

Commercial Agents and Private Inquiry Agents Bill 2004

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are as follows:

- (a) to protect the public in relation to commercial agent and private inquiry agent activities (that is, process serving, debt collection, repossession of goods, surveillance of persons and investigation of persons),
 - (b) to provide for the licensing of persons carrying out, and persons carrying on business in relation to, commercial agent and private inquiry agent activities,
 - (c) to establish standards to be observed by licensees in relation to commercial agent and private inquiry agent activities,
 - (d) to ensure that licensees are accountable for their acts and omissions in relation to commercial agent and private inquiry agent activities,
 - (e) to repeal the *Commercial Agents and Private Inquiry Agents Act 1963*.
- The Bill makes consequential amendments to certain Acts and contains consequential savings and transitional provisions.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation, except for Schedule 3.1 and 3.3 which are to commence on the commencement of Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

Clause 3 sets out the objects of the proposed Act, in the terms set out in paragraphs (a)–(d) of the Overview above.

Clause 4 defines certain words and expressions used in the proposed Act.

Part 2 Licensing of persons for commercial and private inquiry activities

Division 1 Master licences

Clause 5 provides that, with certain exceptions, it is an offence to carry on business in relation to commercial agent activities or private inquiry agent activities otherwise than in accordance with the appropriate master licence.

Clause 6 enables the Commissioner to grant master licences, and applies Part 2 of the *Licensing and Registration (Uniform Procedures) Act 2002* to and in respect of a master licence.

Clause 7 sets out the grounds on which an application for a master licence may be refused.

Clause 8 provides that a master licence has effect for 5 years.

Clause 9 enables the Commissioner to impose conditions on a master licence.

Clause 10 enables the Commissioner to cancel a master licence, and sets out the grounds on which such a licence may be cancelled and the procedure to be followed to cancel such a licence.

Division 2 Operator licences

Clause 11 provides that, with certain exceptions, it is an offence to carry out commercial agent activities or private inquiry agent activities otherwise than in accordance with the appropriate operator licence.

Clause 12 enables the Commissioner to grant operator licences, and applies Part 2 of the *Licensing and Registration (Uniform Procedures) Act 2002* to and in respect of an operator licence.

Clause 13 sets out the grounds on which an application for an operator licence may be refused.

Clause 14 provides that an operator licence has effect for one year or 5 years.

Clause 15 enables the Commissioner to impose conditions on an operator licence.

Clause 16 provides that a person's first operator licence is a probationary licence, has effect for one year only and is subject to a condition requiring supervision.

Clause 17 enables the Commissioner to cancel an operator licence, and sets out the grounds on which such a licence may be cancelled and the procedure to be followed to cancel such a licence.

Division 3 Additional provisions concerning debt collection

Clause 18 is a formal provision that gives effect to Schedule 2 (Trust accounts, records and receivership in relation to debt collection).

Clause 19 prohibits a licensee from charging a debtor with the licensee's costs in collecting a debt, and allows the debtor to recover from the licensee any money received by the licensee in contravention of the prohibition.

Division 4 General

Clause 20 allows a licensee against whom action is taken under the proposed Part to apply to the Administrative Decisions Tribunal against the Commissioner's determination to take that action.

Clause 21 requires the establishment and maintenance of a publicly available Register of Licensees.

Clause 22 enables the Commissioner to issue certificates as to particulars contained in the Register of Licensees, and gives evidentiary status to such a certificate.

Clause 23 makes it clear that the proposed Act does not confer on a licensee any power, authority or immunity that would not be available to the licensee apart from the proposed Act.

Part 3 General offences

Clause 24 prohibits a licensee from employing unlicensed persons to carry out commercial agent or private inquiry agent activities, and from employing disqualified individuals in any capacity.

Clause 25 prohibits a licensee from doing certain things that amount to harassment.

Clause 26 requires a licensee to produce his or her licence on demand to an authorised inspector or to any other person with whom he or she has dealings when acting under the licence.

Clause 27 makes it an offence for a person to obstruct or hinder an authorised inspector in the exercise of the inspector's functions under the proposed Act.

Clause 28 enables offences under the proposed Act to be dealt with by way of penalty notice.

Clause 29 enables a director or other person concerned in the management of a corporation to be proceeded against and convicted in relation to offences committed by the corporation.

Part 4 Administration

Division 1 Power to require information and documents

Clause 30 enables the Commissioner to require a licensee or former licensee to furnish relevant information or produce relevant documents.

Division 2 Power to enter premises

Clause 31 enables an authorised inspector to enter premises, other than residential premises, and inspect documents on the premises to monitor compliance with the proposed Act.

Clause 32 provides for the manner in which an authorised inspector must

exercise a power of entry.

Clause 33 requires an authorised inspector to minimise any damage arising from the exercise of a power of entry, and entitles an interested party to compensation for damage that is caused otherwise than as a consequence of the inspector having been obstructed or hindered.

Clause 34 provides for the issue of search warrants for premises, including residential premises.

Division 3 General

Clause 35 enables the Commissioner to appoint persons as authorised inspectors (police officers are authorised inspectors by virtue of their status as police officers).

Clause 36 enables the Commissioner to delegate functions.

Clause 37 exempts certain persons from personal liability for acts and omissions arising in the execution of the proposed Act.

Clause 38 sets out how documents may be served for the purposes of the proposed Act.

Part 5 Miscellaneous

Clause 39 enables the Governor to make regulations for the purposes of the proposed Act, and provides that a regulation may create offences carrying a maximum penalty of 100 penalty units (currently \$11,000).

Clause 40 repeals the *Commercial Agents and Private Inquiry Agents Act 1963*.

Clause 41 is a formal provision giving effect to Schedule 3 (Amendment of Acts).

Clause 42 is a formal provision giving effect to Schedule 4 (Savings, transitional and other provisions).

Clause 43 requires a review of the proposed Act to be carried out, and tabled in each House of Parliament, within 12 months after the fifth anniversary of the date of assent to the proposed Act.

Schedule 1 Persons not required to be licensed

Schedule 1 lists certain classes of person who will not be required to hold a licence under the proposed Act.

Schedule 2 Trust accounts, records and receivership in relation to debt collection

Schedule 2 applies to any person who is the holder of a master licence for debt collection and any money held by the holder of such a licence. The proposed Schedule is in 3 Parts.

Part 1 contains provisions with respect to trust accounts, modelled on Part 7 of the *Property, Stock and Business Agents Act 2002*.

Part 2 contains provisions with respect to record keeping, modelled on Part 8 of the *Property, Stock and Business Agents Act 2002*.

Part 3 contains provisions with respect to the appointment and functions of receivers, modelled on Part 9 of the *Property, Stock and Business Agents Act 2002*.

Schedule 3 Amendment of Acts

Schedule 3 makes consequential amendments to a number of Acts.

Schedule 4 Savings, transitional and other provisions

Schedule 4 contains a provision enabling savings and transitional regulations to be made (Part 1) and other provisions consequent on the enactment of the proposed Act (Part 2).