

EMPLOYMENT AGENTS.

No. 10 of 1976.

AN ACT to make provision for the regulation of
Employment Agents, and for incidental purposes.

[Assented to 27th May, 1976.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the *Employment Agents Act, 1976.* Short title.

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

Repeals.
Act Nos. 57
of 1909,
64 of 1912,
11 of 1918.

3. The following Acts are repealed, namely—
the Employment Brokers Act, 1909;
the Employment Brokers Act Amendment Act,
1912; and
the Employment Brokers Act Amendment Act,
1918.

Interpre-
tation.

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

“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 appointed under section 11, 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;

“section” means section of this Act;

“the repealed Acts” means the Acts referred to in section 3;

“the Under Secretary” means the person holding or acting in the office of Under Secretary in the Department of Labour and Industry in the Public Service of the State, or, if at any time there is not an office of that name, the person for the time being occupying the office substituted therefor; 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.

5. (1) Any person who—

**Employment
agents.**

- (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.

Transitional provisions.

6. (1) A licence granted under the repealed Acts shall have effect as though it were a licence in similar terms granted under this Act until the thirty-first day of December then next ensuing.

(2) Where any person is the holder of a licence granted under the repealed Acts—

(a) he may apply for the grant of a licence under this Act at any time before the expiry of the licence granted under the repealed Acts; and

(b) on the first application by that person for the grant of a licence under this Act—

(i) the matter may be dealt with as though it were an application for the renewal of a licence;

(ii) the licence may be granted for a period of less than twelve months, the provisions of section 13 notwithstanding; and

- (iii) the fees payable may be rateably apportioned accordingly, taking into account any unexpired period for which payment was made under the repealed Acts.

7. (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.

Applica-
tion of
this Act.

(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. (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.

Exemptions.

(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. Any person, not being a person authorized by any other law to act in the engagement of seamen, who acts as an employment agent in placing any

Employment
of seamen.

other person in employment as a member of the crew of a vessel engaged in maritime navigation, commits an offence.

Adminis-
trative
arrange-
ments.

10. (1) Subject to any specific or general direction given by the Minister, this Act shall be administered by the Under Secretary.

(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.

(3) The Under Secretary shall make, in each year, a written report to the Minister as to the administration of this Act, and the report shall be made before the first day of October in each year.

Licensing
Officer and
inspectors.

11. (1) For the purposes of this Act the functions of the licensing officer shall be performed by the person for the time being holding or acting in the office of Chief Inspector of Factories and Shops under the Factories and Shops Act, 1963.

(2) A person who is appointed an inspector under section twelve of the Factories and Shops Act, 1963, or section one hundred and six of the Industrial Arbitration Act, 1912, may be appointed by the Minister to be an inspector for the purposes of this Act, and on such appointment shall be furnished with a certificate of his appointment in the prescribed form.

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

Employment
agents to be
licensed.

12. (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 subsection (5) of section 25, during the period for which that licence remains in force;
- (d) in relation to the class or classes of business specified in or authorized 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: Five hundred dollars.

**Duration of
licences.**

13. (1) Subject to the provisions of section 6 and section 25 unless sooner surrendered a licence, other than an interim licence, shall remain in force for one year beginning on the day therein specified, and may be renewed from time to time.

(2) Where an application is made for the renewal of a licence after, but within three months of, the date on which that licence expired, 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 three 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.

**Kinds of
licence.**

14. (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 authorizes 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 authorizes 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 authorizes the holder to carry on the business of an employment agent for such period not exceeding three 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. (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.

Classes of business.

(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. (1) Where any business is to be carried on in more than one place or under more than one name or trade name—

Separate places of business, and change of address.

- (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 authorize the holder to conduct his business from the new address.

Supervision
and man-
agement.

17. 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.

Applica-
tions.

18. (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 two 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 authorized 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 twenty-eight days nor less than fourteen 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 two 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 authorize 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) of this section have not been met.

19. (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—

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

- (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.

Objections.

20. (1) Where the Commissioner of Police, or a person authorized 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 authorized 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 Under Secretary, 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.

21. (1) A licence under this Act may be granted or renewed subject— Conditional licences.

(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. (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. Issue of licences.

(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 fourteen days of the receipt by him of a notice under subsection (2) of this section, 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 authorized representative; and

- (c) any firm or body corporate on behalf of which the licence sought is to be used, or its authorized representative,

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

23. 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.

Juris-
diction.

24. (1) Subject to subsection (5) of this section, 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.

Hearing
of Applica-
tions.

(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 Under Secretary 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.

Suspension,
cancellation
and
disqualification.

25. (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 authorized 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 twelve 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.

(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.

Form of
licence.

26. (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 authorized.

(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.

Register.

27. (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.

Justices
Act
to apply.

28. 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 two years from the time when the matter of complaint arose.

29. (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—

Misrepresentation and allied offences.

- (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) of this section commits an offence.

Penalty: Five hundred dollars.

(4) Any employment agent who untruthfully and wilfully publishes, advertises, or otherwise represents or holds himself out as being authorized 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: Five hundred dollars.

Offences.
"This Act"
includes
regulations,
see S. 4 Act
No. 30
of 1918.

30. (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 two hundred dollars.

(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

required to show cause for the purposes of subsection (1) of section 25 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 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.

31. In any prosecution for an offence against this Act—

Facilitation
of proof.

- (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 Under Secretary, 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.

Contract for fees greater than scale to be voidable.

32. 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.

Fees demanded by persons other than licensed employment agents.

33. 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: Five hundred dollars.

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

Employment
by agent.

- (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. 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.

Single
hirings.

36. (1) On and after the expiry of a period of three years from the day on which this section of this Act 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.

Fees
chargeable
to em-
ployees
generally.

(2) Subject to subsection (1) of this section, 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 of this Act, 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.

Fees
chargeable
to em-
ployers
generally.

37. (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 paragraph (a) of subsection (1) of this section shall be made readily available for perusal by the employer at the office of the employment agent.

(3) Subject to the provisions of paragraph (b) of subsection (1) of this section, 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. (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.

Scale of fees and expenses.

(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.

Failure to
arrange
employ-
ment.

39. 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.

Statements
of account.

40. 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. (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 three 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

Short term
placements,
and
spurious
interviews.

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: Five hundred dollars.

Records
of trans-
actions.

42. (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 authorized by him, but the responsibility for ensuring that the requirement has been complied with remains with the employment agent personally.

43. (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.

Financial records.

(2) A licensee—

- (a) shall cause the record of accounts required by subsection (1) of this section 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.

Responsibility for entries.

44. 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.

Retention of records.

45. 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 three years after the date of its preparation, unless the licensing officer otherwise directs.

Inspection of records.

46. (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 authorized in that behalf by the Under Secretary either generally or in any particular case.

(2) Upon the production of his written authority an inspector or other person authorized by the Under Secretary pursuant to subsection (1) of this section 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 authorized 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 three 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) of this subsection 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 authorized 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 authorized to carry out any inspection for the purposes of this section is also thereby authorized, 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 authorized 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: Five hundred dollars.

(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 similar powers to those powers conferred upon the Auditor General by the Audit Act, 1904, 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.

(9) A person who contravenes any of the provisions of this section is guilty of an offence against this Act.

47. (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 authorized by the Under Secretary pursuant to subsection (1) of section 46.

Secrecy.

48. (1) A person who acts as a professional or expert adviser to, or interpreter for, an inspector or other person authorized to perform any duty under this Act, and who discloses to any person not

authorized 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: Five hundred dollars.

49. No liability shall attach to the Under Secretary, 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.

Immunity.

50. 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.

Other rights and remedies.

51. 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.

Records to be available to clients.

52. (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.

Regulations.

(2) Without limiting the general powers conferred by subsection (1) of this section, any regulations made under this Act may—

- (a) be of general or limited application;
- (b) impose penalties not exceeding a fine of two hundred dollars 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.
