

Queensland



# INTRODUCTION AGENTS ACT 2001

**Reprinted as in force on 17 February 2003  
(Act not amended up to this date)**

**Reprint No. 1**

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# Queensland



## INTRODUCTION AGENTS ACT 2001

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# INTRODUCTION AGENTS ACT 2001

[reprinted as in force on 17 February 2003]

## **An Act to regulate the introduction agency industry, and for other purposes**

### **PART 1—PRELIMINARY**

#### **1 Short title**

This Act may be cited as the *Introduction Agents Act 2001*.

#### **2 Commencement**

This Act commences on a day to be fixed by proclamation.

#### **3 Purpose**

The purpose of this Act is to provide for fair trading within the introduction agency industry by—

- (a) establishing a licensing system for introduction agents; and
- (b) establishing methods for disqualifying unsuitable people from the industry; and
- (c) setting minimum standards for carrying on the business of an introduction agent; and
- (d) improving the provision of information to consumers about introduction services and the prices for services; and
- (e) ensuring representations about introduction services include accurate details of the services provided; and
- (f) promoting sound business practices within the industry in order to protect consumers.

#### **4 This Act’s interaction with other laws**

(1) This Act does not limit any other law.

*Example—*

The Criminal Code, sections 12 to 14 include some of the provisions that apply the criminal law of Queensland to particular acts or omissions occurring outside Queensland.

(2) However, if an introduction agreement is a contract to which the *Fair Trading Act 1989*, part 3, division 4 applies, sections 61 and 62 of that Act do not apply to the introduction agreement.<sup>1</sup>

## **PART 2—INTERPRETATION**

### *Division 1—Definitions and notes*

#### **5 Definitions**

The dictionary in schedule 2 defines particular words used in this Act.

#### **6 Notes in text**

A note in the text of this Act is part of the Act.

### *Division 2—Associated persons*

#### **7 Meaning of “associated person” and “effective control”**

(1) An “**associated person**” of an applicant for a licence or a licensee is a person who is not an applicant for a licence or a licensee but nevertheless is, or would be if the licence were granted, in effective control of the applicant’s or licensee’s business.

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<sup>1</sup> *Fair Trading Act 1989*, part 3 (Trade practices), division 4 (Door-to-door sales), sections 61 (Requirements in relation to prescribed contracts) and 62 (No consideration during cooling-off period)

(2) A person who is in **“effective control”** of a business includes a person who—

- (a) is regularly or usually in charge of the business; or
- (b) regularly directs staff of the business in their duties; or
- (c) is in a position to control or influence substantially the business.

(3) If an applicant for a licence or a licensee is a corporation, an executive officer of the corporation is taken to be an **“associated person”** of the applicant or licensee.

### *Division 3—Introduction agent, business, service or agreement*

## **8 Meaning of “introduction agent” and “carry on the business of an introduction agent”**

(1) An **“introduction agent”** is a person who—

- (a) carries on a business of providing, or offering to provide, an introduction service; or
- (b) holds himself, herself or itself out in any way as carrying on the business of an introduction agent; or
- (c) is entitled to share in the income of the business of an introduction agent.

(2) Subsection (1) applies—

- (a) whether the head office or principal place of business of the person is in Queensland or elsewhere; or
- (b) even if the person does not have an established place of business in Queensland.

(3) A person mentioned in subsection (1)(a), (b) or (c) is taken to **“carry on the business of an introduction agent”**.

(4) Despite subsections (1)(c) and (3), a person is not an introduction agent, and is not to be taken to carry on the business of an introduction agent, only because the person is entitled to share, as a shareholder, in the income of the business of an introduction agent that is a corporation.

## **9 Meaning of “introduction service”**

(1) An **“introduction service”** is a service the purpose of which is to introduce a person to 1 or more other persons who might be interested in having a personal relationship, or in attending a social outing, with the person, by—

- (a) giving a name or other identifying details of the other person to the person; or
- (b) giving a document containing names or other identifying details of the other person to the person; or
- (c) arranging for the person to attend a meeting with the other person.

(2) For subsection (1), it does not matter whether—

- (a) the intended introduction is direct or indirect; or
- (b) the personal relationship is intended to be for a long or short time.

## **10 Meaning of “introduction agreement”**

An agreement is an **“introduction agreement”** if it is an agreement to provide an introduction service or part of an introduction service to a person (the **“client”**) and—

- (a) the introduction service or part of the introduction service is provided, or proposed to be provided, to the client in Queensland; or
- (b) the agreement is executed in Queensland by or for a party to the agreement; or
- (c) the client ordinarily resides in Queensland.

### *Division 4—Persons who are not introduction agents*

## **11 Persons carrying out activities with a community purpose**

(1) A person is not an introduction agent only because the person carries on an activity that has some of the features of an introduction service if—

- (a) the activity is carried out for a community purpose; and

- (b) any net proceeds from the activity are solely applied, or are to be solely applied, to furthering the community purpose.

(2) In this section—

**“community purpose”** means—

- (a) a philanthropic or benevolent purpose, including the promotion of art, culture, science, religion, education, medicine or charity; or
- (b) a sporting or recreational purpose, including the benefiting of any sporting or recreational club or association.

## **12 Persons carrying out non-profit activities**

A person is not an introduction agent only because the person carries on an activity that has some of the features of an introduction service if the activity—

- (a) does not have a significant commercial purpose or character; and
- (b) does not primarily seek to make a profit for the person or any other person.

## **13 Publishers of advertisements**

(1) A person is not an introduction agent only because the person—

- (a) publishes, or makes available, details of persons who might be interested in having a personal relationship, or in attending a social outing, with 1 or more other persons—
  - (i) in a newspaper, magazine or similar publication that is readily available to members of the public; or
  - (ii) in a television, radio or similar broadcast that is readily accessible to members of the public who have the necessary equipment to access the broadcast; and
- (b) provides a way of enabling persons seeing or hearing the details to make contact with the persons supplying the details.

(2) Subsection (1) applies even if—

- (a) a member of the public must pay to obtain the publication or broadcast; and

- (b) a person using the way mentioned in subsection (1)(b) must pay a fee of not more than the amount prescribed under a regulation or, if no amount is prescribed, of not more than \$100 for using the way.

## **14 Information providers**

**(1)** A person is not an introduction agent only because the person (“**information provider**”) operates an information service if—

- (a) a person can obtain details of persons who might be interested in having a personal relationship, or in attending a social outing, with 1 or more other persons from the information service without the need to speak to, or to otherwise communicate personally and directly with, the information provider or an employee of the information provider; and
- (b) a person who gives information to the information provider or an employee of the information provider for the purpose of having the information given to other persons is not, by giving the information, placed under an obligation—
  - (i) to use the service again; or
  - (ii) to pay a fee of more than the amount prescribed under a regulation or, if no amount is prescribed, of more than \$100; and
- (c) a person to whom the information is given by the information provider is not, by using the information service, placed under an obligation—
  - (i) to use the service again; or
  - (ii) to pay a fee of more than the amount prescribed under a regulation or, if no amount is prescribed, of more than \$100.

**(2)** Subsection (1)(b)(ii) and (c)(ii) does not apply if the fees for giving information to, or obtaining information from, an information service are based on the length of time a person has electronic or mechanical access to the information service and the length of the time is automatically recorded by electronic or mechanical means.

(3) In this section—

**“information service”** means a service under which details of persons interested in having a personal relationship, or in attending a social outing, with 1 or more other persons are provided.

## **15 Organisers of social activities**

A person is not an introduction agent only because the person organises a social activity with the intention of enabling persons to meet if—

- (a) the activity is publicly advertised and is open to any member of the public who is willing to pay the admission cost for the activity (even if a person can be refused admission because there is a limit on the number of persons who can attend the activity); and
- (b) the admission cost is the only cost a person attending the activity is liable to pay the organiser of the activity, other than the cost of food or drink; and
- (c) a person attending the activity is not placed under an obligation to the organiser of the activity because the person is allowed to attend the activity, other than an obligation concerning the person’s conduct at the activity itself.

## **16 Persons providing neighbourhood information and welcome services**

A person is not an introduction agent only because the person provides a service that arranges for a person to meet with another person if the primary purpose of the meeting is for the other person to provide the person with information about local entertainment, sporting, recreational, cultural or business activities.

## **17 Providers of prostitution**

A person is not an introduction agent only because the person provides an introduction service for the purposes of, or facilitating the provision of, prostitution.

## **PART 3—LICENCES**

### *Division 1—Applications for licence*

#### **18 Requirement to be licensed**

A person must not carry on the business of an introduction agent unless the person holds a licence.

Maximum penalty—200 penalty units.

#### **19 Application for licence**

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

(2) The application must—

- (a) be in the approved form; and
- (b) state the names, addresses and residential addresses of all associated persons of the applicant; and
- (c) be accompanied by the fee prescribed under a regulation; and
- (d) contain the information prescribed under a regulation.

(3) The applicant must state in the application whether the application is for a licence for a term of 1, 2 or 3 years.

(4) The chief executive, by notice, may ask the applicant to give further information or documents relevant to the application.

(5) The chief executive may reject the application if the applicant fails to comply with the request without reasonable excuse.

#### **20 Entitlement to licence**

(1) The chief executive may grant a licence to an applicant only if the chief executive is satisfied that the applicant is a suitable person to hold the licence.

(2) In deciding whether the applicant is a suitable person to hold a licence, the chief executive must consider whether the applicant or an associated person of the applicant—

- (a) has been convicted of an offence against this Act, the *Fair Trading Act 1989*, or a corresponding law within the last 5 years; or
- (b) has breached an undertaking given to the chief executive under this Act or the *Fair Trading Act 1989* within the last 5 years.

## **21 Disqualifying criteria—individuals**

An individual is not a suitable person to hold a licence if the person or an associated person of the person—

- (a) is under 18 years; or
- (b) is an insolvent under administration; or
- (c) has been convicted of a disqualifying offence within the last 5 years; or
- (d) is, or within the last 5 years has been, a licensee or an approved manager under the *Prostitution Act 1999*; or
- (e) has been ordered by a court not to be in any way involved in the operation of the business of an introduction agent (whether under this Act or another law) and the order is still current.

## **22 Disqualifying criteria—corporations**

(1) A corporation is not a suitable person to hold a licence if—

- (a) it is an externally-administered body corporate; or
- (b) it has been ordered by a court not to be in any way involved in the operation of the business of an introduction agent (whether under this Act or another law) and the order is still current; or
- (c) it has been convicted of a disqualifying offence within the last 5 years; or
- (d) an associated person of the corporation—
  - (i) is under 18 years; or
  - (ii) is an insolvent under administration; or
  - (iii) has been convicted of a disqualifying offence within the last 5 years; or

- (iv) is, or in the last 5 years has been, a licensee or an approved manager under the *Prostitution Act 1999*; or
- (v) has been ordered by a court not to be in any way involved in the operation of the business of an introduction agent (whether under this Act or another law) and the order is still current.

(2) In this section—

**“externally-administered body corporate”** has the meaning given by the Corporations Law, section 9.<sup>2</sup>

### 23 Inquiries about applicant’s suitability to hold licence

(1) The chief executive may inquire about an applicant or an associated person of the applicant to help in deciding whether the applicant—

- (a) is a suitable person for the grant of a licence; or
- (b) continues to be a suitable person.

(2) If asked by the chief executive, the commissioner must give the chief executive a written report about the criminal history of the applicant or a named associated person of the applicant.

(3) Subsection (2) applies to the criminal history—

- (a) that is in the commissioner’s possession; or
- (b) to which the commissioner ordinarily has access through arrangements with the police service of the Commonwealth or another State.

(4) Information required to be supplied under this section may be used only to decide whether the applicant is a suitable person for this section or

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2 Corporations Law, section 9—

**“externally-administered body corporate”** means a body corporate—

- (a) that is being wound up;
- (b) in respect of property of which a receiver, or a receiver and manager, has been appointed (whether or not by a court) and is acting;
- (c) that is under administration;
- (ca) that has executed a deed of company arrangement that has not yet terminated; or
- (d) that has entered into a compromise or arrangement with another person the administration of which has not been concluded.

to investigate or prosecute an offence and must not be disclosed for any purpose other than as provided by section 95.<sup>3</sup>

## **24 Decision on application**

(1) The chief executive must consider an application for a licence and—

- (a) grant the licence, with or without conditions; or
- (b) refuse to grant the licence.

(2) If the chief executive decides to grant the licence, the chief executive must—

- (a) grant the licence for the term stated in the application for the licence; and
- (b) promptly give the applicant the licence.

(3) If the chief executive decides to refuse to grant the licence, the chief executive must promptly give the applicant a notice stating—

- (a) the decision; and
- (b) the reasons for the decision; and
- (c) that the applicant may appeal against the decision to a Magistrates Court within 28 days after the date of the notice.

## **25 Renewal of licence**

(1) A licensee may apply to the chief executive for renewal of the licensee's licence before the licence expires.

(2) The application must—

- (a) be in the approved form; and
- (b) state the names and residential addresses of all associated persons of the licensee; and
- (c) be accompanied by the fee prescribed under a regulation; and
- (d) contain the information prescribed under a regulation.

(3) The licensee must state in the application whether the application for renewal of the licence is for a term of 1, 2 or 3 years.

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3 Section 95 (Confidentiality of information)

(4) The chief executive must renew the licence for the term stated in the application unless the chief executive refuses to renew it under section 27.<sup>4</sup>

(5) If a licensee applies for renewal of the licensee's licence—

- (a) the licence is taken to continue in force from the day it would, apart from this paragraph, have ended until the day—
  - (i) the chief executive renews or refuses to renew the licence; or
  - (ii) the licensee withdraws the application for renewal; and
- (b) if the chief executive renews the licence, the licence is taken to have been renewed from the day it would, apart from paragraph (a), have ended.

***Division 2—Suspensions, cancellations, refusals to renew and imposing conditions on licences***

**26 Grounds for suspending, cancelling, refusing to renew or imposing conditions on a licence**

Each of the following is a ground for suspending, cancelling, refusing to renew or imposing a condition on a licence—

- (a) the licence was obtained because of incorrect or misleading information;
- (b) the licensee has, for at least 1 month, stopped carrying on the business of an introduction agent;
- (c) the licensee has failed to comply with a condition of the licence;
- (d) the licensee or an associated person of the licensee has breached an undertaking given to the chief executive under this Act or the *Fair Trading Act 1989*;
- (e) the licensee or an associated person of the licensee has been convicted of an offence against this Act, the *Fair Trading Act 1989*, or a corresponding law within the last 5 years;

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4 Section 27 (Procedure for suspending, cancelling, refusing to renew or imposing conditions on a licence)

- (f) the licensee is no longer a suitable person to hold a licence because of section 21 or 22.<sup>5</sup>

## **27 Procedure for suspending, cancelling, refusing to renew or imposing conditions on a licence**

(1) If the chief executive considers reasonable grounds exist to suspend, cancel, refuse to renew or impose a condition on a licence (the “**action**”), the chief executive must give the licensee a notice (the “**show cause notice**”) that—

- (a) states the action proposed and—
  - (i) if the proposed action is to suspend the licence—states the proposed suspension period; and
  - (ii) if the proposed action is to impose a condition on a licence—states the proposed condition; and
- (b) states the grounds for proposing to take the action; and
- (c) outlines the facts and circumstances that form the basis for the chief executive’s belief; and
- (d) invites the licensee to make representations, within a stated time of not less than 28 days, why the action proposed should not be taken.

(2) If, after considering all representations made within the stated time, the chief executive still believes grounds exist to take the action, the chief executive may—

- (a) if the show cause notice stated the action proposed was to suspend the licence for a stated period—suspend the licence for a period not longer than the stated period; or
- (b) if the show cause notice stated the action proposed was to cancel the licence—
  - (i) cancel the licence; or
  - (ii) suspend the licence for a period; or
- (c) if the show cause notice stated the action proposed was not to renew the licence—

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<sup>5</sup> Section 21 (Disqualifying criteria—individuals) or 22 (Disqualifying criteria—corporations)

- (i) refuse to renew the licence; or
- (ii) refuse to renew the license for a period; or
- (d) if the show cause notice stated the action proposed was to impose a condition on a licence—impose the condition on the licence for a period.

(3) The chief executive must give the licensee notice of the chief executive's decision.

(4) If the chief executive decides to cancel, suspend, refuse to renew or impose a condition on the licence, the notice must state—

- (a) the reasons for the decision; and
- (b) that the licensee may appeal against the decision to a Magistrates Court within 28 days after the date of the notice.

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

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

## **28 Return of suspended or cancelled licence**

(1) If the chief executive cancels or suspends a person's licence, the chief executive may give the person a notice requiring the person to return the licence to the chief executive in the way stated in the notice within a stated period of not less than 14 days.

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

Maximum penalty—20 penalty units.

(3) If a licence returned to the chief executive after suspension is still current at the end of the suspension period, the chief executive must return the licence to the licensee.

***Division 3—General provisions about licences*****29 Requirement to notify changes in information given**

(1) This section applies if a licensee becomes aware of a change in the information given at any time by the licensee for an application for a licence or a renewal of a licence.

(2) The licensee must, within 30 days after becoming aware of the change, give details of the change to the chief executive by signed notice.

Maximum penalty for subsection (2)—50 penalty units.

**30 Replacement licence**

(1) A licensee may apply to the chief executive for the replacement of a lost, stolen or destroyed licence.

(2) The chief executive must consider each application and—

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

(3) If the chief executive is satisfied the licence has been lost, stolen or destroyed, the chief executive must replace the licence.

(4) If the chief executive decides to refuse to replace the licence, the chief executive must give the applicant a notice stating—

- (a) the decision; and
- (b) the reasons for the decision; and
- (c) that the applicant may appeal against the decision to a Magistrates Court within 28 days after the date of the notice.

**31 Surrender of licence**

(1) A licensee may surrender the licensee's licence by signed notice given to the chief executive.

(2) The surrender of the licence takes effect on the day the notice of surrender is given to the chief executive or, if a later day of effect is stated in the notice, the later day.

(3) The person to whom the licence was granted must return the licence to the chief executive within 14 days after the person surrenders the licence, unless the person has a reasonable excuse.

Maximum penalty for subsection (3)—20 penalty units.

### **32 Licence not transferable**

A licence—

- (a) is personal to the licensee; and
- (b) is not transferable to another person; and
- (c) does not vest by operation of law in another person.

### **33 Register of licences**

(1) The chief executive must keep a register of licences.

(2) The register must contain—

- (a) the addresses of the principal and other places at which a licensee carries on the business of an introduction agent; and
- (b) any other information prescribed under a regulation.

(3) The register is to be kept in the form and in the way decided by the chief executive.

(4) Any person may inspect the register—

- (a) at any office of the department when it is open to the public; or
- (b) at any other place or in any other way decided by the chief executive.

(5) On the application of a person and on payment of any fee prescribed under a regulation, the chief executive may give the person a certificate certifying as to any matter relating to the contents of the register.

## **PART 4—RESTRICTIONS ON THE OPERATION OF INTRODUCTION AGENCIES**

### **34 False representations by employees or associated persons**

An employee or an associated person of an introduction agent must not, directly or indirectly—

- (a) represent herself or himself as being available to be introduced to persons entering into introduction agreements with the agent; or
- (b) falsely represent that a particular person, whether identified by name, likeness or otherwise, is available to be introduced to persons entering into introduction agreements with the agent; or
- (c) falsely represent that a database of a specified size or composition is available to persons entering into introduction agreements with the agent; or
- (d) represent that a person having specified characteristics is available to be introduced to persons entering into introduction agreements with the agent, if the person mentioned in the representation is not available to be introduced to persons entering into introduction agreements with the agent.

Maximum penalty—540 penalty units.

### **35 False representations by introduction agents**

(1) An introduction agent must not, directly or indirectly—

- (a) represent herself or himself as being available to be introduced to persons entering into introduction agreements with the agent; or
- (b) falsely represent that a particular person, whether identified by name, likeness or otherwise, is available to be introduced to persons entering into introduction agreements with the agent; or
- (c) falsely represent that a database of a specified size or composition is available to persons entering into introduction agreements with the agent; or
- (d) represent that a person having specified characteristics is available to be introduced to persons entering into introduction agreements with the agent, if the person mentioned in the

representation is not available to be introduced to persons entering into introduction agreements with the agent.

Maximum penalty—540 penalty units.

(2) In a prosecution against an introduction agent for an offence against subsection (1)(b) or (c), the agent bears the onus of proving that the relevant representation is not false if there is evidence of the falsity of the relevant representation.

(3) In a prosecution against an introduction agent for an offence against subsection (1)(d), the agent bears the onus of proving that the person mentioned in the representation was available at the relevant time to be introduced to persons entering into introduction agreements with the agent if there is evidence of the falsity of the relevant representation.

### **36 Use and protection of client information**

(1) An introduction agent must restrict access to personal information given to the agent by a client, or a person who may become a client, to the following persons—

- (a) the introduction agent;
- (b) an employee of the introduction agent;
- (c) a person authorised under this Act or another Act to have access to the information;
- (d) a person entitled to have access to the information under a relevant introduction agreement.

Maximum penalty—200 penalty units.

(2) An introduction agent, an employee of an introduction agent or any other person having access to personal information given to the agent by a client, or a person who may become a client of the agent, must not use the information for any purpose other than—

- (a) to provide an introduction service under an agreement between the agent and the client; or
- (b) a purpose that the person giving the information has agreed to in writing; or
- (c) a purpose related to the administration or enforcement of this Act.

Maximum penalty—200 penalty units.

(3) However, if the ownership of an introduction agent's business changes, the agent may transfer personal information held by the agent to the new owner of the business without the written consent of the person who gave the personal information, unless the person otherwise directs.

(4) If personal information is transferred on the change of ownership of an introduction agent's business, the information is taken, for this section, to have been given to the new owner by the person to whom the information relates.

(5) In this section—

**“personal information”** means information a person gives about herself or himself.

**“use”** information includes disclose, give or sell the information to another person.

### **37 Introduction agent not to use premises used for prostitution**

(1) An introduction agent must not carry on the business of an introduction agent from the same premises where a person is engaged in prostitution.

Maximum penalty—200 penalty units.

(2) For subsection (1), persons carry on business from the same premises if the persons wholly or partly use or share the same office or work space.

### **38 Employees must be over 18**

A person must not employ another person under 18 years in the business of an introduction agent if the other person—

- (a) is involved directly or indirectly in negotiating, or entering into, introduction agreements for the introduction agent; or
- (b) provides introduction services for the introduction agent.

Maximum penalty—200 penalty units.

### **39 Clients must be over 18**

An introduction agent must not enter into an introduction agreement with a person under 18 years.

Maximum penalty—200 penalty units.

**40 Purpose of market research must be disclosed**

(1) This section applies if an introduction agent collects information to enable the compilation of a list of persons who may become clients of the agent.

(2) The agent, an employee of the agent or an entity collecting the information for the agent must, before seeking the information, tell the person from whom the information is sought—

- (a) the reason the information is being sought; and
- (b) that the information is being sought for an introduction agent.

Maximum penalty—200 penalty units.

(3) The agent must ensure, to the maximum extent practicable, that an employee or an entity collecting the information, and any person acting on the entity's behalf—

- (a) tells the person from whom information is sought the reason the information is being sought; and
- (b) does so before seeking the information.

Maximum penalty—200 penalty units.

**41 Client's name must be removed from active lists**

(1) This section applies if a client asks an introduction agent in writing to stop providing an introduction service to the client.

(2) The agent must—

- (a) immediately remove the client's name from any list held by the agent of persons available for introduction; and
- (b) within 2 business days<sup>6</sup> after receiving the request, do everything else that it is practicable for the agent to do to comply with the request.

Maximum penalty—100 penalty units.

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<sup>6</sup> *Acts Interpretation Act 1954*, section 36—

“**business day**” means a day that is not—

- (a) a Saturday or Sunday; or
- (b) a public holiday, special holiday or bank holiday in the place in which any relevant act is to be or may be done.

(3) This section does not prevent an introduction agent from bringing a civil action against the client in relation to the client's request.

(4) This section does not authorise the destruction of a document an introduction agent is required to keep under this Act.

#### **42 Records must be kept for 7 years**

(1) An introduction agent must keep a copy of a document required to be made under this Act for 7 years after—

- (a) if the document is required to be signed—the document is signed; or
- (b) if the document is not required to be signed—the document is given to a person.

*Examples of documents—*

Introduction agreements, pre-contractual disclosure statements.

Maximum penalty—100 penalty units.

(2) If the ownership of an introduction agent's business changes, the agent must transfer records held by the agent to the new licensee carrying on the business.

Maximum penalty—100 penalty units.

(3) If subsection (2) applies, the new licensee must comply with subsection (1) for the transferred records.

## **PART 5—INTRODUCTION AGREEMENTS**

#### **43 Pre-contractual disclosure statement**

(1) Before entering into an introduction agreement with a person, an introduction agent must give the person a detailed, easily legible and clearly expressed written statement describing the introduction service to be provided under the agreement (a “**pre-contractual disclosure statement**”).

Maximum penalty—200 penalty units.

(2) Without limiting subsection (1), the pre-contractual disclosure statement must state the following—

- (a) the name of the agent;
- (b) the type and levels of service provided by the agent;
- (c) the price of each level of service and the method of payment;
- (d) the criteria to be used for introductions;

*Example of criterion for paragraph (d)—*

Whether preferences specified by the person will be strictly adhered to by the agent, or will be used only as a guide.

- (e) the methods used to introduce clients;

*Examples of methods of introduction for paragraph (e)—*

Personal introduction, circulation of membership list.

- (f) the agent's refund policies, including the time within which refunds will be given;
- (g) the agent's complaint procedures;
- (h) whether the person will be liable to pay an amount for ending the agreement early and, if so, the amount the person will be liable to pay;
- (i) any other obligations of the person;
- (j) anything else prescribed under a regulation.

Maximum penalty—200 penalty units.

(3) An introduction agent must not enter into an introduction agreement with a person unless the agent has obtained a written acknowledgment from the person that the person has received a pre-contractual disclosure statement.

Maximum penalty—200 penalty units.

(4) If an introduction agent gives a person written information in a language other than English to accompany the pre-contractual disclosure statement, the agent must ensure that the information is substantially consistent with the information provided in English.

Maximum penalty—200 penalty units.

**44 What must be included in an introduction agreement**

(1) An introduction agent must ensure than an introduction agreement—

- (a) is in writing, easily legible and clearly expressed; and
- (b) states the following—
  - (i) at the beginning of the agreement, the words ‘Important Notice’ in bold type followed by the statement prescribed under a regulation for this subparagraph;
  - (ii) the names, addresses and telephone numbers of the parties to the agreement;
  - (iii) a full description of the service to be provided by the agent under the agreement and the terms on which the service is offered;
  - (iv) the price of the service and the method of payment;
  - (v) prominently in bold type that this Act forbids the payment of an amount more than a stated percentage that is the prepayment limit, before any part of the service is provided;
  - (vi) the term of the agreement;
  - (vii) the conditions under which refunds will be made;
  - (viii) all terms of the agreement in full;
  - (ix) the date on which the client signed the agreement; and
- (c) complies with any other requirements prescribed under a regulation; and
- (d) is signed by the client and by or for the introduction agent.

Maximum penalty—200 penalty units.

(2) An introduction agreement need not contain the statement mentioned in subsection (1)(b)(v) if section 49<sup>7</sup> does not apply to the agreement.

(3) An introduction agent must ensure an introduction agreement is not dated earlier than the date on which the client signs the agreement.

Maximum penalty for subsection (3)—200 penalty units.

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7 Section 49 (Restriction on prepayments)

**45 Client must be given copy of agreement**

(1) Immediately after entering into an introduction agreement, an introduction agent must give the client a readily legible copy of the agreement signed by the agent and the client.

Maximum penalty—200 penalty units.

(2) If the copy of the agreement given to the client is a photocopy, it is sufficient compliance with subsection (1) that the photocopy has a copy of the signatures of the agent and the client.

**46 When introduction agreement is voidable**

(1) This section applies if—

- (a) an introduction agent does not give a person (a “**client**”) a pre-contractual disclosure statement before entering into an introduction agreement with the client; or
- (b) an introduction agent gives a person (also a “**client**”) a pre-contractual statement that does not comply with section 43; or
- (c) an introduction agreement entered into by a client does not comply with section 44; or
- (d) an introduction agent does not give a client a copy of the introduction agreement in accordance with section 45.

(2) The client may end the agreement at any time before it is completed by notice given to the introduction agent.

**47 Client entitled to refund if agreement voidable**

(1) If a client gives an introduction agent a notice under section 46, the introduction agent must refund to the client any amount that has been paid under the agreement within 21 days after receiving the notice.

Maximum penalty—200 penalty units.

(2) If the introduction agent does not refund the amount to the client, the client may recover the amount from the agent as a debt due to the client.

(3) Subsections (1) and (2) are subject to section 48.

(4) Subsections (1) and (2) do not apply if, under section 53—

- (a) the introduction agent and the client agree in writing on an amount to be refunded to the client; and
- (b) the agent refunds the amount to the client.

#### **48 When introduction agent entitled to compensation**

(1) This section applies if a client gives an introduction agent a notice under section 46.

(2) This section does not apply if, under section 53—

- (a) the introduction agent and the client agree in writing on an amount to be refunded to the client; and
- (b) the agent refunds the amount to the client.

(3) The introduction agent may, within 28 days after receiving the notice, apply to a Magistrates Court for an order that the agent is entitled to an amount from the client for things done by the agent under the introduction agreement before the agent received the notice.

(4) The introduction agent may make the application even though the agent has refunded an amount under section 47.

(5) An introduction agent need not refund an amount under, and does not contravene, section 47(1) if the agent—

- (a) within 21 days after receiving the notice, applies to a Magistrates Court for an order that the agent is entitled to an amount from the client for things done by the agent under the introduction agreement before the agent received the notice; and
- (b) pays into the court an amount equivalent to the amount that has been paid under the agreement.

(6) A court to which an application is made under subsection (3) or (5) may order the client to pay an amount to the introduction agent if the court considers that—

- (a) the defect that caused the agreement to be voidable was of a relatively minor nature; and
- (b) allowing the agent to recover the amount would not be unfair to the client having regard to—
  - (i) any services provided or work performed under the agreement; and

- (ii) whether the agent or any one else used unfair pressure, undue influence or unfair tactics on the client at any time in relation to the agreement and, if so, the nature and extent of the unfair pressure, undue influence or unfair tactics.

(7) The court may also make any incidental order, including an order for costs, it considers appropriate.

#### **49 Restriction on prepayments**

(1) This section applies to an introduction agreement only if—

- (a) the contract price for the agreement is at least the amount prescribed under a regulation or, if no amount is prescribed, at least \$500; or
- (b) the total of the contract price for the agreement and all other amounts that the person entering into the agreement with the introduction agent paid, or became liable to pay, the agent for any other introduction agreements—
  - (i) in the 30 days immediately before the date the agreement was signed—is at least the amount prescribed under a regulation or, if no amount is prescribed, at least \$500; or
  - (ii) in the 12 months immediately before the date the agreement was signed—is at least the amount prescribed under a regulation or, if no amount is prescribed, at least \$2 500.

(2) An introduction agent must not, before any part of an introduction service is provided under the agreement, demand of or receive from, a client or someone else on the client's behalf, an amount that is more than the prepayment limit for the agreement.

Maximum penalty—200 penalty units.

(3) An associated person of an introduction agent must not, before any part of an introduction service is provided under the agreement, demand of, or receive from, a client or someone else on the client's behalf, an amount that is more than the prepayment limit for the agreement.

Maximum penalty—200 penalty units.

**50 Introduction agreement voidable if restriction on prepayments not complied with**

(1) This section applies if—

- (a) an introduction agent does not comply with section 49(2); or
- (b) an associated person of an introduction agent does not comply with section 49(3).

(2) The client may end the agreement at any time before it is completed by notice given to the introduction agent.

**51 Client entitled to full refund**

(1) If a client gives an introduction agent a notice under section 50, the introduction agent must refund to the client the whole of the amount that has been paid under the agreement within 21 days after receiving the notice.

Maximum penalty—200 penalty units.

(2) If the introduction agent does not refund the amount to the client, the client may recover the amount from the agent as a debt due to the client.

(3) Subsections (1) and (2) do not apply if, under section 53—

- (a) the introduction agent and the client agree in writing on the amount to be refunded to the client; and
- (b) the agent refunds the amount to the client.

**52 When introduction agent entitled to compensation**

(1) This section applies if—

- (a) an introduction agent is given a notice under section 50; and
- (b) under section 51(1), the agent refunds to the client the whole of the amount that has been paid under the introduction agreement by the client.

(2) This section does not apply if, under section 53—

- (a) the agent and the client agree in writing on an amount to be paid to the agent; and
- (b) the amount is paid to the agent.

(3) The introduction agent may, within 28 days after receiving the notice, apply to a Magistrates Court for an order that the agent is entitled to an amount from the client for things done by the agent under the introduction agreement before the agent received the notice.

(4) The court may order the client to pay an amount to the introduction agent if the court considers that—

- (a) the amount, received by the introduction agent before any part of the introduction service is provided, that is more than the prepayment limit for the agreement is only a small amount compared to the contract price for the agreement; and
- (b) it would be unfair in all the circumstances of the case for the agent not to recover an amount having regard to—
  - (i) the extent of the agent's compliance with this Act as a whole in relation to the agreement; and
  - (ii) the extent to which the agent or anyone else used unfair pressure, undue influence or unfair tactics on the client at any time in relation to the agreement and, if so, the nature and extent of the unfair pressure, undue influence or unfair tactics.

(5) The court may also make any incidental order, including an order for costs, it considers appropriate.

### **53 Introduction agent and client can agree on refund or compensation**

An introduction agent and a client may, within 21 days after the introduction agent receives a notice ending an introduction agreement under section 46 or 50, agree in writing on an amount to be refunded to the client under section 47 or 51.

### **54 Balance of contract price to be paid at end of agreement or in equal instalments**

(1) This section applies to an introduction agreement only if—

- (a) the contract price for the agreement is at least the amount prescribed under a regulation or, if no amount is prescribed, at least \$500; or

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- (b) the total of the contract price for the agreement and all other amounts that the person entering into the agreement with the introduction agent paid, or became liable to pay, the agent for any other introduction agreements—
  - (i) in the 30 days immediately before the date the agreement was signed, is at least the amount prescribed under a regulation or, if no amount is prescribed, at least \$500; or
  - (ii) in the 12 months immediately before the date the agreement was signed, is at least the amount prescribed under a regulation or, if no amount is prescribed, at least \$2 500.

(2) An introduction agreement must provide that, apart from the first payment made under the agreement, the balance of the contract price for the agreement is to be paid—

- (a) at the end of the agreement; or
- (b) in equal instalments spread equally over the term of the agreement as the term is set out in the agreement.

(3) Despite subsection (2)—

- (a) the first payment under the agreement may be for an amount that is more than the amount of each of the subsequent instalments to be paid under the agreement, but must not be for an amount that is more than the prepayment limit for the agreement; and
- (b) the agreement may require the last instalment to be paid before the end of the agreement.

(4) An introduction agent must not—

- (a) enter into an introduction agreement that does not comply with subsection (2) as qualified by subsection (3); or
- (b) in relation to an introduction agreement, demand of, or receive from, a client or someone else on the client's behalf an amount in contravention of this section.

Maximum penalty—200 penalty units.

(5) An associated person of an introduction agent must not, in relation to an introduction agreement, demand of, or receive from, a client or someone else on the client's behalf an amount in contravention of this section.

Maximum penalty—200 penalty units.

(6) Any amount that the client has paid to the agent under the agreement that is more than the amount permitted to be paid under this section is immediately recoverable by the client from the agent as a debt due to the client.

## **55 Early termination payment by client allowed**

(1) This section does not apply if a client has ended an introduction agreement under section 46 or 50.<sup>8</sup>

(2) Despite section 54(2), an introduction agreement may require a client to pay an amount for ending the agreement before a stated date (not earlier than the end of 3 clear business days after the client receives a copy of the signed introduction agreement).

(3) The amount must be stated in the agreement and must not be more than the difference between—

- (a) the contract price for the agreement; and
- (b) the amount that the client has paid under the agreement up to the time it is ended.

## **56 Agreement with opt out clause**

(1) This section applies if—

- (a) an introduction agreement has an opt out clause; and
- (b) the client does not end the agreement on the opt out date.

(2) For sections 49 to 55, the client is taken to have entered into a new introduction agreement with the introduction agent on the opt out date for the balance of the term of the original agreement.

## **57 Provisions of this Act not to be avoided**

(1) An introduction agent must not enter into an introduction agreement or other instrument that contains a term that purports to vary or exclude the operation of a provision of this Act, unless the variation or exclusion is expressly allowed by this Act.

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<sup>8</sup> Section 46 (When introduction agreement is voidable) or 50 (Introduction agreement voidable if restriction on prepayments not complied with)

Maximum penalty—200 penalty units.

(2) Unless expressly allowed by this Act, a term in an introduction agreement or other instrument that purports to vary or exclude the operation of a provision of this Act is void.

(3) This section does not prevent the parties to an introduction agreement from including terms in the agreement that vary or exclude the operation of this Act by imposing greater or more onerous obligations on an introduction agent than are imposed by this Act.

## **58 Cooling-off period**

(1) This section does not limit section 46.<sup>9</sup>

(2) A client may end an introduction agreement at any time before the end of 3 clear business days after the client receives a copy of the signed agreement by signed notice given to the introduction agent.

## **59 Consequences of exercising rights in cooling-off period**

(1) If a client ends an introduction agreement under section 58—

- (a) the introduction agent is entitled to the lesser of the following amounts—
  - (i) the amount prescribed under a regulation or, if no amount is prescribed, \$50;
  - (ii) an amount equal to 10% of the contract price for the agreement; and
- (b) the agent must refund to the client the whole of the amount that the client has paid to the agent under the agreement, other than an amount the agent is entitled to under paragraph (a); and
- (c) the client is not liable to the agent in any way for ending the agreement, despite anything to the contrary in the agreement.

(2) The introduction agent must refund the amount mentioned in subsection (1)(b) within 7 days after receiving the client's notice.

Maximum penalty—200 penalty units.

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<sup>9</sup> Section 46 (When introduction agreement is voidable)

(3) If the introduction agent does not refund the amount mentioned in subsection (1)(b) to the client, the client may recover the amount from the agent as a debt due to the client.

### **60 Additional services may only be provided under a new agreement**

(1) If a client wishes to obtain a different level of introduction service from the level stated in an introduction agreement, the introduction agent must not demand or receive any amount for providing the different level of service.

Maximum penalty—200 penalty units.

(2) Subsection (1) does not apply if the introduction agent receives an amount for providing the different level of service under a new introduction agreement.

## **PART 6—ENFORCEMENT**

### *Division 1—Inspectors*

#### **61 Appointment of inspectors**

(1) The chief executive may appoint an officer of the public service to be an inspector.

(2) The chief executive may appoint a person to be an inspector only if—

- (a) the chief executive believes the person has the necessary expertise or experience to be an inspector; or
- (b) the person has satisfactorily completed an appropriate course of training approved by the chief executive.

(3) The chief executive may limit the powers of an inspector by stating conditions in the instrument of appointment.

#### **62 Inspector's identity card**

(1) The chief executive must give each inspector an identity card.

(2) The identity card must—

- (a) contain a recent photo of the inspector; and
- (b) contain a copy of the inspector's signature; and
- (c) identify the person as an inspector under this Act; and
- (d) state an expiry date for the card.

(3) A person who stops being an inspector must return the person's identity card to the chief executive as soon as possible (but within 21 days) after the person stops being an inspector, unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

(4) This section does not prevent the giving of a single identity card to a person for this Act and other purposes.

### **63 Production or display of inspector's identity card**

(1) An inspector may exercise a power under this Act in relation to some one else (the "**other person**") only if the inspector—

- (a) first produces the inspector's identity card for the other person's inspection; or
- (b) has the inspector's identity card displayed so it is clearly visible to the other person.

(2) However, if for any reason it is not practicable to comply with subsection (1) before exercising the power, the inspector must, at the first reasonable opportunity, produce the identity card for the other person's inspection.

### **64 Inspector's appointment conditions**

(1) An inspector holds office on the conditions stated in the instrument of appointment.

(2) An inspector—

- (a) if the appointment provides for a term of appointment—stops holding office at the end of the term; and

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- (b) if the conditions of appointment provide—stops holding office when the inspector stops holding another office stated in the appointment conditions (the “**main office**”); and
- (c) may resign by signed notice of resignation given to the chief executive.

(3) However, an inspector may not resign from the office under this Act (the “**secondary office**”) if a term of employment to the main office requires the person to hold the secondary office.

*Division 2—Powers of inspectors**Subdivision 1—Entry of places***65 Power to enter places**

(1) An inspector may enter a place if—

- (a) its occupier consents to the entry; or
- (b) it is a public place and the entry is made when it is open to the public; or
- (c) the entry is authorised by a warrant; or
- (d) the inspector believes on reasonable grounds it is a place of business of an introduction agent, and the place is—
  - (i) open for carrying on the business; or
  - (ii) otherwise open for entry; or
  - (iii) required to be open for inspection under the licensee’s licence.

(2) For the purpose of asking the occupier of a place for consent to enter, an inspector may, without the occupier’s consent or a warrant—

- (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
- (b) enter part of the place the inspector reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the occupier.

(3) For subsection (1)(d), a place of business does not include a part of the place where a person resides.

### *Subdivision 2—Procedure for entry*

#### **66 Entry with consent**

(1) This section applies if an inspector intends to ask an occupier of a place to consent to the inspector or another inspector entering the place under section 65(1)(a).

(2) Before asking for the consent, the inspector must tell the occupier—

- (a) the purpose of the entry; and
- (b) that the occupier is not required to consent.

(3) If the consent is given, the inspector may ask the occupier to sign an acknowledgment of the consent.

(4) The acknowledgment must state—

- (a) the occupier has been told—
  - (i) the purpose of the entry; and
  - (ii) that the occupier is not required to consent; and
- (b) the purpose of the entry; and
- (c) the occupier gives the inspector consent to enter the place and exercise powers under this part; and
- (d) the time and date the consent was given.

(5) If the occupier signs the acknowledgment, the inspector must immediately give a copy to the occupier.

(6) If—

- (a) an issue arises in a proceeding about whether the occupier consented to the entry; and
- (b) an acknowledgment complying with subsection (4) is not produced in evidence for the entry;

the onus of proof is on the person relying on the lawfulness of the entry to prove that the occupier consented.

## **67 Application for warrant**

(1) An inspector may apply to a magistrate for a warrant for a place.

(2) The application must be sworn and state the grounds on which the warrant is sought.

(3) The magistrate may refuse to consider the application until the inspector gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Example—*

The magistrate may require additional information supporting the application to be given by statutory declaration.

## **68 Issue of warrant**

(1) The magistrate may issue a warrant only if the magistrate is satisfied there are reasonable grounds for suspecting—

- (a) there is a particular thing or activity (the “**evidence**”) that may provide evidence of an offence against this Act; and
- (b) the evidence is at the place or may be at the place within the next 7 days.

(2) The warrant must state—

- (a) that a stated inspector may, with necessary and reasonable help and force—
  - (i) enter the place and any other place necessary for entry; and
  - (ii) exercise the inspector’s powers under this part; and
- (b) the offence for which the warrant is sought; and
- (c) the evidence that may be seized under the warrant; and
- (d) the hours of the day or night when the place may be entered; and
- (e) the date, within 14 days after the warrant’s issue, the warrant ends.

## **69 Special warrants**

(1) An inspector may apply for a warrant (a “**special warrant**”) by phone, fax, radio or another form of communication if the inspector considers it necessary because of—

- (a) urgent circumstances; or
- (b) other special circumstances, including, for example, the inspector's remote location.

(2) Before applying for the special warrant, the inspector must prepare an application stating the grounds on which the warrant is sought.

(3) The inspector may apply for the special warrant before the application is sworn.

(4) After issuing the special warrant, the magistrate must immediately fax a copy (a **"facsimile warrant"**) to the inspector if it is reasonably practicable to fax the copy.

(5) If it is not reasonably practicable to fax a copy to the inspector—

- (a) the magistrate must tell the inspector—
  - (i) what the terms of the special warrant are; and
  - (ii) the date and time the special warrant is issued; and
- (b) the inspector must complete a form of warrant (a **"warrant form"**) and write on it—
  - (i) the magistrate's name; and
  - (ii) the date and time the magistrate issued the special warrant; and
  - (iii) the terms of the special warrant.

(6) The facsimile warrant, or the warrant form properly completed by the inspector, authorises the entry and the exercise of the other powers stated in the special warrant issued.

(7) The inspector must, at the first reasonable opportunity, send to the magistrate—

- (a) the sworn application; and
- (b) if the inspector completed a warrant form, the completed warrant form.

(8) On receiving the documents, the magistrate must attach them to the special warrant.

(9) If—

- (a) an issue arises in a proceeding about whether an exercise of power was authorised by a special warrant; and

- (b) the warrant is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a special warrant authorised the exercise of the power.

## **70 Warrants—procedure before entry**

(1) This section applies if an inspector named in a warrant issued under this part for a place is intending to enter the place under the warrant.

(2) Before entering the place, the inspector must do, or make a reasonable attempt to do, the following things—

- (a) identify himself or herself to a person present at the place who is an occupier of the place by producing a copy of the inspector's identity card or other document evidencing the inspector's appointment;
- (b) give the person a copy of the warrant or, if the entry is authorised by a facsimile warrant or warrant form mentioned in section 69(6), a copy of the facsimile warrant or warrant form;
- (c) tell the person the inspector is permitted by the warrant to enter the place;
- (d) give the person an opportunity to allow the inspector immediate entry to the place without using force.

(3) However, the inspector need not comply with subsection (2) if the inspector believes on reasonable grounds that immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated.

### *Subdivision 3—Powers after entry*

## **71 General powers after entering places**

(1) This section applies to an inspector who enters a place.

(2) For monitoring or enforcing compliance with this Act, the inspector may—

- (a) search any part of the place; or
- (b) examine, inspect, photograph or film any part of the place or anything at the place; or

- (c) take a sample of anything at the place; or
- (d) take an extract from, or copy, a document at the place; or
- (e) take into or onto the place any person, equipment or material the inspector reasonably requires for exercising a power under this part; or
- (f) require the occupier of the place, or a person at the place, to give the inspector reasonable help to exercise the inspector's powers mentioned in paragraphs (a) to (e).

(3) When making a requirement mentioned in subsection (2)(f), the inspector must warn the person it is an offence to fail to comply with the requirement, unless the person has a reasonable excuse.

## **72 Failure to help inspector**

(1) A person required to give reasonable help under section 71(2)(f) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

(2) If the help is required to be given to an inspector by—

- (a) answering a question; or
- (b) producing a document (other than an authority or a document required to be kept under this Act);

it is a reasonable excuse for the person to fail to answer the question, or produce the document, if complying with the requirement might tend to incriminate the person.

### ***Subdivision 4—Power to seize evidence***

## **73 Power to seize evidence**

(1) An inspector who enters a place under this part other than under a warrant may seize a thing in the place if—

- (a) the inspector reasonably believes the thing is evidence of an offence against this Act; and

- (b) for an entry made with the occupier's consent, seizure of the thing is consistent with the purpose of entry as told to the occupier.

(2) An inspector who enters a place under this part under a warrant may seize the evidence for which the warrant was issued.

(3) An inspector entering a place under authority mentioned in subsection (1) or (2) may also seize anything else in the place if the inspector reasonably believes—

- (a) the thing is evidence of an offence against this Act; and
- (b) the seizure is necessary to prevent the thing being hidden, lost or destroyed or used to commit, continue or repeat the offence.

#### **74 Receipt for seized things**

(1) As soon as possible after an inspector seizes a thing (“**seized thing**”), the inspector must give a receipt for the seized thing to the person from whom it was seized.

(2) However, if for any reason it is not practicable to comply with subsection (1), the inspector must leave the receipt at the place of seizure, in a reasonably secure way and in a conspicuous position.

(3) The receipt must describe generally each seized thing and its condition.

(4) This section does not apply to a thing if it is impracticable or would be unreasonable to give the receipt, given the thing's nature, condition and value.

#### **75 Access to seized things**

(1) Until a seized thing is returned, an inspector must allow a person who would be entitled to the seized thing, if it were not in the inspector's possession, to inspect it and, if it is a document, to take extracts from it or copy it.

(2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.

**76 Return of seized things**

(1) An inspector must return a seized thing to its owner at the end of—

- (a) 1 year; or
- (b) if a proceeding for an offence involving it is started within 1 year, the proceeding and any appeal from the proceeding.

(2) Despite subsection (1), the inspector must immediately return the seized thing to its owner if the inspector is satisfied that—

- (a) its retention as evidence is no longer necessary; and
- (b) its return is not likely to result in its use in repeating an offence against this Act.

**77 Compensation**

(1) A person may claim compensation from the State if the person incurs loss or expense because of the exercise or purported exercise of a power under this part.

(2) Payment of compensation may be claimed and ordered in a proceeding for—

- (a) compensation brought in a court of competent jurisdiction; or
- (b) an offence against this Act brought against the person making the claim for compensation.

(3) A court may order the payment of compensation for the loss or expense only if it is satisfied it is just to make the order in the circumstances of the particular case.

***Subdivision 5—Power to require information*****78 Power to require name and address**

(1) This section applies if an inspector—

- (a) finds a person committing an offence against this Act; or
- (b) finds a person in circumstances that lead, or has information that leads, the inspector to reasonably suspect the person has just committed an offence against this Act.

(2) The inspector may require the person to state the person's name and address.

(3) When making the requirement, the inspector must warn the person it is an offence to fail to state the person's name or address, unless the person has a reasonable excuse.

(4) The inspector may require the person to give evidence of the correctness of the stated name or address if the inspector reasonably suspects the stated name or address is false.

(5) A person must comply with a requirement under subsection (2) or (4), unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

(6) A person does not commit an offence against subsection (5) if—

- (a) the person was required to state the person's name and address by an inspector who suspected the person had committed an offence against this Act; and
- (b) the person is not proved to have committed the offence.

### *Subdivision 6—General enforcement matters*

#### **79 False or misleading statements**

A person must not state anything to an inspector the person knows is false or misleading in a material particular.

Maximum penalty—200 penalty units.

#### **80 False or misleading documents**

(1) A person must not give an inspector a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—200 penalty units.

(2) Subsection (1) does not apply to a person if the person, when giving the document—

- (a) tells the inspector, to the best of the person's ability, how it is false or misleading; and

- (b) if the person has, or can reasonably obtain, the correct information, gives the correct information.

### **81 Obstruction of inspectors**

(1) A person must not obstruct an inspector, or someone helping an inspector, in the exercise of a power under this Act, unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

(2) If a person obstructs an inspector in the exercise of a power under this Act and the inspector decides to exercise the power, the inspector must warn the person that—

- (a) it is an offence to obstruct the inspector, unless the person has a reasonable excuse; and
- (b) the inspector considers the person's conduct is an obstruction.

(3) In this section—

“**obstruct**” includes hinder, resist and attempt to obstruct.

## **PART 7—APPEALS**

### **82 Right to appeal to Magistrates Court**

(1) An applicant for a licence may appeal against the chief executive's decision to refuse to grant the licence.

(2) A licensee may appeal against a decision of the chief executive—

- (a) to suspend a licence; or
- (b) to cancel a licence; or
- (c) to refuse to renew a licence; or
- (d) to impose a condition on a licence; or
- (e) to refuse to replace a licence.

(3) The appeal may be made to the Magistrates Court nearest the place where the applicant or licensee resides or carries on, or proposes to carry on, business under the licence.

**83 How to start appeal**

(1) An appeal is started by—

- (a) filing a notice of appeal with the registrar of the Magistrates Court; and
- (b) serving a copy of the notice on the chief executive.

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

(3) The court may at any time extend the period for filing the notice of appeal.

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

**84 Stay of operation of decisions**

(1) The court may grant a stay of a decision appealed against for the purpose of securing the effectiveness of the appeal.

(2) A stay—

- (a) may be granted on conditions the court considers appropriate; and
- (b) has effect for the period specified by the court; and
- (c) may be revoked or amended by the court.

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

**85 Hearing procedures**

(1) The procedure for an appeal to a Magistrates Court under this Act is to be in accordance with—

- (a) the rules of court for Magistrates Courts; or
- (b) in the absence of relevant rules, directions of the court.

(2) An appeal is to be by way of rehearing, unaffected by the chief executive's decision.

(3) In deciding an appeal, the court—

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

**86 Powers of court on appeal**

(1) In deciding an appeal, the court may—

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

(2) The decision as varied or substituted may be any decision that the chief executive may make.

(3) If the court substitutes another decision, the substituted decision is, for the purposes of this Act other than this part, taken to be the chief executive's decision.

**87 Appeal to District Court on questions of law only**

A party aggrieved by the decision of the court may appeal to the District Court, but only on a question of law.

**PART 8—MISCELLANEOUS***Division 1—Undertakings***88 Undertakings about contravention of Act**

(1) This section applies if the chief executive reasonably believes an introduction agent has contravened this Act.

(2) The chief executive may, by notice given to the agent—

- (a) state the act or omission the chief executive reasonably believes is the contravention; and
- (b) ask the agent to give the chief executive a written undertaking that the agent will not continue or repeat the act or omission.

(3) Subsection (4) applies if—

- (a) the agent gives the undertaking; and
- (b) the contravention is conduct consisting of an act or omission, or a series of acts or omissions; and
- (c) the agent stops the conduct; and
- (d) the chief executive accepts the undertaking.

(4) The chief executive can not start a proceeding for an offence against the agent for the contravention, unless the chief executive withdraws the undertaking under section 89.

### **89 Variation and withdrawal of undertakings**

(1) An undertaking given by an introduction agent and accepted by the chief executive may be varied or withdrawn at any time by—

- (a) the agent who gave it, but only if the chief executive agrees to the variation or withdrawal; or
- (b) the chief executive, if the chief executive reasonably believes that before it was accepted—
  - (i) the agent who gave it contravened this Act in a way unknown to the chief executive; and
  - (ii) had the chief executive known about the contravention, the chief executive would not have accepted the undertaking, or would not have accepted it unless its terms were changed.

(2) The chief executive may also withdraw the undertaking if the chief executive reasonably believes it is no longer necessary.

(3) If the chief executive varies or withdraws the undertaking, the chief executive must give the agent who gave it notice of its variation or withdrawal.

(4) A court may not hear or decide any charge brought against the agent in relation to the act or omission identified in the undertaking unless the agent has contravened the undertaking, or the undertaking has been withdrawn.

(5) This section does not prevent a person from bringing a civil action against the agent in relation to the act or omission.

***Division 2—General provisions about offences*****90 Proceeding for offence**

(1) A proceeding for an offence against this Act must be taken in a summary way under the *Justices Act 1886*.

(2) A proceeding may be started within—

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

**91 Evidence**

(1) This section applies to a proceeding under this Act.

(2) Unless a party, by reasonable notice, requires proof of—

- (a) the appointment of an inspector; or
- (b) the authority of an inspector to do anything under this Act;

the appointment or authority must be presumed.

(3) A signature purporting to be the signature of the chief executive or an inspector is evidence of the signature it purports to be.

(4) A certificate purporting to be signed by the chief executive and stating any of the following matters is evidence of the matter—

- (a) that a specified document is a licence or copy of a licence granted under this Act;
- (b) that on a specified day, or during a specified period, a specified person was or was not a licensee;
- (c) that a licence—
  - (i) was or was not granted for a specified term; or
  - (ii) was or was not in force on a specified day or during a specified period; or
  - (iii) was or was not subject to conditions or a specified condition;
- (d) that a document is a copy of a record kept under this Act.

**92 Additional powers of court**

(1) This section applies if a court finds a person guilty of an offence against this Act.

(2) The court may make any of the following orders—

- (a) an order that the chief executive suspend or cancel the person's licence;
- (b) an order that the person not be in any way involved in the operation of the business of any introduction agent;
- (c) an order that the person refund within 28 days an amount, or part of an amount, paid to the person by a client or someone else.

(3) Subsection (2) is in addition to any other order the court may make.

**93 Corporation taken to have knowledge of its officers**

For this Act, a corporation has the knowledge and intent of any of its officers who is acting, or purporting to act, in the course of his or her duties with the corporation.

**94 Executive officers must ensure corporation complies with Act**

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

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

Maximum penalty—the penalty for the contravention of the provision by an individual or, if the penalty is expressed to be for this section, the expressed penalty.

(3) Evidence that the corporation has committed an offence against a provision of this Act is evidence that each of the executive officers committed the offence of failing to ensure the corporation complies with the provision.

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

- (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence, the officer took all

reasonable steps to ensure the corporation complied with the provision; or

- (b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.

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

### *Division 3—Other general provisions*

#### **95 Confidentiality of information**

(1) A person must not disclose information gained by the person in the administration of this Act.

Maximum penalty—50 penalty units.

(2) Subsection (1) does not apply to a disclosure of information—

- (a) with the consent of the person from whom the information was obtained; or
- (b) in the administration of this Act; or
- (c) to the commissioner; or
- (d) with the approval of the chief executive, to a person administering a corresponding law; or
- (e) in a proceeding under this Act or a report of the proceeding; or
- (f) in a proceeding before a court in which the information is relevant to the issue before the court.

(3) This section does not limit the *Freedom of Information Act 1992*.

#### **96 Protecting officials from liability**

(1) An official is not civilly liable for any disclosure or publication made in the public interest by the official about the commercial or business reputation of any person involved in providing an introduction service.

(2) Without limiting subsection (1), an official is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.

(3) If subsection (2) prevents a civil liability attaching to an official, the liability attaches instead to the State.

(4) In this section—

“official” means—

- (a) the Minister; or
- (b) the chief executive; or
- (c) the commissioner of fair trading; or
- (d) an inspector.

## **97 Delegation by chief executive**

The chief executive may delegate the chief executive’s powers under this Act to an officer of the department.

## **98 Approved forms**

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

## **99 Regulation-making power**

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

(2) A regulation may be made about any of the following matters—

- (a) fees, including the refunding of fees;
- (b) the keeping of records by introduction agents;
- (c) the form and content of advertisements used by introduction agents.

(3) A regulation may provide for a maximum penalty of not more than 20 penalty units for a contravention of a regulation.

*Note—*

For further provisions about the power to make regulations, see the *Statutory Instruments Act 1992*, part 4. Under that Act, section 22(2) and (3), subsection (1) of this section is not limited by subsection (2).

## **PART 9—TRANSITIONAL PROVISIONS**

### **100 Requirement to be licensed**

(1) This section applies if, immediately before the commencement of this section, a person carries on the business of an introduction agent.

(2) Part 3 does not apply to the person until the end of 6 months after the commencement of this section.

### **101 Existing introduction agreements**

(1) Section 39 and part 5<sup>10</sup> do not apply to an introduction agreement entered into before the commencement of this section.

(2) However, part 5 applies to an agreement entered into on or after the commencement of this section that purports to extend an introduction agreement entered into before the commencement of this section.

### **102 Existing employees under 18**

Section 38<sup>11</sup> does not apply to an employee of an introduction agent if the employee's employment with the agent started before the commencement of this section.

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10 Section 39 (Clients must be over 18) and part 5 (Introduction agreements)

11 Section 38 (Employees must be over 18)

**SCHEDULE 1****DISQUALIFYING OFFENCE PROVISIONS UNDER THE  
CRIMINAL CODE**

schedule 2, definition “disqualifying offence”, paragraph (e)

**PART 1—EXISTING PROVISIONS**

1. Chapter 16 (Offences relating to the administration of justice)
2. Chapter 20 (Miscellaneous offences against public authority)
3. Chapter 22 (Offences against morality)
4. Chapter 22A (Prostitution)
5. Chapter 28 (Homicide—suicide—concealment of birth)
6. Chapter 29 (Offences endangering life or health)
7. Chapter 30 (Assaults)
8. Chapter 32 (Rape and sexual assaults)
9. Chapter 33 (Offences against liberty)
10. Chapter 33A (Unlawful stalking)
11. Chapter 36 (Stealing)
12. Chapter 37 (Offences analogous to stealing)
13. Chapter 38 (Stealing with violence—extortion by threats)
14. Chapter 39 (Burglary—housebreaking—and like offences)
15. Chapter 40 (Other fraudulent practices)
16. Chapter 41 (Receiving property stolen or fraudulently obtained and like offences)
17. Chapter 42 (Frauds by trustees and officers of companies and corporations—false accounting)
18. Chapter 42A (Secret commissions)
19. Chapter 49 (Punishment of forgery and like offences)

## SCHEDULE 1 (continued)

20. Chapter 52 (Personation)
21. Chapter 56 (Conspiracy)
22. Section 408C (Fraud)

**PART 2—REPEALED PROVISIONS**

1. Section 343A (Assaults occasioning bodily harm)
2. Section 344 (Aggravated assaults)
3. Section 427 (Obtaining goods or credit by false pretence or wilfully false promise)

*Note—*

The headings shown in this schedule for the provisions are the headings for the provisions that are current as at 31 March 2001.

**SCHEDULE 2****DICTIONARY**

section 5

**“approved form”** see section 98.

**“associated person”** see section 7(1).

**“carry on the business of an introduction agent”** see section 8(3).

**“client”** means a person who is a party to an introduction agreement, other than an introduction agent.

**“commissioner”** means the commissioner of the police service.

**“contract price”**, for an introduction agreement, means the total amount payable under the agreement inclusive of GST.

**“conviction”** means a finding of guilt, or the acceptance of a plea of guilty, by a court, but does not include a finding of guilt, or the acceptance of a plea of guilty, by a court if no conviction is recorded by the court.

**“corresponding law”** means a law of another State that provides for the same matter as this Act or the *Fair Trading Act 1989*, or a provision of this Act or the *Fair Trading Act 1989*.

**“criminal history”**, of a person, means the person’s criminal history as defined under the *Criminal Law (Rehabilitation of Offenders) Act 1986*, other than convictions for which the rehabilitation period has expired, and not been revived, under that Act.

**“disqualifying offence”** means an offence—

- (a) against the *Drugs Misuse Act 1986* that is punishable by imprisonment for 1 year or more, even if a fine may be imposed in addition or as an alternative; or
- (b) against the *Vagrants, Gaming and Other Offences Act 1931*, part 2A as in force immediately before its repeal;<sup>12</sup> or

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<sup>12</sup> *Vagrants, Gaming and Other Offences Act 1931*, part 2A (Offences relating to prostitution)

## SCHEDULE 2 (continued)

- (c) against the *Prostitution Act 1999*; or
- (d) involving fraud or dishonesty that is punishable by imprisonment for 3 months or more; or
- (e) against a provision of the Criminal Code mentioned in schedule 1; or
- (f) against a provision of a law of another State or of the Commonwealth corresponding to a law mentioned in paragraphs (a) to (e).

**“effective control”** see section 7(2).

**“employ”** includes engage on a contract for services or commission and use the services of, whether or not for reward.

**“executive officer”**, of a corporation, means a person who is concerned with, or takes part in, the corporation’s management, whether or not the person is a director or the person’s position is given the name of executive officer.

**“insolvent under administration”** means a person—

- (a) who is an undischarged bankrupt; or
- (b) for whom a debt agreement has been made under the *Bankruptcy Act 1966* (Cwlth), part X or the corresponding provisions of the law of another jurisdiction, if the debt agreement has not ended or has not been terminated; or
- (c) who has executed a deed of arrangement under the *Bankruptcy Act 1966* (Cwlth), part X or the corresponding provisions of the law of another jurisdiction, if the terms of the deed have not been fully complied with; or
- (d) whose creditors have accepted a composition under the *Bankruptcy Act 1966* (Cwlth), part X or the corresponding provisions of the law of another jurisdiction, if a final payment has not been made under the composition.

**“inspector”** means a person who is appointed as an inspector under section 61.

**“introduction agent”** see section 8(1).

**“introduction agreement”** see section 10.

## SCHEDULE 2 (continued)

**“introduction service”** see section 9(1).

**“licence”** means a licence to carry on the business of an introduction agent.

**“notice”** means written notice.

**“opt out clause”**, in an introduction agreement, means a clause that gives the client the option of ending the agreement on an opt out date.

**“opt out date”**, for an introduction agreement, means the date on or before which the client may end the agreement without paying any further amounts due under the agreement.

**“pre-contractual disclosure statement”** see section 43(1).

**“prepayment limit”** means—

- (a) for an introduction agreement that has an opt out clause—an amount that is equal to the percentage prescribed under a regulation of the total amount payable under the agreement until the opt out date or, if no percentage is prescribed, 30%; or
- (b) for an introduction agreement that does not have an opt out clause—an amount that is equal to the percentage prescribed under a regulation of the contract price for the agreement or, if no percentage is prescribed, 30%.

**“prostitution”** see the Criminal Code, section 229E.

## ENDNOTES

### 1 Index to endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). However, no amendments have commenced operation on or before that day. Future amendments of the Introduction Agents Act 2001 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No.[X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 2002
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered
prev	= previous		

## **4 Table of reprints**

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the latest reprint.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

### TABLE OF REPRINTS

Reprint No.	Amendments included	Effective	Notes
1	none	17 February 2003	

## **5 List of legislation**

### **Introduction Agents Act 2001 No. 59**

date of assent 16 August 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 17 February 2003 (automatic commencement under AIA s 15DA(2) (2002 SL No. 197 s 2))