

Queensland



ANNO VICESIMO

ELIZABETHAE SECUNDAE REGINAE

No. 50 of 1971

An Act to make provision for the licensing and control of Credit Reporting Agents and Private Inquiry Agents, for regulating the Use of Listening Devices and for other purposes

[ASSENTED TO 15TH NOVEMBER, 1971]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

PART I—PRELIMINARY

1. Short title. This Act may be cited as the *Invasion of Privacy Act 1971*.

2. Commencement. (1) Except as provided in subsection (2) of this section, this Act, or this Act less specified provisions, shall commence on a date to be fixed by the Governor by Proclamation.

(2) The Governor may, by Proclamation under subsection (1) of this section or by a subsequent Proclamation or Proclamations fix a date or dates for the commencement of the several provisions of this Act not brought into operation pursuant to subsection (1) of this section later than the date fixed by the Proclamation under subsection (1) of this section.

(3) Every Proclamation under this section shall be published in the Gazette.

3. Arrangement of Act. This Act is divided into Parts as follows:—

PART I—PRELIMINARY (ss. 1–4);

PART II—ADMINISTRATION (ss. 5–7);

PART III—CREDIT REPORTING AGENTS AND PRIVATE INQUIRY AGENTS

Division I—Licences (ss. 8–15);

Division II—Credit Reporting Agents (ss. 16–25);

Division III—Private Inquiry Agents (ss. 26–34);

Division IV—Licensees Generally (ss. 35–40);

PART IV—LISTENING DEVICES (ss. 41–48);

PART V—MISCELLANEOUS (ss. 49–53).

4. Interpretation. In this Act, unless the contrary intention appears—

“approved” means approved by the Commissioner;

“Commissioner” means the Commissioner for Corporate Affairs appointed under the *Securities Industry Act 1971*: The term includes an Assistant Commissioner for Corporate Affairs appointed under that Act;

“consumer” means an individual seeking or obtaining credit to be used wholly or primarily for personal, family or household purposes;

“credit reporting agent” means a person who is regularly engaged, in whole or in part, in providing credit reports to any other person, whether for remuneration or otherwise;

“credit reporting agent’s licence” means a valid and unexpired credit reporting agent’s licence or renewed licence issued under Part III of this Act;

“credit report” means any written, oral, or other communication in relation to the credit worthiness, credit standing or credit capacity of a consumer which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer’s eligibility for credit to be used wholly or primarily for personal, family or household purposes: The term does not include any report containing information solely as to transactions or experiences between the consumer and the person making the report or the employer of the person making the report in the course of his employment and where the person making the report or the employer of the person making the report in the course of his employment is a corporation, between the consumer and a related corporation;

“individual” means a natural person;

“inspector” means an inspector appointed under this Act;

“licence” means—

(a) a credit reporting agent’s licence;

(b) a private inquiry agent’s licence; or

(c) a subagent’s licence,
as the case may be.

“licensed credit reporting agent” means the holder of a credit reporting agent’s licence;

“licensed private inquiry agent” means the holder of a private inquiry agent’s licence;

- “ licensed subagent ” means the holder of a subagent’s licence;
- “ licensee ” means the holder of a licence;
- “ listening device ” means any instrument, apparatus, equipment or device capable of being used to overhear, record, monitor or listen to a private conversation simultaneously with its taking place;
- “ Minister ” means the Minister for Justice and Attorney-General, or other Minister of the Crown for the time being charged with the administration of this Act;
- “ private conversation ” means any words spoken by one person to another person in circumstances that indicate that those persons desire the words to be heard or listened to only by themselves or that indicate that either of those persons desires the words to be heard or listened to only by themselves and by some other person, but does not include words spoken by one person to another person in circumstances in which either of those persons ought reasonably to expect the words may be overheard, recorded, monitored or listened to by some other person, not being a person who has the consent, express or implied, of either of those persons to do so;
- “ private inquiry agent ” means any person (whether or not he carries on any other business) who exercises or carries on any of the following functions, namely:—
- (a) obtaining and furnishing information as to the personal character or actions of any person or as to the character or nature of the business or occupation of any person;
 - (b) searching for missing persons;
 - (c) furnishing guards or watchmen; or
 - (d) acting as a guard or watchman, on behalf of any other person and for or in consideration of any payment or other remuneration (whether monetary or otherwise), but does not include any employee of a licensed private inquiry agent;
- “ private inquiry agent’s licence ” means a valid and unexpired private inquiry agent’s licence or renewed licence issued under Part III of this Act;
- “ register ” means a register mentioned in section 15 of this Act;
- “ registered address ” in relation to a credit reporting agent, private inquiry agent or subagent means the address that is for the time being entered in the register in respect of the credit reporting agent, private inquiry agent or subagent, as the case may be;
- “ related corporation ” in relation to a corporation means a corporation that is deemed to be related to the firstmentioned corporation by virtue of subsection (5) of section 6 of the *Companies Act 1961–1971*;
- “ subagent ” means any person in the direct employ of, or acting for or by arrangement with, a private inquiry agent who exercises or carries on for such private inquiry agent any of the functions of a private inquiry agent, whether his remuneration is by way of salary, wages, commission or otherwise;
- “ subagent’s licence ” means a valid and unexpired subagent’s licence or renewed licence issued under Part III of this Act.

PART II—ADMINISTRATION

5. Administration of Act. (1) This Act shall be administered by the Minister and, subject to him, by the Commissioner.

(2) The Governor in Council may from time to time appoint under and for the purposes of this Act such inspectors and other officers as he deems necessary for the effectual administration of this Act.

(3) Such inspectors and other officers shall be appointed, and shall hold their respective offices, under and in accordance with the provisions of the *Public Service Act 1922-1968*.

6. Certificates of Appointment of Inspectors. (1) Every inspector appointed for the purposes of this Act shall be furnished with a certificate of his appointment, signed by the Commissioner, which shall be sufficient evidence of the appointment.

(2) An inspector shall carry his certificate of appointment with him at all times while in the execution of his duty.

7. Powers of Inspector. (1) For the purposes of this Act an inspector may at any time—

- (a) make such examination and inquiry as may be necessary to ascertain whether the provisions of this Act have been or are being complied with and interrogate any person for that purpose and require any such person to answer the questions put, and to sign a declaration of the truth of his answers;
- (b) enter any premises at the registered address of any licensee and inspect and examine any books and papers found upon such entry;
- (c) call to his aid any person whom he may think competent to assist him in the exercise of any power aforesaid;
- (d) exercise such other powers as may be prescribed.

(2) Nothing contained in subsection (1) of this section renders any person compellable to answer any question incriminating or tending to incriminate himself.

PART III—CREDIT REPORTING AGENTS AND PRIVATE INQUIRY AGENTS

Division I—Licences

8. Unlicensed person not to act as credit reporting agent, private inquiry agent or subagent. (1) No person shall—

- (a) act as;
- (b) carry on the business or any of the functions of; or
- (c) advertise, notify or state that—
 - (i) he acts as or is willing to act as; or
 - (ii) carries on or is willing to carry on the business or any of the functions of,

a credit reporting agent unless—

- (d) he is the holder of a credit reporting agent's licence; or

(e) he is a person, or belongs to a class of persons, exempted by the Governor in Council from the requirements of this Act with respect to the holding of a credit reporting agent's licence (which the Governor in Council is empowered so to do either absolutely or subject to conditions).

(2) Subject to sections 26 and 27 of this Act, no person shall—

(a) act as;

(b) carry on the business or any of the functions of; or

(c) advertise, notify or state that—

(i) he acts as or is willing to act as; or

(ii) carries on or is willing to carry on the business or any of the functions of,

a private inquiry agent unless he is the holder of a private inquiry agent's licence.

(3) Subject to sections 26 and 27 of this Act, no person, unless he is the holder of a subagent's licence, shall be or act as a subagent for any licensed private inquiry agent.

(4) Any person who contravenes or fails to comply with any of the provisions of this section is guilty of an offence against this Act and is liable on conviction, in the case of a corporation, to a penalty not exceeding \$500 and, in the case of an individual to a penalty not exceeding \$300 or to imprisonment for a term not exceeding three months, or to both such penalty and imprisonment.

(5) This section shall not apply until the expiration of the period of three months next succeeding the commencement of this Part.

9. Application for licence or renewal. (1) Application for a licence or renewal of a licence,

(a) shall be in accordance with an approved form;

(b) shall be lodged with the Commissioner;

(c) shall be accompanied by the prescribed fee;

(d) shall contain such particulars as are prescribed; and

(e) may set out any other matter that the applicant wishes the Commissioner to consider.

(2) The Commissioner may require an applicant to furnish in writing, within the time specified, further information in connexion with his application.

(3) Upon receipt of an application the Commissioner shall inquire into—

(a) where the applicant is an individual—the fame and character and suitability and qualifications, if any, for the licence in question of the applicant;

(b) where the applicant is a corporation—the fame and character of the directors and the secretary of the corporation and the suitability and qualifications, if any, for the licence in question of the corporation.

(4) An application for renewal of a licence shall be lodged with the Commissioner not later than the thirty-first day of December of the year in which the licence, if not renewed, would expire.

(5) The Commissioner shall not refuse to grant or renew a licence without first giving the applicant for the licence or renewal an opportunity of being heard.

10. Grant of licence. (1) If as a result of the inquiries made pursuant to subsection (3) of section 9 of this Act and after consideration of the interests of the public the Commissioner is of opinion that the applicant is a fit and proper person to hold the licence applied for, the Commissioner shall grant or renew the licence but if he is not of that opinion he shall refuse the application.

(2) The Commissioner may grant or renew a licence subject to such conditions or restrictions as he thinks fit.

(3) A person who contravenes or fails to comply with any condition of or restriction applicable to his licence shall be guilty of an offence against this Act.

(4) Upon receipt of an application for renewal of a licence, the Commissioner may, if he is satisfied that the applicant has complied with the provisions of this Part, grant the application for renewal.

(5) The Commissioner may, in respect of an application for renewal of a licence, dispense with an inquiry under subsection (3) of section 9 of this Act.

(6) A licence shall be in or to the effect of the form prescribed and in addition to any other particulars—

(a) in the case of a licence issued to a person other than a corporation, the licence shall set forth the name, place or places of business and place of abode of the person taking out the licence;

(b) in the case of a licence issued to a corporation the licence shall set forth the name of the corporation and the address of its place or places of business and the name and the address of the secretary and the directors of the corporation.

(7) The fee payable for a licence shall be such amount as may be prescribed.

(8) Subject to this Part, a licence shall expire on the thirty-first day of December next following the date of issue of the licence.

(9) Where a licence is renewed it shall be in force until the thirty-first day of December of the year next following the year in which the licence, if not renewed, would expire.

(10) Upon the refusal or withdrawal of an application for a licence or for the renewal of a licence, there shall be refunded to the applicant, or to any person who appears to the Commissioner to be entitled thereto, such part of the fees paid by the applicant upon lodgment of the application as may be prescribed.

11. Restoration of licence. (1) Where an application for renewal of a licence is not made before the day of expiry of the licence, application may be made for the restoration of the licence.

(2) An application for restoration of a licence shall be made in accordance with the approved form and lodged with the Commissioner who shall make such inquiry into the application as he sees fit.

(3) An application for restoration of a licence shall be accompanied by the prescribed fee.

(4) The Commissioner may require an applicant to furnish in writing within the time specified, further information in connexion with his application.

(5) Upon being satisfied as the result of his inquiries that the non-renewal is due to inadvertence and that the result of such inadvertence should be remedied or that for any reason it is just and equitable that the licence should be restored, the Commissioner may restore the licence and upon restoration shall issue a new licence under his hand.

(6) Where a licence is restored, the holder of the licence shall be deemed to be and to have been as from the expiration of the licence in respect of which the application for restoration was made the holder of a licence of the class in question until such time as the new licence is issued pursuant to subsection (5) of this section.

12. Variation of licence. (1) Upon the application of the holder of a licence, at any time during the currency of that licence, the Commissioner may vary the licence by amending—

- (a) the place or places at which the business is carried on;
- (b) in the case of a corporation—the name and address of the secretary or any director; or
- (c) any other particulars contained in the licence.

(2) An application under this section, accompanied by the relevant licence and the prescribed fee (if any) shall be lodged with the Commissioner who shall make such inquiry as he sees fit in relation to the application.

(3) The provisions of sections 9 and 10 of this Act shall, so far as they are applicable and with all necessary adaptations, apply to and in respect of an application for the variation of a licence in all respects as if the same were an application for a licence or for the renewal of a licence.

13. Cancellation of licence. (1) The Commissioner may, of his own motion or pursuant to any complaint or charge made to him, by notice in writing call upon a person to show cause why a licence of which the person is the holder should not be cancelled and why he should not be disqualified either permanently or temporarily from holding such a licence on the ground—

- (a) that the licence was improperly obtained;
- (b) where the licensee is an individual—that he is not a fit and proper person to continue to hold such a licence;
- (c) where the licensee is a corporation—
 - (i) that any director or the secretary of the corporation is not a fit and proper person to be a director or the secretary, as the case may be, of a corporation holding such a licence; or
 - (ii) that the affairs of the corporation have been so conducted as to render it unfit to continue to hold such a licence; or
- (d) that there has not been compliance with the provisions of this Part.

(2) The notice shall be served personally or by post on the person to whom it is directed and where the notice alleges a ground referred to in subparagraph (i) of paragraph (c) of subsection (1) of this section, a copy of the notice shall be served personally or by post on the director or the secretary referred to in the statement of that ground in the notice.

(3) If at the time and place appointed by the notice issued under subsection (1) of this section, the person to whom it is directed does not appear and in the case of a corporation, where the notice alleges a ground referred to in subparagraph (i) of paragraph (c) of subsection (1) of this section, the director or the secretary, as the case may be, does not appear, then upon proof of due service of the notice upon him or them a reasonable time before the time appointed for appearance, the Commissioner may proceed to hear and determine the matter in the absence of such person, director or secretary as the case may be.

(4) Service of the notice or a copy thereof may be proved by the oath of the person who served it or by statutory declaration or by such other evidence as the Commissioner deems sufficient.

(5) The hearing of the matter shall be an open hearing unless the licensee requests the Commissioner to hear the matter *in camera* and the Commissioner shall permit the person to whom the notice is directed and the director or secretary on whom a copy of the notice has been served to appear at the hearing in person or by counsel or solicitor.

(6) Upon being satisfied of the truth of any of the grounds referred to in subsection (1) of this section and alleged in the notice, the Commissioner may cancel the licence and order that the holder of the licence be disqualified either permanently or for such period as the Commissioner specifies from holding another such licence. Upon the making of such an order the licensee shall cause the licence to be lodged with the Commissioner forthwith.

14. Appeal. (1) Any person who feels aggrieved by any decision of the Commissioner under this Part refusing an application for a licence or renewal, variation or restoration of a licence or cancelling a licence or disqualifying a person from holding a licence either permanently or for a period may, within one month after notification to him of the Commissioner's decision, appeal therefrom to a Magistrates Court constituted under *The Magistrates Courts Acts 1921 to 1964* having jurisdiction at the place where the appellant proposed to carry on or, as the case may be, carried on business, by virtue of the licence.

(2) Every such appeal shall be by way of rehearing and the Magistrates Court shall inquire into and determine the appeal and its decision shall be final and without appeal and shall be given effect to by the Commissioner.

15. Registers. The Commissioner shall keep, in such form and manner as may be prescribed or so far as not prescribed as he thinks fit, registers of all licences and all refusals, renewals, restorations, variations, surrenders and cancellations of licences, which registers shall be available at the office of the Commissioner during normal working hours for perusal by any person upon payment of the prescribed fee.

Division II—Credit Reporting Agents

16. Permissible purposes of reports. A credit reporting agent shall not furnish a credit report to any person other than—

- (a) in accordance with the written instructions of the consumer to whom it relates; or
- (b) a person who or which he has reason to believe intends to use the information contained in the credit report in connexion with a credit transaction involving that person, the employer of that person receiving the report in the course of his employment or a related corporation of that person or employer and the consumer on whom the information is to be furnished.

17. Information to be furnished to consumer and credit reporting agent. (1) Whenever credit for personal, family or household purposes involving a consumer is refused and the refusal is based in whole or in part on information contained in a credit report furnished by a credit reporting agent, the user of the credit report shall notify the consumer—

- (a) of the refusal;
- (b) that the refusal was based in whole or in part on information contained in a credit report; and
- (c) of his right to make a written request to the user of the credit report within fourteen days after receiving advice of such refusal, for the disclosure to him of the name and address of the credit reporting agent who or which made the credit report.

(2) The user of the credit report shall upon receipt of a written request by the consumer in terms of paragraph (c) of subsection (1) of this section forthwith furnish in writing to the consumer the name and address of the credit reporting agent who or which made the credit report.

(3) Upon disclosing to the consumer the name and address of the credit reporting agent pursuant to subsection (2) of this section, the user of the credit report shall notify the credit reporting agent in question of the name and address of the consumer who has been so supplied.

18. Information to be disclosed by credit reporting agent. (1) Where a consumer is furnished pursuant to section 17 of this Act with the name and address of a credit reporting agent, the credit reporting agent shall, upon written request and proper identification of the consumer made within fourteen days after being so furnished, disclose to the consumer the nature and substance of all information contained in the credit report made to the user of the credit report.

(2) Where the accuracy of any information contained in the credit report is disputed, the credit reporting agent shall within a reasonable period of time make investigations into the information so disputed as a result of notice given to the credit reporting agent by the consumer unless it has reasonable grounds for believing that the dispute by the consumer is frivolous, irrelevant or vexatious.

(3) Pending the completion of the investigations in relation to the disputed information the credit reporting agent shall—

- (a) clearly note in his or its records that the information is disputed;
- (b) in any subsequent credit report containing the disputed information clearly note that the information is disputed.

(4) If after the completion of the investigations made by the credit reporting agent, the information disputed is found to be inaccurate or can no longer be verified, the credit reporting agent at his or its own expense shall promptly delete the information from his or its records and inform any person who has previously received a credit report containing such information within six months of the date on which the correction is recorded of that deletion.

(5) At such time as the credit reporting agent completes his or its investigations and determines whether the disputed information is accurate or inaccurate or can no longer be verified, he or it shall so inform the consumer.

(6) Where the consumer disputes the accuracy of the information upon which a credit report is based and alleges that he is unable to refute it without disclosure of the source of the information a credit reporting agent shall disclose to the consumer the source of information but the credit reporting agent may refuse to make the disclosure if he or it has reasonable grounds to believe that disclosure is unnecessary to permit refutation.

(7) The disclosures required under subsections (1) and (6) of this section shall be made to the consumer—

(a) in person if he appears in person and furnishes proper identification;

(b) by telephone if he has made a written request, with proper identification, for telephone disclosure and the charge for any telephone trunk call is prepaid by the consumer;

(c) in writing and posted to the consumer at his last known address by means of registered post if—

(i) the postage is prepaid by the consumer;

(ii) he has made a written request, with proper identification, for written disclosure; and

(iii) he satisfies the credit reporting agent that he cannot reasonably appear in person.

19. Obtaining information falsely. Any person who obtains information on a consumer from a credit reporting agent by any false pretence is guilty of an offence against this Act and is liable on conviction on indictment to a penalty not exceeding \$5,000 or to imprisonment for not more than five years or to both such penalty and imprisonment.

20. Unauthorized disclosure. Any person who knowingly provides information concerning a consumer from the records of a credit reporting agent to a person not authorized to receive that information is guilty of an offence against this Act and is liable on conviction on indictment to a penalty not exceeding \$5,000 or to imprisonment for not more than five years or to both such penalty and imprisonment.

21. Supply of false information. Any person who supplies information that to his knowledge is false or misleading in a material particular to a credit reporting agent for the purpose of having such false or misleading information recorded in the records of the credit reporting agent or reported in a credit report is guilty of an offence against this Act and is liable on conviction on indictment to a penalty not exceeding \$5,000 or to imprisonment for not more than five years or to both such penalty and imprisonment.

22. Falsifying records or credit report. Any person who knowingly falsifies a credit report or any records used or intended for use in relation thereto is guilty of an offence against this Act and is liable on conviction on indictment to a penalty not exceeding \$5,000 or to imprisonment for not more than five years or to both such penalty and imprisonment.

23. Liability of credit reporting agent. A credit reporting agent, the user of a credit report and the supplier of the information which is contained in a credit report do not incur any liability as for defamation in respect of the publication in good faith of any defamatory matter in the course of the preparation, supply and use of a credit report in compliance with this Act.

A publication shall be taken to be made in good faith if—

- (a) the person making the publication does not know, and could not in the circumstances reasonably be expected to know, that the information supplied or used in the credit report is false or misleading in a material particular; and
- (b) the person making the publication is not actuated by ill-will to the person in respect of whom the information was supplied or the credit report furnished or by any other improper motive.

24. Deletion of stale information. (1) After a date to be prescribed once at least in each calendar year or such lesser period as may be prescribed, a credit reporting agent shall make an examination of his or its records and shall delete therefrom all information that relates to any act, matter, circumstance or thing that happened, occurred, existed or was done or omitted to be done more than five years before the time at which the examination is made.

(2) A credit reporting agent shall not furnish to any person a credit report that is based wholly or in part upon information that relates to any act, matter, circumstance or thing that happened, occurred, existed or was done or omitted to be done more than five years before the time at which the credit report is furnished.

(3) Nothing in this section applies to information in respect of the conviction of a person for an offence involving fraud or dishonesty.

25. Demanding payment by threats. Any person who knowing the contents of the writing causes any person to receive any writing demanding the payment of money to any person and containing any threat of any injury or detriment of any kind in relation to his credit worthiness, credit standing or eligibility for credit to be caused to any person, either by the offender or any other person, if the demand is not complied with is guilty of an offence against this Act and is liable on conviction to a penalty not exceeding \$1,000 or to imprisonment for a term not exceeding one year or to both such penalty and imprisonment:

Provided that nothing in this section applies—

- (a) where the amount of money demanded is owing by the person to whom the demand is addressed to the person by or on whose behalf the demand is made; and
- (b) where the threat regarding future credit availability to the person to whom the demand is addressed is confined to the future extension of credit by the person by whom or on whose behalf the demand is made.

Division III—Private Inquiry Agents

26. Act not applicable to certain persons. (1) This Part shall not be construed as requiring any of the following persons to hold a private inquiry agent's licence or a subagent's licence under this Part, that is to say—

- (a) any member of the Commonwealth Police Force or of the police force of this State or any other State or a Territory of the Commonwealth or any part of Her Majesty's Dominions in the exercise of his functions as such member;
- (b) any member of the Defence Forces of the Commonwealth in the exercise of his functions as such member;
- (c) any officer or employee of—
 - (i) the Crown in right of the Commonwealth or of this State or of any other State;
 - (ii) any responsible Minister of the Crown, whether a Minister of the Commonwealth or of this State or of any other State; or
 - (iii) any Government Department of the Commonwealth or of this State or of any other State, in the exercise of his functions as such officer or employee;
- (d) any solicitor acting in the ordinary course of his profession as such or any solicitor's clerk acting in the ordinary course of his master solicitor's profession as such;
- (e) any public accountant registered under the *Public Accountants Registration Act 1946–1971* acting in the ordinary course of his profession or calling as such, or any employee of any such registered public accountant acting in the ordinary course of his employer's profession or calling as such;
- (f) any person bona fide carrying on the business of insurance or of an insurance adjustment agency or any employee or agent of such a person in the exercise of his functions as such employee or agent;
- (g) any person or class of persons exempted by the Governor in Council (which the Governor in Council is empowered so to do either absolutely or subject to conditions).

(2) The fact that any person carries on the business of obtaining or furnishing information as to the financial rating or standing of any person shall not of itself require the person carrying on that business or any employee or agent of that person to hold a private inquiry agent's licence or subagent's licence under this Part.

(3) Any person employed to exercise or carry on for one employer only (such employer not being a private inquiry agent) any of the functions of a private inquiry agent (such functions being exercised or carried on in the course of the business exercised or carried on by that employer) shall not, by reason only of his being so employed, be required by virtue of this Part to be the holder of a private inquiry agent's licence or subagent's licence under this Part.

27. Savings as to licensed subagents. Nothing in this Act shall be construed as requiring any licensed subagent so far as he performs for any licensed private inquiry agent any of the functions of a private inquiry agent, and is duly authorized thereunto by the private inquiry agent, to hold a private inquiry agent's licence, or as requiring any licensed private inquiry agent to hold a subagent's licence under this Part.

28. Persons prohibited from acting as subagents for unlicensed person.

(1) Subject to this Part no person shall be or act as a subagent for any person who is required by this Part to be, but is not, the holder of a private inquiry agent's licence.

(2) A corporation shall not act as or carry on the business of a subagent.

(3) Any person who contravenes or fails to comply with any of the provisions of this section is guilty of an offence against this Act and is liable on conviction, in the case of a corporation, to a penalty not exceeding \$500 and, in the case of an individual, to a penalty not exceeding \$300 or to imprisonment for a term not exceeding three months, or to both such penalty and imprisonment.

29. As to displaying notice on places of business, etc. (1) Every licensed private inquiry agent shall paint or affix and keep painted or affixed on his or its place or places of business (or in the case of a corporation on the principal office of the corporation in the State and on the premises of every branch or agency of the corporation in the State) and on the premises at his or its registered address, in a conspicuous position a notice showing in legible characters his or its name and description as a licensed private inquiry agent or (if such business is not carried on in his or its own name) the name under which he or it or the firm in which he or it is a partner is registered or deemed to be registered under any Act for the time being in force relating to the registration of business names.

(2) Any person—

(a) who contravenes or fails to comply with any of the provisions of subsection (1) of this section; or

(b) who, not being the holder of a private inquiry agent's licence, keeps up or exhibits on or near his office, house or place of business or exhibits anywhere or allows to remain unobliterated any sign, writing, painting, or other mark, implying that such office, house or place of business is that of a person licensed to carry on the business of or to act as a private inquiry agent,

is guilty of an offence against this Act.

30. Certain persons not to be employed by licensees. (1) A licensed private inquiry agent shall not knowingly employ in any way whatever in connexion with his business—

(a) as a subagent, any person who is not a licensed subagent;

(b) any person who is for the time being disqualified under this Part from holding a private inquiry agent's licence, or a subagent's licence; or

(c) any person whose application for a private inquiry agent's licence, or a subagent's licence has been refused, unless such an application has been subsequently granted.

(2) Any licensed private inquiry agent who contravenes or fails to comply with any of the provisions of this section is guilty of an offence against this Act and is liable on conviction to a penalty not exceeding \$200.

31. Misrepresentation, etc., by private inquiry agent. Any private inquiry agent who, by any wilfully false, misleading or deceptive statement, representation or promise or by any wilful concealment of material fact, induces or attempts to induce any person to enter into an agreement or contract in connexion with his or its business as a private inquiry agent is guilty of an offence against this Act.

32. Advertisements. Where any private inquiry agent publishes or causes to be published (whether in a newspaper or otherwise) any advertisement relating to or in connexion with his or its business as such without specifying therein—

(a) his or its name as a licensed private inquiry agent, or (if the business is not carried on in his or its own name) the name under which he or it or the firm in which he or it is a partner is registered or deemed to be registered under any Act for the time being in force relating to the registration of business names; and

(b) his or its place of business,

the private inquiry agent is guilty of an offence against this Act.

33. Unlicensed persons not to recover fees. (1) Subject to this Part no person shall be entitled to bring any proceeding in any court to recover any commission, fee, gain or reward for any service done or performed by him as a private inquiry agent, or subagent, unless he was the holder of a private inquiry agent's licence, or subagent's licence, as the case may be, at the time of doing or performing such service.

(2) This section shall not apply to any service done or performed by a private inquiry agent or subagent where such service was done or performed before the expiration of two months after the commencement of this Part.

34. Excessive charges may be reduced. (1) In any proceedings taken by a private inquiry agent for the recovery of money under an agreement for services rendered in his or its capacity as such, or in any proceedings instituted under subsection (4) of this section, if it appears to the court that the amount charged directly or indirectly under the agreement by the private inquiry agent in respect of the services rendered by him or it is excessive, the court may reopen the transaction.

(2) The court reopening any transaction under this section may, notwithstanding any statement or settlement of accounts, reopen any account already taken between the parties and relieve the client of the private inquiry agent (or any guarantor of that client) of any liability in excess of such sum as the court adjudges to be fairly and reasonably payable for the services rendered by the private inquiry agent (including any expenses reasonably and necessarily incurred) and may set aside, either wholly or in part, or revise, or alter any agreement made or security given in connexion with the transaction and may give a verdict or judgment for any party for such amount as, having regard to the relief, if any, that the court thinks fit to grant, is justly due to that party.

(3) Without prejudice to the generality of the court's powers under subsection (2) of this section, the court in exercising such powers shall have regard to any services performed or continuing services to be performed under any agreement or contract between the licensed private inquiry agent and his or its client, and to any series of services required or undertaken, by or under any such agreement or contract, to be done or performed by the licensed private inquiry agent.

(4) Proceedings may be instituted under this subsection by the client of a private inquiry agent for the purpose of obtaining relief under this section. In any such proceedings, the court shall have and may exercise all or any of the powers conferred by subsections (1) and (2) of this section.

Division IV—Licensees Generally

35. Licensees not to assume additional powers. (1) A licensed credit reporting agent, private inquiry agent or licensed subagent shall not by virtue of his being the holder of a licence have any power or authority which he would not have if this Part had not been enacted.

(2) A licensed credit reporting agent, private inquiry agent or licensed subagent who suggests or implies that any power or authority, other than the power or authority to exercise or carry on the business or any of the functions of a credit reporting agent, a private inquiry agent, or to act as a subagent, as the case may be, is conferred upon him by this Part or the regulations or by his licence is guilty of an offence against this Act.

36. Registered addresses. (1) Every licensed credit reporting agent, licensed private inquiry agent and licensed subagent, shall have a registered address within the State to which all communications and notices may be addressed.

(2) Notice of the registered address and of any change thereof shall be lodged by the credit reporting agent, private inquiry agent or subagent, as the case may be, with the Commissioner within seven days after his commencing to carry on business at such registered address or changed address. The Commissioner shall enter the address or the change therein in the register kept by him.

(3) Any licensed credit reporting agent or licensed private inquiry agent who carries on business without complying with the requirements of this section shall be liable to a penalty not exceeding ten dollars for every day upon which he or it so carries on business; and any licensed subagent who acts as a subagent without complying with the provisions of this section shall be liable on conviction to a penalty not exceeding ten dollars for every day upon which he so acts.

37. Production of licence. Every licensed credit reporting agent, licensed private inquiry agent, and licensed subagent shall on demand made by an inspector, any member of the police force or by any person with whom the credit reporting agent, private inquiry agent or subagent is transacting or attempting to transact any business as such produce his licence to the inspector, member or person.

38. Surrender of licence. (1) Where the holder of a licence desires to surrender the licence held by him, he may in writing notify the Commissioner that he desires to surrender the licence and deliver the licence to the Commissioner.

(2) The Commissioner shall, upon receipt of a notification in pursuance of subsection (1) of this section and the licence in question, endorse on the licence the word "surrendered" and thereupon the licence shall cease to be of force or effect.

39. Licensee not to lend licence. Any licensed credit reporting agent, licensed private inquiry agent or licensed subagent who lets out, hires or lends his licence, or who permits any other person to hold himself

out as the holder of the licence issued to that credit reporting agent, private inquiry agent or subagent, as the case may be, is guilty of an offence against this Act, and on conviction for such offence, and in addition to any penalty therefor, his licence shall thereupon become absolutely void and shall be delivered up to the Commissioner and cancelled.

40. Furnishing incorrect information in applications, etc. Any person who in any application or other statement made under or for the purposes of this Part or the regulations knowingly makes any statement which is not correct or knowingly omits to furnish any particulars by this Part or the regulations required to be furnished is guilty of an offence against this Act.

PART IV—LISTENING DEVICES

41. Part binds Crown. Except where otherwise provided, this Part binds the Crown.

42. Reference to listening devices and private conversations. (1) A reference in this Part to a listening device does not include a reference to a hearing aid or similar device used by a person with impaired hearing to overcome the impairment and to permit him only to hear sounds ordinarily audible to the human ear.

(2) A reference in this Part to a party to a private conversation is a reference—

- (a) to a person by or to whom words are spoken in the course of a private conversation; and
- (b) to a person who, with the consent, express or implied, of any of the persons by or to whom words are spoken in the course of a private conversation, overhears, records, monitors or listens to those words.

43. Prohibition on use of listening devices. (1) A person is guilty of an offence against this Act if he uses a listening device to overhear, record, monitor or listen to a private conversation and is liable on conviction on indictment to a penalty not exceeding \$2,000 or to imprisonment for not more than two years or to both such penalty and imprisonment.

(2) Subsection (1) of this section does not apply—

- (a) where the person using the listening device is a party to the private conversation;
- (b) to the unintentional hearing of a private conversation by means of a telephone;
- (c) to or in relation to the use of any listening device by—
 - (i) a member of the police force acting in the performance of his duty if he has been authorized in writing to use a listening device by—
 - (a) the Commissioner of Police;

- (b) an Assistant Commissioner of Police; or an officer of police of or above the rank of Inspector who has been appointed in writing by the Commissioner to authorize the use of listening devices,

under and in accordance with an approval in writing given by a judge of the Supreme Court in relation to any particular matter specified in the approval;

- (ii) an officer employed in the service of the Commonwealth in relation to customs authorized by a warrant under the hand of the Comptroller-General of Customs and Excise to use a listening device in the performance of his duty;
- (iii) a person employed in connexion with the security of the Commonwealth when acting in the performance of his duty under an Act passed by the Parliament of the Commonwealth relating to the security of the Commonwealth.

(3) In considering any application for approval to use a listening device pursuant to subparagraph (i) of paragraph (c) of subsection (2) of this section a judge of the Supreme Court shall have regard to—

- (a) the gravity of the matters being investigated;
- (b) the extent to which the privacy of any person is likely to be interfered with; and
- (c) the extent to which the prevention or detection of the offence in question is likely to be assisted,

and the judge may grant his approval subject to such conditions, limitations and restrictions as are specified in his approval and as are in his opinion necessary in the public interest.

(4) An application to which subsection (3) of this section relates shall be made as prescribed by Rules of Court or in so far as not so prescribed as a judge may direct, and shall be heard *ex parte* in the judge's chambers. No notice or report relating to the application shall be published and no record of the application or of any approval or order given or made thereon shall be available for search by any person except by direction of a judge of the Supreme Court.

(5) The Commissioner of Police shall—

- (a) as soon as practicable but not later than seven days after the granting of an authorization pursuant to subparagraph (i) of paragraph (c) of subsection (2) of this section cause the Commissioner to be informed of such authorization;
- (b) cause a record to be kept of all authorizations granted pursuant to subparagraph (i) of paragraph (c) of subsection (2) of this section;
- (c) furnish to the Commissioner in respect of each authorization at intervals of not more than one month a report containing such particulars as the Commissioner from time to time requires of the use of any listening device by any member of the police force to overhear, record, monitor or listen to any private conversation to which the member was not a party.

(6) A person referred to in paragraph (c) of subsection (2) of this section who uses a listening device to overhear, record, monitor or listen

to any private conversation to which he is not a party shall not communicate or publish the substance or meaning of that private conversation otherwise than in the performance of his duty.

(7) The court by which a person is convicted of an offence under this section may, by its conviction, order that any listening device used in the commission of the offence and described in the order shall be forfeited to Her Majesty and delivered up, within such period as may be specified in the order, by the person who has possession of the listening device to a person specified in the order.

(8) Where an order is made under subsection (7) of this section and the person who has possession of the listening device refuses or fails to deliver up the listening device in accordance with the order, he is guilty of an offence against this Act and is liable on conviction to a penalty not exceeding \$1,000 and, whether or not proceedings for the offence have been commenced, any member of the police force may seize the listening device and deliver it up in accordance with the order.

44. Prohibition on communication or publication of private conversations unlawfully listened to. (1) A person is guilty of an offence against this Act if he communicates or publishes to any other person a private conversation, or a report of, or of the substance, meaning or purport of, a private conversation, that has come to his knowledge as a result, direct or indirect, of the use of a listening device used in contravention of section 43 of this Act and is liable on conviction on indictment to a penalty not exceeding \$2,000 or to imprisonment for not more than two years or to both such penalty and imprisonment.

(2) Subsection (1) of this section does not apply—

(a) where the communication or publication of the private conversation is made—

(i) to a party to the conversation or with the consent, express or implied, of such a party; or

(ii) in the course of proceedings for an offence against this Act constituted by a contravention of, or a failure to comply with any provision of this Part; or

(b) to prevent a person who has obtained knowledge of a private conversation otherwise than in a manner referred to in that subsection from communicating or publishing to another person the knowledge so obtained by him, notwithstanding that he also obtained knowledge of the conversation in such a manner.

45. Prohibition on communication or publication of private conversations by parties thereto. (1) A person who, having been a party to a private conversation and having used a listening device to overhear, record, monitor or listen to that conversation, subsequently communicates or publishes to any other person any record of the conversation made, directly or indirectly, by the use of the listening device or any statement prepared from such a record is guilty of an offence against this Act and is liable on conviction on indictment to a penalty not exceeding \$2,000 or to imprisonment for not more than two years or to both such penalty and imprisonment.

(2) Subsection (1) of this section does not apply where the communication or publication—

- (a) is made to another party to the private conversation or with the consent, express or implied, of all other parties to the private conversation, being parties referred to in paragraph (a) of subsection (2) of section 42 of this Act;
- (b) is made in the course of legal proceedings;
- (c) is not more than is reasonably necessary—
 - (i) in the public interest;
 - (ii) in the performance of a duty of the person making the communication or publication; or
 - (iii) for the protection of the lawful interests of that person;
- (d) is made to a person who has, or is believed, on reasonable grounds, by the person making the communication or publication to have, such an interest in the private conversation as to make the communication or publication reasonable under the circumstances in which it is made; or
- (e) is made by a person who used the listening device to overhear, record, monitor or listen to the private conversation in accordance with an authorization referred to in paragraph (c) of subsection (2) of section 43 of this Act or who is a person referred to in subparagraph (iii) of that paragraph.

46. Inadmissibility of evidence of private conversations when unlawfully obtained. (1) Where a private conversation has come to the knowledge of a person as a result, direct or indirect, of the use of a listening device used in contravention of section 43 of this Act, evidence of that conversation may not be given by that person in any civil or criminal proceedings.

(2) Subsection (1) of this section does not render inadmissible—

- (a) evidence of a private conversation that has, in the manner referred to in that subsection, come to the knowledge of the person called to give the evidence, if a party to the conversation consents to that person giving the evidence;
- (b) evidence of a private conversation that has, otherwise than in the manner referred to in that subsection, come to the knowledge of the person called to give the evidence, notwithstanding that he also obtained knowledge of the conversation in such a manner; or
- (c) in any proceedings for an offence against this Act constituted by a contravention of, or a failure to comply with, any provision of this Part, evidence of a private conversation that has in the manner referred to in that subsection come to the knowledge of the person called to give the evidence.

(3) The court before which any proceedings referred to in paragraph (c) of subsection (2) of this section are brought may, at any stage of the proceedings and from time to time, make an order forbidding publication of any evidence, or of any report of, or report of the substance meaning or purport of, any evidence referred to in that paragraph.

(4) Any person who contravenes an order made under subsection (3) of this section is guilty of an offence against this Act.

47. Destruction of irrelevant records made by the use of a listening device. The Commissioner of Police shall, as soon as practicable after it has been made, cause to be destroyed so much of any record, whether in writing or otherwise, of any information obtained by the use of a listening device pursuant to an authorization given under subparagraph (i) of paragraph (c) of subsection (2) of section 43 of this Act as does not relate directly or indirectly to the commission of an offence.

48. Advertising listening devices prohibited. A person who—

- (a) publishes or causes to be published by radio or television or in any newspaper or other publication an advertisement relating to any listening device of a prescribed class or description; or
- (b) in any other way advertises or publicly exhibits any such listening device with the intention or apparent intention of promoting its sale or use,

is guilty of an offence against this Act, and is liable on conviction to a penalty not exceeding \$1,000 or to imprisonment for not more than one year or to both such penalty and imprisonment.

PART V—MISCELLANEOUS

49. Offences and penalty. (1) A person who contravenes or fails to comply with any provision of this Act is guilty of an offence against this Act and, where no penalty is expressly provided, is liable to a penalty not exceeding \$500.

(2) Where a person, being a corporation, is guilty of an offence against this Act, any director, manager, secretary or other officer of the corporation who knowingly authorizes or permits the same or is a party to the offence is guilty of that offence and is liable on conviction to the pecuniary penalty or imprisonment or both provided by this Act for such offence.

(3) Any offence against this Act which is expressed to be punishable upon conviction on indictment is a misdemeanour.

(4) Except where this Act otherwise provides, offences against this Act shall be punishable on summary conviction.

50. Proceedings how and when taken. (1) Proceedings for an offence against this Act, may be taken—

- (a) by the Commissioner or an inspector under this Act authorized in writing in that behalf by the Commissioner; or
- (b) with the written consent of the Minister, by any person.

(2) Proceedings for an offence against this Act that is punishable on summary conviction may be brought within the period of twelve months of the commission of the alleged offence, or within six months after the commission of the alleged offence comes to the knowledge of the complainant whichever is the later.

51. Saving of remedies. Subject to section 23 of this Act, no proceedings or conviction for any offence against this Act shall affect any civil right or remedy to which any person aggrieved by the offence may be entitled.

52. Regulations. The Governor in Council may make regulations not inconsistent with this Act for or with respect to—

- (a) prescribing forms for the purposes of this Act and the particulars to be contained therein and the respective purposes for which such form or forms to the like effect shall be used;
- (b) prescribing fees to be paid in respect of any matter or thing required for the purposes of this Act;
- (c) the procedure to be followed on applications to the Commissioner;
- (d) regulating the form and manner of registration of licences, refusals, renewals, variations, cancellations, restorations, surrenders or any other matters requiring registration under this Act;
- (e) prescribing fees for inspection of the registers and for the making and supply of any copy thereof or extract therefrom;
- (f) prescribing the books, accounts, and records to be kept by licensees, and the form and manner of keeping same;
- (g) the exemption by the Commissioner from keeping any prescribed book, account, or record of any licensee who in the opinion of the Commissioner keeps books, accounts, or records, as the case may be, sufficient for the purposes of this Act, and the revocation by the Commissioner of any such exemption;
- (h) prescribing the information or class of information which may or may not be contained in a credit report;
- (i) requiring credit reporting agents and private inquiry agents to make returns and furnish information to the Commissioner;
- (j) exempting absolutely or subject to conditions any person or class of person for the purposes of paragraph (e) of subsection (1) of section 8 of this Act and of paragraph (g) of subsection (1) of section 26 of this Act;
- (k) prescribing all matters and things required or permitted by this Act to be prescribed.

53. Publication of Regulations. (1) Every regulation made under this Act shall—

- (a) be published in the Gazette;
- (b) upon publication, be judicially noticed and such publication shall be conclusive evidence of the matter contained therein;
- (c) take effect from the date of such publication, unless a later date is specified in the regulation for its commencement when, in such event it shall take effect from that later date; and
- (d) be laid before the Legislative Assembly within fourteen sitting days after such publication if the Assembly is in session, and, if not, then within fourteen sitting days after the commencement of the next session of the Assembly.

(2) If the Legislative Assembly passes a resolution of which notice has been given at any time within fourteen sitting days after any such regulation has been laid before it disallowing such regulation or part thereof, that regulation or part shall thereupon cease to have effect, but without prejudice to the validity of anything done or omitted thereunder in the meantime or the making of a further regulation.