

# **INTRODUCTION AGENTS BILL 2001**

## **EXPLANATORY NOTES**

### **GENERAL OUTLINE**

#### **Objectives of the legislation**

The Bill provides protection for consumers utilising the services of introduction agents and ensures fair trading practices in that industry. The legislation has become necessary due to continuing unfair trading practices in parts of the industry, which have led to considerable consumer detriment.

The objectives of the Bill will be achieved by:

- establishing a licensing system for introduction agents;
- establishing methods for disqualifying people from the industry;
- improving the provision of information to consumers about introduction services and prices for services;
- ensuring that (subject to monetary thresholds) no more than 30% of the contract price can be received prior to any services being provided;
- requiring “cooling off” periods for consumers to ensure protection against high pressure selling; and
- conferring powers on inspectors to investigate and prosecute breaches of the legislation.

The Bill is considered a reasonable and appropriate way of achieving the objectives, as existing laws have failed to curb consumer exploitation.

#### **Other options**

Other options considered included the introduction of a code of conduct. However, due to the lack of cohesion in the industry, and the extent of problems in some areas, it was considered that a voluntary code of conduct

would not effectively address the issues. A voluntary code of conduct for the industry was introduced into Victoria in 1995. It was later replaced by the *Introduction Agents Act 1997 (Vic)* which began operation on 1 July 1998.

### **Administrative Cost**

The introduction of a licensing system will place additional functions on the Office of Fair Trading which will require additional funding. The imposition of a licensing fee will to some extent cover costs.

### **Fundamental Legislative Principles**

Those provisions relating to the form and content of contracts only apply to contracts entered into after the Bill is proclaimed into force, and thus are consistent with fundamental legislative principles.

Clause 35 of the Bill provides for the reversal of the onus of proof in proceedings for specific criminal offences relating to false representations. In the case of these particular offences, the fact to be proved is clearly within the knowledge of the offenders and therefore can be easily disproved by them. In contrast, it is difficult to gather evidence to prove those facts, eg. in the case of fictitious clients. For these reasons, it is considered that the reversal of the onus of proof is justified.

Clause 94 of the Bill requires executive officers of a corporation to ensure that the corporation complies with the Act. If a corporation commits an offence, an executive officer commits the offence of failing to ensure that the corporation complied with the Act, subject to the defences that the executive officer took all reasonable steps to ensure the corporation complied, or that the executive officer was not in a position to influence the conduct of the corporation. Concerns may be raised about this clause on the ground that it fails to pay sufficient regard to the rights and liberties of a person in that it effectively reverses the onus of proof. The clause is included because provisions which a corporation may contravene have the potential to cause substantial consumer detriment and it is appropriate that an executive officer who is in a position to influence the conduct of the corporation, and who is responsible for a contravention, should be accountable.

The Bill includes investigative powers consistent with those in other legislation administered by the Office of Fair Trading. The usual safeguards against abuse of power recommended by the Scrutiny of

Legislation Committee have been included. For example: a warrant is required to enter premises except in very limited circumstances; investigators must identify themselves and explain the purpose of their entry and they must also provide receipts for seized documents or things.

### **Consultation**

The Office of Fair Trading established a consumer hotline to gauge the current amount of consumer detriment in the industry. A survey was also sent to agents to gather further information about the industry and services offered. A draft Bill and an associated Issues Paper prepared by a National Competition Policy Review Committee were distributed for public consultation. Copies were sent to all agencies listed in the Yellow Pages, and to a number of consumers and consumer organisations.

Government Departments, including Queensland Treasury and the Department of State Development, were consulted as part of a National Competition Policy review of the proposed Bill. Other Departments consulted included the former Department of Families, Youth and Community Care, the former Department of Employment, Training and Industrial Relations and the Queensland Police Service. Interstate Fair Trading agencies were also provided with a copy of the draft Bill and Issues Paper for comment.

## **NOTES ON PROVISIONS**

### **PART 1—PRELIMINARY**

#### **Short title**

*Clause 1* sets out the short title of the Act.

#### **Commencement**

*Clause 2* states that the Act will commence on proclamation.

**Purpose**

*Clause 3* sets out the purpose of the Act which is to provide consumer protection in the introduction agency industry. This will be achieved through a licensing system; disqualifying people from the industry; setting minimum standards; improving the provision of information to consumers; ensuring that representations about services are not misleading and promoting sound business practices.

**This Act's interaction with other laws**

*Clause 4(1)* makes it clear that the Act operates in addition to any other laws which may apply to introduction agents. For example, sections in the *Criminal Code* extending the extra-territorial operation of the legislation will apply.

*Clause 4(2)* provides that introduction agents engaged in door-to-door selling will not have to comply with particular requirements under the *Fair Trading Act 1989*. The intention of this limited exemption is to avoid possibly conflicting regulation.

**PART 2—DEFINITIONS AND BASIC CONCEPTS*****Division 1—Dictionary*****Definitions**

*Clause 5* states that the dictionary is contained in Schedule 2 of the Act.

**Notes in text**

*Clause 6* provides that a note in the text is part of the Act.

***Division 2—Basic concepts*****Meaning of “associated person” and “effective control”**

*Clause 7(1)* provides that a person is an “associated person” of an applicant for a licence if the person is in effective control of the applicant’s business.

*Clause 7(2)* provides that a person in “effective control” of a business includes a person who is usually in charge of the business; regularly directs staff or controls or influences substantially the business.

*Clause 7(3)* provides that an executive officer of a corporation is also an “associated person.”

***Division 3—Introduction agent, business, service or agreement*****Meaning of “introduction agent”**

*Clause 8* defines an introduction agent as someone who: is in the business of providing an introduction service; holds himself or herself out as providing an introduction service or shares in the proceeds of such a business. However, the definition is not meant to capture people who only hold shares in the business. Subclause (2) provides that the Act will apply whether the head office or principal place of business is in or outside of Queensland.

**Meaning of “introduction service”**

*Clause 9* defines an introduction service, the intention being for the Act to capture those businesses which arrange for individual people to meet other people, who are also members of the service, to develop personal relationships.

**Meaning of “introduction agreement”**

*Clause 10* defines an introduction agreement as an agreement to provide introduction services where the service is to be provided in Queensland, where the agreement is executed in Queensland or where the client ordinarily resides in Queensland.

***Division 4—Persons who are not introduction agents*****Persons carrying out activities with a community purpose**

*Clause 11* provides that community or sporting groups which may regularly get different people together to meet one another are not acting as introduction agents.

**Persons carrying out non-profit activities**

*Clause 12* provides that a person is not an introduction agent if carrying out activities which do not seek to make a profit.

**Publishers of advertisements**

*Clause 13* provides that mere publishers of “lonely hearts” advertisements do not act as introduction agents.

**Information providers**

*Clause 14* is aimed primarily at exempting from the ambit of the Act persons who offer services over the Internet where: there is no need for the client to communicate with the information provider; where the initial fee is relatively small, and where there is no continuing obligation to pay fees.

**Organisers of social activities**

*Clause 15* is intended to provide that the organisers of social activities which are open to the public, where there are admission costs payable, and where the client is under no further obligations to the organiser (eg public dances) are not acting as introduction agents.

**Persons providing neighbourhood information and welcome services**

*Clause 16* provides that a business which arranges people to meet with the primary purpose of providing local, neighbourhood information, is not acting as an introduction agent.

**Providers of Prostitution**

*Clause 17* a person does not act as an introduction agent by providing prostitution services or services relating to prostitution.

**PART 3—LICENCES*****Division 1 – Applications for licence*****Requirement to be licensed**

*Clause 18* provides that a person must not carry on the business of an introduction agent without a licence.

**Application for licence**

*Clause 19* provides that a person may apply to the chief executive for a licence. The clause sets out how the application is to be made and a requirement for the applicant to state the preferred term of the licence. It also empowers the chief executive to ask for further information or documents and to reject the application if the applicant refuses to provide the same.

**Entitlement to licence**

*Clause 20(1)* provides that the chief executive may only grant a licence if he or she is satisfied that the applicant is a suitable person.

*Clause 20(2)* sets out criteria that the chief executive must consider in deciding whether the applicant is a suitable person. The chief executive must apply the criteria not only to the applicant, but to associated persons.

**Disqualifying criteria—individuals**

*Clause 21* provides that an individual is not a suitable person to hold a licence if the person or an associated person falls within certain listed criteria.

**Disqualifying criteria—corporations**

*Clause 22* lists criteria disqualifying a corporation from being a suitable person to hold a licence.

**Inquiries about applicant's suitability to hold licence**

*Clause 23(1)* allows the chief executive to make inquiries about an applicant or an associated person to assist in deciding if the applicant is a suitable person to hold a licence.

*Clause 23(2)* provides that the Commissioner of Police must give the chief executive a report on the criminal history of the applicant or associated person if requested.

*Clause 23(3)* provides that “criminal history” refers to the criminal history that is in the Commissioner’s possession or to which he or she ordinarily has access in other States, Territories or the Commonwealth.

*Clause 23(4)* restricts the use of the criminal history information.

**Decision on application**

*Clause 24(1)* provides that the chief executive must consider an application for a licence and make a decision.

*Clause 24(2)* states what the chief executive must do if he or she decides to grant the licence.

*Clause 24(3)* states what the chief executive must do if he or she decides to refuse to grant the licence.

**Renewal of licence**

*Clauses 25(1), (2),(3) and (4)* set out the procedure for renewing a licence.

*Clause 25(5)* provides that where an application for renewal of a licence is made, the licence is taken to have continued in force until the chief executive decides whether or not to renew it, or until the application is withdrawn.

***Division 2—Suspension, cancellation, refusals to renew and imposing conditions on a licence*****Grounds for suspending, cancelling, refusing to renew or imposing conditions on a licence**

*Clause 26* sets out various grounds for suspending, cancelling, refusing to renew or imposing conditions on a licence.

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

*Clause 27* sets out the procedure for suspending, cancelling, refusing to renew or imposing conditions on a licence. The licensee is to be provided with a “show cause” notice and to be given an opportunity to demonstrate why the action should not be taken. The chief executive must inform the licensee in writing of his or her decision, must give reasons for the decision (if action is to be taken) and the licensee is given a right of appeal to the Magistrates Court.

**Return of suspended or cancelled licence**

*Clause 28* provides that if a licence is cancelled or suspended, the chief executive may request the licensee to return it to the chief executive. The chief executive will return the licence at the end of any suspension period.

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

*Clause 29* provides that if a licensee becomes aware of a change in information given to the chief executive in support of an application for a licence or a renewal of a licence, the licensee must give details of the change to the chief executive.

**Replacement licence**

*Clause 30* provides that a licensee may apply for the replacement of a lost, stolen or destroyed licence and sets out the procedure for doing so,

both for the licensee and the chief executive. If the chief executive refuses to replace the licence, the licensee may appeal to the Magistrates Court.

### **Surrender of licence**

*Clause 31* enables a licensee to surrender a license and sets out the procedure for doing so.

### **Licence not transferable**

*Clause 32* provides that a licence is not transferable.

### **Register of licences**

*Clause 33* provides that the chief executive must maintain a publicly accessible register of licences.

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

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

*Clause 34* prohibits an employee or associated person from: representing himself or herself to be a client; falsely representing that another person or a person with specific characteristics or a fictitious person is a client, or falsely representing the number of members on their membership lists.

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

*Clause 35* prohibits an introduction agent from: representing himself or herself to be a client, falsely representing that another person or a person with specific characteristics or a fictitious person is a client or falsely representing the number of members on their membership lists. In prosecuting for a breach of these provisions, the onus of proof is reversed.

**Use and protection of client information**

*Clause 36(1)* provides that an introduction agent must restrict access to clients' personal information.

*Clause 36(2)* prohibits misuse of client information by an introduction agent or employee of the agent.

*Clauses 36(3) and (4)* provide that client information may be given to a new owner of the introduction agent's business, without breaching the above provisions.

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

*Clause 37* prohibits an introduction agent from carrying on business from the same premises where a person is engaged in prostitution. "Premises" is defined.

**Employees must be over 18**

*Clause 38* limits the range of tasks which may be undertaken by employees of introduction agents who are under the age of 18 years.

**Clients must be over 18**

*Clause 39* provides that an introduction agent must not enter into an introduction agreement with a person under the age of 18 years.

**Purpose of market research must be disclosed**

*Clause 40* provides that when an introduction agent is compiling a list of potential clients, the agent or person acting for the agent must inform the person from whom the information is sought, the reason why the information is being sought, and the reason why it is being sought. An agent must also try to ensure that any person acting on his or her behalf complies with these obligations.

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

*Clause 41* provides that once a client requests in writing that no more introduction services are to be provided, the introduction agent must immediately remove his or her name from the "active" list. Within 2

business days of receiving the request, the agent must do everything else which is practicable to comply with the request.

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

*Clause 42* provides that an introduction agent must keep a copy of any document required to be made under the Act for 7 years after it is either signed or served. If a new person takes over the business, then the records must be transferred to the new owner and retained.

## **PART 5—INTRODUCTION AGREEMENTS**

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

*Clause 43* provides that before entering into an introduction agreement, an introduction agent must provide a client with a legible and clearly expressed statement describing the introduction service to be provided, and in particular setting out specified information about the agent and its business. The agent must obtain a written acknowledgment from the client that he or she has received this statement. If the statement is given in a language other than English, then the statement should be substantially consistent with the information provided in English.

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

*Clause 44* sets out a list of information which must be included in an introduction agreement, including all the terms of the agreement. It also provides that an introduction agent must not insert a date into an introduction agreement which is earlier than the date on which the client signed the agreement.

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

*Clause 45* provides that after entering into an agreement, the introduction agent must provide the client with a signed copy (or photocopy) of the agreement.

**When introduction agreement is voidable**

*Clause 46* provides that if the agent does not give the client a pre-contractual statement, or a copy of the introduction agreement or those documents do not comply with the Act, then the client may end the agreement.

**Client entitled to refund if agreement voidable**

*Clause 47* provides that if a client gives written notice that he or she is ending an agreement under clause 46, then the introduction agent must refund moneys paid under the agreement. The client and agent may also agree to a smaller refund to avoid possible court action under clause 48.

**When introduction agent entitled to compensation**

*Clause 48* provides that if an introduction agent is given a notice under clause 46, the agent may instead of refunding any money, pay all moneys into court and apply to the court for compensation for any work performed under the agreement.

**Restriction on prepayments**

*Clause 49* provides that, where the contract price is above a certain prescribed amount, or where the contract price and other prescribed amounts have been paid to the agent within the last 30 days or previous 12 months, then the introduction agent or any associated person cannot receive an amount greater than the “prepayment limit.” The “prepayment limit” is defined in Schedule 2. The purpose of this is to place a restriction on how much money the agent can receive before any services are provided under the agreement.

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

*Clause 50* provides that if clause 49 is breached, then the client may end the agreement at any time by written notice.

**Client entitled to full refund**

*Clause 51* provides that if a client ends an agreement under clause 50, then the agent must refund the whole of the amount paid under the agreement. The client and agent may also agree on a smaller amount to avoid court action under clause 52.

**When introduction agent entitled to compensation**

*Clause 52* provides that if an agent receives a notice under clause 50, then the agent may apply to the court for compensation for work performed under the agreement. The clause will not apply if the agent and client have already agreed on an amount to be paid to the agent and this has been paid.

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

*Clause 53* ensures that after a client ends an agreement under clause 46 or 50, the client and agent may agree on an amount to be refunded to the client under clauses 47 or 51. These provisions will allow the parties to agree on adequate compensation for the agent, without the client being taken to court.

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

*Clause 54* provides that, where the contract price is above certain prescribed amounts (payable over specific periods) then apart from the first payment made, the rest of the money is to be paid in equal instalments spread equally over the term of the contract. (The amount of the first payment is governed by the “prepayment limit” set out in clause 49).

**Early termination payment by client allowed**

*Clause 55* provides that despite clause 54, an introduction agreement may require a client to pay an amount for ending the agreement early. The amount must be clearly stated in the agreement and must not be more than the amount already paid.

**Agreement with opt out clause**

*Clause 56* provides that if an agreement has an “opt out clause” and the client does not end the agreement on the “opt out date” then the payment restrictions in clauses 49 to 55 are to apply to the remainder of the agreement as if it was a new agreement.

The terms “opt out clause” and “opt out date” are defined in the Schedule 2 Dictionary and are used in the definition of “prepayment limit.”

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

*Clause 57* makes it clear that an agent cannot contract out of the provisions of the Act. Any clause in a contract which conflicts with the Act will be void.

**Cooling-off period**

*Clause 58* provides that a client may withdraw from an agreement within 3 business days of receiving a copy of the signed agreement.

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

*Clause 59* provides that if a client ends an agreement under clause 59, then the agent must refund the total amount paid by the client less \$50 or 10% of the contract price (whichever is less).

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

*Clause 60* provides that if a client wishes to obtain a different level of service from that stated in the agreement, then the introduction agent must enter into a new agreement with the client.

## **PART 6— ENFORCEMENT**

### *Division 1—Inspectors*

#### **Appointment of inspectors**

*Clause 61* provides that the chief executive may appoint inspectors for the purposes of the Act.

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

*Clause 62* provides that the chief executive must give each inspector an identity card and the identity card must be returned to the chief executive when the person stops being an inspector. The identity card must contain a recent photo of the inspector, a copy of the inspector's signature, identify the person as the inspector, and the expiry date of the card.

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

*Clause 63* requires an inspector to produce the inspector's identity card or have the identity card clearly displayed for anyone to see, before the inspector exercises any power under the Act. If it is not practicable for the inspector to produce the card for a person's inspection before exercising the power, the inspector must produce it at the first reasonable opportunity.

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

*Clause 64* provides that an inspector holds office and stops holding office on conditions set out in the appointment instrument. An inspector may also resign by notice to the chief executive. However, an inspector may not resign if a term of his or her employment demands that he or she be an inspector under the Act.

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

*Clause 65(1)* provides that an inspector may enter a place if: the occupier consents; it is a public place and entry is made when it is open to the public; the inspector has a warrant or the inspector reasonably believes that it is the place of business of an introduction agent and it is open for entry or required to be open under the terms of the licence.

*Clause 65(2)* provides that the inspector does not need consent or a warrant to enter land around the premises to contact the occupier, or enter part of the place where the public enters, in order to contact the occupier.

*Clause 65(3)* provides that a place of business does not include a part of the place where a person resides.

***Subdivision 2—Procedure for entry*****Entry with consent**

*Clause 66* provides that when an inspector intends to request consent to enter under clause 65, the inspector must tell the occupier the purpose of the entry and that the occupier is not required to consent. The inspector may ask the occupier to sign an acknowledgment of the consent, and the acknowledgment must include certain prescribed information. The inspector must give a copy of the acknowledgment to the occupier. The clause further provides that a court must find that an occupier did not consent to entry if: the issue of consent arises in court; an acknowledgment of consent is not produced, and the inspector cannot prove that the occupier consented.

**Application for warrant**

*Clause 67* provides that an inspector may apply to a Magistrate for a warrant for a place and sets out the application procedure. The Magistrate may require additional information.

**Issue of warrant**

*Clause 68(1)* limits the situations where a Magistrate may issue a warrant. There must be reasonable grounds for suspecting a breach of the Act creating an offence and that the evidence will remain in place for the next seven days.

*Clause 68(2)* provides that a warrant must state certain information including the inspector's rights to enter; the suspected offence; the evidence that may be seized, the hours when the place may be entered and the date the warrant ends (within 14 days after issue).

**Special warrants**

*Clause 69(1)* provides that an inspector may apply for a warrant by phone, fax, radio or other form of communication because of urgency or other special circumstances.

*Clauses 69(2) and (3)* state that the inspector must prepare an application for a special warrant and may apply for it before the application is sworn.

*Clause 69(4)* provides that the Magistrate must fax a copy of the warrant to the inspector immediately after issue.

*Clause 69(5)* provides that if it is not reasonably practicable to fax a copy, the Magistrate must tell the inspector the terms of the warrant and the time of issue. The inspector must then complete a warrant form.

*Clause 69(6)* provides that the facsimile warrant or the warrant form then authorises entry.

*Clauses 69(7) and (8)* provide that the inspector must then send to the Magistrate the sworn application and any completed warrant form which the Magistrate must attach to the special warrant.

*Clause 69(9)* provides that if: an issue arises in court as to whether a power was authorised by a special warrant, the person relying on the warrant must prove its lawfulness.

**Warrants—procedure before entry**

*Clause 70* sets out the procedure for an inspector named in a warrant to comply with, prior to entry. Before entry the inspector must or reasonably attempt to: identify himself or herself with an identity card or other document; give the person a copy of the warrant or warrant form; tell the

person the warrant authorises the inspector to enter and give the person an opportunity to allow the inspector to enter immediately without force. However, the inspector need not comply with this procedure if he or she has reasonable grounds to believe that compliance would frustrate the effective execution of the warrant.

### ***Subdivision 3—Powers after entry***

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

*Clause 71* provides that on entering a place the inspector may do certain things including: search, examine, inspect, take samples, take copies of documents, take equipment onto the premises or require a person in the place to give reasonable help in doing any of these things.

#### **Failure to help inspector**

*Clause 72* provides that a person required to give reasonable help under clause 72 must comply unless compliance might tend to incriminate the person.

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

#### **Power to seize evidence**

*Clause 73* provides that in certain circumstances, if an inspector enters lawfully under the Act but without a warrant, he or she may seize evidence if he or she reasonably believes it evidences an offence against the Act. If a warrant is issued, evidence may be seized for the purposes of the warrant. The inspector may also seize evidence if he or she reasonably believes it is evidence of an offence against the Act, and the seizure is necessary to prevent its destruction.

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

*Clause 74* provides that an inspector must provide a receipt for anything seized. It sets out the procedure for giving a receipt, the information to be included, and circumstances where the procedure does not apply.

**Access to seized things**

*Clause 75* provides that until a seized thing is returned, the person who would normally be entitled to it may inspect it or make copies of it, unless this would be impracticable or unreasonable.

**Return of seized things**

*Clause 76* provides that an inspector must return a seized thing within one year or at the end of any proceedings started in that year. The inspector must return the thing sooner if its retention as evidence is no longer necessary and its return is not likely to result in the repetition of an offence against the Act.

**Compensation**

*Clause 77* provides that a person may claim compensation from the State if a person incurs loss or expense because of the exercise or purported exercise of an inspector's powers. A claim may be made in a court.

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

*Clause 78* gives inspectors powers to ask for the name and address of persons they reasonably believe have just committed or are committing an offence against the Act. The inspector must warn the person that to refuse would be an offence. However, there is no offence for refusing, if it is later revealed that the person did not commit the suspected offence.

***Subdivision 6—General enforcement matters*****False or misleading statements**

*Clause 79* makes it an offence to make false or misleading statements to an inspector.

**False or misleading documents**

*Clause 80* makes it an offence to knowingly give documents to an inspector which contain false or misleading information, unless the person tells the inspector of this fact and if possible, gives the correct information.

**Obstruction of inspectors**

*Clause 81* makes it an offence to obstruct an inspector without reasonable excuse. There are requirements for an inspector to warn a person of this.

**PART 7—APPEALS****Right to appeal to Magistrates Court**

*Clause 82* provides for appeals to the Magistrates Court against decisions to suspend, cancel, refuse to renew, refuse to replace or refuse to place a condition on a licence.

**How to start appeal**

*Clause 83* sets out how an appeal under clause 80 can be started, ie with a written notice of appeal and within 28 days of receiving the decision.

**Stay of operation of decisions**

*Clause 84* provides that the court has power to grant a stay of the original decision pending the end of the appeal.

**Hearing procedures**

*Clause 85* sets out the appeal procedures: conducted under the rules of court for the Magistrates Court or court's directions; not bound by the rules of evidence, but observing natural justice. The appeal is by way of rehearing.

**Powers of court on appeal**

*Clause 86* provides that the court may confirm the original decision, substitute another one or set aside the original decision and return the matter to the chief executive with appropriate directions.

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

*Clause 87* provides that appeals from the Magistrates Court on licensing decisions can only be made to the District Court on questions of law.

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

*Clause 88* provides that if the chief executive reasonably believes that an introduction agent has contravened the Act, then he or she may ask the agent to give an undertaking not to repeat the contravention. The chief executive cannot begin proceedings for an offence against the Act for the same contravention without withdrawing the undertaking.

**Variation and withdrawal of undertakings**

*Clause 89* provides that an undertaking may be varied or withdrawn by: the agent with agreement of the chief executive or by the chief executive if the agent contravened the Act in a way unknown to the chief executive at the time the undertaking was given, and had the chief executive known, he or she would have refused the undertaking. The chief executive may also withdraw the undertaking if it is no longer necessary. The chief executive must give written notice of the withdrawal to the agent and a court may not hear a charge brought against the agent in relation to the contravention in the undertaking unless the undertaking has been contravened or withdrawn.

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

*Clause 90* sets out proceedings for offences against the Act under the *Justices Act 1886*.

**Evidence**

*Clause 91* provides that authority of an inspector is presumed unless a party requires proof. It also provides that a signature purporting to be that of the chief executive does not have to be proved, and that a certificate signed by the chief executive stating certain matters is evidence of those matters.

**Additional powers of court**

*Clause 92* sets out orders the court may make if a person is guilty of an offence against the Act. Orders relate to cancelling a licence or ordering a person not to be involved in any introduction agency business.

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

*Clause 93* provides that a corporation has the knowledge and intent of any of its officers acting or purporting to act in the course of duty.

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

*Clause 94* requires executive officers of a corporation to ensure the corporation complies with the Act. Certain defences are available.

***Division 3—Other general provisions*****Confidentiality of information**

*Clause 95* places confidentiality obligations on persons administering the Act, eg inspectors. However, information can be disclosed in certain circumstances, eg to a court or to the Commissioner of the Police Service, or under the *Freedom of Information Act 1992*.

**Protecting officials from liability**

*Clause 96* protects officials from liability in disclosing information about the commercial or business reputation of a person involved in providing introduction services. However, liability may attach to the State.

**Delegation by chief executive**

*Clause 97* gives the chief executive the power to delegate powers under the Act.

**Approved forms**

*Clause 98* gives the chief executive power to approve forms for use under the Act.

**Regulation-making power**

*Clause 99* provides that regulations may be made under the Act.

**PART 9—TRANSITIONAL PROVISIONS****Requirement to be licensed**

*Clause 100* provides that any person currently carrying on the business of an introduction agent will not have to be licensed until six months after the commencement of the licensing provisions.

**Existing introduction agreements**

*Clause 101* provides that those parts of the Act which regulate introduction agreements will only apply to new agreements entered into after the Act commences. However, introduction agents will not be able to vary existing agreements to avoid the effect of the Act.

**Existing employees under 18**

*Clause 102* provides that the restrictions on employing people under the age of 18 years will not apply to a person already employed before the commencement of the section.

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

*Schedule one* lists some of the offences, the commission of which by an applicant or an associated person, will disqualify the applicant from being licensed as an introduction agent. The offences relate to fraud, dishonesty, violence and sexual offences. (See also definition of “disqualifying offence” in Schedule 2).

**SCHEDULE 2****DEFINITIONS**

*Schedule two* defines terms used in the Act.