

Version No. 085
Private Agents Act 1966
Act No. 7494/1966

Version incorporating amendments as at 1 July 2005

TABLE OF PROVISIONS

<i>Section</i>	<i>Page</i>
1. Short title and commencement	1
PART I—PRELIMINARY	2
2. Repeal and saving	2
3. Definitions	3
4. Act not applicable to certain persons	9
PART II—COMMERCIAL LICENCES	12
5. Categories of private agents	12
6. Private agents to be licensed	12
7. Chief Commissioner to keep register	13
8. Application for licence	14
9. Corporations and firms	14
10. Requirements in respect of application	15
10A. Provisional licences	16
11. Procedure on receipt of application	17
12. Objections	18
13. Court may issue or refuse licence	19
14. Adjournment	21
15. Application for the renewal of licence	21
16. Applicant entitled to renewal without appearance where no objection is lodged	22
17. Duplicate licence	22
18. Cancellation of licence on information	23
19. Fees	24
PART IIA—<i>Repealed</i>	25
19A–19L. <i>Repealed</i>	25

<i>Section</i>	<i>Page</i>
PART III—GENERAL REQUIREMENTS FOR PRIVATE AGENTS	26
20. Private agent not entitled to fees etc. unless licensed	26
21. Licence not to confer additional powers	26
22. Licence to be produced on demand	26
23. Registered address	27
24. Advertisements to contain name and address	27
25. <i>Repealed</i>	27
26. Private agent not to sell or dispose of his licence	28
27. Unlawful entry	28
28. Misrepresentations	28
29. Delegation of functions to unlicensed person an offence	28
30. Private agent not to employ persons in respect of whom a licence is refused suspended or cancelled	28
PART IV—SPECIAL PROVISIONS	29
Division 1—<i>Repealed</i>	29
31. Surety	29
31A. Value of trustee securities	30
31B. Where value of trustee securities is reduced additional securities to be lodged	30
32. Termination of fidelity bond	32
33. Inspection of surety	33
33A. Trustee securities to remain lodged for at least two years after licence ceases	33
34. Payment into trust account	33
34A. Distribution of trust moneys in the event of default by the commercial agent	34
35. Inspection of records	38
36. Relief to financial institutions	40
37. Repossession of motor vehicles to be reported	41
38. Commercial agents not to charge debtors for expenses of debt collecting etc.	41
39. Sub-agents not to be employed unless licensed	43
40. Commercial sub-agents	43
Division 2—<i>Repealed</i>	43
PART IVA—<i>Repealed</i>	43
41–41C. <i>Repealed</i>	43

<i>Section</i>	<i>Page</i>
PART V—GENERAL	44
42. Court may defer operation of order pending appeal	44
42A. <i>Repealed</i>	45
43. Returns by clerk of the Magistrates' Court	45
44. Furnishing incorrect particulars	45
44A. Permanent records to be kept by commercial agents	46
45. <i>Repealed</i>	47
46. Offences	47
47. Further penalty	47
48. Liability of corporations	48
49. Joint offenders	48
50. Judicial notice of certificates of the Chief Commissioner	48
51. Regulations	49
<hr style="border-top: 3px double #000;"/>	
ENDNOTES	51
1. General Information	51
2. Table of Amendments	52
3. Explanatory Details	55

Version No. 085
Private Agents Act 1966
Act No. 7494/1966

Version incorporating amendments as at 1 July 2005

An Act to license and control Private Agents.

BE IT ENACTED by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):

1. Short title and commencement

- (1) This Act may be cited as the **Private Agents Act 1966**.
- (2) The several provisions of this Act shall come into operation on a day or the respective days to be fixed by proclamation or a series of proclamations of the Governor in Council published in the Government Gazette.

* * * * *

S. 1(3)
repealed by
No. 37/1990
s. 7(a).

PART I—PRELIMINARY

2. Repeal and saving

- (1) On a day to be fixed by proclamation of the Governor in Council published in the Government Gazette the **Process Servers and Inquiry Agents Act 1958** shall be repealed.
- (2) Except as in this Act expressly or by necessary implication provided—
 - (a) all persons things and circumstances appointed or created by or under the repealed Act or existing or continuing under that Act immediately before the commencement of this Act shall under and subject to this Act continue to have the same status operation and effect as they respectively would have had if that Act had not been so repealed;
 - (b) in particular and without affecting the generality of the foregoing paragraph such repeal shall not disturb the continuity of status operation or effect of any regulation order application notice certificate determination objection appeal summons register registration liability or right made effected issued granted given presented passed fixed accrued incurred or acquired or existing or continuing by or under the repealed Act before the commencement of this Act.
- (3) Nothing in sub-section (2) shall be construed as keeping a licence issued under the **Process Servers and Inquiry Agents Act 1958** in force or giving it any operative effect after the repeal of the Act.

3. Definitions

In this Act unless inconsistent with the context or subject-matter—

"authorised deposit-taking institution" has the same meaning as in the Banking Act 1959 of the Commonwealth;

S. 3 def. of "authorised deposit-taking institution" inserted by No. 11/2001 s. 3(Sch. item 58.1).

"commercial agent" means any person (whether or not he carries on any other business) who, whether as principal or agent exercises or carries on or advertises or notifies or states that he exercises or carries on or that he is willing to exercise or carry on or in any way holds himself out to the public as ready to undertake any of the functions of—

- (a) ascertaining the whereabouts of or repossessing any goods or chattels which are the subject of a hire purchase agreement or a bill of sale; or
- (b) collecting or requesting payment of debts—

on behalf of any person or persons for or in consideration of any payment or other remuneration (whether monetary or otherwise).

The term does not include a person who—

- (i) undertakes any such function as a representative of Her Majesty; or
- (ii) is a person who holds a licence under the **Estate Agents Act 1958** and undertakes such functions in his capacity as such licence-holder;

Private Agents Act 1966
Act No. 7494/1966

Part I—Preliminary

s. 3

S. 3 def. of
"commercial
sub-agent"
amended by
No. 7646
s. 2(a).

"commercial sub-agent" means any person in the direct employ of or acting for or by arrangement with a commercial agent who for salary wages commission or other remuneration of any kind whatsoever exercises or carries on for that commercial agent alone any of the functions of a commercial agent;

S. 3 def. of
"corporation"
amended by
Nos 9699
s. 23, 37/1990
s. 4(1)(b).

"corporation" means a company incorporated in Victoria or elsewhere;

S. 3 def. of
"crowd
controller"
inserted by
No. 37/1990
s. 4(1)(d),
repealed by
No. 33/2004
s. 186(a).

* * * * *

S. 3 def. of
"Court" or
"magistrates'
court"
amended by
Nos 7876
s. 2(3),
16/1986 s. 30,
repealed by
No. 57/1989
s. 3(Sch. item
164.1(a)).

* * * * *

S. 3 def. of
"deputy
registrar"
repealed by
No. 33/2004
s. 186(a).

* * * * *

"document" includes book, record, register, account and card;

Private Agents Act 1966
Act No. 7494/1966

Part I—Preliminary

s. 3

"firm" means an unincorporated body of persons (whether consisting of individuals or of corporations or partly of individuals and partly of corporations) associated together for the purpose of carrying on business;

* * * * *

S. 3 def. of "guard agent" amended by No. 7646 s. 2(b), repealed by No. 37/1990 s. 4(1)(a).

"harassing tactics" means anything done or caused to be done which tends to intimidate embarrass ridicule or shame any person, and without in any way affecting the generality of the foregoing includes—

- (a) the leaving in such position in or outside any premises of any notice or of any vehicle or object on which there is writing stating the business of the private agent or any other information which may cause a person visiting or passing by such premises reasonably to infer that the occupier of the premises is being visited or watched by a private agent;
- (b) the calling at any premises or the communicating with persons occupying any premises (whether by telephone or otherwise) with such frequency as is or at such times as are unreasonable in the circumstances;
- (c) the informing of a debtor or of any other person in order that the information may reach the debtor that unless payment is made action other than legal process will be taken which is calculated to embarrass or shame the

Private Agents Act 1966
Act No. 7494/1966

Part I—Preliminary

s. 3

debtor (including a suggestion or threat that the employer of the debtor or any other person will come to know of the debt);

S. 3 def. of "inquiry agent" amended by Nos 7646 s. 2(c), 9019 s. 2(1)(Sch. item 188), 37/1990 s. 4(1)(c), repealed by No. 33/2004 s. 186(a).

* * * * *

"licence" means licence of the relevant category of private agent issued pursuant to this Act;

"officer" in relation to a corporation means any director or like officer and any manager and secretary of the corporation;

"prescribed" means prescribed by this Act or by regulations;

S. 3 def. of "private agent" amended by No. 37/1990 s. 4(1)(e).

"private agent" means a person required to hold a licence under this Act;

S. 3 def. of "process server" amended by No. 7646 s. 2(c), repealed by No. 37/1990 s. 4(1)(a).

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Private Agents Act 1966
Act No. 7494/1966

Part I—Preliminary

s. 3

"proper venue", in relation to the Magistrates' Court, means the venue of the Court nearest to the principal or only place of business of the applicant for a licence or the holder of a licence;

S. 3 def. of "proper venue" inserted by No. 57/1989 s. 3(Sch. item 164.1(b)).

* * * * *

S. 3 def. of "public place" inserted by No. 37/1990 s. 4(1)(f), amended by No. 74/2000 s. 3(Sch. 1 item 102.1), repealed by No. 33/2004 s. 186(a).

"register" means the register of private agents required to be kept pursuant to this Act, and includes a card or filing system kept as a register;

"registered address" means the address which is for the time being entered in the register in respect of a private agent as the address to which all communications and notices may be addressed;

* * * * *

S. 3 def. of "registrar" repealed by No. 33/2004 s. 186(a).

"regulations" means regulations made under this Act;

* * * * *

S. 3 def. of "security firm" inserted by No. 37/1990 s. 4(1)(g), repealed by No. 33/2004 s. 186(a).

Private Agents Act 1966
Act No. 7494/1966

Part I—Preliminary

s. 3

S. 3 def. of
"security
guard"
inserted by
No. 37/1990
s. 4(1)(g),
repealed by
No. 33/2004
s. 186(a).

* * * * *

S. 3 def. of
"surety"
inserted by
No. 8960 s. 2,
amended by
No. 33/2004
s. 186(b).

"surety" means—

- (a) a certificate from the Treasurer that he holds trustee securities lodged by a commercial agent as surety which at the time of issuing the certificate are valued at a sum; or
- (b) a fidelity bond from an insurance company or person approved by the Minister in a sum—

not less than the appropriate sum set out in section 31(2);

S. 3 def. of
"trustee
securities"
inserted by
No. 8960 s. 2.

"trustee securities" means securities acceptable to the Treasurer within the following categories:

- (a) Government securities of the Commonwealth of Australia; or
- (b) Securities guaranteed by the Government of Victoria.

S. 3 def. of
"watchman"
repealed by
No. 37/1990
s. 4(1)(a).

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Private Agents Act 1966
Act No. 7494/1966

Part I—Preliminary

s. 4

4. Act not applicable to certain persons

- (1) This Act shall not be construed as requiring—
- (a) any member of the police force of Victoria or of the Commonwealth or of any other State or Territory of the Commonwealth while acting in the exercise of his functions as such;
 - (b) any member of the defence force of the Commonwealth while acting in the exercise of his functions as such;
 - (c) any employee of—
 - (i) the Crown in right of the Commonwealth or of Victoria; or
 - (ii) any Government department of the Commonwealth or of Victoria—while acting in the exercise of his functions as such;
 - (d) any legal practitioner while acting in the ordinary course of his legal practice or any clerk of a legal practitioner while acting in the ordinary course of his master's legal practice;
 - (e) any qualified public accountant while acting in the ordinary course of his profession;
 - (f) any sheriff deputy-sheriff bailiff or sheriff's officer or other officer of any court while acting as such;

S. 4(1)(c)
amended by
No. 46/1998
s. 7(Sch. 1).

S. 4(1)(d)
amended by
No. 35/1996
s. 453(Sch. 1
item 67(a)(b)).

Private Agents Act 1966
Act No. 7494/1966

Part I—Preliminary

s. 4

S. 4(1)(g)
amended by
No. 7646
s. 3(a).

- (g) any person—
- (i) bona fide carrying on the business of—
 - insurance or of an insurance adjustment agency;
 - banking;
 - a trustee company;
 - a building society or of a friendly society—while acting in the exercise of his functions as such; or
 - (ii) being an employé or agent of such a person while acting in the exercise of his functions as such;

S. 4(1)(h)
amended by
No. 7646
s. 3(b),
substituted by
No. 37/1990
s. 4(2),
repealed by
No. 33/2004
s. 187.

* * * * *

S. 4(1)(i)
inserted by
No. 7646
s. 3(c).

- (i) any person whose duties when employed by a private agent consist of no more than clerical or secretarial work, the giving of information over the telephone on request of matters obtained from existing records of the private agent, or the receipt in the office of the private agent of moneys payable to that private agent in the course of his business—

to hold a licence under or observe the conditions of this Act, and this Act shall be read and construed accordingly.

Private Agents Act 1966
Act No. 7494/1966

Part I—Preliminary

s. 4

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- (2) The Governor in Council may by regulation under this Act exempt to the extent prescribed any class of persons from the operation of this Act.
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Private Agents Act 1966
Act No. 7494/1966

Part II—Commercial Licences

s. 5

Pt 2 (Heading)
amended by
No. 37/1990
s. 5(a).

PART II—COMMERCIAL LICENCES

S. 5
substituted by
No. 37/1990
s. 5(b).

5. Categories of private agents

S. 5(1)
amended by
No. 33/2004
s. 188(1).

- (1) The following are the categories of private agents for the purposes of this Act—
- (a) commercial agents;
 - (b) commercial sub-agents.

S. 5(2)
repealed by
No. 33/2004
s. 188(2).

* * * * *

S. 6
amended by
No. 10/2004
s. 15(Sch. 1
items 22.1,
22.2).

6. Private agents to be licensed

No person shall—

- (a) exercise or carry on or advertise notify or state that he does or is willing to exercise or carry on the business of any category of private agent or act as such, whether as principal or as agent or employé; or
- (b) in any way hold himself out to the public as being prepared for payment or other remuneration (whether monetary or otherwise) to undertake any of the functions of any category of private agent, whether as principal or as agent or employé—

unless he is licensed in that behalf under this Act.

Penalty: 5 penalty units or imprisonment for six months or both.

Further penalty: 0·1 penalty unit.

7. Chief Commissioner to keep register

S. 7 (Heading)
inserted by
No. 33/2004
s. 189(1).

(1) The Chief Commissioner must keep a register of private agents.

S. 7(1)
amended by
No. 9019
s. 2(1)(Sch.
item 189),
substituted by
No. 37/1990
s. 5(c)(i),
amended by
No. 33/2004
ss 189(2),
202(Sch.
item 1).

* * * * *

S. 7(2)
amended by
No. 9019
s. 2(1)(Sch.
item 189),
repealed by
No. 37/1990
s. 5(c)(i).

(3) The register shall—

- (a) be kept in accordance with any regulations prescribing the form and manner of keeping the register;
- (b) contain details of all licences which are in force and any other matters which the Chief Commissioner considers necessary or expedient; and
- (c) be open at all reasonable times to inspection on payment of the prescribed fee.

S. 7(3)(b)
amended by
No. 33/2004
s. 202(Sch.
item 1).

(4) The Chief Commissioner shall—

S. 7(4)
amended by
No. 33/2004
s. 202(Sch.
item 1).

- (a) insert in the register the name and registered address of every private agent who holds a licence pursuant to this Part;

S. 7(4)(a)
amended by
No. 37/1990
s. 5(c)(ii).

Private Agents Act 1966
Act No. 7494/1966

Part II—Commercial Licences

s. 8

- (b) remove from the register the name of every person who has died or whose licence has expired or has been suspended or cancelled;
- (c) enter in the register any alteration in particulars affecting private agents; and
- (d) keep a record of all persons whose licences have been suspended or cancelled and the reasons for such suspension or cancellation.

S. 7(5)
repealed by
No. 37/1990
s. 5(c)(iii).

* * * * *

S. 8
amended by
Nos 7876
s. 2(3),
57/1989
s. 3(Sch. item
164.2).

8. Application for licence

Where an application is made by an individual or a corporation or on behalf of a firm for a licence in respect of any category of private agent, the applicant shall lodge an application in triplicate in the prescribed form containing the prescribed particulars at the proper venue of the Magistrates' Court.

9. Corporations and firms

- (1) Where a corporation seeks a licence the corporation shall appoint as nominee the officer residing in Victoria who is in bona fide control of the business in Victoria.
- (2) Where two or more licence holders carry on or propose to carry on their business as a private agent in the name of a firm, the partners or proposed partners shall appoint as nominee a person residing in Victoria who is in bona fide control of the business in Victoria.
- (3) Every application or document required to be furnished by a corporation or on behalf of a firm pursuant to this Act or any regulation shall be signed on behalf of the corporation or firm by

such nominee, who shall furnish accurately all information given in respect of that corporation or firm.

10. Requirements in respect of application

Such application shall—

- (a) state the place or places of business of the applicant;
- (b) state the address in Victoria (being a place of business) which the applicant desires to be recorded as the registered address for the purposes of this Act;
- (c) contain any other particulars that are prescribed; and
- (d) be accompanied by—
 - (i) a certified copy or extract of the entry of the birth of the applicant (or in the case of a corporation or firm of the nominee) or other sufficient evidence of his age;
 - (ii) three testimonials in duplicate signed by different reputable persons as to the character of the applicant (or in the case of a corporation or firm of the nominee);
 - (iii) three passport-size photographs of the applicant (or in the case of a corporation or firm of the nominee) clearly showing his facial features; and
 - (iv) where the application is for a commercial agent's licence, proof that there has been or will be lodged a surety as required by Division 1 of Part IV;

S. 10(d)(ii)
amended by
No. 9549
s. 2(1)(Sch.
item 183).

S. 10(d)(iv)
amended by
No. 9427
s. 6(1)(Sch. 5
item 144).

Private Agents Act 1966
Act No. 7494/1966

Part II—Commercial Licences

s. 10A

- (e) when made on behalf of a corporation or firm state the names and addresses of the officers of the corporation or the partners of the firm (as the case may be);
- (f) be lodged at the proper venue of the Magistrates' Court at least twenty-one days before the day mentioned in the application as the day on which the application will be made.

S. 10(f)
amended by
Nos 7876
s. 2(3),
57/1989
s. 3(Sch.
item 164.3).

S. 10A
inserted by
No. 7646 s. 4.

10A. Provisional licences

- (1) Where an application for a commercial sub-agent's licence—
 - (a) is supported by a statutory declaration of the employer of the applicant (and where the employer is a corporation, by the nominee) stating that after making reasonable inquiries he is satisfied that objection to the application could not be sustained on any of the grounds mentioned in sub-section (2) of section 12; and
 - (b) is accompanied by the fee prescribed in respect of the licence applied for by the applicant—

the Registrar at the proper venue of the Magistrates' Court, if requested in writing by the applicant may issue to the applicant a provisional licence in the prescribed form.

- (2) The provisional licence shall remain in force until—
 - (a) the day when the commercial sub-agent's licence takes effect or the application for such licence is refused; or

S. 10A(2)(a)
amended by
No. 37/1990
s. 5(d)(ii).

Private Agents Act 1966
Act No. 7494/1966

Part II—Commercial Licences

s. 11

(b) notice of objection to the application is served on the applicant in accordance with paragraph (b) of sub-section (1) of section 12—

whichever happens first.

(3) Where the licence applied for is granted, the fee paid in respect of the issue of the provisional licence shall be deemed to be the fee for the licence so granted.

(4) For the purposes of this Act the holder of a provisional licence shall, while it remains in force, be deemed to be a licensed commercial sub-agent.

S. 10(4)
amended by
No. 37/1990
s. 5(d)(iii).

11. Procedure on receipt of application

The Registrar at the proper venue of the Magistrates' Court after the receipt of any such application shall forthwith—

S. 11
amended by
No. 57/1989
s. 3(Sch. item
164.5(a)).

(a) cause a notice thereof in the prescribed form to be published in the Government Gazette; and

(b) send—

(i) the duplicate of the application, one photograph of the applicant or nominee (as the case may be) and the originals of the testimonials to the officer in charge at the police station nearest to that venue of the Court for investigation and report; and

S. 11(b)(i)
amended by
No. 57/1989
s. 3(Sch. item
164.5(b)).

(ii) the triplicate of the application and one photograph of the applicant or nominee (as the case may be) to the Chief Commissioner.

S. 11(b)(ii)
amended by
No. 33/2004
s. 202(Sch.
item 2).

Private Agents Act 1966
Act No. 7494/1966

Part II—Commercial Licences

s. 12

12. Objections

S. 12(1)
amended by
No. 33/2004
s. 202(Sch.
item 3(a)).

(1) Any person (including the Chief Commissioner) who wishes to object to any application shall—

S. 12(1)(a)
amended by
Nos 7876
s. 2(3),
57/1989
s. 3(Sch. item
164.6(a)).

(a) lodge at the proper venue of the Magistrates' Court a notice in the prescribed form of his objection and of the grounds thereof;

(b) cause a copy of the notice to be served personally or by post upon the applicant at least three days before the hearing of the application; and

(c) send or deliver—

S. 12(1)(c)(i)
amended by
No. 57/1989
s. 3(Sch. item
164.6(b)).

(i) where the objection is not made by the officer in charge at the police station nearest to that venue of the Court—a copy of the notice to such officer; and

S. 12(1)(c)(ii)
amended by
No. 33/2004
s. 202(Sch.
item 3(b)).

(ii) where the objection is not made by the Chief Commissioner—a copy to the Chief Commissioner.

(2) Such objection may be made on the grounds that the applicant—

(a) is not of good character;

(b) is under the age of 18 years;

S. 12(2)(b)
amended by
No. 9075
s. 5(2),
substituted by
No. 37/1990
s. 5(e).

(c) is bankrupt;

(d) has been guilty of harassing tactics;

- (e) has been guilty of conduct which renders him unfit to hold a licence as a private agent;
- (f) has contravened or failed to comply with any provision of this Act or the regulations and that the contravention or failure warrants the refusal of a licence;
- (g) has been convicted of an offence involving stealing fraud or unlawful entry upon any premises or of any other offence which warrants the refusal of a licence; or
- (h) is not capable of carrying out the duties of a licence-holder.

13. Court may issue or refuse licence

- (1) The Magistrates' Court shall in the presence of the applicant consider every such application for a licence and any objection thereto.

S. 13(1)
amended by
No. 57/1989
s. 3(Sch.
item 164.7).

- (2) Where the Court is satisfied—

- (a) that the applicant—

- (i) is of good character;
- (ii) is of or over the age of 18 years;

S. 13(2)(a)(ii)
amended by
No. 9075
s. 5(2),
substituted by
No. 37/1990
s. 5(f).

- (iii) is not bankrupt;
- (iv) has not been guilty of harassing tactics or of conduct which renders him unfit to hold the licence;
- (v) has not contravened or failed to comply with any provision of this Act or the regulations to an extent which warrants the refusal of the licence;

Private Agents Act 1966
Act No. 7494/1966

Part II—Commercial Licences

s. 13

S. 13(2)(b)
amended by
No. 8960
s. 5(a).

(vi) has not been convicted of an offence involving stealing fraud or unlawful entry upon any premises or of any other offence which warrants the refusal of the licence; and

(vii) is capable of carrying out the duties of a licence-holder; and

(b) that when the application is for a commercial agent's licence there has been or will be lodged a surety as required by Division 1 of Part IV—

the Court shall, subject to this Act and on payment of the prescribed fee, grant to the applicant a licence in the prescribed form.

(3) If the Court is not so satisfied the Court may refuse the application for such licence.

(4) Every licence—

(a) shall take effect as on and from the day (not being earlier than the day of payment of the prescribed fee) stated in that behalf in the licence;

(b) shall, unless cancelled pursuant to this Act, continue in force until the 31st day of December in the year for which it is issued and no longer; and

(c) subject to this Act shall authorize the private agent thereby licensed to act as a private agent of the relevant category during the currency of the licence.

14. Adjournment

- (1) If at the hearing of the application an objection is brought before the Magistrates' Court of which due notice has not been given or of which a copy has not been served sent or delivered as required by section 12 the court may, if it thinks that the objection is one that needs consideration, adjourn the hearing of the application to such day as it thinks fit.
- (2) On the hearing of any application under this Act the court shall, if any objection to the application has been lodged or brought before the court, have jurisdiction to determine what costs (if any) shall be paid to or by the objector or the applicant respectively and to order that such costs be paid.

S. 14(1)
amended by
No. 57/1989
s. 3(Sch.
item 164.8).

15. Application for the renewal of licence

- (1) The holder of a licence may before it expires apply for the renewal of that licence for the next year.
- (2) Every application for such renewal shall be made in triplicate in the prescribed form and contain the prescribed particulars, and shall together with the prescribed fee be lodged at the proper venue of the Magistrates' Court at least 21 days before the last day appointed for holding the Court at that venue in the current year.
- (3) The registrar at the proper venue of the Court shall after the receipt of such application for renewal send forthwith—
 - (a) the duplicate of the application to the officer in charge at the police station nearest that venue of the Court; and

S. 15(2)
amended by
Nos 7876
s. 2(3),
57/1989
s. 3(Sch. item
164.9(a)).

S. 15(3)
amended by
No. 57/1989
s. 3(Sch. item
164.9(b)(i)).

S. 15(3)(a)
amended by
No. 57/1989
s. 3(Sch. item
164.9(b)(ii)).

Private Agents Act 1966
Act No. 7494/1966

Part II—Commercial Licences

s. 16

S. 15(3)(b)
amended by
No. 33/2004
s. 202(Sch.
item 4).

(b) the triplicate of the application to the Chief Commissioner.

(4) The provisions of sections 12, 13 and 14 shall, with such modifications as may be necessary, extend and apply to or with respect to any application for the renewal of a licence.

16. Applicant entitled to renewal without appearance where no objection is lodged

Where the application for renewal has been made and no notice of objection has been lodged by any person pursuant to this Act the applicant shall on payment of the prescribed fee be entitled to renewal of the licence although the applicant does not appear either personally or by anyone on his behalf.

17. Duplicate licence

(1) Where—

- (a) a licence is lost or is not in a fit state to be used as a licence; or
- (b) the Chief Commissioner or the Magistrates' Court instructs the licence holder to obtain another licence—

S. 17(1)(b)
amended by
Nos 57/1989
s. 3(Sch. item
164.10),
33/2004
s. 202(Sch.
item 5).

the licence holder shall apply to the said court for a duplicate licence.

(2) The licence holder shall send with such application the prescribed fee and three recent passport size photographs of himself clearly showing his facial features.

Private Agents Act 1966
Act No. 7494/1966

Part II—Commercial Licences

s. 18

18. Cancellation of licence on information

- (1) A registrar of the Magistrates' Court may, on the application of the registrar or any other person, supported by evidence on oath or by affidavit, issue a summons directing a private agent to attend before the Court to show cause why his licence should not be cancelled and why he should not be disqualified either permanently or temporarily from holding a licence—
- (a) on the ground that the licence was obtained contrary to the provisions of this Act; or
 - (aa) on the ground that he has contravened or failed to comply with a provision of this Act or the regulations with which he is required to comply; or
 - (b) on a ground which is a ground on which an objection may be made to an application for a licence.
- (2) On being satisfied of the truth of any of the grounds aforesaid the court, if it thinks fit, may order that such private agent be disqualified either permanently or for such period as the court specifies from holding—
- (a) a licence of the category held by such private agent; and
 - (b) any other category of private agent's licence—
- and that the licence be so cancelled.
- (3) In any proceedings under this section the court may make such order as to costs as it thinks just.

S. 18(1)
amended by
Nos 7876
s. 2(3),
57/1989
s. 3(Sch. item
164.11).

S. 18(1)(aa)
inserted by
No. 8960
s. 6(2).

Private Agents Act 1966
Act No. 7494/1966

Part II—Commercial Licences

s. 19

19. Fees

- (1) The annual fee payable for each licence (whether an original licence or a renewal licence) shall be as prescribed.
 - (2) Where a licence for any year is issued after the 30th day of June the licence fee for that year shall be half the amount of the prescribed fee for that licence.
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Private Agents Act 1966
Act No. 7494/1966

s. 19L

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**Pt 2A
(Heading and
ss 19A–19L)
inserted by
No. 37/1990
s. 6,
amended by
Nos 46/1998
s. 7(Sch. 1),
33/2004
ss 203, 204,
repealed by
No. 33/2004
s. 190.**

Private Agents Act 1966
Act No. 7494/1966

Part III—General Requirements for Private Agents

s. 20

PART III—GENERAL REQUIREMENTS FOR PRIVATE AGENTS

20. Private agent not entitled to fees etc. unless licensed

No person shall be entitled to sue for or recover or retain any commission fee gain or reward for any service performed by him as a private agent unless at the time of performing that service he was the holder of the relevant licence.

21. Licence not to confer additional powers

- (1) No licensed private agent shall by virtue of being licensed have any power or authority which he would not have if this Act had not been passed.
- (2) A private agent who in any way—
 - (a) suggests or implies that by virtue of his licence he may exercise any power or authority which in fact he could not exercise if this Act had not been passed; or
 - (b) uses or attempts to use his licence to exercise or as entitling him to exercise any such power or authority—

shall be guilty of an offence against this Act.

22. Licence to be produced on demand

- (1) A private agent shall on demand produce his licence for inspection—
 - (a) to the Chief Commissioner or to a member of the police force; or
 - (b) to any person with whom he has dealings when carrying out his functions as a private agent.

S. 22
amended by
No. 37/1990
s. 8(a).

S. 22(1)(a)
amended by
No. 33/2004
s. 202(Sch.
item 6).

Private Agents Act 1966
Act No. 7494/1966

Part III—General Requirements for Private Agents

s. 23

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- (2) Sub-section (1)(b) does not apply to crowd controllers or a security firm working as a crowd controller.

S. 22(2)
inserted by
No. 37/1990
s. 8(b).

23. Registered address

- (1) Subject to sub-section (3) every private agent shall have a registered address within Victoria to which all communications and notices may be addressed.
- (2) Every private agent shall promptly notify the Chief Commissioner in writing of the change of his registered address.

S. 23(2)
amended by
No. 33/2004
s. 202(Sch.
item 7).

* * * * *

S. 23(3)
amended by
No. 37/1990
s. 7(b)(i)–(iii),
repealed by
No. 33/2004
s. 191.

- (4) A private agent who carries on business without complying with the requirements of the foregoing provisions of this section shall be guilty of an offence against this Act.

24. Advertisements to contain name and address

A private agent who publishes or causes to be published (whether in a newspaper or by radio or television or otherwise) any advertisement relating to or in connexion with his business (other than an advertisement relating solely to the recruiting of staff) without specifying therein the name as appearing in the licence and the registered address of such agent shall be guilty of an offence against this Act.

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S. 25
repealed by
No. 37/1990
s. 7(c).

Private Agents Act 1966
Act No. 7494/1966

Part III—General Requirements for Private Agents

s. 26

26. Private agent not to sell or dispose of his licence

A private agent who sells disposes of delivers lets out hires or rents his licence to any other person or permits any other person to use his licence shall be guilty of an offence against this Act.

27. Unlawful entry

A private agent who, when exercising or carrying on his functions as a private agent, enters without lawful authority upon any premises shall be guilty of an offence against this Act.

28. Misrepresentations

A private agent who by any false misleading or deceptive statement representation or promise or by any wilful concealment of a material fact induces or attempts to induce any person to enter into an agreement or contract in connexion with his business as such shall be guilty of an offence against this Act.

29. Delegation of functions to unlicensed person an offence

A private agent who directs authorizes or permits any person to exercise any of the functions of a private agent of any category when the person does not hold a licence under this Act with respect to that category shall be guilty of an offence against this Act.

30. Private agent not to employ persons in respect of whom a licence is refused suspended or cancelled

No private agent shall knowingly employ in any capacity whatsoever in his business a person who has been refused a licence under this Act or whose licence has been suspended or cancelled unless the licence has subsequently been granted or restored.

S. 29
substituted by
No. 7646
s. 5.

PART IV—SPECIAL PROVISIONS

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Pt 4 Div. 1
(Heading)
repealed by
No. 33/2003
s. 192.

31. Surety

(1) Notwithstanding anything in this Act a commercial agent's licence shall not be valid and operative unless there is lodged at the proper venue of the Magistrates' Court on behalf of that commercial agent a surety to cover the period of the licence.

S. 31(1)
amended by
Nos 8960
s. 3(1)(a),
57/1989
s. 3(Sch.
item 164.12),
33/2004 s. 193.

(2) The sum required as surety is—

S. 31(2)
amended by
No. 8960
s. 3(1)(b).

(a) where the applicant or licence holder is a corporation— \$30 000;

S. 31(2)(a)
amended by
No. 8960
s. 3(2)(a).

(b) where the applicant or licence holder is a person other than a corporation, who proposes to carry on or carries on the business of a commercial agent in partnership with another person—\$9000; and

S. 31(2)(b)
amended by
No. 8960
s. 3(2)(b).

(c) where the applicant or licence holder is a person other than a corporation, who is not a person referred to in paragraph (b)— \$12 000.

S. 31(2)(c)
amended by
No. 8960
s. 3(2)(c).

Private Agents Act 1966
Act No. 7494/1966

Part IV—Special Provisions

s. 31A

S. 31A
inserted by
No. 8960
s. 4(1).

31A. Value of trustee securities

- (1) In determining the value of any trustee securities for the purposes of this Act, the value shall be—
 - (a) where the face value of the securities is not higher than the market value of the securities—the face value of the securities;
 - (b) where the face value of the securities is higher than the market value of the securities—the market value of the securities.
- (2) Any interest accruing on trustee securities lodged as surety with the Treasurer shall, subject to this Act, be payable to the commercial agent who lodged the securities or to any other person nominated in writing by him.

S. 31B
inserted by
No. 8960
s. 4(1).

31B. Where value of trustee securities is reduced additional securities to be lodged

S. 31B(1)
amended by
No. 100/1995
s. 32(Sch. 2
item 6),
33/2004
s. 202(Sch.
item 8(b)).

- (1) Where the Secretary to the Department of Treasury and Finance determines that the trustee securities lodged by a commercial agent as surety have reduced in value and that the commercial agent should lodge additional trustee securities of a stated sum to keep his surety at the required value he shall inform the Chief Commissioner of his determination.

S. 31B(2)
amended by
Nos 100/1995
s. 32(Sch. 2
item 6),
33/2004
s. 202(Sch.
item 8(a)).

- (2) On being informed of the determination of the Secretary to the Department of Treasury and Finance the Chief Commissioner shall—
 - (a) notify the commercial agent of that determination and request him by a day stated in the notice (being not less than 14 days after the date of the notice) to lodge additional trustee securities to the sum so

Private Agents Act 1966
Act No. 7494/1966

Part IV—Special Provisions

s. 31B

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- determined so that his surety would be valued at the required sum; and
- (b) send a copy of the notice to the registrar at the proper venue of the Magistrates' Court. **S. 31B(2)(b) amended by No. 57/1989 s. 3(Sch. item 164.13).**
- (3) After the additional trustee securities are lodged with the Treasurer by the stated day—
- (a) the Treasurer shall issue to the commercial agent an additional certificate with respect to his surety;
- (b) the Chief Commissioner, on being so informed by the Secretary to the Department of Treasury and Finance, shall notify the registrar at the proper venue of the Magistrates' Court that the additional trustee securities have been lodged by the commercial agent; and **S. 31B(3)(b) amended by Nos 57/1989 s. 3(Sch. item 164.13), 100/1995 s. 32(Sch. 2 item 6), 33/2004 s. 202(Sch. item 8(a)).**
- (c) the commercial agent shall within 14 days after receiving the additional certificate lodge it with the registrar at the proper venue of the Magistrates' Court. **S. 31B(3)(c) amended by No. 57/1989 s. 3(Sch. item 164.13).**
- (4) If the additional trustee securities are not lodged with the Treasurer by the stated day, the Chief Commissioner, on being so informed by the Secretary to the Department of Treasury and Finance, shall— **S. 31B(4) amended by No. 100/1995 s. 32(Sch. 2 item 6), 33/2004 s. 202(Sch. item 8(a)).**
- (a) notify the registrar at the proper venue of the Magistrates' Court that the additional trustee securities were not lodged on the stated day, and apply to the Court to have the licence of the commercial agent suspended; and **S. 31B(4)(a) amended by No. 57/1989 s. 3(Sch. item 164.13).**
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Private Agents Act 1966
Act No. 7494/1966

Part IV—Special Provisions

s. 32

(b) serve a copy of the application on the commercial agent.

S. 31B(5)
amended by
No. 33/2004
s. 202(Sch.
item 8(b)).

- (5) On the hearing of the application of the Chief Commissioner pursuant to sub-section (4) the Court shall (unless the commercial agent satisfies it that the additional certificate has been obtained) forthwith suspend the licence of the commercial agent until such time as it is satisfied that the additional trustee securities have been lodged with the Treasurer by the commercial agent.
- (6) During the suspension of the licence the commercial agent shall be deemed not to be the holder of a licence.

32. Termination of fidelity bond

S. 32(1)
amended by
Nos 57/1989
s. 3(Sch. item
164.14(a)),
33/2004
ss 194,
202(Sch.
item 9).

(1) A fidelity bond given pursuant to this Act may, by notice in writing served personally or by post upon the commercial agent, the registrar at the proper venue of the Magistrates' Court and the Chief Commissioner, be terminated by the insurance company or person.

S. 32(2)
amended by
No. 57/1989
s. 3(Sch. item
164.14(b)).

(2) Such notice shall specify the date (not being earlier than thirty days after the date of the service of the notice on the commercial agent and the registrar at the proper venue of the Magistrates' Court) upon which the bond is to be terminated.

S. 32(3)
amended by
No. 33/2004
s. 194.

(3) The obligation of the insurance company or person shall from such specified date be terminated so far as it relates to transactions by the commercial agent after such specified date, other than the duly accounting to the persons entitled thereto of any trust funds received by the commercial agent before such specified date.

S. 32(4)
amended by
No. 8960
s. 5(b).

(4) Where such bond is terminated during the period for which the licence held by the commercial agent is in force, that licence shall be suspended until a further surety is lodged and is in force, and

such commercial agent shall during the period of such suspension be deemed not to be the holder of a licence.

33. Inspection of surety

- (1) Any person may, on payment of a fee of Twenty-five cents (\$0.25), inspect a surety lodged at the Magistrates' Court and take a copy thereof.

S. 33(1) amended by Nos 8960 s. 5(c)(i), 57/1989 s. 3(Sch. item 164.15).

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S. 33(2)(3) repealed by No. 8960 s. 5(c)(ii).

33A. Trustee securities to remain lodged for at least two years after licence ceases

S. 33A inserted by No. 8960 s. 4(2).

Trustee securities lodged with the Treasurer as surety shall, unless distributed pursuant to section 34A, remain so lodged for a period of two years after the commercial agent ceases to hold a licence and, where the Minister for special reason so determines in any case, for such further period or periods as the Minister considers fit.

34. Payment into trust account

- (1) All moneys received for or on behalf of any person by a commercial agent shall be held by such commercial agent exclusively for such person, and until paid to or as directed by such person shall be paid into a trust account (whether general or separate) in an authorised deposit-taking institution in Victoria in the name of such commercial agent and retained therein.

S. 34(1) amended by Nos 11/2001 s. 3(Sch. item 58.2), 10/2004 s. 15(Sch. 1 item 22.3), 33/2004 s. 195.

Penalty: 60 penalty units or 6 months imprisonment or both.

Private Agents Act 1966
Act No. 7494/1966

Part IV—Special Provisions

s. 34A

(2) The words "trust account" shall appear in the name of the trust account and in the description of that account in the books and records of the commercial agent and on cheques drawn on that account.

S. 34(3)
amended by
Nos 10/2004
s. 15(Sch. 1
item 22.4),
33/2004 s. 195.

(3) Such moneys shall not be used for the payment of the debts of the commercial agent to any other creditor.

Penalty: 60 penalty units or 6 months
imprisonment or both.

(4) Such moneys shall not be liable to be attached or taken in execution under the order of process of any court at the instance of any other creditor.

(5) Nothing in this section shall be construed to remove or affect any lawful claim or lien which the commercial agent may have against or upon any such moneys.

S. 34A
inserted by
No. 8960
s. 6(1).

**34A. Distribution of trust moneys in the event of default
by the commercial agent**

(1) The Minister may take the action set out in subsection (1A) if, after considering a report of an investigation into—

S. 34A(1)
amended by
Nos 57/1989
s. 3(Sch. item
164.16(a)),
11/2001
s. 3(Sch.
item 58.2)
substituted by
No. 33/2004
s. 196(1).

(a) a commercial agent, the Minister is satisfied that the commercial agent has received money for or on behalf of persons and has not properly accounted for the money in the trust account required to be established under this Act; or

(b) a person who has been but is no longer a commercial agent ("former commercial agent"), the Minister is satisfied that—

Private Agents Act 1966
Act No. 7494/1966

Part IV—Special Provisions

s. 34A

- (i) there is an account that was, immediately before the person ceased to be a commercial agent, the trust account required to be established under this Act; and
- (ii) there is lodged at the proper venue of the Magistrates' Court a surety under this Part; and
- (iii) the person, when acting as a commercial agent, received money for or on behalf of persons and did not properly account for the money in the trust account required to be established under this Act.

(1A) The action that may be taken by the Minister is that the Minister may—

S. 34A(1A)
inserted by
No. 33/2004
s. 196(1).

- (a) by notice in writing to the manager or other principal officer of a bank with which the commercial agent or former commercial agent has deposited any money in the trust account required to be kept under this Act, direct that no money be drawn from the trust account without the consent of the Minister until further notice; and
- (b) notify the registrar at the proper venue of the Magistrates' Court that the commercial agent or former commercial agent appears to have received money for or on behalf of persons which is not properly accounted for in the trust account required to be kept under this Act; and
- (c) in the case of a commercial agent, apply to the Court to have his or her licence suspended, and serve a copy of the application on the commercial agent.

Private Agents Act 1966
Act No. 7494/1966

Part IV—Special Provisions

s. 34A

S. 34A(2)
amended by
Nos 11/2001
s. 3(Sch.
item 58.2),
33/2004
s. 196(2).

- (2) The manager or other principal officer of an authorised deposit-taking institution receiving the notice referred to in sub-section (1A)(a) shall give effect to the direction of the Minister.
- (3) On the hearing of the application the Court shall, unless it is satisfied that the failure of the licensee to account for the moneys in his trust account was due to some cause not within his control and that suitable arrangements have been made to pay persons entitled to payment from that trust account, suspend his licence until such time as it is satisfied that the licence need no longer be suspended and should not be cancelled.

S. 34A(4)
substituted by
No. 33/2004
s. 196(3).

- (4) If—
- (a) the Minister has issued a notice under sub-section (1A)(a) in relation to a commercial agent or a former commercial agent; and
 - (b) in the case of a commercial agent, the Minister has suspended his or her licence under sub-section (3), or the licence has later been cancelled—

the Minister may, by notice published in at least two newspapers circulating throughout Victoria, fix a date on or before which any person, who is entitled to receive money which has been or should have been paid into the trust account of the commercial agent or former commercial agent, may prove his or her claim before the Chief Commissioner.

- (5) Unless the Minister directs otherwise because of special circumstances a claim lodged after the date so fixed shall be excluded from the benefit of any distribution of moneys from the trust account to claimants.

Private Agents Act 1966
Act No. 7494/1966

Part IV—Special Provisions

s. 34A

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- (6) The Chief Commissioner or some other qualified person appointed by the Minister shall admit or reject proof of claims made against moneys in the trust account, and no action shall lie against the registrar or person for any decision made in good faith in relation to such claims. **S. 34A(6) amended by No. 33/2004 s. 202(Sch. item 10).**
- (7) If the moneys standing to the credit of the trust account are insufficient to satisfy the amount of all admitted claims the Minister may by order require payment into the trust account of the commercial agent or former commercial agent (as the case requires)—
- (a) where the surety consists of trustee securities lodged with the Treasurer—by the Treasurer of such amount, including any interest accruing on the trustee securities, not exceeding the value of the trustee securities as is equal to the difference between the amount standing to the credit of the trust account and the total amount of the claims admitted;
- (b) where the surety consists of a fidelity bond lodged at the proper venue of the Magistrates' Court on behalf of the commercial agent or former commercial agent (as the case requires)—by the insurance company or person of such amount not exceeding the full amount of the bond as is equal to the difference between the amount standing to the credit of the trust account and the total amount of the claims admitted. **S. 34A(7)(b) amended by Nos 57/1989 s. 3(Sch. item 164.16(b)), 33/2004 s. 196(4) (b)(i)(ii).**
- (8) On receipt of such an order the Treasurer may sell or deal in the securities for the purpose of meeting the requirements of the order.

Private Agents Act 1966
Act No. 7494/1966

Part IV—Special Provisions

s. 35

S. 34A(10)
amended by
No. 11/2001
s. 3(Sch.
item 58.2).

(9) If the moneys standing to the credit of the trust account together with the amount of the surety paid into the trust account are insufficient to satisfy the amount of all admitted claims the Minister may, notwithstanding the provisions of sub-section (1) of section 34, adjust the rights of the claimants amongst themselves with respect to their claims.

(10) The Minister by order in writing may require the manager or other principal officer of an authorised deposit-taking institution who has received a direction pursuant to paragraph (a) of sub-section (1) to pay specified amounts of money from the trust account to the claimants specified in the order.

S. 34A(11)
amended by
Nos 57/1989
s. 3(Sch. item
164.16(c)),
33/2004
s. 196(5).

(11) As soon as practicable after the distribution to claimants of amounts of admitted claims from the trust account of a commercial agent or former commercial agent (as the case requires) the Minister shall notify the registrar at the proper venue of the Magistrates' Court of the result of the administration of the trust account.

S. 34A(12)
amended by
No. 33/2004
s. 196(6).

(12) The cost of administering the trust account in accordance with these provisions shall be a charge upon the commercial agent or former commercial agent (as the case requires) and shall be recoverable in a court of competent jurisdiction.

35. Inspection of records

S. 35(1)
amended by
No. 33/2004
s. 202(Sch.
item 11).

(1) All documents relating to the trust account of a commercial agent or a person who has ceased to be a commercial agent shall at all reasonable times be open to inspection by the Chief Commissioner or by any member of the police force of or above the rank of sergeant or by a person duly authorized in writing in that behalf by the Minister (whether generally or in any particular case).

Private Agents Act 1966
Act No. 7494/1966

Part IV—Special Provisions

s. 35

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- (2) The Chief Commissioner or such member of the police force or a person so authorized may require the commercial agent or the nominee, or in the absence of such person any servant or agent having apparent control of the business—
- (a) to produce for inspection—
- (i) all or any documents relating to the trust account of a commercial agent; and
- (ii) all or any contracts agreements or other documents relating to any transaction by the commercial agent in connexion with his business as such and in his possession custody or control;
- (b) to furnish all authorities and orders to authorised deposit-taking institutions as may reasonably be required of him.
- (3) The Chief Commissioner, any such member of the police force or any such authorized person may make any notes concerning or take any copies or extracts from any documents which are being inspected.
- (4) A person who—
- (a) wilfully delays or obstructs any inspection made under this section;
- (b) wilfully mutilates or destroys or in any way alters anything in any document to delay or obstruct any inspection made under this section;
- (c) on demand refuses or fails to produce any documents which are in his possession custody or control;
- S. 35(2)**
amended by
No. 33/2004
s. 202(Sch.
item 11).
- S. 35(2)(b)**
amended by
No. 11/2001
s. 3(Sch.
item 58.3).
- S. 35(3)**
amended by
No. 33/2004
s. 202(Sch.
item 11).

Private Agents Act 1966
Act No. 7494/1966

Part IV—Special Provisions

s. 36

- (d) on demand refuses or fails to give any relevant information which is within his knowledge; or
- (e) on demand refuses or fails to answer truthfully any questions relating to any document required in respect of an inspection made under this section—
- shall be guilty of an offence against this Act.

36. Relief to financial institutions

S. 36(1)
amended by
Nos 8960
s. 6(3),
11/2001
s. 3(Sch.
item 58.4(a)).

- (1) Subject to the provisions of this section or sub-section (2) of section 34A no authorised deposit-taking institution shall in connexion with any transaction on any account of a commercial agent kept with it or with any other authorised deposit-taking institution, incur any liability or be under any obligation to make any inquiry or be deemed to have any knowledge of any right of any person to any money paid or credited to such account which it would not incur or be under or be deemed to have in the case of an account kept by a person entitled absolutely to all the moneys paid or credited to it:

S. 36(1)
Proviso
amended by
No. 11/2001
s. 3(Sch.
item 58.4(b)).

Provided that nothing in this sub-section shall relieve an authorised deposit-taking institution from any liability or obligation which it would have apart from this Act.

S. 36(2)
amended by
No. 11/2001
s. 3(Sch.
item 58.4(c)
(d)).

- (2) Notwithstanding anything in sub-section (1) an authorised deposit-taking institution at which a commercial agent keeps a trust account shall not, in respect of any liability of the commercial agent to the authorised deposit-taking institution which is not a liability in connexion with that account, have or obtain any recourse or right whether by way of set-off counter-claim charge or otherwise, against moneys standing to the credit of that account:

Private Agents Act 1966
Act No. 7494/1966

Part IV—Special Provisions

s. 37

Provided that nothing in this sub-section shall deprive an authorised deposit-taking institution of any right existing immediately prior to the commencement of this Act.

S. 36(2)
Proviso
amended by
No. 11/2001
s. 3(Sch.
item 58.4(e)).

37. Repossession of motor vehicles to be reported

A commercial agent who repossesses a motor vehicle which is the subject of a hire purchase agreement or a goods mortgage within the meaning of the **Chattel Securities Act 1981**—

S. 37
amended by
No. 10097
s. 174(4).

- (a) shall forthwith after such repossession inform an officer of police on duty at a police station near the place where the vehicle was repossessed that the vehicle has been repossessed, and give to the officer a description of and the registered number of the vehicle; and
- (b) within twenty-four hours after such repossession deliver or send by post to the officer in charge of police at the police station nearest the commercial agent's registered address written particulars in duplicate of the motor vehicle (including particulars of the registered number of the vehicle).

38. Commercial agents not to charge debtors for expenses of debt collecting etc.

- (1) No person who—
 - (a) exercises or carries on any of the functions of a commercial agent (whether or not he is required to hold a licence under this Act); or

Private Agents Act 1966
Act No. 7494/1966

Part IV—Special Provisions

s. 38

(b) acts for or in collusion with a person mentioned in paragraph (a)—

shall be entitled to charge recover or receive from any debtor of a creditor any sum of money or valuable consideration for or on account of any costs charges or expenses (other than stamp duties and any legal costs fixed by or payable in accordance with the scale of costs under the rules of any court) or any remuneration or payment whatsoever for or in connexion with the collection of a debt.

(2) The provisions of sub-section (1)—

(a) shall not be construed as affecting or removing any right existing from time to time of an owner or grantee to recover any costs charges or expenses in respect of the repossession of goods which are the subject of a hire purchase agreement or a bill of sale; and

(b) shall not extend to any sum charged recovered or received for or on account of the reasonable costs incurred by such owner or grantee where the owner or grantee forbears at the request of the hirer or the person whose goods are comprised in the bill of sale (whichever is applicable) to take possession of such goods.

(3) A person who in contravention of this section charges recovers or receives or attempts to charge recover or receive any such sum shall be guilty of an offence against this Act.

(4) Where any money or money's worth is directly or indirectly paid or allowed to or received by any person in contravention of this section the amount or value thereof in respect of such contravention may, notwithstanding any contract to the contrary,

S. 38(4)
amended by
No. 74/2000
s. 3(Sch. 1
item 102.2).

Private Agents Act 1966
Act No. 7494/1966

Part IV—Special Provisions

s. 39

be recovered by the debtor from such person, or if such person is the creditor or a partner employer employee principal or agent of the creditor or is in any way acting in collusion with him, may be set off against the amount of the debt (which shall be deemed to be reduced accordingly) or may be recovered by the debtor from such person or from the creditor.

39. Sub-agents not to be employed unless licensed

No commercial agent shall employ as a sub-agent a person who is not licensed as a commercial sub-agent.

40. Commercial sub-agents

(1) A commercial sub-agent shall not be required to lodge a surety as required by this Division.

S. 40(1)
amended by
No. 8960
s. 5(d).

(2) Subject to sub-section (1) the provisions of this Division relating to commercial agents shall, so far as applicable and with such modifications as may be necessary, relate to commercial sub-agents.

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Pt 4 Div. 2
(Heading and
s. 41)
repealed by
No. 37/1990
s. 7(d).

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Pt 4A
(Heading and
ss 41–41C)
inserted by
No. 37/1990
s. 9,
repealed by
No. 33/2004
s. 197.

Private Agents Act 1966
Act No. 7494/1966

Part V—General

s. 42

PART V—GENERAL

42. Court may defer operation of order pending appeal

S. 42(1)
amended by
Nos 7876
s. 2(3),
57/1989
s. 3(Sch. item
164.17(a)).

- (1) When making any order under this Act the Magistrates' Court may, if it thinks fit, defer the operation of the order pending an appeal.

S. 42(2)
amended by
Nos 7876
s. 2(3), 8427
s. 12, 9019
s. 2(1)(Sch.
item 190),
57/1989
s. 3(Sch. item
164.17(b)(i)(ii)).

- (2) Any person who feels aggrieved by any order of the Magistrates' Court under this Act may appeal to the County Court in accordance with the **Magistrates' Court Act 1989**.

S. 42(3)
amended by
Nos 7876
s. 2(3),
57/1989
s. 3(Sch. item
164.17(c)(i)),
33/2004
s. 202(Sch.
item 12).

- (3) Where an order cancelling a licence has been made by the Magistrates' Court and—
(a) the court does not defer the operation of the order pending appeal; or

S. 42(3)(b)
amended by
No. 57/1989
s. 3(Sch. item
164.17(c)(ii)).

- (b) the court does defer the operation of the order pending appeal but—
(i) no appeal is lodged; or
(ii) on appeal the licence remains cancelled—

the holder of the licence shall forthwith deliver up the licence to the Court for transmission to the Chief Commissioner and any such licence-holder who fails so to deliver up his licence shall be guilty of an offence against this Act.

Private Agents Act 1966
Act No. 7494/1966

Part V—General

s. 43

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S. 42A
inserted by
No. 37/1990
s. 10,
amended by
No. 101/1998
s. 28,
repealed by
No. 33/2004
s. 198.

43. Returns by clerk of the Magistrates' Court

- (1) The registrar at a venue of the Magistrates' Court at which applications are made or other proceedings are undertaken under this Act shall at the times and in the manner prescribed forward to the Chief Commissioner returns in the prescribed form of licences issued suspended or cancelled and of persons refused or disqualified from holding licences.
- (2) In every case where a licence is delivered up to a court under this Act the licence and a copy of any order of the court in relation thereto shall be transmitted forthwith by the proper officer of the court to the Chief Commissioner.

S. 43(1)
amended by
Nos 7876
s. 2(3),
57/1989
s. 3(Sch. item
164.18(a)),
33/2004
s. 202(Sch.
item 13(a)).

S. 43(2)
amended by
Nos 57/1989
s. 3(Sch. item
164.18(b)),
33/2004
s. 202(Sch.
item 13(b)).

44. Furnishing incorrect particulars

Any person who in any application testimonial or other statement made under or for the purposes of this Act knowingly makes any statement which is not correct or furnishes any particulars which are not correct or omits to furnish any particulars by or under this Act required to be furnished shall be guilty of an offence against this Act.

Private Agents Act 1966
Act No. 7494/1966

Part V—General

s. 44A

44A. Permanent records to be kept by commercial agents

S. 44A
(Heading)
inserted by
No. 33/2004
s. 199(1).

S. 44A
inserted by
No. 7646 s. 6,
amended by
No. 37/1990
s. 11(a).

S. 44A(1)
amended by
No. 33/2004
s. 199(2).

- (1) Every commercial agent shall keep or cause to be kept for a period of at least five years a permanent record containing fully and correctly the prescribed particulars of the functions performed by him in such capacity.

S. 44A(2)
amended by
No. 33/2004
s. 199(3)(a)(b).

- (2) Where—

S. 44A(2)(a)
amended by
No. 33/2004
s. 199(3)(a).

- (a) a commercial agent fails to keep or cause to be kept any record required to be kept pursuant to sub-section (1); or
- (b) any portion of a record kept pursuant to sub-section (1) is destroyed or mutilated within the said period of five years or is falsified—

The commercial agent shall be guilty of an offence against this Act, and if the court is satisfied that such failure destruction mutilation or falsification was done with the knowledge of the "commercial agent" and with intent to deceive or mislead any person the court shall, in addition to any other punishment, by order under this Act cancel the licence of the commercial agent.

S. 44A(3)
amended by
No. 33/2004
s. 199(3)(b).

- (3) When cancelling the licence the court shall in the order determine the period (which in no case shall be less than three months) during which the "commercial agent" shall be disqualified from holding such a licence.

Private Agents Act 1966
Act No. 7494/1966

Part V—General

s. 46

(4) If the court decides to cancel a licence, the court may defer the cancellation pending an appeal.

S. 44A(4)
substituted by
No. 37/1990
s. 12.

(5) If—

(a) the court does not defer a cancellation; or

(b) the court defers the cancellation but—

(i) no appeal is lodged within the time permitted; or

(ii) on appeal, the cancellation is not overturned—

S. 44A(5)
inserted by
No. 37/1990
s. 12,
amended by
No. 33/2004
s. 199(4).

the holder of the licence who fails to immediately deliver the licence to the Registrar is guilty of an offence against this Act.

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S. 45
repealed by
No. 37/1990
s. 11(b).

46. Offences

Every person who contravenes or fails to comply with any provision of this Act shall be guilty of an offence against this Act.

Penalty where no other penalty is expressly provided: 20 penalty units.

S. 46
amended by
No. 37/1990
s. 11(c).

47. Further penalty

Where at the foot of any section or part of a section of this Act there appears after a reference to a penalty the expression "**Further penalty**" it shall indicate that any person who is convicted of an offence against this Act in relation to that section or part shall be guilty of a further offence against this Act if the offence continues after he is so convicted and liable to an additional penalty for each day during which the offence so continues of

Private Agents Act 1966
Act No. 7494/1966

Part V—General

s. 48

not more than the amount expressed in the section or part as the amount of the further penalty.

48. Liability of corporations

A corporation may be guilty of and liable for any offence against this Act, and for the purposes of this Act there shall be imputed to a corporation any knowledge consent or intent of any officer thereof; and any person who is an officer of the corporation which is guilty of an offence against this Act shall be deemed to have committed the offence and (without affecting any liability of the corporation or of any other individual therefor) shall be liable accordingly, unless he proves that the act or omission constituting the offence took place without his knowledge or consent and that he did not know and could not reasonably have known thereof.

49. Joint offenders

If two or more persons are responsible for the same offence each of those persons shall be guilty of the offence, and the liability of each of them shall be independent of the liability of the other or others.

50. Judicial notice of certificates of the Chief Commissioner

S. 50
(Heading)
inserted by
No. 33/2004
s. 200.

S. 50
substituted by
No. 37/1990
s. 13.

S. 50(1)
amended by
No. 33/2004
s. 202(Sch.
item 14).

- (1) A certificate certifying any matter relating to the contents of the register and purporting to be signed by the Chief Commissioner is admissible in any proceedings as evidence of the matters appearing in the certificate.

Private Agents Act 1966
Act No. 7494/1966

Part V—General

s. 51

(2) All courts and people authorised by law or the consent of parties to receive evidence must take judicial notice of—

(a) the signature of a person who is, or was, the Chief Commissioner; and

S. 50(2)(a)
amended by
No. 33/2004
s. 202(Sch.
item 14).

(b) the fact that that person is, or was, the Chief Commissioner.

S. 50(2)(b)
amended by
No. 33/2004
s. 202(Sch.
item 14).

51. Regulations

S. 51
amended by
No. 37/1990
s. 14(a).

(1) The Governor in Council may make regulations for or with respect to—

(a) prescribing the form and manner of keeping the register and any other forms to be used under this Act (and all such forms or forms to the like effect shall be sufficient in law);

(b) prescribing fees to be charged in respect of anything done under or for the purposes of this Act;

(c) the procedure on applications, renewals, issuing licences, hearings and other proceedings under this Act;

S. 51(1)(c)
amended by
No. 37/1990
s. 14(b).

(d) records to be kept and returns to be made by commercial agents or commercial sub-agents, and the inspection of such records;

S. 51(1)(d)
amended by
No. 33/2004
s. 201(a).

(e) generally, prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or expedient to be prescribed for carrying out or giving effect to this Act;

(f) prescribing penalties not exceeding 10 penalty units for any contravention of or failure to comply with any regulation;

S. 51(1)(f)
amended by
No. 37/1990
s. 14(c).

Private Agents Act 1966
Act No. 7494/1966

Part V—General

s. 51

S. 51(1)(g)
inserted by
No. 37/1990
s. 14(d).

(g) issuing duplicate licences;

S. 51(1)(h)
inserted by
No. 37/1990
s. 14(d),
amended by
No. 33/2004
s. 202(Sch.
item 15).

(h) prescribing the duties and functions of the
Chief Commissioner.

S. 51(1)(i)(j)
inserted by
No. 37/1990
s. 14(d),
repealed by
No. 33/2004
s. 201(b).

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S. 51(2)
inserted by
No. 37/1990
s. 14(e).

(2) Regulations made under this section may be disallowed in whole, or in part, by resolution of either House of Parliament in accordance with the requirements of section 6(2) of the **Subordinate Legislation Act 1962**.

S. 51(3)
inserted by
No. 37/1990
s. 14(e).

(3) Disallowance under sub-section (2) is deemed to be disallowance by Parliament for the purposes of the **Subordinate Legislation Act 1962**.

S. 51(4)
inserted by
No. 37/1990
s. 14(e).

(4) If either House of Parliament disallows a regulation, no regulation which is the same in substance as the regulation which has been disallowed may be made within 6 months of the disallowance unless the resolution disallowing the regulation has been rescinded by that House.

Private Agents Act 1966
Act No. 7494/1966

Endnotes

ENDNOTES

1. General Information

The **Private Agents Act 1966** was assented to on 13 December 1966 and came into operation as follows:

Sections 1–5, 7–14, 17–19, 31, 32, 40–44, 46–49, 51 on 18 October 1967: Government Gazette 18 October 1967 page 3151; rest of Act on 1 January 1968: Government Gazette 20 December 1967 page 3845.

Private Agents Act 1966
Act No. 7494/1966

Endnotes

2. Table of Amendments

This Version incorporates amendments made to the **Private Agents Act 1966** by Acts and subordinate instruments.

Private Agents Act 1967, No. 7646/1967

Assent Date: 19.12.67
Commencement Date: 19.12.67
Current State: All of Act in operation

Justices (Amendment) Act 1969, No. 7876/1969

Assent Date: 25.11.69
Commencement Date: Ss 3, 5, 6, 7(k)(m)–(o) on 1.7.70; rest of Act on 1.4.70:
Government Gazette 25.2.70 p. 463
Current State: All of Act in operation

Magistrates' Courts (Jurisdiction) Act 1973, No. 8427/1973

Assent Date: 17.4.73
Commencement Date: Ss 3, 6, 8(b), 10(1), 11 (except s. 10(k)) on 3.2.75:
Government Gazette 22.1.75 p. 122; rest of Act on
1.9.75: Government Gazette 30.7.75 p. 2705
Current State: All of Act in operation

Private Agents (Amendment) Act 1976, No. 8960/1976

Assent Date: 16.12.76
Commencement Date: S. 3(2) on 1.1.78: s. 1(3)(a); rest of Act on 21.9.77:
Government Gazette 21.9.77 p. 2983
Current State: All of Act in operation

Statute Law Revision Act 1977, No. 9019/1977

Assent Date: 17.5.77
Commencement Date: 17.5.77 subject to s. 2(2)
Current State: All of Act in operation

Age of Majority Act 1977, No. 9075/1977

Assent Date: 6.12.77
Commencement Date: 1.2.78: Government Gazette 11.1.78 p. 97
Current State: All of Act in operation

Statute Law Revision Act 1980, No. 9427/1980

Assent Date: 27.5.80
Commencement Date: 27.5.80 subject to s. 6(2)
Current State: All of Act in operation

Statute Law Revision Act 1981, No. 9549/1981

Assent Date: 19.5.81
Commencement Date: 19.5.81 subject to s. 2(2)
Current State: All of Act in operation

Private Agents Act 1966
Act No. 7494/1966

Endnotes

Companies (Consequential Amendments) Act 1981, No. 9699/1981

Assent Date: 5.1.82
Commencement Date: Ss 9, 14, 18 on same day as No. 9572—1.7.82: s. 2(2); s. 19 on 1.10.81: s. 2(3); s. 22 on 5.1.82: s. 2(4); rest of Act on same day as No. 9712—1.7.82: s. 2(1)
Current State: All of Act in operation

Credit Act 1984, No. 10097/1984

Assent Date: 22.5.84
Commencement Date: S. 174(4) on 28.2.85: Government Gazette 19.12.84 p. 4483
Current State: This information relates only to the provision/s amending the **Private Agents Act 1966**

Courts Amendment Act 1986, No. 16/1986

Assent Date: 22.4.86
Commencement Date: Ss 1–11, 13–27, 29–34 on 1.7.86: Government Gazette 25.6.86 p. 2180; s. 28 on 1.9.86: Government Gazette 27.8.86 p. 3201; s. 12 on 1.1.88: Government Gazette 7.10.87 p. 2701
Current State: All of Act in operation

Magistrates' Court (Consequential Amendments) Act 1989, No. 57/1989

Assent Date: 14.6.89
Commencement Date: S. 4(1)(a)–(e)(2) on 1.9.89: Government Gazette 30.8.89 p. 2210; rest of Act on 1.9.90: Government Gazette 25.7.90 p. 2217
Current State: All of Act in operation

Private Agents (Amendment) Act 1990, No. 37/1990

Assent Date: 13.6.90
Commencement Date: 15.8.90: Government Gazette 15.8.90 p. 2473
Current State: All of Act in operation

Miscellaneous Acts (Omnibus Amendments) Act 1995, No. 100/1995

Assent Date: 5.12.95
Commencement Date: S. 32(Sch. 2 item 6) on 5.12.95: s. 2(1)
Current State: This information relates only to the provision/s amending the **Private Agents Act 1966**

Legal Practice Act 1996, No. 35/1996

Assent Date: 6.11.96
Commencement Date: S. 453(Sch. 1 item 67(a)(b)) on 1.1.97: s. 2(3)
Current State: This information relates only to the provision/s amending the **Private Agents Act 1966**

Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998

Assent Date: 26.5.98
Commencement Date: S. 7(Sch. 1) on 1.7.98: s. 2(2)
Current State: This information relates only to the provision/s amending the **Private Agents Act 1966**

Private Agents Act 1966
Act No. 7494/1966

Endnotes

Licensing and Tribunal (Amendment) Act 1998, No. 101/1998

Assent Date: 1.12.98
Commencement Date: S. 28 on 1.2.99: Government Gazette 24.12.98 p. 3204
Current State: This information relates only to the provision/s amending the **Private Agents Act 1966**

Statute Law Revision Act 2000, No. 74/2000

Assent Date: 21.11.00
Commencement Date: S. 3(Sch. 1 item 102) on 22.11.00: s. 2(1)
Current State: This information relates only to the provision/s amending the **Private Agents Act 1966**

Statute Law Amendment (Authorised Deposit-taking Institutions) Act 2001, No. 11/2001

Assent Date: 8.5.01
Commencement Date: S. 3(Sch. item 58) on 1.6.01: s. 2(2)
Current State: This information relates only to the provision/s amending the **Private Agents Act 1966**

Monetary Units Act 2004, No. 10/2004

Assent Date: 11.5.04
Commencement Date: S. 15(Sch. 1 item 22) on 1.7.04: s. 2(2)
Current State: This information relates only to the provision/s amending the **Private Agents Act 1966**

Private Security Act 2004, No. 33/2004

Assent Date: 1.6.04
Commencement Date: Ss 203, 204 on 2.6.04: s. 2(1); ss 186–202, Sch. on 1.7.05: s. 2(3)
Current State: This information relates only to the provision/s amending the **Private Agents Act 1966**

Private Agents Act 1966
Act No. 7494/1966

Endnotes

3. Explanatory Details

No entries at date of publication.