



Queensland

# **Private Employment Agents Act 2005**

**Act No. 15 of 2005**





Queensland

# Private Employment Agents Act 2005

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Queensland

## **Private Employment Agents Act 2005**

### **Act No. 15 of 2005**

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**An Act about private employment agents**

**[Assented to 22 April 2005]**

**The Parliament of Queensland enacts—****Part 1 Preliminary****1 Short title**

This Act may be cited as the *Private Employment Agents Act 2005*.

**2 Commencement**

This Act commences on the later of—

- (a) 27 April 2005;<sup>1</sup> or
- (b) the date of assent of this Act.

**3 Dictionary**

The dictionary in the schedule defines particular terms used in this Act.

**4 Meaning of *private employment agent***

- (1) A person is a *private employment agent* if the person, in the course of carrying on business and for gain—
  - (a) offers to find—
    - (i) casual, part-time, temporary, permanent or contract work for a person; or
    - (ii) a casual, part-time, temporary, permanent or contract worker for a person; or
  - (b) negotiates the terms of contract work for a model or performer; or
  - (c) administers a contract for a model or performer and arranges payments under it; or

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<sup>1</sup> The *Private Employment Agents Act 1983* expires on 26 April 2005.



- (d) provides career advice for a model or performer.
- (2) However, a person is not a *private employment agent* only because the person publishes—
  - (a) for someone else, an advertisement about employment opportunities; or
  - (b) an advertisement offering employment opportunities with the person.
- (3) Also, a person is not a *private employment agent* if, for an agreed rate of payment to the person—
  - (a) the person makes a worker of the person available to perform work, whether under a contract of service or a contract for service, for a client of the person; and
  - (b) the worker works under the client’s direction; and
  - (c) the person is responsible for performing the obligations owed by a person to the worker, including paying the worker for the work.

## Part 2                      Code of conduct

### 5            Purpose of pt 2

The purpose of this part is to provide for a code of conduct as the main way of regulating the conduct of private employment agents in their relationships with persons looking for work or for workers.

### 6            Code of conduct

- (1) A regulation may include a code of conduct for private employment agents (the *code of conduct*).
- (2) The code of conduct may—
  - (a) set conduct standards for private employment agents; and
  - (b) establish principles for fair trading; and

- (c) provide for a system of complaint resolution; and
- (d) state the type of work arrangements and commercial operations covered by the code; and
- (e) set recommended standards of competence and training for private employment agents; and
- (f) provide for disciplining private employment agents who contravene the code; and
- (g) state the records that private employment agents must keep; and
- (h) provide for a penalty for a contravention of the code of not more than 14 penalty units.

## **Part 3                      Employment Agents Advisory Committee**

### **Division 1                      Establishment and functions**

#### **7                      Establishment of committee**

The Employment Agents Advisory Committee is established.

#### **8                      Functions of committee**

- (1) The committee has the functions given to it under this Act.
- (2) The committee's functions include—
  - (a) advising the chief executive on matters relating to the content and operation of the code of conduct; and
  - (b) if asked by the chief executive—advising the chief executive in relation to any matter arising under this Act or the *Industrial Relations Act 1999*, chapter 11A.<sup>2</sup>

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<sup>2</sup> *Industrial Relations Act 1999*, chapter 11A (Fees charged by private employment agents)

- (3) In performing its functions, the committee—
  - (a) may consult with anyone the committee considers appropriate; and
  - (b) may ask the chief executive to give the committee any information, including copies of departmental records, about a matter; and
  - (c) may do all things necessary or convenient to be done for, or in connection with, the performance of its functions.

## Division 2                      Membership of committee

### 9                      Membership of committee

- (1) The committee consists of 6 members.
- (2) The members are—
  - (a) 1 person representing private employment agents whose business includes seeking work for models or performers; and
  - (b) 1 person representing private employment agents whose business includes seeking work for workers other than models or performers; and
  - (c) 1 person representing employee organisations representing models or performers; and
  - (d) 1 person representing employee organisations representing workers other than models or performers; and
  - (e) 1 person independent of industry or employee organisations (the *independent person*); and
  - (f) 1 person who is an officer of the department appointed by the chief executive.
- (3) The members mentioned in subsection (2)(a) to (e) are to be appointed by the Minister.
- (4) A member mentioned in subsection (2)(a), (b), (c) or (d) may be a representative of an organisation representing private

employment agents or employee organisations mentioned in the relevant paragraph.

## **10 Chairperson**

The independent person is the chairperson of the committee.

## **11 Term of office**

A member is appointed for a term of not more than 3 years stated in the instrument of appointment and may be reappointed for a further term or terms of not more than 3 years.

## **12 Vacation of office**

The office of a member appointed by the Minister under section 9(3) becomes vacant if—

- (a) the member ceases to be a person who may become a member; or
- (b) the member is absent from 3 consecutive meetings of the committee, without the committee's leave and without reasonable excuse; or
- (c) the member resigns from office by signed notice of resignation given to the Minister.

## **Division 3 Meetings of committee**

### **13 Presiding at meetings**

- (1) The chairperson is to preside at committee meetings.
- (2) However, if the chairperson is absent from a meeting, the members present must choose a member who is present to preside.

**14 Quorum**

A quorum exists at a committee meeting if 4 or more members are present.

**15 Conduct of meetings**

- (1) The committee is to meet regularly to perform its functions.
- (2) The meetings are to be—
  - (a) called by the chairperson; and
  - (b) held when the chairperson decides.
- (3) The committee may otherwise conduct its business, including its meetings, in the way it considers appropriate.

**Division 4 Other provisions about committee****16 Conflict of interest**

- (1) A member must not take part in a discussion about, or vote on, an issue in which the member has a direct or indirect interest.
- (2) A member is taken to have an interest in an issue if, because of the issue, a benefit will, or is likely to, be gained by—
  - (a) the member; or
  - (b) an associate of the member.
- (3) However, the member does not have an interest in an issue only because the member belongs to—
  - (a) an industrial organisation of employees representing a person involved in the issue, unless the member was involved personally in representing the person; or
  - (b) an association of private employment agents involved in the issue, unless the member was involved personally in the issue.
- (4) In this section—

*associate*, of a member, means any of the following—

  - (a) a member of the member's immediate family;

- (b) a person who—
  - (i) is in a business arrangement or relationship with the member; or
  - (ii) is employed by, or employs, the member.

*immediate family* includes—

- (a) the employee's spouse; and
- (b) a child, stepchild, adopted child, foster (or former foster) child, parent, grandparent, grandchild or sibling of the member or member's spouse.

## **17 Entitlements of committee members**

A member, other than the member mentioned in section 9(2)(f), is entitled to be paid the fees, allowances and expenses decided by the Minister.

## **18 Chief executive to help committee**

The chief executive is to give the committee reasonable help to perform its functions.

# **Part 4 Inspectors**

## **19 Appointment and qualifications**

- (1) The chief executive may appoint any of the following persons as an inspector—
  - (a) an officer of the department;
  - (b) a person prescribed under a regulation.
- (2) However, the chief executive may appoint a person as an inspector only if—
  - (a) the chief executive is satisfied the person is qualified for appointment because the person has the necessary expertise or experience; or

- (b) the person has satisfactorily finished training approved by the chief executive.

## 20 Appointment conditions and limit on powers

- (1) An inspector holds office on any conditions stated in—
  - (a) the inspector's instrument of appointment; or
  - (b) a signed notice given to the inspector; or
  - (c) a regulation.
- (2) The instrument of appointment, a signed notice given to the inspector or a regulation may limit the inspector's powers under this Act.
- (3) In this section—  
*signed notice* means a notice signed by the chief executive.

## 21 Issue of identity card

- (1) The chief executive must issue an identity card to each inspector.
- (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) This section does not prevent the issue of a single identity card to a person for this Act and for other purposes.

*Example for subsection (3)—*

If the inspector is also an inspector under the *Industrial Relations Act 1999*, the chief executive under that Act, and the chief executive under this Act, could together issue a combined identity card covering the purposes of both Acts.

## 22 Production or display of identity card

- (1) In exercising a power under this Act in relation to a person, an inspector must—

- (a) produce the inspector's identity card for the person's inspection before exercising the power; or
  - (b) have the identity card displayed so it is clearly visible to the person when exercising the power.
- (2) However, if it is not practicable to comply with subsection (1), the inspector must produce the identity card for the person's inspection at the first reasonable opportunity.
- (3) For subsection (1), an inspector does not exercise a power in relation to a person only because the inspector, as authorised under this Act, enters—
- (a) a public place when it is open to the public; or
  - (b) a place for the purpose of asking the occupier of the place for consent to enter.

## 23 When inspector ceases to hold office

- (1) An inspector ceases to hold office if any of the following happens—
- (a) the term of office stated in a condition of office ends;
  - (b) under another condition of office, the inspector ceases to hold office;
  - (c) the inspector's resignation takes effect.
- (2) Subsection (1) does not limit the ways an inspector may cease to hold office.
- (3) In this section—
- condition of office* means a condition on which the inspector holds office.

## 24 Resignation

An inspector may resign by signed notice given to the chief executive.

## 25 Return of identity card

A person who ceases to be an inspector must return the person's identity card to the chief executive within 21 days



after ceasing to be an inspector, unless the person has a reasonable excuse.

Maximum penalty—14 penalty units.

## Part 5                      Enforcement

### 26      Power to enter place

- (1) An inspector may, without an occupier's consent, enter a place if—
  - (a) it is a public place and the entry is made when it is open to the public; or
  - (b) it is a workplace and the entry is made when—
    - (i) the workplace is open for carrying on business; or
    - (ii) the workplace is otherwise open for entry.
- (2) If the workplace is in, on or near domestic premises, an inspector may, without the occupier's consent—
  - (a) enter the land around the premises 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 are ordinarily allowed to enter when they wish to contact the occupier.
- (3) Power to enter a place under this section does not include power to enter a place, or any part of a place, that is used for residential purposes without the consent of the occupier.
- (4) In this section—

***domestic premises*** means premises usually occupied as a private dwelling house.

***workplace*** means a place in or on which the inspector reasonably believes the business of a private employment agent is, has been, or is about to be carried out.

**27 General powers after entering workplaces**

- (1) This section applies to an inspector who enters a workplace under section 26.
- (2) For monitoring or enforcing compliance with this Act, the inspector may—
  - (a) inspect, photograph or film any part of the workplace or anything at the workplace; or
  - (b) copy a document at the workplace; or
  - (c) take into or onto the workplace the persons, equipment and materials the inspector reasonably requires for exercising a power under this part; or
  - (d) require a person at the workplace to give the inspector reasonable help to exercise the powers under paragraphs (a) to (c).
- (3) When making a requirement under subsection (2)(d), the inspector must warn the person it is an offence to fail to comply with the requirement, unless the person has a reasonable excuse.
- (4) A person required to give reasonable help under subsection (2)(d) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty for subsection (4)—14 penalty units.

**28 Power to require documents to be produced**

- (1) An inspector may require a person the inspector reasonably believes is a private employment agent to produce for inspection, at a reasonable time and place nominated by the inspector, a stated document relating to the business of the private employment agent.
- (2) The person must produce the document, unless the person has a reasonable excuse.

Maximum penalty—14 penalty units.

- (3) It is a reasonable excuse for an individual to fail to comply with the requirement if doing so might tend to incriminate the individual.

- (4) The inspector may keep the document to copy it.
- (5) If the inspector copies a document produced by a person to the inspector, the inspector may require the person to certify the copy as a true copy of the document.
- (6) The person must certify the copy, unless the person has a reasonable excuse.

Maximum penalty—14 penalty units.

- (7) The inspector must return the document to the person as soon as practicable after copying it.

## **29 Power to require information**

- (1) An inspector may, during business hours—
  - (a) question in relation to matters under this Act—
    - (i) a private employment agent; or
    - (ii) a person found in or on a place in or on which the inspector reasonably suspects the business of a private employment agent is being, or is about to be, carried on; and
  - (b) require the agent or person to give the inspector information to help the inspector ascertain whether this Act is being, has been or will be complied with.

- (2) When making the requirement, the inspector must warn the person it is an offence not to comply with the requirement, unless the person has a reasonable excuse.

- (3) The person must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—14 penalty units.

- (4) It is a reasonable excuse for an individual to fail to comply with the requirement if doing so might tend to incriminate the individual.

- (5) The power to question a person includes power to question the person out of anyone else's hearing.

**30 Power to seize evidence**

- (1) An inspector may seize a thing at a workplace the inspector enters under this part 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 continue or repeat the offence.
- (2) Also, an inspector may seize a thing at a workplace the inspector enters under this part if the inspector reasonably believes the thing has just been used in committing an offence against this Act.

**31 Powers supporting seizure**

- (1) Having seized a thing, an inspector may—
  - (a) move the thing from the workplace where it was seized (the *place of seizure*); or
  - (b) leave the thing at the place of seizure but take reasonable action to restrict access to it.
- (2) If an inspector restricts access to a seized thing, a person must not tamper, or attempt to tamper, with the thing or something restricting access to the thing without an inspector's approval.

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

**32 Receipt for seized thing**

- (1) As soon as practicable after an inspector seizes a thing, the inspector must give a receipt for it to the person from whom it was seized.
- (2) However, if it is not practicable to comply with subsection (1), the inspector must leave the receipt in a conspicuous position and in a reasonably secure way at the place of seizure.
- (3) The receipt must describe generally the thing seized and its condition.
- (4) This section does not apply to a thing if it is impracticable or would be unreasonable to give the receipt required by the section, given the thing's nature, condition and value.

**33 Forfeiture of seized thing**

- (1) A seized thing is forfeited to the State if the inspector who seized the thing—
  - (a) can not find its owner after making reasonable inquiries; or
  - (b) can not return it to its owner, after making reasonable efforts; or
  - (c) reasonably believes it is necessary to keep the thing to prevent it being used to commit an offence against this Act.
- (2) Subsection (1)(a) does not require the inspector to make inquiries if it would be unreasonable to make inquiries to find the owner.
- (3) Subsection (1)(b) does not require the inspector to make efforts if it would be unreasonable to make efforts to return the thing to its owner.
- (4) If the inspector decides to forfeit a thing under subsection (1)(c), the inspector must tell the owner of the decision and the reasons for the decision by written notice.
- (5) Subsection (4) does not apply if—
  - (a) the inspector can not find its owner, after making reasonable inquiries; or
  - (b) it is impracticable or would be unreasonable to give the notice.
- (6) In deciding whether, and if so what, inquiries or efforts are reasonable, or whether it would be unreasonable to give notice about a thing, regard must be had to the thing's nature, condition and value.

**34 Return of seized thing**

- (1) If a seized thing has not been forfeited, the inspector must return it to its owner—
  - (a) at the end of 6 months; or

- (b) if a proceeding for an offence involving it is started within 6 months, at the end of the proceeding and any appeal from the proceeding.
- (2) However, unless the thing has been forfeited, the inspector must immediately return a thing seized as evidence to its owner if the inspector stops being satisfied its continued retention as evidence is necessary.

### **35 Access to seized thing**

- (1) Until a seized thing is forfeited or returned, an inspector must allow its owner to inspect it and, if it is a document, to copy it.
- (2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.

## **Part 6 Injunctions**

### **36 Purpose of pt 6**

- (1) The purpose of this part is to provide a way of ensuring private employment agents may be restrained from engaging in conduct that may bring the private employment agents industry into disrepute or from acting as a private employment agent.
- (2) For the purposes of this part, the conduct or proposed conduct of a private employment agent includes conduct engaged in, or proposed to be engaged in, for the private employment agent by an executive officer or employee of the private employment agent.

### **37 Injunctions**

An injunction under this part may be granted by the District Court against a private employment agent at any time restraining the private employment agent from either or both of the following—

- (a) engaging in stated conduct;
- (b) acting as a private employment agent.

### **38 Who may apply for injunction**

The following persons may apply to the court for an injunction—

- (a) the chief executive;
- (b) an organisation, or an officer or member of an organisation, as defined under the *Industrial Relations Act 1999*, section 409;
- (c) a person who has a sufficient interest in the matter to which the application relates;
- (d) a State peak council as defined under the *Industrial Relations Act 1999*.

### **39 Grounds for injunction**

- (1) The court may grant an injunction if the court is satisfied that a private employment agent—
  - (a) has engaged, or is proposing to engage, in conduct that constitutes or would constitute—
    - (i) a contravention of a declared provision; or
    - (ii) attempting to contravene a declared provision; or
    - (iii) aiding, abetting, counselling or procuring a person to contravene a declared provision; or
    - (iv) inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene a declared provision; or
    - (v) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of a declared provision; or
    - (vi) conspiring with others to contravene a declared provision; or
  - (b) has been convicted of a contravention of a declared provision or convicted of a serious offence or has, as an

- executive officer, a person who has been convicted of a contravention of a declared provision or has been convicted of a serious offence; or
- (c) has knowingly employed, or continued to employ, a person who has been convicted of—
- (i) a contravention of a declared provision; or
- (ii) a serious offence;
- in relation to an activity performed for the private employment agency that it is inappropriate for the person to perform, having regard to the nature of the contravention or serious offence; or
- (d) has not paid a person an amount the private employment agent is required to pay under an order made under the *Industrial Relations Act 1999*, section 408E, 408F or 408G<sup>3</sup> or a corresponding law to the section.
- (2) However, the court may grant the injunction only if the court is satisfied that having regard to the nature of the conduct complained of and, if the conduct complained of is a contravention of a declared provision or is a serious offence, the circumstances of the contravention or offence—
- (a) the conduct complained of should be restrained; or
- (b) the person is not an appropriate person to act as a private employment agent.
- (3) In this section—
- convicted**, of a contravention of a declared provision or of a serious offence, means being found guilty of a contravention of a declared provision or of a serious offence, on a plea of guilty or otherwise, whether or not—
- (a) a conviction was recorded; or
- (b) the finding of guilt was before or after the commencement of this section; or

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3 *Industrial Relations Act 1999*, section 408E (Magistrate may order repayment of fees received by private employment agent in criminal proceedings), 408F (Commission may order repayment of fees received by private employment agent) or 408G (Magistrate may order repayment of fees received by private employment agent in civil proceedings)



- (c) for a finding that an employee or executive officer was guilty of a contravention of a declared provision or of a serious offence—the finding was before the employee or executive officer became an employee or executive officer.

**corresponding law**, to this Act or a provision of the *Industrial Relations Act 1999* mentioned in this Act, means a law of another State that provides generally for the same matter as this Act or the provision.

**declared provision** means—

- (a) a provision of this Act or a corresponding law to this Act; or
- (b) a provision of the code of conduct declared by regulation to be a provision to which this part applies; or
- (c) the *Industrial Relations Act 1999*, section 408D(1) or (2) or a corresponding law to the *Industrial Relations Act 1999*, section 408D(1) or (2).<sup>4</sup>

**offence of a sexual nature** means an offence defined in the Criminal Code, section 208, 209, 210, 213, 215, 216, 217, 218, 218A, 219, 221, 227, 228, 229B, 323A, 323B or 363A or chapter 32.<sup>5</sup>

**serious offence** means—

- (a) offences involving the following for which the maximum penalty is at least 3 years imprisonment—
- (i) stealing, fraud, receiving or other dishonesty;

4 *Industrial Relations Act 1999*, section 408D (When fees are or are not payable to private employment agent)

5 Criminal Code, section 208 (Unlawful sodomy), 209 (Attempted sodomy), 210 (Indecent treatment of children under 16), 213 (Owner etc. permitting abuse of children on premises), 215 (Carnal knowledge with or of children under 16), 216 (Abuse of intellectually impaired persons), 217 (Procuring young persons etc. for carnal knowledge), 218 (Procuring sexual acts by coercion etc.), 218A (Using internet etc. to procure children under 16), 219 (Taking child for immoral purposes), 221 (Conspiracy to defile), 227 (Indecent acts), 228 (Obscene publications and exhibitions), 229B (Maintaining a sexual relationship with a child), 323A (Female genital mutilation), 323B (Removal of child from State for female genital mutilation) or 363A (Abduction of child under 16) or chapter 32 (Rape and sexual assaults)

- (ii) unlawful trafficking of drugs;
  - (iii) unlawful use or threatened use of violence;
  - (iv) extortion;
  - (v) arson;
  - (vi) stalking; or
- (b) an offence of a sexual nature; or
  - (c) an offence of attempting or conspiring to commit an offence mentioned in paragraph (a) or (b); or
  - (d) an offence committed in another State that, if committed in Queensland, would be an offence mentioned in paragraph (a), (b) or (c).

#### **40 Court's powers for injunctions**

- (1) The power of the court to grant an injunction restraining a person from engaging in conduct (however described) may be exercised—
  - (a) whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; and
  - (b) whether or not the person has previously engaged in conduct of that kind.
- (2) An interim injunction may be granted under this part until the application is finally decided.
- (3) The court may rescind or vary an injunction at any time.

#### **41 Terms of injunction**

- (1) The court may grant an injunction in the terms the court considers appropriate.
- (2) Without limiting the court's power under subsection (1), an injunction may be granted restraining a person from engaging in stated conduct or acting as a private employment agent—
  - (a) for a stated period; or
  - (b) except on stated terms and conditions.

- (3) Subsection (2) applies whether or not engaging in stated conduct or acting as a private employment agent is part of, or incidental to, the carrying on of another business.
- (4) Also, the court may grant an injunction requiring a person to take stated action, including action to disclose information or publish advertisements, to remedy any adverse consequences of the person's contravention of this Act.

## **42 Undertakings as to costs**

If the chief executive applies for an injunction under this part, no undertaking as to damages or costs may be required or made.

# **Part 7 Miscellaneous**

## **43 Criminal history checks**

- (1) This section applies only to the extent necessary to enable the chief executive to decide whether to apply for an injunction against a private employment agent under part 6.<sup>6</sup>
- (2) The chief executive may ask the commissioner of the police service for a written report about—
  - (a) the private employment agent's criminal history; or
  - (b) the criminal history of—
    - (i) an executive officer of a corporation that is a private employment agent; or
    - (ii) an employee of a private employment agent.
- (3) Subject to subsection (4), the commissioner of the police service must give the report to the chief executive.
- (4) The duty imposed on the commissioner of the police service to comply with the request applies only to information in the

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6 Part 6 (Injunctions)

commissioner's possession or to which the commissioner has access.

(5) If, after making the decision mentioned in subsection (1), the person's criminal history report is no longer required to be kept for the purposes of part 6, the chief executive must destroy the report.

(6) In this section—

***criminal history***, of a person, includes a finding of guilty of an offence, on a plea of guilty or otherwise, whether or not a conviction was recorded.

#### **44 Responsibility for acts or omissions of representatives**

(1) This section applies in a proceeding for an offence against this Act.

(2) If it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show—

(a) the act was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority; and

(b) the representative had the state of mind.

(3) An act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.

(4) In this section—

***representative*** means—

(a) of a corporation—an executive officer, employee or agent of the corporation; or

(b) of an individual—an employee or agent of the individual.

***state of mind***, of a person, includes—

(a) the person's knowledge, intention, opinion, belief or purpose; and

- (b) the person's reasons for the intention, opinion, belief or purpose.

#### **45 Executive officers must ensure corporation complies with Act**

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

Maximum penalty—the penalty for the contravention of the provision by an individual.

- (3) Evidence that the corporation has committed an offence against a provision of this Act is evidence that each of the executive officers committed the offence of failing to ensure that the corporation complies with the provision.
- (4) However, it is a defence for an executive officer to prove that—
  - (a) the officer was not in a position to influence the conduct of the corporation in relation to the offence; or
  - (b) 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.
- (5) For subsection (4)(b), 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.

#### **46 Proceedings for offences**

- (1) A prosecution for a charge of an offence against this Act must be by way of summary proceedings before an industrial magistrate.

- (2) A prosecution for an offence against this Act must be commenced within the later of the following—
  - (a) 1 year after the offence is committed;
  - (b) 6 months after the commission of the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.
- (3) The *Industrial Relations Act 1999* and the rules made under that Act apply, with necessary changes, in relation to a proceeding before an industrial magistrate for a charge of an offence against this Act.

#### **47 Appeal**

A person who is dissatisfied with the decision of an Industrial Magistrates Court in a proceeding for a charge of an offence against this Act may appeal to the Industrial Court.

#### **48 Evidentiary provisions**

In a proceeding under this Act—

- (a) the appointment as inspector of a person claiming to be, or stated to be, an inspector and the authority of an inspector to take proceedings, or do any act, must be presumed, until the contrary is proved; and
- (b) a document appearing to be a copy of a request made, or a notice issued, by an inspector under this Act is evidence of what it states; and
- (c) the authority of a person to accept service of a document on behalf of another must be presumed in the absence of evidence to the contrary.

#### **49 Protection from liability**

- (1) An indemnified person is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.
- (2) If subsection (1) prevents a civil liability attaching to the person, the liability attaches itself to the State.

(3) In this section—

*indemnified person* means any of the following—

- (a) the Minister;
- (b) a member of the committee;
- (c) the chief executive;
- (d) an inspector.

## **50 Regulation-making power**

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may impose a penalty for a contravention of the regulation of not more than 14 penalty units.

## **51 Declaration about use of information obtained under expired Act**

- (1) It is declared that information obtained under the expired Act about the activities or conduct of a person who held a licence as a private employment agent under that Act may be used in a proceeding against the person under part 6<sup>7</sup> of this Act.
- (2) In this section—  
*expired Act* means the *Private Employment Agents Act 1983* as in force from time to time before its expiry.

# **Part 8 Amendment of Industrial Relations Act 1999**

## **52 Act amended in pt 8**

This part amends the *Industrial Relations Act 1999*.

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<sup>7</sup> Part 6 (Injunctions)

**53 Amendment of s 408A (Definitions for ch 11A)**

Section 408A, definition *performer*, after ‘whose work is’—  
*insert*—  
‘to compete in sport or’.

**54 Amendment of s 408B (Meaning of *private employment agent*)**

Section 408B(3)—  
*omit, insert*—

- ‘(3) Also, a person is not a *private employment agent* if, for an agreed rate of payment to the person—
- (a) the person makes a worker of the person available to perform work, whether under a contract of service or a contract for service, for a client of the person; and
  - (b) the worker works under the client’s direction; and
  - (c) the person is responsible for performing the obligations owed by a person to the worker, including paying the worker for the work.’.



## Schedule                      Dictionary

### section 3

*code of conduct* see section 6.<sup>8</sup>

*executive officer*, of a corporation, means a person, by whatever name called and whether or not the person is a director of the corporation, who is concerned, or takes part, in the management of the corporation.

*inspector* means a person who holds an appointment as an inspector under section 19.<sup>9</sup>

*model* means a person whose work is to—

- (a) pose for a painter, photographer, sculptor or other artist; or
- (b) put on articles of clothing or accessories, including, for example, jewellery, hats and shoes, and display them to customers, the public or for advertising purposes; or
- (c) display a hairstyle or other personal body ornamentation or decoration.

*performer* means a person whose work is to compete in sport or to act, dance, mime, perform, play, sing or speak in advertising or for entertainment.

*private employment agent* see section 4.<sup>10</sup>

*publish* includes—

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

*reasonably believe* means believe on grounds that are reasonable in the circumstances.

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8 Section 6 (Code of conduct)

9 Section 19 (Appointment and qualifications)

10 Section 4 (Meaning of *private employment agent*)



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