

South Australia

SECURITY AND INVESTIGATION AGENTS REGULATIONS 1996

*These regulations are reprinted pursuant to the Subordinate Legislation Act 1978 and incorporate all amendments in force as at **18 August 2002**.*

REGULATIONS UNDER THE SECURITY AND INVESTIGATION AGENTS ACT 1995

SECURITY AND INVESTIGATION AGENTS REGULATIONS 1996

being

No. 48 of 1996: *Gaz.* 28 March 1996, p. 1857¹

as varied by

No. 238 of 1996: *Gaz.* 31 October 1996, p. 1584²

No. 259 of 1996: *Gaz.* 23 December 1996, p. 2262³

No. 82 of 1997: *Gaz.* 13 May 1997, p. 1867⁴

No. 77 of 1998: *Gaz.* 28 May 1998, p. 2336⁵

No. 32 of 1999: *Gaz.* 29 April 1999, p. 2382⁶

No. 62 of 1999: *Gaz.* 27 May 1999, p. 2812⁷

No. 143 of 1999: *Gaz.* 1 July 1999, p. 55⁷

No. 84 of 2000: *Gaz.* 25 May 2000, p. 2759⁸

No. 84 of 2001: *Gaz.* 31 May 2001, p. 2025⁹

No. 152 of 2001: *Gaz.* 28 June 2001, p. 2482¹⁰

No. 181 of 2001: *Gaz.* 19 July 2001, p. 2735¹¹

No. 65 of 2002: *Gaz.* 20 June 2002, p. 2541¹²

No. 21 of 2002: *Gaz.* 18 April 2002, p. 1630¹³

¹ Came into operation (except Pt. 4) 31 March 1996: reg. 2(1); Pt. 4 came into operation 30 April 1996: reg. 2(2).

² Came into operation 31 October 1996: reg. 2.

³ Came into operation 3 February 1997: reg. 2.

⁴ Came into operation 1 July 1997: reg. 2.

⁵ Came into operation 1 July 1998: reg. 2.

⁶ Came into operation 29 April 1999: reg. 2.

⁷ Came into operation 1 July 1999: reg. 2.

⁸ Came into operation 1 July 2000: reg. 2.

⁹ Came into operation 1 July 2001: reg. 2.

¹⁰ Came into operation 15 July 2001: reg. 2.

¹¹ Came into operation 19 July 2001: reg. 2.

¹² Came into operation 1 July 2002: reg. 2.

¹³ **Came into operation 18 August 2002: reg. 2.**

NOTE:

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

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**PART 1
PRELIMINARY**

Citation

1. These regulations may be cited as the *Security and Investigation Agents Regulations 1996*.

Commencement

2. (1) Subject to subregulation (2), these regulations will come into operation on 31 March 1996.

(2) Part 4 will come into operation on 30 April 1996.

Revocation

3. The *Commercial and Private Agents Regulations 1989* (see *Gazette* 16 February 1989 p. 460), as varied, are revoked.

Interpretation

4. In these regulations—

"**Act**" means the *Security and Investigation Agents Act 1995*;

"**auditor**" means a registered company auditor within the meaning of the *Corporations Act 2001* of the Commonwealth;

"**collection agent**" means an investigation agent who is authorised by a licence to perform one or more of the following functions:

- (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;

"**former collection agent**" includes an agent who held a licence with the endorsement 1 or commercial agent under the *Commercial and Private Agents Act 1986*;

"**record**" includes information kept by computer, microfilm or other process;

"**trust account**" means an account in which trust money is required to be deposited by an agent;

"**trust money**", in relation to a collection agent, means money—

- (a) that is received by the agent when acting as an agent; and
- (b) to which the agent is not wholly entitled in law and in equity,

but does not include money received on behalf of—

- (c) a person by whom the agent is employed under a contract of service; or
- (d) a person who is also a collection agent.

Offences preventing persons being licensed agents or process servers

5. Schedule 1 sets out classes of offences for the purposes of section 9 (*entitlement to be licensed*) and section 23 (*entitlement to be process server*) of the Act.

Fees

6. (1) The fees fixed by Schedule 2 are payable to the Commissioner for the purposes set out in that schedule.

(2) The Commissioner may waive, reduce or refund a fee (or part of a fee) payable under these regulations if satisfied that it is appropriate to do so in a particular case.

**PART 2
APPLICATION OF ACT**

Exemption for loss adjusters and accountants—prescribed qualifications

7. (1) For the purposes of section 4(e) of the Act, the prescribed qualification in loss adjusting is membership of the Chartered Institute of Loss Adjusters (Australasian Division) or the Institute of Loss Adjusters of Australia Limited.

(2) For the purposes of section 4(f)(ii) of the Act, the prescribed qualification in accountancy is a current practising certificate issued by either the Institute of Chartered Accountants in Australia or the Australian Society of Accountants.

Other exemptions

8. (1) A person is exempt from the requirement to hold a licence authorising the performance of the function of providing advice on security alarm or surveillance systems if—

- (a) the person is registered as an architect under the *Architects Act 1939*; or
- (b) the person holds the qualifications necessary for membership of the Institute of Engineers Australia; or
- (c) the person is employed under a contract of service and provides advice on security alarm or surveillance systems only to his or her employer in relation to premises owned or occupied by the employer.

(2) A person employed in connection with the casino licensed under the *Casino Act 1983* is exempt, while acting in the ordinary course of that employment, from the requirement to hold a licence authorising the performance of one or more of the following functions:

- (a) protecting or guarding a person or property or keeping a person or property under surveillance;
- (b) preventing, detecting or investigating the commission of an offence in relation to a person or property;
- (c) controlling crowds.

(3) A person is exempt from the requirement to hold a licence authorising the performance of the function of controlling crowds if the person is not employed or engaged to deal with persons who behave in a disorderly manner or create a nuisance.

**PART 3
OBLIGATIONS OF LICENSEES**

Annual fee and return

9. (1) For the purposes of section 12(2) of the Act, a licensed agent must pay the fee and lodge the return on or before—

- (a) in the case of a collection agent who held a licence immediately before the commencement of this paragraph—
 - (i) the last day of the month in each year nominated in writing to the agent by the Commissioner; or
 - (ii) if the Commissioner does not nominate a month—31 October in each year;
- (b) in the case of a collection agent who is granted a licence after the commencement of this paragraph or of any other licensed agent—
 - (i) the last day of the month in each year nominated in writing to the agent by the Commissioner; or
 - (ii) if the Commissioner does not nominate a month—the last day of the month in each year that is the same month as the month in which the agent's licence was granted.

(2) For the purposes of section 12(3) of the Act, the penalty for default in paying the fee or lodging the return is as set out in Schedule 2.

Notification of change in circumstances

10. (1) If there is any change in the residential address or the address for service of a licensed agent, the agent must, within 14 days after that change, give written notice to the Commissioner of the new address.

Maximum penalty: \$2 500.

Expiation fee: \$160.

(2) If a licensed agent carries on business as an agent, the agent must notify the Commissioner of changes as follows:

- (a) if there is any change in—
 - (i) the business or trading name under which the licensed agent carries on business; or
 - (ii) the address at which the licensed agent carries on business; or
 - (iii) the address of the registered corporate office of a licensed agent that is a body corporate,

the agent must, within 14 days after that change, give written notice to the Commissioner of the new name or address;

- (b) within 14 days after ceasing to carry on business as an agent, the agent must give written notice to the Commissioner of that fact;

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- (c) within 14 days after entering into partnership to carry on business as an agent or ceasing to be in such a partnership, the agent must give written notice to the Commissioner of that fact, together with the names of the members of the new or former partnership.

Maximum penalty: \$2 500.
Expiation fee: \$160.

(3) If a person is appointed as a director of a body corporate that is a licensed agent, the agent must, within 14 days after the appointment—

- (a) notify the Commissioner in the manner and form approved by the Commissioner of the appointment of the new director; and
- (b) provide the Commissioner with any information required by the Commissioner for the purposes of determining whether the new director meets the requirements for directors under section 9(2) of the Act.

Maximum penalty: \$2 500.
Expiation fee: \$160.

Return, etc., of licence

10A. (1) If a licensed agent surrenders his or her licence, the agent must, at the direction of the Commissioner, return the licence to the Commissioner.

Maximum penalty: \$2 500.
Expiation fee: \$160.

(2) The Commissioner may issue to a licensed agent a licence in replacement of a current licence if satisfied that—

- (a) the current licence has been lost, destroyed or damaged; or
- (b) any photograph of the agent on the current licence should be replaced with a more recent photograph of the agent; or
- (c) any particulars appearing on the current licence are incorrect.

(3) If the Commissioner issues to a licensed agent a replacement licence, the agent must, at the direction of the Commissioner, return the original (or previous duplicate) licence to the Commissioner.

Maximum penalty: \$2 500.
Expiation fee: \$160.

PART 4
IDENTIFICATION OF CROWD CONTROLLERS

Duty of person who carries on business or promotes event to provide crowd controllers with identification card and keep register

11. (1) A person who carries on a business or promotes an event at a place and employs (whether under contract of service or otherwise) one or more licensed security agents to perform the function of controlling crowds at the place must—

- (a) ensure that each agent who personally performs the function of controlling crowds at the place is issued with an identification card in accordance with this regulation; and
- (b) ensure that a register is kept for the place in accordance with this regulation.

Maximum penalty: \$2 500.

Expiation fee: \$160.

(2) The identification card—

(a) must legibly display in black characters on a white background—

- (i) a one or two digit number not less than 4 cm in height and comprised of lines not less than 5 mm in thickness; and
- (ii) the word "security" in letters not less than 5 mm in height; and
- (iii) the name of the place or the event in respect of which the card is issued in letters not less than 5 mm in height;

(b) may be issued to the agent on a permanent basis or periodically, before the agent commences each period of duty.

(3) If more than one agent is to perform the function of controlling crowds at the same place at the same time, the identification card issued to each agent must display a different number.

(4) The register must—

(a) contain the following information:

- (i) the full name and address of the person who carries on the business or promotes the event;
- (ii) the name and address of the place in respect of which the register is kept;
- (iii) the licence number and full name and address of each agent who personally performs the function of controlling crowds at the place;
- (iv) in relation to each period of duty performed by each agent—
 - (A) the time at which the agent starts and finishes the period of duty; and
 - (B) the number displayed on the identification card worn by the agent during the period of duty; and

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- (b) be kept—
 - (i) while the person carrying on the business or promoting the event continues to use the place in respect of which the register is kept—at that place;
 - (ii) in any other case—at some other place of business or residence of the person who carries on the business or promotes the event;
- (c) be retained for at least 6 months, or for such longer period as a member of the police force, the Commissioner or an authorised officer under the *Fair Trading Act 1987* requests by notice in writing.

(5) The person who carries on the business or promotes the event must ensure that the register is readily available for inspection (and copying) at the request of a member of the police force, an authorised officer under the *Fair Trading Act 1987* or a person authorised by the Commissioner.

Maximum penalty: \$2 500.

- (6) In this regulation—

"**period of duty**", in relation to an agent, means any period during which the agent is to or may perform the function of controlling crowds, and includes meal or rest breaks.

Duty of crowd controller to wear identification

12. For the purposes of section 20(2) of the Act, a licensed security agent who is issued with an identification card under regulation 11 must, while performing the function of controlling crowds at the place in respect of which the card is issued, wear the identification card on his or her chest securely attached to the outside of his or her clothing so that at all times the numbers on the card are clearly visible to other persons.

**PART 5
TRUST ACCOUNTS OF COLLECTION AGENTS**

Requirement to keep trust account

13. (1) A collection agent must, as soon as practicable after receiving trust money, deposit the money in an account (in the name of the agent) at an ADI.

Maximum penalty: \$2 500.

(2) A collection agent must not pay any other money into the agent's trust account.

Maximum penalty: \$2 500.

(3) A collection agent must, when applying to open a trust account, inform the ADI that the account is to be a trust account for the purposes of this Part.

Maximum penalty: \$2 500.

General duty with respect to records

14. If a collection agent uses a computer program to keep records under section 14 of the Act and these regulations, the agent must ensure that—

- (a) an electronic copy of all the records is made within 24 hours of any alteration of the records; and
- (b) at least once in each week, an electronic copy of all the records is made and kept in a safe place at a location other than the premises where the computer program is operating; and
- (c) before any information is deleted from the computer records, a hard copy of the information is made and kept by the agent as part of the agent's records; and
- (d) an up-to-date electronic copy of the computer program is made and kept in a safe place at a location other than the premises where the computer program is operating.

Maximum penalty: \$2 500.

Keeping of records

14A. A collection agent must keep detailed records of all trust money received by the agent and of any disbursement of, or other dealing with, that money and must compile detailed accounts of those receipts and disbursements that—

- (a) accurately disclose the state of the trust account maintained by the agent; and
- (b) enable the receipt and disposition of trust money to be conveniently and properly audited; and
- (c) comply with the requirements set out in regulations 16A, 16B and 16C.

Maximum penalty: \$2 500.

Receipt of trust money

15. (1) A collection agent must, in respect of the receipt of trust money—

- (a) make available to the person making payment a receipt that complies with this regulation; and

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- (b) make and retain a copy of the receipt as part of the agent's records.

Maximum penalty: \$2 500.

- (2) The receipt—

- (a) must be legibly written on a form comprised in a series of consecutively pre-numbered duplicate receipt forms marked with the name of the agent and the words "Trust Account"; and

- (b) must contain the following information:

- (i) —

- (A) in the case of a payment made by electronic transfer of funds into an agent's trust account—the date on which the agent makes out the receipt; or

- (B) in any other case—the date of the payment; and

- (ii) the name of the person making the payment; and

- (iii) whether the payment is by cash, cheque, bank cheque or electronic transfer of funds into the agent's trust account and, if the payment is by cheque or bank cheque, the name of the drawer of the cheque; and

- (iv) the name of the person for whom the money is received; and

- (v) brief particulars of the purpose of the payment; and

- (vi) the amount of the payment.

- (3) A collection agent must make out a receipt in accordance with subregulation (2)—

- (a) in the case of a payment made by electronic transfer of funds into an agent's trust account—immediately the agent receives official confirmation that the payment has been made (whether that is by way of receipt by the agent of an ADI statement or some other way, whichever occurs sooner); or

- (b) in any other case—immediately on receipt of the payment.

Maximum penalty: \$2 500.

Withdrawal of trust money

16. (1) A collection agent must not withdraw, or permit another person to withdraw, money from a trust account except—

- (a) for payment to the person entitled to the money or in accordance with the directions of that person; or

- (b) in satisfaction of a claim for commission, fees, costs or disbursements that the agent has against the person on behalf of whom the money is held; or

- (c) to satisfy an order of a court against the person on behalf of whom the agent is holding the money; or

- (d) for payment into a court before which proceedings have been instituted in relation to the money; or
- (e) for the purpose of dealing with the money in accordance with the *Unclaimed Moneys Act 1891*; or
- (f) for making any other payment authorised by law.

Maximum penalty: \$2 500.

- (2) A collection agent must not make a payment of trust money in cash.

Maximum penalty: \$2 500.

- (3) When a collection agent makes a payment of trust money by cheque, the agent—
 - (a) must ensure that the cheque is marked with the name of the agent and the words "Trust Account"; and
 - (b) must—
 - (i) cause the cheque to be crossed and endorsed "not negotiable"; or
 - (ii) obtain from the person receiving the cheque a receipt that complies with subregulation (4) and keep the receipt as part of the agent's records; and
 - (c) must prepare and keep as part of the agent's records a cheque stub or voucher containing the following information:
 - (i) the date and reference number of the cheque;
 - (ii) the name of the payee;
 - (iii) the client name or reference and brief particulars of the purpose of the payment;
 - (iv) the amount of the cheque.

Maximum penalty: \$2 500.

- (4) The receipt must be legible and contain the following information:
 - (a) the date and reference number of the cheque; and
 - (b) particulars identifying the trust account against which the cheque is drawn; and
 - (c) the name of the payee; and
 - (d) brief particulars of the purpose of the payment; and
 - (e) the amount of the cheque.

- (5) When a collection agent authorises the payment of trust money by electronic transfer of funds, the agent—

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- (a) must prepare and keep as part of the agent's records the following information:
 - (i) the date and reference number of the payment;
 - (ii) the name of the payee;
 - (iii) the client name or reference and brief particulars of the purpose of the payment;
 - (iv) the name or style of the ADI account to which the payment is made, its number and the identifying numbers of the receiving ADI and its branch;
 - (v) the amount of the payment; and
- (b) must, on receiving official written confirmation that the payment has been made, keep that confirmation as part of the agent's records.

Maximum penalty: \$2 500.

Cash books

16A. (1) A collection agent must keep as part of the agent's records—

- (a) a cash receipts book in which the agent records the following information in respect of each receipt of trust money:
 - (i) the date and reference number of the receipt;
 - (ii) the name of the person from whom the money is received;
 - (iii) the client name or reference to which the transaction relates;
 - (iv) brief particulars of the purpose of the receipt;
 - (v) the amount of the receipt; and
- (b) a cash payments book in which the agent records the following information in respect of each payment of trust money:
 - (i) the date and reference number of the cheque or electronic transfer of funds by which the payment was made;
 - (ii) the name of the payee;
 - (iii) the client name or reference to which the transaction relates;
 - (iv) brief particulars of the purpose of the payment;
 - (v) the amount of the cheque or electronic transfer of funds.

(2) A collection agent need not keep a cash receipts book or a cash payments book as required by subregulation (1) if the agent uses a computer program to record the information referred to in that subregulation in respect of each receipt or payment of trust money and the program—

- (a) requires input in each field of a data entry screen intended to receive information in respect of a receipt or payment so that all of the information referred to in subregulation (1) is recorded in respect of each receipt and payment; and

- (b) is capable, at any time, of producing—
 - (i) a report of the information in respect of receipts of trust money in the order in which they were received; and
 - (ii) a report of the information in respect of payments of trust money in the order in which they were made.

(3) A collection agent who uses a computer program as referred to in subregulation (2) must ensure that—

- (a) at the end of each month, hard copies of each of the following reports are produced:
 - (i) a report of the information in respect of receipts of trust money received during that month in the order in which they were received;
 - (ii) a report of the information in respect of payments of trust money made during that month in the order in which they were made; and
- (b) those hard copies are kept as part of the agent's records.

(4) The records of receipts and payments must be made by the agent in accordance with this regulation in the order in which they are received or made, each such record being made within two working days after the receipt or payment in question.

(5) Subregulation (4) does not apply in relation to receipts or payments by way of electronic transfer of funds, a record of which must be made within two working days after the agent receives official confirmation that the transfer has occurred.

Separate trust ledger accounts

16B. (1) A collection agent must ensure that the agent's trust ledger accounts are kept separately in respect of each of the agent's clients.

(2) The agent must record in each of the separate accounts the following details:

- (a) the name and address of the client to whom the accounts relate;
- (b) a brief description of the service provided and the transaction to which the accounts relate;
- (c) in respect of each receipt or disbursement of trust money—
 - (i) the date and reference number of the receipt or disbursement;
 - (ii) the name of the person from whom the money is received or to whom the money is disbursed;
 - (iii) brief particulars of the purpose of the receipt or disbursement;
 - (iv) the amount received or disbursed.

(3) The agent must ensure that any changes in the details referred to in subregulation (2)(a) or (b) are recorded in a manner that enables the changes and the order in which they occurred to be identified.

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(4) If the agent transfers money between any of the separate accounts, the transfer must be clearly recorded—

- (a) in both accounts; and
- (b) in a transfer journal,

in sufficient detail that the transfer may be clearly understood.

(5) The records of receipts, disbursements and transfers must be made by the agent in accordance with this regulation in the order in which the receipts, disbursements or transfers are received or made, each such record being made within two working days after the receipt, disbursement or transfer in question.

(6) Subregulation (5) does not apply in relation to receipts or payments by way of electronic transfer of funds, a record of which must be made within two working days after the agent receives official confirmation that the transfer has occurred.

(7) If a collection agent uses a computer program to keep trust ledger accounts or a transfer journal, the agent must ensure that—

- (a) the program is incapable of—
 - (i) recording a transaction that would result in a debit balance in a trust ledger account unless a separate contemporaneous record of the transaction is also made so that, at any time, a hard copy may be produced of all such transactions in chronological order; and
 - (ii) deleting from its records the information relating to a trust ledger account unless—
 - (A) the balance of the account is zero; and
 - (B) a hard copy of all of the information required under these regulations relating to the account has been produced; and
 - (iii) changing existing information relating to a transaction otherwise than by making a further entry showing a separate transaction to effect the change; and
- (b) the program automatically inserts consecutive page numbers into any hard copy report produced by use of the program; and
- (c) the program requires input in each field of a data entry screen intended to receive information for the purposes of a trust ledger account or transfer journal so that the entry contains all of the information required by this regulation.

Maximum penalty: \$2 500.

(8) If a collection agent uses a computer program to keep trust ledger accounts or a transfer journal, the agent must, within two working days of a request from the Commissioner or the agent's auditor, produce hard copies of the trust ledger accounts or transfer journal.

Maximum penalty: \$2 500.

Reconciliation statements

16C. (1) A collection agent must, at the end of each month, prepare and keep as part of the agent's records—

- (a) a statement reconciling the balance of the agent's cash books, or equivalent computer records, kept under regulation 16A with the balance of the agent's trust account; and
- (b) a statement reconciling the balances of the ledgers comprised in the agent's trust ledger accounts with the balance of the agent's trust account.

(2) The agent is not required to set out a list of individual balances, or the names of the clients on whose behalf money is held, when preparing the statement referred to in subregulation (1)(b).

Transfer of money from trust account to office account

17. A collection agent who becomes entitled to money held in the agent's trust account in or towards satisfaction of the agent's commission, fees, costs or disbursements must, as soon as practicable and in any event within three months, transfer the money to an account maintained by the agent for receipts other than trust money.

Maximum penalty: \$2 500.

Statement of dealings to be provided to interested person

18. A collection agent must, at the request of a person who has an interest in trust money, provide that person with a statement setting out details of dealings by the agent with the money.

Maximum penalty: \$2 500.

Retention of accounts and records

19. A collection agent must keep the accounts and records referred to in this Part (or the repealed *Commercial and Private Agents Act 1986* or regulations made under that Act in relation to a commercial agent) in a legible written form, or so as to be readily convertible into such a form, for at least five years.

Maximum penalty: \$2 500.

Audit of trust accounts

20. A collection agent who maintains a trust account must have the accounts and records kept under this Part audited by an auditor in each year in respect of the period from—

- (a) the end of the agent's last audit period (whether under this Part or the repealed *Commercial and Private Agents Act 1986*); or
- (b) in the case of an agent being granted a licence—the date of the grant of the licence,

until—

- (c) two months before the date next occurring on which the agent must lodge an annual return; or
- (d) if the Commissioner fixes some other date at the request of the agent—the date next occurring fixed by the Commissioner.

Maximum penalty: \$2 500.

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Requirement to submit audit statement or declaration if no trust account kept

21. (1) A collection agent who maintains a trust account must, within 2 months after the end of each audit period, lodge with the Commissioner a statement relating to the audit prepared by the auditor in accordance with these regulations.

Maximum penalty: \$2 500.

(2) A collection agent who did not maintain a trust account during a particular audit period, must make and lodge with the Commissioner a declaration in accordance with this regulation setting out the reasons for not maintaining a trust account during that period.

Maximum penalty: \$2 500.

(3) The declaration—

- (a) must be in the form approved by the Commissioner; and
- (b) must be lodged within 2 months after the end of the audit period.

(4) Where a collection agent fails to lodge the audit statement or declaration within the time allowed, the Commissioner may, by notice in writing, require the agent to make good the default and, in addition, to pay to the Commissioner \$331 as a civil penalty for the default.

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

(6) The Commissioner must notify the agent of the cancellation of the agent's licence.

(7) A collection agent is not liable to both a civil penalty and a criminal penalty in respect of the same default under this regulation and, consequently, payment of the civil penalty exonerates the agent from liability to a criminal penalty and payment of a criminal penalty exonerates the agent from liability to the civil penalty.

Agent's statement to auditor

22. (1) A collection agent who is required to have accounts and records audited must, before the completion of the audit, certify—

- (a) under his or her hand; or
- (b) in the case of a firm of agents—under the hands of not less than two partners of the firm; or
- (c) in the case of a body corporate agent—under the hands of not less than two directors of the body,

and deliver to the auditor a notice verified in accordance with this regulation setting out in detail, as of the last day of the period to which the audit relates, particulars of—

- (d) the names of all persons on whose behalf the agent is holding trust money and the amount of the credit of each such person; and
- (e) all negotiable or bearer securities or deposit receipts in the name of the agent which represent money drawn from the agent's trust account and which were held by the agent on that day; and

- (f) —
 - (i) the names of the trust accounts in which the balance of the agent's trust money is lodged and the balances on that date of those accounts; and
 - (ii) if the trust account balances are not in agreement with the balances of the agent's ledger accounts—a statement reconciling those balances.

Maximum penalty: \$2 500.

- (2) The notice must be verified by statutory declaration—
 - (a) of the agent; or
 - (b) in the case of a firm of agents—of not less than two of the partners of the firm; or
 - (c) in the case of a body corporate agent—of not less than two directors of the body.
- (3) The agent must give the auditor making the next succeeding audit of the agent's accounts and records—
 - (a) at the request of the auditor, a copy of the notice, together with a signed copy of the auditor's statement of the last preceding audit of the agent's accounts and records; or
 - (b) if the agent's accounts and records are being audited for the first time or, if for any other reason a copy of the notice cannot be produced for the purpose of the audit—before completion of the audit, a notice containing the same particulars as to money, negotiable or bearer securities and deposit receipts held on the first day of the period to which the audit relates.

Maximum penalty: \$2 500.

Requirements of audit

- 23.** (1) In carrying out an audit, the auditor must—
- (a) make checks that will enable the auditor to give an opinion as to whether the agent has, during the period covered by the audit, complied with these regulations relating to the agent's accounts and records; and
 - (b) ascertain whether a trust account under these regulations was kept by the agent during that period; and
 - (c) make a general test examination of any trust account kept by the agent and of the pass books and statements relating to any such account during that period; and
 - (d) make a comparison as to no fewer than two dates (one to be the last day of the period of the audit and one other to be a date within that period selected by the auditor) between—
 - (i) the liabilities of the agent to the agent's clients as shown by the agent's trust ledger accounts and the records kept under these regulations; and
 - (ii) the aggregate of the balances standing to the credit of the agent's trust account; and

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(e) ask for such information and explanations as the auditor may require for the purposes of this regulation.

(2) The statement prepared by the auditor for lodging with the Commissioner must set out all matters relating to the agent's accounts and records that should, in the auditor's opinion, be communicated to the Commissioner and, in particular, deal with each of the following matters:

(a) whether the accounts and records appear to have been kept regularly and properly written up at all times;

(b) whether the accounts and records have been ready for examination at the periods appointed by the auditor;

(c) whether the agent has complied with the auditor's requirements;

(d) whether, at any time during the period of the audit, the agent's trust account was overdrawn and, if so, the full explanation for that given by the agent;

(e) whether the agent has, or has had, any debit balances in his or her trust account and the explanation or reason for such a debit given by the agent;

(f) whether the auditor has received and examined the notice given to the auditor under regulation 22 and the result of that examination;

(g) if the agent uses a computer program to keep the agent's accounts and records—whether the program allows for the accounts and records to be conveniently and properly audited.

(3) The auditor must attach to the auditor's statement a copy of the agent's notice delivered to the auditor under regulation 22(1).

(4) The auditor must verify the statement by statutory declaration and give a signed copy of the statement to the agent.

(5) If the auditor in the course of auditing the agent's accounts and records discovers—

(a) that they are not kept in a manner that enables them to be properly audited; or

(b) a matter that appears to the auditor to involve dishonesty or a breach of the law by the agent; or

(c) a loss or deficiency of trust money or a failure to pay or account for trust money; or

(d) a failure to comply with this Part,

the auditor must, as soon as possible, give a report in respect of the discovery to the Commissioner and the agent concerned.

Maximum penalty: \$2 500.

Audit when agent ceases to carry on business

24. (1) If a collection agent ceases to carry on business as a collection agent, the agent, or, if the agent has died, the agent's personal representative, must—

- (a) cause the agent's accounts and records kept under these regulations to be audited and reported on by an auditor for the period from the previous audit up to the date on which the agent's affairs are wound up; and
- (b) submit a copy of the auditor's statement to the Commissioner within four months of the winding up of the agent's affairs or within such further period as the Commissioner may allow.

Maximum penalty: \$2 500.

(2) The relevant provisions of this Part apply (subject to such modifications as may be necessary) to the audit and statement required by this regulation.

(3) The collection agent, or his or her personal representative, must continue to comply with these regulations as if the agent had not ceased to carry on business until the agent's affairs (so far as they relate to trust money and other matters required to be recorded under these regulations) are properly and finally wound up.

Maximum penalty: \$2 500.

(4) The preceding provisions of this regulation do not apply to a collection agent who, before ceasing to carry on business, was a member of a firm if all continuing members of the firm and (unless the agent is dead) the agent certify to the Commissioner that the trust money and other matters in respect of which records are required to be kept under these regulations are under the proper administration and control of the continuing partners or some of them.

(5) In this regulation—

"agent" or "collection agent" includes a former collection agent.

Audit and report, etc., for firm operates for each partner

25. An audit of accounts and records kept by a firm of collection agents and the auditor's statement and attached notice relating to the firm's accounts and records will be taken to operate as an audit, statement and notice in respect of each agent who is a member of the firm.

Certain persons may not audit accounts and records of agent

26. A person must not audit the accounts and records of a collection agent if the person—

- (a) is, or has been within two years, an employee or partner of the agent; or
- (b) is an employee of another collection agent actually carrying on business as a collection agent; or
- (c) is, himself or herself, a collection agent carrying on business as a collection agent.

Maximum penalty: \$2 500.

Obtaining information for purposes of audit

27. (1) An auditor employed by a collection agent to make an audit of the trust accounts of the agent may require the agent or any other person in a position to do so—

- (a) to produce all the accounts (including accounts that are not trust accounts) relating to the business of the agent and all documents and records relating to those accounts, including written records that reproduce in a readily understandable form information kept by computer, microfilm or other process; and

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(b) to provide any relevant information relating to the operation of the accounts.

(2) The manager or other principal officer of an ADI or other financial institution with which a collection agent has deposited money, whether in his or her own account or in a general or separate trust account, must, on being required to do so by an auditor employed or appointed to make an audit under this Part, disclose every such account (including all deposit slips, cancelled cheques and other documents relating to the operation of the account) to the auditor.

Maximum penalty: \$2 500.

(3) A person who is required by this regulation to produce documents to an auditor must permit the auditor to make a copy of the whole, or any part, of those documents.

Maximum penalty: \$2 500.

(4) In this regulation—

"**account**" includes a record required to be kept under this Part in relation to the receipt and disposition of trust money;

"**agent**" or "**collection agent**" includes a former collection agent.

ADIs, etc., to report deficiencies in trust accounts

28. An ADI with which a trust account has been established must, as soon as practicable, and in any event within 14 days, after becoming aware of a deficiency in that account, report the deficiency to the Commissioner.

Maximum penalty: \$2 500.

Confidentiality

29. (1) An auditor must not divulge information that has come to his or her knowledge in the course of performing functions under these regulations or the repealed *Commercial and Private Agents Act 1986* except—

- (a) to the collection agent; or
- (b) to the Commissioner; or
- (c) as otherwise required by law.

Maximum penalty: \$2 500.

(2) A person engaged in the administration of the Act or these regulations, must not divulge information disclosed in a report provided under this Part or the repealed *Commercial and Private Agents Act 1986* except—

- (a) for the purpose of confidential consideration of the report by the Minister or the Commissioner; or
- (b) as is otherwise necessary for the proper administration of the Act or these regulations; or
- (c) as is otherwise permitted or required by law.

Maximum penalty: \$2 500.

ADIs, etc., not affected by notice of trust

30. (1) Subject to subregulation (2), an ADI is not affected by notice of a specific trust to which money deposited in a trust account is subject, and is not bound to satisfy itself of the due application of that money.

(2) This regulation does not relieve an ADI of liability for negligence.

Failing to comply with requirement of auditor

31. A person must not—

- (a) refuse or fail to comply with a requirement of an auditor under this Part; or
- (b) hinder, delay or obstruct an auditor in the performance of functions under this Part by altering or destroying relevant documents or by any other means.

Maximum penalty: \$2 500.

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SCHEDULE 1*Offences preventing persons being licensed agents or process servers***Licences—section 9(1)(b) and 9(2)(b)(i)**

1. (1) For the purposes of section 9(1)(b) and 9(2)(b)(i) of the Act, the following offences are prescribed in relation to any function to be authorised by a licence:

- (a) an indictable offence;
- (b) if the conviction was within the previous 5 years—a schedule 3 offence within the meaning of the *Summary Procedure Act 1921* (an offence of dishonesty), other than a first offence of simple larceny;
- (c) common assault or any offence of violence, other than a first offence of common assault;
- (d) an offence against the *Controlled Substances Act 1984* involving a prohibited substance or a drug of dependence, other than—
 - (i) a first offence against section 31 of that Act arising out of the possession, smoking, consumption or administration of a prohibited substance or the possession of equipment for use in connection with a prohibited substance or the preparation of a prohibited substance for smoking, consumption or administration; or
 - (ii) a simple cannabis offence within the meaning of section 45A of that Act;
- (e) an offence against the *Police Act 1952*;
- (f) an offence against the *Listening Devices Act 1972*;
- (g) an offence against the *Telecommunications (Interception) Act 1979* of the Commonwealth;
- (h) an offence against the Act or these regulations or the repealed *Commercial and Private Agents Act 1986* or regulations made under that Act;
- (i) an offence substantially similar to any of the above offences against the law of another place.

(2) Paragraphs (f) and (g) of subclause (1) do not apply in relation to a licence subject to a condition limiting the functions that may be performed under the authority of the licence to controlling crowds.

Process servers—section 23(1)(d)

2. For the purposes of section 23(1)(d) of the Act, the offences specified in clause 1(1) are prescribed in relation to a process server.

SCHEDULE 2

Fees

1. Application fee for licence (s. 8(1)(b) of the Act) \$ 175
2. Licence fee—payable before the granting of a licence under Part 2 of the Act—
 - (a) for a natural person—
 - (i) if licence subject to employee condition or employee (supervision condition) \$ 119
 - (ii) in any other case \$ 294
 - (b) for a body corporate \$ 442

If the period between the grant of the licence and the next date for payment of a fee under section 12 of the Act is less than or more than 12 months, a pro rata adjustment is to be made to the amount of the additional fee by applying the proportion that the length of that period bears to 12 months.

3. Annual fee (s. 12(2)(a) of the Act)-
 - (a) for a natural person—
 - (i) if licence subject to employee condition or employee (supervision condition) \$ 119
 - (ii) in any other case \$ 294
 - (b) for a body corporate \$ 442

If the period between a date for payment of a fee under section 12 of the Act and the next date for payment of the fee under that section (as nominated by the Commissioner) is less than or more than 12 months, a pro rata adjustment is to be made to the amount of the fee by applying the proportion that the length of that period bears to 12 months.

4. Default penalty fee (s. 12(3) of the Act) \$ 215
5. Application fee for alteration to conditions of licence (s. 10 of the Act) \$ 175
6. Fee for replacement of licence \$ 16

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APPENDIX**LEGISLATIVE HISTORY****Transitional Provisions**

(Transitional provision from Regulation No. 259 of 1996, reg. 4)

4. A regulation varied or revoked by these regulations will continue to apply (as in force immediately prior to the variation or revocation coming into operation) to an expiation notice issued under the varied or revoked regulations.

Legislative History

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

Regulation 4:	definition of "auditor" varied by 152, 2001, reg. 3
Regulation 9(1):	substituted by 181, 2001, reg. 3
Regulation 9(2):	varied by 82, 1997, reg. 3; 77, 1998, reg. 3
Regulation 10(1) and (2):	varied by 259, 1996, reg. 3 (Sched. cl. 24)
Regulation 10(3):	inserted by 181, 2001, reg. 4
Regulation 10A:	inserted by 181, 2001, reg. 5
Regulation 11(1):	varied by 259, 1996, reg. 3 (Sched. cl. 24)
Regulation 12:	substituted by 238, 1996, reg. 3
Regulation 13(1) and (3):	varied by 143, 1999, reg. 3 (Sched. cl. 20)
Regulation 14:	substituted by 21, 2002, reg. 3
Regulation 14A:	inserted by 21, 2002, reg. 3
Regulation 15(2):	varied by 143, 1999, reg. 3 (Sched. cl. 20); 21, 2002, reg. 4(a)-(c)
Regulation 15(3):	inserted by 21, 2002, reg. 4(d)
Regulation 16(5):	inserted by 21, 2002, reg. 5
Regulations 16A - 16C:	inserted by 21, 2002, reg. 6
Regulation 21(4):	varied by 84, 2000, reg. 3; 84, 2001, reg. 3; 65, 2002, reg. 3
Regulation 23(2):	varied by 21, 2002, reg. 7
Regulation 27(2):	varied by 143, 1999, reg. 3 (Sched. cl. 20)
Regulation 28:	varied by 143, 1999, reg. 3 (Sched. cl. 20)
Regulation 30(1) and (2):	varied by 143, 1999, reg. 3 (Sched. cl. 20)
Schedule 1	
Clause 1(1):	varied by 32, 1999, reg. 3
Schedule 2:	varied by 82, 1997, reg. 4; substituted by 77, 1998, reg. 4; 62, 1999, reg. 3; 84, 2000, reg. 4; 84, 2001, reg. 4; varied by 181, 2001, reg. 6; substituted by 65, 2002, reg. 4