



ANNO TRICESIMO SECUNDO  
ELIZABETHAE SECUNDAE REGINAE  
VICTORIA

## Employment Agents Act 1983

No. 10018

An Act to make provision for the licensing and regulation of employment agents, to amend the *Market Court Act 1978*, the *Small Claims Tribunals Act 1973*, the *Consumer Affairs Act 1972* and the *Ministry of Consumer Affairs Act 1973* with respect to employment and employment agents, and for other purposes.

[Assented to 13 December 1983]

BE IT ENACTED by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):

### PART I.—GENERAL

1. (1) This Act may be cited as the *Employment Agents Act 1983*. Short title.
2. This Act shall come into operation on a day or on the respective Commencement. days to be fixed by proclamation or successive proclamations of the Governor in Council published in the *Government Gazette*.

## Interpretation.

3. (1) In this Act, unless inconsistent with the context or subject-matter—

## "Employment."

"Employment" includes—

- (a) employment by way of professional employment or under a contract of service or a contract for services; and
- (b) an arrangement whereby a person is to assist in the domestic work of a household in consideration of receiving hospitality with or without further or other remuneration.

## "Employee."

"Employee" includes a person seeking employment and a person sought for employment.

## "Firm."

"Firm" means an unincorporated body of persons (whether consisting of individuals or of bodies corporate or partly of individuals and partly of bodies corporate) registered under the *Business Names Act 1962*, and includes the several persons constituting that body.

## "Licence."

"Licence" means a licence under this Act.

## "Licensing authority."

"Licensing authority" means the licensing authority constituted under Division I of Part II.

## "Officer."

"Officer" in relation to a body corporate includes—

- (a) a Director, secretary, executive officer or employee of the body corporate;
- (b) a receiver or receiver and manager of the property or any part of the property of the body corporate;
- (c) an official manager or a deputy official manager of the body corporate;
- (d) a liquidator of the body corporate; and
- (e) a trustee or other person administering a compromise or arrangement made between the body corporate and any other person or persons.

## "Organization."

"Organization" includes an association of organizations.

## "Organization of employers."

"Organization of employers" means an organization which consists wholly or mainly of employers and whose principal objects include the regulation of relations between employers and employees or organizations of employees.

## "Organization of employees."

"Organization of employees" means an organization which consists wholly or mainly of employees and whose principal objects include the regulation of relations between employees and employers or organizations of employers.

## "Prescribed."

"Prescribed" means prescribed by the regulations.

## "Theatrical agent."

"Theatrical agent" means—

- (a) a person who or a firm or body corporate which carries

on the business of an employment agent for or in connexion with (or represented as being for or in connexion with) the employment or engagement of theatrical performers; or

- (b) any person who on any one occasion or as an isolated act engages any theatrical performer for a theatrical employer.

“Theatrical employer” means any person firm company syndicate society or association who or which employs any theatrical performer for the purpose of a theatrical enterprise and includes any agent of such person firm company syndicate society or association and the parties to any partnership or other agreement for the purpose of the theatrical enterprise.

“Theatrical employer.”

“Theatrical enterprise” means any enterprise or venture which is undertaken for the purpose of giving a performance or performances in a place of entertainment, or for the purpose of filming or taping in any way any performance for the purpose of using the film or tape for entertainment in a place of entertainment the main purpose of which is the financial benefit of a theatrical employer or theatrical performer.

“Theatrical enterprise.”

“Theatrical performer” means any actor singer dancer acrobat model or mannequin or performer of any kind employed by a theatrical employer to act sing dance play model or perform in any theatre music hall or other place of entertainment.

“Theatrical performer.”

(2) Any person who and any firm or body corporate which carries on (whether or not with a view to profit and whether or not in conjunction with any other business) the business of providing services (whether by the provision of information or otherwise) for the purpose of finding employment for persons seeking to be employed or for procuring employees for persons seeking to employ such persons is deemed for the purposes of this Act to be carrying on the business of an employment agent.

(3) In sub-section (2) the reference to providing services does not include a reference—

- (a) to publishing a newspaper or other publication unless it is published wholly or mainly for the purpose mentioned in that interpretation;
- (b) to the display by any person of advertisements on premises occupied by him otherwise than for the said purpose; or
- (c) to any broadcast telecast or cinematograph exhibition.

(4) A person who, as principal, is the employer responsible for the payment of wages or other lawful obligations to an employee and who,

as such employer, provides to other persons the services of his employees to perform tasks of a temporary nature on the basis of predetermined rates agreed between those other persons and himself as such employer, no fee or expense being incurred by the employee in or in relation to the performance of such tasks, shall not be deemed by reason only of that fact to be an employment agent notwithstanding that if the employer did not perform such tasks the employee would receive no payment.

Exemptions.

4. The provisions of Part II. of this Act do not apply to—
- (a) any agent or agency carrying on for fee or reward the business or practice of arranging the supply of nurses;
  - (b) services provided by any organization of employers or organization of employees for its members;
  - (c) services which are ancillary to the letting upon hire of any aircraft, vessel, vehicle, plant or equipment;
  - (d) services provided by an appointments board or service controlled by a university or other post-secondary institution; or
  - (e) any business carried on or any services provided by such persons or classes of persons as may be prescribed.

PART II.—EMPLOYMENT AGENTS

*Division 1—Licensing of Employment Agents*

Constitution of  
licensing  
authority.

5. (1) There shall be for the purposes of this Act a licensing authority constituted as follows:

- (a) A Chairman who is a barrister or solicitor of not less than five years standing; and
- (b) Two members, one of whom represents in the opinion of the Minister the interests of employment agents and one of whom represents in the opinion of the Minister the interests of persons using the services of employment agents.

(2) The Chairman and members referred to in sub-section (1) shall be appointed by the Governor in Council and shall hold office for such period (not exceeding five years) as is specified in their instruments of appointment but shall be eligible for re-appointment.

(3) The licensing authority shall observe any prescribed procedures and otherwise may regulate its own proceedings.

Employment  
agents to be  
licensed.

6. (1) Subject to sub-section (2) a person or a firm or a body corporate shall not carry on the business of an employment agent at any premises after the date of commencement of this section unless he or it is the holder of a licence granted in respect of those premises.

Penalty: 10 penalty units.

(2) A person who or a firm or body corporate which on the date of commencement of this section is carrying on the business of an employment agent at any premises—

- (a) shall before three months have elapsed from that date make application for a licence under this Act; and
- (b) shall not be precluded by sub-section (1) from carrying on that business at those premises until those three months have elapsed or until the application is refused, whichever first occurs.

7. (1) Subject to sub-section (2), an applicant for a licence under this Act shall not less than 21 days before making his or its application advertise notice of the application in a newspaper circulating generally throughout the State.

Notice of application.

(2) An applicant is not required to advertise notice of an application pursuant to sub-section (1) where the application is—

- (a) an application for the renewal of a licence;
- (b) an application in relation to a business which is exempted from the operation of section 5 (1) by section 5 (2) as provided by that section.

(3) A notice under sub-section (1) shall—

- (a) be in or to the effect of the prescribed form;
- (b) state the name and address of the applicant; and
- (c) state the situation of the premises at which the business of an employment agent is to be carried on by the applicant and the class of business to be carried on at those premises.

(4) An application for the grant or renewal of a licence shall be made in or to the effect of the prescribed form to the licensing authority and shall be accompanied by—

- (a) the prescribed fee; and
- (b) (where it is not an application to which section 6 (2) applies) a page of a newspaper circulating generally throughout the State being a page in which was published the notice under sub-section (1) with respect to the application.

(5) The application fee prescribed under sub-section (4) (a) shall not exceed \$200.

8. A person may, within 30 days after the publication of a notice referred to in section 6, lodge with the licensing authority a notice of an objection in respect of the application to which the notice relates.

Objections.

Grant or renewal  
of a licence.

9. (1) An application for the grant of a licence shall not be dealt with before the expiration of fourteen days after the application is lodged with the licensing authority.

(2) Where the licensing authority is satisfied in relation to an application for the grant or the renewal of a licence—

- (a) that, where the application is an application for the grant of a licence, any notice required by section 6 has been duly published;
- (b) that the premises at which the business of an employment agent is or is to be carried on are suitable in respect of a business of the class in question;
- (c) that the business of an employment agent if it is already being carried on is being conducted in compliance with the regulations;
- (d) that—
  - (i) where the applicant is a natural person—the applicant is;
  - (ii) where the applicant is a firm, each natural person who is a partner in the firm is and where the director of a body corporate which is a partner in the firm is a natural person—he is;
  - (iii) where the applicant is a body corporate—each director of the applicant who is a natural person is—  
of or above the age of eighteen years and is a fit person to hold a licence;
- (e) that, where the applicant is a firm, each partner of the firm who is a natural person and where the applicant is a natural person, he—
  - (i) is not an undischarged bankrupt and is not currently taking the benefit of a law for the relief of bankrupt or insolvent debtors; and
  - (ii) has not been convicted, either within the State or elsewhere, of an offence involving fraud or dishonesty punishable on conviction with imprisonment for three months or more; and
- (f) that, where the applicant is a body corporate, it—
  - (i) is not under official management and is not being wound up;
  - (ii) is not a body corporate in respect of the property, or part of the property, of which a receiver or a receiver and manager, has been appointed under the *Companies Act 1961* or the *Companies (Victoria) Code* or under the corresponding law of another State or of a territory; and

- (iii) is not a party to a compromise or scheme of arrangement with its creditors—

it shall subject to this Act grant a licence to the applicant or renew the licence (as the case requires).

(3) In considering whether to grant or refuse an application for a licence the licensing authority shall have regard to any matter raised in any notice of objection lodged under section 7.

(4) In considering for the purposes of sub-section (2) (d) whether a person is a fit person to hold a licence the licensing authority shall have regard to such matters as it considers relevant.

(5) The licensing authority shall within 30 days after receiving an application for grant or renewal of a licence make a decision on the application and give notice in writing of the decision to the applicant and the notice shall state in the case of a refusal to grant or to renew a licence the grounds for the refusal.

10. (1) The licensing authority may grant or renew a licence subject to conditions, limitations or restrictions relating to— Conditions.

- (a) the class of business;
- (b) the place or circumstances at or in which the licence is to have effect;
- (c) the supervision and control of the conduct of the business; and
- (d) such other matters as the licensing authority sees fit.

(2) A person who contravenes any condition limitation or restriction to which a licence is subject commits an offence.

Penalty: 10 penalty units.

11. (1) A licence shall be in the form prescribed. Form of licence.

(2) A licence shall specify—

- (a) the name of the licensee;
- (b) the address of the place or places of business where the licensee may carry on the business of an employment agent;
- (c) the business name if any under which the business is to be carried on; and
- (d) where appropriate, the class or classes of business authorized.

(3) Where the licensing authority is satisfied that a licence has been lost or destroyed he may issue a duplicate licence on payment of the prescribed fee.

(4) Where the licensing authority receives notice pursuant to section 11 (3) of a change in a prescribed particular of a business in respect of

which a licence has been issued, the licensing authority may vary the licence issued in respect of that business.

(5) The licensing authority shall not vary a licence with respect to a place at which the business of an employment agent may be carried on except to delete such a place from the licence.

Duration of  
licence.

12. (1) A licence has effect from and including the day specified in the licence as the day of issue of the licence and shall, unless revoked or surrendered under this Act continue in force for such period as is determined by the licensing authority, being not more than one year.

(2) Where the holder of a licence in respect of any premises has applied before the expiry of the licence for a renewal of the licence in respect of those premises, the previous licence shall not expire until the commencement of the renewed licence or, if the application is refused, until the time for appealing against the refusal has expired, and, if such an appeal is brought, until it is disposed of.

(3) Where there is a change in any particulars of a business in respect of which a licence has been issued which are prescribed particulars for the purposes of this section, the licensee shall within one month of that change give to the licensing authority notice in writing of the change and any person who fails to comply with this sub-section shall be guilty of an offence.

Penalty: 10 penalty units.

(4) A licensee may at any time by notice in writing given to the licensing authority, surrender his or its licence.

Revocation of  
licence.

13. (1) Where—

- (a) the licensing authority is satisfied that the premises at which the business in respect of which the licence was granted are no longer suitable in respect of a business of the class in question;
- (b) the licensing authority is satisfied that the business of an employment agent being carried on by the licensee is not being properly conducted;
- (c) the licensee contravenes or fails to comply with any provision of this Act or the regulations;
- (d) the licensing authority is satisfied that—
  - (i) where the licensee is a natural person—the licensee is;
  - (ii) where the licensee is a firm, a natural person who is a partner in the firm is, or where the director of a body corporate which is a partner in the firm is a natural person—he is; or
  - (iii) where the licensee is a body corporate—a director of the licensee who is a natural person is—not a fit person to hold a licence; or



(e) a natural person who is a partner in a firm which is the holder of a licence or a natural person who is the holder of a licence—

(i) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration or any part of his property for their benefit; or

(ii) is convicted either within the State or elsewhere of an offence involving fraud or dishonesty punishable on conviction with imprisonment for three months or more; or

(f) a body corporate which is a partner in a firm which is the holder of a licence or a body corporate which is the holder of a licence—

(i) is under official management, is commenced to be wound up or has ceased to carry on business;

(ii) is a body corporate in respect of the property, or a part of the property, of which a receiver or a receiver and manager, has been appointed under the *Companies (Victoria) Code* or under the corresponding law of another State or of a territory; or

(iii) has entered into a compromise or scheme of arrangement with its creditors—

the licensing authority may revoke the licence.

(2) The licensing authority shall not act under sub-section (1) unless it has given not less than one month's notice in writing to the holder of the licence of the grounds on which it proposes to revoke the licence, and if the holder makes objections or representations in writing to the licensing authority within one month of the date on which the notice is given or such longer period as the licensing authority may allow, the licensing authority shall have regard to those representations.

(3) On deciding to act under sub-section (1) the licensing authority shall give notice in writing of its decision to the holder of the licence stating the grounds for the revocation.

(4) The revocation of a licence by the licensing authority shall not take effect until the time for appealing against the decision of the licensing authority has expired and, if such an appeal is duly brought, until it is disposed of pursuant to section 18.

#### *Division 2—Appeals*

14. (1) In this section—

“Day of service” means—

(a) in the case of an appeal against a refusal to grant a licence, the day of service of the notice of refusal; and

Tribunal for  
Appeals.

(b) in the case of an appeal against a revocation of a licence, the day of service of the notice of revocation.

"Market Court" means the Market Court established under the *Market Court Act 1978*.

"Tribunal" means Tribunal constituted pursuant to sub-section (2).

(2) There shall be established a Tribunal which shall consist of the president for the time being of the Market Court.

Who may appeal. 15. (1) An applicant for a licence may appeal to the Tribunal against the refusal of the licensing authority to grant the licence.

(2) A holder of a licence may appeal to the Tribunal against the revocation of the licence by the licensing authority.

Notice of appeal. 16. Notice of an appeal under this Division may be lodged up to 21 days after the day of service with the registrar of the Market Court.

Hearing of appeal. 17. (1) The registrar of the Market Court shall fix a day for the hearing of the appeal and shall cause notice of the day fixed to be given to the appellant, the licensing authority and any person who has lodged an objection pursuant to section 7 to the grant of the licence.

(2) The licensing authority may appear at a hearing of an appeal under this section to respond to the appeal.

(3) A person who has lodged an objection pursuant to section 7 to the grant of a licence may, where the application for the licence is refused, appear at the hearing of any appeal under this section against that refusal.

(4) A party to any appeal before the Tribunal may appear and be heard—

(a) personally;

(b) by counsel or a solicitor; or

(c) with leave of the Tribunal, by any other person approved by the Tribunal.

Tribunal may summon any person. 18. (1) The Tribunal may summon any person to appear before it to give evidence and to produce such documents (if any) as are referred to in the summons.

(2) A summons issued by the Tribunal may be served upon the person to whom it is directed by delivering a true copy of the summons to that person himself or by leaving a true copy thereof for him at his last or most usual place of abode or of business with some other person apparently an inmate thereof or employed thereat and apparently not less than sixteen years of age.

(3) A summons issued by the Tribunal shall be signed by the registrar of the Market Court.

**19. (1) Evidence material to any appeal before the Tribunal—**

Procedure.

- (a) may be given orally or in writing; and
- (b) shall, if the Tribunal so requires, be given upon oath or upon affirmation or declaration instead of on oath where the same is permitted by law.

(2) The Tribunal is hereby empowered to administer an oath or, as the case may be, to take and receive an affirmation or declaration for the purpose of taking and receiving evidence.

(3) Costs shall not be allowed to or against any party to proceedings before the Tribunal.

(4) Subject to this Act and the regulations the procedure of the Tribunal is in its discretion.

(5) In the performance of its functions the Tribunal may inform itself in such manner as it thinks fit and is not required to conduct any proceeding in a formal manner.

(6) The Tribunal shall entertain, enquire into and decide upon each appeal made to it under this section.

**20.** Where a question of law arises in the hearing of any appeal before the Tribunal, it may, if it thinks fit (on application made by any party to the proceedings or without such application) reserve the question in the form of a special case for the opinion of the Supreme Court.

Reservation of a question to Supreme Court.

**21.** The decision of the Tribunal with respect to an appeal made under this section shall be final and shall be binding on the appellant and on the licensing authority which shall take such steps as may be necessary to give effect to the decision.

Decision of Tribunal to be final.

*Division 3—Regulation of Employment Agents*

**22.** A person or a firm or body corporate carrying on the business of an employment agent shall not, except—

Agents not to charge persons seeking employment.

- (a) where he or it is a theatrical agent in the circumstances prescribed by this Act and the regulations; or
- (b) in such cases or classes of cases as may be prescribed—

demand or directly or indirectly receive from any person any fee for finding him employment or for seeking to find him employment.

Penalty: 50 penalty units.

Theatrical agents.

**23. A theatrical agent shall not—**

- (a) demand or receive from a theatrical performer for or in respect of the engagement of the theatrical performer by a theatrical employer any greater or other fees than those prescribed;
- (b) take or accept any goods or chattels in payment, or as security for the payment of the prescribed fees or receive or accept any reward or other consideration in addition to the said fees; or
- (c) give or pay to any theatrical employer or agent of any theatrical employer for or in respect of the hiring of any theatrical performer any share or part of the charged fees nor shall any such employer or agent directly or indirectly take or receive from any such person firm or body corporate any share or part of such fee.

Penalty: 50 penalty units.

Employment agents responsible for loss or damage due to contravention.

**24. (1) Where—**

- (a) a person or a firm or body corporate carrying on the business of an employment agent consents—
  - (i) to try and procure employment for a person; or
  - (ii) to try and procure an employee for a person; and
- (b) the second-mentioned person in either case suffers loss or damage due to a contravention of a provision of this Act by the first-mentioned person—

the second-mentioned person may recover the amount of the loss or damage by action against the first-mentioned person or the firm or body corporate (as the case may be).

(2) An action under sub-section (1) shall not be commenced after the expiration of three years from the date on which the cause of action accrued.

(3) In a proceeding against a person arising pursuant to this section, a finding of any fact by a court made in proceedings in which that person has been found to have contravened a provision of this Act is *prima facie* evidence of that fact and the finding may be proved by production of a document under seal of the court from which the finding appears.

Other rights and remedies.

**25.** Except as is expressly provided in this Act, nothing in this Act shall have the effect of limiting, restricting or otherwise affecting any right or remedy a person would have had if this Act had not been enacted.

Employment agents trust accounts.

**26. (1)** In this section and in section 26, "employment agent" means the holder of a licence or a person who or a firm or body corporate which carries on the business of an employment agent.

(2) An employment agent shall open and maintain with a bank in Victoria an account designated as a trust account.

(3) An employment agent shall pay into the trust account all moneys held by it in trust for an employee not later than the next day on which the bank is open for business following the day on which they are received by the employment agent.

(4) For the purposes of sub-section (2)—

(a) all moneys received by an employment agent from an employer in respect of wages payable to an employee; and

(b) all moneys received by a theatrical agent from a theatrical performer—

other than moneys received in respect of fees or other proper charges of the employment agent shall be deemed to be held in trust for the employee.

(5) Sub-section (3) does not apply to or in relation to a cheque, bank cheque, bank draft, money order or postal order made payable to or to the order of a specified person or bearer (not being a cheque, bank cheque, bank draft, money order or postal order in which the payee is the employment agency) received from or on behalf of an employer or employee with instructions, express or implied, that the cheque, bank cheque, bank draft, money order or postal order is to be delivered to the person to whom it is payable.

(6) A person shall not contravene or fail to comply with a provision of this section that is applicable to him.

Penalty: 50 penalty units.

27. (1) An employment agent shall not withdraw money from a trust account except for the purpose of—

Purposes for which money may be withdrawn from a trust account.

(a) making a payment to, or in accordance with the written directions of, a person entitled to the moneys;

(b) defraying fees or other proper charges of the employment agent; or

(c) making a payment that is otherwise authorized by law.

Penalty: 50 penalty units.

(2) Except as otherwise provided in this section or section 25 moneys held in a trust account are not available for payment of the debts of the employment agent or liable to be paid or taken in execution under the order or process of a court.

(3) Nothing in this section or section 25 takes away a lawful claim or lien that a person has against or on any moneys held in a trust account before those moneys are paid into a trust account.

(4) An employment agent is not guilty of an offence against sub-section (1) by reason only that it withdraws from a trust account an amount that is the whole or any part of the amount of a cheque that has been paid into the account but that has not been paid and has not been refused payment, by the banker on which it is drawn.

(5) Where an employment agent withdraws from a trust account an amount that is the whole or any part of the amount of a cheque that has been paid into the account but that has not been paid by the banker on which it is withdrawn and the banker later refuses payment of the cheque, the employment agent shall forthwith pay into the trust account by cash or bank cheque an amount equal to the first-mentioned amount.

(6) An employment agent shall not fail to comply with sub-section (5).

Penalty: 50 penalty units.

Display of  
licence.

28. The holder of a licence shall keep the licence displayed on the premises to which the licence relates in such a position that it can readily be seen by persons resorting to those premises.

Penalty: 5 penalty units.

Fraudulent  
applications and  
entries.

29. (1) Any person who for the purpose of procuring the grant of a licence or the renewal of a licence under this Act—

- (a) makes a statement which he knows to be false in a material particular or recklessly makes a statement which is false in a material particular; or
- (b) produces, furnishes, sends or otherwise makes use of a document which he knows is false in a material particular or recklessly produces, furnishes, sends or otherwise makes use of a document which is false in a material particular—

shall be guilty of an offence.

Penalty: 50 penalty units.

(2) Any person who makes or causes to be made or knowingly allows to be made any entry in a record or other document required to be kept in pursuance of this Act or the regulations which he knows to be false in a material particular shall be guilty of an offence.

Penalty: 50 penalty units.

Offence by body  
corporate.

30. Where a body corporate or a firm is guilty of an offence against this Act, each officer of the body corporate or each partner of the firm who was in any way, by act or omission, directly or indirectly knowingly concerned in or party to the commission of the offence is also guilty of that offence.

Offence against  
regulations.

31. A person who or a firm or body corporate which contravenes or fails to comply with the regulations shall be guilty of an offence.

Penalty: 5 penalty units.

32. Proceedings for any offence against this Act may be taken by the Director of Consumer Affairs or by any person who is an inspector under Part V. of the *Consumer Affairs Act 1972* or by any person thereunto authorized in writing by the Minister whether generally or in any particular case or by any person who is specially aggrieved by the commission of such offence. Proceedings.

33. (1) The Governor in Council may make regulations to secure the proper conduct of persons who and firms and bodies corporate which carry on the business of an employment agent and to protect the interests of persons availing themselves of the services of such businesses, and such regulations may in particular make provision— Regulations.

- (a) requiring persons firms and bodies corporate carrying on the business of an employment agent to keep records;
- (b) prescribing the form of such records and the entries to be made in them;
- (c) prescribing qualifications appropriate for persons firms or bodies corporate carrying on such businesses; or
- (d) regulating advertising by persons firms or bodies corporate carrying on such businesses.

(2) The Governor in Council may make regulations prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or expedient to be prescribed for carrying out or giving effect to this Act.

(3) Regulations under this Act may make different provisions in relation to different cases or classes of cases.

### PART III.—AMENDMENTS TO VARIOUS ACTS

34. Section 2 of the *Market Court Act 1978* shall be amended as follows: *Market Court Act 1978.*

- (a) After the expression “2” there shall be inserted the expression “(1)”;
- (b) After the interpretation of “Director” there shall be inserted the following interpretation:
  - “Firm” means an unincorporated body of persons (whether consisting of individuals or of bodies corporate or partly of individuals and partly of bodies corporate) registered under the *Business Names Act 1962*, and includes the several persons constituting that body.”;
- (c) At the end of the section there shall be inserted the following sub-sections:

“(2) In this Act, a reference to a person who or to a firm or body corporate which carries on the business of an

New ss. 2 (2) and (3) inserted

employment agent is a reference to a person who or a firm or body corporate which would be deemed for the purposes of the *Employment Agents Act 1983* to be carrying on such a business.

(3) This Act shall apply to, and to the provision of services by a person who or a firm or body corporate which carries on the business of an employment agent as if—

(a) that person, firm or body corporate were a trader; and

(b) a person who uses the services of the trader in seeking employment were a consumer in relation to that trader.”.

*Market Court Act 1978.*

Amendment of s. 3.

35. In section 3 of the *Market Court Act 1978*, after the expression “3.” there shall be inserted the expression “Except as provided in section 2 (3),”.

*Small Claims Tribunals Act 1973.*

New ss. 2 (4) inserted.

36. After section 2 (3) of the *Small Claims Tribunals Act 1973*, there shall be inserted the following sub-sections:

“(4) The provisions of this Act shall apply to a claim for recovery of an amount of loss or damage where the claim arises pursuant to—

(a) section 13AAB(1) of the *Consumer Affairs Act 1973*; or

(b) section 23 of the *Employment Agents Act 1983*—

which is a claim for an amount which is not greater than the prescribed amount which has arisen not more than two years previously as if—

(c) that claim were a small claim;

(d) the person against whom (or the firm or body corporate against which) the claim is made were a trader; and

(e) the person making the claim were a consumer.

(5) In sub-section (4), “the prescribed amount” means the monetary limit prescribed from time to time in paragraph (a) of the interpretation of “small claim” in section 2 (1) of the *Small Claims Tribunals Act 1973*.”

*Consumer Affairs Act 1972.*

New ss. 4 (2) and (3) inserted.

37. Section 4 of the *Consumer Affairs Act 1972* shall be amended as follows:

(a) After the expression “4.” there shall be inserted the expression “(1)”; and

(b) At the end of the section there shall be inserted the following sub-sections:

“(2) In this section a reference to a person who or to a firm or body corporate which carries on the business of an employment agent is a reference to a person who or a firm or body corporate which would be deemed for the purposes



of the *Employment Agents Act* 1983 to be carrying on such a business.

(3) The provisions of this Act shall apply as if a person who uses the services of a person who carries on the business of an employment agent in seeking employment were a consumer in relation to the second-mentioned person (or in relation to the firm or body corporate, as the case may be)."

38. After section 13 of the *Consumer Affairs Act* 1972 there shall be inserted the following sections:

*Consumer Affairs Act* 1972.

New ss. 13AA—  
13AAC inserted.

"13AA. (1) Any person who—

- (a) publishes or causes to be published an advertisement seeking a person or persons for employment by any person, where the advertisement contains a statement that is false or misleading in a material particular;
- (b) publishes or causes to be published an advertisement seeking employment where the advertisement contains a statement that is false or misleading in a material particular; or
- (c) makes to a person who is seeking employment a statement that is false or misleading in a material particular—

Offence to advertise for employees or for employment in a false or misleading way.

shall be guilty of an offence.

(2) It is a defence to a prosecution of a person for an offence under sub-section (1) in relation to a statement that is false or misleading in a material particular if the person proves that—

- (a) he made the statement only as an agent for another person; and
- (b) he believed on reasonable grounds that the statement was true and not misleading in any material particular.

(3) A person who, in the course of carrying on a business, makes a statement concerning the profitability or risk or any other material aspect of any business which he represents as one that can be, or can be to a considerable extent carried on at a person's place of residence and who does not believe on reasonable grounds that the statement is true and is not deceptive or misleading, shall be guilty of an offence.

(4) A person who, in the course of carrying on a business, invites, whether by advertisement or otherwise, persons to engage or participate in a business activity requiring the investment of moneys by the persons concerned and the performance by them of work associated with the investment and who makes a statement concerning the profitability or risk or any other material aspect of the business activity and who does not believe on reasonable grounds that the statement is true and is not deceptive or misleading shall be guilty of an offence.

(5) No prosecution shall be instituted against the printer publisher or proprietor of any newspaper printed or published in Victoria or

against any person having the management or control of any broadcast telecast or cinematograph exhibition or against any person acting under the authority of any of them or the publication of a statement in contravention of this section unless—

- (a) the printer publisher proprietor or person has been warned by a law officer that publication of the statement or that the publication of another statement substantially the same as that statement is an offence;
- (b) the printer publisher proprietor or person has after receiving the warning published or authorized or permitted the publication of the statement or of any such other statement; and
- (c) the consent of a law officer to the prosecution is first obtained.

Person making false or misleading statement liable for loss or damage caused.

13AAB. (1) A person who suffers loss or damage due to a contravention of a provision of section 13AA by another person may recover the amount of loss or damage by action against that other person or against any person involved in the contravention.

(2) An action under sub-section (1) shall not be commenced after the expiration of three years after the date on which the cause of action accrued.

Proceedings arising under section 13AAB.

13AAC. (1) In a proceeding against a person arising pursuant to section 13AAB a finding of any fact by a court made in proceedings for an offence against section 13AA in which that person has been found to have contravened or to have been involved in a contravention of section 13AA is *prima facie* evidence of that fact and the finding may be proved by production of a document under the seal of the court from which the finding appears.

(2) For the purposes of this section and of section 13AAB a reference to a person involved in a contravention of section 13AA is a reference to a person who aids abets counsels or procures or by any act or omission is in any way, directly or indirectly, knowingly concerned in the commission of an offence under that section.

(3) Where in respect of any statement made or published by a body corporate, being a statement to which a provision of section 13AA may apply, it is necessary in any proceedings to establish the intention or belief of the body corporate, it is sufficient to show that a servant or agent of that body corporate had that intention or belief.”

Consumer Affairs Act 1972.  
Consequential amendments of s. 13.

39. Section 13 of the *Consumer Affairs Act 1972* shall be amended as follows:

- (a) After the word “section” in sub-section (3) there shall be inserted the expression “or section 13AA”;

- (b) After the word "section" in sub-section (5) there shall be inserted the expression "or under section 13AA";
- (c) After the word "section" in sub-section (7) there shall be inserted the expression "or under section 13AA";
- (d) After the word "section" in sub-section (11) there shall be inserted the expression "or under section 13AA"; and
- (e) After the word "section" in sub-section (12) there shall be inserted the expression "and section 13AA".

40. At the end of the Schedule to the *Ministry of Consumer Affairs Act 1973* there shall be inserted the expression "*Employment Agents Act 1983*".

*Ministry of  
Consumer Affairs  
Act 1973.  
Consequential  
amendment.*