

South Australia

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SECURITY AND INVESTIGATION AGENTS ACT 1995

An Act to regulate security and investigation agents; to repeal the Commercial and Private Agents Act 1986; and for other purposes.

*This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at **1 November 2001**.*

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

SECURITY AND INVESTIGATION AGENTS ACT 1995

being

Security and Investigation Agents Act 1995 No. 93 of 1995
[Assented to 7 December 1995]¹

as amended by

Co-operatives Act 1997 No. 61 of 1997 [Assented to 7 August 1997]²

Statutes Amendment (Consumer Affairs) Act 1998 No. 21 of 1998 [Assented to 2 April 1998]³ (as amended by Statutes Amendment (Consumer Affairs) Amendment Act 1998 No. 22 of 1998 [Assented to 2 April 1998])

Financial Sector Reform (South Australia) Act 1999 No. 33 of 1999 [Assented to 17 June 1999]⁴

District Court (Administrative and Disciplinary Division) Amendment Act 2000 No. 4 of 2000 [Assented to 20 April 2000]⁵

Statutes Amendment (Consumer Affairs) Act 2001 No. 47 of 2001 [Assented to 11 October 2001]⁶

¹ Came into operation 31 March 1996: *Gaz.* 28 March 1996, p. 1797.

² Came into operation 1 December 1997: *Gaz.* 20 November 1997, p. 1326.

³ Part 12 (ss. 33-36) & Sched. came into operation 28 May 1998: *Gaz.* 28 May 1998, p. 2292.

⁴ Schedule (item 48) came into operation 1 July 1999: being the date specified under section 3(16) of the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999* of the Commonwealth as the transfer date for the purposes of that Act.

⁵ Schedule 1 (cl. 37) came into operation 1 June 2000: *Gaz.* 18 May 2000, p. 2554.

⁶ **Part 7 (ss. 22-24) came into operation 1 November 2001: *Gaz.* 25 October 2001, p. 4686.**

NOTE:

- Asterisks indicate repeal or deletion of text.
- Entries appearing in bold type indicate the amendments incorporated since the last reprint.
- For the legislative history of the Act see Appendix.

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Security and Investigation Agents Act 1995

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Security and Investigation Agents Act 1995*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Interpretation

3. In this Act, unless the contrary intention appears—

"**agent**" means a security agent, an investigation agent or a process server;

"**Commissioner**" means the Commissioner for Consumer Affairs;

"**Court**" means the Administrative and Disciplinary Division of the District Court of South Australia;

"**director**" of a body corporate includes—

- (a) a person occupying or acting in the position of director or member of the governing body of the body corporate, by whatever name called and whether or not validly appointed to occupy or duly authorised to act in the position; and
- (b) any person in accordance with whose directions or instructions the directors or members of the governing body of the body corporate are accustomed to act;

"**investigation agent**" means a person who performs one or more of the following functions for fee or reward:

- (a) ascertaining the whereabouts of or repossessing goods that are subject to a security interest;
- (b) collecting or requesting the payment of debts;
- (c) executing legal process for the enforcement of a judgment or order of a court;
- (d) executing distress for the recovery of rates, taxes or money;
- (e) obtaining or providing (without the written consent of a person) information as to the personal character or actions of the person or as to the business or occupation of the person;
- (f) searching for missing persons;
- (g) obtaining evidence for the purpose of legal proceedings (whether the proceedings have been commenced or are prospective);

"loss adjuster" means a person who performs one or more of the following functions:

- (a) investigating loss or injury arising from the use of a motor vehicle or personal injury arising out of or in the course of the employment of the person by whom the injury was sustained;
- (b) obtaining evidence for the purpose of legal proceedings in respect of such loss or injury;
- (c) assessing pecuniary compensation or damages likely to be awarded in respect of such loss or injury;
- (d) making, commencing, resisting, negotiating, compromising or settling a claim in respect of such loss or injury;

"process server" means a person who, for fee or reward, serves a writ, summons or other legal process;

"security agent" means a person who performs one or more of the following functions for fee or reward:

- (a) protecting or guarding a person or property or keeping a person or property under surveillance;
- (b) hiring out or otherwise supplying dogs or other animals for the purpose of protecting or guarding a person or property;
- (c) preventing, detecting or investigating the commission of an offence in relation to a person or property;
- (d) controlling crowds;
- (e) providing advice on security alarm or surveillance systems;
- (f) hiring out or otherwise supplying security alarm or surveillance systems;
- (g) installing or maintaining security alarm or surveillance systems;

"security alarm or surveillance system" means electronic or other devices designed, constructed or adapted to give warning of or monitor or record unauthorised entry or misconduct on premises or parts of premises;

"security interest" means any interest in or power over goods that secures payment of a debt or performance of any other obligation.

Application of Act

4. This Act does not apply to—

- (a) a member of the police force of this State;
- (b) a sheriff, deputy sheriff, sheriff's officer, bailiff or other officer of a court or tribunal, while performing official functions;
- (c) an officer or employee of the Crown or any instrumentality of the Crown while performing official functions;

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- (d) an officer or employee of a council within the meaning of the *Local Government Act 1934*, or a body vested with the powers of a council, while performing official functions;
- (e) any of the following:
- (i) a person who holds prescribed qualifications in loss adjusting while practising as a loss adjuster;
 - (ii) a body corporate while carrying on business as a loss adjuster under the management of a natural person who is resident in the State and holds prescribed qualifications in loss adjusting;
 - (iii) a person employed under a contract of service by a person or body referred to in subparagraph (i) or (ii) while acting in the ordinary course of that employment;
- (f) any of the following:
- (i) a person who practises as a legal practitioner; or
 - (ii) a person who holds prescribed qualifications in accountancy and practises as an accountant; or
 - (iii) a person registered as an agent under the *Land Agents Act 1994*; or
 - (iv) a company authorised by special Act of Parliament to act as a trustee; or
 - (v) an ADI; or
 - (vi) a society registered under the *Co-operatives Act 1997* or the *Starr-Bowkett Societies Act 1975*; or
 - (vii) a friendly society; or
 - (viii) a person lawfully carrying on business as a credit provider within the meaning of the *Consumer Credit Act 1972*; or
 - (ix) a person who lawfully carries on the business of banking or insurance or the business of an insurance intermediary (within the meaning of the *Insurance (Agents and Brokers) Act 1984* of the Commonwealth),
while acting in that capacity in the ordinary course of the profession or business;
- (g) a person employed under a contract of service by a person or body referred to in paragraph (f) while acting in the ordinary course of that employment;
- (h) a person employed under a contract of service who acts as an agent only as an incidental part of the duties of that employment, including, for example—
- (i) a person employed as a resident caretaker who acts as a security agent by keeping property under surveillance only as an incidental part of the duties of that employment;
 - (ii) a person employed as a shop assistant who acts as a security agent by providing advice on security alarm or surveillance systems only as an incidental part of the duties of that employment;

- (i) a person who performs only clerical or secretarial functions on behalf of an agent;
- (j) a person employed under a contract of service by a licensed investigation agent who acts as an agent only by requesting the payment of debts by telephone calls made from the agent's place of business while under the supervision of the agent.

Commissioner to be responsible for administration of Act

5. The Commissioner is responsible, subject to the control and directions of the Minister, for the administration of this Act.

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**PART 2
LICENCES**

Obligation to be licensed

6. (1) A person must not—

- (a) carry on business, or otherwise act, as a security agent or investigation agent except as authorised by a licence under this Part; or
- (b) advertise or otherwise hold himself or herself out as being entitled to carry on business, or to otherwise act, as a security agent or investigation agent unless authorised to so act by a licence under this Part.

Maximum penalty: \$20 000.

(2) A person required to be licensed as an agent is not entitled to any fee or other consideration in respect of functions performed in the course of carrying on business as an agent unless—

- (a) the person was authorised by a licence to perform the functions in the course of carrying on business as an agent; or
- (b) a court hearing proceedings for recovery of the fee or other consideration is satisfied that the person's failure to be so authorised resulted from inadvertence only.

Classes of licences

7. Licences under this Act are of the following classes:

- (a) *security agents licence*: a licence authorising a person to act as a security agent;
- (b) *investigation agents licence*: a licence authorising a person to act as an investigation agent;
- (c) *restricted security agents licence* or *restricted investigation agents licence*: a security agents licence or investigation agents licence subject to a condition or conditions of the following kinds:
 - (i) *restricted functions condition*: a condition limiting the functions that may be performed under the authority of the licence;¹
 - (ii) *employee condition*: a condition preventing the holder of the licence from carrying on business as an agent;
 - (iii) *employee (supervision) condition*: if the licence is subject to an employee condition, a condition requiring the holder of the licence to perform functions as an agent only under the supervision of a natural person who holds and has held (whether under this Act or the *Commercial and Private Agents Act 1986*), for a period specified in the licence, a licence authorising the person to perform those functions personally without supervision;
 - (iv) *partnership condition*: a condition preventing the holder of the licence from carrying on business as an agent except in partnership with a person specified in the licence or some other person approved by the Commissioner;

- (v) *partnership (business only) condition*: if the licence is subject to a partnership condition, a condition preventing the holder of the licence from personally performing functions as an agent.

^{1.} *Examples of restricted functions conditions*

- a condition limiting the functions that may be performed under the authority of a security agents licence to controlling crowds
(a *restricted security agents licence—crowd control*)
- a condition limiting the functions that may be performed under the authority of a security agents licence to—
 - providing advice on security alarm or surveillance systems
 - hiring out or otherwise supplying security alarm or surveillance systems
 - installing or maintaining security alarm or surveillance systems(a *restricted security agents licence—security systems*)
- a condition limiting the functions that may be performed under the authority of an investigation agents licence to—
 - ascertaining the whereabouts of or repossessing goods that are subject to a security interest
 - collecting or requesting the payment of debts
 - executing legal process for the enforcement of a judgment or order of a court
 - executing distress for the recovery of rates, taxes or money(a *restricted investigation agents licence—collection*)
- a condition limiting the functions that may be performed under the authority of an investigation agents licence to—
 - obtaining or providing (without the written consent of a person) information as to the personal character or actions of the person or as to the business or occupation of the person
 - searching for missing persons
 - obtaining evidence for the purpose of legal proceedings (whether the proceedings have been commenced or are prospective)(a *restricted investigation agents licence—inquiry*)

Application for licence

8. (1) An application for a licence must—

- (a) be made to the Commissioner in the manner and form approved by the Commissioner; and
- (b) be accompanied by the fee fixed by regulation.

(2) An applicant for a licence must provide the Commissioner with such evidence as the Commissioner thinks appropriate as to the identity, age and address of the applicant and any other information required by the Commissioner for the purposes of determining the application.

(3) A licence granted to a natural person will include a photograph of the holder of the licence; consequently, an applicant for a licence who is a natural person may be required by the Commissioner—

- (a) to attend at a specified place for the purpose of having the applicant's photograph taken; or
- (b) to supply the Commissioner with one or more photographs of the applicant as specified by the Commissioner.

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(4) If an applicant for a licence has previously failed to pay a fee or penalty that became payable under this Act, the Commissioner may require the applicant to pay the whole or a specified part of the fee or penalty.

(5) The Commissioner may, by notice in writing, require an applicant for a licence, within a time fixed by the notice (which may not be less than 28 days after service of the notice), to comply with any requirement under this section to the Commissioner's satisfaction.

(6) If the applicant fails to comply with the notice under subsection (5), the Commissioner may, without further notice, refuse the application but keep the fee that accompanied the application.

Entitlement to be licensed

9. (1) A natural person is entitled to be granted a licence if—

(a) the person has—

(i) the qualifications and experience required by regulation for the functions to be authorised by the licence; or

(ii) subject to the regulations, qualifications and experience the Commissioner considers appropriate having regard to the functions to be authorised by the licence and whether the licence is to be subject to an employee (supervision) condition¹; and

(b) the person has not been convicted of an offence of a class specified by regulation in relation to the functions to be authorised by the licence; and

(c) the person is not suspended or disqualified from practising or carrying on an occupation, trade or business under a law of this State, the Commonwealth, another State or a Territory of the Commonwealth; and

(d) the person is a fit and proper person to be the holder of the licence; and

(e) in the case of a licence not to be subject to an employee condition¹, the person—

(i) is not an undischarged bankrupt or subject to a composition or deed or scheme of arrangement with or for the benefit of creditors; and

(ii) has not, during the period of five years preceding the application for the licence, been a director of a body corporate that has been wound up for the benefit of creditors—

(A) when the body was being so wound up; or

(B) within the period of six months preceding the commencement of the winding up; and

(iii) has sufficient business knowledge and experience and financial resources for the purpose of properly carrying on business under the licence.

- (2) A body corporate is entitled to be granted a licence if—
- (a) the body corporate—
 - (i) is not suspended or disqualified from practising or carrying on an occupation, trade or business under a law of this State, the Commonwealth, another State or a Territory of the Commonwealth; and
 - (ii) is not being wound up and is not under official management or in receivership; and
 - (b) no director of the body corporate—
 - (i) has been convicted of an offence of a class specified by regulation in relation to the functions authorised by the licence; or
 - (ii) is suspended or disqualified from practising or carrying on an occupation, trade or business under a law of this State, the Commonwealth, another State or a Territory of the Commonwealth; or
 - (iii) has, during the period of five years preceding the application for the licence, been a director of a body corporate that has been wound up for the benefit of creditors—
 - (A) when the body was being so wound up; or
 - (B) within the period of six months preceding the commencement of the winding up; and
 - (c) the directors of the body corporate together have sufficient business knowledge and experience for the purpose of properly directing the business carried on under the licence; and
 - (d) the body corporate has sufficient financial resources for the purpose of properly carrying on business under the licence; and
 - (e) each director of the body corporate is a fit and proper person to be the director of a body corporate that is the holder of a licence.
- (3) If, on an application by a person for a licence, the Commissioner—
- (a) is not satisfied that the applicant meets requirements as to qualifications, business knowledge, experience or financial resources; but
 - (b) is satisfied that the applicant proposes to carry on business as an agent in partnership with a person who does meet the requirements not satisfied by the applicant,

the Commissioner may, subject to the other provisions of this section, grant a licence to the applicant subject to a partnership condition¹.

(4) If a licence is to be granted subject to a partnership condition¹ to an applicant who does not have the qualifications and experience required under subsection (1)(a), the licence is also to be subject to a partnership (business only) condition¹.

¹ See section 7.

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Conditions

10. Conditions may be imposed by the Commissioner on the grant of the licence and may be varied or revoked by the Commissioner at any time on application by the holder of the licence.

Appeals

11. (1) An applicant for a licence may appeal to the Court against a decision of the Commissioner refusing the application or imposing a condition on the licence.

(2) Subject to subsection (4), an appeal must be instituted within one month of the making of the decision appealed against.

(3) The Commissioner must, if so required by the applicant, state in writing the reasons for the Commissioner's decision.

(4) If the reasons of the Commissioner are not given in writing at the time of making the decision and the applicant (within one month of the making of the decision) requires the Commissioner to state the reasons in writing, the time for instituting an appeal runs from the time at which the applicant receives the written statement of those reasons.

* * * * *

Power of Commissioner to require photograph and information

11A. The Commissioner may, by notice in writing, require a licensed agent, within a time fixed by the notice (which may not be less than 28 days after service of the notice)—

(a) at least once in every 10 years—

- (i) to attend at a specified place for the purpose of having the agent's photograph taken; or
- (ii) to supply the Commissioner with one or more photographs of the agent as specified by the Commissioner; and

(b) not more than once in each year—to provide the Commissioner with such evidence as the Commissioner thinks appropriate as to the identity, age and address of the agent and information about any other specified matters.

Duration of licence and annual fee and return, etc.

12. (1) A licence remains in force (except for any period for which it is suspended) until—

- (a) the licence is surrendered or cancelled; or
- (b) the licensed agent dies or, in the case of a licensed body corporate, is dissolved.

(2) A licensed agent must, each year not later than the date fixed by regulation—

- (a) pay to the Commissioner the fee fixed by regulation; and
- (b) lodge with the Commissioner a return in the manner and form required by the Commissioner.

(3) Where a licensed agent fails to pay the annual fee or lodge the annual return in accordance with subsection (2), or to comply with a notice under section 11A, the Commissioner may, by notice in writing, require the agent to make good the default and, in addition, to pay to the Commissioner the amount fixed by regulation as a penalty for default.

(4) Where the agent fails to comply with the notice within 28 days after service of the notice, the agent's licence is cancelled.

(5) The Commissioner must notify the agent in writing of the cancellation of the agent's licence.

(6) A licensed agent may surrender the licence.

(7) In this section—

"licensed agent" includes a licensed agent whose licence has been suspended.

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**PART 3
REGULATION OF ACTIVITIES**

Employment of agents

12A. A person (whether licensed under this Act or not) must not employ another as an agent under a contract of service to perform functions of a particular kind unless that other person holds a licence authorising him or her to personally perform functions of that kind.

Maximum penalty: \$20 000.

Operation of licensed agent's business

13. (1) A licensed agent that is a body corporate must ensure that the agent's business is (with respect to the functions authorised by the licence) properly managed and supervised by a natural person who holds a licence authorising the person to perform those functions personally without supervision.

Maximum penalty: \$20 000.

(2) A licensed agent authorised to carry on business under the licence must ensure that functions performed in the course of the business are performed by natural persons who hold licences authorising them to perform those functions personally.

Maximum penalty: \$20 000.

Accounts of licensed agent

14. A licensed agent must keep accounts as required by the regulations.

Maximum penalty: \$10 000.

Licensed agent not to purport to have powers outside licence

15. (1) A licence does not confer on an agent power or authority to act in contravention of, or in disregard of, law or rights or privileges arising under or protected by law.

(2) A licensed agent must not hold himself or herself out as having a power or authority by virtue of the licence that is not in fact conferred by the licence.

Maximum penalty: \$10 000.

Prohibition against assisting another to pretend to be agent

16. A person (whether licensed under this Act or not) must not supply or lend a document or form or provide other assistance to another person for the purpose of enabling that other person falsely to pretend to be an agent, or a person who, in the course of a business, performs any of the functions of an agent.

Maximum penalty: \$10 000.

Misrepresentation

17. An agent who makes a false, misleading or deceptive representation, or conceals a material fact, for the purpose of inducing another person to enter into an agreement or contract in connection with the performance of any of the functions of an agent is guilty of an offence.

Maximum penalty: \$10 000.

Name in which licensed agent may carry on business

18. A person must not carry on business as an agent under a licence except in the name appearing in the licence or in a business name registered by the person in accordance with the provisions of the *Business Names Act 1996* of which the Commissioner has been given prior notice in writing.

Maximum penalty: \$2 500.

Publication of advertisements by licensed agent

19. A person carrying on business as an agent under a licence must not publish, or cause to be published, an advertisement relating to the business (other than an advertisement relating solely to the recruiting of staff) unless the advertisement specifies the name of the agent appearing in the licence or a registered business name in which the agent carries on business as an agent and of which the Commissioner has been given prior notice in writing.

Maximum penalty: \$2 500.

Licence or identification to be carried or displayed

20. (1) A natural person who is a licensed agent must, at all times when performing functions under the licence, carry his or her licence and produce it forthwith if requested to do so by—

- (a) a member of the police force; or
- (b) the Commissioner; or
- (c) a person appointed as an authorised officer under the *Fair Trading Act 1987*; or
- (d) a person with whom the agent has dealings as an agent.

Maximum penalty: \$1 250.

Expiation fee: \$160.

(2) A natural person who is—

- (a) a licensed security agent authorised to perform the function of controlling crowds; or
- (b) an agent of a class specified by the regulations,

must comply with the requirements of the regulations about the wearing of identification or a uniform (or both).

Maximum penalty: \$1 250.

Expiation fee: \$160.

Limitations on settling claims relating to motor vehicles

21. (1) Subject to this section, a person required to be licensed as an agent must not, when acting on behalf of another, settle or compromise or attempt to settle or compromise a claim in respect of loss or injury arising out of the use of a motor vehicle after proceedings have been instituted in a court in respect of that loss or injury.

Maximum penalty: \$10 000.

(2) This section does not apply unless the process by which the proceedings are instituted has been served on the defendant to those proceedings.

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(3) It is a defence to a charge of an offence against subsection (1) if it is proved that the defendant did not know, and could not by the exercise of reasonable diligence have discovered, that proceedings had been instituted in a court in respect of the loss or injury.

Repossession of motor vehicles to be reported

22. An agent who takes possession of a motor vehicle that is subject to a security interest must—

- (a) as soon as practicable after taking possession of the motor vehicle, inform a member of the police force on duty at the police station nearest to the place where the agent took possession of the vehicle; and
- (b) within 24 hours after taking possession of the motor vehicle, deliver or send by post to the member of the police force in charge of the police station nearest to the agent's address for service¹, written particulars in duplicate of the motor vehicle, including particulars of the registered number of the vehicle.

Maximum penalty: \$2 500.

¹ See section 46(2).

Entitlement to be process server

23. (1) A natural person must not—

- (a) carry on business, or otherwise act, as a process server; or
- (b) advertise or otherwise hold himself or herself out as being entitled to carry on business, or otherwise act, as a process server,

unless the person—

- (c) is qualified in accordance with the regulations; and
- (d) has not been convicted of an offence of a class specified by regulation in relation to a process server.

Maximum penalty: \$20 000.

(2) A process server (whether a natural person or body corporate) must not employ a person as a process server unless the person meets the requirements of subsection (1).

Maximum penalty: \$20 000.

**PART 4
DISCIPLINE**

Interpretation of Part 4

24. In this Part—

"agent" includes—

- (a) a former agent; or
- (b) a person licensed as an agent, whether or not carrying on business, or otherwise acting, as an agent; or
- (c) a person formerly licensed as an agent;

"director" of a body corporate includes a former director of a body corporate.

Cause for disciplinary action

25. (1) There is proper cause for disciplinary action against an agent if—

- (a) the agent has acted contrary to an assurance accepted by the Commissioner under the *Fair Trading Act 1987*; or
- (b) the agent has acted contrary to this Act or otherwise unlawfully, or improperly, negligently or unfairly, in the course of performing functions as an agent; or
- (c) in the case of an agent who has been carrying on business as an agent—the agent or any other person has acted contrary to this Act or otherwise unlawfully, or improperly, negligently or unfairly, in the course of conducting, or being employed or otherwise engaged in, that business; or
- (d) in the case of an agent who has been employed or engaged to manage and supervise an incorporated agent's business—the agent or any other person has acted unlawfully, improperly, negligently or unfairly in the course of managing or supervising, or being employed or otherwise engaged in, that business; or
- (e) in the case of a person licensed as an agent—
 - (i) the licence of the agent was improperly obtained; or
 - (ii) events have occurred such that the agent would not be entitled to be granted the licence if he or she were to apply for it.

(2) Disciplinary action may be taken against each director of a body corporate that is an agent if there is proper cause for disciplinary action against the body corporate.

(3) Disciplinary action may not be taken against a person in relation to the act or default of another if that person could not reasonably be expected to have prevented the act or default.

(4) This section applies in relation to conduct occurring before or after the commencement of this Act.

Complaints

26. The Commissioner or any other person may lodge with the Court a complaint setting out matters that are alleged to constitute grounds for disciplinary action under this Part.

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Hearing by Court

27. (1) On the lodging of a complaint, the Court may conduct a hearing for the purpose of determining whether the matters alleged in the complaint constitute grounds for disciplinary action under this Part.

- (2) Without limiting the usual powers of the Court, the Court may during the hearing—
- (a) allow an adjournment to enable the Commissioner to investigate or further investigate matters to which the complaint relates; and
 - (b) allow the modification of the complaint or additional allegations to be included in the complaint subject to any conditions as to adjournment and notice to parties and other conditions that the Court may think fit to impose.

Participation of assessors in disciplinary proceedings

28. In any proceedings under this Part, the Court will, if a Judge of the Court so determines, sit with assessors selected in accordance with schedule 1.

Disciplinary action

29. (1) On the hearing of a complaint, the Court may, if it is satisfied on the balance of probabilities that there is proper cause for taking disciplinary action against the person to whom the complaint relates, by order do one or more of the following:

- (a) reprimand the person;
- (b) impose a fine not exceeding \$20 000 on the person;
- (c) in the case of a person who is licensed as an agent—
 - (i) impose conditions or further conditions on the licence;
 - (ii) suspend the licence for a specified period or until the fulfilment of stipulated conditions or until further order;
 - (iii) cancel the licence;
- (d) disqualify the person from holding a licence or a licence of a specified class under this Act or prohibit the person from carrying on business as an agent or as an agent of a specified class;
- (e) prohibit the person from being employed or otherwise performing functions as an agent or as an agent of a specified class;
- (f) prohibit the person from being a director of a body corporate that is an agent or an agent of a specified class.

(2) The Court may—

- (a) stipulate that a disqualification or prohibition is to apply—
 - (i) permanently; or
 - (ii) for a specified period; or
 - (iii) until the fulfilment of stipulated conditions; or

(iv) until further order;

(b) stipulate that an order relating to a person is to have effect at a specified future time.

(3) A condition imposed by the Court under this section may require the person to satisfactorily complete a specified course of training within a specified period.

(4) If—

(a) a person has been found guilty of an offence; and

(b) the circumstances of the offence form, in whole or in part, the subject matter of the complaint,

the person is not liable to a fine under this section in respect of conduct giving rise to the offence.

Contravention of orders

30. (1) If a person—

(a) is employed or otherwise performs functions as an agent; or

(b) becomes a director of a body corporate that is an agent,

in contravention of an order of the Court, that person and the agent are each guilty of an offence.

Maximum penalty: \$35 000 or 6 months imprisonment.

(2) If a person carries on business as an agent in contravention of an order of the Court, the person is guilty of an offence.

Maximum penalty: \$35 000 or 6 months imprisonment.

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**PART 5
MISCELLANEOUS**

Delegations

31. (1) The Commissioner may delegate any of the Commissioner's functions or powers under this Act—

- (a) to a person employed in the Public Service; or
- (b) to the person for the time being holding a specified position in the Public Service; or
- (c) to any other person under an agreement under this Act between the Commissioner and an organisation representing the interests of agents or a particular class of agents.

(2) The Minister may delegate any of the Minister's functions or powers under this Act (except the power to direct the Commissioner).

(3) A delegation under this section—

- (a) must be in writing; and
- (b) may be conditional or unconditional; and
- (c) is revocable at will; and
- (d) does not prevent the delegator from acting in any matter.

Agreement with professional organisation

32. (1) The Commissioner may, with the approval of the Minister, make an agreement with an organisation representing the interests of agents or a particular class of agents under which the organisation undertakes a specified role in the administration or enforcement of this Act.

(2) The agreement—

- (a) must be in writing and executed by the Commissioner and the organisation; and
- (b) may contain delegations by the Commissioner of functions or powers under this Act or the *Fair Trading Act 1987*; and
- (c) must set out any conditions governing the performance or exercise of functions or powers conferred on the organisation; and
- (d) must make provision for the variation and termination of the agreement by the Commissioner with the approval of the Minister or the organisation.

(3) The Commissioner may not delegate for the purposes of the agreement—

- (a) functions or powers under Part 2;
- (b) power to request the Commissioner of Police to investigate and report on matters under Part 5;
- (c) power to commence a prosecution for an offence against this Act.

- (4) A delegation by the Commissioner for the purposes of the agreement—
 - (a) has effect subject to the conditions specified in the agreement; and
 - (b) may be varied or revoked by the Commissioner in accordance with the terms of the agreement; and
 - (c) does not prevent the Commissioner from acting in any matter.

(5) The Minister must, within six sitting days after the making of an agreement, cause a copy of the agreement to be laid before both Houses of Parliament.

Exemptions

33. (1) The Minister may, on application by a person, exempt the person from compliance with a specified provision of this Act.

- (2) An exemption is subject to the conditions (if any) imposed by the Minister.
- (3) The Minister may, at his or her discretion, vary or revoke an exemption.
- (4) The grant or a variation or revocation of an exemption must be notified in the *Gazette*.

Register of licensed agents

34. (1) The Commissioner must keep a register of persons licensed as agents under this Act.

- (2) The Commissioner must record on the register—
 - (a) the class of licence held by the person; and
 - (b) any conditions to which the licence is subject; and
 - (c) disciplinary action taken against the person under this Act; and
 - (d) a note of any assurance accepted by the Commissioner under the *Fair Trading Act 1987* in relation to the person.
- (3) A person may inspect the register on payment of the fee fixed by regulation.

Commissioner and proceedings before Court

35. (1) The Commissioner is entitled to be joined as a party to any proceedings of the Court under this Act.

(2) The Commissioner may appear personally in any such proceedings or may be represented at the proceedings by counsel or a person employed in the Public Service.

Return of licences

36. If a licence is suspended or cancelled under this Act, the holder of the licence must, at the direction of the Court or the Commissioner, return the licence to the Commissioner.

Maximum penalty: \$2 500.

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False or misleading information

37. A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information provided, or record kept, under this Act.

Maximum penalty: (a) if the person made the statement knowing that it was false or misleading—\$10 000;

(b) in any other case—\$2 500.

Statutory declaration

38. Where a person is required to provide information to the Commissioner, the Commissioner may require the information to be verified by statutory declaration and, in that event, the person will not be taken to have provided the information as required unless it has been verified in accordance with the requirements of the Commissioner.

Investigations

39. The Commissioner of Police must, at the request of the Commissioner, investigate and report on any matter relevant to—

(a) the determination of an application under this Act; or

(b) a matter that might constitute proper cause for disciplinary action under this Act.

General defence

40. It is a defence to a charge of an offence against this Act if the defendant proves that the offence was not committed intentionally and did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence.

Liability for act or default of officer, employee or agent

41. For the purposes of this Act, an act or default of an officer, employee or agent of a person carrying on a business will be taken to be an act or default of that person unless it is proved that the officer, employee or agent acted outside the scope of his or her actual, usual and ostensible authority.

Offences by bodies corporate

42. Where a body corporate is guilty of an offence against this Act, each director of the body corporate is, subject to the general defence under this Part, guilty of an offence and liable to the same penalty as may be imposed for the principal offence.

Continuing offence

43. (1) A person convicted of an offence against a provision of this Act in respect of a continuing act or omission—

(a) is liable, in addition to the penalty otherwise applicable to the offence, to a penalty for each day during which the act or omission continued of not more than one-tenth of the maximum penalty prescribed for that offence; and

(b) is, if the act or omission continues after the conviction, guilty of a further offence against the provision and liable, in addition to the penalty otherwise applicable to the further offence, to a penalty for each day during which the act or omission continued after the conviction of not more than one-tenth of the maximum penalty prescribed for the offence.

(2) Where an offence consists of an omission to do something that is required to be done, the omission will be taken to continue for as long as the thing required to be done remains undone after the end of the period for compliance with the requirement.

Prosecutions

44. (1) Proceedings for an offence against this Act must be commenced—

- (a) in the case of an expiable offence—within the time limits prescribed for expiable offences by the *Summary Procedure Act 1921*;
- (b) in any other case—within 2 years of the date on which the offence is alleged to have been committed or, with the authorisation of the Minister, at a later time within 5 years of that date.

(2) A prosecution for an offence against this Act cannot be commenced except by—

- (a) the Commissioner; or
- (b) an authorised officer under the *Fair Trading Act 1987*; or
- (c) a person who has the consent of the Minister to commence the prosecution.

(3) In any proceedings, an apparently genuine document purporting to be a certificate of the Minister certifying authorisation of, or consent to, a prosecution for an offence against this Act will be accepted, in the absence of proof to the contrary, as proof of the authorisation or consent.

Evidence

45. In any proceedings, a certificate executed by the Commissioner certifying that a person did or did not hold a specified licence on a specified date constitutes proof, in the absence of proof to the contrary, of the matters so certified.

Service of documents

46. (1) Subject to this Act, a notice or document required or authorised by this Act to be given to or served on a person may—

- (a) be served on the person personally; or
- (b) be posted in an envelope addressed to the person—
 - (i) at the person's last known address; or
 - (ii) where the person is a licensed agent—at the person's address for service; or
- (c) where the person is a licensed agent—be left for the person at the person's address for service with someone apparently over the age of 16 years; or
- (d) be transmitted by facsimile transmission to a facsimile number provided by the person (in which case the notice or document will be taken to have been given or served at the time of transmission).

(2) The address for service of a licensed agent is the address of which the Commissioner has been last notified in writing by the agent as the agent's address for service.

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Annual report

47. (1) The Commissioner must, on or before 31 October in each year, submit to the Minister a report on the administration of this Act during the period of 12 months ending on the preceding 30 June.

(2) The Minister must, within six sitting days after receipt of the report, cause a copy of the report to be laid before each House of Parliament.

Regulations

48. (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.

(2) Without limiting the generality of subsection (1), the regulations may—

- (a) require agents to comply with codes of conduct;
- (b) fix various maximum rates of commission and other charges that may be charged or made by agents for specified services;
- (c) regulate charges, payments and reimbursements made by or to an agent in connection with specified services;
- (d) fix fees to be paid in respect of any matter under this Act and regulate the recovery, refund, waiver or reduction of such fees;
- (e) exempt (conditionally or unconditionally) classes of persons or activities from the application of this Act or specified provisions of this Act;
- (f) impose a penalty (not exceeding a fine of \$2 500) for contravention of, or non-compliance with, a regulation.

(3) Regulations under this Act—

- (a) may be of general application or limited application;
- (b) may make different provision according to the matters or circumstances to which they are expressed to apply;
- (c) may provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Commissioner or the Minister.

(4) The regulations may operate by reference to a specified code as in force at a specified time or as in force from time to time.

(5) If a code is referred to in the regulations—

- (a) a copy of the code must be kept available for inspection by members of the public, without charge and during normal office hours, at an office determined by the Minister; and
- (b) evidence of the contents of the code may be given in any legal proceedings by production of a document apparently certified by the Minister to be a true copy of the code.

SCHEDULE 1

Appointment and Selection of Assessors for Court

(1) The Minister must establish a panel of persons who may sit as assessors consisting of persons representative of persons involved in functions regulated under this Act.

(2) The Minister must establish a panel of persons who may sit as assessors consisting of persons representative of members of the public who deal with persons referred to in subclause (1).

(3) A member of a panel is to be appointed by the Minister for a term of office not exceeding three years and on conditions determined by the Minister and specified in the instrument of appointment.

(4) A member of a panel is, on the expiration of a term of office, eligible for reappointment.

(5) Subject to subclause (6), if assessors are to sit with the Court in proceedings under Part 4, a Judge of the Court on the complaint must select one member from each of the panels to sit with the Court in the proceedings.

(6) A member of a panel who has a personal or a direct or indirect pecuniary interest in a matter before the Court is disqualified from participating in the hearing of the matter.

(7) If an assessor dies or is for any reason unable to continue with any proceedings, the Court constituted of the judicial officer who is presiding at the proceedings and the other assessor may, if the judicial officer so determines, continue and complete the proceedings.

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SCHEDULE 2*Repeal and Transitional Provisions***Repeal**

1. The *Commercial and Private Agents Act 1986* is repealed.

Transitional provisions

2. (1) A person who held a licence under the *Commercial and Private Agents Act 1986* immediately before the commencement of this Act with an endorsement listed in column 1 below will be taken to have been licensed as an agent under this Act with a licence as described opposite in column 2.

<i>Endorsement</i>	<i>Class of licence</i>
1 or commercial agent	a restricted investigation agents licence subject to a condition limiting the functions that may be performed under the authority of the licence to— <ul style="list-style-type: none"> · ascertaining the whereabouts of or repossessing goods that are subject to a security interest · collecting or requesting the payment of debts · executing legal process for the enforcement of a judgment or order of a court · executing distress for the recovery of rates, taxes or money
2 or inquiry agent	a restricted investigation agents licence subject to a condition limiting the functions that may be performed under the authority of the licence to— <ul style="list-style-type: none"> · obtaining or providing (without the written consent of a person) information as to the personal character or actions of the person or as to the business or occupation of the person · searching for missing persons · obtaining evidence for the purpose of legal proceedings (whether the proceedings have been commenced or are prospective)
3 or security agent	a restricted security agents licence subject to a condition limiting the functions that may be performed under the authority of the licence to— <ul style="list-style-type: none"> · protecting or guarding a person or property or keeping a person or property under surveillance · hiring out or otherwise supplying dogs or other animals for the purpose of protecting or guarding a person or property · preventing, detecting or investigating the commission of an offence in relation to a person or property · controlling crowds
4 or security guard	a restricted security agents licence subject to a condition limiting the functions that may be performed under the authority of the licence to— <ul style="list-style-type: none"> · protecting or guarding a person or property or keeping a person or property under surveillance · preventing, detecting or investigating the commission of an offence in relation to a person or property · controlling crowds
5 or security alarm agent	a restricted security agents licence subject to a condition limiting the functions that may be performed under the authority of the licence to— <ul style="list-style-type: none"> · providing advice on security alarm or surveillance systems · hiring out or otherwise supplying security alarm or surveillance systems · installing or maintaining security alarm or surveillance systems
6 or security officer	a restricted security agents licence subject to a condition limiting the functions that may be performed under the authority of the licence to preventing, detecting or investigation the commission of an offence in relation to a person or property
7 or crowd controller	a restricted security agents licence subject to a condition limiting the functions that may be performed under the authority of the licence to controlling crowds

(2) If the person's licence under the *Commercial and Private Agents Act 1986* was subject to a condition under section 11 of that Act, the corresponding condition will be taken to have been imposed under section 10 on the person's licence under this Act.

(3) If an order or decision of the Commercial Tribunal is in force or continues to have effect under Part 2 Division 2 of the *Commercial and Private Agents Act 1986* immediately before the commencement of this Act, the order or decision has effect as if it were an order of the Court under Part 4 of this Act.

(4) If a person—

(a) who was disqualified from being licensed under the repealed Act immediately before the commencement of this Act; and

(b) who remains disqualified at the commencement of this subclause,

is employed or otherwise engaged in the business of an agent during the period of that disqualification, both that person and the agent are guilty of an offence.

Maximum penalty: \$5 000.

(5) Subclause (4) applies after its commencement, whether the contract of employment or other engagement was entered into before or after its commencement.

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APPENDIX

LEGISLATIVE HISTORY

(entries in bold type indicate amendments incorporated since the last reprint)

Section 4:	amended by 61, 1997, s. 456; 33, 1999, Sched. (item 48)
Section 6(1):	amended by 21, 1998, Sched. cl. 9
Section 8(2):	amended by 47, 2001, s. 22(a)
Section 8(3) - (6):	inserted by 47, 2001, s. 22(b)
Section 11(2):	amended by 4, 2000, s. 9(1) (Sched. 1 cl. 37(a))
Section 11(5):	repealed by 4, 2000, s. 9(1) (Sched. 1 cl. 37(b))
Section 11(6):	repealed by 4, 2000, s. 9(1) (Sched. 1 cl. 37(c))
Section 11A:	inserted by 47, 2001, s. 23
Section 12(3):	amended by 47, 2001, s. 24
Section 12A:	inserted by 21, 1998, s. 33
Section 23(1):	amended by 21, 1998, Sched. cl. 9
Section 28:	amended by 21, 1998, s. 34
Section 29(1):	amended by 21, 1998, Sched. cl. 9
Section 44(1):	substituted by 21, 1998, Sched. cl. 9
Schedule 1	
Subclause (5):	amended by 21, 1998, s. 35
Subclause (7):	amended by 4, 2000, s. 9(1) (Sched. 1 cl. 37(d))
Schedule 2	
Clause 2(4) and (5) :	inserted by 21, 1998, s. 36