



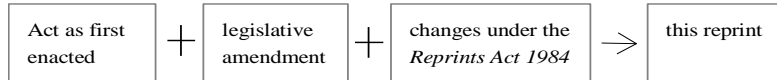
Western Australia

Employment Agents Act 1976

Reprinted as at 26 October 2001

Guide for using this reprint

What the reprint includes



Endnotes, Compilation table, and Table of provisions that have not come into operation

1. Details about the original Act and legislation that has amended its text are shown in the Compilation table in endnote 1, at the back of the reprint. The table also shows any previous reprint.
2. Validation, transitional, savings, or other provisions identified in the Compilation table may be important. The table may refer to another endnote setting out the text of these provisions in full.
3. A table of provisions that have not come into operation, to be found in endnote 1a if it is needed, lists any provisions of the Act being reprinted that have not come into operation and any amendments that have not come into operation. The full text is set out in another endnote that is referred to in the table.

Notes amongst text (italicised and within square brackets)

1. If the reprint includes a section that was inserted, or has been amended, since the Act being reprinted was passed, editorial notes at the foot of the section give some history of how the section came to be as it is. If the section replaced an earlier section, no history of the earlier section is given (the full history of the Act is in the Compilation table).

Notes of this kind may also be at the foot of Schedules or headings.

2. The other kind of editorial note shows something has been —
 - removed (because it was repealed or deleted from the law); or
 - omitted under the *Reprints Act 1984* s. 7(4) (because, although still technically part of the text, it no longer has any effect).

The text of anything removed or omitted can be found in an earlier reprint (if there is one) or one of the written laws identified in the Compilation table.

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Defined Terms



Western Australia

Reprinted under the
Reprints Act 1984 as
at 26 October 2001

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*¹.

2. Commencement

This Act or any provisions of this Act shall come into operation on a date or dates to be fixed by proclamation¹.

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

4. Interpretation

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

“**authorised person**” means a person authorised by the Commissioner;

“**Commissioner**” means the person holding or acting in the office of Commissioner for Fair Trading under section 15 of the *Consumer Affairs Act 1971*;

“**Department**” has the same meaning as it has in the *Consumer Affairs Act 1971*²;

“**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;

“employee” includes a person seeking employment and a person sought for employment;

“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;

“inspector” means an inspector designated under section 11B, and includes the licensing officer;

“licence” means a licence granted pursuant to this Act;

“licensing officer” means the person performing the functions of that office pursuant to section 11, but also includes a court of summary jurisdiction in the exercise of its licensing jurisdiction 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).]

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.

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.

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

10A. Application of *Financial Administration and Audit Act 1985*

The provisions of the *Financial Administration and Audit Act 1985* 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 Act² and its operations under this Act.

[Section 10A inserted by No. 98 of 1985 s. 3.]

11. Licensing officer

For the purposes of this Act the functions of the licensing officer shall be performed by the person holding or acting in the office of Commercial Registrar under the *Commercial Tribunal Act 1984*.

[Section 11 inserted by No. 70 of 1990 s. 5.]

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. Inspectors

The Commissioner may designate any person referred to in section 11A as an inspector.

[Section 11B inserted by No. 70 of 1990 s. 5.]

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11C. Certificate of identity

The Commissioner shall furnish an inspector with a certificate signed by the Commissioner certifying that that person has been designated an inspector.

[Section 11C inserted by No. 70 of 1990 s. 5.]

11D. Inspector subject to Commissioner

In carrying out the functions conferred on an inspector by this Act the inspector shall give effect to any direction given by the Commissioner.

[Section 11D inserted by No. 70 of 1990 s. 5.]

11E. Conduct of proceedings

Subject to the direction of the Commissioner, any proceedings for an offence against this Act may be instituted and conducted by the licensing officer or any inspector on his behalf.

[Section 11E inserted by No. 70 of 1990 s. 5.]

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 licensing officer shall fix a period, not exceeding the period prescribed, during which the licence is to have effect.

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- (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).
- (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 licensing officer 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 licensing officer for the purpose of winding up the deceased's estate.

[Section 13 amended by No. 56 of 1995 s. 12.]

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 licensing officer 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.

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 licensing officer 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 licensing officer that he proposes to conduct his business from an address other than

that in respect of which the licence was issued, the licensing officer may amend the licence accordingly and authorise the holder to conduct his business from the new address.

- (3) Where the holder of a licence notifies the licensing officer that the holder proposes to change the name or trade name or names or trade names specified in the licence, the licensing officer may amend the licence accordingly and authorise the holder to carry on business under that name or those names.
- (4) The licensing officer shall not change a name or trade name specified in a licence unless the licensing officer 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 licensing officer 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.]

17. Supervision and management

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

18. Applications

- (1) An application for the grant or renewal of a licence shall be made in the prescribed manner to the licensing officer, 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 licensing officer, 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 licensing officer 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 licensing officer 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 licensing officer may, if he thinks fit, grant the application although the requirements of subsection (4) have not been met.

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) may be represented at any hearing;
 - (ii) is liable to pay and may be awarded costs; and
 - (iii) may be required to satisfy the licensing officer that it consents to the application.
- (2) On an application made under this section the licensing officer 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 hear and 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.

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 licensing officer 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.
- (3) A person who makes an objection to the grant or renewal of a licence is, while he maintains the objection, a party to the proceedings on the application.

[Section 20 amended by No. 70 of 1990 s. 6.]

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 licensing officer thinks fit to impose.
- (2) A person who contravenes any condition, limitation or restriction to which a licence is subject commits an offence.

22. Issue of licences

- (1) Subject to the Minister, where no objection to the grant or renewal of a licence is lodged with the licensing officer the licensing officer 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) Where the licensing officer proposes not to grant or renew a licence or proposes to impose any condition, limitation or restriction he shall notify the applicant in writing setting out the reasons for his decision.
- (3) Where —
- (a) an objection to the grant or renewal of a licence has been lodged with the licensing officer; or
 - (b) an applicant has, within 14 days of the receipt by him of a notice under subsection (2), notified the licensing officer in writing that he is aggrieved by the decision,

the application shall be referred by the licensing officer to the clerk of the Court of Petty Sessions nearest to the place specified in the application as that in which the applicant proposes to carry on his business, or nearest to the principal place of business specified by the applicant where the applicant proposes to have more than one place of business.

- (4) The clerk of the court shall —
 - (a) endorse on the application particulars of the day appointed for the hearing of the application, and of the hour and place of the hearing; and
 - (b) return a copy of the application so endorsed to the licensing officer.
- (5) On receipt of the endorsed application the licensing officer shall notify in writing —
 - (a) every person who has lodged with him an objection to the grant of the proposed licence;
 - (b) the applicant, or his authorised representative; and
 - (c) any firm or body corporate on behalf of which the licence sought is to be used, or its authorised representative,

of the day, hour and place of the hearing appointed.

23. Jurisdiction

A Court of Petty Sessions constituted by a Stipendiary Magistrate sitting alone has and may exercise jurisdiction to hear and determine applications referred and proceedings instituted by or on behalf of the licensing officer under this Act.

24. Hearing of Applications

- (1) Subject to subsection (5), the hearing of an application referred to a Court of Petty Sessions shall be a judicial proceeding open to the public, and may be at any time adjourned by the magistrate.
- (2) Any party may appear and be represented by a solicitor or agent, and the magistrate shall hear the applicant, if the applicant so desires, and any objector who has lodged a notice with the licensing officer and appears before him.

- (3) Unless the magistrate so requires, it shall not be necessary for the proposed licensee to appear in person.
- (4) Where the application is for the grant or renewal of a general licence the magistrate may instead order that a restricted licence shall be granted if he so thinks fit.
- (5) Unless —
 - (a) notice of objection has been lodged; or
 - (b) the Commissioner otherwise requires,an application for the renewal of a licence may be taken in Chambers.
- (6) Where an application is refused, or is granted or renewed subject to any condition, limitation or restriction which would not have been imposed had an objection not been made, the magistrate may order the applicant to pay to an objector the whole or a part of the costs of and incidental to his objection.
- (7) If any objection to an application appears to the magistrate to be frivolous or vexatious he may order the person so objecting to pay to the applicant the costs of and occasioned by the objection.

[Section 24 amended by No. 70 of 1990 s. 6.]

25. Suspension, cancellation and disqualification

- (1) On a complaint that a person, firm or body corporate to which this section applies —
 - (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,made by the licensing officer, or a person authorised by him, the person, firm or body corporate named in the complaint may be summoned before a Court of Petty Sessions, constituted by a Stipendiary Magistrate sitting alone, for the place where the

alleged conduct occurred, to show cause why the licence should not be suspended or cancelled, and why that person, firm or body corporate should not be disqualified either temporarily or permanently from holding or taking the benefit of a licence.

- (2) This section applies to and in relation 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 —
 - (a) upon proof of the due service of the summons a court is satisfied that a person, a firm, or any body corporate has failed to appear to answer a summons issued under this section; or
 - (b) a court is satisfied pursuant to a summons issued under this section that the holder of the licence, the firm or body corporate named in the licence as that on behalf of which it is to be used or the persons responsible for its management, is, are or have been during the currency of the licence guilty of conduct which would constitute grounds for a refusal to renew a licence; or
 - (c) the holder of a licence or a firm or body corporate named in a licence is convicted by any court of an offence against this Act, whether or not pursuant to a summons issued under this section,

that court may order that the licence be suspended for such period as the court 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 court specifies in the order or permanently.

- (4) The court may order that the licence be delivered up to the clerk of the court and any person who fails to deliver up his licence to the clerk of the court in accordance with the terms of the order commits an offence against this Act.

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- (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 court 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.

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 licensing officer is satisfied that a licence has been lost or destroyed, he may issue a duplicate licence on payment of the prescribed fee.

27. Register

- (1) The licensing officer 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 licensing officer 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 licensing officer 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.

28. Justices Act to apply

The provisions of the *Justices Act 1902*, shall have effect in relation to proceedings under this Act in so far as they are applicable, save that a complaint for an offence under this Act may be made at any time within 2 years from the time when the matter of complaint arose.

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 Act³ within the time or in the manner thereby provided; or

(b) contravenes or fails to comply with any provision of this Act³,

commits an offence.

(2) Any person convicted of an offence against this Act³ 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 Act³, or is required to show cause for the purposes of section 25(1) or to satisfy the court as to the question of fitness or repute upon any application for the grant or renewal of a licence, 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 Act³ 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.

31. Facilitation of proof

In any prosecution for an offence against this Act —

- (a) it is not necessary to prove the appointment of the licensing officer or any inspector or his authority, but nothing in this paragraph prevents the right of the defendant to prove the extent of that authority;
- (b) a signature purporting to be that of the Commissioner, the licensing officer or any inspector 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 licensing officer 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 complaint 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.]

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 licensing officer.
- (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.

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 licensing officer 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.

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 licensing officer otherwise directs.

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 an inspector or any other person duly authorised in that behalf by the Commissioner either generally or in any particular case.
- (2) Upon the production of his written authority an inspector or other person authorised by the Commissioner pursuant to subsection (1) may require any licensee or in his absence any employee or agent of the licensee for the time being having the apparent control or charge of the office or place of business —
 - (a) to produce for inspection —
 - (i) all records, accounts, schedules or notices required to be kept or exhibited in accordance with this Act; and
 - (ii) all books, papers, contracts, agreements, documents or other records relating to any transaction by or with the licensee in connection with the business of an employment agent in the possession, custody or control of the licensee;and
 - (b) to answer any questions or supply any information with respect to any of those accounts, books, papers, contracts, agreements, documents or other records or any entry in any of them.

- (3) Without prejudice to any of the other powers conferred on him by this Act an inspector or other person authorised under this section may, at any reasonable hour by day or night, —
- (a) enter any place that he has reasonable cause to believe is used as, or intended to be used as or was at any time within the preceding 3 months used as, the office of an employment agent and inspect and examine that place and any documents or records found therein;
 - (b) call to his assistance any member of the Police Force where he has reasonable cause to apprehend any obstruction in the exercise of his powers or in the execution of his duties;
 - (c) take with him into any place referred to in paragraph (a) any person he may require as an interpreter and whose assistance he deems necessary in the performance of his duties under this Act;
 - (d) require any person who he finds committing or whom he reasonably suspects has committed an offence against this Act, or whom the inspector is authorised to question under this Act, or whose name and address is, in the opinion of the inspector, reasonably required for the purpose of carrying out his duties under this Act, to state his name and address, and, if he has reasonable ground for suspecting that the name or address as stated is false, require evidence of the correctness thereof; and
 - (e) exercise such powers and authorities as are conferred on him by this Act or as may be prescribed.
- (4) A person authorised to carry out any inspection for the purposes of this section is also thereby authorised, and shall be permitted, to make and take with him notes, copies or extracts of or from any document or other thing so inspected.
- (5) A person is not required under this section to answer any question or give any information that tends to incriminate him, and before any person is questioned he shall be so informed.

- (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) wilfully delay or obstruct any person so authorised in the exercise of his powers under this section;
 - (c) on demand refuse or fail to produce any accounts, books, papers, contracts, agreements, documents or other records required for inspection under this section in his possession, custody or control;
 - (d) on demand refuse or fail without lawful excuse to answer truthfully any questions relating to any accounts, books, papers, contracts, agreements, records or other documents required for inspection under this section.

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 *Financial Administration and Audit Act 1985*, 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
 - (b) any firm or body corporate named in a licence as that for the benefit of which it is to be used.

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- (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.]

47. Offences

- (1) A person shall not —
- (a) assault, resist or impede, delay or in any way obstruct an inspector 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 an inspector or a person acting as professional or expert adviser to, or interpreter for, an inspector 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 an inspector;
 - (d) when required by or under this Act to furnish any assistance or to furnish any information to an inspector —
 - (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 an inspector, 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 an inspector, or fail to allow the inspector, 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 an inspector in accordance with this Act, or attempt to do so;
 - (g) use any threat or any abusive or insulting language to any inspector or any employee with respect to any inspection, examination or interrogation made by an inspector; or
 - (h) impersonate an inspector.
- (2) For the purposes of this section, the term “**inspector**” includes a person authorised by the Commissioner pursuant to section 46(1).

[Section 47 amended by No. 70 of 1990 s. 6.]

48. Secrecy

- (1) A person who acts as a professional or expert adviser to, or interpreter for, an inspector or other person authorised to perform any duty under this Act and who discloses to any person not authorised by this Act to receive it any information respecting any business or employment agent acquired by him in the exercise of his functions under this Act, commits an offence.
- (2) A person who, either directly or indirectly, except in the performance of a duty under or in connection with this Act, makes a record of, or divulges or communicates to any person, any information concerning the affairs of any other person, firm or body corporate acquired by him by reason of his office or employment under or for the purposes of this Act, commits an offence.

Penalty: \$500.

49. Immunity

No liability shall attach to the Commissioner, the licensing officer, an inspector, 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.]

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;
 - (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.]



Notes

¹ This reprint is a compilation as at 26 October 2001 of the *Employment Agents Act 1976* and includes the amendments made by the other written laws referred to in the following table.

Compilation table

Short title	Number and year	Assent	Commencement
<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> ⁴	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))

² On the date as at which this reprint 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.

³ “This Act” includes regulations, see the *Interpretation Act 1918* which was repealed by the *Interpretation Act 1984*.

⁴ The *Business Licensing Amendment Act 1995* s. 15 reads as follows:

“

15. Transitional

Despite the provisions of section 13 of the principal Act as amended by this Act, a licence, other than an interim licence, granted or renewed under the principal Act during 1995 is, subject

to section 25 of the principal Act, upon expiry to be renewed under section 13 of the principal Act —

- (a) in the case of a licence granted or renewed between 1 January and 30 April 1995, for a period of one year;
- (b) in the case of a licence granted or renewed between 1 May and 31 August 1995, for a period of 2 years; and
- (c) in the case of a licence granted or renewed between 1 September and 31 December 1995, for a period of 3 years.

”

Defined Terms

Defined Terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined Term	Provision(s)
authorised person	4(1)
Commissioner	4(1)
Department.....	4(1)
employee.....	4(1)
employment	4(1)
engagement	4(1)
firm	4(1)
inspector.....	4(1), 47(2)
licence	4(1)
licensee	46(8)
licensing officer	4(1)
transaction.....	4(1)