

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY

AGENTS (AMENDMENT) BILL 1998

EXPLANATORY MEMORANDUM

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AGENTS (AMENDMENT) BILL 1998

OUTLINE

Current arrangements for Employment Agents

The *Agents Act 1968* makes no provision for the regulation of employment agents as is the case in other states but in particular in surrounding New South Wales. The *Act* as it stands regulates the business of a real estate agent, stock and station agent, business agent or travel agent.

The Bill

The purpose of the Agents (Amendment) Bill 1998 is to put in place a scheme for the regulation of employment agents in the Australian Capital Territory. This follows recent changes initiated by the Federal Government which has seen the demise of the Commonwealth Employment Service and new Commonwealth arrangements which invite the establishment of a plethora of employment agencies around the country. It is therefore necessary to bring the Australian Capital Territory into line so far as the regulation of the business of an employment agent is concerned. The principle aim of the Bill is to prevent the exploitation of job seekers by employment agencies.

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Clauses 1, 2 and 3 are formal requirements. Clause 1 refers to the short title of the Bill; clause 2 sets out the commencement arrangements; and clause 3 identifies the title of the act being amended.

Clause 4 - Interpretation.

Section 5 of the Principal Act is amended to include employment agent in the definition of 'agent', 'business' and 'licence'. The clause also includes the definition of an 'employment agent'.

Clause 5 - Insertion

Clause 5 inserts a new section 5DA which defines the business of an employment agent.

Clause 6 - Employees of agents

Clause 6 amends section 5E of the Principal Act to include a reference to the new section 5DA. This allows the employees of employment agents to carry out their employment without being licensed.

Clause 7 - Fit and proper person

Clause 7 applies the 'fit and proper person' test to employment agents.

Clause 8 - Register

Clause 8 provides for a Register of Employment Agents.

Clause 9 - Natural persons to be licensed

Clause 9 amends section 18 of the Principal Act to prohibit the carrying on of business as an employment agent unless licensed. The clause also provides for a penalty of 20 penalty units.

Clause 10 - Companies to be licensed

Clause 10 amends section 19 of the Principal Act to prohibit a company from carrying out the business of an employment agent unless licensed. The clause provides for a penalty of 100 penalty units.

Clause 11 - Insertion

Clause 11 inserts a new section 19B 'Licensed employment agents - receipt of remuneration'. Section 19B prevents a person or a company which holds an employment agent's licence from collecting a fee, charge or any other remuneration from a person for whom work is found or assistance has been given to find work. The clause provides for a penalty of 20 penalty units for a natural person and 100 penalty units for a body corporate.

Clause 12 - Insertion

Clause 12 inserts new Division 3AA 'Eligibility for grant of employment agent's licence'. Division 3AA sets out the requirements for the grant of a licence for natural persons in section 47CA and companies in section 47CB.

Clause 13 - Applications for licences by individuals

Clause 13 amends section 48 of the Principal Act to include 'employment agent'.

Clause 14 - Applications for licences by companies

Clause 14 amends section 49 of the Principal Act to include 'employment agent'

Clause 15 - Grant or refusal of licence

Clause 15 amends section 51 of the Principal Act to include provisions for the board to grant or refuse an application from a natural person or a company for a licence for an employment agent.

Clause 16 - Issue of licences

Clause 16 amends section 53 of the Principal Act to include reference to 'employment agents' among the conditions for the issue of licences. This clause includes a reference to the new section 47CB - Eligibility - companies

Clause 17 - Company directors specified in licence

Clause 17 amends section 54 of the Principal Act to include a reference to the new section 47CB - Eligibility - companies

Clause 18 - Trust money

Clause 18 amends section 55 of the Principal Act to exclude employment agents from the provisions of that section

Clause 19 - Application of division

Clause 19 amends section 55A of the Principal Act to exclude employment agents from the provisions of Division 2 - Trust accounts

Clause 20 - Accounting records

Clause 20 amends section 60 of the Principal Act to include provision for the keeping of records by employment agents.

Clause 21 - Receipts

Clause 21 amends section 61 of the Principal Act to include provisions requiring an employment agent to give receipts and keep receipt records.

Clause 22 - Application

Clause 22 amends section 61A of the Principal Act to exclude employment agents from the provisions of Division 4 - Audit and inspection of trust accounts.

Clause 23 - Records of other money

Clause 23 amends section 70 of the Principal Act to require the keeping of accounting and other records by employment agents other than records kept under the requirements of new sub section 60 (1B)

Clause 24 - Inspection of bank accounts

Clause 24 amends section 71 of the Principal Act to include reference to accounts, related documents or records kept in respect of an employment agent.

Clause 25 - Rules of conduct - licensed agents

Clause 25 amends section 72 of the Principal Act to apply the same rules of conduct which apply to travel agents to employment agents.

Clause 26 - Revocation of registration or licence

Clause 26 amends section 77 of the Principal Act to enable the board to revoke the registration or licence of a company licensed as an employment agent.

Clause 27 - Suspension of travel or employment agent's licence

Clause 27 amends section 82 of the Principal Act to enable the board to suspend an employment agent's licence.

Clause 28 - Notice to bank

Clause 28 amends section 85 of the Principal Act to apply provisions of the section to an employment agent.

Clause 29 - Agent not to share commission

Clause 29 amends section 101 of the Principal Act to exclude employment agents from the provision prohibiting agents from sharing commissions, fees, gains or rewards.

Clause 30 - Insertion

Clause 30 inserts a new section 105B 'Improper use of title of employment agent' to provide penalties for the improper use of the title of employment agent.

Clause 31 - Evidence of licensing

Clause 31 amends section 119 of the Principle Act to include employment agents in the provisions for evidence of licensing.