**

- (1) For the purposes of a licence other than a general licence the class or classes of business that may be carried on shall be specified in the licence.
- (2) The Commissioner may define a class of business in whatever terms he thinks fit, or he may specify a prescribed classification.
- (3) Regulations may prescribe that carrying on a business in relation to any specified kind of employment shall constitute a separate class of business for the purposes of this Act, and any such regulation may be of general or limited application according to time, place or other circumstance.

*[Section 15 amended by No. 55 of 2004 s. 294.]*

**16. Separate places of business, and change of address**

- (1) Where any business is to be carried on in more than one place or under more than one name or trade name —
  - (a) the Commissioner may require that separate applications are made in relation to each such place of business, name or trade name; and
  - (b) it may be made a condition of the licence that any part of that business be conducted as a separate entity.
- (2) Where the holder of a licence notifies the Commissioner that he proposes to conduct his business from an address other than that in respect of which the licence was issued, the Commissioner may amend the licence accordingly and authorise the holder to conduct his business from the new address.

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- (3) Where the holder of a licence notifies the Commissioner that the holder proposes to change the name or trade name or names or trade names specified in the licence, the Commissioner may amend the licence accordingly and authorise the holder to carry on business under that name or those names.
- (4) The Commissioner shall not change a name or trade name specified in a licence unless the Commissioner is satisfied that the new name is the name of the applicant or that the applicant, or firm or body corporate on behalf of whom the licence is held, is the proprietor of the new trade name.
- (5) A notice under subsection (2) or (3) shall be in writing and accompanied by the relevant licence.
- (6) The Commissioner shall enter in the register details of any amendment made under subsection (2) or (3).

*[Section 16 amended by No. 56 of 1995 s. 13; No. 55 of 2004 s. 294.]*

**17. Supervision and management**

In relation to any place of business, no licence shall be granted or renewed unless the Commissioner is satisfied that adequate management and supervision will be provided to safeguard the interests of prospective employees.

*[Section 17 amended by No. 55 of 2004 s. 294.]*

**18. Applications**

- (1) An application for the grant or renewal of a licence shall be made in the prescribed manner to the Commissioner, and shall be accompanied by the prescribed fee.
- (2) On the application for the grant of a licence, but not in respect of a renewal, the full names and business or residential address of 2 persons resident in the State willing to act as character referees for the proposed licensee shall be stated on the application.

- (3) The Commissioner of Police is authorised to disclose to the Minister, on the request of the Commissioner, any record or information relevant to an application under this Act.
- (4) Not more than 28 days nor less than 14 days before an application for the grant of a licence is submitted to the Commissioner the applicant shall cause a notice in the prescribed form to be published in a newspaper circulating in the locality of each place from which the business is to be carried on and a page of that newspaper showing the advertisement shall be lodged together with the application, but no such advertisement shall be required in the case of the renewal of a licence.
- (5) Where applications relating to 2 or more persons are made on the same day in respect of any one business or in respect of related businesses, the Commissioner may authorise the publication of a joint advertisement for the purposes of this section.
- (6) An application for the transfer of a licence shall be endorsed to show clearly the particulars of the licence to which it relates, but in all other respects shall be dealt with as though it were an application for the grant of a licence.
- (7) In relation to an application for an interim licence the Commissioner may, if he thinks fit, grant the application although the requirements of subsection (4) have not been met.

*[Section 18 amended by No. 55 of 2004 s. 294.]*

**19. Licences may be issued for the benefit of a firm or body corporate**

- (1) Where it is desired that a licence shall be granted to a natural person on behalf of a firm or of a body corporate, the application —
  - (a) shall state the name and the principal place of business of that firm or body corporate;

- (b) shall state the name and the principal place of business of the proposed licensee;
  - (c) may be made either by the firm or body corporate on behalf of the proposed licensee or by the proposed licensee personally;
  - (d) shall be treated as though made by or on behalf of the firm or body corporate which —
    - [(i), (ii) deleted]*
    - (iii) may be required to satisfy the Commissioner that it consents to the application.
- (2) On an application made under this section the Commissioner shall have regard not only to the question as to whether or not the proposed licensee is a fit and proper person to hold a licence but also to the fitness and repute of the firm or body corporate on behalf of which the licence is to be used, and may take into consideration any objection or submission made in relation to that firm or body corporate or the persons responsible for its management.
- (3) Two or more licences may be granted on behalf of the same firm or body corporate.
- (4) A licence granted pursuant to an application made under this section shall specify the firm or body corporate on behalf of which it is granted and shall not have effect as a licence granted to the natural person named therein on his own behalf.
- (5) Where a licensee is an employee of a firm or body corporate named in his licence, that firm or body corporate and not the licensee shall be primarily responsible for observing the requirements of this Act but both the licensee and the firm or body corporate so named may be charged with and convicted of the like offence.
- (6) Except with the consent of the firm or body corporate named in the licence no licence granted pursuant to this section may be transferred, but, subject to this Act, the licence may be



transferred to any person to whom the firm or body corporate has agreed to transfer it and the consent of the licensee or his legal personal representative shall not be necessary where the licensee was an employee of that firm or body corporate at the time the licence was granted.

*[Section 19 amended by No. 55 of 2004 s. 281 and 294.]*

**20. Objections**

- (1) Where the Commissioner of Police, or a person authorised by him, or any other person, desires to object to the grant or renewal of a licence he shall lodge with the Commissioner and serve on the applicant or his authorised representative a notice stating the objection and the grounds thereof in sufficient detail to enable the applicant to know what he has to answer.
- (2) The Commissioner of Police shall, at the request of the Commissioner, cause his officers to make an investigation or inquiry and report relating to any matter that is the subject of an objection to the grant or renewal of a licence.

*[Section 20 amended by No. 70 of 1990 s. 6; No. 55 of 2004 s. 282 and 294.]*

**21. Conditional licences**

- (1) A licence under this Act may be granted or renewed subject —
  - (a) to any condition, limitation or restriction prescribed as being of general application or applicable to specified circumstances for the purposes of this Act; and
  - (b) to conditions, limitations or restrictions relating to —
    - (i) the class of business;
    - (ii) the place or circumstances at or in which it is to have effect;
    - (iii) the supervision and control of the conduct of the business; or

- (iv) such other matters as the Commissioner thinks fit to impose.
- (2) A person who contravenes any condition, limitation or restriction to which a licence is subject commits an offence.  
*[Section 21 amended by No. 55 of 2004 s. 294.]*

**22. Issue of licences**

- (1) After considering any objection to the grant or renewal of a licence lodged with the Commissioner, the Commissioner may, if he is satisfied that the applicant is a fit and proper person to hold a licence and that no other circumstances make it undesirable, grant a licence under this Act or renew any licence so granted either unconditionally or subject to conditions, limitations or restrictions.
- (2) If the application is for the grant or renewal of a general licence the Commissioner may instead grant a restricted licence.
- (3) The Commissioner shall give notice in writing of the Commissioner's decision to the applicant and any person who made an objection setting out, in a notice given to a person who might be aggrieved by the decision, the reasons for his decision and informing the person to whom the notice is given of the right to apply to the State Administrative Tribunal for a review of the decision.
- (4) If the applicant or a person who lodged an objection with the Commissioner is aggrieved by the Commissioner's decision on the application, the aggrieved person may apply to the State Administrative Tribunal for a review of the decision.  
*[Section 22 amended by No. 55 of 2004 s. 283.]*

*[23, 24. Repealed by No. 55 of 2004 s. 284.]*

**25. Suspension, cancellation and disqualification**

- (1) The Commissioner may allege to the State Administrative Tribunal that disciplinary action should be taken against a person, firm or body corporate to which this section applies because the person, firm or body corporate —
  - (a) has been guilty of improper conduct in relation to the carrying on of the business of an employment agent; or
  - (b) has been guilty of any offence involving dishonest or fraudulent conduct, or of an offence against this Act.
- (2) This section applies to any person, firm, or body corporate who or which is or are, or during the period of 12 months immediately preceding was or were, the holder of a licence or named in a licence.
- (3) Where the State Administrative Tribunal, on dealing with an allegation under subsection (1), is satisfied that a reason described in that subsection has been made out, it may order that the licence concerned be suspended for such period as the Tribunal determines or shall be cancelled and that any or all of such persons or any such firm or body corporate shall be disqualified from holding or taking the benefit of a licence either for such period as the Tribunal specifies in the order or permanently.
- (4) The State Administrative Tribunal may order that the licence be delivered up to the Commissioner and any person who fails to deliver up his licence to the in accordance with the terms of the order commits an offence against this Act.
- (5) A licence the operation of which is suspended under this section shall for the period of that suspension be deemed not to be in force.
- (6) Where a person, firm or body corporate is disqualified from holding or taking the benefit of a licence by an order of the State Administrative Tribunal made under this section he or it shall

not, for the period of that disqualification, be eligible to apply for any further or other licence under this Act.

*[Section 25 amended by No. 55 of 2004 s. 285.]*

**26. Form of licence**

- (1) A licence shall be in the form prescribed.
- (2) A licence shall specify —
  - (a) the name of the holder and where it is granted on behalf of a firm or body corporate the name of that firm or body corporate;
  - (b) the address of the place or places of business in respect of which it is taken out;
  - (c) the trade name, if any, under which the business is to be carried on; and
  - (d) where appropriate, the class or classes of business authorised.
- (3) Where the Commissioner is satisfied that a licence has been lost or destroyed, he may issue a duplicate licence on payment of the prescribed fee.

*[Section 26 amended by No. 55 of 2004 s. 294.]*

**27. Register**

- (1) The Commissioner shall keep a Register in the prescribed manner of all persons licensed, and all firms and bodies corporate on behalf of which a licence has been granted, under this Act.
- (2) Particulars of every condition, limitation and restriction imposed in relation to a licence shall be specified in the Register.
- (3) The Commissioner shall, upon receipt of the prescribed fee, make the Register available for inspection and furnish a certificate as to the contents of the Register.

- (4) A certificate under the hand of the Commissioner as to any matter contained in the Register shall, in the absence of proof to the contrary, be taken as proof of the matter so certified.

*[Section 27 amended by No. 55 of 2004 s. 294.]*

**28. Limitation period for offences**

A prosecution for an offence under this Act must be commenced within 2 years after the date on which the offence is alleged to have been committed.

*[Section 28 inserted by No. 59 of 2004 s. 141.]*

**29. Misrepresentation and allied offences**

- (1) A person who knowingly makes or publishes or causes to be made or published in the course of business as an employment agent any representation or statement which he knows or reasonably ought to know —

- (a) is false or misleading in a material particular; or
- (b) is likely to deceive or mislead a person in a material way,

commits an offence.

- (2) If in a proceeding against any person for making or publishing or causing to be made or published any representation or statement in contravention of this section it is proved that the representation or statement was in contravention of this section when made or published, that person shall be deemed to have had knowledge that the representation or statement contravened this section unless he proves —

- (a) that he took all reasonable precautions against committing the contravention; and
- (b) that at the time of making or publishing the representation or statement he had reasonable grounds to believe and did believe that the representation or statement did not contravene this section when so made

or published and that he had no reason to suspect otherwise.

- (3) Any employment agent who induces a person to enter into any engagement by any statement or representation made or published in contravention of subsection (1) commits an offence.

Penalty: \$500.

- (4) Any employment agent who untruthfully and wilfully publishes, advertises, or otherwise represents or holds himself out as being authorised by any person or body of persons, whether corporate or unincorporate, to act in or promote the engagement of any person or class of persons for any employment commits an offence.

Penalty: \$500.

**30. Offences**

- (1) Any person who —
- (a) fails to comply with any of the requirements of this Act within the time or in the manner thereby provided; or
  - (b) contravenes or fails to comply with any provision of this Act,

commits an offence.

- (2) Any person convicted of an offence against this Act is liable, where no penalty is expressly provided for the offence, to a penalty not exceeding \$200.
- (3) Where a body corporate is charged with an offence against this Act, a person who is concerned or takes part in the management of that body corporate may be charged with a like offence and where the body corporate is convicted of the offence a person who is so concerned or takes part in the management of the body corporate may be convicted of the like offence unless he proves that —

- (a) the offence committed by the body corporate was committed without his knowledge;
  - (b) he was not in a position to influence the conduct of the body corporate in relation to the commission of the offence by it; or
  - (c) he, being in such a position, used all due diligence to prevent the commission of the offence by the body corporate.
- (4) Where by reason of or arising out of any act or omission of the holder of a licence granted on behalf of a firm or body corporate a person is charged with an offence under this Act, or is the subject of an allegation under section 25(1), it shall be an answer in any such case for the firm or body corporate to show that —
- (a) the act or omission complained of was committed or occurred without the knowledge of the firm or body corporate and that the firm or body corporate could not reasonably be expected to have known that any provision of this Act had been contravened or had not been complied with;
  - (b) the firm or body corporate was not in a position to influence the conduct of the holder of the licence in relation to the act or omission; or
  - (c) the firm or body corporate used all due diligence to prevent the commission or occurrence of such act or omission.

*[Section 30 amended by No. 55 of 2004 s. 287.]*

**31. Facilitation of proof**

In any prosecution for an offence against this Act —

- (a) it is not necessary to prove the appointment of the Commissioner or any person appointed by the Commissioner to institute and conduct proceedings on the Commissioner's behalf or his authority, but nothing

in this paragraph prevents the right of the accused to prove the extent of that authority;

- (b) a signature purporting to be that of the Commissioner, the a person appointed by the Commissioner shall be taken to be the signature of the person whose signature it purports to be until the contrary is proved;
- (c) a statement signed by the Commissioner that a licence of the description mentioned in the statement has or has not been granted under this Act to or in relation to any person, firm or body corporate specified in the statement, or as to the date of issue or renewal and the particulars contained in any such licence or the conditions, limitations or restrictions imposed thereon, is evidence of the matters specified in the statement;
- (d) the allegation in or averment in any prosecution notice that any premises were used, at the time stated therein, for the purposes of carrying on the business of an employment agent is evidence thereof; and
- (e) any work done in any premises used for the purposes of carrying on the business of an employment agent shall be deemed to have been done, and any person employed therein shall be deemed to have been employed, with the knowledge and by the authority of the person responsible for the management of that business unless the contrary is proved.

*[Section 31 amended by No. 70 of 1990 s. 6; No. 55 of 2004 s. 288 and 294; No. 84 of 2004 s. 79 and 82.]*

**32. Contract for fees greater than scale to be voidable**

Where a contract or agreement is made or entered into whereby any employer or employee, or any person acting for any employer or employee, either directly or indirectly agrees to pay to any employment agent or to any person on his behalf in respect of any contract or transaction subject to the provisions of this Act, any fee or other moneys greater or other than the rates permitted in accordance with this Act, —



- (a) such greater or other amount is recoverable, with costs, by the person so paying; and
- (b) the contract or agreement is voidable at the option of that employer or employee.

**33. Fees demanded by persons other than licensed employment agents**

A person, not being an employment agent licensed under this Act, who by or through any employment agent demands, receives or retains from a person seeking employment any fees or other moneys not lawfully chargeable under this Act commits an offence.

Penalty: \$500.

**34. Employment by agent**

No fee shall be charged to an employee in relation to any transaction —

- (a) whereby the employee is employed by the employment agent or any firm or business in which the employment agent is personally involved; or
- (b) whereby the employee is so employed but the use of his services or his engagement for the purposes of other employers is arranged for casual or short term periods.

**35. Single hirings**

Where a transaction relates to an engagement for a term certain only the fee shall be fixed at the commencement and shall not be chargeable to an employee on the basis of a continuing or recurring commitment having the effect of reducing the amount of his periodic remuneration, notwithstanding that the term of the engagement is thereafter extended.

**36. Fees chargeable to employees generally**

- (1) On and after the expiry of a period of 3 years from the day on which this section came into operation, or on and after such

earlier date as the Governor may by Order in Council declare in relation to any class of business specified therein, no fee shall be chargeable to an employee in relation to any transaction.

- (2) Subject to subsection (1), in relation to any transaction the fee to be charged to an employee shall be fixed in accordance with the scale approved under section 38, and an employment agent shall not directly or indirectly demand, receive or retain from an employee any amount in excess of the fee so fixed and the expenses permitted in accordance with this Act.
- (3) The scale of fees and expenses chargeable to an employee shall be displayed in the office of the employment agent, in such a manner as to be easily readable.
- (4) No fee or expense shall be recoverable from any employee by an employment agent unless either before that person was accepted as a client or at or prior to the acceptance of the engagement written advice of the scale of fees and expenses applicable was given or forwarded to him.
- (5) In relation to any engagement —
  - (a) no fee shall be charged to the employee unless a fee is also charged to the employer; and
  - (b) the fee charged to the employee shall not exceed the fee charged to the employer.

**37. Fees chargeable to employers generally**

- (1) In relation to any transaction, the amount of fees and expenses chargeable to an employer by an employment agent shall be —
  - (a) unless the parties have otherwise agreed in writing, the amount fixed by reference to the relevant scale determined in accordance with this Act; or
  - (b) where the employer and the employment agent in relation to any particular transaction or class of transactions have negotiated and agreed in writing in advance the basis on which the employer is to be

charged, an amount determined in accordance with that basis,

and an employment agent shall not directly or indirectly demand, receive or retain from an employer any amount in excess of the amount so determined.

- (2) The scale of fees and expenses that may be charged by an employment agent to an employer pursuant to subsection (1)(a) shall be made readily available for perusal by the employer at the office of the employment agent.
- (3) Subject to the provisions of subsection (1)(b), no fee or expense shall be recoverable from any employer by an employment agent unless on or before the introduction of the employee the employer was given, either personally or by posting to the address notified by him, written advice of the scale of fees and expenses applicable.

**38. Scale of fees and expenses**

- (1) No scale of fees or expenses shall be used by an employment agent unless it has been submitted to and approved by the Commissioner.
- (2) A scale of fees or expenses shall set out clearly —
  - (a) the maximum amounts that are to be chargeable or the formula upon which the maximum charge is to be assessed;
  - (b) whether —
    - (i) the employer and the employee; or
    - (ii) only the employer,are liable to pay the fees or expenses;
  - (c) if different rates are to be chargeable for different classes of person, place, employment, or other circumstance, the rates applicable to each;
  - (d) the time for payment;

- (e) the period and other conditions of any replacement guarantee to be offered; and
- (f) where the amount includes expenses —
  - (i) the fee; and
  - (ii) the basis upon which the expenses are to be assessed, stating specifically the ancillary or administrative services to be charged for in each transaction.

*[Section 38 amended by No. 55 of 2004 s. 294.]*

**39. Failure to arrange employment**

Where a person pays to an employment agent any moneys in respect of fees or expenses or otherwise and does not through the services of that employment agent —

- (a) being an employee, obtain employment within one month; or
- (b) being an employer, engage an employee within such period as is agreed or within one month, whichever is the greater period,

then on demand made within one further month thereafter the employment agent shall repay those moneys after deduction of such expenses as are lawful.

**40. Statements of account**

Where an employment agent acts for an employee, with the employee's written consent, in relation to an engagement which requires the employer to pay to the employment agent the whole or any part of the remuneration earned by the employee for his services, that employment agent is required —

- (a) when requesting payment from the employer, to furnish to the employer a written statement of account showing clearly —

- (i) the name of the employee;
- (ii) the period of the employment;
- (iii) the hours worked; and
- (iv) the amount of moneys due, specifying separately the wages or other money due to the employee and the amounts due to the employment agent in respect of his fees and his expenses;

and

- (b) when making payment to the employee, to furnish to the employee a written statement of account signed by the employment agent showing clearly —
  - (i) the name of the employer;
  - (ii) the period of the employment;
  - (iii) the hours worked; and
  - (iv) the amount of moneys received from the employer, specifying separately the fee due to the employment agent from the employer, the fee due to the employment agent from the employee and the amounts due to the employment agent in respect of each other account, with details of the reason for each such other account.

**41. Short term placements, and spurious interviews**

- (1) An engagement whereby —
  - (a) the employee is in the employ of a person and —
    - (i) the services of that employee are assigned to another employer; or
    - (ii) an engagement with another employer is arranged,  
by the first named employer for a casual, short term or temporary period not exceeding 3 months; or

- (b) the employee works under an arrangement or agreement with a person who is his employer to perform work or services for some other employer,

and no specific contract of service is entered into between that employee and the other employer but the other employer is responsible to the employee for the payment of wages or other lawful obligations, that engagement shall be taken to be a short term placement to which the provisions of this Act apply and the first named employer shall be deemed to be carrying on the business of an employment agent.

- (2) A person who purports to offer employment, whether on his own behalf or that of another, and charges or attempts to charge any fee or other moneys by way of an application fee or otherwise in relation to the making of an application for that employment, not being a charge lawfully made under this Act, commits an offence.

Penalty: \$500.

**42. Records of transactions**

- (1) In relation to —
  - (a) every person on behalf of whom he consents to try and procure employment; and
  - (b) every person on behalf of whom he consents to try and procure an employee,

an employment agent shall prepare and maintain a record clearly showing the full names and address of the person for whom he is acting, the nature of and the conditions and remuneration applicable to the employment sought or offered, and such other particulars as may be prescribed.

- (2) Every employment agent who refers persons seeking employment to other persons with a view to engagement or who, on behalf of an employer, makes an engagement with any person to enter employment with that employer, whether the engagement be absolute or contingent, shall give or forward to

- each prospective employee a form of “Notice of Employment Offered” signed by the employment agent, and specifying —
- (a) the name and address of the employment agent;
  - (b) the name and business address of the proposed employer;
  - (c) the name and residential address of the proposed employee; and
  - (d) particulars of the employment offered by the employer including —
    - (i) the nature of the employment;
    - (ii) the salary or wage;
    - (iii) such other details as to conditions relevant to the employment as the employer may supply.
- (3) Every “Notice of Employment Offered” shall contain a statement that the terms of the employment are a matter to be negotiated between the employer and the employee and that the particulars set out in the notice are given for guidance only.
- (4) Every employment agent —
- (a) shall keep as his own office record a copy of every form of “Notice of Employment Offered” in consecutive number order; and
  - (b) shall insert on his office copy of that form —
    - (i) the date employment is commenced; or
    - (ii) that no engagement was made in respect of the offer.
- (5) Any document or other record required by this Act to be signed or kept by an employment agent may be so signed or kept on his behalf by a person authorised by him, but the responsibility for ensuring that the requirement has been complied with remains with the employment agent personally.

**43. Financial records**

- (1) Where a licensee in relation to any transaction in the course of business as an employment agent receives for or on behalf of any person an amount of money, the licensee shall record the amount or cause the amount to be recorded in such a manner as to show particulars of that receipt separately from any record of money received or held for or on behalf of any other person or for or on behalf of that licensee and shall keep that record at the licensed premises or in such other place as the Commissioner may approve.
- (2) A licensee —
  - (a) shall cause the record of accounts required by subsection (1) to be kept in such a manner as to show full and accurate particulars of each transaction, and of all withdrawals or payments made from that account in sufficient detail to enable the accounts to be conveniently and properly audited; and
  - (b) shall correctly balance those accounts at the end of each month.
- (3) A person who contravenes any of the provisions of this section is guilty of an offence against this Act.

*[Section 43 amended by No. 55 of 2004 s. 294.]*

**44. Responsibility for entries**

Every entry in a record, whether a record of accounts or a record of transactions, kept for the purposes of this Act by or for a licensee is deemed, unless the contrary is proved, to have been made by or with the authority of the licensee.

**45. Retention of records**

Every record required to be prepared for the purposes of this Act, whether a record of accounts or a record of transactions, shall be retained by the employment agent or the firm or body corporate for which it was prepared for a period of not less than



3 years after the date of its preparation, unless the Commissioner otherwise directs.

*[Section 45 amended by No. 55 of 2004 s. 294.]*

**46. Inspection of records**

- (1) All books, accounts, documents, and other records that are required to be kept under this Act by a licensee shall at all reasonable times be open to inspection by the Commissioner for the purposes of investigating whether this Act is being complied with or carrying out any other investigation for the purposes of this Act.

*[(2)-(5) repealed]*

- (6) A person shall not —
  - (a) fail to keep the records required to be kept in accordance with this Act, or any entry therein, or knowingly make any false or misleading entry therein, or deliver a false transcript of an entry therein.

*[(b) deleted]*

Penalty: \$500.

- (7) Where the Minister considers that for the protection of the public it is desirable so to do he may, by notice in writing, appoint an auditor, at the expense of the licensee, to arrange for and carry out an audit of the accounts of the licensee in connection with his business as an employment agent in respect of the period specified in the notice, and the auditor so appointed has in respect of those accounts the same powers as the powers conferred on the Auditor General by the *Auditor General Act 2006*, in relation to public accounts and shall prepare and deliver to the Minister a report on the audit.
- (8) For the purposes of this section the expression *licensee* includes —
  - (a) a person whose licence has expired or has been cancelled, suspended or surrendered; and

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- (b) any firm or body corporate named in a licence as that for the benefit of which it is to be used.
- (9) A person who contravenes any of the provisions of this section is guilty of an offence against this Act.

*[Section 46 amended by No. 98 of 1985 s. 3; No. 70 of 1990 s. 6; No. 55 of 2004 s. 289; No. 77 of 2006 s. 17.]*

**47. Offences**

- (1) A person shall not —
  - (a) assault, resist or impede, delay or in any way obstruct the Commissioner in the exercise of his powers or in the discharge of his duties under this Act;
  - (b) fail, without lawful excuse, to answer any question put to him in pursuance of this Act by the Commissioner or a person acting as professional or expert adviser to, or interpreter for, the Commissioner or give a false or misleading answer to any such question;
  - (c) fail to comply in any respect with the lawful request, requirement, direction or order of the Commissioner;
  - (d) when required by or under this Act to furnish any assistance or to furnish any information to the Commissioner —
    - (i) fail to furnish that assistance or information;
    - (ii) furnish false or misleading information; or
    - (iii) refuse to sign any declaration that he is required to sign by or under this Act;
  - (e) fail, when so required by the Commissioner, to produce any permit, certificate or authority held or had by him, or any book, pay sheet, notice, record, list or other document of whatsoever kind required by this Act to be held or kept by him, or required by this Act to be produced to the Commissioner, or fail to allow the Commissioner, upon him so producing the same, to

make copies of or take extracts from it or of any part thereof or of any entries therein;

- (f) directly or indirectly prevent any person from appearing before or being questioned by the Commissioner in accordance with this Act, or attempt to do so;
- (g) use any threat or any abusive or insulting language to the Commissioner with respect to any inspection, examination or interrogation made by the Commissioner; or
- (h) impersonate the Commissioner.

*[(2) repealed]*

*[Section 47 amended by No. 70 of 1990 s. 6; No. 55 of 2004 s. 290.]*

**48. Information officially obtained to be confidential**

- (1) A person who misuses information obtained by reason of any function that person has, or at any time had, in the administration of this Act commits an offence.

Penalty: \$20 000.

- (2) A person misuses information if it is, directly or indirectly, recorded, used, or disclosed to another person, other than —
  - (a) in the course of duty;
  - (b) under this Act;
  - (c) for the purposes of the investigation of any suspected offence or the conduct of proceedings against any person for an offence;
  - (d) in a manner that could not reasonably be expected to lead to the identification of any person to whom the information refers; or
  - (e) with the consent of the person to whom the information relates, or each of them if there is more than one.

- (3) In this section —

**s. 48A**

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**information** means information concerning the affairs of a person.

*[Section 48 inserted by No. 28 of 2006 s. 94.]*

**48A. Delegation by Commissioner**

- (1) The Commissioner may delegate to any other person employed in the Department any power or duty of the Commissioner under another provision of this Act.
- (2) The delegation must be in writing signed by the Commissioner.
- (3) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (4) A person exercising or performing a power or duty that has been delegated to the person under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (5) Nothing in this section limits the ability of the Commissioner to perform a function through an officer or agent.

*[Section 48A inserted by No. 28 of 2006 s. 94.]*

**49. Immunity**

No liability shall attach to the Commissioner, or any other person for any act or omission by him in good faith and in the exercise or purported exercise of his powers or functions, or in the discharge or purported discharge of his duties, under this Act.

*[Section 49 amended by No. 70 of 1990 s. 6; No. 55 of 2004 s. 292.]*

**49A. Judicial notice**

All courts, judges and persons acting judicially shall take judicial notice of the official signature of every person who is for the time being and every person who has at any time been

the Commissioner and of the fact that such person holds or has held such office.

*[Section 49A inserted by No. 28 of 2006 s. 95.]*

**50. Other rights and remedies**

Except as is expressly provided in this Act, nothing in this Act shall have the effect of limiting, restricting or otherwise affecting any right or remedy a person would have had if this Act had not been enacted.

**51. Records to be available to clients**

On payment of the prescribed fee, any record required to be kept in accordance with this Act that relates to any employer or employee shall be open at all reasonable times to inspection by him so far as regards any entry relating to him.

**52. Regulations**

- (1) The Governor may make regulations for or with respect to any matter or thing which is required to give effect to the provisions of this Act.
- (2) Without limiting the general powers conferred by subsection (1), any regulations made under this Act may —
  - (a) be of general or limited application;
  - (b) impose penalties not exceeding a fine of \$200 in respect of a contravention of any of the regulations;
  - (c) prescribe that fees shall be payable in relation to any application or other matter under this Act other than the commencement of proceedings before the State Administrative Tribunal;
  - (d) prescribe the forms to be used and the records to be kept for the purposes of this Act, and the manner of, and time for, their completion including a requirement that information supplied be verified by statutory declaration; and

- (e) make such transitional, incidental or supplementary provisions as the Governor considers necessary or expedient for the purpose of this Act.
- (3) No regulation shall be deemed to be invalid by reason only that it delegates to, or confers on, any person or body a discretionary authority.
- (4) Section 45(1) and (2) of the *Interpretation Act 1984* apply in respect of fees prescribed under this Act despite sections 3(3) and 45(3) of that Act.

*[Section 52 amended by No. 56 of 1995 s. 14; No. 55 of 2004 s. 293.]*

**Notes**

- <sup>1</sup> This is a compilation of the *Employment Agents Act 1976* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

**Compilation table**

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Employment Agents Act 1976</i>	10 of 1976	27 May 1976	1 Nov 1976 (see s. 2 and <i>Gazette</i> 24 Sep 1976 p. 3493)
<i>Acts Amendment (Financial Administration and Audit) Act 1985 s. 3</i>	98 of 1985	4 Dec 1985	1 Jul 1986 (see s. 2 and <i>Gazette</i> 30 Jun 1986 p. 2255)
<i>Employment Agents Amendment Act 1990</i>	70 of 1990	22 Dec 1990	19 Apr 1991 (see s. 2 and <i>Gazette</i> 19 Apr 1991 p. 1711)
<i>Acts Amendment (Public Sector Management) Act 1994 s. 3(2)</i>	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)
<i>Business Licensing Amendment Act 1995 Pt. 4</i> <sup>3</sup>	56 of 1995	20 Dec 1995	1 Jan 1996 (see s. 2(3))
<i>Statutes (Repeals and Minor Amendments) Act 1997 s. 39(10)</i>	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2(1))
<b>Reprint of the <i>Employment Agents Act 1976</i> as at 26 Oct 2001</b> (includes amendments listed above)			
<i>Courts Legislation Amendment and Repeal Act 2004 s. 141</i> <sup>6</sup>	59 of 2004 (as amended by No. 2 of 2008 s. 77(13))	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004 Pt. 2 Div. 41</i> <sup>4</sup>	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004 s. 79 and 82</i>	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))

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<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Machinery of Government (Miscellaneous Amendments) Act 2006</i> Pt. 4 Div. 11 <sup>5</sup>	28 of 2006	26 Jun 2006	1 Jul 2006 (see s. 2 and <i>Gazette</i> 27 Jun 2006 p. 2347)
<b>Reprint 2: The Employment Agents Act 1976 as at 11 Aug 2006</b> (includes amendments listed above)			
<i>Financial Legislation Amendment and Repeal Act 2006</i> s. 17	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2 and <i>Gazette</i> 19 Jan 2007 p. 137)

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<sup>2</sup> On the date as at which this was prepared the department principally assisting the Minister in the administration of the *Consumer Affairs Act 1971* was the Department of Consumer and Employment Protection.

<sup>3</sup> The *Business Licensing Amendment Act 1995* s. 15 is a transitional provision that is of no further effect.

<sup>4</sup> The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.

<sup>5</sup> The *Machinery of Government (Miscellaneous Amendments) Act 2006* Pt. 4 Div. 23 reads as follows:

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### **Division 23 — Transitional provisions**

#### **151. Commissioner for Fair Trading**

- (1) On commencement, the person holding the office of Commissioner for Fair Trading immediately before commencement is to be taken to have been designated as the Commissioner or Registrar (as the case requires) for the purposes of each of the following enactments —
- (a) the *Associations Incorporation Act 1987*;
  - (b) the *Business Names Act 1962*;
  - (c) the *Chattel Securities Act 1987*;
  - (d) the *Companies (Co-operative) Act 1943*;
  - (e) Part 8 of the *Competition Policy Reform (Western Australia) Act 1996*;
  - (f) the *Consumer Affairs Act 1971*;
  - (g) the *Co-operative and Provident Societies Act 1903*;



- (h) the *Credit Act 1984*;
  - (i) the *Credit (Administration) Act 1984*;
  - (j) the *Employment Agents Act 1976*;
  - (k) the *Hire-Purchase Act 1959*;
  - (l) the *Limited Partnerships Act 1909*;
  - (m) the *Motor Vehicle Dealers Act 1973*;
  - (n) the *Petroleum Products Pricing Act 1983*;
  - (o) the *Petroleum Retailers Rights and Liabilities Act 1982*;
  - (p) the *Residential Tenancies Act 1987*;
  - (q) the *Retirement Villages Act 1992*;
  - (r) the *Travel Agents Act 1985*.
- (2) A thing done or omitted to be done by, to or in relation to, the Commissioner for Fair Trading (including in his or her capacity as the Prices Commissioner) before commencement under a provision of the *Consumer Affairs Act 1971* for the purposes of another enactment listed in subsection (1) has the same effect after commencement, to the extent that it has any force or significance after commencement, as if it had been done or omitted —
- (a) by, to or in relation to, the Commissioner or Registrar (as the case requires) as defined in that other enactment as in force after commencement; and
  - (b) where relevant, under the corresponding provision of that other enactment as in force after commencement.
- (3) To the extent that a thing done or omitted to be done by, to or in relation to, the Commissioner for Fair Trading (including in his or her capacity as the Prices Commissioner) before commencement under, or for the purposes of, an enactment listed in subsection (1) is not covered by subsection (2), it has the same effect after commencement, to the extent that it has any force or significance after commencement, as if it had been done or omitted by, to or in relation to, the Commissioner or Registrar (as the case requires) as defined in that enactment as in force after commencement.
- (4) A thing done or omitted to be done by, to or in relation to, the Commissioner for Fair Trading before commencement under, or for the purposes of, an enactment not listed in subsection (1) has the same effect after commencement, to the extent that it has any force or significance after commencement, as if it had been done or omitted by, to or in relation to, the Commissioner as defined in the *Consumer Affairs Act 1971* as in force after commencement.

- (5) A reference in an enactment to the Commissioner for Fair Trading is to have effect after commencement as if it had been amended to be a reference to —
- (a) in the case of an enactment listed in subsection (1) or subsidiary legislation made under such an enactment — the Commissioner or Registrar (as the case requires) as defined in the enactment as in force after commencement; or
  - (b) in the case of any other enactment or subsidiary legislation — the Commissioner as defined in the *Consumer Affairs Act 1971* as in force after commencement.

**152. Commissioner for Corporate Affairs and Registrar of Co-operative and Financial Institutions**

- (1) A thing done or omitted to be done by, to or in relation to, the Commissioner for Corporate Affairs before commencement under, or for the purposes of, the *Companies (Co-operative) Act 1943* has the same effect after commencement as if it had been done or omitted by, to or in relation to, the Registrar as defined in that Act as in force after commencement.
- (2) A thing done or omitted to be done by, to or in relation to, the Registrar of Co-operative and Financial Institutions before commencement under, or for the purposes of, the *Co-operative and Provident Societies Act 1903* has the same effect after commencement as if it had been done or omitted by, to or in relation to, the Registrar as defined in that Act as in force after commencement.

**153. *Consumer Affairs Act 1971***

Each office in existence immediately before commencement because of section 15(1) of the *Consumer Affairs Act 1971* does not cease merely because that subsection is repealed by this Act.

**154. *Petroleum Products Pricing Act 1983***

Each office in existence immediately before commencement because of section 5(2)(b) of the *Petroleum Products Pricing Act 1983* does not cease merely because that paragraph is deleted by this Act.

**155. Interpretation**

In this Division —

***commencement*** means the time at which this Division comes into operation;

**Commissioner for Fair Trading** means the Commissioner for Fair Trading referred to in section 15 of the *Consumer Affairs Act 1971* as in force before commencement;

**Prices Commissioner** means the Prices Commissioner referred to in section 5(1) of the *Petroleum Products Pricing Act 1983* as in force before commencement.

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<sup>6</sup> The *Courts Legislation Amendment and Repeal Act 2004* Sch. 2 cl. 17 was repealed by the *Criminal Law and Evidence Amendment Act 2008* s. 77(13).