



New South Wales

# Commercial Agents and Private Inquiry Agents Regulation 2017

under the

Commercial Agents and Private Inquiry Agents Act 2004

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Commercial Agents and Private Inquiry Agents Act 2004*.

TROY GRANT, MP  
Minister for Police

## Explanatory note

The object of this Regulation is to remake, with no significant changes, the provisions of the *Commercial Agents and Private Inquiry Agents Regulation 2006*, which is repealed on 1 September 2017 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation deals with, among other things, the following matters:

- (a) application procedures for master licences,
- (b) application procedures for operator licences,
- (c) other administrative provisions common to master licences and operator licences,
- (d) the regulation of business and activities carried out under master licences and operator licences,
- (e) other matters of a preliminary or miscellaneous nature.

This Regulation is made under the *Commercial Agents and Private Inquiry Agents Act 2004*, including section 39 (the general regulation-making power) and other provisions referred to in the Regulation.

This Regulation comprises or relates to matters set out in Schedule 3 to the *Subordinate Legislation Act 1989*, namely matters of a machinery nature and matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

## Contents

	Page
<b>Part 1 Preliminary</b>	
1 Name of Regulation	3
2 Commencement and repeal	3
3 Definitions	3
4 Meaning of “close associate”	4
5 Major and minor offences	4
<b>Part 2 Licences</b>	
<b>Division 1 Master licences</b>	
6 Applications for master licences: individuals	5
7 Applications for master licences: corporations	5
8 Application fees	5
9 Applications in relation to additional licensable activities	6
10 Certain persons not required to hold master licence	6
11 Condition as to periodic updating of registered particulars	7
12 Condition as to record-keeping	7
<b>Division 2 Operator licences</b>	
13 Applications for operator licences	7
14 Application fees	8
15 Applications in relation to additional licensable activities	8
16 Certain persons not required to hold operator licence	9
17 Condition as to collection of licence	9
18 Condition as to periodic updating of registered particulars	10
<b>Division 3 General</b>	
19 Investigation of licence application	10
20 Contravention of licence conditions	10
21 Licensee not to sell or dispose of licence	10
22 Surrender of licence	11
23 Notification of lost etc licences	11
24 Register of Licensees	11
<b>Part 3 Regulation of licensable activities</b>	
25 Licensees to give name and licence number to interested persons when conducting business by telephone	12
26 Debt collector to produce evidence of debt if requested	12
27 Records kept in relation to debt collection	12
<b>Part 4 Miscellaneous</b>	
28 Certificates of authority	13
29 Authorised inspectors	13
30 Savings	13
<b>Schedule 1 Penalty notice offences</b>	<b>14</b>

## Commercial Agents and Private Inquiry Agents Regulation 2017

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### Part 1 Preliminary

#### 1 Name of Regulation

This Regulation is the *Commercial Agents and Private Inquiry Agents Regulation 2017*.

#### 2 Commencement and repeal

This Regulation commences on 1 September 2017 and is required to be published on the NSW legislation website.

**Note.** This Regulation replaces the *Commercial Agents and Private Inquiry Agents Regulation 2006*, which is repealed on 1 September 2017 under section 10 (2) of the *Subordinate Legislation Act 1989*.

The *Commercial Agents and Private Inquiry Agents Act 2004* and this Regulation are repealed on the commencement of section 3 (1) of the *Fair Trading Amendment (Commercial Agents) Act 2016*.

#### 3 Definitions

(1) In this Regulation:

**approved form** means a form approved by the Commissioner.

**close associate**—see clause 4.

**licence number**, in relation to a licence, means the unique identifier included in the licence pursuant to section 20 of the *Licensing and Registration (Uniform Procedures) Act 2002*.

**licensable activity** means a commercial agent activity or a private inquiry agent activity.

**licensed operator** means a person who holds an operator licence.

**permanent Australian resident** means a person resident in Australia whose continued presence in Australia is not subject to any limitation as to time imposed by or in accordance with law.

**qualified accountant** means:

- (a) a Certified Practising Accountant member of CPA Australia, New South Wales Division, or
- (b) a member of Chartered Accountants Australia and New Zealand, New South Wales Branch, who holds a Certificate of Public Practice issued by that organisation, or
- (c) a member of the Institute of Public Accountants who holds a Professional Practice Certificate issued by that Institute.

*the Act* means the *Commercial Agents and Private Inquiry Agents Act 2004*.

**Note.** The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

- (2) Notes included in this Regulation do not form part of this Regulation.

#### 4 Meaning of “close associate”

- (1) For the purposes of this Regulation, a person is a *close associate* of an applicant for, or the holder of, a licence if the person:
- (a) holds or will hold any relevant financial interest, or is or will be entitled to exercise any relevant power (whether in his or her own right or on behalf of any other person), in the business of the licence applicant or holder, and by virtue of that interest or power is or will be able (in the opinion of the Commissioner) to exercise a significant influence over or with respect to the conduct of that business, or
  - (b) holds or will hold any relevant position, whether in his or her own right or on behalf of any other person, in the business of the licence applicant or holder.

- (2) In this clause:

*relevant financial interest*, in relation to a business, means:

- (a) any share in the capital of the business, or
- (b) any entitlement to receive any income derived from the business, whether the entitlement arises at law or in equity or otherwise.

*relevant position* means:

- (a) the position of director or manager, or
  - (b) any other executive position,
- however those positions are designated.

*relevant power* means any power, whether exercisable by voting or otherwise and whether exercisable alone or in association with others:

- (a) to participate in any directorial, managerial or executive decision, or
- (b) to elect or appoint any person to any relevant position.

#### 5 Major and minor offences

- (1) Each of the following offences is declared to be a *major offence* for the purposes of the Act:
- (a) an offence under Division 10, 10A, 14, 14A or 15 of Part 3 of the *Crimes Act 1900*,
  - (b) an offence under former section 93IK, 545AB or 562AB of the *Crimes Act 1900*,
  - (c) an offence under section 93T or 351A of the *Crimes Act 1900*,
  - (d) an offence under section 13 of the *Crimes (Domestic and Personal Violence) Act 2007*.
- (2) An offence under former section 18Q, 18R, 18S or 18T of the *Privacy Act 1988* of the Commonwealth is declared to be a *minor offence* for the purposes of the Act.

## Part 2 Licences

### Division 1 Master licences

#### 6 Applications for master licences: individuals

An application for a master licence that is made by an individual must be in the approved form, and must include the following information:

- (a) the name, date and place of birth and residential address of:
  - (i) the individual, and
  - (ii) each of the individual's close associates,
- (b) if the individual is not a permanent Australian resident, information establishing the basis on which the individual is permitted to work in Australia,
- (c) the individual's business address,
- (d) any business name, within the meaning of the *Business Names Registration Act 2011* of the Commonwealth, under which the individual carries on business,
- (e) the licensable activities in respect of which the individual proposes to carry on business under the master licence,
- (f) information establishing that the individual satisfies the requirements referred to in section 7 (2) (c) of the Act,
- (g) if the individual is applying for the renewal of an existing master licence, the licence number of the existing licence.

**Note.** See also the requirements of section 12 of the *Licensing and Registration (Uniform Procedures) Act 2002*.

#### 7 Applications for master licences: corporations

An application for a master licence that is made by a corporation must be in the approved form, and must include the following information:

- (a) the name of the corporation,
- (b) the name, date and place of birth and residential address of each of the corporation's close associates,
- (c) the address of the corporation's registered office and, if that address is not the address of its principal place of business, the address of its principal place of business,
- (d) any business name, within the meaning of the *Business Names Registration Act 2011* of the Commonwealth, under which the corporation carries on business,
- (e) the licensable activities in respect of which the corporation proposes to carry on business under the master licence,
- (f) if the corporation is applying for the renewal of an existing master licence, the licence number of the existing licence.

**Note.** See also the requirements of section 12 of the *Licensing and Registration (Uniform Procedures) Act 2002*.

#### 8 Application fees

- (1) The fees for an application for the granting, renewal or restoration of a master licence, regardless of the number of licensable activities to which it relates, are as follows:

- (a) \$480 for a licence for a licensee employing no licensed operators (a ***Class 1 licence***),
  - (b) \$910 for a licence for a licensee employing one or more, but not more than 10, licensed operators (a ***Class 2 licence***),
  - (c) \$1,940 for a licence for a licensee employing more than 10 licensed operators (a ***Class 3 licence***).
- (2) The fees for an application for the amendment of a master licence are as follows:
- (a) \$430 for an amendment that would change a Class 1 licence to a Class 2 licence,
  - (b) \$1,030 for an amendment that would change a Class 2 licence to a Class 3 licence,
  - (c) \$1,460 for an amendment that would change a Class 1 licence to a Class 3 licence,
  - (d) \$80 for any other amendment.
- (3) Of each fee prescribed by subclause (1) or (2) (a)–(c), \$65 is a processing fee for the purposes of Part 2 of the *Licensing and Registration (Uniform Procedures) Act 2002*.
- (4) The whole of the fee prescribed by subclause (2) (d) is a processing fee for the purposes of Part 2 of the *Licensing and Registration (Uniform Procedures) Act 2002*.
- (5) The fee for an application for the replacement of a master licence is \$65, of which the whole amount is a processing fee for the purposes of Part 2 of the *Licensing and Registration (Uniform Procedures) Act 2002*.

#### **9 Applications in relation to additional licensable activities**

An application by the holder of an existing master licence for a licence to carry on business in relation to a licensable activity not covered by the existing licence is taken to be an application for the amendment of the existing licence, and is to be dealt with accordingly.

#### **10 Certain persons not required to hold master licence**

- (1) For the purposes of section 5 (2) (b) of the Act, each of the following classes of persons is declared to be a class of persons to whom section 5 of the Act does not apply:
- (a) any subsidiary of a corporation, but only in relation to licensable activities carried out solely on behalf of the corporation,
  - (b) any corporation that has a subsidiary, but only in relation to licensable activities carried out by the subsidiary on behalf of persons other than the corporation,
  - (c) any authorised deposit-taking institution,
  - (d) any qualified accountant,
  - (e) any corporation that carries on a business of providing accounting services,
  - (f) any incorporated legal practice,
  - (g) any agent of:
    - (i) any insurance company referred to in Schedule 1 to the Act, or
    - (ii) any person carrying on the business of an insurance loss adjuster referred to in Schedule 1 to the Act, or

- (iii) any authorised deposit-taking institution referred to in Schedule 1 to the Act,  
but only in relation to licensable activities carried out solely on behalf of that company, person or institution,
  - (h) ASX Operations Pty Ltd (ACN 004 523 782),
  - (i) any person carrying on investigations relating to disciplinary matters or workplace grievances or other investigations of a similar nature on behalf of an agency that comprises the whole or part of a government sector agency within the meaning of the *Government Sector Employment Act 2013*,
  - (j) any person providing an employment placement service (within the meaning of section 48 of the *Fair Trading Act 1987*).
- (2) In subclause (1) (a), **subsidiary**, in relation to a corporation, means any corporation that is a related body corporate, within the meaning of the *Corporations Act 2001* of the Commonwealth, in relation to the corporation.
- Note.** The carrying out of a licensable activity by the subsidiary of a corporation will not require the subsidiary to hold a master licence where the corporation is the client (subclause (1) (a)). However, the carrying out of a licensable activity by the subsidiary of a corporation will require the subsidiary, but not the corporation, to hold a master licence where a third party is the client (subclause (1) (b)).

#### 11 Condition as to periodic updating of registered particulars

It is a condition of each master licence that any notice of changed particulars under section 24 of the *Licensing and Registration (Uniform Procedures) Act 2002* must be accompanied by a notification fee of \$65 if the change being notified concerns a particular that is included in the licence.

**Note.** Any such change will result in the issue of a replacement licence with updated particulars.

#### 12 Condition as to record-keeping

It is a condition of each master licence for an activity that the licensee must keep a record of:

- (a) the name, residential address and licence number of each of the licensee's employees who is a licensed operator for that activity, and
- (b) in relation to each occasion on which the licensee is engaged to carry out that activity:
  - (i) the name and address of the person by whom the licensee was engaged, and
  - (ii) the nature of the work carried out pursuant to that engagement, and
  - (iii) the name of the person by whom that work was carried out.

### Division 2 Operator licences

#### 13 Applications for operator licences

An application for an operator licence must be in the approved form, and must include the following information:

- (a) the individual's name, date and place of birth and residential address,
- (b) if known, the business address of the person or persons by whom the individual is, or is to be, employed to carry out licensable activities under the operator licence,

- (c) if the individual is not a permanent Australian resident, information establishing the basis on which the individual is permitted to work in Australia,
- (d) the licensable activities that the individual proposes to carry out under the operator licence,
- (e) information establishing that the individual satisfies the requirements referred to in section 13 (2) (c) of the Act,
- (f) if the individual is applying for the renewal of an existing operator licence, the licence number of the existing licence.

**Note.** See also the requirements of section 12 of the *Licensing and Registration (Uniform Procedures) Act 2002*.

#### 14 Application fees

- (1) The fees for an application for the granting, renewal or restoration of an operator licence, regardless of the number of licensable activities to which it relates, are as follows:
  - (a) \$130 for a licence for 1 year,
  - (b) \$480 for a licence for 5 years.
- (2) Of each fee prescribed by subclause (1), \$65 is a processing fee for the purposes of Part 2 of the *Licensing and Registration (Uniform Procedures) Act 2002*.
- (3) The fee for an application for the amendment of an operator licence, regardless of the number of licensable activities to which it relates, is \$80, of which the whole amount is a processing fee for the purposes of Part 2 of the *Licensing and Registration (Uniform Procedures) Act 2002*.
- (4) The fee for an application for the replacement of an operator licence, regardless of the number of licensable activities to which it relates, is \$65, of which the whole amount is a processing fee for the purposes of Part 2 of the *Licensing and Registration (Uniform Procedures) Act 2002*.
- (5) Despite subclauses (1)–(4), no fee is payable in relation to an application by an individual for the granting, renewal, restoration, amendment or replacement of an operator licence if the application is made together with:
  - (a) a similar application by that individual for the granting, renewal, restoration, amendment or replacement of a master licence, or
  - (b) a similar application by a proprietary company (within the meaning of the *Corporations Act 2001* of the Commonwealth) for the granting, renewal, restoration, amendment or replacement of a master licence so long as:
    - (i) the company employs only that individual to carry out commercial agent activities or private inquiry agent activities, and
    - (ii) the individual is a director of the company and any other director of the company is the spouse or de facto partner, parent, sibling, son or daughter of the individual.

**Note.** “De facto partner” is defined in section 21C of the *Interpretation Act 1987*.

#### 15 Applications in relation to additional licensable activities

An application by the holder of an existing operator licence for a licence to carry out a licensable activity not covered by the existing licence is taken to be an application for the amendment of the existing licence, and is to be dealt with accordingly.



## 16 Certain persons not required to hold operator licence

- (1) For the purposes of section 11 (3) (b) of the Act, each of the following classes of individuals is declared to be a class of individuals to whom section 11 of the Act does not apply:
- (a) any employee of a subsidiary of a corporation, but only in relation to licensable activities carried out solely on behalf of the corporation,
  - (b) any employee of an authorised deposit-taking institution,
  - (c) any qualified accountant,
  - (d) any agent, and any employee of an agent, of:
    - (i) any insurance company referred to in Schedule 1 to the Act, or
    - (ii) any person carrying on the business of an insurance loss adjuster referred to in Schedule 1 to the Act, or
    - (iii) any authorised deposit-taking institution referred to in Schedule 1 to the Act,but only in relation to licensable activities carried out solely on behalf of that company, person or institution,
  - (e) any employee of ASX Operations Pty Ltd (ACN 004 523 782),
  - (f) any person carrying on investigations relating to disciplinary matters or workplace grievances or other investigations of a similar nature on behalf of an agency that comprises the whole or part of a government sector service within the meaning of the *Government Sector Employment Act 2013*,
  - (g) any person providing an employment placement service (within the meaning of section 48 of the *Fair Trading Act 1987*).
- (2) In subclause (1) (a), **subsidiary**, in relation to a corporation, means any corporation that is a related body corporate, within the meaning of the *Corporations Act 2001* of the Commonwealth, in relation to the corporation.
- Note.** The carrying out of a licensable activity by the subsidiary of a corporation will not require an employee of the subsidiary to hold an operator licence where the corporation is the client (subclause (1) (a)).

## 17 Condition as to collection of licence

- (1) It is a condition of the Commissioner's decision under section 18 of the *Licensing and Registration (Uniform Procedures) Act 2002* to grant an operator licence that the licence must be collected, within 60 days after the date on which notice of the Commissioner's decision on the application for the licence is served on the applicant under section 19 of that Act, from the location specified in the notice for that purpose.
- (2) If an operator licence is not collected within the period referred to in subclause (1), the Commissioner's decision is taken, on and from the end of that period, to be a decision to refuse the application.
- (3) For the purposes of section 3 of the *Licensing and Registration (Uniform Procedures) Act 2002*, Part 2 of that Act is modified in relation to a decision arising under subclause (2) so as:
- (a) not to require the Commissioner to notify that decision under section 19 of that Act, and
  - (b) not to entitle the applicant for the licence to apply for a review of that decision under section 23 of that Act.

**Note.** in such circumstances, the applicant is entitled to a refund under section 22 of the *Licensing and Registration (Uniform Procedures) Act 2002*.

### **18 Condition as to periodic updating of registered particulars**

- (1) It is a condition of each operator licence that any notice of changed particulars under section 24 of the *Licensing and Registration (Uniform Procedures) Act 2002* must be accompanied by a notification fee of \$65 if the change being notified concerns a particular that is included in the licence.
- (2) Only one such fee is payable in respect of the change by a licensee who holds both a master licence and an operator licence.  
**Note.** Any such change will result in the issue of a replacement licence with updated particulars.

## **Division 3 General**

### **19 Investigation of licence application**

- (1) On receiving an application for a licence, the Commissioner may carry out all such investigations and inquiries as the Commissioner considers necessary to enable the Commissioner to consider the application properly.
- (2) In the case of an application made by an individual, the Commissioner:
  - (a) may require the applicant to do any one or more of the following for the purpose of confirming the applicant's identity:
    - (i) to provide the Commissioner with a photograph of the applicant,
    - (ii) to consent to having his or her photograph taken by an authorised officer,
    - (iii) to consent to having his or her fingerprints taken by an authorised officer, and
  - (b) must refuse to grant the licence unless the applicant has complied with any such requirement.
- (3) Any application for a licence made by any person who was at any time a police officer or a member of the police force of any other jurisdiction (whether in Australia or overseas) must be referred to the Professional Standards Command within the NSW Police Force, which may seek further advice from the Law Enforcement Conduct Commission as to the suitability of the applicant to hold a licence.
- (4) In this clause, **authorised officer** means any of the following persons authorised in writing by the Commissioner as an authorised officer for the purposes of this clause:
  - (a) any police officer or other person employed within the NSW Police Force,
  - (b) any Public Service employee.

### **20 Contravention of licence conditions**

A licensee must not contravene any condition of the licence.  
Maximum penalty: 50 penalty units.

### **21 Licensee not to sell or dispose of licence**

A licensee must not:

- (a) sell, dispose of, deliver, let out, hire or rent the licence to any other person, or
- (b) permit any other person to use the licence.

Maximum penalty: 50 penalty units.

## **22 Surrender of licence**

- (1) A licence that is suspended or cancelled must be immediately surrendered as follows:
  - (a) if the notice of suspension or cancellation is handed to the licensee by a police officer, the person must immediately give the licence to the police officer,
  - (b) if the notice of suspension or cancellation is served on the licensee otherwise than as referred to in paragraph (a), the licensee must immediately deliver the licence to the Commissioner.

Maximum penalty: 50 penalty units.

- (2) For the purposes of this clause, a licence is taken to have been delivered to the Commissioner if it has been handed over to a police officer at a police station or has been sent to the Security Licensing and Enforcement Directorate, NSW Police Force by registered post.

## **23 Notification of lost etc licences**

- (1) Within 7 days after becoming aware that his or her licence has been lost, stolen, destroyed, defaced or mutilated, a licensee must notify the Commissioner of that occurrence.

Maximum penalty: 5 penalty units.

- (2) For the purposes of this clause, the Commissioner is taken to have been notified of the occurrence if:
  - (a) written notice of the occurrence has been sent by post to the Commissioner, or
  - (b) oral notice of the occurrence has been given, either in person or by telephone, to a police officer at a police station.

## **24 Register of Licensees**

The following particulars are to be recorded in the Register of Licensees in respect of each master licence and operator licence issued under the Act:

- (a) the name of the licensee,
- (b) the nature of the licence,
- (c) the date on which the licence expires,
- (d) any conditions that the Commissioner has imposed on the licence,
- (e) the licence number of the licence.

## Part 3 Regulation of licensable activities

### 25 Licensees to give name and licence number to interested persons when conducting business by telephone

(1) A licensee who is carrying on business under a master licence by telephone, or carrying out licensable activities under an operator licence by telephone, must advise an interested person to whom he or she is speaking, at the beginning of the licensee's first telephone call to that person and whenever asked during that or any subsequent telephone call, of the following:

- (a) his or her name and licence number,
- (b) the purpose of the call.

Maximum penalty: 50 penalty units.

(2) In this clause:

*interested person* means:

- (a) if the telephone call relates to debt collection—the debtor, or
- (b) if the telephone call relates to the investigation of a person—the person being investigated, or
- (c) if the telephone call relates to the service of process—the person on whom legal process is to be served, or
- (d) if the telephone call relates to the repossession of goods—the person who is holding the goods.

*telephone* includes any person to person audio or audio-visual electronic communication.

### 26 Debt collector to produce evidence of debt if requested

A licensee under a licence for debt collection who is requesting, demanding or collecting money due under a debt must, on demand by the debtor, provide the debtor with:

- (a) documentary evidence of the debt, or
- (b) the creditor's contact details.

Maximum penalty: 50 penalty units.

### 27 Records kept in relation to debt collection

(1) The records that clause 11 of Schedule 2 to the Act requires to be kept in relation to debt collection:

- (a) must be kept in the English language, and
- (b) may be kept in a computer or on paper.

(2) Computer records are to be backed up at intervals of no more than 1 month.

(3) The most recent back-up of computer records must be kept as far from the computer as is reasonably necessary to ensure that an incident affecting the computer will not affect the back-up.

(4) The holder of a master licence for debt collection must ensure that the requirements of this clause are complied with.

Maximum penalty: 100 penalty units.

## Part 4 Miscellaneous

### 28 Certificates of authority

- (1) For the purposes of section 32 of the Act, an authorised inspector's certificate of authority is to be in the form of an identity card that bears a photograph of the inspector and includes the following particulars:
  - (a) the inspector's name,
  - (b) the nature of the inspector's powers under the Act,
  - (c) the date on which the certificate expires,
  - (d) a statement that the certificate is issued under the Act.
- (2) Police officers are exempt from the operation of section 32 (1) (a) of the Act.

**Note.** Police officers are therefore not required to be in possession of a certificate of authority when exercising the powers conferred on an authorised inspector by Division 2 of Part 4 of the Act.
- (3) An authorised inspector who enters premises in the exercise of any power under Division 2 of Part 4 of the Act must, on demand, produce his or her certificate of authority for inspection by any person who appears to be in charge of the premises.  
Maximum penalty: 50 penalty units.

### 29 Authorised inspectors

Persons employed within the NSW Police Force, otherwise than as police officers, comprise a class of persons from whom authorised inspectors may be appointed under section 35 of the Act.

**Note.** Police officers are authorised inspectors by virtue of the definition of **authorised inspector** in section 4 (1) of the Act.

### 30 Savings

Any act, matter or thing that, immediately before the repeal of the *Commercial Agents and Private Inquiry Agents Regulation 2006*, had effect under that Regulation continues to have effect under this Regulation.

## Schedule 1 Penalty notice offences

For the purposes of section 28 of the Act:

- (a) each offence specified in this Schedule is an offence for which a penalty notice may be issued, and
- (b) the amount payable under any such penalty notice is the amount specified in this Schedule for the offence.

<b>Column 1</b>	<b>Column 2</b>
<b>Provision</b>	<b>Penalty</b>
<b>Commercial Agents and Private Inquiry Agents Act 2004</b>	
Section 26	\$550
Section 30 (2)	\$1,100
Schedule 2, clause 2 (4)	\$1,100
Schedule 2, clause 4	\$1,100
Schedule 2, clause 8 (6)	\$550
Schedule 2, clause 11 (6)	\$550
Schedule 2, clause 14 (offence by a corporation)	\$1,100
Schedule 2, clause 14 (offence by an individual)	\$550
Schedule 2, clause 16	\$1,100
Schedule 2, clause 33 (1)	\$1,100
Schedule 2, clause 51 (2)	\$550
<b>Commercial Agents and Private Inquiry Agents Regulation 2017</b>	
Clause 20	\$550
Clause 21	\$550
Clause 22 (1)	\$550
Clause 27 (4)	\$1,100

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