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LEGISLATIVE ASSEMBLY FOR
THE AUSTRALIAN CAPITAL TERRITORY

The Agents (Amendment) Bill 1998

**Report No.6 of the
Standing Committee on Justice and Community Safety**

December 1999

Resolution of Appointment

That—

The following general purpose standing committees be established to inquire into and report on matters referred by the Assembly or, matters that are considered by the committee to be of concern to the community...

...a Standing Committee on Justice and Community Safety to examine matters related to administration of justice, legal policy and services, registrar and regulatory services, electoral services, consumer affairs, corrective, emergency and police services and fair trading and any other matter under the responsibility of the portfolio minister.

Legislative Assembly for the ACT, *Minutes of Proceedings*, No.2, 28 April 1998, p 15.

Terms of Reference

Inquire into and report on the Agents (Amendment) Bill 1998.

Legislative Assembly for the ACT, *Minutes of Proceedings*, No.60, 1 September 1999, p 532-3.

Committee Membership

Paul Osborne MLA (Chair)

John Hargreaves MLA (Deputy Chair)

Harold Hird MLA

Trevor Kaine MLA

Secretary: Fiona Clapin

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DISSENTING REPORT- MR HAROLD HIRD MLA	

RECOMMENDATIONS

The following summary of recommendations is drawn from the text of this report. References relate to the paragraph numbers of the recommendations in the body of the report.

Recommendation 1

28.The committee recommends that the ACT Government seriously consider undertaking a strategic review of ACT consumer protection mechanisms in the ACT to include a comprehensive analysis of resourcing, coverage and reporting issues.

Recommendation 2

30.The committee recommends that relevant legislation be amended to require the annual report for the Agents Board to include information on:

- the number and nature of complaints;
- whether and of whom investigations were undertaken and the resultant actions;
- the number of agents registered during the year; and
- the nature of educational activities undertaken by the Board to inform consumers of their rights under the ACT.

Recommendation 3

32.The committee recommends that the annual report of the Agents Board include a list of licensed employment agents.

Recommendation 4

35.The committee recommends that the Bill be amended to include provision for the development of a specific Employment Agents Code of Conduct.

Recommendation 5

37.The committee recommends that the Bill be amended to exempt theatrical and modelling agents from the prohibition on fees and charges.

Recommendation 6

52.The committee recommends that

- (i) licence fees for employment agents be set at a rate in parity with NSW (approximately \$200 including \$100 application fee and \$100 annual fee);and**
- (ii) the ACT Government set aside funds in the 2000/01 budget to cover the residual cost of regulating ACT employment agents.**

Recommendation 7

57.The committee recommends that the Legislative Assembly support the passage of the Agents (Amendment) Bill 1998 with the minor amendments suggested in this report.

Introduction

1.Mr Berry MLA introduced this Bill on 24 June 1998. The Bill amends to *Agents Act 1968* to apply a scheme of agent regulation to employment agents. The Bill includes:

- provision for licensing of employment agents including a prohibition of operating without a licence and penalties for improperly using the title of employment agent;
- a supervisory mechanism under the authority of the Agents Board, with associated fees for agents; and
- a prohibition on the collection of fees or charges from unemployed people.

2.The *Agents Act 1968* currently provides for the licensing and supervision of real estate, stock and station, travel and business agents in the ACT. It provides for: the definition, required qualifications and provision of licences to agents; the establishment of an Agents Board, Registrar and inspectors; the keeping of records; and procedures for investigation of complaints against agents and for the surrender of licences and inquiries by the Agents Board.

3.This Bill raises questions concerning the appropriate level of regulation required in the employment industry. Although other types of agents are regulated through a licensing system, this is not the case for employment agents.

4.The committee has assessed the merits of this Bill against its understanding of the public interest which includes the need for adequate consumer protection standards for unemployed people together with the minimisation of unnecessary cost to the ACT community.

Conduct of the inquiry

5.The inquiry was advertised in local newspapers in September and the committee also directly invited relevant organisations to make a submission. The Department of Justice and Community Safety also wrote directly to each of the 73 employment agencies in the ACT advising them of the inquiry and inviting them to make submissions.

6.Only three submissions were received; one from a community-based employment agency, one from ACTCOSS, who strongly supported the Bill and one from the ACT Government, who strongly opposed the Bill. The

committee decided that, given this low level of public interest, it was not necessary to hold public hearings on the Bill.

Background to the legislation

7. When introducing the Bill, Mr Berry identified the need for regulation of employment agents partly due to changes introduced by the Howard Commonwealth Government. These changes included job cuts to the Commonwealth Public Service, leading to significant numbers of unemployed people looking for jobs in the ACT and changes requiring the unemployed to access private employment agents rather than the old system of registering with the CES.¹

8. The changes introduced by the Commonwealth mean that the market in which employment agents operate has changed significantly over the past few years.

9. Mr Berry highlighted the lack of regulation in the ACT to ensure the unemployed are not exploited. He stated that while employment agents, on the whole, will be good operators who will care about their clients:²

This is a ripe area for exploitation. It is an area where people at their weakest point can be exploited by unscrupulous operators.³

10. According to Mr Berry, the types of people who might be affected by this legislation include aged blue-collar workers trying to live off retrenchment moneys but barred from social security benefits and access to free job services. Another group is women seeking to re-enter the workforce after an absence of some years to raise children with partners in the workforce. This group cannot be guaranteed a free job service or appropriate training or re-skilling. According to Mr Berry, part-time workers, students and newly arrived migrants barred from receiving social security benefits for two years are also vulnerable to exploitation.⁴

11. While the committee did not receive specific complaints about the behaviour of employment agents in the ACT, ACTCOSS highlighted anecdotal complaints about the behaviour of employment agents across Australia, in particular, breaches of anti-discrimination laws.⁵

¹ Mr Wayne Berry MLA, *Hansard*, 24 June 1998, p841.

² *ibid* p842.

³ *ibid*, p842.

⁴ *ibid* p843.

⁵ ACTCOSS, Submission, pp10-11

The ACT employment market

12. With the changing employment market in the ACT, notably, the growth in information technology and advanced technology industries and fall in public sector permanent employment, there has been an increase in short-term contract employment. ACTCOSS characterised these changes as:

The ACT labour market has been subject to massive structural change and sectoral shifts in the past five years, which has resulted in considerable volatility, redundancies, marked casualisation of employment opportunity and consequent insecurity of income.⁶

The ACT industry

13. The ACT employment industry consists of approximately 70 employment agencies which provide a diverse range of services from professional recruitment to placement of unemployed people under contract with Job Network members. Approximately 12 of the 70 agencies are members of the Job Network, introduced in May 1998 by the Commonwealth as a replacement for the CES.⁷

14. Unemployed people have access to Centrelink computer system, where employers register jobs. The cost of placing people who are not on benefits is either borne by the individual or by employers who pay for the placement. Employment agencies are not restricted in charging fees to employers and these can range from \$250 to \$850 for basic placements.⁸

15. Currently, ACT employment agents face three types of supervision:

- consumer protection offered through the ACT Consumer Affairs Bureau;
- agency supervision provided under the *Corporations Law* or the *Associations Incorporation ACT 1991*;
- for those funded through the Commonwealth's Job Network, the regime established under the Job Network Employment Services Industry Code of Ethics.

16. Those agencies not funded under the Job Network do not have to meet employment-agency specific rules, codes or guidelines. Those agencies funded by the ACT Government to provide employment services are required

⁶ ACTCOSS, *Submission*, p9

⁷ ACT Government, *Submission*, p2.

⁸ *ibid.*

to adhere to contract-specific clauses in relation to conflict of interest, privacy and financial probity.

Other jurisdictions

17. Legislation of employment agents varies widely across Australia. Currently, the Northern Territory, Tasmania and the ACT are the only jurisdictions which do not have specific legislation for employment agents. Appendix C provides a summary of legislative provisions in Australian states.

18. In NSW there are currently 2,260 registered private employment agents. The fee in NSW is \$100 for a licence application fee and \$100 for an annual licence fee.⁹

19. ACTCOSS suggested that the Queensland *Private Employment Agencies Act 1983* is the best model, as it balances public interest with consumer protection and provider accountability.¹⁰

The industry view

20. This inquiry only attracted one submission from an ACT employment agency. This was despite the inquiry being advertised in the *Canberra Times* and the Government writing directly to every employment agency in the ACT advising them of the inquiry and alerting them to the prospect of a licence fee being introduced. The committee interpreted this lack of response as an indication that the industry is not as concerned about the possibility of regulation as the Government has claimed.

21. The Government had earlier written to employment agencies in October 1998, seeking their views on the Bill. Of the 73 agents contacted, approximately 14 responded, advising their opposition to the Bill on the following grounds:

- cost
- there are better ways of achieving compliance
- lack of market place problems to justify the scheme

⁹ ACT Government, *Submission*, p2.

¹⁰ ACTCOSS, *Submission*, p8.

- could lead to funds being diverted to an unnecessary bureaucracy
- agents already required to comply with strict Commonwealth contractual obligations
- agents not permitted to charge people eligible for Commonwealth-funded employment assistance
- there was no industry consultation
- regulation better achieved through funding contracts
- the Bill does not distinguish between differing needs of people seeking employment-related services
- the proposal is discriminatory
- the industry is over-regulated.

22.The National Industry Association for Disability Services (ACROD), which has 550 members nationwide, opposed the Bill and sought exemption from it, if introduced. ACROD members argued the proposal is unfair and would discriminate against their members as they are required to comply with Commonwealth Government policy, which encourages Commonwealth funded agencies to supplement funding.¹¹

ACTCOSS's view

23.ACTCOSS, which represents the interests of consumers, community service providers and the general public/community interest in the ACT, strongly supports the Bill, although they have suggested some additional requirements to strengthen community accountability.

Need for a general review

24.ACTCOSS supports a wide-ranging review of consumer protection mechanisms. It claims consumer protection mechanisms are inadequately funded to carry out their responsibilities and that this is particularly relevant with the current policy of outsourcing human and economic services.

25.ACTCOSS highlighted inconsistency in consumer protection mechanisms in human services in the ACT. For example, most ACT employment service

¹¹ ACT Government, *Submission*, p4.

providers also partially act as training providers. Registered training providers must adhere to standards on informed consent, information provision and complaints while employment agents are not required to meet the same standards. ACTCOSS pointed to confusion due to potential overlap of responsibilities in areas of children's, mental health, corrections and disability services. ACTCOSS claimed that currently in the ACT, particular requirements for consumer protection are based on compliance with Commonwealth funding agreements or historical attachments rather than a rational analysis of what is needed.¹²

26. ACTCOSS also highlighted inadequacies in reporting requirements on agent's activities which limits options for proper assessment of consumer satisfaction. They have recommended that annual reports be required to report on a common dataset including information on the number of complaints, how they were assessed, investigation action taken how the complaint was resolved etc. The committee supports the amendment of the Chief Minister's Annual Report Directions to incorporate ACTCOSS's suggestions. These issues should be considered as part of a general review.

27. The committee believes the Government should seriously consider conducting a review of the adequacy of consumer mechanism in the ACT. ACTCOSS has an in-depth knowledge of ACT consumer issues and Government should take their recommendations seriously. Furthermore, the move to increased outsourcing creates a concomitant need for appropriate consumer protection mechanisms.

Recommendation 1

28. The committee recommends that the ACT Government seriously consider undertaking a strategic review of ACT consumer protection mechanisms in the ACT to include a comprehensive analysis of resourcing, coverage and reporting issues.

Reporting requirements

29. ACTCOSS suggested the Bill be amended to provide for additional reporting requirements for employment agents similar to that required under the Queensland legislation. The committee supported this suggestion because it felt it would enhance the implementation of the Bill's objectives. It

¹² ACTCOSS, *Submission*, pp2-3

would also improve the reporting of complaints for all types of agents, not just employment agents.

Recommendation 2

30.The committee recommends that relevant legislation be amended to require the annual report for the Agents Board to include information on:

- **the number and nature of complaints;**
- **whether and of whom investigations were undertaken and the resultant actions;**
- **the number of agents registered during the year; and**
- **the nature of educational activities undertaken by the Board to inform consumers of their rights under the ACT.**

Publication of list of licensed employment agents

31.ACTCOSS suggested the Bill be amended to provide for publication of a list of licensed employment agents twice yearly in a newspaper. The committee supported the concept, although not to the extent proposed by ACTCOSS. It was of the view that publication of a list of agents in the annual report of the Agents Board should be sufficient.

Recommendation 3

32.The committee recommends that the annual report of the Agents Board include a list of licensed employment agents.

Code of Practice

33.ACTCOSS also suggested that an ACT-specific employment agents Code of Practice be developed to cover all employment agents regardless of their source of funding. ACTCOSS stated:

Currently the approach to Codes of Practice is piecemeal, with Job Network providers subject to a Code of Practice specifically in relation to those services, some general requirements and training providers being subject to another set of guidelines. The Bill proposes the adoption of the Rules of Conduct for Travel Agents, which cover probity

issues but are not as specific as the Job Network Code. Building on the Job Network Code of Practice, an ACT-specific Employment Agents Code of Practice should be developed to cover all employment agents, regardless of their source of funding.¹³

34.The committee agreed this would be appropriate.

Recommendation 4

35.The committee recommends that the Bill be amended to include provision for the development of a specific Employment Agents Code of Conduct.

Exemption for modelling and theatrical agents

36.ACTCOSS also pointed out that the Bill does not give adequate recognition to the possible need for exemptions on prohibition of fees and charges for modelling and theatrical agents. They suggested amendments based on the NSW model. The committee agreed that that this would be appropriate.

Recommendation 5

37.The committee recommends that the Bill be amended to exempt theatrical and modelling agents from the prohibition on fees and charges.

Government view

38.The ACT Government opposes the Bill on the grounds that it is a costly, anti-competitive, unfair and discriminatory regulation on the operation of small businesses. According to the Government the small businesses will have no choice but to pass on this additional cost to their clients and the ACT community.¹⁴

39.The Government also objected to the Bill on the grounds that under National Competition Principles Agreement, ACT legislation should not contain anti-competitive restrictions, unless the benefits of the restrictions to the community outweigh the costs and the objectives of the legislation can only be achieved by restricting competition. The Government claims the Bill is not supported by compelling evidence. In their view, no problems have been

¹³ *ibid*, p14.

¹⁴ ACT Government, *Submission*, p5.

identified with the industry charging fees to 'genuinely unemployed people' and that there is only anecdotal evidence about problems in the industry.¹⁵

40. The Government suggested that the Bill is discriminatory because it may discriminate against employment agents in favour of other organisations that provide similar career counselling services. They claim the Bill does not distinguish between a genuinely unemployed person and an unemployed person who can afford to pay for an agency service. They pointed out that some agencies offer resume preparation, career counselling and similar activities to individuals seeking career path changes and such clients can afford to pay on a fee-for-service basis.

Consultation by Government

41. While the Government is to be commended for engaging in consultation with one of the key parties likely to be affected by the legislation, it is noteworthy that they did not consult with the other key group- unemployed people, who are the clients of employment agencies. This demonstrates a partisan approach by the Government. It is apparent that the Government's definition of 'public interest' appears to rest on a notion that 'public interest' equals 'less cost for business' and 'less cost for taxpayers'.

42. The committee takes a broader interpretation of public interest. It is one which encompasses the responsibility of Government to provide adequate consumer protection mechanisms, especially for the disadvantaged, in addition to its responsibility to minimise the costs of regulation to the general ACT community.

43. The assumption by Government that the views of unemployed people would have somehow emerged if they had any real problems, without being solicited, and in the absence of any current consumer protection mechanisms, undermines the credibility of their case against the Bill. Disadvantaged unemployed people are likely to have limited access to expressing their views, particularly if they are desperate to gain employment and therefore not wanting to be critical of the agencies which provide one of their only means of accessing employment. In any case, they were not given the opportunity afforded to business, with each individual ACT employment agency being directly consulted by Government about the Bill.

44. Currently in the ACT, there is no system for regulating employment agents and no avenue for complaints. Therefore, it is not valid to conclude that a lack

¹⁵ ACT Government, *Submission*, p3.

of complaints reflects the lack of any problems. Even if there are no problems now, a system of regulation as proposed in the Bill, should limit any future problems by providing a deterrent effect.

Funding issues

45.The ACT Government stated that the cost of the scheme would have to be recouped through the imposition of a licence fee. The Government estimated that the cost of the scheme would be in the order of \$100,000 per annum and therefore the average cost of a licence would be more than \$1000 per annum. (See Attachment B for the Government's detailed costing) The Government considers that the cost of administering this scheme will impose an unjustifiable financial burden on the industry and their clients, as the agents will need to pass on the cost of the levy to the community.

46.The Government claims the cost of participating in the market will be so high that some employment agents may retire from the market or seek to avoid the levy. This would place an even heavier financial burden on those remaining or leave a funding gap for the Government to meet. The Government claims that:

The cost of Government partly or fully funding this scheme cannot be absorbed. No separate appropriation has been made in anticipation of the passage of this scheme.¹⁶

47.The committee was surprised that the Government's costing estimated such a high cost for the administration of this legislation. The Government claims this cost cannot be absorbed into current administration of other agents. The committee would have expected there would be some efficiencies based on economies of scale with the Agents Board currently processing licenses for travel agents, real estate agents and others. However, the committee did not receive evidence challenging the Government's costing so accepts it at face value.

48.One not for profit employment agency, Zenith Employment and Training, raised concerns that the burden of costs associated with the regulation would reduce their capacity to provide services for their disabled clients. They were concerned that the Bill only makes provision for companies and individuals. Incorporated organisations such as Zenith which operate under tight contract to their funding bodies, may face additional costs to create a corporate entity through which to operate, in addition to the licence fee.¹⁷

¹⁶ ACT Government, Submission, p3.

¹⁷ Zenith Employment and Training, *Submission*

49.The committee agreed that a \$1000 fee as proposed by the Government would be an exorbitant imposition for such non-profit agencies. It would also be an imposition for other agencies and is not justifiable. The committee strongly supports the introduction of regulation for employment agents but the costs should be in line with the costs under similar schemes in NSW, that is \$100 for registration and \$100 annual fee. This would address the concerns of the non-profit agencies and should make the introduction of the regulatory system more acceptable to private agents.

50.Because the total amount collected from the industry will not enable self-funding, the Government will need to make a funding commitment towards the regulation of employment agents. The exact amount will need to be determined by Government.

51.The committee recognises that the ACT Government may be taking on a funding commitment because of actions by the Commonwealth Government. Outsourcing by the Commonwealth may have enabled that government to make savings but this still leaves the ACT Government with a responsibility to regulate these outsourced functions, and this comes with a cost. Sometimes the necessary monitoring can be provided for in contracts but in other cases, such as the regulation of employment agents, additional regulatory mechanisms will be necessary, to ensure an adequate standard of consumer protection. It is suggested that the ACT Government pursue this issue with the Commonwealth Grants Commission.

Recommendation 6

52.The committee recommends that

- (i) licence fees for employment agents be set at a rate in parity with NSW (approximately \$200 including \$100 application fee and \$100 annual fee);and**
- (ii) the ACT Government set aside funds in the 2000/01 budget to cover the residual cost of regulating ACT employment agents.**

Conclusions

53.The ACT Government's objection to the regulation of employment agents is not sustainable. If their argument was taken to its logical conclusion they would have no reason to continue with the regulation of real estate agents, travel agents, stock and station agents and business agents.

54.The recommendations in this report aim to provide for an appropriate system of regulation which promotes consumer protection in the ACT employment industry. It also recognises the need not to place an unfair

burden on business by supporting a fee structure in line with NSW requirements, rather than the exorbitant level proposed by the ACT Government.

55.The committee proposes that the Bill be supported with minor amendments aimed at enhancing the consumer protection and accountability objectives.

56.The ACT should be aiming to be at the forefront of consumer protection regulation, not lagging behind with the excuse that we cannot afford to protect some of our most disadvantaged citizens.

Recommendation 7

57.The committee recommends that the Legislative Assembly support the passage of the Agents (Amendment) Bill 1998 with the minor amendments suggested in this report.

Paul Osborne MLA

Chair

29 November 1999

Appendix A-Submissions

1. Zenith Employment and Training
2. ACTCOSS
3. ACT Government

Appendix B-Government Costing

Appendix C-Legislation in Other Jurisdictions¹⁸

¹⁸ Source: ACTCOSS *Submission*