



Legislative Council

Fair Trading Amendment (Employment Placement Services) Bill Hansard - Extract

30/10/2002

Second Reading

The Hon. IAN MACDONALD (Parliamentary Secretary) [11.23 a.m.]: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

The bill introduced today contains significant consumer protection reforms for job seekers. It also takes into consideration the changing environment in which employment agents and the recruitment industry and consumers conduct their business.

Licensing of employment agents has been an element of industrial relations legislation in New South Wales for many years. In 1996 the employment agent provisions were separated from the *Industrial Relations Act* and the *Employment Agents Act* 1996 came into being. This new Act, together with the Employment Agents Regulation 1996, provides the mechanism for the regulation of the industry in New South Wales. In recognition that the key components of the legislation involve the protection of job seekers as consumers of employment agency services, the legislation has been administered by the Department of Fair Trading from that time.

During 2000 a review of the operation of the Act was initiated consistent with the Government's commitments under the *Competition Principles Agreement*.

It is the Government's policy to ensure that review processes take into account the full range of public benefits of legislation and that all views are thoroughly considered before any reforms are proposed. To achieve this a steering committee, chaired by the Department of Fair Trading, was established to conduct the review and a reference group comprising industry representatives and consumer advocates was formed.

Consultation occurred with a number of groups including the Recruitment and Consulting Services Association, the NSW Labor Council, the Council of Social Service of New South Wales and Jobfutures, and I thank them for their involvement in the preparation of this legislation. Seventeen hundred copies of the issues paper were distributed to interested parties and responses sought on the issues it raised, as well as any other relevant matter. Relevant parties were consulted individually and given the opportunity to put their views.

The review examined a range of issues including the possible difficulties faced by job seekers in regard to such matters as misleading advertising, inappropriate charging of fees and deceptive conduct.

The review concluded that the current licensing system is not considered to have a substantial impact on competition or business costs. It also found, however, that many of the complaints made by job seekers to the Department of Fair Trading were matters which could be addressed by the Fair *Trading Act*.

As expressed by the peak industry body Australian Business Industrial in its submission:

"The Act operates as a barrier which, while not overly onerous, is unnecessary and irksome."

This bill maintains the essence of the current legislation and strengthens the enforcement provisions by retaining and enhancing relevant consumer protection mechanisms and removing an ineffective licensing regime.

The bill provides for the repeal of the *Employment Agents Act 1996* and the inclusion of specific consumer protection provisions relating to employment placement services. It also includes consequential amendments to schedules in the *Fines Act 1996* and the *Industrial Relations Act 1996* to omit references to the *Employment Agents Act 1996*.

During the consultation process it became apparent that there was much confusion among consumers and industry with regard to the difference between employment agents and labour hire firms. The bill seeks to address this under the proposed section 60P by defining an employment placement service as a service provided by a person as an agent for the purpose of:

- finding or assisting to find a person to carry out work for a business seeking to have work carried out, or
- finding or assisting to find employment for a person seeking to be employed.

In other words, in order for a business to be considered an employment placement service for the purposes of the legislation there must be an agency relationship between the placement service and the job seeker.

An employment placement service does not have an employee/employer relationship or a contract of employment worker. If it did so, it would be considered a labour hire firm.

A labour hire firm is one that uses its own employees to provide services to other businesses seeking to have work carried out. Alternatively, such a firm may also find workers to provide services to other businesses seeking to have work carried out and employ these workers directly. In both cases, an employee/employer relationship or a contract of employment exists to protect the worker.

Issues surrounding labour hire firms have been examined in the final report of the Labour Hire Taskforce.

The definition of employment placement services in this way does not prevent the business from charging a prospective employee for other services it may provide such as preparation of a resume or advice on how to present at interview. These are not employment placement services within the meaning of section 60P.

Section 60Q establishes the key consumer protection provisions of the bill.

Section 60Q (1) prohibits a person from receiving a fee, charge or remuneration for the provision of employment placement services to a person seeking employment. The bill provides for a maximum penalty of \$5,500 if this provision is breached. Although this is a continuation of a provision in the *Employment Agents Act 1996*, it is an important consumer protection mechanism because it prevents job seekers from being exploited by agents. There have been circumstances in the past where agents may claim to have legitimate jobs for prospective job seekers, charge a fee for referrals or information and job seekers find that there is, in fact, no position actually available.

There have also been allegations of "churning". This is the practice of sending unsuitable applicants to clients in an effort to boost profits because the client must pay the agent for each applicant sent to fill the position. The provision of information standards in the new bill will appropriately address these issues by requiring agents to inform job seekers that they are prohibited from charging job seekers a placement fee and must not send job seekers to unsuitable positions or non-existent positions.

Any such fees inappropriately charged are recoverable under section 60Q (3).

The Government has a responsibility to protect consumers from being exploited in the marketplace. Often the best way to achieve this is to ensure that consumers go armed with information about their rights and about the obligations of the traders with whom they deal. The fact that a customer—in this case a job seeker—is provided with information by the employment agent about what is acceptable or unacceptable business practice constitutes a powerful incentive for businesses to do the right thing.

The bill provides for a regulation-making power for the establishment of information standards under Section 60R. This key provision provides a mechanism for requiring employment placement services to provide job seekers with access to information regarding their rights and available methods of redress in relation to those rights.

The general penalty provisions currently in the Fair *Trading Act 1987* will apply to persons who breach the information standard. This means that if the information standards are breached by an individual a maximum penalty of \$22,000 is available and in the case of a body corporate a maximum of \$110,000 may be incurred.

The Department of Fair Trading cannot always be present at the agent's premises and the requirement for the provision of information standards will ensure consumers are adequately informed. The standards will ensure the provision of appropriate information to job seekers about their rights and responsibilities thereby reducing the possibility of exploitation and deception by the agent.

The nature of the employment agents' operating environment has changed over the years due to advances in technology and changing regulatory requirements.

This amendment bill seeks to address the changing environment of the employment placement services industry and provides a sound foundation for the future operation of employment placement services in the marketplace and maintaining protection of consumer rights.

I commend the bill.