

Commercial Agents and Private Inquiry Agents Regulation 2000

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New South Wales

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New South Wales

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Commercial Agents and Private Inquiry Agents Regulation 2000



New South Wales

Part 1 Preliminary

Note—

This Regulation replaces the *Commercial Agents and Private Inquiry Agents Regulation 1995* which is repealed on 1 September 2000 under section 10 (2) of the *Subordinate Legislation Act 1989*.

1 Name of Regulation

This Regulation is the *Commercial Agents and Private Inquiry Agents Regulation 2000*.

2 Commencement

This Regulation commences on 1 September 2000.

3 Definitions

(1) In this Regulation:

agent means a commercial agent or a private inquiry agent.

the Act means the *Commercial Agents and Private Inquiry Agents Act 1963*.

(2) In this Regulation, a reference to a Form is a reference to a Form set out in Schedule 1.

(3) The explanatory note, table of contents and notes in the text of this Regulation do not form part of this Regulation.

Part 2 Exemptions

4 Licence holder under another Act

The class of persons consisting of each person:

- (a) who, because the person exercises a function or carries on a business, is required to hold and holds a licence under an Act other than the *Commercial Agents and Private Inquiry Agents Act 1963*, and

(b) who, but for this clause, would be required to hold a licence under the latter Act because the person exercises the function or carries on the business,

is exempt from the requirement to hold a licence under the latter Act.

5 Written records

A licensed agent who carries on business at 2 or more places of business, and who keeps written records at each place of business in connection with business transacted at that place, is exempt from the requirement under section 33 (1) of the Act to keep written records at his or her registered address.

6 Bailiffs

A person appointed under the *District Court Act 1973* or the *Local Courts (Civil Claims) Act 1970* to act as a bailiff is exempt, while so acting, from the requirement to hold a licence as a commercial agent or subagent.

7 Industrial organisations

An industrial organisation within the meaning of the *Industrial Relations Act 1996* is exempt from all provisions of the Act other than section 29.

Part 3 Licences

8 Form of licences

For the purposes of section 9 (1) of the Act:

- (a) the prescribed form of licence for a natural person is Form 1, and
- (b) the prescribed form of licence for a corporation is Form 2.

9 Applications for licences

(1) For the purposes of section 10 (1) of the Act:

- (a) the prescribed form of application for a commercial agent's or private inquiry agent's licence is Form 3, and
- (b) the prescribed form of application for a subagent's licence is Form 4.

(2) An application for a subagent's licence must be signed:

- (a) by the agent for whom the applicant is or acts as a subagent, or
- (b) if the agent is a corporation, by a director of the corporation.

(3) For the purposes of section 10 (9) (b) of the Act, the prescribed form of notice of objection is Form 5.

- (4) The application fees payable for the issue or renewal of licences under the Act are as set out in the Table to this clause.

Table

Licence	Fee
Commercial agent's licence	\$55
Private inquiry agent's licence	\$55
Subagent's licence	\$15
Duplicate licence	\$5

10 Prescribed experience

- (1) For the purposes of section 10 (6) (a) (iii) of the Act, in relation to a natural person applying for a commercial agent's licence:
- (a) the prescribed experience is having been a licensed subagent for a continuous period of at least 12 months, and
 - (b) the prescribed qualification is a certificate in Commercial Agency Practice issued by the TAFE Commission.
- (2) For the purposes of section 10 (6) (a) (iii) of the Act, in relation to a natural person applying for a private inquiry agent's licence:
- (a) the prescribed experience is having been a licensed subagent for a continuous period of at least 12 months, and
 - (b) the prescribed qualification is a certificate in Private Agency Practice issued by the TAFE Commission.

11 Ceasing to be or to act as subagent

- (1) Within 14 days after a licensed subagent ceases to be or to act as a subagent for an agent, the agent must give written notice of that fact to the Clerk of the Local Court from which the subagent's licence was issued or renewed.
- Maximum penalty: 10 penalty units (in the case of a corporation) and 2 penalty units (in any other case).
- (2) Within 14 days after a licensed subagent ceases to be or to act as a subagent, the subagent must return his or her licence to the Clerk of the Local Court from which the licence was issued or renewed.
- Maximum penalty: 2 penalty units.

Part 4 Miscellaneous

12 Perusal of register

For the purposes of section 15 of the Act, the fee for perusal of the register of licences under the Act is \$13.

13 Audit of accounts

- (1) For the purposes of section 32A (3) (a) of the Act, a person is qualified to audit books, papers, accounts and other documents if the person is a registered company auditor within the meaning of the *Corporations Act 2001* of the Commonwealth.
- (2) For the purposes of section 32A (5) of the Act, the prescribed certificate is a certificate in Form 6.

14 Written records

- (1) For the purposes of section 33 of the Act, all written records made by a licensed agent under that section must be kept:
 - (a) in book form, or
 - (b) on the loose-leaf principle, or
 - (c) in a system of cards.
- (2) For the purposes of section 33 of the Act, written records must be made:
 - (a) in the case of the receipt of money, within 7 days after the date of receipt of the money, and
 - (b) in any other case, within 14 days after the event to which the record relates.

15 Statements of account

- (1) For the purposes of section 33A (1) of the Act, the prescribed time for furnishing a statement showing the balance of money standing to the credit of a person as at 30 June in any year is not later than 31 July in that year.
- (2) For the purposes of section 33A (2) of the Act:
 - (a) the prescribed manner for the making of a request for an itemised account is to make the request in writing, and
 - (b) the prescribed manner of rendering an itemised account of a transaction is by rendering a written account to the person who made the request.

16 Fidelity bonds

- (1) The fidelity bond required to be lodged prior to the issue by the Clerk of a Local Court

of a commercial agent's licence must be in Form 7.

(2) For the purposes of section 35 (2) (a) of the Act, the sum of \$20,000 is prescribed.

17 Action on fidelity bonds

For the purposes of section 37A (1) of the Act, an application to the Minister is made in the prescribed manner if it is made in writing and lodged at the office of the Minister.

18 Notification to Commissioner

For the purposes of section 42 of the Act, any police officer who is of or above the rank of sergeant, and who is attached to the Licensing Enforcement Agency within the Police Service, is a prescribed officer.

19 General savings provision

Any act, matter or thing that, immediately before the repeal of the *Commercial Agents and Private Inquiry Agents Regulation 1995*, had effect under that Regulation continues to have effect under this Regulation.

Schedule 1 Forms

Form 1

(Clause 8)

Licence

(Commercial Agents and Private Inquiry Agents Act 1963)

LICENCE No

(insert photograph here)

SURNAME:

GIVEN NAMES:

SIGNATURE:

BUSINESS ADDRESS:

RESIDENTIAL ADDRESS:

(If the same as the business address, state "as above")

The above person is licensed under the *Commercial Agents and Private Inquiry Agents Act 1963* and holds the class of licence noted below.

.....
(expiry date)

.....
(class of licence)

Form 2

(Clause 8)

Licence

(Commercial Agents and Private Inquiry Agents Act 1963)

LICENCE No

NAME:

SIGNATURE OF DIRECTOR:

SOLE OR PRINCIPAL PLACE OF BUSINESS:

The above corporation is licensed under the *Commercial Agents and Private Inquiry Agents Act 1963* and holds the class of licence noted below.

.....
(expiry date)

.....
(class of licence)

Form 3

(Clause 9)

Application for licence

(Commercial Agents and Private Inquiry Agents Act 1963)

To the Local Court
at**

I, of

(full name)

(place of living or registered office of corporation)

apply for *(renewal of) *Commercial Agent's Licence

Private Inquiry Agent's Licence

1. My place of business is situated at

2. My registered address will be

*3. My current licence No issued at
will expire on

Dated at this day of

.....(signature of applicant or signature of director, if corporation)

NOTE—

Photographs are required when an application is made by a natural person for a licence. The photographs submitted must meet the following requirements:

(a) Three identical colour photographs not more than 2 months old.

(b) Size 45 × 35 mm.

(c) Full front view of head and shoulders (without head covering or sun/tinted glasses) against a blank background.

(d) Dark backgrounds, fading or heat sensitive photographs are not acceptable.

* Strike out the inappropriate word or words.

** If the applicant resides (or, in the case of a corporation, is registered), in New South Wales, the application must be lodged with the Registrar of the Local Court district within which the applicant proposes to carry on business or, if there is more than

one such Court, with the Registrar of the Local Court nearest to the place where the applicant proposes to carry on business. If the applicant resides (or, in the case of a corporation, is registered), out of New South Wales, the application may be lodged with the Registrar of any Local Court.

Form 4

(Clause 9)

Application for licence

(Commercial Agents and Private Inquiry Agents Act 1963)

To the Local Court
at**

I, of in the State of
(full name) *(place of living)*

apply for *(renewal of) *Commercial Agent's Licence
Private Inquiry Agent's Licence
Subagent's Licence

- 1. My place of business is situated at
- 2. My registered address will be
- 3. I am an employee of
(full name of employer)
a licensed *Commercial Agent *Private Inquiry Agent whose place of business is
- 4. My current licence No issued at
will expire on

Dated at this day of 20 .

.....*(signature of applicant)*

.....*Signature of licensed commercial/private inquiry agent with whom the applicant will be in direct employ, or acting for or by arrangement with.*

.....
(full name of licensed commercial/private inquiry agent)
.....
(place of business of licensed commercial/private inquiry agent)

NOTE—

Photographs are required when an application is made for a licence. The photographs submitted must meet the following requirements:

- (a) Three identical colour photographs not more than two months old.
- (b) Size 45 × 35 mm.
- (c) Full front view of head and shoulders (without head covering or sun/tinted glasses) against a blank background.
- (d) Dark backgrounds, fading or heat sensitive photographs are not acceptable.

* Strike out the inappropriate word or words.

** If the applicant resides (or, in the case of a corporation, is registered), in New South Wales, the application must be lodged with the Clerk of the Local Court district within which the applicant proposes to carry on business or, if there is more than one such Court, with the Clerk of the Local Court nearest to the place where the applicant proposes to carry on business.

Form 5

(Clause 9)

Notice of objection to grant of licence

(Commercial Agents and Private Inquiry Agents Act 1963)

WHEREAS the Officer in Charge of Police at proposes to object to the grant of your application on the following grounds:

- 1.
- 2.

TAKE NOTICE that your application will be heard by the Local Court at on the day of

Issued on

(date)

.....Registrar of the Local Court.

TO of

(full name of applicant)

(place of living or registered office of corporation)

and* of

* If the application is for a subagent's licence, the person specified in the application as the employer of the applicant must also be notified.

Form 6

(Clause 13)

Auditor's certificate

(Commercial Agents and Private Inquiry Agents Act 1963)

Name of licensee:

- 1. I am a registered company auditor within the meaning of the *Corporations Act 2001* of the Commonwealth.
- 2. I have inspected the books, papers, accounts and other documents which the licensee has produced to me in connection with money held:
 - (a) in a trust account kept by the licensee and required to be audited in accordance with section 32A of the *Commercial Agents and Private Inquiry Agents Act 1963*, and
 - (b) relating to transactions during the year ended on 30 June immediately preceding this report.
- 3. The trust records have been properly kept and written up in accordance with clauses 14 and 15 of the

Commercial Agents and Private Inquiry Agents Regulation 2000.

- 4. In my opinion, the trust records exhibit a complete and accurate view of the operation of the licensee's trust accounts for the year.
- 5. The audit conducted was, to my knowledge, a complete and accurate audit of the books, papers, accounts and other documents audited.
- 6. The auditor's report is a complete and accurate record of that audit.

Dated:

(signed)

Full Name:

Firm Name (if any):

Address:

Phone No.:

Form 7

(Clause 16)

Fidelity bond

(Commercial Agents and Private Inquiry Agents Act 1963)

BY THIS DEED of

(name of insurer)

(registered office)

binds itself and its successors, subject to the following conditions, to pay \$20,000 to the Crown in right of New South Wales.

Sealed with Our Seal.

Dated:

WHEREAS—

1 of

(name of applicant)

(address)

(the applicant) is an applicant for the grant of a commercial agent's licence under the *Commercial Agents and Private Inquiry Agents Act 1963*

- 2. The obligation of the bond is conditioned to be void if:
 - (a) the applicant is granted a commercial agent's licence under the *Commercial Agents and Private Inquiry Agents Act 1963*, and
 - (b) the applicant duly observes and complies with all the provisions of that Act and any Regulations made under the Act with respect to any money received by the applicant or by any partnership of which the applicant is a member as a commercial agent or by a subagent or other person employed by the applicant or partnership, and
 - (c) the applicant duly accounts for and pays over to the persons respectively entitled all money received by the applicant or by any partnership of which the applicant is a member as a commercial agent or by a subagent or other person employed by the applicant or partnership.

BUT—

The granting of any time, credit, forbearance or indulgence to the applicant, any partnership of which the

applicant is a member as a commercial agent or a subagent or any other person employed by the applicant or partnership, in respect of money received by the applicant, partnership, subagent or person, shall not release the surety from this bond.

PROVIDED THAT—

1. The surety may be released from the bond if the surety gives notice in writing to the Registrar of the Local Court where this deed is lodged that the surety desires to be relieved from liability under the bond.
2. On giving notice, the surety's liability will cease:
 - (a) on the date specified in the notice (not being earlier than is required by or under the *Commercial Agents and Private Inquiry Agents Act 1963*), or
 - (b) where the applicant holds a commercial agent's licence, on the end of the current term of the licence, whether by expiry or cancellation,

so far as it relates to future transactions of the applicant, other than the application, payment or disposal of, the dealing with or the accounting for, money received before that date by the applicant, any partnership of which the applicant is a member as a commercial agent or a subagent or other person employed by the applicant or partnership.

THE SEAL OF

(name of insurer)

was affixed in the presence of: