



New South Wales

Commercial Agents and Private Inquiry Agents Regulation 2005

under the

Commercial Agents and Private Inquiry Agents Act 2004

Her 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*.

Minister for Police

Explanatory note

The object of this Regulation is to make provision consequent on the enactment of the *Commercial Agents and Private Inquiry Agents Act 2004*. The regulation deals with the following matters:

- (a) application procedures for master licences (Division 1 of Part 2),
- (b) application procedures for operator licences (Division 2 of Part 2),
- (c) other administrative provisions common to master licences and operator licences (Division 3 of Part 2),
- (d) the regulation of the business and activities carried out under master licences and operator licences (Part 3),
- (e) other matters of a preliminary or miscellaneous nature (Part 1).

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

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Clause 1	Commercial Agents and Private Inquiry Agents Regulation 2005
Part 1	Preliminary

Commercial Agents and Private Inquiry Agents Regulation 2005

under the

Commercial Agents and Private Inquiry Agents Act 2004

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Commercial Agents and Private Inquiry Agents Regulation 2005*.

2 Commencement

This Regulation commences on [date to be advised].

3 Definitions

(1) In this Regulation:

close associate is defined in 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.

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

(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

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Part 1 Preliminary

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, or
- (c) the position of secretary,

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 offences

An offence under Division 10, 10A, 14, 14A or 15 of Part 3 of the *Crimes Act 1900*, or under section 562AB of that Act, is declared to be a **major 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 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 Act 2002*, 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 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 Act 2002*, 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.

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Part 2 Licences

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 are as follows:
 - (a) \$750 for a licence for a licensee employing no licensed operators (a ***Class 1 licence***),
 - (b) \$1,250 for a licence for a licensee employing one or more, but not more than 10, licensed operators (a ***Class 2 licence***),
 - (c) \$2,000 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) \$500 for an amendment that would change a Class 1 licence to a Class 2 licence,
 - (b) \$750 for an amendment that would change a Class 2 licence to a Class 3 licence,
 - (c) \$1,250 for an amendment that would change a Class 1 licence to a Class 3 licence,
 - (d) \$65 for any other amendment.
- (3) Of each fee prescribed by subclause (1) or (2), \$65 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 a master licence is \$50, 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) Pursuant to 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) subsidiaries of an exempt corporation, but only in relation to licensable activities carried out solely on behalf the corporation,

- (b) agents 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,
- (c) ASX Operations Pty Limited (ACN 004 523 782).

- (2) In subclause (1) (a):

exempt corporation, in relation to a licensable activity, means a corporation that, under the Act, is exempt from the requirement to hold a master licence for that activity.

subsidiary, in relation to an exempt 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 exempt corporation.

Division 2 Operator licences

11 Applications for operator licences

An application for an operator licence must include the following information:

- (a) the individual's name, date and place of birth and residential address,
- (b) if applicable, 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*.

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Part 2 Licences

12 Application fees

- (1) The fees for an application for the granting, renewal or restoration of an operator licence are as follows:
 - (a) \$150 for a licence for one year,
 - (b) \$600 for a licence for 5 years.
- (2) In the case of an application by an individual for both a master licence and an operator licence for the same licensable activity, no fee is payable in relation to the application for the operator licence.
- (3) 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*.
- (4) The fee for an application for the amendment of an operator 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*.
- (5) The fee for an application for the replacement of an operator licence is \$50, of which the whole amount is a processing fee for the purposes of Part 2 of the *Licensing and Registration (Uniform Procedures) Act 2002*.

13 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.

14 Certain persons not required to hold operator licence

- (1) Pursuant to 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) employees of subsidiaries of an exempt corporation, but only in relation to licensable activities carried out solely on behalf the corporation,
 - (b) agents, and employees of agents, 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,

(c) employees of ASX Operations Pty Limited (ACN 004 523 782).

(2) In subclause (1) (a):

exempt corporation, in relation to a licensable activity, means a corporation that, under the Act, is exempt from the requirement to hold an operator licence for that activity.

subsidiary, in relation to an exempt 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 exempt corporation.

Division 3 General

15 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:
 - (i) to provide the Commissioner with a photograph of the applicant, or
 - (ii) to consent to having his or her photograph taken by an authorised officer, or
 - (iii) to consent to having his or her fingerprints taken by an authorised officer,for the purpose of confirming the applicant's identity, and
 - (b) must refuse to grant the licence unless the applicant has complied with any such requirement.
- (3) 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) a police officer or any other member of NSW Police,
 - (b) a member of staff of a Department within the meaning of the *Public Sector Employment and Management Act 2002*.

16 Contravention of licence conditions

A licensee must not contravene any condition of the licence.

Maximum penalty: 50 penalty units.

Clause 17 Commercial Agents and Private Inquiry Agents Regulation 2005

Part 2 Licences

17 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.

18 Surrender of licence

- (1) A licence that is suspended or cancelled must be immediately surrendered as follows:

- (a) if a notice of suspension or cancellation is sent to the person to whom the licence was granted, the person must, on receiving that notice, deliver the licence to the Commissioner,
- (b) if no such notice is sent to the person but the person is otherwise directed by a police officer to hand over the licence, the person must hand over the licence in accordance with that direction.

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 or at a police station.

19 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) verbal notice of the occurrence has been given, either in person or by telephone, to a police officer at a police station.

20 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,

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Clause 20

Licences

Part 2

- (c) the date on which the licence expires,
- (d) any conditions to which the licence is subject,
- (e) the licence number of the licence.

Clause 21 Commercial Agents and Private Inquiry Agents Regulation 2005

Part 3 Miscellaneous

Part 3 Miscellaneous

21 Penalty notice offences

For the purposes of section 28 of the Act:

- (a) an offence under a provision of the Act or this Regulation specified in Column 1 of Schedule 1 is prescribed as a penalty notice offence, and
- (b) the amount specified in Column 2 of Schedule 1 in respect of such an offence is the prescribed amount of penalty for the offence.

22 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 having charge of the premises.

Maximum penalty: 50 penalty units.

23 Authorised inspectors

Persons employed within NSW Police, 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.

24 Licensees to give name and licence number when conducting business by telephone

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, on demand, advise the person with whom he or she is speaking of his or her name and licence number.

Penalty: 50 penalty units.

25 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, produce documentary evidence of the debt.

Penalty: 100 penalty units.

26 Records kept in relation to debt collection

- (1) The records that clause 11 of Schedule 2 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 one 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.

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Schedule 1 Penalty notices

Schedule 1 Penalty notices

(Clause *21)

Column 1	Column 2
Provision	Penalty
Commercial Agents and Private Inquiry Agents Act 2004	
Section 26	\$550
Section 27	\$1,100
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 35	\$1,100
Schedule 2, clause 51 (2)	\$550
Commercial Agents and Private Inquiry Agents Regulation 2005	
Clause 16	\$550
Clause 17	\$550
Clause 18 (1)	\$550
Clause 19 (1)	\$55
Clause 22 (3)	\$550
Clause 24	\$550
Clause 25	\$1,100
Clause 26 (4)	\$1,100