

First print



New South Wales

Employment Agents Bill 1995

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament. This Bill is cognate with the *Industrial Relations Bill 1995*.

Overview of Bill

The object of this Bill is to enact as a separate Act the provisions of Chapter 7 of the *Industrial Relations Act 1991* relating to the regulation of private employment agents as a consequence of the repeal of that Act by the proposed *Industrial Relations Act 1995*. The provisions are re-enacted without any modifications other than of a minor or consequential nature.

Outline of provisions

Part 1 Preliminary

Clauses 1–4 contain preliminary provisions (including the name of the proposed Act and relevant definitions).

Part 2 Licensing of business of employment agents

Clauses 5–18 continue the requirements for persons carrying on the business of private employment agents to be licensed. Licences are issued by the Director-General of the Department of Industrial Relations.

Part 3 Conduct of business of employment agents

Clauses 19–22 continue provisions regulating the business of a private employment agent. In particular:

- (a) a licensee may only charge employers (and not prospective employees) fees for finding persons work.
- (b) a licensee is required to keep information about the conduct of the licensee's business and make it available for official inspection.
- (c) a licensee must not advertise positions that are not in fact available.

Part 4 Miscellaneous

Clauses 23–33 contain miscellaneous provisions. In particular, the clauses provide exemptions for licensees under the *Entertainment Industry Act 1989*, penalty notices for offences and for the review of the proposed Act.

Schedule 1 Savings, transitional and other provisions.

The schedule contains relevant provisions for a savings and transitional nature consequent on the repeal of the *Industrial Relations Act 1991* and the enactment of the proposed Act.



New South Wales

Employment Agents Bill 1995

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New South Wales

Employment Agents Bill 1995

No. , 1995

A Bill for

An Act relating to private employment agents.

Clause 1 Employment Agents Bill 1995

Part 1 Preliminary

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Employment Agents Act 1995*.

2 Commencement

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This Act commences on a day or days to be appointed by proclamation.

3 Definitions generally

In this Act:

approved means approved by the Director-General. 10

Director-General means the Director-General of the Department of Industrial Relations.

exercise a function includes perform a duty.

function includes a power, authority or duty.

inspector means an officer of the Department of Industrial Relations appointed by the Director-General to be an inspector for the purposes of this Act. 15

licence means a licence in force under this Act.

licensee includes a person who holds a licence jointly with another person or other persons. 20

4 Definition of "carrying on the business of a private employment agent"

- (1) A person carries on the business of a private employment agent for the purposes of this Act if the person acts as an agent for the purpose of: 25
- (a) finding or assisting to find a person to carry out work for a person seeking to have work carried out, or
 - (b) finding or assisting to find employment for a person seeking to be employed.

- (2) It is immaterial whether the employment or work is to be undertaken or carried out pursuant to a contract of employment or otherwise.
- (3) A person does not carry on the business of a private employment agent merely because the person publishes an advertisement placed by or on behalf of some other person who is seeking to have work carried out or to be employed. 5
- (4) A person does not carry on the business of a private employment agent merely because the person carries out any functions in the course of his or her employment by some other person. 10

Part 2 Licensing of business of employment agents

5 Private employment agents to be licensed

- (1) A person who carries on the business of a private employment agent must not demand or receive any fee, charge or other remuneration in respect of that business unless the person is the holder of a licence. 5
- (2) A licensee must not carry on the business of a private employment agent at a place other than the place to which the licence, or another licence held by the person, relates. 10

Maximum penalty: 50 penalty units.

6 Persons to be in charge at each place of business

- (1) A person must not act as the person in charge at the place of business to which a licence relates unless:
- (a) the person is the licensee or the person has been duly appointed under this section to do so, or 15
- (b) the person is so acting:
- (i) for a period not exceeding 1 month in the place of an absent person referred to in paragraph (a), or
- (ii) for a period not exceeding 7 days pending an appointment of a person under this section. 20
- (2) A licensee must not permit a contravention of subsection (1) at a place to which the licence relates.
- (3) If a person is a licensee in respect of more than one place of business, the person must not: 25
- (a) act as the person in charge at more than one of those places of business, or
- (b) act as the person in charge at any of those places of business unless the person has nominated that place of business by lodging with the Director-General a notice in the approved form. 30

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- (4) A licensee may appoint a person as the person in charge at the place of business to which the licence relates by lodging with the Director-General a notice in the approved form. The appointment takes effect on the date the notice is lodged or a later date specified in the notice. 5
- (5) A licensee must not appoint a person under this section if the licensee knows, or could reasonably be expected to know, that within the preceding period of 12 months:
- (a) an application by that person for a licence has been refused, or 10
 - (b) a licence held by that person has been cancelled,
- unless the refusal or cancellation has been overturned by a Local Court on an appeal under this Act.
- (6) A nomination or appointment under this section ceases to have effect on the day on which a notice in the approved form is lodged with the Director-General by the licensee or on a later date specified in the notice. 15

Maximum penalty: 20 penalty units.

7 Application for licence as private employment agent

- (1) An application for a licence must be: 20
- (a) in the approved form, and
 - (b) advertised by the applicant in the approved manner in a newspaper circulating generally throughout the State at least 7 days, but not more than 14 days, before the application is made, and 25
 - (c) accompanied by the fee prescribed by the regulations, and
 - (d) lodged with the Director-General.
- (2) A separate application is required for each place of business.

8 Inquiries and objections relating to applications

- (1) The Director-General may request the Commissioner of Police to report to the Director-General whether or not any one or more of the following is a fit and proper person to hold a licence: 30

- (a) an applicant for a licence or a director of a corporation that is an applicant for a licence,
 - (b) a person appointed under this Act to be in charge of a place of business to which a licence relates.
- (2) On receipt of such a request, the Commissioner of Police is required to have such inquiries made as the Commissioner considers necessary in order to comply with the request and is required to furnish a report of the result of those inquiries to the Director-General. 5
- (3) A person may, within 21 days after an application for a licence has been duly advertised under this Act, lodge with the Director-General a notice of objection to the grant of the application. 10
- (4) The notice of objection must be in the approved form and the information it contains must be verified by statutory declaration. 15
- (5) The Director-General may, by notice served:
- (a) on the applicant for a licence, or
 - (b) on a licensee who appoints a person as the person in charge at the place of business to which the licence relates,
- require that applicant or licensee to furnish, within the period specified in the notice, further information or documents in connection with the application or appointment. 20

9 Determination of application for licence

- (1) An application for the grant of a licence is not to be dealt with before the expiration of 14 days after the application is lodged with the Director-General. 25
- (2) The Director-General is to grant a licence to an applicant if the Director-General is satisfied that:
- (a) the application has been duly made, and
 - (b) each applicant (and, in the case of a corporation, each director of the corporation) is a fit and proper person to hold a licence, and 30
 - (c) each applicant (not being a corporation) is over 18 years of age, and

-
- (d) the place of business to which the application relates is reasonably suitable for carrying on the business of a private employment agent.
- (3) Otherwise, the Director-General is to refuse the application for the licence and serve on the applicant notice of the refusal and of the reasons for the refusal. The notice may be served on any one of the applicants in the case of a joint application. 5
- (4) The Director-General may have regard to the following matters when determining whether a person is a fit and proper person to hold a licence: 10
- (a) the person's character,
- (b) any report on the person furnished under this Act by the Commissioner of Police,
- (c) any other relevant matter (including any matter specified in any notice of objection lodged under this Act). 15

10 Form of licence

- (1) A licence is to be in the approved form.
- (2) A licence is to specify the following: 20
- (a) the name of the licensee or the names of the licensees,
- (b) the place of business to which the licence relates,
- (c) the date on which the licence is granted,
- (d) any other approved particulars.

11 Duration of licence

- (1) A licence has effect on and from the date it is granted and continues in force until it is cancelled under this Act. 25
- (2) The Director-General may cancel a licence if, before the end of any successive period of 12 months after the licence is granted, the licensee: 30
- (a) fails to lodge with the Director-General a statement in the approved form containing the information relating to the licence that is required by that form, or

- (b) fails to pay to the Director-General the fee prescribed by the regulations for the continuation of the licence.

12 Notice of changed particulars

- (1) A licensee must notify the Director-General if any of the following events occur: 5
 - (a) the licensee ceases to carry on the business of a private employment agent,
 - (b) the business of the licensee is carried on at a place other than the place specified in the licence,
 - (c) the name under which the licensee carries on business is changed, 10
 - (d) the name of a corporation that is the licensee is changed,
 - (e) the licence is held by a corporation and the directors of the corporation are changed,
 - (f) the nomination of a place of business at which the licensee is the person in charge ceases to have effect or the licensee is, or is likely to be, absent for a period exceeding one month from that place of business, 15
 - (g) an appointment by the licensee of a person as the person in charge at a place of business ceases to have effect or the appointee is, or is likely to be, absent from that place of business for a period exceeding one month, 20
 - (h) any other event relating to the licence or licensee that is prescribed by the regulations.
- Maximum penalty: 5 penalty units. 25
- (2) The notification is to be in the approved form and is to be given within the time and in the manner required by that approved form.
- (3) When giving notice of an event specified in subsection (1) (a), (b), (c) or (d), the licensee must surrender the licence to the Director-General, for cancellation in the case of the event specified in subsection (1) (a) or for amendment in the case of an event specified in subsection (1) (b), (c) or (d). 30
- Maximum penalty: 5 penalty units.

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- (4) A regulation prescribing other events in respect of which notice must be given to the Director-General may require the licensee to surrender the licence for cancellation or amendment when giving notice of the event.
- (5) The Director-General is to cancel a licence surrendered for cancellation and may amend a licence surrendered for amendment. 5

13 Cancellation of licence

The Director-General may cancel a licence for such reasons as the Director-General thinks fit, including (but without being limited to) any of the following reasons: 10

- (a) that the licensee (or a person on behalf of the licensee) made a statement, in or in connection with the application for the grant of the licence or in a statement furnished under this Act, that was false or misleading in a material particular, 15
- (b) that the licensee is not a fit and proper person to continue to be the holder of the licence,
- (c) that a director of a corporation that is the licensee would not, if he or she were the holder of a licence, be a fit and proper person to continue to be the holder of the licence, 20
- (d) that a person appointed by a licensee to be the person in charge at the place of business in respect of which the licence is granted would not, if he or she were the holder of a licence, be a fit and proper person to be the holder of a licence, 25
- (e) that the licensee has failed to comply with a provision of this Act (whether or not the licensee has been convicted of an offence against this Act),
- (f) that the business of the licensee as a private employment agent has not been or is not being properly conducted, 30
- (g) that the premises in which the business of the licensee is being carried on are not, or have ceased to be, reasonably suitable for carrying on the business of a private employment agent. 35

14 Procedure for cancellation

- (1) If the Director-General proposes to cancel a licence, the Director-General must give the licensee a notice setting out the reasons for the proposed cancellation and requiring the licensee, within such period as is specified in the notice, to show cause why the licence should not be cancelled. 5
- (2) If the Director-General cancels a licence, the Director-General is to cause a notice of cancellation to be served on the licensee. The notice is to state the reasons for the cancellation of the licence.
- (3) A notice of proposed cancellation or of cancellation is not, however, required if the cancellation is on either of the following bases: 10
- (a) a request has been made by the licensee for the cancellation,
 - (b) the Director-General is satisfied that the licensee (not being a corporation) has died, that a partnership being carried on by joint licensees has been dissolved or that the licensee (being a corporation) has been wound up. 15
- (4) The cancellation of a licence takes effect on the expiration of 21 days after the day on which the notice of cancellation is served. 20
- (5) However, if an appeal is duly lodged under this Act against the cancellation of the licence, the cancellation does not take effect unless the Local Court hearing the appeal confirms the cancellation or the appeal is withdrawn.
- (6) A person who was the holder of a licence cancelled under this Act must, on the cancellation of the licence taking effect, deliver the licence to the Director-General as soon as possible. 25
- Maximum penalty: 5 penalty units.
- (7) In the case of joint licensees, it is sufficient if a notice under this section is served on any one of the joint licensees. 30

15 If licence cancelled holder not qualified to obtain another licence

A person whose licence under this Act has been cancelled (except at the person's own request) is not entitled to hold such a licence until the expiration of one year from the date of cancellation. 35

16 Right of appeal against refusal of application or cancellation of licence

- (1) An applicant for a licence may appeal to a Local Court against the refusal of the Director-General to grant the licence.
- (2) A licensee may appeal to a Local Court against the cancellation by the Director-General of the licence. 5
- (3) Notice of an appeal under this section, specifying the grounds of appeal, must be lodged not later than 21 days after the day of service of the notice of refusal or cancellation.

17 Appeal procedure

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- (1) Notice of the time and place of the hearing of an appeal is to be given by the Clerk of the Local Court to the Director-General and to the appellant and the notice is to state the grounds of the appeal.
- (2) The hearing of an appeal may proceed despite any omission or error in that notice or the failure to give that notice if the Local Court is satisfied that the appellant and the Director-General had knowledge of the time and place of the hearing and were not prejudiced by any such omission or error or by failure to give the notice. 15
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- (3) If relevant, a report furnished under this Act to the Director-General by the Commissioner of Police and certified by the Director-General to have been so furnished is to be received in proceedings before the Local Court on an appeal as evidence of the contents of the report. 25
- (4) The Local Court is to hear and determine the appeal and may confirm or disallow the refusal or cancellation appealed against.
- (5) If an application for a licence is refused or a licence is cancelled on the ground that a person named in the application or the licensee is not a fit and proper person to be or continue to be the holder of a licence, the Local Court hearing and determining the appeal is to determine whether or not that person or licensee is a fit and proper person to be or continue to be the holder of a licence. 30

- (6) The decision of a Local Court in respect of an appeal is final and binding on the person or persons appealing and on the Director-General, who is to take such steps as may be necessary to give effect to the decision.
- (7) If regulations are made relating to the institution, hearing and determination of an appeal, the appeal is to be instituted, heard and determined in accordance with those regulations. 5

18 Register to be kept by Director-General

- (1) The Director-General is required to keep a register of licences granted under this Act and to record in the register in respect of each licence: 10
 - (a) the matters which are required to be specified in the licence, and
 - (b) particulars of any fees paid, or due but not paid, in respect of the licence, and 15
 - (c) particulars of any amendment of the licence, and
 - (d) particulars of the name of the person in charge at a place of business to which a licence relates, and
 - (e) particulars of each such place of business, and
 - (f) if the Director-General causes a notice of cancellation to be served on a licensee, a note to that effect, and 20
 - (g) particulars of any cancellation of the licence and any appeal against the cancellation, and
 - (h) any other matter the Director-General considers relevant.
- (2) The register under this section is to be kept in an approved form. 25
- (3) A certificate purporting to be signed by the Director-General and certifying that on any date or during any period specified in the certificate the particulars set forth in the certificate as to any of the matters specified in subsection (1) did or did not appear in the register under this section is, without proof of the signature of the Director-General, evidence of the particulars certified. 30

Part 3 Conduct of business of employment agents

19 Persons from whom licensees may obtain fee, charge or other remuneration

- (1) A licensee must not, in connection with the business of a private 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. 5

Maximum penalty: 50 penalty units. 10

- (2) It is immaterial whether the work or employment is to be carried out or undertaken pursuant to a contract of employment or otherwise.
- (3) If any fee, charge or remuneration is received in contravention of this section, the amount concerned may be recovered from the licensee in a court of competent jurisdiction as a debt due to the person who paid that amount. 15

20 Production of licence required to recover fee, charge or other remuneration

A person required to be licensed under this Act is not entitled to recover in a court any fees, charges or other remuneration in connection with the business of a private employment agent unless the person produces his or her licence to the court. 20

21 Registers and letters to be kept by licensees

- (1) A licensee must: 25
- (a) keep a register containing particulars of the name and address of every person who applies to the licensee for employment and of every person who applies to the licensee for labour and the nature of the employment or labour required, and 30
- (b) keep a register containing particulars of all engagements made by or through the licensee, of any fee, charge or remuneration received in respect of any such engagement and of the name of the person from whom any such fee, charge or remuneration was received, and 35

(c) retain the originals of all letters received by the licensee in connection with his or her business as a private employment agent for a period of at least 12 months after their receipt.

(2) A register under this section is to be kept in an approved form. 5

(3) A licensee must retain a register under this section for a period of at least 12 months after the making of the last entry in it.

(4) A licensee must:

(a) allow an inspector, at any reasonable time, to inspect and take copies of or extracts from, a register or any letters kept under this section, and 10

(b) furnish to an inspector, within the time specified in a notice served on the licensee by the inspector, such information as the inspector requires in relation to the particulars contained in the register referred to in subsection (1) (b). 15

(5) A person must not make in a register kept under this section any entry that the person knows is false or misleading in a material particular.

Maximum penalty: 50 penalty units.

22 Advertising by licensees 20

(1) A licensee must not advertise or cause to be advertised any matter that, by its tenor, suggests or implies that the matter is not advertised by or on behalf of a private employment agent.

(2) A licensee must not advertise or cause to be advertised a position as being available when no such position exists. 25

(3) In this section, *advertise* includes publish in a newspaper or in any other media.

Maximum penalty: 50 penalty units.

Part 4 Miscellaneous

23 Act binds the Crown

This Act binds the Crown in right of New South Wales and, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

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24 Persons exempted from Act

(1) This Act does not apply to or in respect of:

- (a) a model or modelling agency, or
- (b) a licensee under the *Entertainment Industry Act 1989*, or
- (c) a person or class of persons exempted from this Act by the regulations.

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(2) The regulations may also exempt a person or class of persons from specified provisions of this Act.

(3) An exemption may be provided by the regulations subject to conditions or unconditionally.

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25 Performance of Director-General's functions

Anything authorised or required under this Act to be done by, lodged with or paid to the Director-General may be done by, lodged with or paid to any officer of the Department of Industrial Relations who is authorised generally or specially in that behalf in writing by the Director-General. Anything purporting to have been done by, lodged with or paid to an officer so authorised is taken to have been done by, lodged with or paid to the Director-General.

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26 Loss or destruction of licence

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On satisfactory proof of loss or destruction of a licence, the Director-General may, at the request of the licensee, issue a duplicate licence. The duplicate is for all purposes to be treated as if it were the original licence.

27 Service of notices

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(1) A notice that is required to be served or given under this Act may be served personally or by post.

- (2) The Director-General may serve or give any such notice to a licensee by posting it addressed to the place of business to which the licence relates or by delivering it to a person apparently working at that place.

28 Search warrant

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- (1) An inspector may apply to an authorised justice for the issue of a search warrant if the inspector has reasonable grounds for believing that a provision of this Act or the regulations has been or is being contravened in any premises.

- (2) The authorised justice to whom the application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising the inspector named in the warrant, when accompanied by a police officer:

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(a) to enter the premises, and

(b) to search the premises for evidence of a contravention of this Act or the regulations.

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- (3) Part 3 of the *Search Warrants Act 1985* applies to a search warrant issued under this section.

- (4) In this section:

authorised justice means an authorised justice within the meaning of the *Search Warrants Act 1985*.

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premises includes any mine, structure, building, aircraft, vehicle, vessel and place (whether built on or not), and any part of it.

29 Penalty notices

- (1) An inspector may serve a penalty notice on a person if it appears to the inspector that the person has committed an offence against this Act or the regulations, being an offence prescribed by the regulations as a penalty notice offence.

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- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may pay, within the time and to the person specified in the notice, the amount of penalty prescribed by the regulations for the offence if dealt with under this section.

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- (3) A penalty notice may be served personally or by post.
- (4) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (5) Payment under this section is not to be regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence. 5
- (6) The regulations may:
- (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and 10
- (b) prescribe the amount of penalty payable for the offence if dealt with under this section, and
- (c) prescribe different amounts of penalties for different offences or classes of offences. 15
- (7) The amount of a penalty prescribed under this section for an offence is not to exceed the maximum amount of penalty that could be imposed for the offence by a court.
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences. 20
- 30 Summary procedure for offences under this Act or regulations**
- (1) Proceedings for an offence against this Act or the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone. 25
- (2) Any such proceedings may be commenced not later than 12 months after the offence was alleged to have been committed.
- (3) Proceedings for an offence against this Act or the regulations may be instituted only: 30
- (a) by the Minister or by a person with the written consent of the Minister, or
- (b) by an inspector.
-

- (4) In any such proceedings, a consent to institute the proceedings, purporting to have been signed by a person authorised to give a consent under this section is evidence of that consent without proof of the signature or authority of the person.
- (5) Any such proceedings instituted by an officer of a Government Department may be prosecuted on his or her behalf by any officer of that Department. 5

31 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act. 10
- (2) In particular, the regulations may make provision for or with respect to:
- (a) the exhibition of licences and other documents by licensees, and 15
 - (b) the scale of fees, charges or other remuneration chargeable by and payable to licensees, and
 - (c) contracts for the employment abroad in any capacity of any persons, and 20
 - (d) special requirements in connection with the carrying on of the business of an employment agent for baby-sitting services.
- (3) A regulation may create an offence punishable by a penalty not exceeding 20 penalty units. 25

32 Savings, transitional and other provisions

Schedule 1 has effect.

33 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives. 30

- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Schedule 1 Savings, transitional and other provisions

(Section 32)

1 Regulations

- (1) The regulations may make provision of a savings or transitional nature consequent on the repeal of the *Industrial Relations Act 1991* and the enactment of this Act. 5
- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to this Act or a later date. 10
- (3) To the extent to which such a provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or 15
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

2 Existing licences 20

A licence in force (or taken to be in force) under Chapter 7 of the *Industrial Relations Act 1991* (relating to private employment agents) immediately before the repeal of that Chapter is taken to have been issued by the Director-General under this Act. 25

3 Existing registers

A register kept (or taken to be kept) under Chapter 7 of the *Industrial Relations Act 1991* is taken to have been kept under this Act.

4 Construction of superseded references

A reference in another Act, in an instrument made under an Act or in any document, to the *Industrial Relations Act 1991* (or to a provision of or anything done under that Act) in relation to private employment agents is to be read as a reference to this Act.

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5 Transitional fees

Until the regulations otherwise provide, the prescribed fee to accompany an application for a licence under this Act and the fee prescribed for the continuation of such a licence is \$40.

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6 Transitional penalty notice provision

Until the regulations otherwise provide, an offence against section 21 (except subsection (5)) is a prescribed offence for the purposes of section 29 and the prescribed amount of penalty for the offence is \$100.

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7 General saving

(1) If anything done or commenced under the *Industrial Relations Act 1991* before the commencement of this clause and still having effect or not completed immediately before that commencement could have been done or commenced under this Act if this Act had been in force when the thing was done or commenced:

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- (a) the thing done continues to have effect, or
- (b) the thing commenced may be completed,

as if it had been done or commenced under this Act.

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(2) This clause is subject to any express provision of this Act on the matter.

