

1998
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Mr Berry)

Agents (Amendment) Bill 1998

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Agents (Amendment) Bill 1998

A BILL

FOR

An Act to amend the *Agents Act 1968*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1. Short title

This Act may be cited as the *Agents (Amendment) Act 1998*.

5 **2. Commencement**

(1) Sections 1, 2 and 3 commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions commence on a day, or respective days, fixed by the Minister by notice in the *Gazette*.

10 (3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

3. Principal Act

In this Act, "Principal Act" means the *Agents Act 1968* ¹

4. Interpretation

Section 5 of the Principal Act is amended—

- 5 (a) by omitting from the definition of "agent" in subsection (1) "or travel agent" and substituting ", travel agent or employment agent";
- (b) by omitting from the definition of "business" in subsection (1) "or travel agent" and "or 5D" and substituting ", travel agent or employment agent" and ", 5D or 5DA" (respectively),
- 10 (c) by omitting from the definition of "licence" in subsection (1) "or a travel agent" (wherever occurring) and substituting ", a travel agent or an employment agent", and
- (d) by inserting in subsection (1) the following definition
- 15 " 'employment agent' means a person who, by virtue of section 5DA, carries on business as an employment agent,".

5. Insertion

After section 5D of the Principal Act the following section is inserted:

"5DA. Employment agents—interpretation

- 20 "(1) A person carries on business as an employment agent if, in the course of carrying on business, the person—
- (a) finds or assists in finding a person to carry out work for a person seeking to have work carried out,
- 25 (b) finds or assists in finding employment for a person seeking to be employed; or
- (c) holds out or advertises that he or she is prepared to carry on an activity referred to in paragraph (a) or (b).
- "(2) A person shall not be taken to carry on business as an employment agent only because the person—
- 30 (a) publishes an advertisement placed by or on behalf of some other person who is seeking to have work carried out or to be employed; or
- (b) carries out any functions in the course of his or her employment by some other person.
- 35 "(3) For the purposes of subsection (1) it is immaterial whether the employment or work referred to in that subsection is to be undertaken or carried out pursuant to a contract of employment or otherwise."

6. Employees of agents

Section 5E of the Principal Act is amended by omitting “or 5D” and substituting “, 5D or 5DA”.

7. Fit and proper person

5 Section 5F of the Principal Act is amended—

- (a) by omitting from subsection (1) “and (f) (i) and (ii)” and substituting “, (f) (i) and (ii), (g) (ii) and (h) (i) and (ii)”; and
- (b) by omitting from subparagraph (1) (a) (i) “or (f) (i) or (ii)” and substituting “, (f) (i) or (ii), (g) (ii) or (h) (i) or (ii)”.

10 **8. Register**

Section 7 of the Principal Act is amended—

- (a) by omitting from paragraph (1) (c) “and”; and
- (b) by adding at the end of subsection (1) the following paragraph:
“(e) the Register of Employment Agents.”.

15 **9. Natural persons to be licensed**

Section 18 of the Principal Act is amended by omitting the penalty provision at its foot and substituting the following subsection and penalty provision:

- 20 “(5) A person (other than a company) shall not carry on business as an employment agent unless the person holds an employment agent’s licence.
Penalty: 20 penalty units.”.

10. Companies to be licensed

25 Section 19 of the Principal Act is amended by omitting the penalty provision at its foot and substituting the following subsection and penalty provision:

- “(5) A company shall not carry on business as an employment agent unless it holds an employment agent’s licence.
Penalty: 100 penalty units.”.

11. Insertion

30 After section 19A of the Principal Act the following section is inserted in Part III:

“19B. Licensed employment agents—receipt of remuneration

35 A person or company who holds an employment agent’s licence shall not, in connection with carrying on business as an employment agent, demand or receive any fee, charge or other remuneration except from a

person for whom the licensee finds, or assists in finding, a person to undertake employment or otherwise to carry out work.

Penalty:

- (a) if the offender is a natural person—20 penalty units;
- 5 (b) if the offender is a body corporate—100 penalty units.”.

12. Insertion

After Division 3A of Part V of the Principal Act the following Division is inserted:

“Division 3AA—Eligibility for grant of employment agent’s licence

“47CA. Eligibility—natural persons

A person, other than a company, is eligible for the grant of an employment agent’s licence if—

- (a) the person is at least 18 years of age;
- 15 (b) the person’s experience as an employment agent has been such that he or she is competent to carry on business on his or her own account as a licensed employment agent;
- (c) the person is not disqualified under subsection 82A (1) or (2) or a corresponding law from holding an employment agent’s licence;
- 20 and
- (d) the person is not disqualified under subsection 82A (3) or a corresponding law from being involved in the direction, management or conduct of an employment agent’s business

“47CB. Eligibility—companies

25 A company is eligible for the grant of an employment agent’s licence if—

- (a) each person involved in the management of the company is at least 18 years of age,
- 30 (b) the company is not prohibited by its memorandum of association from carrying on business as an employment agent;
- (c) at least 1 of the directors of the company has experience such that he or she is competent to carry on business on his or her own behalf as a licensed employment agent;
- 35 (d) the company is not disqualified under subsection 82A (1) or (2) or a corresponding law from holding an employment agent’s licence; and

- (e) no officer of the company is disqualified under subsection 82A (3) or a corresponding law from being involved in the direction, management or conduct of an employment agent's business."

13. Applications for licences by individuals

- 5 Section 48 of the Principal Act is amended by omitting from paragraph (1) (cb) "or business agent" and substituting ", business agent or employment agent".

14. Applications for licences by companies

- 10 Section 49 of the Principal Act is amended by omitting from paragraph (1) (d) "or business agent" and substituting ", business agent or employment agent".

15. Grant or refusal of licence

Section 51 of the Principal Act is amended—

- 15 (a) by omitting from subparagraph (3) (e) (iii) "or" (last occurring); and
- (b) by adding at the end of subsection (3) the following paragraphs:
 - "(g) in the case of an application for the grant of an employment agent's licence—the Board has reasonable grounds for believing that—
 - 20 (i) the applicant is not likely to carry on business as an employment agent honestly and fairly,
 - (ii) the applicant is in any other way not a fit and proper person to hold an employment agent's licence; or
 - 25 (iii) if a person employed or to be employed by the applicant to be in charge of the day to day conduct of the applicant's business at a particular place were to apply for an employment agent's licence, the Board would, by virtue of paragraph (b) or (d) or subparagraph (i) or (ii), be entitled to refuse the application; or
 - 30
 - (h) in the case of an application by a company for the grant of an employment agent's licence—the Board has reasonable grounds for believing that—
 - 35 (i) the reputation of the company is such that it would not be a fit and proper person to hold an employment agent's licence;
 - (ii) if a director of, or a person concerned in the management of, the company were to apply for an employment agent's licence, the Board would, by
 - 40

virtue of paragraph (b), (d) or (g), be entitled to refuse the application; or

- (iii) any person (other than an officer of the company) whom the Board has reasonable grounds for believing has control or substantial control of the company is not likely to exercise that control honestly and fairly.”.

5

16. Issue of licences

Section 53 of the Principal Act is amended—

- 10 (a) by omitting from subsection (2) “or 47 (1) (b)” and substituting “, 47 (1) (b) or 47CB (c)”; and
(b) by inserting in subsection (3) “or employment agent” after “travel agent”.

17. Company directors specified in licence

15 Section 54 of the Principal Act is amended—

- (a) by omitting from subparagraph (7) (a) (i) “or 47 (1) (b)” and substituting “, 47 (1) (b) or 47CB (c)”; and
(b) by omitting from paragraph (8) (c) “or 47 (1) (b)” and substituting “, 47 (1) (b) or 47CB (c)”.

20 **18. Trust money**

Section 55 of the Principal Act is amended by adding at the end of subsection (2) “or employment agents”.

19. Application of Division

25 Section 55A of the Principal Act is amended by adding at the end “or employment agents”.

20. Accounting records

Section 60 of the Principal Act is amended—

- (a) by omitting from subsection (1) “travel agent” and substituting “travel agent or employment agent”;
30 (b) by inserting after subsection (1A) the following subsection:
“(1B) A licensed employment agent shall keep accounting and other records disclosing the particulars of any money received by the agent in respect of the activity referred to in paragraph 5DA (1) (a), being an activity in respect of which the agent is, by virtue of section 5DA, carrying on business as an employment agent ”,
35 (c) by omitting from subsection (3) “or (1A)” and substituting “, (1A) or (1B)”; and

(d) by inserting in subsection (3) “or (1B)” after “subsection (1A)”.

21. Receipts

Section 61 of the Principal Act is amended by inserting in subsection (1) “or (1B)” after “(1A)”.

5 **22. Application**

Section 61A of the Principal Act is amended by adding at the end “or employment agents”.

23. Records of other money

10 Section 70 of the Principal Act is amended by omitting from subsection (1) “(1A)” and substituting “(1A) or (1B)”.

24. Inspection of bank accounts

Section 71 of the Principal Act is amended—

- 15 (a) by omitting from paragraph (1) (a) “travel agent” and substituting “travel agent or employment agent”;
- (b) by adding at the end of paragraph (1) (b) “or (1B)”;
- (c) by inserting in subsection (2) “or (1B)” after “(1A)”.

25. Rules of conduct—licensed agents

20 Section 72 of the Principal Act is amended by omitting from subsection (3) “travel agent” and substituting “travel agent or employment agent”.

26. Revocation of registration or licence

Section 77 of the Principal Act is amended by omitting from subparagraph (1) (c) (i) “or 47 (1) (b)” and substituting “, 47 (1) (b) or 47CB (c)”.

25 **27. Suspension of travel or employment agent’s licence**

Section 82 of the Principal Act is amended by inserting “or employment agent’s” after “travel agent’s”.

28. Notice to bank

Section 85 of the Principal Act is amended—

- 30 (a) by inserting in subparagraph (1) (a) (ii) “or (1B)” after “(1A)”;
- (b) by omitting from subparagraph (1) (a) (iii) “(1A)” and substituting “(1A) or (1B)”.

29. Agent not to share commission

Section 101 of the Principal Act is amended by omitting from subsection (1) "travel agent" and substituting "travel agent or employment agent".

5 **30. Insertion**

After section 105A of the Principal Act the following section is inserted

"105B. Improper use of title of employment agent

10 "(1) A person who is not a licensed employment agent shall not use, in an advertisement or otherwise, words which would reasonably lead to the belief that the person is a licensed employment agent.

Penalty.

(a) if the offender is a natural person—10 penalty units;

(b) if the offender is a body corporate—50 penalty units.

15 "(2) Without limiting the effect or application of subsection (1), a person who is not a licensed employment agent who—

(a) places, or suffers or permits to be placed, on a building in which the person's business is carried on; or

(b) places on a document, as a description of his or her business;

20 the words 'employment agent' or other words that imply that, in the course of carrying on business, the person acts, or is prepared to act, as agent for principals in connection with any activity in respect of which the agent is, by virtue of section 5DA, carrying on business as an employment agent, is guilty of an offence punishable, on conviction, by a fine not exceeding—

25 (c) in the case of a natural person—10 penalty units; or

(d) in the case of a company—50 penalty units."

31. Evidence of licensing

30 Section 119 of the Principal Act is amended by omitting "or a travel agent's licence" and substituting "a travel agent's licence or an employment agent's licence"

NOTES

Principal Act

1 Reprinted as at 30 November 1996 See also Acts Nos. 41 and 96, 1997

Penalty units

See section 33AA of the *Interpretation Act 1967*