

South Australia

Security and Investigation Agents Regulations 2011

under the *Security and Investigation Agents Act 1995*

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Part 1—Preliminary

1—Short title

These regulations may be cited as the *Security and Investigation Agents Regulations 2011*.

2—Commencement

These regulations will come into operation on 1 September 2011.

3—Interpretation

In these regulations—

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

approved form means a form approved by the Commissioner;

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

blood test information sheet means an information sheet in the approved form that sets out, for the benefit of sample collectors, the procedures prescribed under regulation 21;

collection agent means an investigation agent who is authorised by a licence to perform 1 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*;

medical practitioner means a person registered under the *Health Practitioner Regulation National Law* to practise in the medical profession (other than as a student);

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

registered nurse means a person registered under the *Health Practitioner Regulation National Law*—

- (a) to practise in the nursing and midwifery profession as a nurse (other than as a student); and
- (b) in the registered nurses division of that profession;

sample collector means—

- (a) in the case of a blood sample—a medical practitioner or a registered nurse; and

- (b) in the case of a urine sample—a medical practitioner or a registered nurse, or a police officer authorised by the Commissioner of Police to take samples of urine for the purposes of section 23J(1) of the Act;

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;

urine screening test means a test of a kind approved by the Commissioner for the conduct of urine screening tests.

Part 2—Application of Act

4—Exemption for loss adjusters and accountants—prescribed qualifications

- (1) For the purposes of section 4(e) of the Act, the prescribed qualification in loss adjusting is membership of the Australasian Institute of Chartered Loss Adjusters.
- (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 CPA Australia Ltd.

5—Other exemptions

- (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 *Architectural Practice Act 2009*; or
 - (b) the person holds the qualifications necessary for membership 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 1997* is exempt, while acting in the ordinary course of that employment, from the requirement to hold a licence authorising the performance of 1 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 who is not employed or engaged to deal with persons who behave in a disorderly manner or create a nuisance is exempt from the requirement to hold a licence authorising the performance of the function of controlling crowds unless the person is employed or engaged to control crowds on licensed premises (within the meaning of the *Liquor Licensing Act 1997*).

Part 3—General provisions supporting Act

6—Offences preventing persons being licensed agents or process servers

For the purposes of section 9 and section 23 of the Act, the classes of offences set out in Schedule 1 are specified.

7—Offences for purposes of suspension and cancellation of security agents licence

For the purposes of section 23A(1), 23B(1) and 23G(1) of the Act, the classes of offences set out in Schedule 2 are specified.

8—Annual fee and return

- (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 4.

9—Objection to application for licence

For the purposes of section 8A(3) of the Act, the prescribed period is 90 days.

10—Review of licence

For the purposes of section 23H of the Act, the prescribed number of occasions is 2 and the prescribed period is 36 months.

Part 4—Crowd controllers

Division 1—Identification

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

- (1) A person who carries on a business or promotes an event at a place and employs (whether under contract of service or otherwise) 1 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 number of up to 3 digits 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 1 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

- (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 police officer, 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 police officer, 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.

12—Duty of crowd controller to wear identification

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.

Division 2—Drug testing

13—Prescribed drugs and non-complying sample

For the purposes of Part 3A Division 2 of the Act—

- (a) a *prescribed drug* is—
 - (i) a controlled drug (other than a drug of dependence) within the meaning of the *Controlled Substances Act 1984*; or
 - (ii) a drug referred to in Schedule 8 of the current Poisons Standard within the meaning of the *Therapeutic Goods Act 1989* of the Commonwealth; and
- (b) a *non-complying sample* is a sample of blood or urine containing any trace of a prescribed drug.

14—Who may take samples

- (1) The following persons may take a blood or urine sample from a licensee for the purposes of a drug testing procedure the licensee has been directed to undertake under section 23J(1) of the Act:
 - (a) in the case of a blood sample—a medical practitioner or a registered nurse;

- (b) in the case of a urine sample—a medical practitioner or a registered nurse, or a police officer authorised by the Commissioner of Police to take such a sample.
- (2) A police officer may not be authorised to take a urine sample unless the officer has completed to a satisfactory level a course of training approved by the Commissioner of Police.

15—Taking of blood samples

The following are the prescribed procedures in accordance with which a sample of a licensee's blood must be taken and dealt with for the purposes of section 23J of the Act:

- (a) the sample must be taken by the sample collector in the presence of a police officer;
- (b) the sample collector must place the sample, in approximately equal proportions, in 2 containers suitable for the purpose;
- (c) each container must contain a sufficient quantity of blood to enable an accurate evaluation to be made of any concentration of any prescribed drug present in the blood and the sample of blood taken by the sample collector must be such as to furnish 2 such quantities of blood;
- (d) the sample collector must seal each container by application of an adhesive seal bearing an identifying number;
- (e) it is the duty of the sample collector to take such measures as are reasonably practicable in the circumstances to ensure that the blood is not adulterated and does not deteriorate so as to prevent a proper assessment of the concentration of any prescribed drug present in the blood of the licensee;
- (f) the sample collector must then complete a certificate in the approved form by inserting the particulars required by the form, which must then be signed by the sample collector, the police officer in whose presence the sample has been taken and the licensee;
- (g) the original of the signed certificate must then be delivered to the licensee together with 1 of the sealed containers containing part of the blood sample;
- (h) a copy of the signed certificate must be delivered by the sample collector together with the other sealed container containing part of the blood sample to the police officer;
- (i) the blood sample container and copy of the certificate referred to in paragraph (h) must not be delivered into the possession of the licensee;
- (j) the licensee must comply with all reasonable directions of the sample collector or police officer in connection with the taking of the sample and the signing of the certificate.

16—Taking of urine samples

The following are the prescribed procedures in accordance with which a sample of a licensee's urine must be taken and dealt with for the purposes of section 23J of the Act:

- (a) if the sample collector is not a police officer, the sample collector must carry out the functions under this regulation in the presence of a police officer;
- (b) the sample collector must provide the licensee with a urine collection container and allow the licensee to provide the sample in private;
- (c) the licensee must provide a sample of his or her urine in the container and then deliver the container to the sample collector immediately;
- (d) the sample collector—
 - (i) must, within 4 minutes of receiving the sample, test the temperature, and conduct a visual examination, of the sample; and
 - (ii) may conduct any other test designed to determine whether or not the sample is a sample of the licensee's urine and is otherwise suitable for analysis;
- (e) if the sample collector has reasonable cause to suspect that the sample—
 - (i) is not a sample of the licensee's urine or has been diluted or tampered with in any way; or
 - (ii) is not suitable for analysis for some other reason,
the sample collector, or the police officer accompanying the sample collector—
 - (iii) must require another sample to be provided in accordance with this regulation; and
 - (iv) may require the licensee to submit to a search before the additional sample is provided;
- (f) if the sample collector or police officer requires the licensee to submit to a search, the search—
 - (i) may only be conducted by, and in the presence of, a person of the same sex as the licensee; and
 - (ii) must be carried out in private; and
 - (iii) must not be witnessed by any more persons than is reasonably necessary;
- (g) if the licensee provides 2 samples that, in the opinion of the sample collector, are not samples of the licensee's urine or are otherwise unsuitable for analysis, the licensee will be taken to have failed to comply with a direction under section 23J;
- (h) when the sample collector is satisfied that the licensee has provided a satisfactory sample of the licensee's urine, the sample collector may subject the sample to a urine screening test to determine whether the sample should be submitted for analysis;

- (i) if the sample collector does not subject the sample to a urine screening test, or a urine screening test indicates that the sample may be a non-complying sample, the sample collector must, in the presence of the licensee, place such amount of the sample in a container (suitable for the purpose) as is necessary to enable an accurate evaluation to be made of any concentration of any prescribed drug present in the urine;
- (j) the sample collector must then seal the container by application of an adhesive seal bearing an identifying number;
- (k) it is the duty of the sample collector to take such measures as are reasonably practicable in the circumstances to ensure that the urine is not adulterated and does not deteriorate so as to prevent a proper assessment of the concentration of any prescribed drug present in the urine of the licensee;
- (l) the sample collector must then complete a certificate in the approved form by inserting the particulars required by the form, which must then be signed by the sample collector, the licensee and, if the sample collector is not a police officer, the police officer in whose presence the sample has been taken;
- (m) the original of the signed certificate must then be delivered to the licensee;
- (n) if the sample collector is not a police officer, a copy of the signed certificate must be delivered by the sample collector to the police officer in whose presence the sample has been taken together with the sealed container containing the urine sample;
- (o) the urine sample container and copy of the certificate referred to in paragraph (n) must not be delivered into the possession of the licensee;
- (p) the licensee must comply with all reasonable directions of the sample collector or police officer in connection with the taking of the sample and the signing of the certificate.

17—Analysis of sample

- (1) A police officer who takes or is given a sample of blood or urine, or a certificate, under regulation 15 or 16 must cause the sample and certificate to be delivered to Forensic Science SA as soon as reasonably practicable.
- (2) The Director of Forensic Science SA must, as soon as possible following the delivery of a sample under subregulation (1), ensure that the sample is analysed by or under the supervision of an analyst to determine the level of any prescribed drug in the sample.
- (3) The analyst must then complete and sign a certificate certifying as to the following matters:
 - (a) the date of receipt at Forensic Science SA of the sample container and the certificate accompanying the sample container;
 - (b) the identifying number appearing on the adhesive seal used to seal the sample container;
 - (c) the name and professional qualifications of the analyst;
 - (d) the presence of any prescribed drug found to be present in the sample;
 - (e) any factors relating to the sample or the analysis that might, in the opinion of the analyst, adversely affect the accuracy or validity of the analysis;

- (f) any other information relating to the sample or analysis (or both) that the analyst thinks fit to include.
- (4) The analyst's certificate must be sent by post to the licensee at the address shown as the licensee's address on the certificate accompanying the sample container.
- (5) A copy of the analyst's certificate must be sent to the Commissioner and the Commissioner of Police.
- (6) A urine sample delivered to Forensic Science SA under this regulation must be held by Forensic Science SA for a period of not less than 6 months following the delivery.
- (7) A licensee from whom a urine sample was taken may arrange, at the expense of the licensee, for further testing of the sample while the sample is held by Forensic Science SA.
- (8) A licensee from whom a blood sample was taken may cause the sample of blood as contained in the blood sample container delivered to that licensee to be analysed to determine the presence of any prescribed drug present in the blood.

18—Certificate evidence

In any proceeding under the Act, and in the absence of proof to the contrary, any of the following certificates is evidence of the matters certified in the certificate:

- (a) a certificate purporting to be signed by a sample collector certifying that an identified urine sample was taken or collected—
 - (i) from a named person; and
 - (ii) at a specified date and time; and
 - (iii) in accordance with the regulations;
- (b) a certificate purporting to be signed by a medical practitioner or registered nurse certifying that an identified blood sample was taken or collected—
 - (i) from a named person; and
 - (ii) at a specified date and time; and
 - (iii) in accordance with the regulations;
- (c) a certificate purporting to be signed by an analyst certifying—
 - (i) that an identified blood or urine sample taken from a named person was analysed for drugs in accordance with these regulations; and
 - (ii) the results obtained from that analysis.

19—Prescribed form of identification

- (1) Pursuant to section 23J(5)(c) of the Act, a licensee must produce 1 of the following forms of identification at the time a blood or urine sample is taken:
 - (a) a current photographic driver's licence issued under the *Motor Vehicles Act 1959* or under a corresponding law of another State or a Territory;
 - (b) a current photographic Proof of Age card issued by the Registrar of Motor Vehicles or by a corresponding public authority of the Commonwealth or another State or a Territory;

- (c) a current passport issued by the Commonwealth or under the law of another country, bearing a photograph of the person and enabling the age of the person to be determined;
 - (d) a current photographic licence issued by the Commissioner under the Act.
- (2) Failure by a licensee to produce identification as required by subregulation (1) will be taken to be a failure by the licensee to comply with a direction under section 23J of the Act.

Division 3—Alcohol testing

20—Conduct of alcotest and breath analysis

- (1) A licensee required under the Act to submit to an alcotest or breath analysis must not refuse or fail to comply with all reasonable directions of a police officer in relation to the requirement and, in particular, must not refuse or fail to exhale into the apparatus by which the alcotest or breath analysis is conducted in accordance with the directions of a police officer.
- (2) Pursuant to section 23K(4) of the Act, if a licensee submits to a breath analysis, the breath analysis must be conducted in the following manner:
 - (a) the licensee must provide 2 separate samples of breath for analysis;
 - (b) each sample must be provided in accordance with the directions of the operator of the breath analysing instrument and must consist of not less than 1 litre of breath;
 - (c) there must be an interval of not less than 2 minutes and not more than 10 minutes between the provision of the samples.
- (3) Despite subregulation (2)—
 - (a) if, on analysing a sample of breath, the breath analysing instrument indicates an error in the analysis of the sample—
 - (i) that sample, or, if that sample was the second sample provided, both samples, must be disregarded; and
 - (ii) the licensee may be required to provide 2 further samples of breath for analysis using a different instrument (and such samples must be provided in accordance with subregulation (2)(b) and (c)); or
 - (b) if, on analysing a sample of breath, the breath analysing instrument indicates the presence of alcohol in the mouth of the licensee—
 - (i) that sample, or, if that sample was the second sample provided, both samples, must be disregarded; and
 - (ii) the licensee may be required to provide 2 further samples of breath for analysis (and such samples must be provided in accordance with subregulation (2)(b) and (c)); or
 - (c) if, on analysing 2 samples of breath, the breath analysing instrument indicates that the reading obtained on analysis of the second sample was more than 15% higher or lower than the reading obtained on analysis of the first sample—

- (i) those samples must be disregarded; and
 - (ii) the licensee may be required to provide 2 further samples of breath for analysis (and such samples must be provided in accordance with subregulation (2)(b) and (c)); or
- (d) if, for any reason, a second sample of breath is not provided within 10 minutes of the provision of the first sample—
 - (i) the first sample is to be disregarded; and
 - (ii) the licensee may be required to provide 2 further samples of breath for analysis (and such samples must be provided in accordance with subregulation (2)(b) and (c)).
- (4) If a licensee submits to a breath analysis, the result of the breath analysis will, for the purposes of the Act, be taken to be the reading produced by the breath analysing instrument, on analysis of the samples of breath provided by the licensee in accordance with this regulation, that indicates the lower concentration of alcohol in the licensee's breath (not taking into account any samples that, in accordance with this regulation, are to be disregarded).

21—Procedures for voluntary blood test

The following are the prescribed procedures in accordance with which a sample of a licensee's blood must be taken and dealt with for the purposes of section 23M(2)(a) of the Act:

- (a) the licensee must cause the sample to be taken by a sample collector of the licensee's choice and must deliver to the sample collector—
 - (i) the blood test kit supplied to the licensee under section 23M(5)(b) of the Act for use for that purpose; and
 - (ii) the blood test information sheet supplied to the licensee under regulation 23;
- (b) the sample must be taken by the sample collector as soon as reasonably practicable but, in any event, within 4 hours of the licensee having submitted to the breath analysis indicating, for the purposes of the Act, the presence of the prescribed concentration of alcohol in the licensee's blood;
- (c) the sample collector must place the sample, in approximately equal proportions, in 2 containers (being the containers provided as part of the blood test kit);
- (d) each container must contain a sufficient quantity of blood to enable an accurate evaluation to be made of any concentration of alcohol present in the blood and the sample of blood taken by the sample collector must be such as to furnish 2 such quantities of blood;
- (e) the sample collector must seal each container by application of the adhesive seal bearing an identifying number provided as part of the blood test kit;
- (f) it is the duty of the sample collector to take such measures as are reasonably practicable in the circumstances to ensure that the blood is not adulterated and does not deteriorate so as to prevent a proper assessment of the concentration of alcohol present in the blood of the licensee;

- (g) the sample collector must then complete a certificate in the approved form by inserting the particulars required by the form;
- (h) the certificate must be signed by the sample collector certifying as to the matters set out in the form;
- (i) the certificate must also bear the signature of the licensee, attested to by the signature of the sample collector;
- (j) the original of the signed certificate must then be delivered to the licensee together with 1 of the sealed containers containing part of the blood sample;
- (k) a copy of the signed certificate must be delivered by the sample collector together with the other sealed container containing part of the blood sample to a police officer who must, in turn, deliver that copy of the certificate and the blood sample container to Forensic Science SA;
- (l) the blood sample container and copy of the certificate referred to in paragraph (k) must not be delivered into the possession of the licensee;
- (m) on receipt of the blood sample container and certificate at Forensic Science SA, the blood in the container must be analysed as soon as reasonably practicable by or under the supervision of an analyst to determine the concentration of alcohol present in the blood expressed in grams in 100 millilitres of blood;
- (n) the analyst must then complete and sign a certificate certifying as to the following matters:
 - (i) the date of receipt at Forensic Science SA of the blood sample container and the certificate accompanying the blood sample container;
 - (ii) the identifying number appearing on the adhesive seal used to seal the blood sample container;
 - (iii) the name and professional qualifications of the analyst;
 - (iv) the concentration of alcohol found to be present in the blood expressed in grams in 100 millilitres of blood;
 - (v) any factors relating to the blood sample or the analysis that might, in the opinion of the analyst, adversely affect the accuracy or validity of the analysis;
 - (vi) any other information relating to the blood sample or analysis or both that the analyst thinks fit to include;
- (o) the analyst's certificate must be sent by post to the licensee at the address shown as the licensee's address on the certificate accompanying the blood sample container;
- (p) a copy of the analyst's certificate must be sent to or retained on behalf of the Minister;
- (q) a copy of the analyst's certificate must also be sent to the Commissioner and the Commissioner of Police;

- (r) the licensee from whom the blood sample was taken may cause the sample of blood as contained in the blood sample container delivered to that licensee to be analysed to determine the concentration of alcohol present in the blood.

22—Oral advice and written notice on recording of positive breath analysis reading

- (1) The oral advice required to be given for the purposes of section 23M(5)(a) of the Act must be as set out in Part A of Schedule 3.
- (2) The written notice required to be delivered for the purposes of section 23M(5)(a) of the Act must be as set out in Part B of Schedule 3.

23—Request for approved blood test kit

- (1) For the purposes of section 23M(5)(b) of the Act, a request for an approved blood test kit must be made in accordance with the following provisions:
 - (a) the request may, in the first instance, be made orally to the person operating the breath analysing instrument (the *operator*);
 - (b) on such a request having been made by the licensee, the operator or any other police officer present at the scene must complete a written request form in the approved form by inserting the particulars required by the form;
 - (c) the licensee making the request must then sign the request form in the presence of the operator or other police officer and the licensee's signature must be attested to by the signature of the operator or other officer;
 - (d) the original of the signed request form may be retained by the licensee making the request;
 - (e) a copy of the signed request form must be delivered to the operator or other police officer.
- (2) The copy of the request form delivered to the operator or other police officer must be delivered to the Commissioner or retained on the Commissioner's behalf for 12 months from the day on which the request form was signed by the licensee making the request.
- (3) If a licensee requests an approved blood test kit, the operator or any other police officer must provide the licensee with a blood test information sheet.

Part 5—Collection agents

24—Requirement to keep trust account

- (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.

25—General duty with respect to records

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.

26—Keeping of records

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 29, 30 and 31.

Maximum penalty: \$2 500.

27—Receipt of trust money

- (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
 - (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.

28—Withdrawal of trust money

- (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 (5) and keep the receipt as part of the agent's records.

Maximum penalty: \$2 500.

- (4) When a collection agent makes a payment of trust money by cheque, the agent must prepare and keep as part of the agent's records a cheque stub or voucher containing the following information:
 - (a) the date and reference number of the cheque;
 - (b) the name of the payee;
 - (c) the client name or reference and brief particulars of the purpose of the payment;
 - (d) the amount of the cheque.
- (5) 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.
- (6) When a collection agent authorises the payment of trust money by electronic transfer of funds, the agent—
 - (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.

29—Cash books

- (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 2 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 2 working days after the agent receives official confirmation that the transfer has occurred.

30—Separate trust ledger accounts

- (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.
- (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 2 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 2 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 2 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.

31—Reconciliation statements

- (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 29 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).

32—Transfer of money from trust account to office account

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 3 months, transfer the money to an account maintained by the agent for receipts other than trust money.

Maximum penalty: \$2 500.

33—Statement of dealings to be provided to interested person

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.

34—Retention of accounts and records

A collection agent must keep the accounts and records referred to in this Part in a legible written form, or so as to be readily convertible into such a form, for at least 5 years.

Maximum penalty: \$2 500.

35—Audit of trust accounts

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 ; or
 - (b) in the case of an agent being granted a licence—the date of the grant of the licence,
- until—
- (c) 2 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.

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

- (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) If 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 the amount fixed by Schedule 4 as a civil penalty for the default.
- (5) If 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.

37—Agent's statement to auditor

- (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 2 partners of the firm; or
 - (c) in the case of a body corporate agent—under the hands of not less than 2 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 2 of the partners of the firm; or
 - (c) in the case of a body corporate agent—of not less than 2 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.

38—Requirements of audit

- (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 2 dates (1 to be the last day of the period of the audit and 1 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
 - (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 37 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 37(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.

39—Audit when agent ceases to carry on business

- (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 4 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.

40—Audit and report etc for firm operates for each partner

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.

41—Certain persons may not audit accounts and records of agent

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

- (a) is, or has been within 2 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.

42—Obtaining information for purposes of audit

- (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
 - (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.

43—ADIs etc to report deficiencies in trust accounts

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.

44—Confidentiality

- (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.

45—ADIs etc not affected by notice of trust

- (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.

46—Failing to comply with requirement of auditor

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.

Part 6—Miscellaneous

47—Notification of change in circumstances

- (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;

- (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.

48—Return etc of licence

- (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.

49—Fees

- (1) The fees fixed by Schedule 4 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.

Schedule 1—Offences preventing persons being licensed agents or process servers

1—Licences—section 9(1)(b) and 9(2)(b)(i)

- (1) An offence to which this subclause applies is prescribed for the purposes of section 9(1)(b) and 9(2)(b)(i) of the Act in relation to any function to be authorised by a licence other than the function of controlling crowds if—
 - (a) a sentence of detention or imprisonment of more than 30 months was imposed in respect of the offence; or
 - (b) the offence was committed by a minor and—
 - (i) in the case of a minor dealt with in relation to the offence as an adult—the conviction was within the previous 10 years; or
 - (ii) in any other case—the conviction was within the previous 5 years; or
 - (c) the offence was committed by an adult and the conviction was within the previous 10 years.
- (2) Subclause (1) applies to the following offences:
 - (a) an indictable offence;
 - (b) common assault or an offence of violence;
 - (c) an offence against the *Controlled Substances Act 1984* involving a controlled drug, other than a simple cannabis offence within the meaning of section 45A of that Act;
 - (d) an offence against the *Firearms Act 1977*, other than an offence against section 15C, 18, 21A, 21AB or 26 of that Act;

- (e) an offence against section 15 or 15A of the *Summary Offences Act 1953*;
 - (f) an offence against the *Police Act 1998*;
 - (g) an offence against the *Listening and Surveillance Devices Act 1972*;
 - (h) an offence against the *Telecommunications (Interception) Act 1979* of the Commonwealth;
 - (i) an offence against the Act or regulations made under the Act or the repealed *Commercial and Private Agents Act 1986* or regulations made under that Act;
 - (j) an offence substantially similar to any of the above offences against the law of the Commonwealth, another State or a Territory, or a place outside Australia.
- (3) An offence to which this subclause applies is prescribed for the purposes of section 9(1)(b) and 9(2)(b)(i) of the Act in relation to the function of controlling crowds to be authorised by a licence if—
- (a) a sentence of detention or imprisonment of more than 30 months was imposed in respect of the offence; or
 - (b) the offence was committed by a minor and—
 - (i) in the case of a minor dealt with in relation to the offence as an adult—the conviction was within the previous 10 years; or
 - (ii) in any other case—the conviction was within the previous 5 years; or
 - (c) the offence was committed by an adult and the conviction was within the previous 10 years.
- (4) Subclause (3) applies to the following offences:
- (a) an indictable offence;
 - (b) common assault or an offence of violence;
 - (c) an offence against the *Controlled Substances Act 1984* involving a controlled drug;
 - (d) an offence against the *Firearms Act 1977*, other than an offence against section 15C, 18, 21A, 21AB or 26 of that Act;
 - (e) an offence against section 15 or 15A of the *Summary Offences Act 1953*;
 - (f) an offence against the *Police Act 1998*;
 - (g) an offence against the Act or regulations made under the Act or the repealed *Commercial and Private Agents Act 1986* or regulations made under that Act;
 - (h) an offence substantially similar to any of the above offences against the law of the Commonwealth, another State or a Territory, or a place outside Australia.
- (5) The following offences are prescribed for the purposes of section 9(1)(b) and 9(2)(b)(i) of the Act in relation to any function to be authorised by a licence if the conviction was within the previous 5 years:
- (a) a summary offence against Part 5 of the *Criminal Law Consolidation Act 1935*;

- (b) an offence substantially similar to the above offence against the law of the Commonwealth, another State or a Territory, or a place outside Australia.

2—Process servers—section 23(1)(d)

For the purposes of section 23(1)(d) of the Act, the offences prescribed by clause 1(1) and (5) are prescribed in relation to a process server.

3—Application of section 25(1)(e)(ii)

- (1) For the purposes of the application of section 25(1)(e)(ii) of the Act to a person licensed as an agent immediately before 10 June 2005—
 - (a) a conviction of an offence committed by the person before 10 June 2005 is to be disregarded if the conviction would not have prevented the person from being entitled to be granted the licence before that day; and
 - (b) a conviction of an offence committed by the person after 10 June 2005 is to be taken into account if the conviction would prevent the person from being entitled to be granted the licence if he or she were to apply for it following the conviction.
- (2) For the purposes of the application of section 25(1)(e)(ii) of the Act to a person who, immediately before 10 June 2005, holds a licence that authorises the person to perform the function of controlling crowds, a conviction of a simple cannabis offence (within the meaning of section 45A of the *Controlled Substances Act 1984*) committed by the person before that day is to be disregarded.

Schedule 2—Classes of offences—Suspension or cancellation of security agents licence (Regulation 7)

1—Offences for the purposes of section 23A

- (1) For the purposes of section 23A(1)(a) of the Act, an offence to which this subclause applies is prescribed in relation to the following functions authorised by a licence:
 - (a) controlling crowds;
 - (b) protecting or guarding a person or property;
 - (c) installing or maintaining security alarm or surveillance systems.
- (2) Subclause (1) applies to the following offences:
 - (a) an indictable offence;
 - (b) common assault or an offence of violence;
 - (c) a summary offence against Part 5 of the *Criminal Law Consolidation Act 1935*;
 - (d) an offence against the *Controlled Substances Act 1984* involving a controlled drug, other than a simple cannabis offence within the meaning of section 45A of that Act;
 - (e) an offence against the *Firearms Act 1977*, other than an offence against section 15C, 18, 21A, 21AB or 26 of that Act;
 - (f) an offence against section 15 or 15A of the *Summary Offences Act 1953*;

- (g) an offence against the *Police Act 1998*;
- (h) an offence against the *Listening and Surveillance Devices Act 1972*;
- (i) an offence against the *Telecommunications (Interception) Act 1979* of the Commonwealth;
- (j) an offence against the Act or regulations made under the Act;
- (k) an offence substantially similar to any of the above offences against the law of the Commonwealth, another State or a Territory, or a place outside Australia.

2—Offences for the purposes of section 23B

For the purposes of section 23B(1) of the Act, the following offences are prescribed in relation to the function of controlling crowds authorised by a licence:

- (a) common assault or an offence of violence;
- (b) an offence against the *Controlled Substances Act 1984* involving a controlled drug;
- (c) an offence against the *Firearms Act 1977*, or any offence involving the use of a firearm;
- (d) an offence substantially similar to any of the above offences against the law of the Commonwealth, another State or a Territory, or a place outside Australia.

3—Offences for the purposes of section 23G

For the purposes of section 23G(1) of the Act, the following offences are prescribed:

- (a) in relation to the function of controlling crowds authorised by a licence—the offences prescribed by clause 2;
- (b) in relation to the function of protecting or guarding a person or property authorised by a licence—
 - (i) an offence of violence;
 - (ii) an offence against the *Controlled Substances Act 1984* involving a controlled drug, other than a simple cannabis offence within the meaning of section 45A of that Act;
 - (iii) an offence against the *Firearms Act 1977*, or any offence involving the use of a firearm;
 - (iv) an offence against section 134 (Theft) or 137 (Robbery) of the *Criminal Law Consolidation Act 1935*;
 - (v) an offence substantially similar to any of the above offences against the Commonwealth, another State or a Territory, or a place outside Australia;

- (c) in relation to the function of installing or maintaining security alarm or surveillance systems authorised by a licence—an offence against section 134 (Theft) or 137 (Robbery) of the *Criminal Law Consolidation Act 1935* or an offence substantially similar to either of those offences against the law of the Commonwealth, another State or a Territory, or a place outside Australia.

Schedule 3—Prescribed oral advice and written notice

Part A—Oral advice for the purposes of section 23M(5)(a) of *Security and Investigation Agents Act 1995*

The breathalyser reading just taken shows that you had a prohibited level of alcohol in your blood.

Therefore, it appears that your security agents licence may be cancelled by the Commissioner for Consumer Affairs under the *Security and Investigation Agents Act 1995*.

It will be presumed by the Commissioner that the breathalyser accurately indicated your blood alcohol level at the time of the reading and for the preceding two hours. However, the *Security and Investigation Agents Act 1995* allows for contrary evidence based on the results of a blood test.

If you want to have such a blood test you will have to make your own arrangements and follow certain procedures, using a special blood test kit. This blood test kit will be supplied to you on your signing a written request. You will also be supplied with an information sheet that sets out the relevant procedures. You must give the information sheet to the medical practitioner or registered nurse who takes your blood sample.

If you obtain a blood test kit and want to have your blood tested, you should take the kit promptly to a hospital or medical practitioner in order to have a sample of your blood taken.

Alternatively, you may have the sample taken by a registered nurse.

The blood sample must be taken by the medical practitioner or registered nurse within four hours of the breath analysis that indicated the presence of alcohol in your blood.

You must not consume any more alcohol before having a sample of your blood taken and must not open the blood test kit before delivering it to a medical practitioner or registered nurse.

Under the blood test procedure, the sample of blood is divided and sealed in two containers. You will have to sign a form that will be given to you by the medical practitioner or registered nurse.

One of the sealed containers will be given to you and you may make your own arrangements to have the blood in that container analysed.

In any event, the blood in the other container will be analysed by Forensic Science SA and you will be given written notice of the results of the analysis.

Further information as to these matters is contained in the written notice which will be delivered to you shortly.

Part B—Written notice for the purposes of section 23M(5)(a) of the *Security and Investigation Agents Act 1995*

Operation of Security and Investigation Agents Act in relation to results of breath analysis

1 Cancellation of licence

A security agents licence may be cancelled by the Commissioner for Consumer Affairs if the results of a breath analysis demonstrate that the prescribed concentration of alcohol (as defined in section 23I of the *Security and Investigation Agents Act 1995*) was present in the licensee's blood when the licensee was performing the function of controlling crowds.

2 Breath analysis

Your breath has just been analysed by means of a breath analysing instrument which indicated that the prescribed concentration of alcohol was present in your blood.

Accordingly, it appears that your security agents licence may be cancelled as described above.

3 Legal effect of breath analysis result

The result of the breath analysis will be presumed to accurately record the concentration of alcohol in your blood at the time of the analysis and throughout the preceding 2 hours (section 23M(1), (3)).

You will be able to challenge the accuracy of the breath analysis reading—

- if you have a sample of your blood taken and analysed as described below AND
- if the result of analysis of the blood sample shows that the breath analysing instrument gave a false reading of the concentration of alcohol present in your blood (section 23M(2)).

Procedures for optional blood test

- 1 You may have a sample of your blood taken and analysed if you wish.
- 2 For that purpose, you must request the breath analysis operator to supply you with an approved blood test kit (you must sign a written request form for the kit and should retain a copy of the signed request form).
- 3 You should then proceed promptly to a hospital or a medical practitioner or registered nurse of your choice and request that a sample of your blood be taken (using the blood test kit). You must give the medical practitioner or registered nurse the blood test information sheet that was supplied to you with the blood test kit.
- 4 The sample of your blood must be taken within four hours of the breath analysis that indicated the presence of alcohol in your blood.
- 5 Do not consume any further alcohol before the sample is taken.
- 6 Do not open the blood test kit.

- 7 The medical practitioner or registered nurse taking the sample of your blood will divide it and place it into two containers and seal the containers. One container will be delivered to you—do not break the seal on this container.
- 8 Sign the form presented to you by the medical practitioner or registered nurse—the original of the form will be given to you which you should retain.
- 9 You may, if you wish, have the blood sample (in the container delivered to you) analysed at a laboratory to determine the concentration of alcohol present in the blood.
- 10 The other blood sample container will, in any event, be sent to Forensic Science SA where the blood will be analysed. The results of this analysis will be sent to you at your address (as indicated on the form presented to you by the medical practitioner or registered nurse who took the blood sample).

Schedule 4—Fees

1	Application fee for licence (section 8(1)(b) of the Act)—	
	(a) for natural person	\$401.00
	(b) for body corporate	\$651.00
2	Licence fee—payable before the granting of a licence under Part 2 of the Act—	
	(a) for natural person—	
	(i) if licence subject to employee condition or employee (supervision condition)	\$260.00
	(ii) in any other case	\$546.00
	(b) for body corporate	\$713.00
	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 (section 12(2)(a) of the Act)—	
	(a) for a natural person—	
	(i) if licence subject to employee condition or employee (supervision condition)	\$260.00
	(ii) in any other case	\$546.00
	(b) for a body corporate	\$713.00
	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 (section 12(3) of the Act)	\$149.00
5	Application fee for alteration to conditions of licence (section 10 of the Act)	\$244.00
6	Fee for replacement of licence	\$22.90
7	Civil penalty for default in lodging audit statement or declaration (regulation 36(4))	\$311.00

Schedule 5—Revocation and transitional provisions

1—Revocation

The *Security and Investigation Agents Regulations 1996* are revoked.

2—Transitional provisions

- (1) A form approved by the Commissioner as an approved form for the purposes of the revoked regulations will, if the approval was in force immediately before the commencement of this clause, be taken to have been approved by the Commissioner as an approved form for the purposes of these regulations.
- (2) A urine screening test of a kind approved by the Commissioner for the conduct of urine screening tests under the revoked regulations will, if the approval was in force immediately before the commencement of this clause, be taken to be a test of a kind approved by the Commissioner for the conduct of urine screening tests for the purposes of these regulations.
- (3) A police officer authorised by the Commissioner of Police to take a urine sample for the purposes of the revoked regulations will, if the authorisation was in force immediately before the commencement of this clause, be taken to be authorised by the Commissioner of Police to take a urine sample for the purposes of these regulations.
- (4) In this provision—

revoked regulations means the *Security and Investigation Agents Regulations 1996*.

Note—

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

Made by the Governor

with the advice and consent of the Executive Council
on 25 August 2011

No 203 of 2011

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