

# NORTHERN TERRITORY OF AUSTRALIA

## COMMERCIAL AND PRIVATE AGENTS LICENSING ACT

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 ACT

An Act to provide for the licensing of commercial and private agents

### Part 1 Preliminary

#### 1 Short title

This Act may be cited as the *Commercial and Private Agents Licensing Act*.

#### 2 Commencement

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

#### 3 Interpretation

(1) In this Act unless the contrary intention appears:

**agent** means a commercial agent, inquiry agent, process server or private bailiff licensed under this Act.

**bank** includes the Territory Insurance Office.

**commercial agent** means a person who, for monetary or other consideration, performs any of the following functions:

- (a) ascertaining the whereabouts of, or repossessing any goods or chattels that are the subject of a hire purchase agreement or bill of sale;
- (b) collecting, or requesting the payment of, debts;
- (c) executing any legal process for the enforcement of any judgment or order of a court;
- (d) executing any distress for the recovery of rates, taxes or moneys;

(e) obtaining evidence for the purpose of any legal proceedings;  
or

(f) searching for missing persons,

on behalf of any other person.

**Commissioner** has the same meaning as in the *Consumer Affairs and Fair Trading Act*.

**Court** means the Local Court.

**document** includes book, record, register, account, paper and card.

**harassing tactics** means any act or conduct that tends to intimidate, embarrass, ridicule or shame any person, and without limiting the generality of the foregoing, includes:

(a) any act or omission (including the positioning of a vehicle) from which it might reasonably be inferred by a person visiting or passing any premises that an occupant of the premises is being visited, or is under surveillance by, an agent;

(b) unduly frequent visiting of premises or communication with the occupants of premises; and

(c) any suggestion made to, or intended to be communicated to, a debtor that if he fails to pay any debt action may be taken that would embarrass or shame him, or prejudice him in his employment.

**inquiry agent** means a person who, for monetary or other consideration, performs any of the following functions:

(a) obtaining or providing information as to the personal character or actions of any person, or as to the business or occupation of any person;

(b) obtaining evidence for the purpose of any legal proceedings;  
or

(c) searching for missing persons,

on behalf of any other person.

**licence** means a licence granted under Division 2 of Part 2 to carry on business as one of the following kinds of agent:

(a) a commercial agent;

- (b) inquiry agent;
- (c) process server;
- (d) private bailiff.

***licence period*** means:

- (a) the period that expires on the expiry of 12 months after the commencement of the *Commercial and Private Agents Licensing Amendment Act 2000*; or
- (b) if the period referred to in paragraph (a) has expired – a period of 3 years commencing on the day after the expiry of the period referred to in paragraph (a) or on each third anniversary of that day.

***officer*** in relation to a corporation, means any director, manager or secretary of the corporation.

***order*** includes decision, direction or declaration.

***private bailiff*** means a person who holds a licence as a private bailiff under this Act.

***process server*** means a person who, for monetary or other consideration, performs the function of serving any writ, summons or other legal process on behalf of any other person.

***Registrar*** has the same meaning as in the *Local Court Act*.

- (2) A reference in this Act to a category of licence is a reference to:
  - (a) a licence by the kind of agent that the licence authorises to carry on business; or
  - (b) all licences authorising the same kind of agents to carry on business.

## **4 Application**

- (1) This Act shall not apply to:
  - (a) a member of the Northern Territory or Commonwealth Police Force acting in accordance with his duties;
  - (b) a Chief Executive Officer or employee, as defined in the *Public Sector Employment and Management Act* while acting in the performance of his functions under that Act;

- (c) an employee of the Crown or any instrumentality of the Crown while acting in the performance of his functions as such an employee;
  - (d) a legal practitioner acting in the ordinary course of his profession;
  - (e) a clerk of a legal practitioner while acting in the ordinary course of his employment as a clerk of the legal practitioner;
  - (f) an accountant while acting in the ordinary course of his profession;
  - (g) an officer of any Court while acting in the performance of his functions as an officer of that Court;
  - (h) a trustee company, credit union, building society, or friendly society or a person carrying on the business of insurance, insurance broking, insurance adjustment or banking, while acting in the ordinary course of business as such or an employee of any such company, union, society or person while acting in the ordinary course of his employment;
  - (i) a person employed under a contract of service by a person who is not an agent while acting in the ordinary course of that employment; or
  - (j) a person authorised by the Power and Water Authority, established by the *Power and Water Authority Act*, to request and receive payment of money due and owing to it by members of an Aboriginal community or group while acting in the ordinary course of requesting and receiving those payments.
- (2) The Regulations under this Act may exempt to the extent prescribed any class of persons from the operation of this Act.

## **Part 2            Licensing of agents**

### **Division 1        Offences**

#### **5                No activities as agent unless licensed**

Subject to this Act, a person must not carry on business as a commercial agent, an inquiry agent, a process server or a private bailiff unless he or she has been issued a licence of the appropriate category.

Penalty:        500 penalty units.



**6            Breach of terms or conditions of licence**

An agent must not contravene or fail to comply with a term or condition of his or her licence.

Penalty:        500 penalty units.

**Division 2            Grant of licence**

**7            Application for licence**

- (1) A person may apply to the Commissioner for a licence to carry on business as a commercial agent, inquiry agent, private bailiff or process server.
- (2) An applicant may be:
  - (a) an agent applying for a category of licence other than the category the agent holds;
  - (b) a person who is employed by an agent; or
  - (c) any other person.
- (3) An applicant may apply for one licence or a number of licences of different categories.
- (4) An application is to:
  - (a) be in a form approved by the Commissioner;
  - (b) contain the information that is indicated by the form or otherwise prescribed;
  - (c) be accompanied by the prescribed processing fee; and
  - (d) in the case of an application for a licence to carry on business as a commercial agent or a private bailiff – be accompanied by the bond in the prescribed form and the prescribed security that the applicant would, if the applicant were a commercial agent or a private bailiff, be required to lodge with the Commissioner under Part 5.

**8                      Commissioner may require additional information**

- (1) The Commissioner may request an applicant for a licence to provide any one or more of the following in support of the application:
  - (a) information additional to that contained in his or her application;
  - (b) a document relating to the information contained in the application or the additional information.
- (2) The Commissioner may request the applicant or, if the applicant is a corporation, an officer of the applicant to:
  - (a) appear personally before the Commissioner; and
  - (b) provide further information in connection with the application.
- (3) The applicant must comply with a request of the Commissioner made under this section.

**9                      Objections to application**

- (1) On receiving an application for a licence, the Commissioner must give to the Commissioner of Police a copy of it and any accompanying documents other than statements relating to the material and financial resources of the applicant.
- (2) On making an application for a licence, the applicant must publish notice of the application in a newspaper circulating throughout the Territory and a newspaper circulating in the area where he or she proposes to carry on the business as agent the subject of the application.
- (3) The notice must contain the prescribed information and must specify a period during which members of the public may, in writing given to the Commissioner, object to the granting of the licence on a ground specified in section 11 or 12.
- (4) The Commissioner of Police must, within 28 days of receiving the copy of the application and any accompanying documents, give to the Commissioner a notice in writing that either supports the application or objects to the grant of a licence to the applicant on the grounds that the applicant or, if the applicant is a corporation, an officer of the applicant may not be a fit and proper person.
- (5) An objection to the grant of a licence is to state the reasons for the objection.

**10            Inquiry by Commissioner**

If:

- (a) an objection is made under section 9 to the grant of a licence;  
or
- (b) the Commissioner considers that there may be grounds for refusing to grant the licence,

the Commissioner must hold an inquiry as to whether to grant the application.

**11            Grounds for refusing to grant licence to natural person**

- (1) The Commissioner must refuse to grant a licence on an application made by a natural person if:
  - (a) the applicant is less than 18 years of age;
  - (b) the applicant is disqualified under section 17P from holding a licence;
  - (c) the applicant 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 applicant fails to comply with a request of the Commissioner under section 8;
  - (e) the applicant does not comply with the prescribed qualifications or other prescribed requirements, if any;
  - (f) in the opinion of the Commissioner, the applicant is not likely to carry on the business as agent the subject of the application honestly and fairly;
  - (g) in the opinion of the Commissioner, the applicant is in any other way not a fit and proper person to hold a licence; or
  - (h) in the opinion of the Commissioner, a person with whom it appears the applicant would, if granted the licence, carry on the business as an agent in partnership is a person to whom the Commissioner would, if that person were the applicant, refuse to grant the licence.

- (2) Without limiting subsection (1)(f) and (g), in determining whether an applicant is a fit and proper person to hold a licence, the Commissioner must have regard to whether the applicant:
- (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 this Act, the Regulations or any other enactment administered by the Minister.

## **12            Grounds for refusing to grant licence to corporation**

- (1) The Commissioner must refuse to grant a licence on an application made by a corporation if:
- (a) a person concerned in the management of the corporation is less than 18 years of age;
  - (b) the applicant is disqualified under section 17P from holding a licence;
  - (c) the applicant fails to comply with a request of the Commissioner under section 8;
  - (d) the applicant does not comply with the prescribed qualifications or other prescribed requirements, if any;
  - (e) in the opinion of the Commissioner, the applicant is not likely to carry on the business as agent the subject of the application honestly and fairly;
  - (f) in the opinion of the Commissioner, the reputation of the applicant is such that the applicant is not a fit and proper person to hold a licence;
  - (g) in the opinion of the Commissioner, an officer of the applicant is not of good reputation or character and, if he or she were the applicant, would not be a fit and proper person to hold a licence;

- (h) in the opinion of the Commissioner, any person (other than an officer of the corporation) who appears to have control or substantial control of the applicant is not of good reputation or character or is not likely to exercise that control honestly and fairly; or
  - (j) in the opinion of the Commissioner, a person with whom it appears the applicant would, if granted the licence, carry on business as an agent in partnership is a person to whom the Commissioner would, if that person were the applicant, refuse to grant the licence.
- (2) Without limiting subsection (1)(e), (f), (g) or (h), in determining any matter referred to in those paragraphs, the Commissioner must have regard to whether the applicant, any other person referred to in those paragraphs or a person who is an associate of the applicant:
  - (a) has, during the period of 10 years immediately preceding the date the applicant made the 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 this Act, the Regulations or any other enactment administered by the Minister.
- (3) In subsection (2), **associate** has the same meaning as in Division 2 of Part 1.2 of the Corporations Law.

### **13            Grant of licence**

- (1) Unless the Commissioner is required to refuse to grant a licence under section 11 or 12, the Commissioner must grant a licence to an applicant.
- (2) The Commissioner must not grant a licence to an applicant unless it is of the same category as applied for by the applicant.
- (3) The Commissioner may not grant a licence that authorises the carrying on of the business of more than one kind of agent.

## **14                      Term and renewal of licence**

- (1) The Commissioner must grant a licence for a term that has effect until the expiry of the licence period current at the date of the grant of the licence or, if the application for the licence is made 6 months or less before the expiry of the licence period current at the date the application is made, until the expiry of that licence period or the next following licence period.
- (2) In granting a licence the application for which was made 6 months or less before the expiry of the licence period current at the date the application was made, the Commissioner may grant the licence for a term that has effect during the whole or a part of the remainder of that licence period until the expiry of the next following licence period.
- (3) No licence may have effect before the date it is issued under section 17A.
- (4) For the avoidance of doubt, a licence has effect from the date it is issued or other later date specified in the licence:
  - (a) until the expiry of the licence period current at the date the application for the licence is made or the licence period next following the current licence period, as the case may require; or
  - (b) until it is cancelled or surrendered.
- (5) Subject to section 17D, a licence may be renewed.

## **15                      Other terms and conditions of licence**

- (1) The Commissioner may, subject to this Act, grant a licence subject to the other terms and conditions, including conditions relating to the conduct of audits of an agent's business, as he or she considers appropriate.
- (2) It is a term of a licence that the agent's business authorised by the licence is to be carried on at a place specified in the licence.
- (3) If more than one place of business is specified in a licence, the licence must specify which is the agent's principal place of business.
- (4) The terms and conditions imposed on a licence by or under this section are to be specified on the licence.

**16            Notification of Commissioner's decision, appeal etc.**

- (1) The Commissioner must, within 45 days after receiving an application for a licence, notify the applicant in writing that:
  - (a) the Commissioner has granted the licence to the applicant and that the applicant will be issued the licence on paying the prescribed fee; or
  - (b) the Commissioner refuses to grant the licence.
- (2) A notice under subsection (1)(a) is to:
  - (a) specify the terms and conditions that the Commissioner proposes to impose on the licence; and
  - (b) invite the person to whom the licence is to be granted to make to the Commissioner, within the period of not more than 14 days specified in the notice, oral or written submissions regarding the proposed terms and conditions of the licence.
- (3) After considering the submissions of the applicant (if any), the Commissioner may impose the terms and conditions he or she considers appropriate on the licence, whether or not as proposed in the notice under subsection (2)(a).
- (4) The notice under subsection (1)(b) is to:
  - (a) specify the reasons why the Commissioner refuses to grant the licence; and
  - (b) inform the person of his or her right of appeal under section 17.

**17            Right of appeal against refusal to grant licence**

- (1) If the Commissioner refuses to grant a licence, the person who applied for the licence may within 14 days of the date of the notice given to him or her under section 16(1)(b) appeal to the Court against the Commissioner's decision.
- (2) The appeal is to be by way of rehearing of the application.
- (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.

**17A            Issue of licence and payment of licence fee**

- (1) If a person who receives a notice under section 16(1)(a) pays the prescribed fee, the Commissioner must issue the licence to the person.
- (2) The Commissioner must not issue the licence before the person pays the prescribed fee.
- (3) In prescribing the fee, the Regulations may provide for the calculation of the fee or the portion of the fee payable by a person for part of a licence period.

**17B            Duration of licence**

A licence has effect:

- (a) until the expiry of the relevant licence period;
- (b) until it is cancelled;
- (c) until it is surrendered;
- (d) unless it is suspended;
- (e) if it is granted to a person who is a natural person (but subject to section 17F) – unless the agent dies; or
- (f) if it is granted to a person who is a corporation – unless the agent is dissolved,

as the case may require.

**Division 3            Miscellaneous**

**17C            Variation of licence**

- (1) Subject to this section, the Commissioner may:
  - (a) on his or her own motion; or
  - (b) on the application of an agent,by notice in writing given to the agent, vary a term or condition of the agent's licence.
- (2) Before varying a licence under subsection (1)(a) the Commissioner must give the agent written notice:
  - (a) specifying the proposed variation;



- (b) specifying the reasons for the variation; and
  - (c) inviting the agent to, within the period of not less than 28 days specified in the notice, submit reasons why the variation should not be made.
- (3) If, after considering the submissions of the agent (if any), the Commissioner continues to consider that the variation is appropriate, the Commissioner may vary the licence, whether or not as proposed in the notice under subsection (2).
- (4) An agent's application for variation of the agent's licence under subsection (1)(b) is to be in a form approved by the Commissioner and accompanied by the prescribed fee.
- (5) A licence may be varied by the addition of a new term or condition or the substitution or deletion of any of its existing terms and conditions.
- (6) If an agent applies under subsection (1)(b) to vary the licence by deleting, adding or substituting a place at which the agent is authorised to carry on business under the licence or the place which is the agent's principal place of business, the Commissioner must vary the licence accordingly on being satisfied that to do so would not result in the agent contravening a law in force in the Territory.
- (7) A variation of a licence takes effect on:
  - (a) the date notice of the variation is given to the licensee; or
  - (b) the date specified for that purpose in the notice,whichever last occurs.
- (8) On receiving the notice of the variation, the agent must produce the licence to the Commissioner for endorsement of the variation on the licence.
- (9) Subsections (2), (3), (4), (5), (6) and (7) do not apply if the variation is for a formal or clerical reason that does not alter the effect of the licence.

## **17D        Renewal of licence**

- (1) If an agent wants to continue to carry on business as agent during the licence period next following the expiry of the agent's licence, the agent may apply to the Commissioner to renew the agent's licence.

- (2) Unless the Commissioner agrees to allow an agent to make an application to renew the agent's licence less than 3 months before the commencement of the next licence period, the agent must apply to renew the licence at least 3 months, but not more than 6 months, before the commencement of that licence period.
- (3) This Part applies, to the extent necessary, to and in relation to the renewal of a licence as if references in this Part to an application for a licence, the grant of a licence or a licence include references to an application to renew a licence, the renewal of a licence or a renewed licence.

**17E        Agent's manager to be approved by Commissioner**

- (1) An agent must not carry on business at a place unless there is present and in charge of the operations of the business at the place:
  - (a) if the agent is a corporation – a natural person approved by the Commissioner to be the manager of the place; or
  - (b) if the agent is a natural person – either the agent or another natural person approved by the Commissioner to be the manager of the place.

Penalty:        500 penalty units.

- (2) The Regulations may:
  - (a) make provision with respect to applications to the Commissioner for approvals for the purposes of this section;
  - (b) specify the period within which the Commissioner must approve or refuse to approve a person as manager;
  - (c) specify the manner in which approval or refusal to approve a person as manager is to be made and notice of the approval or refusal is to be given and require the Commissioner to specify reasons if he or she refuses to approve a person as manager;
  - (d) specify the grounds on which the Commissioner must refuse to approve a person as a manager;
  - (e) enable the Commissioner to make enquiries and seek advice concerning the suitability of a natural person to be a manager and prescribe information that the Commissioner may consider in determining the person's suitability;

- (f) prescribe conditions that the Commissioner may impose on approvals and enable the Commissioner to impose the prescribed conditions that he or she considers appropriate in the case of each approval;
- (g) specify the period for which an approval has effect;
- (h) empower the Commissioner to revoke an approval and prescribe the grounds on which an approval may be revoked;
- (j) make provision for a right of appeal to the Court if the Commissioner refuses to approve a person as manager or revokes an approval; and
- (k) prescribe the fees payable when applying for the approval of a person as manager and when the approval is granted and the time for and manner of the payment of the fees.

**17F        Death of agent**

- (1) If an agent dies, a person who is or who is named as or who intends to apply to be a legal personal representative of the deceased agent may, within 28 days after the death or any longer period that the Commissioner agrees to, apply to the Commissioner to carry on the deceased agent's business as an agent for the period ending:
  - (a) 6 months after the date of the agent's death; or
  - (b) immediately before the next succeeding anniversary of the date of the grant of the licence,whichever last occurs.
- (2) The Commissioner may authorise or refuse to authorise the person to carry on the deceased agent's business as an agent.
- (3) If the Commissioner authorises the person to carry on the deceased agent's business, he or she may impose the conditions relating to the conduct of the business that he or she considers appropriate.
- (4) On a person being authorised to carry on the business of a deceased agent, the person:
  - (a) has all the rights, authorities, powers, functions and obligations of the deceased agent; and
  - (b) is to be taken to be the holder of the deceased agent's licence.

- (5) If the Commissioner imposes conditions on the conduct of the business of a deceased agent by the person authorised to carry on the business under this section, the person must as, soon as reasonably possible after being authorised to carry on the business, produce the licence to the Commissioner to endorse the conditions on the licence.

Penalty:        50 penalty units.

### **17G        Changes in officers of corporation**

- (1) If, in the case of an agent that is a corporation, a person becomes an officer of the agent in addition to or in place of an existing officer, the agent must give notice of that fact to the Commissioner within 28 days of the date the person became an officer of the agent.
- (2) Notice under subsection (1) is to:
- (a) state the full name, date of birth and present residential address of the person;
  - (b) give the date on which the person became an officer of the agent;
  - (c) state any other addresses where the person resided during the 3 year period immediately before the date of the notice;
  - (d) state whether the person has (whether in the Territory or elsewhere) previously carried on business as an agent or been employed by an agent and, if so, give particulars of that business or employment; and
  - (e) be accompanied by a certificate signed by 2 other persons to the effect that the person would, if that person were an applicant for a licence, be a fit and proper person to hold a licence.
- (3) On receiving a notice under subsection (1), the Commissioner must give a copy of the notice to the Commissioner of Police.
- (4) The Commissioner of Police must, within 14 days of receiving the notice, give to the Commissioner a notice in writing that does one of the following:
- (a) objects to the agent continuing to hold a licence on the ground that the person who became the officer of the agent would, if that person were an applicant for a licence, not be a fit and proper person to hold a licence;

- (b) states that nothing is known about the person that is a ground for objecting to the agent continuing to hold a licence.

**17H      Licence not transferable**

A licence is not transferable.

**17J      Surrender of licence**

- (1) An agent may surrender his or her licence by notice in writing to the Commissioner.
- (2) On the surrender of a licence, the licence ceases to have effect but the person who surrendered the licence remains liable for:
  - (a) paying all outstanding debts and any other liability incurred by or obligation imposed before the surrender on the person as agent; and
  - (b) an act or omission done, caused, permitted or made by the person as agent before the surrender.

**Part 3                      Suspension and cancellation etc. of licence**

**17K      Commissioner may vary, suspend or cancel licence**

- (1) If the Commissioner considers that:
  - (a) a licence is obtained by means of misrepresentation;
  - (b) an agent is a person who would, if the agent were an applicant for a licence, be refused a licence under section 11 or 12; or
  - (c) an agent that is a corporation has failed to give notice under section 17G(1) of a change in the officers of the agent,the Commissioner may, subject to this Part:
  - (d) vary a term or condition of the licence or impose a new term or condition;
  - (e) suspend the licence for a specified period; or
  - (f) cancel the licence.
- (2) The Commissioner is not required to exercise a power conferred by subsection (1) if he or she considers that, in the circumstances of a particular case, it is not necessary in the public interest.

**17L Inquiry before exercise of power**

- (1) The Commissioner must not exercise a power conferred by section 17K(1) unless he or she has held an inquiry under this section.
- (2) If the Commission considers that there may be grounds on which to exercise a power under section 17K(1), the Commission must give written notice that he or she proposes to hold an inquiry to:
  - (a) the agent concerned; and
  - (b) if the Commissioner considers that a person other than the agent may be affected by the exercise of the power – to that other person.
- (3) The notice is to:
  - (a) state the ground or grounds that the Commissioner considers may authorise the exercise of the power;
  - (b) request the agent to make written and oral submissions to the Commissioner regarding the inquiry;
  - (c) specify the date (which is not to be less than 7 clear days after the date on which the notice is given to the agent) by which the Commissioner is to have received the agent's written submissions; and
  - (d) specify a date after the date referred to in paragraph (c) when the Commissioner will hear the agent's oral submissions.
- (4) If the Commissioner considers it necessary in the public interest, the Commissioner may, by the notice given under subsection (2), suspend the agent's licence from the date on which that notice is given to the agent until notice is given to the agent under section 17M.

**17M Result of inquiry**

- (1) If, after holding an inquiry under section 17L, the Commissioner decides to take no further action in respect of the matter, the Commissioner must give written notice of his or her decision to the agent.
- (2) If, after holding the inquiry, the Commissioner decides that there are grounds for the exercise of a power under section 17K(1) and that he or she will exercise the power, the Commissioner must give notice in writing of his or her decision to the agent:

- (a) stating the decision of the Commissioner;
- (b) stating the ground or grounds for the exercise of the power;
- (c) if the Commissioner decides to vary a term or condition of or impose a new condition on a licence – requiring the agent to produce the licence to the Commissioner for endorsement of its variation and specifying the time within which the agent must produce the licence to the Commissioner;
- (d) if the Commissioner decides to suspend the licence – stating the period of suspension and informing the agent of the right of appeal under section 17N; and
- (e) informing the agent of the right of appeal under section 17N.

#### **17N Appeal**

- (1) If the Commissioner varies, cancels or suspends a licence under this Part, the agent may within 14 days of the date of the notice given to him or her under section 17M(2) appeal to the Court against the Commissioner's decision.
- (2) The appeal is to be by way of rehearing.
- (3) In determining an appeal, the Court:
  - (a) has all the powers of the Commissioner in determining whether to exercise the power to vary, suspend or cancel the licence the subject of the appeal; and
  - (b) may make the orders as to costs it considers appropriate.

#### **17P Disqualification resulting from cancellation or suspension of licence**

- (1) If the Commissioner suspends a licence under this Part and, on appeal (if any), the Court upheld the suspension, the agent under the licence must not during the period of suspension:
  - (a) carry on business as an agent; or
  - (b) be employed or otherwise engaged in the business of another agent.

Penalty: 500 penalty units.

- (2) If the Commissioner cancels a licence under this Part and, on appeal (if any), the Court upheld the cancellation, the person who was the agent under the licence is disqualified from holding a

licence for a period of 12 months from the date when the cancellation took effect.

- (3) A person who is disqualified from holding a licence under subsection (2) must not during the period of disqualification be employed or otherwise engaged in the business of an agent.

Penalty: 500 penalty units.

- (4) An agent must not employ or otherwise engage in the agent's business an agent whose licence has been suspended or a former agent whose licence has been cancelled during the period of disqualification referred to in subsection (1) or (2).

Penalty: 500 penalty units.

## **Part 5 Bonds for certain agents**

### **18 Lodgement of bond**

- (1) A commercial agent or a private bailiff shall ensure that at all times during the currency of his licence there is lodged with the Commissioner a bond in full force and effect in the prescribed form, accompanied by the prescribed security.
- (2) Notwithstanding subsection (1), an employee of a commercial agent or of a private bailiff or, where the commercial agent or the private bailiff is a corporation, a manager referred to in section 36(1), shall not be required to lodge a bond or security with the Commissioner in accordance with subsection (1).
- (3) An agent who ceases to be an employee or a manager shall not act as a commercial agent or a private bailiff unless he complies with subsection (1).
- (4) Where a commercial agent or private bailiff has not lodged with the Commissioner a bond in the prescribed form accompanied by the prescribed security or, a bond lodged by the commercial agent or private bailiff is not in full force and effect, he shall, for the purposes of this Act, be deemed not to be licensed for such period as a bond or security is not lodged or the bond is not in full force and effect.

### **19 Amount of bond**

The amount of a bond under this Part shall be:

- (a) where the agent is a corporation – \$2,000;



(b) where the agent is not a corporation and the agent proposes to carry on or carries on business as an agent in partnership with another person – \$1,500; and

(c) in all other cases – \$1,000.

## **20 Court may order additional security**

(1) If at any time during the currency of a commercial agent's licence or a private bailiff's licence the Commissioner determines that the bond required by this Act is not adequately secured, the holder of the licence shall furnish such security as the Commissioner may direct.

(2) Where the Commissioner makes a determination under subsection (1) that the bond is not adequately secured the person who would otherwise be the holder of the licence shall not be licensed for the purpose of this Act until such time as security in accordance with the Commissioner's determination is provided.

## **21 Cessation of partnership**

(1) Where an agent who has entered into a bond in order to carry on business under a partnership ceases to carry on business in partnership with another person, he shall, before commencing to carry on business in his own right, enter into a bond in the prescribed form in the sum of \$1,000.

(2) If an agent fails to enter into a bond in the prescribed form in the sum of \$1,000 within one month of ceasing to carry on business in partnership with another person, the licence for which he is required to enter into a bond shall lapse.

## **22 Return of security**

(1) Where an agent ceases to carry on business, he, or any person who lodged security in support of his bond, may apply to the Commissioner for the return of the security.

(2) The Commissioner may refuse to order the return of the security where it is satisfied that the security is still or may be in the future required.

# **Part 6 Trust accounts and prescribed records**

## **23 Moneys held on trust**

(1) Subject to this Act, all moneys received for or on behalf of a person by an agent shall be held by the agent exclusively for that person.

- (2) All moneys received by an agent on behalf of any person shall be paid into and held in a trust account in a bank, building society or credit union in the Northern Territory in the name of the agent.
- (3) An agent shall pay into his trust account any moneys required to be paid into that trust account within 2 working days of receipt of those moneys.
- (4) Where an agent receives money from a person upon whom he has served a summons or against whom he has executed a warrant, the agent shall immediately notify the Commissioner of the receipt of that money.
- (5) No moneys shall be paid out of an agent's trust account otherwise than to or as directed by the person on whose behalf the agent holds those moneys.

Penalty: 20 penalty units or imprisonment for 12 months.

#### **24 Moneys not liable for attachment**

- (1) Moneys held in an agent's trust account shall not be liable to be attached or taken in execution under an order or process of any court at the instance of any creditor other than a creditor of the person on whose behalf the moneys were received by the agent.
- (2) This section shall not be construed as preventing the removal of moneys from the trust account to satisfy a lawful claim or lien that the agent has upon those moneys.

#### **25 Prescribed records**

- (1) An agent shall keep or cause to be kept fully and correctly prescribed records and other prescribed documents in relation to the functions performed by him in his capacity as an agent.

Penalty: 50 penalty units.

- (1A) An offence against subsection (1) is a regulatory offence.

- (2) An agent shall not destroy, falsify or mutilate any record or other document kept in pursuance of subsection (1) or cause or permit any such record or other document to be destroyed, falsified or mutilated within the period of 5 years after it was made or to be removed from his possession during that period.

Penalty: 100 penalty units or imprisonment for 6 months.

**26 Inspection of prescribed records**

- (1) All prescribed records and other prescribed documents of an agent or a person who has ceased to be an agent shall at all reasonable times be open to inspection by the Commissioner or a member of the Northern Territory Police Force or by a person duly authorized in writing by the Commissioner to inspect those records or those other documents.
- (2) The Commissioner, a member of the Police Force or a person so authorized by the Commissioner may require an agent or, where the agent is a corporation, the person who manages the business of the corporation conducted in pursuance of the licence, or in the absence of that person, any person having apparent control of the business:
  - (a) to produce for inspection all or any prescribed records and other prescribed documents; and
  - (b) to furnish such other documents in his custody or control as may be reasonably required for the purpose of ascertaining whether there has been any contravention of, or failure to comply with, this Act or any other Act or law in connection with trust moneys.
- (3) The Commissioner, a member of the Police Force, or a person authorized to do so may take any copies or extracts from or make any notes concerning any records or other documents subject to inspection.
- (4) A person shall not:
  - (a) wilfully delay or obstruct any inspection under this section;
  - (b) wilfully mutilate or destroy, or in any way alter any record or other document to delay or obstruct any inspection under this section; or
  - (c) on demand refuse or fail to comply with a requirement duly made of him under this section.

Penalty: 100 penalty units or imprisonment for 6 months.

**27 Restriction on disposition of moneys**

- (1) The Commissioner may by notice in writing served upon a banker or other person having the custody or control of trust moneys affected by the provisions of this Part, restrict or prohibit any dealing in or disposition of those moneys.

- (2) A person who acts in contravention of an order under subsection (1) shall be guilty of an offence and liable to a penalty on being found guilty not exceeding 100 penalty units or imprisonment for 6 months.

## **28 Investigation of trust accounts**

- (1) If the Commissioner:
- (a) has considered a report of an investigation into the trust account of an agent; and
  - (b) is satisfied that the agent has received moneys for or on behalf of a person and has not properly accounted for those moneys in the agent's trust account,

the Commissioner may, by notice in writing to the manager or other principal officer of a bank, building society or credit union with which the agent has deposited any money in a trust account in his or her capacity as agent, direct that, until he or she revokes the notice, no moneys are to be drawn from the trust account without the Commissioner's consent.

- (2) The manager or other principal officer of a bank, building society or credit union receiving a notice referred to in subsection (1)(a) shall give effect to the direction of the Commissioner.

## **28A Audit**

- (1) The Commissioner may appoint a person to carry out an audit of the books, accounts, records and other documents of an agent that relate to the conduct of the agent's business.
- (2) The Commissioner must not appoint a person under subsection (1) unless he or she is satisfied that the person is suitably qualified or has suitable experience to enable him or her to conduct the audit.
- (3) In conducting an audit, the person:
- (a) is entitled at all reasonable times to full and free access to a licensee's books, accounts and records as necessary to complete the audit;
  - (b) may request the agent or the manager of a place where the agent is carrying on business to answer a question or to produce any document relating to the agent's records that is under his or her custody or control; and

- (c) may make copies of or take extracts from a book, account or record or other document to which the auditor has access or that is produced for the auditor.
- (4) The costs and expenses of the person carrying out the audit are payable by and recoverable from the agent.
- (5) A person must not hinder, obstruct or interfere with a person appointed under subsection (1) who is carrying out an audit in the proper manner.

Penalty: 100 penalty units or imprisonment for 12 months

## **29 Suspension of licences**

- (2) If a licence is suspended under this Act, the Commissioner shall cause a notice to be published in a newspaper circulating in the area where the agent carried on business in the Northern Territory fixing a date by which time any person having a claim against the trust account of the agent whose licence has been suspended shall lodge a claim form with the Commissioner.
- (3) Any person who fails to claim within the time specified in the advertisement published under subsection (2) shall not be entitled to share in the distribution of moneys payable from the trust account unless the Commissioner otherwise directs.
- (4) The Commissioner or some other person appointed by the Minister shall admit or reject proof of claims made against moneys in the trust account and no action shall lie against the Commissioner or a person so appointed for any decision made in good faith in relation to such claims.
- (5) If the moneys standing to the credit of the trust account are insufficient to satisfy the amount of all admitted claims the Commissioner shall make pro rata payments forthwith to the claimants and shall by notice in writing demand from the agent payment of the balance required to meet admitted claims.
- (6) Where the agent is unable to meet payment of those claims within 28 days of service of a notice under subsection (5) the Commissioner may call up the bond and any security lodged in support of the bond.
- (7) The cost of administering the trust account in accordance with this section shall be a debt due by the agent and shall be recoverable in a court of competent jurisdiction.

## **Part 7                      Employment, powers and duties of private bailiffs**

### **30                      Employment of private bailiff**

- (1) A private bailiff may be employed by a person or a legal practitioner acting for a person who is entitled to the issue of a warrant under the *Local Court Act* to execute that warrant.
- (2) Where a private bailiff is employed under sub-section (1) the person employing him shall inform a Registrar having jurisdiction in the area where the warrant was issued.
- (3) A Registrar who is notified in accordance with subsection (2) shall issue the warrant to the private bailiff so nominated.

### **31                      Nomination of private bailiff**

- (1) Where a person is entitled to the issue of a warrant of execution or arrest under the *Local Court Act* and has not nominated a private bailiff, a Registrar may require the person to nominate a private bailiff to execute that warrant.
- (2) In the event that the Registrar requires a person to nominate a private bailiff under subsection (1), the Registrar shall issue the warrant to the private bailiff.
- (3) Where a person fails to nominate a private bailiff after the Registrar has required the person to do so, the Registrar may appoint a private bailiff to execute the warrant.

### **32                      Private bailiff to accept warrant**

A private bailiff shall not without reasonable excuse refuse to accept a warrant of execution or arrest issued by a Registrar to him.

Penalty:            10 penalty units.

### **33                      Rights and powers of private bailiff**

- (1) Where a private bailiff is employed under section 30, the fees for service or execution payable under the *Local Court Regulations* shall not be payable to a Registrar by the person entitled to the issue of the warrant, and the private bailiff shall be entitled only to such amount as is agreed between the private bailiff and the person employing him.
- (1A) Where a private bailiff is employed under section 31, the fees payable under the *Local Court Regulations* shall be paid to a Registrar by the person entitled to the issue of the warrant, and the

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private bailiff shall, subject to the approval of a Registrar, be entitled to those fees.

- (4) A private bailiff is not an employee of the Northern Territory.
- (5) A private bailiff is, in the execution of a warrant issued to him under this Act and in respect of any money recovered under such a warrant, subject to the direction of a Registrar.

### **33A Recovery of costs on execution of warrant**

- (1) Subject to subsection (2) but notwithstanding section 33(1), a person employing a private bailiff may recover the fees for service or execution payable under the Local Court Regulations from the person against whom a warrant is executed.
- (2) When a person employing a private bailiff pays the private bailiff an amount exceeding the fees for service or execution payable under the Local Court Regulations, the person against whom a warrant is executed shall not be liable for the excess so paid.

## **Part 8 General**

### **34 Commissioner may waive or refund fee**

- (1) The Commissioner may, in a particular case, waive the whole or part of a fee payable under this Act.
- (2) The Commissioner may, in a particular case, refund the whole or a part of a fee that accompanies an application made under this Act.

### **38 Multiple licences**

A person may hold a number of licences of different categories simultaneously.

### **39 Employee to be licensed**

- (1) An agent shall not employ a person to act as a commercial agent, an inquiry agent, a process server or a private bailiff unless the person so employed holds a licence of the category which applies to the work for which he is employed.

Penalty: 5 penalty units.

- (2) An offence against subsection (1) is a regulatory offence

**40 Fees for agents**

No person shall be entitled to sue for, recover or retain any commission, fee, gain or reward for any service performed by him as an agent unless at the time of performing that service he was a holder of a licence of the category under which he performed the service.

**41 Rights not affected by licence**

A licence does not confer upon any person any power or authority to act in contravention of, or in disregard of any law or rights or privileges guaranteed or arising under or protected by any law.

**42 Offence to exceed power**

An agent shall not:

- (a) suggest or imply that by virtue of his licence he may exercise any power or authority which in fact he could not exercise if this Act had not been passed; or
- (b) use or attempt to use his licence to exercise any power or authority which he could not exercise if this Act had not been passed.

Penalty: 500 penalty units.

**43 Commercial agent to report on motor vehicles**

A commercial agent who takes possession of a motor vehicle that is subject to a hire purchase agreement, chattel mortgage or bill of sale:

- (a) shall as soon as practicable after taking possession of the motor vehicle inform a member of the Police Force on duty at the Police Station nearest to the place where he took possession of the vehicle; and
- (b) within 24 hours after taking possession of the motor vehicle, deliver or send by post to the officer in charge of the Police Station nearest to the commercial agent's registered address, written particulars in duplicate of the motor vehicle including particulars of the registered number of the motor vehicle.

Penalty: 20 penalty units.



**45 Civil remedies not affected**

Nothing in this Act shall affect any civil remedy that a person may have against an agent in respect of any matter.

**46 Offence by corporation**

- (1) Subject to this section, where an offence against a provision of this Act relating to an agent is committed by a corporation, then, in addition to any penalty to which the corporation is liable for that offence, the officers of the corporation shall be liable to the penalty provided by this Act in respect of the commission of that offence by an individual.
- (2) It is a defence for an officer subject to a prosecution under subsection (1) to establish that the offence was committed without his knowledge and that he used all due diligence to prevent the commission of the offence.

**46A Infringement notices**

- (1) The Commissioner or a person authorised by the Commissioner may serve on a person who has allegedly committed a prescribed offence against this Act a notice providing for the payment to the Commissioner of a prescribed amount instead of the penalty that may otherwise be imposed on being found guilty of committing the offence.
- (2) The notice served under subsection (1) is to:
  - (a) specify the name and, if not the same, business name, the address and, in the case of a natural person, the date of birth of the person who allegedly committed the offence;
  - (b) describe the offence and specify the provision of this Act that the person has allegedly contravened or failed to comply with;
  - (c) specify the date or approximate date when or period during which and the place where the offence was committed;
  - (d) specify the amount payable to the Commissioner;
  - (e) specify the period after the date of the service of the notice within which the person must pay the amount to the Commissioner, and the place where the payment should be made, to avoid prosecution in respect of the offence;

- (f) state that:
  - (i) in order to avoid prosecution in respect of the alleged commission of the offence the person may pay the amount specified in the notice to the Commissioner;
  - (ii) the payment of the amount is instead of the penalty by which the offence is otherwise punishable;
  - (iii) on payment of the amount the person will not be liable for a penalty or costs for the offence; and
  - (iv) if the person wishes to be dealt with by a court in relation to the offence, he or she should not pay the amount to the Commissioner; and
- (g) describe the procedures that apply if the person does not pay the amount to the Commissioner or wishes to be dealt with by a court.

#### **46B Service of notice, &c., on corporation**

Where, under this Act, a summons, notice, order or other document is required to be served on or delivered to a corporation, the summons, notice, order or document may be served on or delivered to the nominee appointed under section 10(1).

#### **47 Regulations**

The Administrator may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for the purpose of carrying out or giving effect to this Act.

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## ENDNOTES

### 1 KEY

Key to abbreviations

<b>amd</b> = amended	<b>od</b> = order
<b>bl</b> = by-law	<b>om</b> = omitted
<b>ch</b> = Chapter	<b>pt</b> = Part
<b>div</b> = Division	<b>r</b> = regulation/rule
<b>exp</b> = expires/expired	<b>renum</b> = renumbered
<b>f</b> = forms	<b>rep</b> = repealed
<b>Gaz</b> = <i>Gazette</i>	<b>s</b> = section
<b>hdg</b> = heading	<b>sch</b> = Schedule
<b>ins</b> = inserted	<b>sdiv</b> = Subdivision
<b>lt</b> = long title	<b>SL</b> = Subordinate Legislation
<b>N/C</b> = not commenced	<b>sub</b> = substituted

### 2 LIST OF LEGISLATION

***Commercial and Private Agents Licensing Act 1979 (Act No. 41, 1979)***

Assent date	27 April 1979
Commenced	12 September 1980 ( <i>Gaz</i> G37, 12 September 1980, p 2)

***Statute Law Revision (No. 3) 1979 (Act No. 37, 1980)***

Assent date	24 April 1980
Commenced	24 April 1980

***Commercial and Private Agents Licensing Amendment Act 1981 (Act No. 21, 1981)***

Assent date	25 March 1981
Commenced	25 March 1981

***Criminal Law (Regulatory Offences) Act 1983 (Act No. 68, 1983)***

Assent date	28 November 1983
Commenced	1 January 1984 (s 2, s 2 <i>Criminal Code Act 1983</i> (Act No. 47, 1983), <i>Gaz</i> G46, 18 November 1983, p 11 and <i>Gaz</i> G8, 26 February 1986, p 5)

***Law Officers Amendment Act (No. 2) 1986 (Act No. 48, 1986)***

Assent date	10 December 1986
Commenced	19 December 1986 ( <i>Gaz</i> S87, dated 17 December 1986)

***Statute Law Revision Act 1993 (Act No. 6, 1993)***

Assent date	18 March 1993
Commenced	18 March 1993

***Public Sector Employment and Management (Consequential Amendments) Act 1993 (Act No. 28, 1993)***

Assent date	30 June 1993
Commenced	1 July 1993 (s 2, s 2 <i>Public Sector Employment and Management Act 1993</i> (Act No. 11, 1993) and <i>Gaz</i> S53, 29 June 1993)

***Statute Law Revision Act (No. 2) 1993 (Act No. 70, 1993)***

Assent date	9 November 1993
Commenced	9 November 1993

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**Statute Law Revision Act 1994 (Act No. 50, 1994)**

Assent date 20 September 1994  
Commenced 20 September 1994

**Sentencing (Consequential Amendments) Act 1996 (Act No. 17, 1996)**

Assent date 19 April 1996  
Commenced 1 July 1996 (s 2, s 2 *Sentencing Act 1995* and *Gaz S15*, 13 June 1996)

**Financial Institutions (Miscellaneous Amendments) Act 1997 (Act No. 23, 1997)**

Assent date 2 June 1997  
Commenced 2 June 1997

**Territory Insurance Office (Miscellaneous Amendments) Act 1998 (Act No. 37, 1998)**

Assent date 27 May 1998  
Commenced 27 May 1998

**Statute Law Revision Act 2000 (Act No. 19, 2000)**

Assent date 6 June 2000  
Commenced s 6: 4 December 1999; rem: 12 July 2000 (*Gaz G27*, 12 July 2000, p 2)

**Commercial and Private Agents Licensing Amendment Act 2000 (Act No. 49, 2000)**

Assent date 1 November 2000  
Commenced 1 December 2001 (s 2)

### 3 SAVINGS AND TRANSITIONAL PROVISIONS

ss 6(2) and 17 *Commercial and Private Agents Licensing Amendment Act 2000* (Act No. 49, 2000)

### 4 LIST OF AMENDMENTS

s 3	amd No. 21, 1981, s 3; No. 37, 1998, s 3; No. 49, 2000, s 4
s 4	amd No. 21, 1981, s 4; No. 28, 1993, s 3; No. 50, 1994, s 3; No. 23, 1997, s 6
pt II hdg	sub No. 49, 2000, s 5
pt II	
div 1 hdg	ins No. 49, 2000, s 5
ss 5 – 6	sub No. 49, 2000, s 5
pt II	
div 2 hdg	ins No. 49, 2000, s 5
s 7	amd No. 21, 1981, s 5 sub No. 49, 2000, s 5
s 8	amd No. 21, 1981, s 6; No. 17, 1996, s 6 sub No. 49, 2000, s 5
s 9	amd No. 48, 1986, s 9 sub No. 49, 2000, s 5
s 10	amd No. 21, 1981, s 7 sub No. 49, 2000, s 5
s 11	amd No. 21, 1981, s 8; No. 48, 1986, s 9; No. 17, 1996, s 6 sub No. 49, 2000, s 5
s 12	amd No. 18, 2002, s 6 sub No. 49, 2000, s 5
ss 13 – 15	sub No. 49, 2000, s 5
s 16	amd No. 21, 1981, s 9; No. 48, 1986, s 9; No. 17, 1996, s 6; No. 19, 2000, s 9 sub No. 49, 2000, s 5

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s 17	amd No. 21, 1981, s 10 sub No. 49, 2000, s 5
ss 17A – 17B	ins No. 49, 2000, s 5
pt II	
div 3 hdg	ins No. 49, 2000, s 5
ss 17C – 17J	ins No. 49, 2000, s 5
pt III hdg	sub No. 49, 2000, s 5
ss 17K – 17P	ins No. 49, 2000, s 5
pt IV hdg	rep No. 49, 2000, s 5
s 18	sub No. 21, 1981, s 11 amd No. 49, 2000, s 6
s 19	sub No. 21, 1981, s 11
s 20	amd No. 49, 2000, s 16
s 22	amd No. 49, 2000, s 16
s 23	amd No. 21, 1981, s 12; No. 23, 1997, s 6; No. 49, 2000, s 16
s 25	amd No. 49, 2000, s 7
s 26	amd No. 49, 2000, s 16
s 27	amd No. 17, 1996, s 6; No. 49, 2000, s 16
s 28	amd No. 23, 1997, s 6; No. 49, 2000, s 8
s 28A	ins No. 49, 2000, s 9
s 29	amd No. 49, 2000, s 10
s 30	amd No. 21, 1981, s 13; No. 19, 2000, s 9; No. 49, 2000, s 16
s 31	amd No. 19, 2000, s 9; No. 49, 2000, s 16
s 32	amd No. 49, 2000, s 16
s 33	amd No. 37, 1980, s 5; No. 21, 1981, s 14; No. 6, 1993, s 8; No. 19, 2000, s 9; No. 49, 2000, s 11
s 33A	ins No. 21, 1981, s 15 amd No. 6, 1993, s 8; No. 19, 2000, s 9
s 34	sub No. 49, 2000, s 12
s 35	rep No. 49, 2000, s 12
s 36	amd No. 21, 1981, s 16 rep No. 49, 2000, s 12
s 37	rep No. 49, 2000, s 12
s 39	amd No. 49, 2000, s 13
ss 42 – 43	amd No. 49, 2000, s 16
s 44	rep No. 49, 2000, s 14
s 46AA	ins No. 68, 1983, s 105 amd No. 70, 1993, s 8 rep No. 49, 2000, s 15
s 46A	ins No. 21, 1981, s 17 sub No. 49, 2000, s 15
s 46B	ins No. 21, 1981, s 17