

# NORTHERN TERRITORY OF AUSTRALIA

## COMMERCIAL AND PRIVATE AGENTS LICENSING REGULATIONS

As in force at 1 December 2001

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 1 December 2001

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## COMMERCIAL AND PRIVATE AGENTS LICENSING REGULATIONS

Regulations under the *Commercial and Private Agents Licensing Act*

### Part 1 Preliminary

#### 1 Citation

These Regulations may be cited as the *Commercial and Private Agents Licensing Regulations*.

#### 2 Commencement

These Regulations come into operation on the commencement of the *Commercial and Private Agents Amendment Act 2000*.

#### 3 Definition

In these Regulations, **ADI** has the same meaning as in the *Banking Act 1959* of the Commonwealth.

### Part 2 Approval of agents' managers under section 17E of the Act

#### 4 Application to be agent's manager

- (1) A natural person who intends to be the manager of a place where an agent carries on or will carry on business must apply to the Commissioner to be approved as the agent's manager at that place.
- (2) The application is to:
  - (a) be in writing; and
  - (b) be accompanied by an application fee of \$50.
- (3) The Commissioner must not accept the application unless it is in a form that he or she approves.

**5 Commissioner may require additional information**

- (1) The Commissioner may request an applicant under regulation 4 to:
  - (a) provide information additional to that contained in his or her application;
  - (b) provide a document relating to information contained in the application or the additional information; or
  - (c) appear personally before the Commissioner and provide further information in connection with the application.
- (2) The Commissioner may make enquiries to ascertain the suitability of the applicant to be a manager.

**6 Grounds for refusing to approve person as manager**

- (1) The Commissioner must refuse to approve a person as an agent's manager if:
  - (a) the person is less than 18 years of age;
  - (b) the person is disqualified under section 17P of the Act from holding a licence;
  - (c) the person is taking the benefit of a law for the relief of bankrupt or insolvent debtors or is a person whose remuneration is being assigned for the benefit of creditors;
  - (d) the person fails to comply with a request of the Commissioner under regulation 5;
  - (e) in the opinion of the Commissioner, the applicant is not likely to manage the business of the agent honestly and fairly;
  - (f) in the opinion of the Commissioner, the person is in any other way not a fit and proper person to manage the business of the agent; or
  - (g) in the opinion of the Commissioner, the person is a person to whom the Commissioner would, if that person were applying for a licence, refuse to grant the licence.

- (2) Without limiting subregulation (1)(e), (f) or (g), in determining whether a person is a fit and proper person to manage the business of an agent, the Commissioner must have regard to whether the person:
- (a) has, during the period of 10 years immediately before the date the applicant made his or her application, been found guilty of or served a part of a term of imprisonment for an offence (wherever committed) involving fraud, dishonesty or physical violence;
  - (b) was, at the time the application was made, either the subject of a charge in relation to such an offence or bound in relation to such an offence by a recognisance; or
  - (c) has at any time been found guilty of an offence against the Act, these Regulations, any other regulations made under the Act, or any other enactment administered by the Minister.

## **7 Approval of manager**

- (1) Unless the Commissioner is required to refuse to approve a person as a manager under regulation 6, the Commissioner must approve a person as the manager of a place where an agent carries on or will carry on business.
- (2) The Commissioner must notify, in writing, an applicant for approval as a manager that the applicant:
- (a) is approved as manager; or
  - (b) is not approved as manager,
- within 45 days of the date on which the applicant's application was made.
- (3) The notice under subregulation (2)(b) is to:
- (a) specify the reasons why the Commissioner refuses to approve the applicant; and
  - (b) inform the person of his or her right of appeal under regulation 10.

**8 Duration of approval**

- (1) An approval of a person as manager given under regulation 7 has effect:
  - (a) until the expiry of the licence of the agent for whom he or she is manager;
  - (b) until the licence of the agent is revoked;
  - (c) until the licence of the agent is surrendered; or
  - (d) subject to subregulation (2) – unless the agent dies or, if the agent is a corporation, unless it is dissolved.
- (2) Subregulation (1)(d) does not apply if the Commissioner authorises a person under section 17F(2) of the Act to carry on the deceased agent's business as an agent and that person carries on the deceased agent's business in accordance with the authorisation.

**9 Revocation of approval**

- (1) The Commissioner may revoke an approval of a person as manager given under regulation 7 if the approval was obtained by means of fraud or misrepresentation.
- (2) If the Commissioner revokes an approval, the Commissioner must notify, in writing, both the person whose approval is revoked and the agent for whom the person is manager.
- (3) The notice under subregulation (2) is to:
  - (a) specify the reasons why the Commissioner is revoking the approval;
  - (b) specify either that the revocation takes effect on the date the person whose approval is revoked receives the notice or on the later date specified in the notice; and
  - (b) inform the person whose approval is revoked of his or her right of appeal under regulation 10.

**10 Right of appeal against refusal to approve or revocation of approval**

- (1) If the Commissioner:
  - (a) refuses under regulation 7 to approve a person as manager of a place where an agent carries on or will carry on business; or
  - (b) revokes a person's approval under regulation 9,

the person may, within 14 days after the date of the notice given to him or her under regulation 7(2)(b) or 9(2), appeal to the Court against the Commissioner's decision.

- (2) The appeal is to be by way of a rehearing.
- (3) In determining an appeal, the Court:
  - (a) has all the powers of the Commissioner in respect of the application for the licence the subject of the appeal; and
  - (b) may make the orders as to costs it considers appropriate.

## **Part 3                      Other matters**

### **11                      Processing fee**

For the purposes of section 7(4)(c) of the Act, the prescribed processing fee is \$100.

### **12                      Prescribed information to be contained in notice of application for licence**

For the purposes of section 9(3) of the Act, the following information is to be contained in the notice published in a newspaper by an applicant:

- (a) the name of the applicant;
- (b) if the applicant is a corporation – the name of each director of the applicant;
- (c) the business name under which the applicant intends to carry on business under the licence applied for;
- (d) each place where the applicant intends to carry on business under the licence applied for.

### **13                      Licence fee**

The prescribed fee to be paid before a licence is issued under section 17A of the Act is:

- (a) in the case of a licence (including a renewed licence) that has been granted to have effect for the whole of a licence period – \$90;

- (b) in the case of a licence that has been granted to have effect for part of the licence period current at the date it was granted – \$2.50 for each month or part of each month during which the licence is to have effect; or
- (c) in the case of a licence that has been granted to have effect for part of the licence period current when it was granted and for the whole of the next following licence period – \$90 and \$2.50 for each month or part of each month of the licence period current when it was granted during which the licence is to have effect.

#### **14 Form of bond and security for satisfaction of bond**

- (1) For the purposes of section 18(1) of the Act, the form in Schedule 1 is the prescribed form of bond.
- (2) For the purposes of section 18(1) of the Act, the following are forms of security for the satisfaction of a bond:
  - (a) a trustee security or trustee securities equal to the amount of the bond accompanied by an authority to sell authorising the Territory to sell the security or securities on the licensee breaching a condition of the bond;
  - (b) if the bond is given by an insurance company or ADI – the bond.

#### **15 Prescribed records etc.**

- (1) For the purposes of section 25(1) of the Act, the prescribed records and other documents to be kept by an agent are records specifying:
  - (a) in the case of an agent acting in connection with ascertaining the location of any goods delivered pursuant to a hire-purchase agreement, bill of sale, goods mortgage or consumer lease:
    - (i) the full name and address of the person who requested the agent to ascertain the location of the goods;
    - (ii) the date the agent received the request;
    - (iii) a description of the goods;
    - (iv) the location of the goods;



- (v) if any premises had to be entered to ascertain the location of the goods – how the entry was made and the exact terms of the authority, document, arrangement or agreement under which the agent legally entered the premises; and
  - (vi) the fee charged for the service;
- (b) in the case of an agent acting in connection with repossessing any goods delivered pursuant to a hire-purchase agreement, bill of sale, goods mortgage or consumer lease:
  - (i) the full name and address of the person who requested the goods to be repossessed;
  - (ii) the date the agent received the request;
  - (iii) the full name and address of the person from whom the goods were repossessed;
  - (iv) the date and time of day of the repossession;
  - (v) the names of the persons who repossessed the goods;
  - (vi) a full description of the goods repossessed;
  - (vii) the address of the premises at which the goods were repossessed;
  - (viii) whether the person from whom the goods were repossessed was present at the time of the repossession;
  - (ix) if that person was not present at the time of the repossession – the names of any other occupants of the premises where the goods were repossessed who were present;
  - (x) if the person from whom they were repossessed was not present at the time of repossession – how entry was made into the premises from which they were repossessed;
  - (xi) the exact terms of the authority, document, arrangement or agreement under which the agent legally entered the premises;
  - (xii) what notice of the repossession of the goods, if any, was given to or left for the person from whom the goods were repossessed;

- (xiii) the address to which the repossessed goods were taken; and
- (xiv) the fee charged for the service;
- (c) in the case of an agent acting in connection with collecting or requesting payment of debts:
  - (i) the full name and address of the person who requested that the debt be collected or that a request for payment of the debt be made;
  - (ii) the date the agent received the request;
  - (iii) the full name and address of the person from whom the debt was collected or to whom the request for payment of the debt was made;
  - (iv) the amount of the debt;
  - (v) particulars of requests made for payment of the debt or of action taken to collect the debt; and
  - (vi) the fee charged for the service;
- (d) in the case of an agent acting as a process server in relation to the service of any process:
  - (i) the name and address of the person requesting the process to be served;
  - (ii) the date the process was received;
  - (iii) the nature of the process;
  - (iv) the full name and address of the person to be served with the process;
  - (v) the date, place and time of day of service of the process;
  - (vi) whether the process was served personally on the person;
  - (vii) if the process was not served personally on the person – the name of the person with whom the process was left and the time, date and place the process was left with that person;
  - (viii) if the process was not served – the reason for failure to serve the process; and

- (ix) the fee charged for the service; and
- (e) in the case of an agent acting as an inquiry agent in relation to any inquiry:
  - (i) the full name and address of the person who requested the inquiry to be conducted;
  - (ii) the date the agent received the request;
  - (iii) a statement of the nature of the inquiry;
  - (iv) the date a written statement of the information or evidence obtained or other final report on the inquiry was delivered; and
  - (v) the fee charged for the inquiry.
- (2) The agent must make a record of the particulars referred to in subregulation (1) as soon as possible after the particulars become known to the agent.

**16 Offences for which infringement notices may be issued and amounts payable under infringement notice etc.**

- (1) For the purposes of section 46A(1) of the Act:
  - (a) a prescribed offence is an offence against the provision of the Act specified in column 1 of Schedule 2; and
  - (b) the prescribed amount payable by a person who has allegedly committed an offence against a provision of the Act specified in column 1 of Schedule 2 is the amount specified opposite in column 2 of that Schedule.
- (2) If a person who is served a notice under section 46A(1) of the Act intends to pay the prescribed amount in order to avoid prosecution for the offence he or she allegedly committed, the person must pay the amount to the Commissioner within 28 days after the date the notice is served on the person.

**17 Repeal**

The Regulations specified in Schedule 3 are repealed.

## Schedule 1

regulation 14(1)

### FORM

#### NORTHERN TERRITORY OF AUSTRALIA

#### *Commercial and Private Agents Licensing Act*

### BOND

#### *Obligations*

BY THIS BOND, (*insert name of applicant, insurance company or ADI*) of (*insert address of applicant, insurance company or ADI*) binds \*himself/herself/itself and \*his/her/its heirs, executors, successors and assigns to the Territory for the payment to the Territory of the sum of \*\$2,000/\$1,500/\$1,000.

#### *Condition*

THE ABOVE OBLIGATION is void if (*insert name of applicant*) is the holder of a licence under the *Commercial and Private Agents Licensing Act* and during the currency of that licence complies with that Act and any Regulations made under it with respect to moneys held on trust.

\*Provided that if (*insert name of insurance company or ADI*) gives written notice to (*insert name of applicant*) and to the Commissioner that it wishes to be relieved of further liability under the bond, the obligation of (*insert name of insurance company or ADI*) under this bond is terminated in respect of transactions that occur after 30 days have elapsed from the date of service of that notice on the Commissioner.

#### **\*SIGNED, SEALED AND DELIVERED**

by (*insert name of applicant*)

in the presence of:

.....  
signature of applicant

.....  
signature of witness

#### **\*THE COMMON SEAL**

of (*insert name of insurance company or ADI*)  
is affixed in accordance with its  
Articles of Association in the presence of:

.....  
Director

.....  
name of Director (print)

.....  
Secretary

.....  
name of Secretary (print)

*\*delete if not applicable*

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## Schedule 2      Infringement offences and penalties

regulation 16

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<b>Column 1 Provision of the Act</b>	<b>Column 2 Amount</b>
section 17F(5)	10 penalty units
section 23(5)	4 penalty units
section 25(1)	10 penalty units
section 32	2 penalty units
section 39(1)	1 penalty unit
section 43	4 penalty units

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## **Schedule 3 Repealed Regulations**

regulation 17

*Commercial and Private Agents Licensing Regulations*

Regulations 1980, No. 2

*Amendments of the Commercial and Private Agents Licensing Regulations*

Regulations 1981, No. 11

*Amendment of Commercial and Private Agents Licensing Regulations*

Regulations 1999, No. 35

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## ENDNOTES

### 1

### KEY

Key to abbreviations

amd = amended  
 app = appendix  
 bl = by-law  
 ch = Chapter  
 cl = clause  
 div = Division  
 exp = expires/expired  
 f = forms  
 Gaz = Gazette  
 hdg = heading  
 ins = inserted  
 lt = long title  
 nc = not commenced

od = order  
 om = omitted  
 pt = Part  
 r = regulation/rule  
 rem = remainder  
 renum = renumbered  
 rep = repealed  
 s = section  
 sch = Schedule  
 sdiv = Subdivision  
 SL = Subordinate Legislation  
 sub = substituted

### 2

### LIST OF LEGISLATION

***Commercial and Private Agents Licensing Regulations (SL No. 46, 2001)***

Notified	19 December 2001
Commenced	1 December 2001 (r 2, s 2 <i>Commercial and Private Agents Licensing Amendment Act 2000</i> (Act No. 49, 2000) and Gaz G47, 28 November 2001, p 2)