

**INDUSTRIAL ARBITRATION
(EMPLOYMENT AGENCIES) AMENDMENT
ACT.**

New South Wales



ANNO VICESIMO QUARTO

ELIZABETHÆ II REGINÆ

Act No. 107, 1975.

An Act to make further provisions with respect to the licensing of private employment agents and the fees payable to private employment agents by employees and employers; for these and other purposes to amend the Industrial Arbitration Act, 1940. [Assented to, 23rd December, 1975.]

BE

Industrial Arbitration (Employment Agencies) Amendment.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

No. 107, 1975

1. This Act may be cited as the "Industrial Arbitration (Employment Agencies) Amendment Act, 1975".

2. (1) This section and section 1 shall commence on the date of assent to this Act.

(2) Except as provided in subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

3. The Industrial Arbitration Act, 1940, is, in this Act, referred to as the Principal Act.

4. The Principal Act is amended—

Amendment of Act No. 2, 1940.

(a) by omitting from section 2 the matter relating to Divisions 2 and 3 of Part XIV and by inserting instead the following matter:—

DIVISION 2.—*Theatrical agencies and employers*—ss. 136–145.

DIVISION 2A.—*Private employment agents*—ss. 145A–145R.

DIVISION 3.—*General provisions for the purposes of Part XIV*—ss. 146–153.

(b)

*Industrial Arbitration (Employment Agencies) Amendment.***No. 107, 1975****Sec. 5.
(Interpreta-
tion.)**

(b) by inserting at the end of section 5 (1) the following definition :—

“Under Secretary” means the person for the time being holding the office of, or acting as, Under Secretary of the Department of Labour and Industry.

**Sec. 92.
(Recovery
of wages.)**

(c) (i) by omitting from section 92 (6) the words “of the Department of Labour and Industry”;

(ii) by omitting from section 92 (6) the word “said”;

**Part XIV,
Division 2:
Heading.**

(d) by omitting the heading before section 136 and by inserting instead the following heading :—

*DIVISION 2.—Theatrical agencies and employers.***Sec. 136.
(Defini-
tions.)**

(e) by omitting from section 136 the words “Part of this Act” and by inserting instead the words “Division and in Division 3.”;

**Sec. 137.
(Persons
carrying
on
theatrical
agencies
to be
licensed
and
theatrical
employers
to hold
permits.)**

(f) (i) by omitting from section 137 (1) (a) the words “open or carry on for profit any agency for procuring or assisting to procure employment or labour, or any business having as one of its purposes the bringing together of intending employers and persons seeking employment, or”;

(ii) by omitting from section 137 (1) the words “Part of this Act” wherever occurring and by inserting instead the word “Division”;

(iii)

Industrial Arbitration (Employment Agencies) Amendment.

- (iii) by omitting from section 137 (2) the words ~~No. 107, 1975~~
“Every such license” and by inserting instead
the words “A license referred to in subsection
(1) (a)”;
- (iv) by omitting from section 137 (2) the words
“agency or business or”;
- (g) (i) by omitting from section 138 (1) the words ~~Sec. 138.~~
“license or for the issue of a” and by inserting <sup>(Application
for license.)</sup> instead the words “theatrical agent’s license
or for the issue of a theatrical employer’s”;
- (ii) by omitting from section 138 (2) the words
“Part of this Act” and by inserting instead
the word “Division”;
- (h) (i) by omitting from section 139 the words “Part ~~Sec. 139.~~
of this Act” and by inserting instead the word <sup>(Licensee
to keep
registers.)</sup>
“Division”;
- (ii) by omitting from section 139 (a) the words
“, and pays a fee in respect of his application,”
and by inserting instead the words “as a
theatrical performer”;
- (iii) by omitting from section 139 (b) the words
“labour, and pays a fee in respect of his
application,” and by inserting instead the
words “a theatrical performer”;
- (i) (i) by inserting in section 140 after the word ~~Sec. 140.~~
“licensees” the words “under this Division”; <sup>(Scale of
fees.)</sup>
- (ii) by omitting from section 140 the words “or
businesses” wherever occurring;

(j)

*Industrial Arbitration (Employment Agencies) Amendment.***No. 107, 1975****Sec. 141.**

(No fees to be received except those prescribed.)

- (j) (i) by inserting in section 141 (1) after the words "A licensee" the words "under this Division";
- (ii) by omitting from section 141 (1) (a) the words "registration or engagement of any person" and by inserting instead the words "engagement of a theatrical performer";
- (iii) by inserting in section 141 (1) (c) before the word "employer" where firstly and secondly occurring the word "theatrical";
- (iv) by omitting from section 141 (1) (c) the word "employee" and by inserting instead the words "theatrical performer";
- (v) by inserting in section 141 (1) (c) before the word "employer" where thirdly occurring the word "such";
- (vi) by omitting from section 141 (1) (c) the words "a licensee" and by inserting instead the words "any such licensee";
- (vii) by inserting in section 141 (1) (d) after the word "employment" the words "as theatrical performers";
- (viii) by inserting in section 141 (4) after the word "any" where firstly occurring the word "such";
- (ix) by inserting in section 141 (4) after the word "employment" the words "as theatrical performers";

Sec. 142.
(Registration fee to be repaid if employment or labour not found.)

- (k) by omitting section 142;

(l)

Industrial Arbitration (Employment Agencies) Amendment.

(1) (i) by inserting in section 143 after the words "A No. 107, 1975 licensee" wherever occurring the words "under this Division"; Sec. 143.
(False statements or entries by licensees.)

(ii) by omitting from section 143 the words "registers for employment" and by inserting instead the words "applies to him for employment as a theatrical performer";

(iii) by omitting from section 143 the words "as in this Act provided" and by inserting instead the words "pursuant to section 139";

(m) by inserting in section 144 after the word "licensee" the words "under this Division"; Sec. 144.
(Conviction to be endorsed on license.)

(n) by omitting from section 145 the words "Part of this Act" and by inserting instead the word "Division"; Sec. 145.
(Cancellation of license or permit.)

(o) by inserting after section 145 the following Division :— Part XIV, Division 2A.

DIVISION 2A.—*Private employment agents.*

145A. In this Division, except in so far as the context or subject-matter otherwise indicates or requires—
Interpretation: Division 2A.

"license" means a license in force under this Division;

"licensee" includes a person who holds a license jointly with another person or other persons;

"regulation" means a regulation made for the purposes of this Division or made pursuant to section 153.

No. 107, 1975

**Business
of
private
employment
agent.**

145B. (1) Subject to this section and section 145C, a person carries on the business of a private employment agent if he acts as an agent—

- (a) for procuring or assisting to procure a person to carry out work for a person seeking to have work carried out; or
- (b) for procuring or assisting to procure employment for a person seeking to be employed,

whether that employment or work is to be undertaken or carried out pursuant to a contract of employment, or otherwise.

(2) A person who prints or publishes in a newspaper within the meaning of the Printing and Newspapers Act, 1973, or in a document within the meaning of that Act, an advertisement placed by or on behalf of a person seeking to have work carried out or by or on behalf of a person seeking to be employed does not, by reason only of the printing and publishing of that advertisement, carry on the business of a private employment agent.

(3) A person who carries out any of the functions referred to in subsection (1) in the course of his employment by some other person does not, by reason only of his so carrying out those functions, carry on the business of a private employment agent.

Exemptions.

145C. (1) The Governor may, by regulation, exempt any person or any class of persons from the operation of all or any of the provisions of this Division.

(2)

Industrial Arbitration (Employment Agencies) Amendment.

(2) An exemption under subsection (1) ~~No. 107, 1975~~ may be given unconditionally or subject to such conditions as may be prescribed in respect of the exemption.

(3) Where an exemption under subsection (1) is given subject to conditions the exemption does not have effect during any period when the conditions are not being complied with.

(4) It is a sufficient defence to a prosecution arising under this Division if the defendant proves that at the relevant time he was a person, or a member of a class of persons, exempted from the operation of this Division by subsection (1) and, where that exemption was given subject to any condition, that he was, at that time, complying with that condition.

145D. (1) Subject to this Division, where a ~~Private~~ person carries on the business of a private ~~employment~~ ^{agents to be licensed.} agent—

- (a) he shall not demand or receive any fee, charge or remuneration in respect of that business except in accordance with the authority of a license held by him; and
- (b) he shall not, where he is the holder of a license, carry on that business at a place other than the place to which that or another license held by him relates.

(2)

No. 107, 1975

(2) A person who fails to comply with subsection (1) is guilty of an offence and liable to a penalty not exceeding \$500.

Persons to
be in charge
at each
place of
business.

145E. (1) A person shall not act as the person in charge at the place of business to which a license relates unless—

- (a) not being a corporation, he is the licensee, or one of a number of joint licensees, and the place of business is the place of business nominated under subsection (3) in respect of that licensee;
- (b) he is a person appointed under subsection (4) in respect of that place of business; or
- (c) he is not a person referred to in paragraph (a) or (b) and is so acting—
 - (i) for a period not exceeding one month in the place of an absent person so referred to; or
 - (ii) for a period not exceeding seven days pending an appointment under subsection (4).

(2)

Industrial Arbitration (Employment Agencies) Amendment.

(2) A licensee or, where there are joint licensees, a joint licensee, shall not, in respect of a place of business to which his license relates, permit a contravention of subsection (1).

(3) Where a person is a licensee, or one of a number of joint licensees, in respect of more than one place of business, he shall not—

- (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 he has, by instrument in writing signed by him or, where he is a joint licensee, by all of the joint licensees, and lodged with the Under Secretary, nominated that place as the place of business at which he will be the person in charge.

(4) A licensee may appoint a person as the person in charge at the place of business to which his license relates by lodging with the Under Secretary a notice in the prescribed form signed by the licensee or, where there are joint licensees, by all of the joint licensees, that contains the prescribed particulars.

(5) An appointment under subsection (4) takes effect on the day on which the prescribed form relating to the appointment is lodged with the Under Secretary or, where a later day is specified in the form, on that later day.

(6)

No. 107, 1975

(6) A licensee shall not appoint a person as the person in charge at the place of business to which his license relates if the licensee knows, or ought reasonably to know, that within the last preceding period of twelve months—

- (a) an application by that person for a license has been refused; or
- (b) a license held by that person has been cancelled,

unless an industrial magistrate, upon an appeal under this Division against the refusal or cancellation, has found that person to be a fit person to hold, or continue to hold, a license.

(7) Subject to subsection (8), a nomination referred to in subsection (3) (b) or an appointment under subsection (4) ceases to have effect on the day on which a notice in or to the effect of the prescribed form, signed by or on behalf of the licensee of that place of business, is lodged with the Under Secretary.

(8) Where a notice referred to in subsection (7) specifies a day, being a day that is after the day on which the notice is lodged, as the day on which the nomination or appointment to which it relates ceases to have effect, that nomination or appointment, as the case may be, ceases to have effect on the day specified in the notice.

(9) A person who fails to comply with any of the provisions of this section is guilty of an offence and liable to a penalty not exceeding \$500.

Industrial Arbitration (Employment Agencies) Amendment.

145F. (1) An application for the grant of a No. 107, 1975 license shall—

- (a) be made in the prescribed form;
- (b) contain the prescribed particulars;
- (c) specify the class of license applied for;
- (d) be accompanied by a page of a newspaper circulating generally throughout the State, being a page in which was published, at least seven, but not more than fourteen, days before the making of the application, a notice in the prescribed form with respect to the application;
- (e) be accompanied by the prescribed fee; and
- (f) be lodged with the Under Secretary.

Application
for license
as private
employment
agent.

(2) Where a business for which a license is required is to be carried on at more than one place of business, a separate application for the grant of a license in respect of each such place shall be lodged with the Under Secretary.

(3) A regulation made for the purposes of subsection (1) (a) or (b) may be made so as to apply differently according to such factors as may be specified in the regulation.

145G. (1) The Under Secretary may request the Inquiries Commissioner of Police to report to him whether and objections. or not—

- (a) an applicant for a license;

(b)

No. 107, 1975

- (b) a proposed partner of an applicant for a license in the business in respect of which the license is applied for;
- (c) a director of a corporation that is an applicant for a license;
- (d) a director of a corporation that is a proposed partner of an applicant for a license in the business in respect of which the license is applied for; or
- (e) a person in respect of whom notice of an appointment is lodged under section 145E (4),

is, or if he were the applicant for a license would be, a fit person to be the holder of a license and on receipt of any such request the Commissioner of Police shall cause to be made such inquiries as he deems necessary in order to comply with the request and shall furnish a report of the result of those inquiries to the Under Secretary.

(2) A person may, within twenty-one days after the publication of a notice referred to in section 145F (1) (d), lodge with the Under Secretary a notice of objection in respect of the application to which the notice relates.

(3) A notice of objection referred to in subsection (2) shall be a statutory declaration in or to the effect of the prescribed form, shall contain the prescribed particulars and shall be lodged in the prescribed manner.

(4)

Industrial Arbitration (Employment Agencies) Amendment.

(4) The Under Secretary may, by ~~No. 107, 1975~~ instrument in writing served on the applicant for a license or on a licensee who makes an appointment under section 145E (4), require that applicant or licensee or, where there is more than one, any one or more of them, to furnish within the period specified in the instrument such further information and documents as he may reasonably require in connection with the application or appointment and may specify in the instrument.

(5) An instrument referred to in subsection (4) may be served by sending the instrument by certified mail addressed to the applicant or licensee at his address last known to the Under Secretary or by causing it to be delivered to the applicant or licensee personally.

145H. (1) An application for the grant of a license shall not be dealt with before the expiration of fourteen days after the application is lodged with the Under Secretary. Disposal of applications for licenses.

(2) Where the Under Secretary is satisfied with respect to an application for the grant of a license—

(a) that the notice referred to in section 145F (1) (d) relating to the application has been duly published;

(b)

No. 107, 1975

(b) in the case of an application for the grant of a license referred to in section 1451 (1) (a), that the Under Secretary is not prohibited by section 1451 (2) from granting to the applicant a license so referred to;

(c) that—

- (i) the applicant is;
- (ii) where the applicant is a corporation—each director of the corporation is;
- (iii) each proposed partner (if any) of the applicant in carrying on the business of a private employment agent is; and
- (iv) where any such proposed partner is a corporation—each director of that corporation is,

a fit person to hold a license;

(d) that—

- (i) where the applicant is not a corporation—the applicant is;
- (ii) where the applicant is a corporation—each director of the applicant who is not himself a corporation is;

(iii)

Industrial Arbitration (Employment Agencies) Amendment.

(iii) where a proposed partner (if any) No. 107, 1975 of the applicant in carrying on the business of a private employment agent is not a corporation—that proposed partner is; and

(iv) where any such proposed partner is a corporation—each director of that corporation who is not himself a corporation is,

of or above the age of eighteen years; and

(e) that the premises specified in the application as being the place of business in respect of which the application is made are reasonably suitable for carrying on the business of a private employment agent,

the Under Secretary shall grant and issue to the applicant a license of the class applied for in respect of that place of business.

(3) In considering for the purposes of subsection (2) (c) whether a person is or would be a fit person to hold a license the Under Secretary—

(a) shall, in the case of a person other than a corporation, have regard to his character;

(b)

No. 107, 1975

(b) shall have regard to any report relating to that person furnished under section 145G (1) by the Commissioner of Police; and

(c) shall have regard to such other matters, including any matter specified in any notice of objection lodged under section 145G (2), as the Under Secretary considers relevant for the purpose of determining the fitness of the applicant to hold a license.

(4) Where, in relation to an application, the Under Secretary is not satisfied as to any one or more of the matters specified in subsection (2) he shall refuse the application and send to the applicant by certified mail addressed to the applicant at his address last known to the Under Secretary, or deliver to the applicant personally, a notice in writing of the refusal.

(5) In the case of an application made by more than one person it is a sufficient compliance with subsection (4) if the notice referred to in that subsection is served on any one of the applicants.

(6) A notice referred to in subsection (4) shall state the reasons for the refusal.

(7) The day on which a notice referred to in subsection (4) is served is—

(a) where the notice is sent by certified mail, the day when the notice would be delivered in the ordinary course of post; or

(b) where the notice is delivered to the applicant personally, the day when it is so delivered.

Industrial Arbitration (Employment Agencies) Amendment.

145I. (1) A license authorises the holder **No. 107, 1975** thereof, in respect of the carrying on by him of the business of a private employment agent at the place specified in the license—

- (a) to demand and receive a fee, charge or remuneration from any person; or
- (b) to demand and receive a fee, charge or remuneration only from a person who employs labour,

whichever is specified in the license.

(2) A license conferring the authority referred to in subsection (1) (a) shall not be granted after 31st December, 1980.

(3) Subject to this Division, a license conferring the authority referred to in subsection (1) (a) that is in force on 31st December, 1980—

- (a) ceases after that day to confer that authority; and
- (b) takes effect after that day as a license conferring the authority referred to in subsection (1) (b).

145J. A license shall be in the prescribed form **Form of license.** and, without prejudice to the inclusion in the license of any other particulars, shall—

- (a) specify the name of the person to whom the license is issued or, where the license is issued to more than one person, the names of the persons to whom the license is issued;
- (b) specify, in accordance with section 145I (1), the authority conferred by the license;

(c)

No. 107, 1975

(c) specify the place of business in respect of which the license is granted; and

(d) specify the day of issue of the license.

Duration
of license.

145K. (1) A license has effect from and including the day specified in the license as the day of issue of the license.

(2) Subject to this Division, a license continues in force until it is cancelled under subsection (3) or under section 145L (3) (a) or 145M.

(3) If, before the expiration of the year commencing on the day on which a license takes effect, or the expiration of any year commencing on the anniversary of that day, the licensee fails—

(a) to lodge with the Under Secretary a statement in writing signed by him that contains the prescribed information, compiled as at a day not earlier than one month before the expiration of that year; or

(b) to pay the Under Secretary the prescribed fee for continuation of the license,

the Under Secretary may, at the expiration of the year so commencing during which the failure occurs, cancel the license.

(4) The provisions of section 145M (10) and (11) apply to a person whose license is cancelled under this section in the same way as they apply to a person whose license is cancelled under section 145M.

145L.

145L. (1) Where—

No. 107, 1975

Notice of
changed
particulars.

- (a) a licensee ceases to carry on the business of ~~private employment agent~~;
- (b) the business of a licensee is carried on at a place other than the place specified in the license;
- (c) the name under which a licensee carries on business is changed;
- (d) the name of a corporation that is a licensee is changed;
- (e) a license is held by a corporation and the directors of the corporation are changed;
- (f) the nomination of a place of business under section 145E (3) (b) ceases to have effect or a licensee is, or is likely to be, absent for a period exceeding one month from the place of business so nominated as the place of business at which he is the person in charge;
- (g) an appointment under section 145E (4) in respect of a place of business of a licensee 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; or
- (h) any other prescribed event relating to a license or licensee occurs,

the

No. 107, 1975

the licensee shall, within the prescribed time and in the prescribed manner, notify the Under Secretary of the occurrence of that event and of such particulars as may be prescribed in respect of the event and shall, when giving notice of an event specified in paragraph (a), (b), (c) or (d) surrender the license to the Under Secretary, for cancellation in the case of the event specified in paragraph (a) or for amendment in the case of an event specified in paragraph (b), (c) or (d).

(2) A regulation prescribing other events in respect of which notice shall be given to the Under Secretary may require the licensee to surrender his license for cancellation or amendment when giving notice of the event.

(3) The Under Secretary—

(a) shall cancel a license surrendered for cancellation; or

(b) may amend a license surrendered for amendment,

pursuant to subsection (1) or a regulation made pursuant to subsection (2).

(4) A licensee who fails to comply with the provisions of subsection (1) is guilty of an offence and liable to a penalty not exceeding \$200.

**Cancellation
of license.**

145M. (1) The Under Secretary may, for such reason as he thinks fit, cancel a license.

(2)

Industrial Arbitration (Employment Agencies) Amendment.

(2) Without limiting the generality of No. 107, 1975 subsection (1), the Under Secretary may cancel a license if he is satisfied—

(a) that a licensee or a director of a corporation that is a licensee made a statement in or in connection with—

(i) the application for the grant of the license; or

(ii) a statement referred to in section 145K (3) (a),

that was false or misleading in a material particular;

(b) that a licensee is not a fit person to continue to be the holder of the license;

(c) that a director of a corporation that is a licensee would not, if he were the holder of a license, be a fit person to continue to be the holder of the license;

(d) that a corporation, being a licensee, is not a fit person to continue to be the holder of the license;

(e) that a person appointed by a licensee to be the person in charge at the place of business in respect of which the license is issued would not, if he were the holder of a license, be or, as the case may be, continue to be, a fit person to be the holder of a license;

(f) that a licensee has failed to comply with the provisions of section 145L (1);

(g)

No. 107, 1975

- (g) that the business of a licensee as a private employment agent has not been or is not being properly conducted;
- (h) that the premises in which the business of a licensee is being carried on are not, or have ceased to be, reasonably suitable for carrying on the business of a private employment agent; or
- (i) that a licensee has been convicted of an offence against this Division.

(3) Where he proposes to cancel a license the Under Secretary shall, except where—

- (a) a request has been made by the licensee or all of the joint licensees for the cancellation; or
- (b) the Under Secretary is satisfied—
 - (i) that the licensee, not being a corporation, has died;
 - (ii) that a partnership being carried on by joint licensees has been dissolved; or
 - (iii) that the licensee, being a corporation, has been wound up,

give the licensee a notice in writing setting forth the reasons for the proposed cancellation and requiring the licensee, within such period as is specified in the notice, to show cause why the license should not be cancelled.

(4)

Industrial Arbitration (Employment Agencies) Amendment.

(4) Where upon the expiration of the period specified in any notice given pursuant to subsection (3), or of such further period as the Under Secretary may allow, the Under Secretary cancels a license he shall cause a notice of cancellation to be served on the licensee by sending the notice by certified mail addressed to the licensee at the place of business in respect of which the license was granted, or by causing it to be delivered to the licensee personally.

(5) In the case of a license issued to joint licensees it is a sufficient compliance with subsection (4) if the notice of cancellation is served on any one of the joint licensees.

(6) A notice of cancellation shall state the reasons for the cancellation of the license.

(7) Subject to subsection (8), the cancellation of a license takes effect upon the expiration of the day that is twenty-one days after the day on which the notice of cancellation is served.

(8) Where a licensee appeals under section 145N against the cancellation of the license, the cancellation shall have effect—

- (a) only if the industrial magistrate hearing the appeal confirms the cancellation or if the appeal is withdrawn; and
- (b) on the day on which the industrial magistrate confirms the cancellation, or such later day as the industrial magistrate orders or, if the appeal is withdrawn, on the day on which it is withdrawn.

(9)

No. 107, 1975

(9) The day on which a notice of cancellation is served is—

- (a) where the notice is sent by certified mail, the day when the notice would be delivered in the ordinary course of post; or
- (b) where the notice is delivered to the licensee personally, the day when it is so delivered.

(10) A person who was the holder of a license and who, upon the cancellation of the license taking effect, fails to forthwith deliver the license to the Under Secretary is guilty of an offence and liable to a penalty not exceeding \$200.

(11) A person who was a joint licensee is not guilty of an offence referred to in subsection (10) if another of the persons who were joint licensees delivers the license to the Under Secretary.

Appeals.

145N. (1) In subsection (5), "day of service" means—

- (a) in the case of an appeal against a refusal to grant a license, the day of service of the notice of refusal; and
- (b) in the case of an appeal against a cancellation of a license, the day of service of the notice of cancellation.

(2) An applicant for the grant of a license may appeal to an industrial magistrate against the refusal of the Under Secretary to grant the license.

(3)

Industrial Arbitration (Employment Agencies) Amendment.

(3) A licensee may appeal to an industrial magistrate against the cancellation by the Under Secretary of the license. No. 107, 1975

(4) Where an application for the grant of a license made by more than one person is refused or a license held by more than one person is cancelled, an appeal under this section against the refusal or cancellation may be made by any of the applicants or licensees, as the case may be, on behalf of all of the applicants or licensees, or by all of the applicants or licensees jointly, but not otherwise.

(5) Notice of an appeal under this section, specifying the grounds of appeal, shall be lodged with the registrar not later than twenty-one days after the day of service.

(6) The registrar shall give notice of the time and place of the hearing of an appeal under this section to the Under Secretary and to the person or persons appealing and shall state in the notice to the Under Secretary the grounds of the appeal.

(7) The hearing of an appeal may proceed notwithstanding any omission or error in a notice under subsection (6) or the failure to give any such notice if the industrial magistrate is satisfied that any person appealing and the Under Secretary 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 any such notice.

(8)

No. 107, 1975

(8) Where relevant, a report furnished pursuant to section 145G (1) to the Under Secretary by the Commissioner of Police and certified by the Under Secretary to have been so furnished shall be received in proceedings before an industrial magistrate under this section as evidence of the contents of the report.

(9) An industrial magistrate shall hear and determine an appeal made to him under this section and may confirm or disallow the refusal or cancellation appealed against.

(10) Where a license is refused or cancelled on the ground that a person named in the application, or the licensee, as the case may be, is not a fit person to be, or continue to be, the holder of a license, the industrial magistrate hearing and determining the appeal shall determine whether or not that person or licensee is a fit person to be, or continue to be, the holder of a license.

(11) The decision of an industrial magistrate in respect of an appeal made under this section shall be final and shall be binding on the person or persons appealing and on the Under Secretary, who shall take such steps as may be necessary to give effect to the decision.

(12) Subject to this section, where regulations are made relating to the institution, hearing and determination of an appeal under this section, any such appeal shall be instituted, heard and determined in accordance with those regulations.

Industrial Arbitration (Employment Agencies) Amendment.

145O. (1) The Under Secretary shall keep a No. 107,1975 register, in such form as he determines, of licenses issued under this Division and shall record therein Registers to be kept. in respect of each license—

- (a) the matters which under section 145J are required to be specified in the license;
- (b) particulars of any fees paid, or due but not paid, in respect of the license under section 145K (3) (b);
- (c) particulars of any amendment of the license made pursuant to section 145L (3) (b);
- (d) particulars of any cancellation of the license under section 145K (3), 145L (3) (a) or 145M; and
- (e) such other matters as may be prescribed.

(2) The Under Secretary shall keep a register, in such form as he determines, containing—

- (a) particulars of the name of each licensee who has been specified in an instrument referred to in section 145E (3) (b) as the person in charge at the place of business nominated in that instrument and particulars of the name of each person who has been appointed in accordance with section 145E (4);
- (b) particulars of each place of business so nominated and each place of business to which such an appointment relates;
- (c)

No. 107, 1975

- (c) particulars of the date on which a nomination under section 145E (3) (b) and an appointment under section 145E (4) takes effect or ceases to have effect, as the case may require;
- (d) if he causes a notice of cancellation to be served on a licensee on the ground that the licensee or a person so appointed is not a fit person to be, or continue to be, the holder of a license, a note to that effect; and
- (e) particulars of the result of any appeal against the cancellation of a license on the ground that the licensee or a person so appointed is not a fit person to be, or continue to be, the holder of a license.

(3) The Under Secretary may make such alterations in the registers referred to in subsections (1) and (2) as are necessary to ensure that the matters recorded therein in respect of any license or person are accurate.

(4) A certificate purporting to be signed by the Under Secretary 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) or (2) did or did not appear in the registers referred to in those subsections shall, in all courts and upon all occasions, without proof of the signature of the Under Secretary and without the production of any record or document upon which the certificate is founded, be evidence of the particulars certified in and by the certificate.

145P. Anything authorised or required by or No. 107, 1975 under this Division to be done by, lodged with or paid to the Under Secretary may be done by, lodged with or paid to any officer of the Department of Labour and Industry who is authorised generally or specially in that behalf in writing by the Under Secretary, and anything purporting to have been done by, lodged with or paid to an officer so authorised shall be deemed to have been done by, lodged with or paid to the Under Secretary.

Performance
of Under
Secretary's
functions.

145Q. (1) The holder of a license referred to Prescribed in section 145I (1) (a) who, in respect of the carrying on by him of any of the functions of a private employment agent, directly or indirectly demands or receives from a person seeking work or seeking to be employed, pursuant to a contract of employment or otherwise—

- (a) an amount by way of a fee, charge or remuneration that is greater than the prescribed amount; or
- (b) a reward or consideration in addition to or instead of any amount that he may lawfully so demand or receive,

is guilty of an offence and liable to a penalty not exceeding \$500.

(2) The prescribed amount referred to in subsection (1) may be—

- (a) a monetary amount; or
- (b) a percentage of the salary, wage or remuneration payable to a person in respect of that person's employment during such period as is prescribed.

(3)

No. 107, 1975

(3) A regulation may be made requiring a licensee who has arranged for the employment of a person, at the option of the employee—

- (a) to refund any amount paid to the licensee in consideration of that arrangement; or
- (b) to find alternative employment for that person,

if the employment is terminated, in the circumstances specified in the regulation, before the expiration of two weeks or, where the employment was arranged for a period of less than two weeks, before the expiration of that period.

(4) A regulation made for the purposes of subsection (2) or (3) may be made so as to apply differently according to such factors as are specified in the regulation.

**Offences
by
licensees.**

145R. (1) A licensee who—

- (a) fails to keep a register or registers, in such form as is approved by the Under Secretary, containing particulars of the name and address of every person who applies to him for employment and of every person who applies to him for labour and the nature of the employment or labour required or to retain a register so kept for a period of twelve months after the making of the last entry therein;
- (b) fails to keep a register, in such form as is approved by the Under Secretary, containing particulars of all engagements made by

or

or through the licensee, of any fee, charge No. 107, 1975 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 or to retain any such register for a period of twelve months after the making of the last entry therein;

- (c) fails to retain the originals of all letters received by the licensee in connection with his business as a private employment agent for the period of twelve months after their receipt;
- (d) fails to permit the Under Secretary or an officer authorised by him, at any reasonable hour, to inspect the registers referred to in paragraphs (a) and (b) and the letters referred to in paragraph (c);
- (e) fails to inform a person who applies to him for employment of the prescribed amount, if any, that may be payable by that person;
- (f) where the Under Secretary, by notice in writing served in the manner specified in section 145M (4), requires that licensee to furnish him, within such time as is, or at such times as are, specified in the notice, with information in writing relating to all or any of the particulars contained in the register referred to in paragraph (b), fails to furnish that information within the time or at any of the times so specified;
- (g) except when the license issued to him has been surrendered to the Under Secretary in accordance with this Division, fails to display the license in a conspicuous position in the premises to which it relates;
- (h)

No. 107, 1975

- (h) makes any false entry in a register referred to in paragraph (a) or (b);
- (i) advertises or causes to be advertised, or publishes or causes to be published, any matter that, by its tenor, suggests, implies or infers that the matter is not advertised or published by or on behalf of a private employment agent; or
- (j) advertises or causes to be advertised a position as being available when no such position exists,

is guilty of an offence and liable to a penalty not exceeding \$500.

(2) Where a corporation commits an offence under this Part and the offence is proved to have been committed with the consent or approval of a director, secretary or manager of the corporation, that director, secretary or manager is also guilty of that offence and liable to the penalty provided in respect of that offence.

**Part XIV,
Division 3:
Heading.**

- (p) by inserting before section 146 the following heading :—

DIVISION 3.—*General provisions for the purposes of Part XIV.*

Sec. 146.
(Where
license
cancelled
holder not
qualified
to obtain
license.)

- (q) (i) by inserting in section 146 after the word "license" where firstly occurring the words "under this Part";
- (ii) by inserting in section 146 after the word "hold" the word "such";

(r)

(r) by inserting in section 147 after the word "licensee" No. 107, 1975
the words "under this Part";

Sec. 147.
(Production
of license.)

(s) by omitting from section 148 the words " , and on Sec. 148.
the payment of ten cents, the Minister may, at the (Loss or
request" and by inserting instead the following destruction
words :— of license.)

under this Part—

(a) where the license is a license issued under
Division 2, the Minister; and

(b) where the license is a license issued under
Division 2A, the Under Secretary,

may, at the request;

(t) by omitting the heading before section 149;

Part XIV.
Division 3:
Heading.

(u) by omitting from section 149 the words "this Part Sec. 149.
of this Act" and by inserting instead the matter (Offences.)
"Division 2";

(v) by omitting from section 150 the words "of this Sec. 150.
Act" wherever occurring;

(Penalty
for con-
travention
of Act.)

(w) (i) by omitting from section 151 the words "of Sec. 151.
this Act";

(Who may
take pro-
ceedings.)

(ii) by omitting from section 151 the words "by
any" and by inserting instead the words "only
by a";

(x)

No. 107, 1975

Sec. 152.
(Copy of
entries in
registers
to be
evidence.)Sec. 153.
(Regula-
tions.)Transitional
and saving
provisions.

(x) by inserting in section 152 after the word "pre-scribed" the words "for the purposes of Division 2";

(y) by omitting from section 153 the words "of this Act" wherever occurring.

5. (1) A license, not being a license to open or carry on a theatrical agency, referred to in section 137 (1) (a) of the Principal Act and in force immediately before the commencement of section 4 shall, upon that commencement, be deemed to be a license referred to in section 145I (1) (a) of that Act, as amended by section 4, that—

- (a) is issued to the person named in the license;
- (b) is issued in respect of the place of business specified in the license or, where the business is being conducted at some other place and the Minister or the Under Secretary of the Department of Labour and Industry has been notified thereof in writing, the place of business so notified; and
- (c) subject to subsection (4), continues in force until it is cancelled under section 145K (3), 145L (3) (a) or 145M of that Act, as so amended.

(2) Where, immediately before the commencement of section 4, an application made under the provisions of section 138 of the Principal Act has not been determined, that application shall be determined as if this Act had not been enacted.

(3) Subsection (1) applies to and in respect of a license granted pursuant to an application referred to in subsection (2) in the same way as it applies to a license in force immediately before the commencement of section 4.

(4)

(4) Where the holder of a license referred to in sub- No. 107, 1975 section (1) or (3) surrenders the license held by him that, by subsection (1), is deemed to be a license referred to in section 145I (1) (a) of the Principal Act, as amended by section 4, the Under Secretary of the Department of Labour and Industry may, if that license is still in force—

- (a) unless that person makes the request referred to in paragraph (b), without fee issue to that person a license referred to in section 145I (1) (a) of the Principal Act, as amended by section 4, in the prescribed form in which is specified as the day of issue of the license, the date referred to in section 137 (2) of that Act as the date of the license; or
- (b) where that person so requests, without fee issue to that person a license referred to in section 145I (1) (b) of the Principal Act, as amended by section 4, in the prescribed form in which is specified as the day of issue of the license, the date referred to in section 137 (2) of that Act as the date of the license,

and upon the issue of any such license the provisions of subsection (1) cease to have effect in relation to the surrendered license.

(5) Where a license, not being a license to open or carry on a theatrical agency, referred to in section 137 (1) (a) of the Principal Act, as amended by section 4, specifies the names of more than one person those persons shall, upon the operation of subsection (1), be deemed to be joint licensees under Division 2A of Part XIV of the Principal Act, as amended by section 4.

(6)

No. 107, 1975

(6) Where before the commencement of section 4 the Under Secretary of the Department of Labour and Industry was notified in writing of the name of a person who is to have, or has, the management of the business of a private employment agent carried on at a specified place the licensee carrying on that business shall, subject to section 145E (7) and (8) of the Principal Act, as amended by section 4, be deemed—

- (a) where the person to whom the notification relates is not the licensee or one of a number of joint licensees—to have appointed that person under section 145E (4) of that Act, as so amended, to be the person in charge at that place of business; or
- (b) where the person to whom the notification relates is the licensee or one of a number of joint licensees—to have nominated that place of business under section 145E (3) of that Act, as so amended, as the place of business at which he is the person in charge.

(7) A reference in subsection (6) to a notification is, where there was more than one such notification, a reference to the later or latest such notification.

(8) A person who, immediately before the commencement of section 4, is the holder of a license, not being a license to open or carry on a theatrical agency, issued under the Principal Act—

- (a) who fails to retain for the period of six months following that commencement the originals of all letters received by him in connection with his business as a private employment agent during the period of six months that immediately preceded that commencement;
- (b)

(b) who has in his possession or under his control any registers referred to in section 139 of the Principal Act and who fails, after that commencement, to retain those registers for the period of twelve months following that commencement; or

(c) who fails to permit the Under Secretary of the Department of Labour and Industry or an officer authorised by him to inspect the letters referred to in paragraph (a) and the registers referred to in paragraph (b),

is guilty of an offence and liable to a penalty not exceeding \$500.