

Regulatory Impact Statement  
Subordinate Legislation Act 1989

**Commercial Agents and Private Inquiry Agents  
Regulation 2005**

A Regulation under the  
*Commercial Agents and Private Inquiry Agents Act 2004*

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Additional copies of this Regulatory Impact Statement and the draft Regulation can be obtained from the NSW Police website [www.police.nsw.gov.au/sir](http://www.police.nsw.gov.au/sir)

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## **1. INTRODUCTION**

### **1.1 Title and Proponent of the Proposed Regulation**

The *Commercial Agents and Private Inquiry Agents Regulation 2005* (the Regulation) has been developed by the Ministry for Police and is proposed by the Hon Carl Scully MP, Minister for Police.

### **1.2 Why is the Regulation being made?**

The *Subordinate Legislation Act 1989* provides for the automatic repeal of statutory rules (regulations) after they have been in force for five years. The *Commercial Agents and Private Inquiry Agents Regulation 2000* is due to be repealed on 1 September 2006. It is proposed that the Regulation be remade with some amendments.

### **1.3 Status of the Proposed Regulation**

The proposed Regulation is only a draft at this stage. This Regulatory Impact Statement is being released alongside the draft Regulation so that the commercial and private inquiry agent industries as well as other interested parties may assess the proposed requirements, and submit comments and suggestions. The draft Regulation may take into account comments from submissions. The new Regulation will be published in the NSW Government Gazette and will come into effect on a date to be proclaimed.

### **1.4 What is the Purpose of this Regulatory Impact Statement?**

The *Subordinate Legislation Act 1989* controls the making of regulations in NSW and aims to reduce unnecessary regulation by government. The Act requires that a Regulatory Impact Statement be prepared and public consultation be undertaken before a new regulation can be made.

The Regulatory Impact Statement explains the purpose of the Regulation, weighs the economic and social aspects of the proposed Regulation and considers feasible options to meet the aims of the proposed Regulation. The Regulatory Impact Statement must demonstrate that the proposed Regulation is the most viable option and the option that brings the greatest overall benefit to the public.

The Regulatory Impact Statement procedure aims to ensure that:

- The regulation is the most efficient and effective way of achieving the policy objective of the legislation; and
- The regulation imposes minimum cost on the community or produces an outcome where the expected benefits outweigh the expected costs.

The Regulatory Impact Statement must:

- State the objectives of the proposed Regulation and the reasons for them;
- Identify alternative options by which those objectives might be achieved;

- Assess the costs and benefits of each alternative - this assessment must consider the alternative of not taking any action;
- Assess which of the alternatives will bring about the greatest net benefit or the least net cost to the community; and
- Outline the consultation program to be undertaken.

The impact of a proposed regulation is generally expressed in terms of:

- 'Cost-benefit' analysis of the options, where the costs and benefits flowing from the regulation can be measured in monetary terms; or
- 'Cost effectiveness' analysis, where the benefits of the regulation cannot readily be expressed in monetary terms.

'Qualitative' costs and benefits may also be important to these assessments. Consideration of qualitative costs and benefits allows important social issues to be taken into account, such as quality of life, public safety, or crime reduction.

## **2. BACKGROUND**

### **2.1 The Commercial Agents and Private Inquiry Agents Industry in NSW**

Commercial agent activities include debt collection, process serving, and repossession, or more particularly:

- Making demands to relevant parties regarding overdue accounts, receiving cash or funds from debtors for third party clients and then carrying out appropriate disbursement;
- Locating and identifying parties to be served with legal process, delivering claims/bankruptcy notices/summons, and delivering family law documents upon estranged parties in relation to matters such as property settlements and access to and/or custody of children; and
- Locating and identifying parties for the purpose of repossession of goods, making demands to debtors, and resolving disputes about debts between parties.

Private inquiry agent activities span a variety of fields including commercial crime, fraud, system design and forensic accounting services, and include:

- 'Legal work', for example factual inquiries and locating persons such as beneficiaries to deceased estates and witnesses to events;
- 'Commercial work', for example, debugging, pre-employment checks and specialised investigations; and
- 'Domestic work', for example finding missing relatives, abduction recoveries and spouse fidelity checks.

When collecting information, a private inquiry agent might carry out surveillance, conduct interviews, gather physical evidence for both civil and criminal proceedings, give evidence in court and provide reports and briefs of evidence.

Methods of operation range from a one-person business to a corporation comprising a number of commercial agents or private inquiry agents or both. Government agencies, corporations and individuals may all employ the services of commercial agents and private inquiry agents.

The *Commercial Agents and Private Inquiry Agents Act 1963 National Competition Policy Review Final Report October 2003* listed the total number of commercial and private inquiry agent licence holders in NSW as 5,275. The breakdown of numbers of commercial agents and private inquiry agents is provided in Table 2.1 and Table 2.2, respectively.

**Table 2.1 Private Inquiry Licence Holders**

<b>Type of licence</b>	<b>Number of licences issued</b>
Commercial Agent	692
Commercial Sub-Agent	1,178

<b>Sub total</b>	<b>1,870</b>
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**Table 2.2 Private Inquiry Licence Holders**

<b>Type of Licence</b>	<b>Number of Licences Issued</b>
Private Inquiry Agent	2,431
Private Inquiry Sub-Agent	974
<b>Sub total</b>	<b>3,405</b>

## 2.2 The Current Licensing Regime

The *Commercial Agents and Private Inquiry Agents Act 1963*, which commenced on 1 July 1963, sets out the current regulatory framework for commercial and private inquiry agents. The *Commercial Agents and Private Inquiry Agents Act 1963* is administered by the Minister for Police.

Although not explicitly stated, it is clear that the overriding objective of the *Commercial Agents and Private Inquiry Agents Act 1963* is to protect the public from people of undesirable character acting as commercial or private inquiry agents. This has been achieved through the introduction of a licensing regime for commercial agents, private inquiry agents, and their respective sub-agents.

The *Commercial Agents and Private Inquiry Agents Act 1963* provides penalties for carrying on the business or any functions of a commercial or private inquiry agent without a licence. The maximum penalty available under the legislation is 50 penalty units (\$5,500) for a corporation or 5 penalty units (\$550) and/or imprisonment for a period no greater than six months for an individual.

The Local Courts act as the collection and adjudication point for applications for licences. However, pursuant to section 10 of the *Commercial Agents and Private Inquiry Agents Act 1963*, the Clerk of the Local Court is required to refer the particulars of the licence applicant to the nearest NSW Police Local Area Command.

Police may make an objection (within one month) to the grant of a licence to an individual on one or more of the following grounds:

- The applicant is not of good fame or character;
- The applicant is not a fit and proper person to hold a licence;
- The applicant does not have the prescribed qualifications or experience;
- The applicant has not attained the age of 18;
- The applicant (with the exception of a sub-agent) has not been continuously resident in Australia during the period of twelve months prior to the application;
- The applicant is disqualified under the Act from holding a licence; and
- The applicant has, within 10 years prior to the application, been convicted of an offence punishable on indictment.

In the case of a corporation, Police may object to a licence being granted where any

directors, the secretary of the corporation, or any manager in charge of carrying out the functions of a licence holder, or any person in charge of carrying out the licence functions, does not meet certain requirements.

The *Commercial Agents and Private Inquiry Agents Act 1963* also regulates certain business activities. These include the display of licences at business premises, information to be included in advertisements, repossession, receipt of moneys in trust, and keeping records of transactions.

There are a number of agencies and occupations that are exempt from the requirement to hold a licence if they are engaged in activities commensurate with those of a commercial agent or private inquiry agent. These exemptions include:

- Police;
- Defence force personnel;
- Officers or employees of the Crown, and responsible Minister of the Crown or any Government Department;
- Solicitors and their clerks;
- Registered company auditors or their employees;
- Insurance companies, insurance adjustment agencies, their employees and agents;
- Banks, their employees and agents;
- Official receivers, administrators and liquidators; and
- The Public Trustee and executors.

### 2.3 Changes to the Commercial Agents and Private Inquiry Agents Act 1963

With the exception of the *Commercial Agents and Private Inquiry Agents (Amendment) Act 1985*, the *Commercial Agents and Private Inquiry Agents Act 1963* has undergone only a small number of amendments since its commencement.

The principal change in the *Commercial Agents and Private Inquiry Agents (Amendment) Act 1985* was to remove security employees from the definition of private inquiry agents and place the regulation of them under a separate piece of legislation. It also strengthened controls over financial transactions and upgraded requirements for qualifications.

There have, however, been many machinery amendments to ensure that the provisions of the *Commercial Agents and Private Inquiry Agents Act 1963* remain current in relation to other pieces of NSW legislation. These include:

- *Decimal Currency Act 1965*;
- *Supreme Court Act 1970*;
- *Commercial Agents and Private Inquiry Agents (Amendment) Act 1971*;
- *Reprints Act 1972*;
- *Miscellaneous Acts (Local Courts) Amendment Act 1982*;
- *Miscellaneous Acts (Credit) Repeal and Amendment Act 1984*;
- *Commercial Agents and Private Inquiry Agents (Amendment) Act 1985*;
- *Statute Law (Miscellaneous Provisions) Act (No 2) 1986*;



- *Statute Law (Miscellaneous Provisions) Act (No 1) 1987;*
- *Statute Law (Miscellaneous Provisions) Act (No 3) 1988;*
- *Public Accountants Registration (Repeal and Amendment) Act 1989;*
- *Statute Law (Penalties) Act 1992;*
- *Statute Law (Miscellaneous Provisions) Act 1995;*
- *Financial Institutions (Miscellaneous Amendments) Act 1996;*
- *Statute Law (Miscellaneous Provisions) Act 1999;*
- *Corporations (Consequential Amendments) Act 2001;* and
- *Statute Law (Miscellaneous Provisions) Act 2005.*

#### 2.4 Review of the Commercial Agents and Private Inquiry Agents Act 1963

Although the *Commercial Agents and Private Inquiry Agents Act 1963* has only been significantly amended once in the last 20 years, the regulation of commercial agents and private inquiry agents in NSW has been examined on a number of occasions. These inquiries have resulted in:

- A Report by Mr RJ Bartley for the Business Deregulation Unit (BDU) of the then Department of Business and Consumer Affairs (1991), which led to the development of a joint NSW Police and BDU Discussion Paper: *NSW Licensing of Commercial Agents and Private Inquiry Agents – Issues and Options*;
- An Independent Commission Against Corruption publication: *Report on Unauthorised Release of Government Information - 1992*;
- A Report of the Review of the private investigation industry by the then Department of Consumer Affairs - 1994; and
- Recommendations to the Minister for Police from the Commercial Agents and Private Investigators Working Party set up by the Ministry for Police - 1997.

#### 2.5 The National Competition Policy Review

On 11 April 1995, the Council of Australian Governments (COAG) agreed to a National Competition Policy reform program. The reform program consists of three major agreements:

- The Competition Principles Agreement, which provides jurisdictions with guiding principles for ensuring competitive markets are maintained;
- The National Competition and Related Reforms Agreement, which provides a regime under which the Commonwealth funds the States and Territories for performance of obligations under the Policy; and
- The Conduct Code Agreement, which outlines formal notification protocols in relation to the Policy.

The aim of the National Competition Policy (NCP) reform program was to promote and maintain competition in order to increase economic efficiency and community welfare while continuing to provide for consumer protection.

As part of the reform program, all States and Territories were required to review their legislation to identify the costs and benefits of restrictive regulation. As far as the regulation of commercial and private inquiry agents was concerned, the guiding

principle of the review was to ensure that the *Commercial Agents and Private Inquiry Agents Act 1963* did not restrict competition, unless it could be demonstrated that the benefits to the community as a whole outweighed the costs of the restriction and the objectives of the legislation can only be achieved by restricting competition.

On this basis, the review of the *Commercial Agents and Private Inquiry Agents Act 1963* considered:

- The objective of government regulation of commercial agents and private inquiry agents;
- Whether regulatory intervention was still justified;
- The impact of the current legislation on competition within the industry and the costs and benefits of the legislation; and
- Whether the Government's objectives could be met by any less restrictive mechanisms.

The Ministry for Police, as part of the review process, prepared an Issues Paper. Details of the Review and the availability of the Issues Paper were advertised in the metropolitan and regional press, and the Issues Paper was disseminated to a range of individuals and organisations.

The Ministry for Police received a total of 22 submissions. The majority of these submissions supported the retention of a statutory licensing scheme for commercial and private inquiry agents.

The findings of the Review were incorporated into the *Commercial Agents and Private Inquiry Agents Act 1963: National Competition Policy Review Final Report* (the Report of the Review), which made 30 recommendations for change.

The aim of the Report of the Review was to assess, in a transparent manner, the costs and benefits of regulating the commercial and private inquiry agents industries, with a view to remaking the legislation.

Overall, the Report of the Review found that the regulatory objectives of the legislation could only be achieved through maintaining a licensing regime for commercial and private inquiry agents. It also recommended a number of amendments to:

- Clarify certain provisions;
- Make the legislation more effective in achieving its objectives; and
- Reduce the regulatory burden for licence holders.

Following the release of the Report of the Review in November 2003, legislation was prepared to give effect to the recommendations of the Review.

## 2.6 The Commercial Agents and Private Inquiry Agents Act 2004

The *Commercial Agents and Private Inquiry Agents Act 2004* gives effect to the legislative recommendations of the Report of the Review. The *Commercial Agents*

*and Private Inquiry Agents Act 2004:*

- Repeals the *Commercial Agents and Private Inquiry Agents Act 1963*;
- Preserves the licensing of persons carrying out, and persons carrying on business in relation to, commercial and private inquiry agent activities, however, the administration of the licensing scheme has been transferred from Local Courts to NSW Police;
- Retains the exemptions from the requirement to be licensed in the 1963 Act for persons undertaking commercial or private inquiry agent activities on their own or their employers behalf, and for:
  - Police;
  - Defence Force personnel;
  - Public servants of NSW, the Commonwealth or any other State or Territory;
  - Officers or employees of a public authority of NSW, the Commonwealth or any other State or Territory;
  - Lawyers and their legal clerks;
  - Company auditors;
  - Persons who are employed by insurance companies and insurance loss adjusters; and
  - Banking employees.
- Provides a probationary licensing scheme for new entrants;
- Sets out the classes of persons who are ineligible for a licence, including persons convicted of specified offences, non-citizens who are prohibited from engaging in employment in Australia, and persons who do not have appropriate experience or are unqualified or untrained;
- Includes special provisions for debt collectors in order to regulate record keeping and the collection and distribution of moneys collected by these agents;
- Provides that discretionary licensing determinations are reviewable by the Administrative Decisions Tribunal;
- Establishes a Register of licence holders that is accessible by the public;
- Makes it an offence to:
  - Employ unlicensed and non-eligible persons;
  - Harass persons in the collection of debts from them;
  - Fail to produce a licence on request by an authorised officer or a person with whom the licensee is dealing; or
  - Obstruct authorised officers in the carrying out of their duties;
- Provides powers for authorised officers to obtain documents relating to the activities of the business, enter licensees business premises under strict circumstances and enables search warrants to be obtained; and
- Provides a new licence fee structure in recognition of the administrative and regulatory costs of the scheme.

By establishing a licensing scheme similar to that of the *Security Industry Act 1997*, for administration through the Security Industry Registry, the *Commercial Agents and Private Inquiry Agents Act 2004* will:

- Enable the streamlining of licence application processing;
- Ensure consistent and ongoing integrity assessments; and

- Utilise the expertise of Security Industry Registry staff to adjudicate, issue, suspend, refuse or revoke licences in a consistent and centralised manner.

In addition, as recommended in the Report of the Review, the objects of the *Commercial Agents and Private Inquiry Agents Act 2004* are now explicitly stated within the legislation. These objects are:

- 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);
- To provide for the licensing of persons carrying out, and persons carrying on business in relation to, commercial agent and private inquiry agent activities;
- To establish standards to be observed by licensees in relation to commercial agent and private inquiry agent activities; and
- To ensure that the licensees are accountable for their acts and omissions in relation to commercial agent and private inquiry agent activities.

As the then Minister for Police stated in his Second Reading Speech in the Legislative Assembly, the *Commercial Agents and Private Inquiry Agents Act 2004* is not designed to cover all persons who undertake commercial agent or private inquiry agent activities, only those persons who do so on behalf of others for a fee.

The *Commercial Agents and Private Inquiry Agents Act 2004* was assented to on 28 September 2004 and will commence on a date to be proclaimed.

Copies of the *Commercial Agents and Private Inquiry Agents Act 2004* and the current *Commercial Agents and Private Inquiry Agents Regulation 2000* can be viewed or downloaded from the NSW legislation website at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au).

## 2.7 The Regulation

In accordance with the requirements of the *Subordinate Legislation Act 1989*, the *Commercial Agents and Private Inquiry Agents Regulation 2000* will be automatically repealed on 1 September 2006. In addition, in order to support provisions of the *Commercial Agents and Private Inquiry Agents Act 2004*, a new Regulation is required. To this end, the draft *Commercial Agents and Private Inquiry Agents Regulation 2005* has been prepared.

### **3. OBJECTIVES OF THE PROPOSED REGULATION**

#### **3.1 Objectives of the Proposed Regulation**

The objective of the *Commercial Agents and Private Inquiry Agents Regulation 2005* is to provide the detail required to support the operation of the *Commercial Agents and Private Inquiry Agents Act 2004*.

The proposed *Commercial Agents and Private Inquiry Agents Regulation 2005* covers:

- Application procedures for master and operator licences including how applications are to be made and the information and particulars that must accompany the licence application;
- The fees which are payable for licences;
- Matters related to the investigation of applications including the taking of fingerprints;
- Offences related to the licence including contravention of a licence condition, surrender of the licence and notification requirements related to lost, stolen, defaced or mutilated licences;
- The particulars to be recorded on the Register of Licensees; and
- Other matters such as penalty notices, authorised inspectors, certificates of authority and the keeping of records for debt collection.

#### **3.2 Options to Achieve Objectives**

Three options for achieving the above objective are considered in this Regulatory Impact Statement:

##### **Option 1:**

**Do nothing i.e. allow current Regulation to lapse**

This option would mean that the *Commercial Agents and Private Inquiry Agents Act 2004* would operate without any accompanying Regulation.

##### **Option 2:**

**Rely on the industry to self regulate**

This option would place the onus on commercial and private inquiry agent industries to establish the necessary administrative procedures to facilitate the licensing regime established by the *Commercial Agents and Private Inquiry Agents Act 2004*.

##### **Option 3:**

**Make the proposed Regulation**

This option would ensure that the administrative detail was in place to enable the operation of the *Commercial Agents and Private Inquiry Agents Act 2004*.

***This is the preferred option.***

### 3.2 Criteria Used to Assess the Regulatory Options

The criteria used to evaluate regulatory objective are as follows:

- The extent to which the option contributes to the overall efficiency of the regulatory system; and
- The cost effectiveness of each option, in terms of costs and benefits to consumers, industry and government.

### 3.3 Scope of the Proposed Regulation

The scope of any Regulation is limited by the regulation-making powers provided under the relevant Act. The relevant regulation making powers of the *Commercial Agents and Private Inquiry Agents Act 2004* are summarised in the table 3.1 below.

Table 3.1 – Power of the *Commercial Agents and Private Inquiry Agents Act 2004* and the Scope of the Proposed Regulation

Power provided by the Act	Section	Scope of the proposed Regulation	Clause
<b>Part 1 Preliminary</b>			
To prescribe the requirements of membership of an approved industry association for master licensees in the definition of “disqualified individual”.	4	None prescribed.	
To prescribe those offences which constitute a “major offence” and prohibit the issue of a licence to an applicant.	4	An offence under Division 10, 10A, 14, 14A or 15 of Part 3 of the <i>Crimes Act 1900</i> , or under section 562AB of that Act, is declared to be a major offence for the purposes of the Act.	5
To prescribe those offences which constitute a “minor offence” and may prohibit the issue of a licence to an applicant.	4	None prescribed.	
<b>Part 2 Licensing of Persons for Commercial and Private Inquiry Activities</b>			
To prescribe additional classes of persons as being exempt from the requirement to hold a master licence.	5(2)(b)	<p>(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:</p> <p>(a) Subsidiaries of an exempt corporation, but only in relation to licensable activities carried out solely on behalf the corporation,</p> <p>(b) Agents of:</p> <p>(i) Any insurance company referred to in Schedule 1 to the Act,</p> <p>(ii) Any person carrying on the business of an insurance loss adjuster referred to in Schedule 1 to the Act, or</p> <p>(iii) Any authorised deposit-taking institution referred to in Schedule 1 to the Act,</p> <p>but only in relation to licensable activities carried out solely on behalf of that company, person or institution.</p> <p>(c) ASX Operations Pty Limited (ACN 004 523 782).</p> <p>(2) In subclause (1)(a):</p> <p><b>exempt corporation</b>, 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.</p>	10

Power provided by the Act	Section	Scope of the proposed Regulation	Clause
		<b>subsidiary</b> , in relation to an exempt corporation, means any corporation that is a related body corporate, within the meaning of the <i>Corporations Act 2001</i> of the Commonwealth, in relation to the exempt corporation.	
To prescribe such matters concerning licences as relevant to the operation of Part 2 (Uniform Licensing Procedures) of the <i>Licensing and Registration (Uniform Procedures) Act 2002</i>	6(5)	<p>An application for a master licence that is made by an individual must include the following information:</p> <ul style="list-style-type: none"> <li>(a) The name, date and place of birth and residential address of: <ul style="list-style-type: none"> <li>(i) the individual, and</li> <li>(ii) each of the individual's close associates,</li> </ul> </li> <li>(b) If the individual is not a permanent Australian resident, information establishing the basis on which the individual is permitted to work in Australia,</li> <li>(c) The individual's business address,</li> <li>(d) Any business name, within the meaning of the <i>Business Names Act 2002</i>, under which the individual carries on business,</li> <li>(e) The licensable activities in respect of which the individual proposes to carry on business under the master licence,</li> <li>(f) Information establishing that the individual satisfies the requirements referred to in section 7 (2) (c) of the Act,</li> <li>(g) If the individual is applying for the renewal of an existing master licence, the licence number of the existing licence.</li> </ul> <p><b>Note.</b> See also the requirements of section 12 of the <i>Licensing and Registration (Uniform Procedures) Act 2002</i>.</p> <p>An application for a master licence that is made by a corporation must include the following information:</p> <ul style="list-style-type: none"> <li>(a) The name of the corporation,</li> <li>(b) The name, date and place of birth and residential address of each of the corporation's close associates,</li> <li>(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,</li> <li>(d) Any business name, within the meaning of the <i>Business Names Act 2002</i>,</li> </ul>	<p>6</p> <p>7</p>



Power provided by the Act	Section	Scope of the proposed Regulation	Clause
		<p>under which the corporation carries on business,</p> <p>(e) The licensable activities in respect of which the corporation proposes to carry on business under the master licence,</p> <p>(f) If the corporation is applying for the renewal of an existing master licence, the licence number of the existing licence.</p> <p><b>Note.</b> See also the requirements of section 12 of the <i>Licensing and Registration (Uniform Procedures) Act 2002</i>.</p>	
To prescribe certain classes of individuals as being exempt from the requirement to hold an operator licence.	11(3)(b)	<p>(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:</p> <p>(a) Employees of subsidiaries of an exempt corporation, but only in relation to licensable activities carried out solely on behalf the corporation,</p> <p>(b) Agents and employees of agents, of:</p> <p>(i) Any insurance company referred to in Schedule 1 to the Act,</p> <p>(ii) Any person carrying on the business of an insurance loss adjuster referred to in Schedule 1 to the Act, or</p> <p>(iii) Any authorised deposit-taking institution referred to in Schedule 1 to the Act,</p> <p>but only in relation to licensable activities carried out solely on behalf of that company, person or institution.</p> <p>(c) Employees of ASX Operations Pty Limited (ACN 004 523 782).</p> <p>(3) In subclause (1)(a):</p> <p><b>exempt corporation</b>, 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.</p> <p><b>subsidiary</b>, in relation to an exempt corporation, means any corporation that is a related body corporate, within the meaning of the <i>Corporations Act 2001</i> of the Commonwealth, in relation to the exempt corporation.</p>	14
To prescribe that an application for an operator licence must include certain information.	12(5)	<p>An application for an operator licence must include the following information:</p> <p>(a) The individual's name, date and place of birth and residential address,</p> <p>(b) If applicable, the business address of the person or persons by whom the</p>	11

Power provided by the Act	Section	Scope of the proposed Regulation	Clause
		<p>individual is, or is to be, employed to carry out licensable activities under the operator licence,</p> <p>(c) If the individual is not a permanent Australian resident, information establishing the basis on which the individual is permitted to work in Australia,</p> <p>(d) The licensable activities that the individual proposes to carry out under the operator licence,</p> <p>(e) Information establishing that the individual satisfies the requirements referred to in section 13 (2) (c) of the Act,</p> <p>(f) If the individual is applying for the renewal of an existing operator licence, the licence number of the existing licence.</p> <p><b>Note.</b> See also the requirements of section 12 of the <i>Licensing and Registration (Uniform Procedures) Act 2002</i>.</p>	
To prescribe the fees payable for perusal of the Register of Licences.	21(2)	None prescribed.	
To prescribe information to be kept in the Register of Licences.	21(3)	<p>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:</p> <p>(a) The name of the licensee,</p> <p>(b) The nature of the licence,</p> <p>(c) The date on which the licence expires,</p> <p>(d) Any conditions to which the licence is subject,</p> <p>(e) The licence number of the licence.</p>	20
<b>Part 3 General Offences</b>			
To prescribe penalty notice offences and the penalty payable.	28	<p>For the purposes of section 28 of the Act:</p> <p>(a) An offence under a provision of the Act or this Regulation specified in Column 1 of Schedule 1 is a prescribed as a penalty notice offence, and</p> <p>(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.</p>	21

Power provided by the Act	Section	Scope of the proposed Regulation	Clause
<b>Part 4 Administration</b>			
To prescribe the form of a certificate of authority.	32	(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: <ul style="list-style-type: none"> <li>(a) The inspector's name,</li> <li>(b) The nature of the inspector's powers under the Act,</li> <li>(c) The date on which the certificate expires,</li> <li>(d) A statement that the certificate is issued under the Act.</li> </ul>	22
To prescribe the classes of person from which authorised inspectors may be appointed.	35	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.  <b>Note.</b> Police officers are authorised inspectors by virtue of the definition of <i>authorised inspector</i> in section 4(1) of the Act.	23
<b>Part 5 Miscellaneous</b>			
To prescribe a general regulation making power which enables the Governor to make regulations: <ul style="list-style-type: none"> <li>(1) As necessary or convenient for carrying out or giving effect to the Act.</li> <li>(2) With respect to the: <ul style="list-style-type: none"> <li>(a) Manner in which a master licence holder is to carry on a commercial or private inquiry agent business;</li> <li>(b) Manner in which an operator licence holder is to carry out commercial or private inquiry agent activities;</li> <li>(c) Information to be displayed by a master licence holder at his or her business premises;</li> <li>(d) Information to be included in correspondence sent out by a master licence holder in relation to his or her business; and</li> </ul> </li> </ul>	39	See Table 4.1 below.	

Power provided by the Act	Section	Scope of the proposed Regulation	Clause
(e) Record keeping requirements (3) Exemptions from the licensing requirements of the Act. (4) The creation of offences punishable by penalties not exceeding 100 penalty units.			
<b>Schedule 2 Part 1 Trust Accounts</b>			
To prescribe exempt money or class of money from requirements relating to trust money.	7(4)	None prescribed.	
<b>Schedule 2 Part 2 Records</b>			
To prescribe the records relating to the licensee's business required to be kept.	11(1)(b)	None prescribed.	
To prescribe how records relating to the licensee's business must be kept.	11(4)	For the purposes of 11(4) of the Act: (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 backup on 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 backup. (4) The holder of a master licence for debt collection must ensure that the requirements of this clause are complied with. <b>Maximum Penalty: 100 penalty units.</b>	26
<b>Schedule 2 Part 3 Receivership</b>			
To prescribe meaning of an "associate" of a licensee.	27(1)(f)	None prescribed.	
To prescribe the relationship to a licensee that would constitute a "prescribed relationship".	27(2)(d)	None prescribed.	

Power provided by the Act	Section	Scope of the proposed Regulation	Clause
<b>Schedule 4 Part 1 General</b>			
To prescribe savings or transitional provisions.	1(1)	None prescribed.	

#### 4. IMPACT ASSESSMENT OF THE PROPOSED REGULATION

The proposed Regulation involves a redraft of the current Regulation with minor amendments. The changes are set out below.

**Table 4.1 - Differences between the Current and Proposed Regulation**

Current Provision	Proposed Regulation	Reason for Change
<p>Clause 3 sets out the definitions of:</p> <p>(1) In this Regulation:</p> <p><b>Agent</b> means a commercial agent or a private inquiry agent.</p> <p><b>The Act</b> means the <i>Commercial Agents and Private Inquiry Agents Act 1963</i>.</p> <p>(2) In this Regulation, a reference to a Form is a reference to a Form set out in Schedule 1.</p> <p>(3) The explanatory note, table of contents and notes in the text of this Regulation do not form part of this Regulation.</p>	<p>Clause 3 sets out the definition of:</p> <p>(1) In this Regulation:</p> <p><b>Close associate</b> is defined in clause 4.</p> <p><b>Licence number</b>, in relation to a licence, means the unique identifier included in the licence pursuant to section 20 of the <i>Licensing and Registration (Uniform Procedures) Act 2002</i>.</p> <p><b>Licensable activity</b> means a commercial agent activity or a private inquiry agent activity.</p> <p><b>Licensed operator</b> means a person who holds an operator licence.</p> <p><b>Permanent Australian resident</b> 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.</p> <p><b>The Act</b> means the <i>Commercial Agents and Private Inquiry Agents Act 2004</i>.</p> <p>(2) Notes included in this Regulation do not form part of this Regulation.</p>	<p>The definitions in the Regulation have been updated to reflect new licensing requirements of the legislation and the application of the <i>Licensing and Registration (Uniform Procedures) Act 2002</i>.</p>
<p>Clause 4 prescribes licensing conditions for persons who hold a licence under Acts other than the <i>Commercial Agents and Private Inquiry Agents Act 1963</i>.</p>	<p>Not in proposed Regulation.</p>	<p>It is appropriate that persons performing commercial and/or private inquiry agent activities, and who are not the subject of an exemption, should be subject to the same training and probity and integrity requirements as all other commercial and private inquiry agents, regardless of whether the person holds a licence of another kind.</p>

Current Provision	Proposed Regulation	Reason for Change
No current provision.	<p>Clause 4 defines provides the meaning of “close associate”:</p> <p>(1) For the purposes of this Regulation, a person is a <b>close associate</b> of an applicant for, or the holder of, a licence if the person:</p> <p>(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</p> <p>(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.</p> <p>(2) In this clause:</p> <p><b>relevant financial interest</b> in relation to a business means:</p> <p>(a) Any share in the capital of the business, or</p> <p>(b) Any entitlement to receive any income derived from the business, whether the entitlement arises at law or in equity or otherwise.</p> <p><b>relevant position</b> means:</p> <p>(a) The position of director or manager, or</p> <p>(b) Any other executive positions, or</p> <p>(c) The position of secretary,</p>	<p>Although “associates” are defined in section 27(1)(f) of Schedule 2 of the <i>Commercial Agents and Private Inquiry Agents Act 2004</i> for the purposes of receivership, clauses 6(a)(ii) and 7(b) of the Regulation require details of a master licence applicant’s close associates to be provided with the application for a licence. This will enable the Commissioner to investigate those persons who may exert control or influence over a prospective licence holder.</p> <p>This provision defines what constitutes a close associate and is designed to prevent a person without a criminal record from obtaining a master licence on behalf of another person, whose criminal record would preclude them from holding such a licence.</p>

Current Provision	Proposed Regulation	Reason for Change
	<p>however those positions are designated.</p> <p><b>relevant power</b> means any power, whether exercisable by voting or otherwise and whether exercisable alone or in association with others:</p> <p>(a) To participate in any directorial, managerial or executive decision, or</p> <p>(b) To elect or appoint any person to any relevant position.</p>	
<p>Clause 5 prescribes circumstances exempting a licensee from the requirement to keep written records at a business at a registered address.</p>	<p>Not in proposed Regulation.</p>	<p>Record keeping requirements are primarily set out in Part 2 of Schedule 2 of the <i>Commercial Agents and Private Inquiry Agents Act 2004</i>. This exemption has not been preserved.</p>
<p>No current provision.</p>	<p>Clause 5 prescribes the definition of major offences which prohibit the issue of a licence to an applicant:</p> <p>An offence under Division 10, 10A, 14, 14A or 15 of Part 3 of the <i>Crimes Act 1900</i>, or under section 562AB of that Act, is declared to be a <b>major offence</b> for the purposes of the Act.</p>	<p>Pursuant to sections 7 and 13 of the <i>Commercial Agents and Private Inquiry Agents Act 2004</i>, the grant of a licence must be refused if the applicant is a disqualified individual or disqualified corporation, being amongst other things an individual or corporation who has been convicted of or found guilty of a major offence.</p> <p>Although a “major offence” is defined in section 4 of the <i>Commercial Agents and Private Inquiry Agents Act 2004</i>, additional offences may be specified in the Regulation. Clause 5 includes as a “major offence” additional offences of sexual and other forms of violence.</p>
<p>Clause 6 provides certain bailiffs as exempt from the requirement to hold a licence.</p>	<p>Not in proposed Regulation.</p>	<p>No longer required.</p>
<p>No current provision.</p>	<p>Clause 6 specifies that:</p> <p>An application by an individual for a master licence must include the following information:</p>	<p>Clause 6 provides the administrative detail for what information must be included in an application for a master licence (individual). This will form the basis for the licence application.</p>



Current Provision	Proposed Regulation	Reason for Change
	<p>(a) The name, date and place of birth and residential address of:</p> <p>(i) The individual, and</p> <p>(ii) Each of the individual's close associates,</p> <p>(b) If the individual is not a permanent Australian resident, information establishing the basis on which the individual is permitted to work in Australia,</p> <p>(c) The individual's business address,</p> <p>(d) Any business name, within the meaning of the <i>Business Names Act 2002</i>, under which the individual carries on business,</p> <p>(e) The licensable activities in respect of which the individual proposes to carry on business under the master licence,</p> <p>(f) Information establishing that the individual satisfies the requirements referred to in section 7 (2) (c) of the Act,</p> <p>(g) If the individual is applying for the renewal of an existing master licence, the licence number of the existing licence.</p> <p><b>Note.</b> See also the requirements of section 12 of the <i>Licensing and Registration (Uniform Procedures) Act 2002</i>.</p>	
Clause 7 exempts certain industrial organisations from the requirement to hold a license.	Not in proposed Regulation.	No longer required.
No current provision.	<p>Clause 7 specifies that:</p> <p>An application by a corporation for a master licence must include the following information:</p>	Clause 7 provides the administrative detail for what information must be included in an application for a master licence (corporation), which will form the basis for the licence application.

Current Provision	Proposed Regulation	Reason for Change
	<p>(a) The name of the corporation,</p> <p>(b) The name, date and place of birth and residential address of each of the corporation's close associates,</p> <p>(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,</p> <p>(d) Any business name, within the meaning of the <i>Business Names Act 2002</i>, under which the corporation carries on business,</p> <p>(e) The licensable activities in respect of which the corporation proposes to carry on business under the master licence,</p> <p>(f) If the corporation is applying for the renewal of an existing master licence, the licence number of the existing licence.</p> <p><b>Note.</b> See also the requirements of section 12 of the <i>Licensing and Registration (Uniform Procedures) Act 2002</i>.</p>	
<p>Clause 8 prescribes the form that a licence for a natural person and a corporation are to take.</p>	<p>Not in proposed Regulation.</p>	<p>The form of licences under the <i>Commercial Agents and Private Inquiry Agents Act 2004</i> is not prescribed to enable it to be updated as required and not subject to regulatory change for each and every amendment.</p>
<p>No current provision</p>	<p>Clause 8 specifies the matters relating to fees for a master licence:</p> <p>(1) The fees for an application for the granting, renewal or restoration of a master licence are as follows:</p> <p>(a) \$750 for a licence for a licensee employing no licensed operators (a <b>Class 1 licence</b>),</p>	<p>Clause 8 sets out the fees for the new licensing and enforcement system, which are set at a level that meets the costs of the implementation and administration of that system.</p>

Current Provision	Proposed Regulation	Reason for Change
	<p>(b) \$1,250 for a licence for a licensee employing one or more, but not more than 10, licensed operators (a <b>Class 2 licence</b>),</p> <p>(c) \$2,000 for a licence for a licensee employing more than 10 licensed operators (a <b>Class 3 licence</b>).</p> <p>(2) The fees for an application for the amendment of a master licence are as follows:</p> <p>(a) \$500 for an amendment that would change a Class 1 licence to a Class 2 licence,</p> <p>(b) \$750 for an amendment that would change a Class 2 licence to a Class 3 licence,</p> <p>(c) \$1,250 for an amendment that would change a Class 1 licence to a Class 3 licence,</p> <p>(d) \$65 for any other amendment.</p> <p>(3) Of each fee prescribed by subclause (1) or (2), \$65 is a processing fee for the purposes of Part 2 of the <i>Licensing and Registration (Uniform Procedures) Act 2002</i>.</p> <p>(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 <i>Licensing and Registration (Uniform Procedures) Act 2002</i>.</p>	
Clause 9 prescribes matters related to applying for a licence, including licence fees.	See new clauses 6 - 8 above and clauses 11 and 12 below for new application requirements and fees.	
No current provision.	<p>Clause 9 refers to the inclusion of additional licensable activities on existing licences:</p> <p>An application by the holder of an existing master licence for a licence to carry on business in relation</p>	<p>Licence fees are set at different levels according to whether the application is a new application, an application for a replacement licence, or an application for a variation of a licence.</p> <p>Where the variation of the licence involves adding an additional</p>

Current Provision	Proposed Regulation	Reason for Change
	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.	licensable activity, not already covered by the existing licence, for the purposes of clause 8, clause 9 makes it clear that such a change is an amendment to the licence, and is subject to the probity and other checks required by the licensing system for that kind of activity. It is also subject to the fee requirements set out in clause 8(2) and (3) of the Regulation.
Clause 10 sets out certain qualifications and training that are prerequisites for a licence.	Not in proposed Regulation.	<p>Section 7 of the <i>Commercial Agents and Private Inquiry Agents Act 2004</i> was amended by the <i>Statute Law (Miscellaneous Provisions) Act 2005</i> to provide the following ground for refusing the grant of a master licence:</p> <p>(c) If the applicant does not satisfy such requirements as to qualifications, training or experience as the Commissioner may from time to time determine.</p> <p>See Chapter 7 - Additional Matters Not Covered in the Regulation for further details.</p>
No current provision.	<p>Clause 10 and 14 sets out certain classes of persons as being exempt from the requirement to hold a master or operator licence:</p> <p>(1) Pursuant to section 5(2)(b) [11(3)(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:</p> <p>(a) Subsidiaries of an exempt corporation, but only in relation to licensable activities carried out solely on behalf the corporation,</p> <p>(b) Agents of:</p> <p>(i) Any insurance company referred to in Schedule 1 to the Act,</p> <p>(ii) Any person carrying on the business of an insurance loss adjuster referred to in Schedule 1 to the Act, or</p> <p>(iii) Any authorised deposit-taking</p>	<p>As indicated by the then Minister for Police in his Second Reading Speech on the <i>Commercial Agents and Private Inquiry Agents Act 2004</i>, the exemptions from the 1963 Act will be preserved.</p> <p>Clauses 10 and 14 reinstate those exemptions not specifically listed in Schedule 1 of the <i>Commercial Agents and Private Inquiry Agents Act 2004</i>.</p> <p>It also introduces two further exemptions for:</p> <ul style="list-style-type: none"> <li>• A related body corporate. It is considered that a company performing commercial or private inquiry agent activities solely for a related body corporate should not be subject to the licensing requirements. This is due to the fact that the relationship is akin to an employee undertaking the activity solely on his or her employer's behalf.</li> <li>• The Australian Stock Exchange Operations Pty Limited. Although employees of the Australian Stock Exchange Pty Limited may undertake some activities which would fall within the definition of commercial and private inquiry agent</li> </ul>

Current Provision	Proposed Regulation	Reason for Change
	<p>institution referred to in Schedule 1 to the Act,</p> <p>but only in relation to licensable activities carried out solely on behalf of that company, person or institution.</p> <p>(c) ASX Operations Pty Limited (ACN 004 523 782).</p> <p>(2) In subclause (1)(a):</p> <p><b>exempt corporation</b>, 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.</p> <p><b>subsidiary</b>, in relation to an exempt corporation, means any corporation that is a related body corporate, within the meaning of the <i>Corporations Act 2001</i> of the Commonwealth, in relation to the exempt corporation.</p>	<p>activities in the <i>Commercial Agents and Private Inquiry Agents Act 2004</i>, this exemption is considered appropriate as the activities of the Australian Stock Exchange Operations Pty Limited are undertaken in the context of the stringent licensing regime in the <i>Corporations Act 2001</i> (Cth).</p>
<p>Clause 11 prescribes the notification requirements for subagents ceasing to act as subagents.</p>	<p>Not in proposed Regulation.</p>	<p>Subagents not longer exist under the <i>Commercial Agents and Private Inquiry Agents Act 2004</i>. Accordingly this provision is no longer necessary.</p>
<p>No current provision.</p>	<p>Clause 11 prescribes that:</p> <p>An application for an operator licence must include the following information:</p> <p>(a) The individual's name, date and place of birth and residential address,</p> <p>(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,</p> <p>(c) If the individual is not a permanent Australian resident, information establishing the basis on which the individual is permitted to work in</p>	<p>Clause 11 provides the administrative detail for what information must be included in an application for an operator licence, and will form the basis for the licence application form.</p>

Current Provision	Proposed Regulation	Reason for Change
	<p>Australia,</p> <p>(d) The licensable activities that the individual proposes to carry out under the operator licence,</p> <p>(e) Information establishing that the individual satisfies the requirements referred to in section 13 (2) (c) of the Act,</p> <p>(f) If the individual is applying for the renewal of an existing operator licence, the licence number of the existing licence.</p> <p><b>Note.</b> See also the requirements of section 12 of the <i>Licensing and Registration (Uniform Procedures) Act 2002</i>.</p>	
<p>Clause 12 sets down the fee payable for perusal of the register of licences.</p>	<p>Not in proposed Regulation.</p>	<p>As the Register of Licensees established under section 21(1) of the <i>Commercial Agents and Private Inquiry Agents Act 2004</i> will be made available on the internet, no fee for the perusal of the Register has been set at this stage.</p>
<p>No current provision.</p>	<p>Clause 12 specifies the matters relating to fees for an operator licence:</p> <p>(1) The fees for an application for the granting, renewal or restoration of an operator licence are as follows:</p> <p>(a) \$150 for a licence for one year,</p> <p>(b) \$600 for a licence for 5 years.</p> <p>(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.</p> <p>(3) Of each fee prescribed by subclause (1), \$65 is a processing fee for the purposes of Part 2 of the <i>Licensing and Registration (Uniform Procedures)</i></p>	<p>Clause 12 sets out the fees for the new licensing and enforcement system, which are set at a level that meets the costs of the implementation and administration of that system.</p>

Current Provision	Proposed Regulation	Reason for Change
	<p><i>Act 2002.</i></p> <p>(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 <i>Licensing and Registration (Uniform Procedures) Act 2002.</i></p> <p>(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 <i>Licensing and Registration (Uniform Procedures) Act 2002.</i></p>	
Clause 13 prescribes the qualifications required to perform audit of accounts.	Not in proposed Regulation.	The qualifications of auditors are set out in section 18 of the <i>Commercial Agents and Private Inquiry Agents Act 2004.</i> Accordingly, this provision is no longer necessary.
No current provision.	<p>Clause 13 refers to the inclusion of additional licensable activities on existing licences:</p> <p>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.</p>	<p>Licence fees are set at different levels according to whether the application is a new application, an application for a replacement licence, or an application for a variation of a licence.</p> <p>Where the variation of the licence involves adding an additional licensable activity, not already covered by the existing licence, for the purposes of clause 12, clause 13 makes it clear that such a change is an amendment to the licence, and is subject to the probity and other checks required by the licensing system. It is also subject to the fee requirements set out in clause 12(4) of the Regulation.</p>
Clause 14 sets out the written record keeping requirements for licence holder.	<p>Clause 26 refers to record keeping requirements for debt collection:</p> <p>(1) The records that clause 11 of Schedule 2 requires to be kept in relation to debt collection:</p> <p>(a) Must be kept in the English language, and</p> <p>(b) May be kept in a computer or on paper.</p> <p>(2) Computer records are to be backed up at</p>	Pursuant to section 11(4) of Schedule 2 of the <i>Commercial Agents and Private Inquiry Agents Act 2005</i> , clause 26 clarifies how and where debt collection records must be kept to ensure appropriateness and consistency in record keeping.

Current Provision	Proposed Regulation	Reason for Change
	<p>intervals of no more than one month.</p> <p>(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.</p> <p>(4) The holder of a master licence for debt collection must ensure that the requirements of this clause are complied with.</p> <p><b>Maximum penalty: 100 penalty units.</b></p>	
<p>Clause 15 prescribes matters relating to statements of account.</p>	<p>Not in proposed Regulation.</p>	<p>The procedures for dealing with trust money are set out in Division 4 of Schedule 1 of the <i>Commercial Agents and Private Inquiry Agents Act 2004</i>.</p>
<p>No current provision.</p>	<p>The new clause 15 prescribes the investigations the Commissioner may carry out following lodgement of an application for a licence:</p> <p>(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.</p> <p>(2) In the case of an application made by an individual, the Commissioner:</p> <p>(a) May require the applicant:</p> <p>(i) to provide the Commissioner with a photograph of the applicant,</p> <p>(ii) to consent to having his or her photograph taken by an authorised officer, or</p> <p>(iii) to consent to having his or her</p>	<p>Clause 15 introduces additional probity requirements for licensees including the taking of fingerprints and photographs. These requirements will enable the Commissioner to undertake the necessary investigations to confirm an applicant's identity and his or her suitability to hold a licence.</p>



Current Provision	Proposed Regulation	Reason for Change
	<p>fingerprints taken by an authorised officer,</p> <p>for the purpose of confirming the applicant's identity, and</p> <p>(b) Must refuse to grant the licence unless the applicant has complied with any such requirement.</p> <p>(3) In this clause, <b>authorised officer</b> means any of the following persons authorised in writing by the Commissioner as an authorised person for the purposes of this clause:</p> <p>(a) A police officer or any other member of NSW Police,</p> <p>(b) A member of staff of a Department within the meaning of the <i>Public Sector Employment and Management Act 2002</i>.</p>	
<p>Clause 16 sets down matters concerning lodgement of fidelity bonds and clause 17 prescribes the manner in which an application to the Minister regarding fidelity bonds is made.</p>	<p>Not in proposed Regulation.</p>	<p>The <i>Commercial Agents and Private Inquiry Agents Act 1963: National Competition Policy Review Final Report</i> recommended that the requirement to lodge a fidelity bond be removed from the legislation. This occurred in the <i>Commercial Agents and Private Inquiry Agents Act 2004</i>. Accordingly this provision is no longer necessary.</p>
<p>No current provision.</p>	<p>Clause 16 specifies that:</p> <p>A licensee must not contravene any condition of the licence.</p> <p><b>Maximum penalty is 50 penalty units.</b></p>	<p>Sections 9 and 15 of the <i>Commercial Agents and Private Inquiry Agents Act 2004</i> authorises the Commissioner to issue a licence subject to any conditions as the Commissioner deems necessary.</p> <p>Pursuant to section 39(4) of the <i>Commercial Agents and Private Inquiry Agents Act 2004</i>, clause 16 creates an offence for the failure of the master or operator licence holder to comply with those conditions.</p>
<p>No current provision.</p>	<p>Clause 17 prescribes that restrictions on the use of a</p>	<p>Pursuant to section 39(4) of the <i>Commercial Agents and Private Inquiry Agents Act 2004</i>, clause 17 creates an offence for the</p>

Current Provision	Proposed Regulation	Reason for Change
	licence: A licensee must not: (a) Sell, dispose of, deliver, let out, hire or rent the licence to another person, or (b) Permit any other person to use the licence. <b>Maximum penalty: 50 penalty units.</b>	inappropriate use of a licence and will help to ensure that only those persons authorised by the licence carry out the business or activities specified.
Clause 18 specifies the persons who may be a prescribed officer.	Clause 23 prescribes the classes of person who are 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. <b>Note.</b> Police officers are authorised inspectors by virtue of the definition of <b>authorised inspector</b> in section 4 (1) of the Act.	Clause 23 recognises that non-sworn personnel within NSW Police undertake licensing and enforcement roles in respect of the <i>Commercial Agents and Private Inquiry Agents Act 2004</i> .
No current provision.	Clause 18 prescribes the requirements for the surrender of a 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. <b>Maximum penalty: 50 penalty units.</b>	Pursuant to section 39(4) of the <i>Commercial Agents and Private Inquiry Agents Act 2004</i> , clause 18 creates an offence for the failure to surrender a suspended or cancelled licence. This provision will ensure that a person, whose eligibility for a licence has been withdrawn or otherwise put on hold, cannot continue to operate using that licence.

Current Provision	Proposed Regulation	Reason for Change
	(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.	
Clause 19 prescribes savings or transitional provisions.	Not in proposed Regulation.	The savings and transitional provisions are set out in Schedule 4 of the <i>Commercial Agents and Private Inquiry Agents Act 2004</i> .
No current provision	<p>Clause 19 specifies the actions a licence holder must take in regard to a lost, stolen or destroyed licence:</p> <p>(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.</p> <p><b>Maximum penalty: 5 penalty units.</b></p> <p>(2) For the purposes of this clause, the Commissioner is taken to have been notified of the occurrence if:</p> <p>(a) Written notice of the occurrence has been sent by post to the Commissioner, or</p> <p>(b) Verbal notice of the occurrence has been given, either in person or by telephone, to a police officer, or at a police station.</p>	Pursuant to section 39(4) of the <i>Commercial Agents and Private Inquiry Agents Act 2004</i> , clause 19 places the onus on the licence holder to advise the Commissioner of the loss, theft, destruction, defacement or mutilation of a licence. The aim of this provision is to ensure that where a licence is otherwise destroyed, the Commissioner is appropriately advised to allow for the replacement of that licence.
Schedule 1, Form 1 sets out the format of a licence for a natural person.	Not in proposed Regulation.	The form of the application and the licence required under the <i>Commercial Agents and Private Inquiry Agents Act 2004</i> are not prescribed to enable those forms to be updated as required and not subject to regulatory change for each and every amendment.
Schedule 1, Form 2 sets out the format for a licence for a corporation.	Not in proposed Regulation.	See above.
Schedule 1, Form 3 sets out the application form for a commercial	Not in proposed Regulation.	See above.

Current Provision	Proposed Regulation	Reason for Change
agent or private inquiry agent licence.		
Schedule 1, Form 4 sets out the application form for a subagent licence.	Not in proposed Regulation.	See above.
Schedule 1, Form 5 is the form for giving notice of the lodgement of an objection to the grant of a licence.	Not in proposed Regulation.	See above.
Schedule 1, Form 6 is the form for an auditor's certificate.	Not in proposed Regulation.	See above.
Schedule 1, Form 7 is the form for a lodgement of a fidelity bond.	Not in proposed Regulation.	See above.
No current provision.	<p>Clause 20 prescribes the information to be kept on the Register of Licensees.</p> <p>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:</p> <ul style="list-style-type: none"> <li>(a) The name of the licensee,</li> <li>(b) The nature of the licence,</li> <li>(c) The date on which the licence expires,</li> <li>(d) Any conditions to which the licence is subject,</li> <li>(e) The licence number of the licence.</li> </ul>	<p>Clause 20 outlines those particulars that must be included in the Register of Licensees and will offer the public a mechanism by which to check whether a commercial agent or private inquiry agent is currently licensed and the terms of that licence.</p>
No current provision.	<p>Clause 21 prescribes penalty notice offences and penalty payable:</p> <p>For the purposes of section 28 of the Act:</p> <ul style="list-style-type: none"> <li>(a) An offence under a provision of the Act or this</li> </ul>	<p>Clause 21 outlines those offences that are prescribed for the purposes of issuing a penalty notice and the penalty payable in relation to those penalty notices.</p>

Current Provision	Proposed Regulation	Reason for Change
	<p>Regulation specified in Column 1 of Schedule 1 is prescribed as a penalty offence, and</p> <p>(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.</p>	
<p>No current provision.</p>	<p>Clause 22 prescribes the form of an authorised inspector's certificate of authority:</p> <p>(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:</p> <p>(a) The inspector's name,</p> <p>(b) The nature of the inspector's powers under the Act,</p> <p>(c) The date on which the certificate expires,</p> <p>(d) A statement that the certificate is issued under the Act.</p> <p>(2) Police officers are exempt from the operation of section 32 (1) (a) of the Act.</p> <p><b>Note.</b> 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.</p> <p>(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.</p> <p><b>Maximum penalty: 50 penalty units.</b></p>	<p>Clause 22 establishes a certificate of authority for authorised inspectors, with the exception of sworn police officers. It will provide the person being inspected with formal photographic certification that the inspector is not only authorised to undertake activities, but also the extent of his or her power to act. It will prevent a person falsely representing him or herself as an authorised inspector, to gain advantage.</p> <p>Pursuant to section 39(4) of the <i>Commercial Agents and Private Inquiry Agents Act 2004</i>, clause 22 also creates an offence for the failure to produce a certificate of authority on demand.</p>

Current Provision	Proposed Regulation	Reason for Change												
No current provision.	<p>Clause 24 sets down the requirements on a licence holder to provide his or her name and licence number when conducting business by telephone:</p> <p>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.</p> <p><b>Penalty: 50 penalty units.</b></p>	<p>Together with the establishment of the Register of Licensee, clause 24 offers further protections to the general public by requiring that a licensee must, upon request, provide details of his or her name and licence number when conducting business by telephone. Unlike conducting business face to face, where the licence may be viewed, telephone enquiries do not permit the same level of scrutiny of the credentials of the licensee. This provision places the onus on the licensee to provide those details when asked.</p>												
No current provision.	<p>Clause 25 prescribes the requirement for a debt collector to be able to produce evidence of a debt on request:</p> <p>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.</p> <p><b>Penalty: 100 penalty units.</b></p>	<p>Clause 25 ensures that a licensee undertaking debt collection activities must be able to demonstrate, on paper, that the debt exists. This provision will minimise any risk that the proper documentation of a debt has not been undertaken or that a person is being pursued for a debt that does not exist.</p>												
No current provision.	<p>Schedule 1 prescribes the penalty notice offences and the amounts payable:</p> <table border="1" data-bbox="573 1068 1178 1435"> <thead> <tr> <th data-bbox="573 1068 877 1154">Column 1 Provision</th> <th data-bbox="877 1068 1178 1154">Column 2 Penalty</th> </tr> </thead> <tbody> <tr> <td data-bbox="573 1154 877 1240"><b>Commercial Agents and Private Inquiry Agents Act 2004</b></td> <td></td> </tr> <tr> <td data-bbox="573 1240 877 1284">Section 26</td> <td data-bbox="877 1240 1178 1284">\$550</td> </tr> <tr> <td data-bbox="573 1284 877 1328">Section 27</td> <td data-bbox="877 1284 1178 1328">\$1,100</td> </tr> <tr> <td data-bbox="573 1328 877 1372">Section 30 (2)</td> <td data-bbox="877 1328 1178 1372">\$1,100</td> </tr> <tr> <td data-bbox="573 1372 877 1435">Schedule 2, clause 2 (4)</td> <td data-bbox="877 1372 1178 1435">\$1,100</td> </tr> </tbody> </table>	Column 1 Provision	Column 2 Penalty	<b>Commercial Agents and Private Inquiry Agents Act 2004</b>		Section 26	\$550	Section 27	\$1,100	Section 30 (2)	\$1,100	Schedule 2, clause 2 (4)	\$1,100	<p>Schedule 1 outlines those offences that can be dealt with by way of penalty notice and the penalty payable in relation to those penalty notices.</p> <p>For the most part, offences identified for penalty notices are those offences that do not carry a penalty of imprisonment or a maximum monetary penalty in excess of 100 penalty units.</p>
Column 1 Provision	Column 2 Penalty													
<b>Commercial Agents and Private Inquiry Agents Act 2004</b>														
Section 26	\$550													
Section 27	\$1,100													
Section 30 (2)	\$1,100													
Schedule 2, clause 2 (4)	\$1,100													

Current Provision	Proposed Regulation	Reason for Change
	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	
	<b>Commercial Agents and Private Inquiry Agents Regulation 2005</b>	
	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	

The impact of each of the clauses of the proposed *Commercial Agents and Private Inquiry Agents Regulation 2005* on industry, Government and the community is assessed below. A copy of the proposed Regulation is attached at Appendix A to this Regulatory Impact Statement.

## **5. IMPACT OF INDIVIDUAL CLAUSES OF THE PROPOSED REGULATION**

### **5.1 Preliminary (Clauses 1 to 5)**

This Part of the Regulation:

- Cites the title of the proposed Regulation;
- Specifies the proposed commencement date; and
- Defines certain terms and phrases as used in the proposed Regulation.

#### **Definitions (Clause 3)**

##### *Objective*

To prescribe the definitions for:

- A licence number;
- A licensable activity;
- A licensed operator;
- A permanent Australian resident; and
- The Act.

##### *Provision*

Clause 3 clarifies the meaning of phrases introduced in the Regulation to support the operation of the new licensing requirements pursuant to both the *Commercial Agents and Private Inquiry Agents Act 2004* and the *Licensing and Registration (Uniform Procedures) Act 2002*.

##### *Comment*

The proposed changes are machinery in nature and no costs arise.

#### **Close Associate (Clause 4)**

##### *Objective*

To prescribe the definition for what constitutes a close associate of an applicant.

##### *Provision*

This provision provides a definition of a close associate and clarifies what details must be provided in an application for a master licence. Clauses 6(a)(ii) and 7(b) of the draft Regulation require that a master licence applicant provide details of his or her close associates with the application for a licence. This requirement is designed to enable the Commissioner to investigate those persons who may exert control or influence over a prospective licence holder.

##### *Comment*

While the clause extends the powers of the Commissioner to determine whether a licence should be granted by enabling enquiries into associates of the applicant, it is considered to be an extremely important tool in preventing criminal infiltration of the commercial and private inquiry agents industries. The inclusion of close associates in the licensing regime provides a mechanism to prevent a person, whose criminal record would preclude them from holding such a licence, using a “clean skin” (a person without a criminal record) to obtain a master licence on his or her behalf.

This provision may have costs for applicants and existing licensees if this clause



precludes the licensee from holding a licence. However, the benefits to public safety and the industry generally far outweigh these costs.

### **Major Offences (Clause 5)**

#### *Objective*

To prescribe additional offences which constitute a major offence for the purposes of the *Commercial Agents and Private Inquiry Agents Act 2004*, and require the mandatory refusal of a grant, or revocation, of a licence.

#### *Provision*

Pursuant to section 4 of the *Commercial Agents and Private Inquiry Agent Act 2004*, clause 5 includes crimes of violence such as offences in the nature of rape and other acts of sexual assault, sexual servitude, kidnapping, procuring for prostitution and child prostitution and pornography as major offences for the purposes of the Act.

#### *Comment*

A major offence is defined in section 4 of the *Commercial Agents and Private Inquiry Agent Act 2004* as an offence involving:

- Violence, fraud, dishonesty or theft, being an offence punishable by imprisonment;
- The unlawful possession or use of a firearm or other weapon or drug;
- Part 2 of the *Listening Devices Act 1984*, or under corresponding provisions of the law of the Commonwealth or of another State or Territory;
- The *Telecommunications (Interception) Act 1979* of the Commonwealth.

Commercial and private inquiry agent activities involve a high degree of involvement and contact with members of the public, who are often in vulnerable positions. Although offences involving violence are included in section 4 of the *Commercial Agents and Private Inquiry Agents Act 2004*, it is considered that a conviction for sexual and other related offences should be specifically mentioned as mandatory grounds for the refusal of a licence. Clause 5 will prevent a person with an offence under Division 10, 10A, 14, 14A and 15 of Part 3 and section 562AB of the *Crimes Act 1900* from interacting with members of the public as commercial or private inquiry agents in potentially vulnerable circumstances.

This provision may have costs for applicants and existing licensees if they are precluded from obtaining a licence. However, the benefits to public safety and the industry generally far outweigh these costs.

### **5.2 Licences (Clauses 6 to 20)**

Division 1 of Part 2 outlines the administrative requirements for an application for a master licence including:

- Details required to be provided in an application by an individual and a corporation;
- Licence fees; and
- Exemptions.

Division 2 of Part 2 outlines the administrative requirements for an application for an operator licence including:

- Details required to be provided in an application by an individual and a corporation;
- Licence fees; and
- Exemptions.

Division 3 of Part 2 outlines general matters related to licensing including:

- The investigations the Commissioner may carry out following lodgement of an application for a licence;
- Additional offences relating to the licence and conditions on the licence; and
- The establishment of a Register of Licensees.

### **Applications for Master Licences (Clauses 6 to 7)**

#### *Objective*

To prescribe those details required as part of an application for a master licence by an individual and a corporation.

#### *Provision*

Clauses 6 and 7 outline the details that an applicant must provide in an application for a master licence. This information will form the basis of the standard application form to be prepared by the Security Industry Registry.

#### *Comment*

The proposed changes are machinery in nature and no costs arise.

### **Application Fees (Clauses 8 and 12)**

#### *Objective*

To prescribe the fees for the new licensing and enforcement system proposed by the *Commercial Agents and Private Inquiry Agents Act 2004*.

#### *Provision*

These fees are set at a level that reflects the cost and administration of the licensing and enforcement system and includes provision for a non-refundable processing fee.

#### *Comment*

Submissions to the *Commercial Agents and Private Inquiry Agents Act 1963 National Competition Policy Review Final Report October 2003* recognised the need for increased enforcement of conduct requirements. In particular, concerns were expressed that lack of enforcement creates a perception that it is possible to get away with non-compliance, putting those who are being responsible are at a disadvantage when competing with non-compliant licensees.

The changes to commercial and private inquiry agents licensing contained in *Commercial Agents and Private Inquiry Agents Act 2004* were designed to promote more effective enforcement by creating an identifiable licensing authority with comprehensive knowledge of the legislation to whom complaints may be brought, and providing for both responsive and pro-active enforcement. However, in order to

be able to implement an effective enforcement program, the licensing authority must be adequately resourced for this task.

In this regard, the fee structure in the draft Regulation was developed as part of a thorough business case detailing the costs of the proposed changes to the licensing regime, which was vetted by Treasury. While the fees represent an increase from those under the *Commercial Agents and Private Inquiry Agents Act 1963*, it should be noted that those fees have remained extremely low for the last 20 years. It is also considered that the cost to industry is outweighed by the benefit of having an appropriate fee structure that meets the cost of the administration of the licensing and enforcement system. In most cases, professional licence fees are a tax deductible business expense.

In addition, a GST exemption is being sought for fees for licences issued pursuant to the *Commercial Agents and Private Inquiry Agents Act 2004*. While there is precedent to suggest that an application to exempt commercial and private inquiry agent licence fees from the GST would be successful (security industry licence fees are currently exempt), the success or otherwise of the exemption application may not be known until the end of 2005.

### **Additional Licensable Activities – Master Licensees (Clause 9)**

#### *Objective*

To prescribe how the amendment of a licence to include additional licensable activities should be treated.

#### *Provision*

Licence fees are set at different levels according to whether the application is a new application, an application for a replacement licence, or an application for a variation of a licence.

Where the variation of the licence involves adding an additional licensable activity, not already covered by the existing licence, this clause makes it clear that such a change is an amendment to the licence. Thus, the applicant is subject to the probity and other checks required by the licensing system for that kind of activity. Moreover, it provides that the fees applicable for an amendment are set out in clauses 8(2) and (3) of the Regulation.

#### *Comment*

The fees have been set at a level that reflects the new licensing and enforcement system. This clause prevents a master licence applicant from avoiding paying the appropriate fees for the class of licence sought. For example, the fee payable on an application for a Class 1 licence (a master licence where no operators are employed) is \$750. An amendment to change the licence to a Class 2 licence (where the licensee can employ up to 10 operators) represents a significant change in the licence, and invokes additional monitoring requirements. The clause is intended to prevent a master licence holder from obtaining a Class 1 licence, but immediately varying that licence to a Class 2 licence to avoid the increased cost of the Class 2 licence. It is appropriate that the licence holder seeking to change the class of licence should pay the Class 2 licence fee less the cost of the Class 1 licence already paid, in this case, \$500, and not merely a \$65.00 processing fee. This provision may have an appreciable cost impact on master licence holders

seeking to upgrade their licence classes.

### **Exemptions (Clauses 10 and 14)**

#### *Objective*

To prescribe exemptions from the licensing requirements of the *Commercial Agents and Private Inquiry Agents Act 2004*.

#### *Provision*

Sections 5(2)(b) and 11(3)(b) of the *Commercial Agents and Private Inquiry Agents Act 2004* provide that a person is not required to hold a commercial or private inquiry agent licence if that person belongs to a class of persons declared by the Regulation to be a class of person to whom the sections do not apply.

#### *Comment*

As indicated by the then Minister for Police in his Second Reading Speech on the *Commercial Agents and Private Inquiry Agents Act 2004*, the exemptions from the 1963 Act were to be preserved. However, it appeared that the reference to agents of authorised deposit taking organisations, insurance companies and insurance loss adjusters were not included in the legislation. Clause 10 reinstates those exemptions not specifically listed in Schedule 1 of the *Commercial Agents and Private Inquiry Agents Act 2004*.

It also introduces two further exemptions from the operation of the *Commercial Agents and Private Inquiry Agents Act 2004*:

- The Australian Stock Exchange Operations Pty Limited; and
- A general exemption for a related body corporate.

Although employees of the Australian Stock Exchange Pty Limited may undertake some activities which would fall within the definition of commercial and private inquiry agent activities in the *Commercial Agents and Private Inquiry Agents Act 2004*, it was not the intention of Parliament that the legislation introduce another layer of regulation to cover licensed market operators. Given that the objective of the *Commercial Agents and Private Inquiry Agents Act 2004* is to “*protect the public in relation to commercial agent and private inquiry agent activities*” which is achieved by providing for the “*licensing of persons carrying out, and carrying on a business in relation to, commercial agent and private inquiry agent activities*”, it is considered that an exemption for the Australian Stock Exchange Operations Pty Limited is appropriate as its activities are undertaken in the context of the stringent licensing regime in the *Corporations Act 2001* (Cth).

In addition, it is considered that a company performing commercial agent or private inquiry agent activities solely for a related body corporate should not be subject to the licensing requirements. This is due to the fact that the relationship is akin to an employee undertaking the activity solely on his or her employer’s behalf. It is not expected that this provision will have any cost impact on industry as it will preserve the status quo.

### **Additional Licensable Activities – Operator Licensees (Clause 13)**

#### *Objective*

To prescribe how the amendment of a licence to include additional licensable activities should be treated.

*Provision*

Licence fees are set at different levels according to whether the application is a new application, an application for a replacement licence, or an application for a variation of a licence.

Where the variation of an operator licence involves adding an additional licensable activity, not already covered by the existing licence, this clause makes it clear that such a change is an amendment to the licence. Accordingly, the applicant is subject to the probity and other checks required by the licensing system for that kind of activity. Moreover, it provides that the fees applicable for an amendment are set out in clauses 12(3) and (4) of the Regulation.

*Comment*

The fees have been set at a level that reflects the new licensing and enforcement system. An amendment to change an operator licence to add an additional licensable activity requires probity checks to be undertaken prior to be granted. On this basis, it is appropriate that the licensee pay an additional \$65 in processing fees, which is the cost incurred by the Security Industry Registry in processing the application and undertaking probity checks, rather than the \$50 licence replacement fee. This provision will have a very limited cost to industry.

**Investigation of Licence Applications (Clause 15)**

*Objective*

To authorise the Commissioner to carry out all investigations necessary to assist the Commissioner to determine whether or not to grant a licence.

*Provision*

Clause 15 authorises the Commissioner to undertake whatever inquiries and investigations are required to assist him to determine whether or not to grant a licence. It also introduces additional probity requirements for licensees including the taking of fingerprints and photographs.

*Comment*

While industry may have some concerns about the additional investigations, in particular the taking of fingerprints, the example of the security industry has shown that despite stringent requirements regarding mandatory disqualifying criminal offences, a number of applicants had used false names to obtain licences. The introduction of fingerprinting reduced the capacity of applicants to circumvent the licensing requirements and minimised the involvement of persons with relevant criminal convictions from engaging in employment in the security industry, for example, by legally changing their name to avoid criminal history checks.

Identity fraud indicates a propensity towards criminal activity which poses both a financial and a public safety threat to the industry and to the public. This is of concern given that commercial and private inquiry agents have a high degree of contact with members of the public, who are often in vulnerable positions, and hold money and goods on trust for third parties. It is considered that the taking of fingerprints and photographs will reduce potential risk of theft or other criminal

activity to manageable levels by enabling the Commissioner to undertake the necessary investigations to confirm an applicant's identity and ensure his or her appropriateness to hold a licence.

This provision may have costs to applicants and existing licensees if he or she is refused a licence on the basis of the further investigations permitted by this clause. However, it is considered that benefits to public safety and the industry generally far outweigh the costs.

### **Contravention of Licence Conditions (Clause 16)**

#### *Objective*

To provide an offence for contravening a condition of a licence.

#### *Provision*

Sections 9 and 15 of the *Commercial Agents and Private Inquiry Agents Act 2004* authorises the Commissioner to issue a licence subject to any conditions as the Commissioner deems necessary.

Pursuant to section 39(4) of the *Commercial Agents and Private Inquiry Agents Act 2004*, clause 16 creates an offence for the failure of the master or operator licence holder to comply with those conditions.

#### *Comment*

While it is recognised that the vast majority of licence holders will comply with the requirements of the licensing scheme, there will always be some licence holders who may not. This provision is designed to act as a deterrent to a licence holder contravening a condition of his or her licence, as imposed by sections 9 and 15 of the *Commercial Agents and Private Inquiry Agents Act 2004*.

### **Offences Related to Licences (Clauses 17 to 19)**

#### *Objective*

To prescribe additional offences related to the sale, disposal and surrender of a licence and accompanying notification requirements.

#### *Provision*

Pursuant to section 39(4) of the *Commercial Agents and Private Inquiry Agents Act 2004*:

- Clause 17 creates an offence for the inappropriate sale, disposal, delivery, hire or rent of a licence;
- Clause 18 creates an offence for the failure to surrender a suspended or cancelled licence; and
- Clause 19 creates an offence for failure to notify the Commissioner of the loss, theft, destruction, defacement or mutilation of a licence.

#### *Comment*

Commercial and private inquiry agent activities involve a high degree of involvement and contact with members of the public, often in circumstances where there is a high degree of vulnerability. These provisions are designed to increase public safety by ensuring that:

- A licensee does not use his or her licence inappropriately by lending, selling or hiring out his or her licence. This provision complements the existing prohibitions in the *Commercial Agents and Private Inquiry Agents Act 2004* against the carrying on a business, or carrying out any commercial or private inquiry agent activity and reinforces that only those persons authorised by the licence carry out the business or activities specified;
- A person, whose eligibility for a licence has been withdrawn or otherwise put on hold, cannot continue to operate using that licence; and
- Where a licence is lost or otherwise destroyed, the Commissioner is appropriately advised to allow for the replacement of that licence.

These provisions will impose costs on licence holders, if he or she commits licence related offences. However, the benefits to public safety and the industry generally far outweigh the costs.

### **Register of Licensees (Clause 20)**

#### *Objective*

To prescribe the particulars to be included in the Register of Licensees.

#### *Provision*

Clause 20 outlines the details to be included in the Register of Licensees, which was established pursuant to section 21 of the *Commercial Agents and Private Inquiry Agents Act 2004*, including the name of the licensee, licence number, the date of expiry of the licence, the nature of the licence and any conditions the licence is subject.

#### *Comment*

Clause 20 provides a mechanism for the public, whether persons seeking to engage the services of a commercial or private inquiry agent, or persons who are the subject of commercial or private agent activities, to check if that commercial agent or private inquiry agent is licensed and the terms of that licence. It will provide greater assurance that the person is properly licensed to undertake the work that he or she purports to be able to undertake. This provision has no cost to industry and will impact positively on public safety and consumer confidence in the industry.

### **Penalty Notice Offences (Clause 21 and Schedule 1)**

#### *Objective*

To establish penalty notice offences.

#### *Provision*

Clause 21 establishes a penalty notice scheme and Schedule 1 outlines those offences that are prescribed for the purposes of issuing a penalty notice and the penalty payable in relation to those penalty notices.

#### *Comment*

The advantage of introducing a penalty notice system for “minor” breaches of *Commercial Agents and Private Inquiry Agents Act 2004* and the Regulation is that it will encourage people who may be guilty of minor indiscretions to pay a penalty rather than go through the court process. This will have a positive impact both on

Government by alleviating pressure on both Police and Court resources, and on industry, as minor breaches may be dealt with quickly without a finding of guilt.

### **Certificates of Authority (Clause 22)**

#### *Objective*

To prescribe the requirements of a certificate of authority.

#### *Provision*

Clause 22 establishes a certificate of authority for authorised inspectors, with the exception of sworn police officers who are exempt from this requirement. It is designed to provide formal photo certification to any person being inspected, to confirm that the inspector is authorised to undertake activities and extent of his or her power to act. It will also prevent a person falsely representing him or herself as an authorised inspector.

Pursuant to section 39(4) of the *Commercial Agents and Private Inquiry Agents Act 2004*, clause 22 also creates an offence for the failure to produce a certificate of authority on demand.

#### *Comment*

This provision will ensure that an authorised inspector is immediately identifiable, has capacity to demonstrate that he or she is authorised to undertake inspection activities and the extent of his or her powers. This provision gives greater assurances to commercial and private inquiry agents that a person undertaking investigations is not falsely representing him or herself as an authorised inspector. This provision will have a positive impact on industry by ensuring that authorised inspectors are readily identifiable through the holding of the appropriate certifications.

### **Authorised Inspectors (Clause 23)**

#### *Objective*

To prescribe an additional class of persons as authorised inspectors.

#### *Provision*

This provision provides that persons employed by NSW Police, but not as Police officers, may be appointed as authorised inspectors.

#### *Comment*

Clause 23 recognises that non-sworn personnel within NSW Police undertake licensing and enforcement roles as far as the *Commercial Agents and Private Inquiry Agents Act 2004* is concerned. It also allows for non sworn Police personnel to be appointed as an authorised inspector. This provision is not expected to have a cost to industry but will impact positively on the Government's capacity to monitor the activities of commercial and private inquiry agents.

### **Conducting Business via Telephone (Clause 24)**

#### *Objective*

To prescribe additional requirements for licensees conducting business via the telephone.



*Provision*

Clause 24 requires licensees who are conducting business via telephone under the authority of either a master or operator licence to provide his or her name and licence number upon request.

*Comment*

Clause 24 offers additional safeguards for the general public by placing the onus on the licensee to provide his or her name and licence number when asked. Unlike conducting business face to face, where the licence may be produced and examined, telephone enquiries do not permit the same level of scrutiny of the credentials of the licensee. This provision has no cost to industry, but will have a positive impact on consumers and the general public by enabling the details of commercial and private inquiry agents to be provided and checked.

**Production of Evidence of Debt (Clause 25)***Objective*

To require the production of evidence of a debt upon request.

*Provision*

Clause 25 requires that a licensee who is requesting, demanding, or collecting money, must provide documentary evidence of the debt, if asked.

*Comment*

Clause 25 ensures that a licensee undertaking debt collection activities must be able to demonstrate, on paper, that the debt exists. This provision will minimise any risk that the proper documentation of a debt has not been undertaken, or that a person is being pursued for a debt that can not be conclusively documented. This provision will have significant benefits for consumers who have, in the past, been criminally or mistakenly targeted for debt collection. There will be an impact on industry regarding ensuring appropriate documentation; however, it is considered that the majority of the industry would already be compliant.

**Records to be Kept in Relation to Debt Collection (Clause 26)***Objective*

To prescribe the record keeping requirements related to debt collection.

*Provision*

Pursuant to 11(1)(b) of the *Commercial Agents and Private Inquiry Agents Act 2004*, clause 26 clarifies how and where debt collection records must be kept, including keeping the records in either paper form or on a computer and in English. If debt collection records are kept on the computer, additional backing-up measures are required.

*Comment*

This provision is designed not only to ensure appropriateness and consistency in record keeping but also that all necessary information is available should an authorised inspector be required to undertake an inspection. This provision is machinery in nature and there should be limited cost to licence holders as record keeping requirements already exist.

## **6. IMPACT ANALYSIS OF THE PROPOSED REGULATION**

### **6.1 Option 1: Do Nothing**

This option would result in the existing *Commercial Agents and Private Inquiry Agents Regulation 2000* being repealed on 1 September 2006, with no replacement Regulation being made. While the Act would still exist, a number of provisions would be unworkable and the objectives of the Act could not be achieved. It would not be possible to give effect to the intention of the Act without some further action by the Government, such as amending the Act. Enshrining the proposed requirements of the Regulation in the Act would reduce the capacity to amend the requirements quickly to respond to problems that may arise for consumers or to address changes in industry practices.

#### *Impact on Consumers*

In the absence of a functioning licensing regime, there is a real risk of increased costs to the consumer on the basis that it would be very difficult to provide assurances that persons who purport to be competent and capable of discharging the functions of commercial and private inquiry agents are in fact appropriately qualified. Moreover, without the capacity to undertake further investigations about the suitability of a prospective licensee and his or her associates, infiltration could occur of the commercial and private inquiry agent industries particularly in relation to the collection of monies, by unethical, untrained or criminal elements. This may result in consumers being at risk of unscrupulous traders. Without appropriate resourcing through licence fees, there would be very limited capacity for Police to enforce and prosecute non-compliance with the legislation.

#### *Impact on Industry*

In the absence of a Regulation, professional and competent persons within the commercial and private inquiry agent industries would have difficulties in obtaining a licence and confirming their responsibilities under the legislation. It would also be much harder to satisfy consumers that they were competent and appropriately trained to carry out those commercial and private inquiry agent activities. In addition, without the necessary industry regulations, it would be easy for criminals to take advantage of a system that is less controlled. It would this be much harder to prevent undesirable persons from engaging in commercial and private inquiry agent activities, to the detriment of the majority of competent and honest licensees.

#### *Impact on Government*

The Government's licensing of commercial and private inquiry agents would continue under the *Commercial Agents and Private Inquiry Agents Act 2004* but this role would be extremely difficult due to the lack of resources to meet the cost of licensing and enforcement under the *Commercial Agents and Private Inquiry Agents Act 2004*. It would also be more time-consuming in the absence of appropriate and consistent regulations. Clear and concise guidelines are required to outline the requirements of applications for licences and other administrative procedures, without which inconsistency in the application of the *Commercial Agents and Private Inquiry Agents Act 2004* is likely.

### *Conclusion*

The option to 'do nothing' would result in a system which could not be properly administered and the intent of the Act would not be achieved.

Option 1 is not supported.

### 6.2 Option 2: Rely on the Industry to Self-Regulate

This option would involve relying on the commercial and private inquiry agents industries to develop the administrative detail required to support the *Commercial Agents and Private Inquiry Agents Act 2004*.

#### *Impact on Consumers*

Although self-regulation may offer a number of benefits, particularly in low risk industries where it is unlikely that a major breach of industry codes of practice would result in criminal activities and endangerment of the public, there is a very real risk that self-regulation will result in commercial decisions being made without the necessary consideration of public needs. Whilst these decisions may advantage the industry, the concern for public safety or consumer protection may not be paramount.

#### *Impact on Industry*

The *Commercial Agents and Private Inquiry Agents Act 1963: National Competition Policy Review Final Report* (the Report of the Review) noted that, while many industry bodies felt that self-regulation was a long term option, the majority of submissions accepted that industry was not equipped for self-regulation at this time. In absence of an overriding industry representative body, it would be difficult to establish any kind of uniformity as far as the licensing requirements were concerned. In absence of clear and concise guidelines, it is highly likely that the *Commercial Agents and Private Inquiry Agents Act 2004* would be inconsistently applied.

#### *Impact on Government*

The Government's licensing of commercial and private inquiry agents would continue under the *Commercial Agents and Private Inquiry Agents Act 2004* but this role would be more difficult as Government would be heavily reliant on industry to ensure the operation of the licensing system. This would be complicated by the fact that there is no single industry representative body to develop the necessary administrative structure to support the *Commercial Agents and Private Inquiry Agents Act 2004*.

### *Conclusion*

The option for industry to self regulate would result in a system that could not be properly administered and the intent of the Act would not be achieved.

Option 2 is not supported.

### 6.3 Option 3: The Proposed Regulation

The proposed *Commercial Agents and Private Inquiry Agents Regulation 2005* has been developed to replace the current *Commercial Agents and Private Inquiry*

*Agents Regulation 2000*, which will be automatically repealed on 1 September 2006. The proposed Regulation provides the administrative detail and structure required to support the operation of the *Commercial Agents and Private Inquiry Agents Act 2000* by prescribing:

- Application procedures for master and operator licences including how applications are to be made and the information and particulars that must accompany the licence application;
- The fees which are payable for licences;
- Matters related to the investigation of applications including the taking of fingerprints;
- Offences related to the licence including contravention of a licence condition, surrender of the licence and notification requirements related to lost, stolen, defaced or mutilated licences;
- The particulars to be recorded on the Register of Licensees; and
- Other matters such as penalty notices, authorised inspectors, certificates of authority and the keeping of records for debt collection.

#### *Impact on Consumers*

The proposed Regulation benefits consumers by ensuring, together with the *Commercial Agents and Private Inquiry Agents Act 2004*, that commercial and private inquiry agents are not only properly licensed, but also that undesirable persons are prevented from engaging in employment in the industry through additional probity requirements.

A number of the measures provided under the Regulation provide intangible benefits by increasing consumer confidence in dealing with the industry, for example, by establishing a Register of Licensees, requiring that licensees provide licence particulars on demand and evidence of debts and providing penalties for the misuse of licences.

#### *Impact on Industry*

There are few significant foreseeable impacts on the commercial and private inquiry agent industries in the proposed Regulation. While it is recognised that commercial and private inquiry agents are already regulated, the Regulation will support the introduction of the *Commercial Agents and Private Inquiry Agents Act 2004*.

The proposed Regulation benefits industry by:

- Providing an improved, centralised licensing environment;
- Ensuring the probity of commercial and private inquiry agents; and
- Prescribing a standardised application process and fees structure.

It will also provide potential new entrants to the commercial and private inquiry agents industries with a high level of certainty regarding their obligations and requirements under the regulatory regime.

There will, however, be some cost to industry, particularly in relation to the new fee structure and for applicants or existing licensees who would be precluded from holding a licence because of various disqualifying criteria introduced by the Regulation.

*Impact on Government*

As indicated above, in the absence of the Regulation, the licensing and enforcement of commercial and private inquiry agents activities could not be adequately achieved. Although the Government incurs costs in administering the legislation, the fees set by the proposed Regulation contribute to these costs. In addition, it is considered that the cost of Government's involvement in the licensing and regulation of the commercial and private inquiry industries is justified in terms of the protection that it affords agents, consumers and the wider public.

*Conclusion*

Option 3, the proposed Regulation, meets the regulatory objective in that it provides the necessary detail required to support the operation of the *Commercial Agents and Private Inquiry Agents Act 2004*. It reduces the risk to the community as a whole, including commercial and private inquiry agents, from malpractice and criminal behaviour in an industry, which is particularly vulnerable, and reduces the risk of economic loss to consumers who employ commercial and private inquiry agents.

Option 3 provides the greatest net benefit and is the preferred option.

## **7. ADDITIONAL MATTERS NOT INCORPORATED INTO THE REGULATION**

### **7.1 Code of Conduct**

The *Commercial Agents and Private Inquiry Agents Act 1963: National Competition Policy Review Final Report* (Report of the Review) considered the development of a Code of Conduct. Those submissions to the Review that canvassed the issue considered were in favour of a Code of Practice to raise the standards and service provided by licensed agents. However, it was not considered that a Code of Practice of itself would be sufficient to regulate the industry, rather it was a valuable adjunct to a statutory licensing regime.

It is noted that the submissions expressed a range of views on the preferred structure and development of a Code. In general, there was consensus that a Code should be developed in consultation with all industry stakeholders.

There is capacity within the *Commercial Agents and Private Inquiry Agents Act 2004* to prescribe those offences which constitute a “minor offence” and may prohibit the issue of a licence to an applicant. In this respect, failure to comply with a Code of Practice could be incorporated into the draft Regulation as a “minor offence”, and give rise to discretionary grounds for the refusal of a licence. However, for this to occur there must be a statutory basis for the Code of Practice, namely, it must be mandatory and ideally, included in a schedule to the Regulation.

To facilitate this process, it is recommended that the Ministry for Police convene a Working Party comprising industry and Government representatives to develop a Code of Practice for possible inclusion in a schedule to the Regulation as a matter of priority.

Persons wishing to make submissions to the draft *Commercial Agents and Private Inquiry Agents Regulation 2005*, are also asked to consider matters that should be included in an industry Code of Practice.

### **7.2 Training Qualification and Experience Requirements**

At the time of the NCP Review, section 10 of the *Commercial Agents and Private Inquiry Agents Act 1963* provided that all applications are to be referred to the nearest NSW Police Local Area Command for the purposes of ascertaining whether there is any objection to the grant of a licence. The grounds for objections were set out in subsection 10(6) of the *Commercial Agents and Private Inquiry Agents Act 1963* and relevantly include “*that the applicant does not have the prescribed qualifications or experience*”.

Clause 10 of the *Commercial Agents and Private Inquiry Agents Regulation 2000* provided:

(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 or a registered training organisation approved by the Commissioner of Police.*

The rationale behind this approach was that members of the public are not in a position to check the competency of individual licence holders, and were dependent on the licensing system to indicate that a commercial or private inquiry agent was properly qualified and trained. By requiring applicants for a licence to demonstrate the prescribed qualifications or experience, consumers can have more confidence that services provided will conform to a basic level of skill.

However, as identified by the *Commercial Agents and Private Inquiry Agents Act 1963: National Competition Policy Review Final Report* (Report of the Review) the requirements had created much debate and confusion amongst Police and applicants alike, a situation that has been exacerbated by inconsistent interpretation of the legislation by magistrates across the State.

Submissions to the Review were generally supportive of moving towards more competency based outcomes, which was consistent with the current approach of the *Security Industry Act 1997*. The Report of the Review found that the system of national competency standards forming part of the Australian Qualifications Framework would provide the legislation with a mechanism to incorporate a system of training qualifications that were dynamic and would address future changing conditions within the industry.

The Report of the Review recommended that *"an application for a licence must not be granted unless the applicant has attained the approved competency standards or the approved level of accreditation required for the class of licence sought"*.

To implement this recommendation, the *Commercial Agents and Private Inquiry Agents Act 2004* was prepared on the basis that a licence must not be issued to a "disqualified individual", which relevantly includes *"an individual who does not have the qualifications, training or experience required by the Regulations with respect to the activities to which the individual's licence or application for a licence relates"*.

However, a "disqualified corporation" is defined as a corporation that has a "disqualified individual" as one of its directors or one of the persons concerned in its management. This would mean that licence must not be issued to any corporation, if any director or person concerned in its management did not have the requisite training or experience, as defined by the Regulation.

It was considered that this provision was unduly restrictive and would unfairly prevent corporations with non-operational directors who do not satisfy training

requirements from holding a master licence. It was further considered that little benefit would be gained by imposing such a requirement if the director does not undertake operational duties (i.e. perform commercial or private inquiry agent functions).

On this basis, minor amendments to the *Commercial Agents and Private Inquiry Agents Act 2004* were included in the *Statute Law (Miscellaneous Provisions) Act 2005* to remove the training, qualification and experience requirements from the definition of a “disqualified individual” and to introduce a discretionary ground of refusal of an application for a master licence (section 7(2)) or an operator licence (section 13(2)): “*if the applicant does not satisfy such requirements as to qualifications, training or experience as the Commissioner may determine from time to time*”.

These amendments have the effect of limiting the exclusions applicable to corporations to only those issues that may impact on public safety, namely where any director fails to meet the fit and proper persons requirements or has been convicted or found guilty of a major offence.

This also allows for a greater degree of flexibility in determining and updating the training and qualification requirements, particularly to accommodate changing conditions in the commercial and private inquiry agent industries. As a result, there is no specific clause within the draft *Commercial Agents and Private Inquiry Agents Regulation 2005* outlining the training, qualification and experience requirements, rather the Commissioner will issue publicly available guidelines outlining those requirements.



## **8. CONSULTATION**

Individuals and organisations are being invited to comment on the proposed Regulation in the following ways:

- Publication of notices in statewide newspapers;
- Publication of a notice in the Government Gazette;

Invitations to comment on the proposed regulation will be forwarded to a range of organisations, including the following organisations that made submissions to the review of the *Commercial Agents and Private Inquiry Agents Act 1963*:

- Australian Centre for Security Research;
- Australian Collectors Association;
- Australian Finance Conference;
- Australian Institute of Private Detectives;
- Consumer Credit Legal Centre (NSW) Inc;
- Peter A Cox & Associates;
- Office of Fair Trading;
- Office for Women;
- Institute of Mercantile Agents;
- Insurance Australia Group;
- Insurance Council of Australia;
- NSW Police;
- NSW Privacy Commissioner;
- NSW Treasury;
- TAFE NSW; and
- WorkCover NSW.

***APPENDIX A: PROPOSED COMMERCIAL AGENTS AND PRIVATE INQUIRY  
AGENTS REGULATION 2005***