

South Australia

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.

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Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

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

3—Interpretation

In this Act, unless the contrary intention appears—

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

approved psychological assessment means a form of psychological assessment approved by the Commissioner for the purpose of determining whether a person is fit and proper to hold a security agents licence;

Commissioner means the Commissioner for Consumer Affairs;

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

criminal intelligence means information relating to actual or suspected criminal activity (whether in this State or elsewhere) the disclosure of which could reasonably be expected to prejudice criminal investigations, or to enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement;

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; and
- (c) a person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the body corporate or who has the capacity to affect significantly the body corporate's financial standing;

holder of a security agents licence includes the holder of a security agents licence that has been suspended;

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 agents licence includes a restricted security agents licence;

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.

4—Application of Act

This Act does not apply to—

- (a) a police officer;
- (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;
- (d) an officer or employee of a council within the meaning of the *Local Government Act 1999*, 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
 - (vii) a friendly society; or

- (viii) a person lawfully carrying on business as a credit provider within the meaning of the *Credit Administration Act 1995*; 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 Contracts 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.

5—Commissioner to be responsible for administration of Act

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

5A—Enforcement

- (1) The powers of authorised officers under sections 77 and 78 of the *Fair Trading Act 1987* may be exercised by police officers for the enforcement of this Act, and those sections apply for that purpose as if police officers were authorised officers.
- (2) However, section 78(4) of the *Fair Trading Act 1987* does not apply to a police officer in uniform.

5B—Criminal intelligence

- (1) No information provided by the Commissioner of Police to the Commissioner may be disclosed to any person (except the Minister, a court or a person to whom the Commissioner of Police authorises its disclosure) if the information is classified by the Commissioner of Police as criminal intelligence.
- (2) If the Commissioner—
 - (a) refuses an application for a security agents licence, or imposes a condition on a security agents licence, or suspends a security agents licence; and

- (b) the decision to do so is made because of information that is classified by the Commissioner of Police as criminal intelligence,

the Commissioner is not required to provide any grounds or reasons for the decision other than that to grant the application would be contrary to the public interest, or that it would be contrary to the public interest if the licence were to continue in force without the condition, or that it would be contrary to the public interest if the licensee were to continue to be licensed.

- (3) If the Commissioner of Police objects to an application under section 8A because of information that is classified by the Commissioner of Police as criminal intelligence, the Commissioner must, as soon as reasonably practicable after receiving the notice of objection, instead of serving a copy of the notice of objection on the applicant, advise the applicant in writing that the Commissioner of Police has objected to the application on the ground that to grant the application would be contrary to the public interest.
- (4) If the Commissioner or the Commissioner of Police lodges a complaint under Part 4 because of information that is classified by the Commissioner of Police as criminal intelligence, the complaint need only state that it would be contrary to the public interest if the person specified in the complaint were to be or continue to be licensed.
- (5) In any proceedings under this Act, the Commissioner or the Court—
- (a) must, on the application of the Commissioner of Police, take steps to maintain the confidentiality of information classified by the Commissioner of Police as criminal intelligence, including steps to receive evidence and hear argument about the information in private in the absence of the parties to the proceedings and their representatives; and
 - (b) may take evidence consisting of or relating to information classified by the Commissioner of Police as criminal intelligence by way of affidavit of a police officer of or above the rank of superintendent.
- (6) The Commissioner of Police may not delegate the function of classifying information as criminal intelligence for the purposes of this Act except to a Deputy Commissioner or Assistant Commissioner of Police.

Part 2—Licences

6—Obligation to be licensed

- (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.

7—Classes of licences

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.

Example—

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*)

8—Application for licence

- (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.
- (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.

8A—Applications for security agents licence to be furnished to Commissioner of Police

- (1) The Commissioner must, in relation to each application for a security agents licence—
 - (a) give the Commissioner of Police a copy of the application; or
 - (b) notify the Commissioner of Police of the identity of the applicant or, if the applicant is a body corporate, the identity of each director of the body corporate.
- (2) As soon as reasonably practicable following receipt of an application, or information in respect of an application, under subsection (1), the Commissioner of Police—
 - (a) must make available to the Commissioner information about criminal convictions; and
 - (b) may make available to the Commissioner other information to which the Commissioner of Police has access,
relevant to whether the application should be granted.
- (3) The Commissioner of Police may, following receipt of an application, or information in respect of an application, under subsection (1), object to the application by notice in writing provided to the Commissioner within the prescribed period.
- (4) A notice of objection under subsection (3) must state grounds for the objection.
- (5) Subject to section 5B, a copy of the notice of objection must be served by the Commissioner on the applicant as soon as reasonably practicable after the notice is received by the Commissioner.
- (6) The Commissioner must, before deciding whether to grant or refuse the application, give the applicant a reasonable opportunity to respond to the notice of objection.

8B—Applicant for security agents licence must be required to provide fingerprints

- (1) If a person applies for a security agents licence, the Commissioner must, by notice in writing, request—
 - (a) if the person is a natural person—the person; and
 - (b) if the person is a body corporate—each director of the body corporate,to attend at a specified time and place for the purpose of having his or her fingerprints taken by a police officer.

- (2) If a person fails to attend for the taking of fingerprints in accordance with a request under subsection (1), the Commissioner must, by notice in writing, require the person, within a time fixed by the notice (which may not be less than 28 days after service of the notice), to make good the default.
- (3) If the person fails to comply with the notice under subsection (2), the Commissioner must, without further notice, refuse the application (but may keep the fee that accompanied the application).
- (4) If the Commissioner has requested a person to attend for the taking of fingerprints under subsection (1), the Commissioner is not required to consider the application in relation to which the request has been made until the fingerprints have been taken and relevant information provided to the Commissioner by the Commissioner of Police in accordance with this section.
- (5) As soon as reasonably practicable after fingerprints have been taken from a person by a police officer pursuant to a request under this section, the Commissioner of Police must make available to the Commissioner such information to which the Commissioner of Police has access about the identity, antecedents and criminal history of the person as the Commissioner of Police considers relevant.

8C—Applicant for security agents licence may be required to undergo psychological assessment

- (1) If an applicant for a security agents licence is seeking authorisation to perform the function of controlling crowds, the Commissioner may, for the purpose of determining whether the applicant is fit and proper to hold such a licence, request the applicant to take part, at the cost of the applicant, in an approved psychological assessment.
- (2) If a person fails to take part in a psychological assessment in accordance with a request under subsection (1), the Commissioner may, by notice in writing, require the person, within a time fixed by the notice (which may not be less than 28 days after service of the notice), to make good the default.
- (3) If the person fails to comply with the notice under subsection (2), the Commissioner may, without further notice, refuse the application but keep the fee that accompanied the application.
- (4) If the Commissioner has requested a person to take part in a psychological assessment under subsection (1), the Commissioner is not required to consider the application in relation to which the request has been made until the applicant has been assessed and the results of the assessment provided to the Commissioner.

9—Entitlement to be licensed

- (1) Subject to section 9A, 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) Subject to section 9A, 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.

Note—

- 1 See section 7.

9A—Factors to be taken into account in deciding whether to grant application for security agents licence

- (1) In deciding whether a person is a fit and proper person to hold a security agents licence, or to be the director of a body corporate that is the holder of a security agents licence, the Commissioner must take into consideration—
- (a) the reputation, honesty and integrity of the person; and
 - (b) the reputation, honesty and integrity of people with whom the person associates.
- (2) If the Commissioner of Police has objected to an application for a security agents licence under section 8A(3), the Commissioner must take into consideration the grounds for the objection when assessing the application.
- (3) An application for a security agents licence can only be granted if the Commissioner is satisfied that to grant the application would not be contrary to the public interest.

10—Conditions

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.

11—Appeals

- (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.

- (1a) The Commissioner of Police may appeal to the Court against a decision of the Commissioner granting an application for a security agents licence.
- (2) Subject to subsection (4), an appeal must be instituted within one month of the making of the decision appealed against.
- (3) Subject to section 5B, the Commissioner must, if so required by the applicant or the Commissioner of Police, 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 or the Commissioner of Police (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.

11A—Power of Commissioner to require photograph and information

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.

11AB—Power of Commissioner to require security agent to provide fingerprints

- (1) The Commissioner may, by notice in writing, require—
 - (a) a natural person who is the holder of a security agents licence; or
 - (b) a director of a body corporate that is the holder of a security agents licence,to attend at a specified time and place for the purpose of having his or her fingerprints taken by a police officer.
- (2) As soon as reasonably practicable after fingerprints have been taken from a person by a police officer pursuant to a requirement under subsection (1), the Commissioner of Police must make available to the Commissioner such information to which the Commissioner of Police has access about the identity, antecedents and criminal history of the person as the Commissioner of Police considers relevant.

11AC—Power of Commissioner to require security agents authorised to control crowds to undertake training

- (1) The Commissioner may, by notice in writing, require the holder of a security agents licence that authorises the licensee to perform the function of controlling crowds to complete an approved security industry training course within a period specified by the Commissioner.

- (2) If a licensed security agent has been required by the Commissioner to complete a training course under subsection (1), the security agent must, when next lodging an annual return following the end of the period within which he or she has been required to complete the course, provide the Commissioner with evidence that the course has been completed to a satisfactory standard.

- (3) In this section—

annual return means the return required to be lodged by a licensed agent under section 12(2)(b);

approved security industry training course means a course of training approved by the Commissioner for the purposes of this Act.

11AD—Power of Commissioner to require security agents authorised to control crowds to take part in psychological assessment

The Commissioner may, for the purpose of determining whether the holder of a security agents licence that authorises the licensee to perform the function of controlling crowds is a fit and proper person, by notice in writing, require the licensee to attend at a specified time and place for the purpose of taking part in an approved psychological assessment.

12—Duration of licence and annual fee and return etc

- (1) A licence remains in force (except for any period for which it is suspended) until—
- the licence is surrendered or cancelled; or
 - 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—
- pay to the Commissioner the fee fixed by regulation; and
 - 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 or requirement under section 11A, 11AB, 11AC or 11AD, 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 a time fixed by the notice (which may not be less than 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.

Part 3—Regulation of activities

12A—Employment of security agents or investigation agents

- (1) A person (whether licensed under this Act or not) must not employ another as a security agent or investigation 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.

- (2) A person (whether licensed under this Act or not) must not engage another to perform the function of controlling crowds unless the person personally performing the function holds a licence authorising him or her to do so.

Maximum penalty: \$20 000.

13—Operation of licensed agent's business

- (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.

14—Accounts of licensed agent

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

Maximum penalty: \$10 000.

15—Licensed agent not to purport to have powers outside licence

- (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.

16—Prohibition against assisting another to pretend to be agent

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.

17—Misrepresentation

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.

18—Name in which licensed agent may carry on business

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.

19—Publication of advertisements by licensed agent

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.

20—Licence or identification to be carried or displayed

- (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 police officer; 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.

21—Limitations on settling claims relating to motor vehicles

- (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.
- (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.

22—Repossession of motor vehicles to be reported

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 police officer 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 police officer 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.

Note—

- ¹ See section 46(2).

23—Entitlement to be process server

- (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 3A—Regulation of security agents

Division 1—Suspension, cancellation and disqualification

23A—Circumstances in which Commissioner may suspend security agents licence

- (1) Subject to section 23B, if—
 - (a) the holder of a security agents licence, or a director of a body corporate that is the holder of a security agents licence, is charged with an offence of a class specified by regulation in relation to the functions authorised by the licence; or
 - (b) the Commissioner is satisfied, for any other reason, that it would be contrary to the public interest if the holder of a security agents licence were to continue to be licensed,

the Commissioner may, by notice in writing to the holder of the licence (a *suspension notice*), suspend the licence for a specified period or until further notice.
- (2) Suspension of a licence under this section takes effect immediately on service of a suspension notice advising that the licence has been suspended.
- (3) A person on whom a suspension notice has been served may, within the period of 21 days following service of the notice, make written representations to the Commissioner as to why his or her security agents licence should not be suspended.
- (4) The Commissioner must, at the end of the period of 28 days following service of a suspension notice under this section—
 - (a) confirm or revoke the suspension; and
 - (b) advise the holder of the licence in writing of the Commissioner's decision; and
 - (c) if the holder of the licence has surrendered the licence and the Commissioner's decision is to revoke the suspension—return the licence to the holder of the licence.
- (5) The Commissioner must, in determining whether to confirm or revoke suspension of a security agents licence, have regard to any representations received from the holder of the licence under subsection (3).
- (6) The Commissioner may, at any time, on his or her own initiative, or on application by a person whose licence is suspended, revoke the suspension of a security agents licence under this section.

23B—Circumstances in which Commissioner must suspend security agents licence

- (1) If the holder of a security agents licence that authorises the licensee to perform the function of controlling crowds is charged by a police officer or the Director of Public Prosecutions with an offence of a class specified by regulation in relation to the functions authorised by the licence, the Commissioner must, by notice in writing to the holder of the licence (a *suspension notice*), suspend the licence until further notice.
- (2) Suspension of a licence under this section takes effect immediately on service of a suspension notice advising that the licence has been suspended.
- (3) Suspension of a licence under this section may not be revoked by the Commissioner unless—
 - (a) the holder of the licence has been found not guilty by a court of the criminal charges relevant to the licence having been suspended, or those charges have been withdrawn or dismissed; and
 - (b) the Commissioner is satisfied that revocation of the suspension would not be contrary to the public interest.
- (4) The Commissioner must, as soon as reasonably practicable after becoming aware that all charges relevant to suspension of a licence under this section have been finalised—
 - (a) confirm or revoke the suspension; and
 - (b) advise the holder of the licence in writing of the confirmation or revocation; and
 - (c) if the holder of the licence has surrendered the licence and the suspension is revoked—return the licence to the licence holder.

23C—Content of suspension notice

- (1) A suspension notice must include—
 - (a) subject to section 5B, a statement of the Commissioner's reasons for the suspension; and
 - (b) in the case of a notice under section 23A, a statement that—
 - (i) the Commissioner is required, at the end of 28 days following service of the notice, to confirm or revoke the suspension; and
 - (ii) the holder of the licence may, within 21 days of having received the notice, provide the Commissioner with reasons why the licence should not be suspended; and
 - (c) a direction that the person must, within 7 days of service of the notice, surrender the suspended licence to the Commissioner.
- (2) A person who, without reasonable excuse, fails to surrender his or her licence in accordance with a direction under subsection (1) is guilty of an offence.

Maximum penalty: \$1 250.

23D—Service of suspension notice

- (1) Subject to this section, a suspension notice must be served personally on the person whose licence is to be suspended by the notice.
- (2) If personal service cannot be effected promptly, it will be sufficient service for the notice—
 - (a) to be left for the person with someone apparently over the age of 16 years; or
 - (b) to be posted in an envelope addressed to the person,at the person's address for service.
- (3) The person's address for service is the address of which the Commissioner has been last notified in writing by the person as the person's address for service.

23E—Appeal

- (1) A person whose security agents licence has been suspended under section 23A or 23B may appeal to the Court against the decision of the Commissioner to suspend the licence.
- (2) The Court must hear and determine an appeal under this section as expeditiously as possible.
- (3) If an appeal under this section is not determined within 3 months of the commencement of the appeal, the suspension to which the appeal relates will, unless the Court orders otherwise, be stayed until the appeal is finally determined or withdrawn.

23F—Immunity

No liability attaches to the Commissioner or the Crown for the exercise or purported exercise in good faith of the Commissioner's power to suspend a security agents licence.

23G—Cancellation of licence

- (1) If the holder of a security agents licence is found guilty of an offence of a class specified by regulation in relation to the functions authorised by the licence, the licence is cancelled and the licensee must, within 7 days of that finding, surrender the licence (if it has not already been surrendered) to the Commissioner.
- (2) A person who, without reasonable excuse, fails to surrender his or her licence in accordance with subsection (1) is guilty of an offence.

Maximum penalty: \$1 250.

23H—Review of licence

- (1) If disciplinary action is taken on the prescribed number of occasions within the prescribed period against a person, or a number of persons, employed or otherwise engaged in the business of an agent carrying on business as a security agent, the Commissioner must review the licence of the agent to determine if the licence should be suspended or a complaint lodged in respect of the agent under section 26.

(2) In this section—

disciplinary action means—

- (a) suspension or cancellation of a licence under this Part; or
- (b) disciplinary action under section 29.

Division 2—Alcohol and drug testing of persons authorised to control crowds

23I—Definitions for this Division

In this Division—

alcotest means a test by means of apparatus approved for the purpose of conducting alcotests under the *Road Traffic Act 1961*;

analyst means—

- (a) a person appointed as an analyst for the purposes of the *Road Traffic Act 1961*; or
- (b) a person holding an office of a class approved for the purposes of the *Road Traffic Act 1961*;

approved blood test kit means a kit of a kind declared by the Governor by regulation to be an approved blood test kit for the purposes of the *Road Traffic Act 1961*;

authorised officer means an authorised officer under the *Fair Trading Act 1987*;

breath analysing instrument means apparatus of a kind approved as a breath analysing instrument under the *Road Traffic Act 1961*;

breath analysis means an analysis of breath by a breath analysing instrument;

licensee means the holder of a security agents licence that authorises the licensee to perform the function of controlling crowds;

prescribed concentration of alcohol means any concentration of alcohol in the blood.

23J—Security agent authorised to control crowds may be required to undertake drug testing

- (1) A police officer or an authorised officer may, by notice in writing, direct a licensee to attend at a specified time and place for the purpose of undertaking a drug testing procedure to determine the level of any prescribed drug in any form in the blood or urine of the agent.
- (2) A notice under subsection (1) must specify what sample or samples are to be taken.
- (3) A police officer or authorised officer may give directions reasonably required for purposes connected with the administration or enforcement of this section.
- (4) If a sample of blood or urine given by a licensee under this section is found on analysis to be a non-complying sample (within the meaning of the regulations), the Commissioner or the Commissioner of Police may—
 - (a) determine the costs and expenses of carrying out the analysis; and

- (b) recover the amount so determined from the licensee as a debt in a court of competent jurisdiction.
- (5) Regulations may be made under this section—
 - (a) regulating the manner of taking and dealing with samples of blood and urine and their analysis; and
 - (b) providing for certificate evidence for use in any proceedings as to the taking and analysis of any urine or blood sample and the authority of a person to carry out an analysis; and
 - (c) requiring a licensee to produce the prescribed form of identification at the time a sample of blood or urine is taken, and providing that a failure to do so is taken to be a failure to comply with a direction under this section.

23K—Security agent authorised to control crowds may be required to undertake alcohol testing

- (1) A police officer may require a licensee, while performing the function of controlling crowds, to submit to an alcotest.
- (2) If an alcotest conducted under subsection (1) indicates that the prescribed concentration of alcohol may be present in the blood of the licensee, a police officer may require the licensee to submit to a breath analysis.
- (3) Performance of a breath analysis required under subsection (2) must be commenced within 2 hours of the licensee having submitted to the alcotest indicating that the prescribed concentration of alcohol may be present in the blood of the licensee.
- (4) The regulations may prescribe the manner in which an alcotest or breath analysis is to be conducted and may, for example, require that more than one sample of breath is to be provided for testing or analysis and, in such a case, specify which reading of the instrument or apparatus will be taken to be the result of the alcotest or breath analysis for the purposes of this and any other Act.

23L—Concentration of alcohol in breath taken to indicate concentration of alcohol in blood

If a licensee submits to an alcotest or a breath analysis and the alcotest apparatus or the breath analysing instrument produces a reading in terms of a number of grams of alcohol in 210 litres of the person's breath, the reading will, for the purposes of this Act, be taken to be that number of grams of alcohol in 100 millilitres of the person's blood.

23M—Evidence etc

- (1) If the requirements and procedures in relation to breath analysing instruments and breath analysis under this Act, including subsections (4) and (5), have been complied with, it must be presumed, in the absence of proof to the contrary, that the concentration of alcohol so indicated was present in the blood of the licensee at the time of the analysis.

- (2) No evidence can be adduced in rebuttal of the presumption created by subsection (1) except—
- (a) evidence of the concentration of alcohol in the blood of the licensee as indicated by analysis of a sample of blood taken and dealt with in accordance with the procedures prescribed by regulation; and
 - (b) evidence as to whether the results of analysis of the sample of blood demonstrate that the breath analysing instrument gave a false reading of the concentration of alcohol present in the blood of the licensee.
- (3) If it is proved in proceedings that a concentration of alcohol was present in the licensee's blood at the time of a breath analysis, it must be conclusively presumed that that concentration of alcohol was present in the licensee's blood throughout the period of two hours immediately preceding the analysis.
- (4) As soon as practicable after a licensee has submitted to an analysis of breath by means of a breath analysing instrument, the person operating the instrument must deliver to the licensee a statement in writing specifying—
- (a) the reading produced by the breath analysing instrument; and
 - (b) the date and time of the analysis.
- (5) If a licensee has submitted to an analysis of breath by means of a breath analysing instrument and the concentration of alcohol indicated as being present in the blood of that licensee by the breath analysing instrument is the prescribed concentration of alcohol, the person operating the instrument must immediately—
- (a) give the person the prescribed oral advice and deliver to the person the prescribed written notice as to the operation of this Act in relation to the results of the breath analysis and as to the procedures prescribed for the taking and analysis of a sample of the person's blood; and
 - (b) at the request of the person made in accordance with the regulations, deliver an approved blood test kit to the person.
- (6) A certificate—
- (a) purporting to be signed by the Commissioner of Police and to certify that a person named in the certificate is authorised by the Commissioner of Police to operate breath analysing instruments; or
 - (b) purporting to be signed by a person authorised to operate breath analysing instruments by the Commissioner of Police and to certify that—
 - (i) the apparatus used by the authorised person was a breath analysing instrument within the meaning of this Act; and
 - (ii) the breath analysing instrument was in proper order and was properly operated; and
 - (iii) the provisions of this Act with respect to breath analysing instruments and the manner in which an analysis of breath by means of a breath analysing instrument is to be conducted were complied with,

is, in the absence of proof to the contrary, proof of the matters so certified.

- (7) A certificate purporting to be signed by a police officer and to certify that an apparatus referred to in the certificate is or was of a kind approved under the *Road Traffic Act 1961* for the purpose of performing alcotests is, in the absence of proof to the contrary, proof of the matter so certified.
- (8) A certificate purporting to be signed by a police officer and to certify that a person named in the certificate submitted to an alcotest on a specified day and at a specified time and that the alcotest indicated that the prescribed concentration of alcohol may then have been present in the blood of that person is, in the absence of proof to the contrary, proof of the matters so certified.
- (9) A certificate purporting to be signed by an analyst, certifying as to the concentration of alcohol, or any drug, found in a specimen of blood identified in the certificate expressed in grams in 100 millilitres of blood is, in the absence of proof to the contrary, proof of the matters so certified.
- (10) A certificate purporting to be signed by a person authorised to operate breath analysing instruments by the Commissioner of Police and to certify that—
- (a) a person named in the certificate submitted to an analysis of breath by means of a breath analysing instrument on a day and at a time specified in the certificate; and
 - (b) the breath analysing instrument produced a reading specified in the certificate; and
 - (c) a statement in writing required by subsection (4) was delivered in accordance with that subsection,
- is, in the absence of proof to the contrary, proof of the matters so certified.
- (11) A certificate purporting to be signed by a person authorised to operate breath analysing instruments by the Commissioner of Police and to certify—
- (a) that, on a date and at a time specified in the certificate, a person named in the certificate submitted to an analysis of breath by means of a breath analysing instrument; and
 - (b) that the prescribed oral advice and the prescribed written notice were given and delivered to the person in accordance with subsection (5)(a); and
 - (c) that—
 - (i) the person did not make a request for an approved blood test kit in accordance with the regulations; or
 - (ii) at the request of the person, a kit that, from an examination of its markings, appeared to the person signing the certificate to be an approved blood test kit was delivered to the person in accordance with subsection (5)(b),
- is, in the absence of proof to the contrary, proof that the requirements of subsection (5) were complied with in relation to the person.
- (12) A certificate purporting to be signed by a police officer and to certify that a person named in the certificate was, at the time of being directed to submit to an alcotest, performing the function of controlling crowds is, in the absence of proof to the contrary, proof of the matter so certified.

- (13) A certificate purporting to be signed by a police officer and to certify that a person named in the certificate was required under this Division to submit to an alcotest or breath analysis and refused or failed to comply with all reasonable directions of a police officer in relation to the requirement is, in the absence of proof to the contrary, proof of the matter so certified.

23N—Commissioner of Police must report results of breath analysis to Commissioner

The Commissioner of Police must, as soon as reasonably practicable after a police officer has required a licensee to submit to an alcotest or breath analysis, provide a report to the Commissioner setting out—

- (a) whether or not the licensee complied with the requirement; and
- (b) if the licensee complied with the requirement—the result of the alcotest or analysis.

23O—Cancellation of licence

- (1) The Commissioner may, subject to this section, cancel a security agents licence if—
- (a) the licensee fails, without reasonable excuse, to comply with—
 - (i) a notice or direction under section 23J; or
 - (ii) a requirement or direction under section 23K; or
 - (b) a sample of the blood or urine of the licensee taken in accordance with section 23J is found on analysis to be a non-complying sample (within the meaning of the regulations); or
 - (c) the results of a breath analysis undertaken in accordance with this Division demonstrate that the prescribed concentration of alcohol was present in the licensee's blood at a time when the licensee was performing the function of controlling crowds.
- (2) The Commissioner must, before exercising powers under subsection (1) in relation to a licensee—
- (a) give written notice to the licensee of the proposed cancellation, including a statement of the reasons that the Commissioner considers justify the cancellation; and
 - (b) allow the licensee a period of 14 days (or such longer period as the Commissioner may in a particular case allow) to show cause why the licence should not be cancelled.
- (3) At the end of the period allowed by the Commissioner under subsection (2), the Commissioner must—
- (a) determine, having regard to any response received from the licensee, whether or not to proceed with cancellation of the licence; and
 - (b) advise the licensee by notice in writing of the Commissioner's determination.
- (4) A notice under subsection (3)(b) must, if the licence is to be cancelled, specify the date from which the cancellation is to take effect (which must be not less than 14 days from the date of the notice) and the grounds for the Commissioner's determination.

23P—Surrender of licence

- (1) A person whose security agents licence has been cancelled under section 23O must, within 7 days of the date on which the cancellation takes effect, surrender the licence to the Commissioner.
- (2) A person who, without reasonable excuse, fails to surrender his or her licence in accordance with subsection (1) is guilty of an offence.

Maximum penalty: \$1 250.

23Q—Appeal

A person whose security agents licence has been cancelled under section 23O may appeal to the Court against the decision of the Commissioner to cancel the licence.

Part 4—Discipline

24—Interpretation of Part 4

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.

25—Cause for disciplinary action

- (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; or

- (f) in the case of a natural person licensed or formerly licensed as a security agent—
 - (i) the person is not a fit and proper person; or
 - (ii) the person has contravened a provision of the *Gaming Machines Act 1992* or the *Liquor Licensing Act 1997* relating to the prevention of a person from entering, or the removal of a person from, licensed premises (within the meaning of the *Liquor Licensing Act 1997*); or
 - (iii) it would be contrary to the public interest if the licensee were to be or continue to be licensed; or
 - (g) in the case of a body corporate licensed or formerly licensed as a security agent—
 - (i) a director of the body corporate is not a fit and proper person; or
 - (ii) it would be contrary to the public interest if the body corporate were to be or continue to be licensed.
- (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.

26—Complaints

The Commissioner, a police officer or any other person may lodge with the Court a complaint setting out, subject to section 5B, matters that are alleged to constitute grounds for disciplinary action under this Part.

27—Hearing by Court

- (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.

27A—Procedure in the case of complaint against security agent

- (1) On the hearing of a complaint against a person licensed or formerly licensed as a security agent, the Court—
 - (a) is not bound by the rules of evidence but may inform itself as it thinks fit; and

- (b) must act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms.
- (2) In determining whether there is proper cause for disciplinary action against a person licensed or formerly licensed as a security agent, regard may be had to such evidence of the conduct (no matter when the conduct is alleged to have occurred) of the person or persons with whom the person associates (or has associated at any relevant time) as the Court considers relevant, including information that existed at the time the licence was granted, regardless of whether that information was known or could have been made known to the Commissioner at that time.

28—Participation of assessors in disciplinary proceedings

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.

29—Disciplinary action

- (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.

30—Contravention of orders

- (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.

Part 5—Miscellaneous

31—Delegations

- (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.

32—Agreement with professional organisation

- (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.

33—Exemptions

- (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.

34—Register of licensed agents

- (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.

35—Commissioner and proceedings before Court

(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.

36—Return of licences

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.

36A—Destruction of fingerprints

(1) This section applies—

(a) to fingerprints taken under section 8B in connection with an application for a security agents licence if the application is refused; or

(b) to fingerprints taken under section 8B in connection with an application for a security agents licence if the application is granted and the licence is cancelled or voluntarily surrendered, or the holder, being a body corporate, dissolved; or

(c) to fingerprints taken under section 11AB of the holder of a security agents licence or a director of the holder of a security agents licence if the licence is cancelled or voluntarily surrendered, or the holder, being a body corporate, dissolved.

(2) A person whose fingerprints have been taken under this Act may, if the fingerprints are fingerprints to which this section applies, apply to the Commissioner of Police to have the fingerprints, and any copies of the fingerprints, destroyed.

(3) The Commissioner of Police may grant or refuse the application as the Commissioner of Police sees fit.

37—False or misleading information

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.

38—Statutory declaration

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.

39—Commissioner of Police to conduct investigations and make available relevant information

- (1) 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.
- (2) The Commissioner of Police must, as soon as reasonably practicable after becoming aware of information relevant to a matter that might constitute proper cause for disciplinary action under this Act, make the information available to the Commissioner.

40—General defence

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.

41—Liability for act or default of officer, employee or agent

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.

42—Offences by bodies corporate

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.

43—Continuing offence

- (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.

44—Prosecutions

- (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; or
 - (d) a police officer.
- (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.

45—Evidence

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.

46—Service of documents

- (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.

47—Annual report

- (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.

48—Regulations

- (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.

Schedule 2—Repeal and transitional provisions

1—Repeal

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

2—Transitional provisions

- (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.

Endorsement	Class of licence
1 or commercial agent	<p>a restricted investigation agents licence subject to a condition limiting the functions that may be performed under the authority of the licence to—</p> <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

Endorsement	Class of licence
2 or inquiry agent	<p>a restricted investigation agents licence subject to a condition limiting the functions that may be performed under the authority of the licence to—</p> <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	<p>a restricted security agents licence subject to a condition limiting the functions that may be performed under the authority of the licence to—</p> <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	<p>a restricted security agents licence subject to a condition limiting the functions that may be performed under the authority of the licence to—</p> <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	<p>a restricted security agents licence subject to a condition limiting the functions that may be performed under the authority of the licence to—</p> <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	<p>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</p>
7 or crowd controller	<p>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</p>

- (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.

3—Transitional provisions relating to *Statutes Amendment (Liquor, Gambling and Security Industries) Act 2005*

- (1) The Commissioner must, within 2 years after the day on which section 1 of the *Statutes Amendment (Liquor, Gambling and Security Industries) Act 2005* comes into operation, by notice in writing, require—
 - (a) each natural person who is on that day the holder of a security agents licence; and
 - (b) each director of a body corporate that is on that day the holder of a security agents licence,to attend at a specified time and place for the purpose of having his or her fingerprints taken by a police officer.
- (2) As soon as reasonably practicable after fingerprints have been taken from a person by a police officer pursuant to a requirement under subclause (1), the Commissioner of Police must make available to the Commissioner such information to which the Commissioner of Police has access about the identity, antecedents and criminal history of the person as the Commissioner of Police considers relevant.
- (3) If a person fails to comply with a notice under subclause (2), the Commissioner may, by notice in writing, require the person to make good the default.
- (4) If the person fails to comply with the notice within a time fixed by the notice (which may not be less than 28 days after service of the notice), the person's licence is cancelled.
- (5) A person whose fingerprints have been taken under this clause may, if his or her security agents licence is cancelled or voluntarily surrendered, or if he or she was required to provide the fingerprints because he or she was the director of a body corporate that has since dissolved, apply to the Commissioner of Police to have the fingerprints, and any copies of the fingerprints, destroyed.

- (6) The Commissioner of Police may grant or refuse the application as the Commissioner of Police sees fit.

Legislative history

Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1995	93	<i>Security and Investigation Agents Act 1995</i>	7.12.1995	31.3.1996 (<i>Gazette</i> 28.3.1996 p1797)
1997	61	<i>Co-operatives Act 1997</i>	7.8.1997	1.12.1997 (<i>Gazette</i> 20.11.1997 p1326)
1998	21	<i>Statutes Amendment (Consumer Affairs) Act 1998</i> as amended by 22/1998	2.4.1998	Pt 12 (ss 33—36) & Sch—28.5.1998 (<i>Gazette</i> 28.5.1998 p2292)
1998	22	<i>Statutes Amendment (Consumer Affairs) Amendment Act 1998</i>	2.4.1998	2.4.1998
1999	33	<i>Financial Sector Reform (South Australia) Act 1999</i>	17.6.1999	Sch (item 48)—1.7.1999 being the date specified under s 3(16) of the <i>Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999</i> of the Commonwealth as the transfer date for the purposes of that Act: s 2(2)
2000	4	<i>District Court (Administrative and Disciplinary Division) Amendment Act 2000</i>	20.4.2000	Sch 1 (cl 37)—1.6.2000 (<i>Gazette</i> 18.5.2000 p2554)
2001	47	<i>Statutes Amendment (Consumer Affairs) Act 2001</i>	11.10.2001	Pt 7 (ss 22—24)—1.11.2001 (<i>Gazette</i> 25.10.2001 p4686)
2005	22	<i>Statutes Amendment (Liquor, Gambling and Security Industries) Act 2005</i>	9.6.2005	Pt 4 (ss 43—59), Sch 1 (cl 3) & Sch 3—8.12.2005 (<i>Gazette</i> 8.12.2005 p4195)
2006	44	<i>Statutes Amendment (Justice Portfolio) Act 2006</i>	14.12.2006	Pt 26 (ss 50—58)—uncommenced

Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Pt 1		
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	8.12.2005
s 3		
approved psychological assessment	inserted by 22/2005 s 43(1)	8.12.2005
criminal intelligence	inserted by 22/2005 s 43(2)	8.12.2005
director	amended by 22/2005 s 43(3)	8.12.2005
holder of a security agents licence	inserted by 22/2005 s 43(4)	8.12.2005
security agents licence	inserted by 22/2005 s 43(5)	8.12.2005
s 4	amended by 61/1997 s 456 amended by 33/1999 Sch (item 48) amended by 22/2005 Sch 3	1.12.1997 1.7.1999 8.12.2005
ss 5A and 5B	inserted by 22/2005 s 44	8.12.2005
Pt 2		
s 6		
s 6(1)	amended by 21/1998 Sch cl 9 as inserted by 22/1998 s 3	28.5.1998
s 8		
s 8(2)	amended by 47/2001 s 22(a)	1.11.2001
s 8(3)—(6)	inserted by 47/2001 s 22(b)	1.11.2001
ss 8A—8C	inserted by 22/2005 s 45	8.12.2005
s 9		
s 9(1)	amended by 22/2005 s 46(1)	8.12.2005
s 9(2)	amended by 22/2005 s 46(2)	8.12.2005
s 9A	inserted by 22/2005 s 47	8.12.2005
s 11		
s 11(1a)	inserted by 22/2005 s 48(1)	8.12.2005
s 11(2)	amended by 4/2000 s 9(1) (Sch 1 cl 37(a))	1.6.2000
s 11(3)	amended by 22/2005 s 48(2), (3)	8.12.2005
s 11(4)	amended by 22/2005 s 48(4)	8.12.2005
s 11(5)	<i>deleted by 4/2000 s 9(1) (Sch 1 cl 37(b))</i>	<i>1.6.2000</i>
s 11(6)	<i>deleted by 4/2000 s 9(1) (Sch 1 cl 37(c))</i>	<i>1.6.2000</i>
s 11A	inserted by 47/2001 s 23	1.11.2001
ss 11AB—11AD	inserted by 22/2005 s 49	8.12.2005

s 12		
s 12(3)	amended by 47/2001 s 24	1.11.2001
	amended by 22/2005 s 50(1)	8.12.2005
s 12(4)	amended by 22/2005 s 50(2)	8.12.2005
Pt 3		
s 12A		
s 12A(1)	s 12A inserted by 21/1998 s 33	28.5.1998
	s 12A amended and redesignated as s 12A(1) by 22/2005 s 51(1), (2)	8.12.2005
s 12A(2)	inserted by 22/2005 s 51(2)	8.12.2005
s 20		
s 20(1)	amended by 22/2005 Sch 3	8.12.2005
s 22	amended by 22/2005 Sch 3	8.12.2005
s 23		
s 23(1)	amended by 21/1998 Sch cl 9 as inserted by 22/1998 s 3	28.5.1998
Pt 3	inserted by 22/2005 s 52	8.12.2005
Pt 4		
s 25		
s 25(1)	amended by 22/2005 s 53	8.12.2005
s 26	amended by 22/2005 s 54(1), (2)	8.12.2005
s 27A	inserted by 22/2005 s 55	8.12.2005
s 28	amended by 21/1998 s 34	28.5.1998
s 29		
s 29(1)	amended by 21/1998 Sch cl 9 as inserted by 22/1998 s 3	28.5.1998
Pt 5		
s 36A	inserted by 22/2005 s 56	8.12.2005
s 39		
s 39(1)	s 39 redesignated as s 39(1) by 22/2005 s 57	8.12.2005
s 39(2)	inserted by 22/2005 s 57	8.12.2005
s 44		
s 44(1)	substituted by 21/1998 Sch cl 9 as inserted by 22/1998 s 3	28.5.1998
s 44(2)	amended by 22/2005 s 58	8.12.2005
Sch 1		
scl (5)	amended by 21/1998 s 35	28.5.1998
scl (7)	amended by 4/2000 s 9(1) (Sch 1 cl 37(d))	1.6.2000
Sch 2		
cl 2		
cl 2(4) and (5)	inserted by 21/1998 s 36	28.5.1998
cl 3	inserted by 22/2005 s 59	8.12.2005

Transitional etc provisions associated with Act or amendments

Statutes Amendment (Liquor, Gambling and Security Industries) Act 2005, Sch 1—Transitional provisions

3—*Security and Investigation Agents Act 1995*

- (1) An amendment to the *Security and Investigation Agents Act 1995* effected by a provision of this Act applies in respect of an application under that Act if the application is determined after the commencement of that provision irrespective of whether the application was lodged before or after that commencement.
- (2) An amendment to the *Security and Investigation Agents Act 1995* effected by a provision of this Act applies in respect of a licence granted under that Act, or a person licensed under that Act, whether the licence was granted before or after the commencement of that provision.
- (3) An amendment to the *Security and Investigation Agents Act 1995* effected by a provision of this Act that provides for the suspension or cancellation of a person's licence if the person is charged with or found guilty of an offence applies only if the offence is committed, or alleged to have been committed, after the commencement of that provision.

Historical versions

Reprint No 1—1.12.1997

Reprint No 2—28.5.1998

Reprint No 3—1.7.1999

Reprint No 4—1.6.2000

Reprint No 5—1.11.2001