

Western Australia

Debt Collectors Licensing Regulations 1964

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Debt Collectors Licensing Regulations 1964

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Debt Collectors Licensing Regulations 1964

1. Citation

- (1) These regulations may be cited as the *Debt Collectors Licensing Regulations 1964*¹.
- (2) In these regulations “**the Act**” means the *Debt Collectors Licensing Act 1964*, and if that Act is amended, includes that Act as amended from time to time.

2. Forms

The forms set out in the First Schedule to these regulations shall be used for the several purposes to which they are respectively applicable, and shall contain the particulars, indicated by the forms respectively with such variations as circumstances may require.

3. Application by corporation

Every application under the Act by a corporation shall be signed on behalf of the corporation by its manager, secretary or other governing officer, by whatever name called.

[Regulation 3 inserted in Gazette 26 September 1975 p. 3725.]

4. Fees

The following fees are payable for the matters specified —

\$

r. 5

For the issue or renewal of a licence	350
For the transfer of a licence	200
For a duplicate licence	30
For an inspection of the register kept under section 12 of the Act	10

*[Regulation 4 inserted in Gazette 30 June 1989 p. 1974;
amended in Gazette 1 August 1990 p. 3658; 13 December 1991
p. 6157; 14 August 1992 p. 4023; 27 Jun 2006 p. 2254.]*

5. Transfer of licence

- (1) A licensee may, at any time during the currency of his licence, apply to the Commissioner for the transfer of the licence to a person qualified to hold the licence and on receipt of the application the Commissioner shall as soon as practicable notify the Commissioner of Police of the fact.
- (2) The application for the transfer of the licence signed by the licensee and by the proposed transferee shall be lodged in duplicate in the prescribed form with the Commissioner and shall be accompanied by —
 - (a) the licence;
 - (b) testimonials as to the character of the proposed licensee signed by not less than 3 reputable persons;
 - (c) the fee prescribed under regulation 4; and
 - (d) a fidelity bond in the prescribed form or approved security in the appropriate sum as required by section 20 of the Act in respect of the proposed transferee as if the proposed transferee were an applicant for a licence.
- (3) Instead of lodging a fidelity bond or approved security there may be lodged in the case where a fidelity bond already lodged by the licensee is a fidelity bond in the prescribed form or the licensee has lodged an approved security, an undertaking in writing by the surety under the bond or security to hold itself or himself, as the case may be, liable thereunder in respect of the

proposed transferee as if the fidelity bond or approved security were lodged in respect of the proposed transferee.

- (4) If the Commissioner is satisfied that the proposed transferee is —
- (a) of good fame and character;
 - (b) a fit and proper person to be a licensee; and
 - (c) of the age of 21 years or more,

the Commissioner may transfer the licence to him and thereupon the transferee shall, during the currency of the licence, be deemed to be the holder of the licence.

- (5) Where the proposed transferee is a corporation any reference in subregulation (4) to the proposed transferee shall be read and construed as a reference to the directors of the corporation.
- (6) Upon the transfer of a licence the Commissioner shall —
- (a) endorse the licence accordingly;
 - (b) enter the particulars thereof in the register kept by him pursuant to section 12 of the Act; and
 - (c) notify the Commissioner of Police of the transfer of the licence.
- (7) Where the application for a transfer of a licence is not granted or the application is withdrawn the amount of the prescribed fee shall be refunded to the applicant.

[Regulation 5 amended in Gazette 30 Dec 2004 p. 6915-6; 22 Sep 2006 p. 4102.]

6. Lodging of application

An application for the grant, renewal or transfer of a licence to the Commissioner under the Act shall be lodged in duplicate in the prescribed form with the Commissioner.

[Regulation 6 inserted in Gazette 30 Dec 2004 p. 6916]

r. 7

7. Duplicate licence

- (1) An application for a duplicate licence under section 9(5) of the Act shall be lodged in duplicate in the prescribed form with the Commissioner.
- (2) Where a duplicate licence is issued that licence shall be endorsed as follows —

This licence is issued under section 9(5) of the *Debt Collectors Licensing Act 1964*, in substitution for licence number

[Regulation 7 amended in Gazette 30 Dec 2004 p. 6916]

8. Fidelity bond

The fidelity bond required to be lodged prior to the issue by the Commissioner of a licence or a transfer thereof shall be in or to the effect of the Second Schedule to these regulations.

[Regulation 8 amended in Gazette 30 Dec 2004 p. 6916]

9. Surrender of licence

A licensee may at any time during the currency of his licence surrender the licence by letter under his hand addressed to the Commissioner notifying the Commissioner that he desires, as from the date specified therein, to surrender the licence and enclosing the licence with the letter.

[Regulation 9 amended in Gazette 30 Dec 2004 p. 6916]

10. Non-disclosure by auditor and person appointed by Minister

- (1) Except as provided in this regulation an auditor or person appointed by the Minister shall not divulge to any person or in any proceedings, any information that he has obtained in the course of conducting an audit or examination pursuant to the Act.
- (2) An auditor or person appointed by the Minister is not guilty of a breach of this regulation by disclosing any information —

- (a) by means of or in any report made pursuant to the Act or to the Minister;
- (b) in or for the purposes of any legal proceedings arising out of any such report or instituted in connection with the trust accounts of a debt collector to whom the information relates; or
- (c) to any surety under a fidelity bond or approved security given in respect of a debt collector either verbally or in writing if the disclosure is first approved by the Minister.

11. Offence

A licensee shall not use directly or indirectly in the conduct or carrying on of his business as a debt collector, any vehicle of whatever kind on which is painted, affixed or otherwise exhibited —

- (a) the fact that he is a debt collector; or
- (b) the words, “debt collector”; or
- (c) any words importing or likely to import that he carries on the business of a debt collector.

12. Change of address

Where the address of the place of business of a licensee as shown in his licence is changed, notice in writing of the change shall be lodged by the licensee with the Commissioner, within 7 days after the address is changed.

[Regulation 12 amended in Gazette 30 Dec 2004 p. 6916]

13. Charges by licensee

A licensee may charge, recover or receive from any debtor of a creditor for or in connection with the collection of a debt from the debtor on behalf of the creditor where the debt is paid by instalments a sum of 50 cents or a sum not exceeding 2½% of the amount of the debt, whichever is the greater amount.

14. Exemptions

- (1) The provisions of the Act do not apply to a person who, in the course of carrying on business either on his own account or in conjunction with another, collects debts being moneys owing to another person under a mortgage or bill of sale or contract for the sale or letting of land or of a business, if —
 - (a) authority to make the collection is, in each case, to the knowledge of the debtor concerned, conferred on the person collecting the debt at or before the time when the debt becomes due and payable or within one month thereafter;
 - (b) that person is not otherwise a debt collector within the meaning of the Act; and
 - (c) that person does not himself, or by any person employed by him in the ordinary course of his business, prepare or issue or take any active part in the preparation or issue of any court process for the recovery of any of those debts.

- (2) Where a licensee carries on the business of a debt collector in partnership with any person, that person is exempt from the provisions of section 5 of the Act, so far as those provisions apply to that business or any of the functions of a debt collector performed by that person in relation to that business, so long as the licensee remains a licensee and a partner of that person.

[Regulation 14 inserted in Gazette 12 October 1965 p. 3515; amended in Gazette 6 January 1966 p. 1.]

15. Penalties

A person who commits a breach of these regulations is guilty of an offence against the regulations and is liable to a penalty not exceeding \$200.

16. Infringement notices

- (1) The offences specified in the Third Schedule are offences for which an infringement notice may be issued under Part 2 of the *Criminal Procedure Act 2004*.
- (2) The modified penalty specified opposite an offence in the Third Schedule is the modified penalty for that offence for the purposes of section 5(3) of the *Criminal Procedure Act 2004*.
- (3) The Commissioner may, in writing, appoint persons or classes of persons to be authorised officers or approved officers for the purposes of Part 2 of the *Criminal Procedure Act 2004*.
- (4) The Commissioner is to issue to each authorised officer a certificate, badge or identity card identifying the officer as a person authorised to issue infringement notices.

[Regulation 16 inserted in Gazette 22 Sep 2006 p. 4102.]

First Schedule

Form 1

Debt Collectors Licensing Act 1964

**APPLICATION FOR DEBT COLLECTOR'S LICENCE OR
RENEWAL THEREOF**

I of (place of abode)
in the State of, hereby make application for *a
grant or renewal of a Debt Collector's Licence.

My principal or sole place of business where I propose to carry on business as a
debt collector is situated at

The other places at which I intend to carry on business as a debt collector are
situated at

*My current licence number will expire on the
..... day of 20

I am not under the age of 21 years.

Testimonials as to my character are annexed hereto marked respectively "A"
"B" and "C" and signed respectively by

	Name	Address	Occupation
A			
B			
C			

Dated this day of, 20

.....
Signature of Applicant

* Strike out whichever is inapplicable.

[Form 1 amended in Gazette 30 Dec 2004 p. 6917.]

Form 2

Debt Collectors Licensing Act 1964

DEBT COLLECTOR'S LICENCE

PURSUANT to the provisions of the abovementioned Act
..... of*, whose principal or
sole place of business is situated at
is hereby licensed to carry on business as a debt collector on his or its behalf in
Western Australia from the date hereof until the day of
....., 20, unless this licence is before that date
cancelled in accordance with the Act.

Given under my hand at this day of
..... 20

.....
Commissioner for Fair Trading

* Insert place of abode.

[Form 2 amended in Gazette 30 Dec 2004 p. 6917.]

.....
[Form 3 deleted in Gazette 30 Dec 2004 p. 6917.]

Debt Collectors Licensing Regulations 1964
First Schedule

Form 4

Debt Collectors Licensing Act 1964

NOTIFICATION TO COMMISSIONER OF POLICE

Name of Licensee	Place of Abode	Sole or Principal Place of Business	Licence No. and Expiry Date	Date of Issue, Renewal or Cancellation	Action Notified*

* Issue, renewal, cancellation or surrender or notification of change of place of business or transfer of licence.

.....
Commissioner for Fair Trading

[Form 4 amended in Gazette 30 Dec 2004 p. 6917.]

Form 5

Debt Collectors Licensing Act 1964

APPLICATION FOR DUPLICATE LICENCE

I, of
hereby make application for a duplicate of Debt Collector's Licence Number
....., which was issued to me on the day of
..... 20

I tender herewith the prescribed fee of \$_____.

My sole or principal place of business is situated at

The licence number has not been transferred, terminated,
or cancelled.

I have made diligent search for the licence, but have been unable to find it
and am of the opinion that it has been accidentally (or, as the case may be,)
lost
lost destroyed.*

Dated this day of, 20

.....
Applicant

*Strike out whichever is inapplicable.

*[Form 5 amended in Gazette 30 Dec 2004 p. 6917; 22 Sep 2006
p. 4102.]*

Form 6

Debt Collectors Licensing Act 1964

APPLICATION FOR TRANSFER OF A DEBT COLLECTOR'S LICENCE

I of
 being the holder of a Debt Collector's Licence Number issued
 on the day of 20 and
 whose principal or sole place of business is situated at
 hereby make application for
 the transfer of the licence to

..... of

The licence is attached hereto for endorsement.

And I the said, hereby make
 application that the licence be transferred to me.

My principal or sole place of business where I propose to carry on the business
 of a debt collector is situated at

My place of abode is situated at

I am not under the age of 21 years.

I tender herewith the prescribed fee of \$ _____.

Testimonials as to my character are annexed hereto marked respectively "A"
 "B" and "C" and signed respectively by —

	Name	Address	Occupation
A			
B			
C			

Dated this day of, 20

.....
 Signature of Transferor Signature of Transferee

*[Form 6 amended in Gazette 30 Dec 2004 p. 6917; 22 Sep 2006
 p. 4102.]*

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First Schedule**

Form 7

<i>Debt Collectors Licensing Act 1964</i>	Infringement notice no.
Infringement notice	
Alleged offender	Name: Family name _____
	Given names _____
	or Company name _____
	ACN _____
Address _____	
Postcode _____	
Alleged offence	Description of offence _____
	<i>Debt Collectors Licensing Act 1964 s.</i> <i>Debt Collectors Licensing Regulations 1964 r.</i>
	Date _____ / _____ /20 _____ Time _____ a.m./p.m.
	Modified penalty \$ _____
Officer issuing notice	Name _____
	Signature _____
	Office _____
Date	Date of notice _____ / _____ /20 _____
Notice to alleged offender	It is alleged that you have committed the above offence. If you do not want to be prosecuted in court for the offence, pay the modified penalty within 28 days after the date of this notice. How to pay By post: Send a cheque or money order (payable to 'Approved Officer — <i>Debt Collectors Licensing Act 1964</i> ') to: Approved Officer — <i>Debt Collectors Licensing Act 1964</i> Department of Consumer and Employment Protection Locked Bag 14 Cloisters Square Perth WA 6850
	In person: Pay the cashier at: Department of Consumer and Employment Protection 219 St George's Terrace, Perth WA If you do not pay the modified penalty within 28 days, you may be prosecuted or enforcement action may be taken under the <i>Fines, Penalties and Infringement Notices Enforcement Act 1994</i> . Under that Act your driver's licence and/or vehicle licence may be suspended. If you need more time to pay the modified penalty, you can apply for an extension of time by writing to the Approved Officer at the above postal address. If you want this matter to be dealt with by prosecution in court , sign here _____ and post this notice to the Approved Officer at the above postal

Debt Collectors Licensing Regulations 1964
First Schedule

	address within 28 days after the date of this notice.
--	---

[Form 7 inserted in Gazette 22 Sep 2006 p. 4103.]

Form 8

<i>Debt Collectors Licensing Act 1964</i>		Withdrawal no.
Withdrawal of infringement notice		
Alleged offender	Name: Family name	
	Given names	
	or Company name	
	_____ ACN	
Address		Postcode
_____		_____
Infringement notice	Infringement notice no.	
	Date of issue / /20	
Alleged offence	Description of offence _____	
	<i>Debt Collectors Licensing Act 1964 s.</i>	
	<i>Debt Collectors Licensing Regulations 1964 r.</i>	
Date / /20		Time a.m./p.m.
Officer withdrawing notice	Name	
	Signature	
	Office	
Date	Date of withdrawal / /20	
Withdrawal of infringement notice <small><i>[*delete whichever is not applicable]</i></small>	The above infringement notice issued against you has been withdrawn.	
	If you have already paid the modified penalty for the alleged offence you are entitled to a refund.	
* Your refund is enclosed.		<i>or</i>
* If you have paid the modified penalty but a refund is not enclosed, to claim your refund sign this notice and post it to:		
Approved Officer — <i>Debt Collectors Licensing Act 1964</i>		
Department of Consumer and Employment Protection		
Locked Bag 14 Cloisters Square		
Perth WA 6850		
Signature		/ /20

[Form 8 inserted in Gazette 22 Sep 2006 p. 4103-4.]

*[First Schedule amended in Gazette 28 October 1983 p. 4370;
30 Dec 2004 p. 6917; 22 Sep 2006 p. 4102-4.]*

Second Schedule

Debt Collectors Licensing Act 1964

FIDELITY BOND

KNOW ALL MEN BY THESE PRESENTS that

(insert name in full of the corporation which is the surety) an incorporated company carrying on the business of insurance in the State of Western Australia (in this bond called "the Surety") is hereby firmly held and bound to Her Most Gracious Majesty Queen Elizabeth II, Her Heirs, Successors and Assigns in the sum of (\$10 000 if the licensee is a corporation or \$6 000 where the licensee is a natural person) to be paid to Her Majesty, Her Heirs, Successors or Assigns for which payment well and truly be made the Surety binds itself and its successors firmly by these presents.

Sealed with our seal

Dated this day of, 20.....

WHEREAS one (name of applicant for a debt collector's licence with his address and description) (in this bond called "the Applicant") is an applicant for the grant of a debt collector's licence under the *Debt Collectors Licensing Act 1964*, and under the provisions of that Act each such applicant is required to lodge with its or his application a fidelity bond for the sum of \$10 000 if the applicant is a corporation and \$6 000 if the applicant is a natural person from some insurance company approved for the purpose by the Minister for the time being administering the Act; and whereas the above bounden Surety has agreed to enter into the above written bond. Now, therefore, the condition of the above written bond is such that if the applicant is granted a debt collector's licence under the *Debt Collectors Licensing Act 1964*, and if from time to time and at all times thereafter the applicant shall duly pay all penalties, damages and costs adjudged against the licensee to whom the bond relates in respect of any act done or omitted by him as a debt collector before the bond is terminated and shall duly observe and comply with all the provisions of that Act and the regulations thereunder with respect to any moneys received by him or it or by any partnership of which he or it is or shall be a member as a debt collector or debt collectors and the applicant shall duly and faithfully account for and pay over to the persons respectively entitled thereto all moneys received by the applicant or by any partnership of which he or it is or shall be a member in the course of his or its business as debt collectors but so that no granting by or on behalf of Her Majesty the Queen or the Minister or any person paying to the applicant or to any such partnership or any employee of the applicant any of

those moneys or by or on behalf of any person entitled to any of those moneys or any person employing the applicant or any such partnership as debt collectors, of any time, credit, forbearance or indulgence to the applicant, to any such partnership or employee of the applicant shall in any way release the Surety from liability under the above written bond then the above written bond shall be void but otherwise shall remain in full force and effect, but if the Surety gives notice in writing to the licensee, the Commissioner of Police and to the Commissioner that the Surety desires to be relieved of any further liability thereunder as from the date specified in the notice, being a date not earlier than thirty days from the service of the notice, the obligation of the surety under these presents shall cease as from the date so specified but notwithstanding such determination the Surety shall continue to be liable —

- (a) in respect of all penalties, damages and costs adjudged against the licensee to whom the above written bond relates in respect of any act, done or omitted before the date of the determination of the bond; and
- (b) for the due accounting after the specified date by the licensee to the persons entitled thereto, of all trust money received by the licensee before the specified date.

In witness whereof the Surety has hereunto affixed its Common Seal the day and year above written.

The Common Seal of
was hereunto affixed
pursuant, etc.,
in the presence of:

*[Second Schedule amended in Gazette 30 Dec 2004 p. 6917;
22 Sep 2006 p. 4104.]*

**Third Schedule — Prescribed offences and
modified penalties**

[r. 16]

[Heading inserted in Gazette 22 Sep 2006 p. 4104.]

Offences under <i>Debt Collectors Licensing Act 1964</i>		Modified penalty
s. 5	Unlicensed person carrying on business as a debt collector	\$40
s. 15(4)	Failing to notify Commissioner of opening or change of name of trust account	\$40
Offences under <i>Debt Collectors Licensing Regulations 1964</i>		Modified penalty
r. 11	Using vehicle identifying person as debt collector	\$40
r. 12	Failing to notify Commissioner of change of address	\$40

[Third Schedule inserted in Gazette 22 Sep 2006 p. 4104.]

Notes

- ¹ This is a compilation of the *Debt Collectors Licensing Regulations 1964* and includes the amendments made by the other written laws referred to in the following table.

Compilation table

Citation	Gazettal	Commencement
<i>Debt Collectors Licensing Regulations 1964</i>	14 Apr 1965 p. 1031-7	14 Apr 1965
	12 Oct 1965 p. 3515	12 Oct 1965
	6 Jan 1966 p. 1	6 Jan 1966
	26 Sep 1975 p. 3725	1 Oct 1975
<i>Debt Collectors Licensing Amendment Regulations 1983</i>	28 Oct 1983 p. 4370	1 Nov 1983 (see r. 2)
<i>Debt Collectors Licensing Amendment Regulations 1986</i>	29 Aug 1986 p. 3205-6	1 Sep 1986 (see r. 2)
<i>Debt Collectors Licensing Amendment Regulations 1988</i>	12 Aug 1988 p. 2771	12 Aug 1988
<i>Debt Collectors Licensing Amendment Regulations 1989</i>	30 Jun 1989 p. 1974	1 Jul 1989 (see r. 2)
<i>Debt Collectors Licensing Amendment Regulations 1990</i>	1 Aug 1990 p. 3658	1 Aug 1990
<i>Debt Collectors Licensing Amendment Regulations 1991</i>	13 Dec 1991 p. 6157	13 Dec 1991
<i>Debt Collectors Licensing Amendment Regulations 1992</i>	14 Aug 1992 p. 4023	14 Aug 1992
<i>Debt Collectors Licensing Amendment Regulations 2004</i>	30 Dec 2004 p. 6915-17	1 Jan 2005 (see r 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
<i>Debt Collectors Licensing Amendment Regulations (No. 2) 2006</i>	27 Jun 2006 p. 2254	1 Jul 2006 (see r. 2)
<i>Debt Collectors Licensing Amendment Regulations 2006</i>	22 Sep 2006 p. 4101-4	22 Sep 2006 (see r. 2(a))