Speech by

# Hon. GORDON NUTTALL

## MEMBER FOR SANDGATE

Hansard 17 April 2002

### PRIVATE EMPLOYMENT AGENCIES AND OTHER ACTS AMENDMENT BILL

**Hon. G. R. NUTTALL** (Sandgate—ALP) (Minister for Industrial Relations) (11.56 a.m.), in reply: In commencing my response, I thank all honourable members for their contribution to the debate and particularly for their kind words in relation to my bringing the bill before the House. I thank the opposition, and in particular the honourable member for Keppel, for its support of the bill. This is the first bill that I have brought to the House as minister for which I have had some support from the opposition. It is a pleasant change.

This bill implements the recommendations of the independent review of the Private Employment Agencies Act 1983. This review was undertaken by an independent reviewer and included an independent public benefit test undertaken in accordance with national competition policy requirements. The review has also taken account of the need to ensure that the regulatory framework for private employment agencies is suitable within a contemporary environment.

Under the provisions of the bill the regulatory framework for licensing of private employment agencies will expire two years after its commencement and, in the interim, the bill introduces a simplified licensing process where current licences will continue to operate. New applicants will be issued with a licence by the licensing officer on recommendation of the Employment Agents Advisory Committee, comprising a representative of agents, employee organisations and government, and which is to be chaired by an independent person.

The new committee will adjudicate on licence applications and examine complaints that may be made against agents. The committee will also be required to formulate a code of conduct for the regulation of private employment agents dealing with the type of work arrangements and commercial operations to be covered by the code, standards of competence, training, disciplinary matters and record-keeping requirements. This code will form a basis for the future regulation of agents and will come into operation after the expiry of the current legislation.

The current protections for persons wishing to use agents contained within the Private Employment Agencies Act 1983 will be retained and transferred to the jurisdiction of the Industrial Relations Act 1999. Under these new arrangements the Queensland Industrial Relations Commission will be given powers to enable the recovery of fees charged by agents in contravention of the act through the small claims procedure. This will obviate the need to take a formal prosecution through the Industrial Magistrates Court and thereby help reduce the legal costs that may be incurred by both parties.

The bill also introduces some changes to the way in which agents may receive fees from persons seeking work. Under the new provisions, an agent may receive a fee from a model or performer for finding the person work, but only where: first, the fee is no more than 10 per cent of the gross amount payable to the model or performer; second, the agent provides written details of the nature of the work and related payments; and, third, the model or performer is paid at least the amount payable under an applicable award or agreement.

For those agents in the modelling and entertainment industries—for example, sports agents—who also act in the capacity of manager, the bill allows such an agent to also charge a fee in accordance with a written agreement with the model or performer. Under these arrangements, an agent or a manager will be required to provide at least four management services for the model or the performer, and they will include: one, the handling of business affairs; two, providing accounting advices; three, publicising and promotion; four, providing services ancillary to a performance; five,

providing continuing career or artistic advice; or, six, representing the model or performer in negotiations with the media, entertainment industry workers or the public.

I now turn to matters raised by honourable members during the debate. I am particularly pleased that the honourable member for Keppel has indicated his support for the bill. One matter the member raised was that he hoped the new arrangements will also achieve savings for private employment agents. I can inform the honourable member and the House that the new arrangements will result in savings to private employment agents. Initially, fees over the first two years will be reduced where agents will be required to pay only a $450 application fee or a $300 renewal fee. This represents a saving to agents, with applications for new licences currently incurring a $354 application fee. Following the granting of a licence, the agents are then required to pay an annual renewal fee of $178. So if one adds both those together, one can see that the new regime is actually cheaper. Further savings for agents will be achieved because they will not be required to also take out advertisements or appear before the Industrial Magistrates Court as part of the application process.

The honourable member for Nicklin raised a matter about the restriction of legal representation in the recovery of the legal fees charged by agents. I can confirm to the honourable member that clause 29 of the bill amends section 319 of the Industrial Relations Act 1999 to specifically state that legal representation is not permitted in such instances. This provision mirrors those that currently apply in the case of an application to the Queensland Industrial Relations Commission to recover unpaid wages under section 278 and has due regard to the principles of natural justice. In this regard, the Queensland Industrial Relations Commission has traditionally been a lay tribunal, with parties typically represented by lay representatives—usually industrial advocates employed by unions and employer organisations or industrial officers of the Department of Industrial Relations.

Both the honourable member for Nicklin and the honourable member for Caloundra have raised a particular issue as to why a person may be represented by a person who is a solicitor if they are an employee of a union when a person cannot be represented by a solicitor as their individual agent. This issue turns on representation rights under the Industrial Relations Act 1999. These matters have been considered extensively by the parliament in both 1999 and 2001. If a person is represented in proceedings by a union and the person who is appearing on behalf of the union as a direct employee is also a solicitor at law, the restriction on legal representation under section 139 of the Industrial Relations Act does not apply. It also does not apply because the union is representing the party. Representation is by the union and not by the lawyer. These provisions apply equally to a person employed by an employer organisation who also may be a lawyer.

These provisions were inserted into the Industrial Relations Act 1999 in line with the unanimous recommendation of the industrial relations task force. This recommendation was in response to cases where certain individuals were previously being excluded from appearing on behalf of their organisations where, for instance, they had completed legal studies but were not practising as a solicitor. Legal representation is generally restricted in a number of matters before the Queensland Industrial Relations Commission, with the objective of reducing excessive litigation and legal costs and focusing parties on achieving resolution of matters in dispute. It should be noted that other avenues of recovery continue to be available by way of an application to an industrial magistrate for recovery or a prosecution for an offence to an industrial magistrate, in which case legal representation may occur.

The honourable member for Nicklin also raised concerns that clause 9 of the bill omits sections 12 and 13 of the act. Section 12 of the legislation deals with the compulsion of a person to answer or produce documents and the admissibility or otherwise of that in evidence. This section was omitted on the advice of the Office of Parliamentary Counsel on the basis that a person is entitled under the principles of natural justice to refuse to answer a question that would incriminate the person. The section is therefore considered to be contrary to current legislative principles and practices. I can also inform the honourable member that this matter was considered by the Scrutiny of Legislation Committee, which commented favourably on the removal of this section.

Section 13 deals with the tabling of an annual report of the licensing officer. This section has been removed also on the advice of the Office of Parliamentary Counsel as it is now considered superfluous with the provisions for the tabling of reports contained within the Financial Administration and Audit Act 1977. In future, a report on the operations of the legislation will be included in the Department of Industrial Relations' annual report.

The honourable members for Nicklin and Caloundra raised issues with clause 20 and the insertion of new sections 36 and 37 of the bill. These new sections deal with the responsibility for acts or omissions of representatives and provide that executive officers must ensure the corporation complies with the act. Section 36 clarifies the responsibility for acts or omissions of representatives. It declares persons, including corporations, to be guilty of offences committed by their representatives, including their employees. Section 37 places an obligation on executive officers of corporations to ensure the corporation complies with the act. If the corporation commits an offence, each executive officer also commits an offence. These provisions replace existing section 38, titled 'Responsibility for employees',

which deals with the criminal responsibility of corporations and partnerships for their nominees who hold a private employment agency licence on their behalf and who are employees.

Defences exist if the person took reasonable steps to prevent the offending act or omission to ensure compliance or if the person was not in a position to influence the conduct of the relevant person. These defences effectively reverse the onus of proof. The provisions are therefore considered justifiable and necessary to prevent unscrupulous private employment agents sheltering behind employees or corporations and for the effective enforcement of the legislation. The new provisions have been inserted on the advice of the Office of Parliamentary Counsel.

The honourable member for Caloundra raised issues about who will be on the Employment Agents Advisory Committee and how they will be appointed. These matters are contained in proposed new sections 31A to 31D. The membership of the committee will comprise two representatives of the private employment agents industry, two representatives of employee organisations, one independent chairperson and one officer of the Department of Industrial Relations. Members of the committee, except for the officer of my department, are to be appointed by myself as the minister. The officer of the department is to be appointed by the director-general. In making appointments, I as the minister will give due regard to industry representation and experience.

In conclusion, the Private Employment Agencies Bill 2002 will provide a two-year interim licensing process for employment agents within Queensland while a suitable code of conduct will be developed by industry stakeholders focusing on the minimum standards for the industry. Parties, including an individual, an employee organisation, an agent or an industrial inspector, will now be able to pursue an application seeking to recover fees unlawfully charged through the Queensland Industrial Relations Commission using its successful small claims jurisdiction. Alternatively, they may continue to pursue an application or prosecution through the Industrial Magistrates Court. Importantly, the bill ensures fairer and more practical minimum standards for the setting of fees by agents for models and performers seeking work and in defined circumstances for the provision of appropriate management services.

I take this opportunity to thank members of my staff and members of the Department of Industrial Relations who have helped develop this bill. I particularly thank the honourable member for Clayfield for her contribution. As has been stated before, she comes from the arts and media industry. I know that she has been a strong advocate for this bill. It is pleasing in particular for her, after all these years, to be a member of the government that will actually pass this bill. I commend the bill to the House.