

NORTHERN TERRITORY OF AUSTRALIA
COMMERCIAL AND PRIVATE AGENTS LICENSING AMENDMENT ACT
2000

No. 49 of 2000

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SCHEDULE



NORTHERN TERRITORY OF AUSTRALIA

No. 49 of 2000

AN ACT

to amend the *Commercial and Private Agents Licensing Act*

[Assented to 1 November 2000]

[Second reading 15 August 2000]

The Legislative Assembly of the Northern Territory enacts as follows:

1. Short title

This Act may be cited as the *Commercial and Private Agents Licensing Amendment Act 2000*.

2. Commencement

This Act comes into operation on the date fixed by the Administrator by notice in the *Gazette*.

3. Principal Act

The *Commercial and Private Agents Licensing Act* is in this Act referred to as the Principal Act.

4. Interpretation

Section 3 of the Principal Act is amended—

- (a) by omitting "In this Act" and substituting "(1) In this Act";

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- (b) by inserting after the definition of "commercial agent" the following:
" 'Commissioner' has the same meaning as in the *Consumer Affairs and Fair Trading Act*";
- (c) by omitting the definition of "licence" and substituting the following:
" '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;"
- (d) by omitting "person." from the definition of "process server" and substituting "person;"
- (e) by inserting after the definition of "process server" the following:
" 'Registrar' has the same meaning as in the *Local Court Act*."; and
- (f) by adding at the end the following:
"(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."

5. Repeal and substitution

Parts 2, 3 and 4 of the Principal Act are repealed and the following substituted:

"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.

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"(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.

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"(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;

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- (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.

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- "(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

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- (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

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- (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."

6. Lodgement of bond

(1) Section 18 of the Principal Act is amended by omitting from subsections (1), (2) and (4) "Clerk of the Court" and substituting "Commissioner".

(2) On the commencement of this Act, a Registrar with whom a commercial agent or a private bailiff lodged a bond or prescribed security under Part 5 of the Principal Act as in force immediately before that commencement must give the bond or prescribed security to the Commissioner.

7. Prescribed records

Section 25 of the Principal Act is amended –

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- (a) by adding at the end of subsection (1) the following:
"Penalty: 50 penalty units.
"(1A) An offence against subsection (1) is a regulatory offence."; and
- (b) by omitting from subsection (2) "\$500" and substituting "100 penalty units".

8. Investigation of trust accounts

Section 28 of the Principal Act is amended –

- (a) by omitting subsection (1) and substituting the following:
"(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."; and

- (b) by omitting from subsection (2) "Minister" and substituting "Commissioner".

9. New section

The Principal Act is amended by inserting after section 28 the following:

"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 –

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- (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."

10. Suspension of licences

Section 29 of the Principal Act is amended –

- (a) by omitting subsection (1);
- (b) by omitting from subsection (2) all words before "shall cause" and substituting "If a licence is suspended under this Act, the Commissioner";
- (c) by omitting from subsection (2) "Clerk of Court" (second occurring) and substituting "Commissioner";
- (d) by omitting from subsection (3) "Court" and substituting "Commissioner";
- (e) by omitting from subsection (4) "Clerk of Court" (twice occurring) and substituting "Commissioner";
- (f) by omitting from subsection (4) "Minister" and substituting "Commissioner";
- (g) by omitting from subsection (5) "Clerk of Court" and substituting "Commissioner"; and
- (h) by omitting from subsection (6) "Minister" and substituting "Commissioner".

11. Rights and powers of private bailiff

Section 33 of the Principal Act is amended –

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- (a) by omitting from subsection (1) "the Clerk of the Court" and substituting "a Registrar";
- (b) by omitting from subsection (1A) "the Clerk of the Court" (twice occurring) and substituting "a Registrar";
- (c) by omitting from subsection (4) "within the meaning of section 7A of the *Compensation (Australian Government Employees) Act 1971* of the Commonwealth"; and
- (d) by omitting from subsection (5) "the Clerk of the Court" and substituting "a Registrar".

12. Repeal and substitution

Sections 34, 35, 36 and 37 of the Principal Act are repealed and the following substituted:

"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."

13. Employee to be licensed

Section 39 of the Principal Act is amended –

- (a) by omitting "An agent" and substituting "(1) An agent";
- (b) by omitting "\$500" and substituting "5 penalty units"; and
- (c) by adding at the end the following:

"(2) An offence against subsection (1) is a regulatory offence."

14. Repeal

Section 44 of the Principal Act is repealed.

15. Repeal and substitution

Sections 46AA and 46A of the Principal Act are repealed and the following substituted:

"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."

16. Further amendments

The Principal Act is amended as set out in the Schedule.

17. Transitional

(1) In this section, unless the contrary intention appears, "Principal Act" means the *Commercial and Private Agents Licensing Act* as amended by this Act.

(2) On the commencement of this Act, a licence in force immediately before that commencement is to be taken to have been granted for a term that expires 12 months after that commencement.

(3) If the holder of a licence referred to in subsection (1) intends to carry on business as an agent after the expiry of the licence, the holder of the licence must apply to renew the licence under and in accordance with section 17D of the Principal Act.

(4) If, on the commencement of this Act, an application for a licence made under section 7 of the Principal Act as in force before that commencement is not being or has not been heard by a magistrate, the application is to be taken to be, and is to be dealt with as if it were, an application for a licence made under the Principal Act and the Principal Act applies to and in relation to the application with the necessary changes.

(5) If, on the commencement of this Act, a matter arising or in process under section 16(1) of the Principal Act as in force before that commencement is not being or has not been heard by the Court, the matter is to be taken to be a matter referred to in section 17K(1)(a), (b) or (c) of the Principal Act and is to be instituted, continued or enforced under the Principal Act in the same manner as if it were such a matter and Part 3 of the Principal Act applies to and in relation to the matter with the necessary changes.

(6) If, on the commencement of this Act, the hearing of a matter arising under section 16(1) of the Principal Act as in force before the commencement of this Act is in process, the hearing is to be determined and the orders of the Court enforced in the same manner as if this Act had not commenced.

(7) An appeal arising or in process under section 17 of the Principal Act as in force before the commencement of this Act may be instituted or continued, and enforced, in the same manner as if this Act had not commenced.

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SCHEDULE

Section 16

Provision	Amendment	
	omit	substitute
Section 20(1)	"Court" (twice occurring)	"Commissioner"
Section 20(2)	"Court"	"Commissioner"
	"Court's order"	"Commissioner's determination"
Section 22(1) and (2)	"Court"	"Commissioner"
Section 23(4)	"Clerk of the Court"	"Commissioner"
Section 23(5)	"\$2,000"	"20 penalty units"
Section 26(1) and (2)	"Minister" (twice occurring)	"Commissioner"
Section 26(3)	"Minister"	"Commissioner"
Section 26(4)	"\$500"	"100 penalty units"
Section 27(1)	"Minister may by order"	"Commissioner may by notice"
Section 27(2)	"\$1,000"	"100 penalty units"
Section 30 (2) and (3)	"the Clerk of the Court"	"a Registrar"
Section 31(1)	"the Clerk of the Court"	"a Registrar"
Section 31(2) and (3)	"Clerk of the Court" (twice occurring)	"Registrar"
Section 32	"Clerk of the Court"	"Registrar"
	"\$200"	"10 penalty units"

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Section 42 "\$500" "500 penalty units"

Section 43 "\$500" "20 penalty units"
