

South Australia

Security and Investigation Agents Variation Regulations 2013

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 Variation Regulations 2013*.

2—Commencement

These regulations will come into operation on the day on which the *Security and Investigation Agents (Miscellaneous) Amendment Act 2013* comes into operation.

3—Variation provisions

In these regulations, a provision under a heading referring to the variation of specified regulations varies the regulations so specified.

Part 2—Variation of *Security and Investigation Agents Regulations 2011*

4—Variation of regulation 1—Short title

Regulation 1—delete "Agents" and substitute:

Industry

5—Variation of regulation 3—Interpretation

Regulation 3, definition of *Act*—delete "Agents" and substitute:

Industry

6—Substitution of regulations 6 and 7

Regulations 6 and 7—delete the regulations and substitute:

6—Classes of offences (sections 3, 9, 23, 23A, 23B and 23G of Act)

- (1) For the purposes of sections 3(2)(a)(i) and 23 of the Act, the following is prescribed:
 - (a) the person has been convicted of a category A offence, or a category B offence, and the penalty imposed for the offence included detention or imprisonment of more than 30 months;
 - (b) the person has been convicted of a category A offence within the preceding 10 years;
 - (c) the person has been found guilty but not convicted of a category A offence within the preceding 5 years;
 - (d) the person has been found guilty but not convicted of a category B offence within the preceding 5 years and the penalty imposed for the offence included a fine of or greater than \$500;
 - (e) the person has been convicted of a category B offence within the preceding 10 years and the penalty imposed for the offence included a fine of or greater than \$500, detention or imprisonment.
- (2) For the purposes of section 9(7) and 23A of the Act, the following are prescribed offences:
 - (a) a category A offence;
 - (b) a category B offence.
- (3) For the purposes of section 23B of the Act, a category A offence is a prescribed offence.
- (4) For the purposes of section 23G of the Act, the following is prescribed:
 - (a) the person has been found guilty of a category A offence;

- (b) the person has been found guilty of a category B offence and the penalty imposed for the offence included a fine of or greater than \$500, detention or imprisonment.
- (5) However, if the conviction of a person for an offence is a spent conviction under the *Spent Convictions Act 2009*, the offence is to be disregarded for the purposes of the Act.
- (6) In this regulation—

category A offence means—

- (a) an indictable offence; or
- (b) an offence against the *Controlled Substances Act 1984* in respect of a controlled drug, controlled precursor or controlled plant, other than an offence constituted of possession of a controlled drug, controlled precursor or controlled plant; or
- (c) an offence against the *Police Act 1998*; or
- (d) an offence against Part 5.3 of the Criminal Code set out in the Schedule to the *Criminal Code Act 1995* of the Commonwealth; or
- (e) except in relation to a security agent authorised to perform only the function of controlling crowds—
 - (i) an offence against the *Listening and Surveillance Devices Act 1972*; or
 - (ii) an offence against the *Telecommunications (Interception and Access) Act 1979* of the Commonwealth; or
- (f) 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;

category B offence means—

- (a) 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; or
- (b) an offence of dishonesty; or
- (c) common assault or an offence of violence; or
- (d) an offence against the *Firearms Act 1977*, other than an offence against section 15C, 18, 21A, 21AB or 26 of that Act; or
- (e) an offence against Part 3A of the *Summary Offences Act 1953*; or
- (f) an offence against the *Controlled Substances Act 1984* constituted of possession of a controlled drug, controlled precursor or controlled plant; or

- (g) 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,

but does not include a category A offence.

7—Variation of regulation 8—Annual fee and return

- (1) Regulation 8(1)—delete subregulation (1) and substitute:

- (1) For the purposes of section 7C(1) of the Act, a licensed agent or a licensed security industry trainer must pay the fee and lodge the return on or before—
- (a) the last day of the month in each year nominated in writing to the agent or trainer by the Commissioner; or
- (b) 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 or trainer's licence was granted.

- (2) Regulation 8(2)—delete "12(3)" and substitute:

7C(2)

8—Insertion of regulation 9A

After regulation 9 insert:

9A—Licence endorsements (section 11B of Act)

- (1) If a licence is endorsed with the words "investigation agent", the endorsement indicates that the licence is an investigation agents licence.
- (2) If an investigation agents licence is endorsed with 1 or more of the endorsements listed below or with words to the same effect, the endorsements indicate that the licence is subject to a restricted functions condition limiting the functions that may be performed under the authority of the licence to the functions indicated by the endorsements as set out below.

Endorsement	Function
collection work	ascertaining the whereabouts of or repossessing goods that are subject to a security interest; and collecting or requesting the payment of debts; and executing legal process for the enforcement of a judgment or order of a court; and executing distress for the recovery of rates, taxes or money

Endorsement	Function
inquiry work	obtaining or providing (without the written consent of a person) information as to the personal character or actions of the person or as to the business or occupation of the person; and searching for missing persons; and obtaining evidence for the purpose of legal proceedings (whether the proceedings have been commenced or are prospective)

- (3) If a licence is endorsed with the words "security agent", the endorsement indicates that the licence is a security agents licence.
- (4) If a security agents licence is endorsed with 1 or more of the endorsements listed below or with words to the same effect, the endorsements indicate that the licence is subject to a restricted functions condition limiting the functions that may be performed under the authority of the licence to the functions indicated by the endorsements as set out below.

Endorsement	Function
body guarding	protecting or guarding a person or keeping a person under surveillance; and preventing, detecting or investigating the commission of an offence in relation to a person
crowd or venue control	controlling crowds
general guarding	protecting or guarding property or keeping property under surveillance (other than in a manner involving a dog or while in possession of a firearm); and preventing, detecting or investigating the commission of an offence in relation to property
guarding with a dog	protecting or guarding property, or keeping property under surveillance, in a manner involving a dog; and hiring out or otherwise supplying dogs or other animals for the purpose of protecting or guarding property
guarding with a firearm	protecting or guarding property, or keeping property under surveillance, while possessing or using a firearm within the meaning of the <i>Firearms Act 1977</i>
monitoring centre operations	protecting or guarding property, or keeping property under surveillance, by means of monitoring a security alarm or surveillance system whether from the place at which the property is located or from another place (but not by means of attendance in response to an alarm)

Endorsement	Function
security systems work	providing advice on security alarm or surveillance systems; and hiring out or otherwise supplying security alarm or surveillance systems; and installing or maintaining security alarm or surveillance systems
security systems work ltd to providing sales and advice only	providing advice on security alarm or surveillance systems; and hiring out or otherwise supplying security alarm or surveillance systems

- (5) If, immediately before the commencement of this subregulation, an endorsement listed in column 1 below or words to the same effect are displayed on a security agents licence, the licence will be taken to be endorsed instead with the endorsement or endorsements listed opposite in column 2:

canine handling	guarding with a dog
crowd control work	crowd or venue control
restricted to guard work	general guarding body guarding
security guard ltd to control room operations	monitoring centre operations
security guard restricted to watching, guarding or protecting property	general guarding
security guard work	general guarding body guarding

- (6) If, immediately before the commencement of this subregulation, a person who holds a security agents licence holds a firearms licence under the *Firearms Act 1977* endorsed with the purpose "use in the course of carrying on the business of guarding property or use in guarding property in the course of employment by a person who carries on that business—6", the security agents licence will be taken to be endorsed with "guarding with a firearm".
- (7) If a licence is endorsed with the words "security industry trainer", the endorsement indicates that the licence is a security industry trainers licence.

- (8) If a security agents licence or an investigation agents licence is endorsed with an endorsement listed below or with words to the same effect, the endorsement indicates that the licence is subject to the condition listed opposite in column 2.

Endorsement	Condition
employee	an employee condition preventing the holder of the licence from carrying on business as an agent
employee (supervision)	an employee (supervision) condition— <ol style="list-style-type: none">(a) preventing the holder of the licence from carrying on business as an agent; and(b) requiring the holder of the licence to perform functions as an agent only under the supervision of a natural person who holds and has held, for the minimum period specified by the Commissioner in writing, a licence authorising the person to perform those functions personally without supervision
partnership, <i>followed by a name</i>	a partnership condition preventing the holder of the licence from carrying on business as an agent except in partnership with the person specified
partnership (business only), <i>followed by a name</i>	a partnership (business only) condition preventing the holder of the licence— <ol style="list-style-type: none">(a) from carrying on business as an agent except in partnership with the person specified; and(b) from personally performing functions as an agent
in training	a training condition requiring the holder of the licence to satisfactorily complete a course of training, or gain experience, within a period of time, as specified by the Commissioner in writing

9—Variation of regulation 47—Notification of change in circumstances

- (1) Regulation 47(1)—after "licensed agent," insert:

licensed security industry trainer or holder of an approval as a security industry training provider,

- (2) Regulation 47(1)—after "the agent" insert:
 , trainer or training provider
- (3) Regulation 47(2)—delete subregulation (2) and substitute:
- (2) The holder of an approval as a security industry training provider, or a licensed agent who carries on a business as an 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 approved security industry training provider or licensed agent carries on business; or
- (ii) the address at which the approved security industry training provider or licensed agent carries on business; or
- (iii) the address of the registered corporate office of an approved security industry training provider or licensed agent that is a body corporate,
- the training provider or 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 a security industry training provider or agent, the training provider or agent must give written notice to the Commissioner of that fact;
- (c) within 14 days after entering into partnership to carry on business as a security industry training provider or an agent or ceasing to be in such a partnership, the training provider or 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.

- (4) Regulation 47(3)—delete "a licensed agent, the agent" and substitute:
 the holder of an approval as a security industry training provider or is a licensed agent, the training provider or the agent
- (5) Regulation 47(3)(b)—after "section 9(2)" insert:
 or 23AAA(2)
- (6) Regulation 47(3)(b)—after "Act" insert:
 , as the case requires

10—Variation of regulation 48—Return etc of licence

- (1) Regulation 48(1)—after "licensed agent" insert:
 or licensed security industry trainer

- (2) Regulation 48(1)—after "the agent" insert:
or trainer
- (3) Regulation 48(2)—after "licensed agent" insert:
or licensed security industry trainer
- (4) Regulation 48(2)(b)—after "agent" wherever occurring insert:
or trainer
- (5) Regulation 48(3)—after "licensed agent" insert:
or licensed security industry trainer
- (6) Regulation 48(3) after "the agent" insert:
or trainer

11—Revocation of Schedules 1 and 2

Schedules 1 and 2—delete the Schedules

12—Substitution of Schedule 3

Schedule 3—delete the Schedule and substitute:

Schedule 3—Prescribed oral advice and written notice

Part A—Oral advice for the purposes of section 23M(5)(a) of *Security and Investigation Industry 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 Industry 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 2 hours. However, the *Security and Investigation Industry 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 4 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 2 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 Industry Act 1995*

Operation of Security and Investigation Industry 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 Industry 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) and (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 4 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 2 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).

13—Variation of Schedule 4—Fees

- (1) Heading to Schedule 4—delete the heading and substitute:

Schedule 4—Fees and default penalties

- (2) Schedule 4, clause 2—delete "section 12" and substitute:

section 7C

- (3) Schedule 4, clause 3—delete "section 12(2)(a)" and substitute:
section 7C(1)(a)
- (4) Schedule 4, clause 3—delete "section 12" and substitute:
section 7C
- (5) Schedule 4, clause 4—delete "Default penalty fee (section 12(3) of the Act)" and substitute:
Penalty for default in paying fee or lodging return (section 7C(2) of the Act)
- (6) Schedule 4, clause 5—delete "section 10" and substitute:
section 7A(3)

Schedule 1—Transitional provisions

1—Transitional provisions

- (1) For the purposes of the application of section 23(1)(d) of the Act to a person who was carrying on business, or otherwise acting, as a process server immediately before the day on which regulation 6, as substituted by these regulations, comes into operation, a finding of guilt or a conviction, in respect of an offence committed by the person before that day, is to be disregarded if the finding of guilt or the conviction would not have prevented the person from being entitled to carry on a business, or otherwise act, as a process server before that day.
- (2) For the purposes of the application of section 23A of the Act to a person who holds a security agents licence, or is a director of a body corporate that is the holder of a security agents licence, immediately before the day on which regulation 6, as substituted by these regulations, comes into operation, a charge laid, in respect of an offence committed by the person before that day, is to be disregarded if the laying of the charge would not have resulted in the suspension of the licence before that day.
- (3) For the purposes of the application of section 23B of the Act to a person who holds a security agents licence that authorises the licensee to perform the function of controlling crowds immediately before the day on which regulation 6, as substituted by these regulations, comes into operation, a charge laid, in respect of an offence committed by the person before that day, is to be disregarded if the laying of the charge would not have resulted in the suspension of the licence before that day.
- (4) For the purposes of the application of section 23G of the Act to a person who holds a security agents licence, or is a director of a body corporate that is the holder of a security agents licence, immediately before the day on which regulation 6, as substituted by these regulations, comes into operation, a finding of guilt or a conviction, in respect of an offence committed by the person before that day, is to be disregarded if the finding of guilt or the conviction would not have resulted in the cancellation of the licence before that day.

- (5) For the purposes of the application of section 25(1)(e)(ii) of the Act to a person licensed as an agent or a director of a body corporate that holds a licence as an agent, immediately before the day on which regulation 6, as substituted by these regulations, comes into operation, a finding of guilt or a conviction, in respect of an offence committed by the person before that day, is to be disregarded if the finding of guilt or the conviction would not have been relevant to deciding whether the person was a fit and proper person to hold a licence or to be a director of a body corporate that holds a licence before that day.

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's Deputy

with the advice and consent of the Executive Council
on 15 August 2013

No 206 of 2013

AGO0207/10CS