

[CONFIDENTIAL]

(Rough Draft for Consideration Only.)

No. , 1939.

# A BILL

To provide for the licensing and regulation of auctioneers, stock and station and real estate agents; to provide for the establishment and maintenance of an auctioneers, stock and station and real estate agents fidelity guarantee fund; to repeal the Auctioneers Licensing Act, 1898, and certain other Acts; and for purposes connected therewith.

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

## PART I.

### PRELIMINARY.

1. (1) This Act may be cited as the "Auctioneers, Stock and Station and Real Estate Agents Act, 1939." Short title.

Auctioneers, Stock and Station and Real Estate Agents.

(2) This Act shall commence on a day to be appointed by the Governor and notified by proclamation published in the Gazette.

2. This Act is divided into Parts as follows:—

Division  
into Parts.

PART I.—PRELIMINARY.

PART II.—THE COUNCIL OF THE AUCTIONEERS, STOCK AND STATION AND REAL ESTATE AGENTS.

PART III.—AUCTIONEERS, STOCK AND STATION AND REAL ESTATE AGENTS.

DIVISION 1.—*Licenses.*

DIVISION 2.—*Licenses generally.*

DIVISION 3.—*Auctioneers.*

DIVISION 4.—*Real Estate Agents.*

PART IV.—THE AUCTIONEERS, STOCK AND STATION AND REAL ESTATE AGENTS FIDELITY GUARANTEE FUND.

PART V.—GENERAL.

3. In this Act, unless the context otherwise indicates or requires—

Definitions.

“Auctioneer” means any person who exercises the trade or business of an auctioneer or seller by commission at any auction sale or who sells or attempts to sell or offer for sale or resale any estate, goods or effects by way of auction.

“Auction sale,” “sale by auction,” “sell by way of auction,” and expressions of a similar character mean the selling of any estate, goods, or effects whatsoever by outcry, by what is known as Dutch auction, by knocking-down of hammer, candle, lot, parcel, instrument, machine, or by any other mode whereby the highest, the lowest, or any bidder is the purchaser; or whereby the first person who claims the property submitted for sale at a certain price named by the person acting as auctioneer is the purchaser; or whereby there is a competition for the purchase of any estate, goods, or effects whatsoever in any way commonly

cf. Act No.  
44, 1936,  
s. 4.

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commonly known and understood to be by way of auction, and shall be deemed to include the selling by outcry or in any other manner before mentioned in any public place or in any room, or mart, or place to which the public are admitted or have access, whether or not the sale has been advertised to take place.

“Council” means the council of the auctioneers, stock and station agents and real estate agents.

“Fund” means the Auctioneers, Stock and Station and Real Estate Agents Fidelity Guarantee Fund.

“Individual” means a natural person and does not include a corporation.

“License” means a license issued under this Act.

“Licensee” means the holder of any license issued under this Act.

“Live stock” means horses, cattle, asses, mules, sheep, swine, camels or goats.

“Prescribed” means prescribed by this Act or the regulations.

“Real estate agent” means a person (whether or not such person carries on any other business) who for reward (whether monetary or otherwise) carries on business as an agent for—

(a) the sale, purchase, exchange, letting or taking on lease of land, other than land used for agricultural or pastoral purposes; or

(b) the collection of rents payable in respect of any lease or letting of land other than land used for agricultural or pastoral purposes.

“Regulations” means regulations made under this Act.

“Registrar” means the registrar appointed under this Act.

“Stock

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“Stock and station agent” means a person (whether or not such person carries on any other business) who, for reward (whether monetary or otherwise), carries on business as an agent for—

- (a) the sale, purchase, exchange, letting or taking on lease of land used for agricultural or pastoral purposes;
- (b) the collection of rents payable in respect of any lease or letting of land used for agricultural or pastoral purposes;
- (c) the sale, purchase or exchange of live stock;
- (d) the provision of agistment for live stock or the collection of fees for such agistment.

4. (1) This Act shall not be construed as requiring—

- (a) any Minister of the Crown whether a Minister of the State of New South Wales or of the Commonwealth of Australia; or
- (b) any Government department of the said State or Commonwealth (including the Rural Bank of New South Wales and any statutory corporation representing the Crown); or
- (c) the Municipal Council of Sydney or any council within the meaning of the Local Government Act, 1919; or
- (d) any public statutory authority prescribed by the regulations; or
- (e) any officer or employee of the Crown or of any such Minister, department, corporation, council or authority in the exercise of his functions as such officer or employee,

Act not to apply to any Government department, etc.

cf. Act No. 7, 1935, s. 8.

to hold a license under this Act.

(2) Nothing in this Act shall be construed—

(a) as requiring—

- (i) the Public Trustee or any executor, administrator, trustee, liquidator, official receiver

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receiver, master in equity or in lunacy, trustee or assignee of a bankrupt, trustee of an assignment for the benefit of creditors, mortgagee, committee of a lunatic or receiver, for the purpose of performing his functions, exercising his powers or carrying out his duties as such; or

- (ii) any person for the purposes of any sale made of Crown lands or other Crown property or for the purposes of any sale of any property made by virtue of any writ or process issued out of any Court or made in obedience to any process issued by any Court or judge or justice for the recovery of any fine, penalty or award, or under any rule, order or decree of any competent Court or made pursuant to the Impounding Act, 1898,

to hold a license under this Act:

Provided that notwithstanding anything in this paragraph it shall not be lawful for any executor, administrator or trustee of the estate of a deceased auctioneer, stock and station agent or real estate agent, as the case may be, to exercise or carry on the business of the deceased as such executor, administrator or trustee at any time after the expiration of twelve months after the death of the deceased unless such executor, administrator or trustee holds a license under this Act; or

Vict. Act  
No. 4,117,  
s. 6.

- (b) as prohibiting any person for the time being entitled to practise as a barrister or solicitor from performing any function exercising any power or carrying out any duty which if this Act had not passed he might lawfully have performed, exercised or carried out as such barrister or solicitor; or
- (c) as rendering any such person liable to any proceedings or to any penalty for performing any such function or exercising any such power or carrying out any such duty; or

(d)

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(d) (without affecting the generality of the foregoing provisions of this subsection) as requiring any trustee company to hold a license under this Act or otherwise comply with its provisions in respect of any business lawfully carried on by such trustee company.

(3) Notwithstanding anything in this Act, where at least two members of a partnership are duly licensed as stock and station agents or as real estate agents, as the case may be, any other member of the partnership who produces evidence satisfactory to the Minister that such member is of good character may be granted a certificate in the prescribed form exempting him from any provisions of this Act which render him liable to a penalty for exercising or carrying on the business of a stock and station agent or real estate agent, as the case may be, or for acting as a stock and station agent or real estate agent, as the case may be, or in any way holding himself out as ready to undertake any of the functions of a stock and station agent or real estate agent, as the case may be, without being the holder of a license, but such member of the partnership shall be subject to all other provisions of this Act, and any certificate so granted may be revoked by the Minister at any time and shall thereupon cease to have any further force, operation or effect.

Partial exemption as to certain members of partnerships.

(4) The Governor may by regulations—

- (a) exempt to the extent prescribed any class of persons from the operation of this Act; and
- (b) specify what provisions (if any) of this Act and the regulations are, with such modifications as are necessary or seem desirable, to apply to any class of persons so exempted.

(5) Nothing in this Act shall be construed as relieving any person from the obligation to take out a license from any Department of the Government or under any Act (other than this Act) for the performance of any function the exercise of any power or the carrying out of any

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any duty for which a license would have been required if this Act had not been passed or to pay the fees payable in respect of any such license.

(6) This Act shall not apply to a sale by auction of any goods, wares, or merchandise at a bazaar or fancy fair held for raising funds in aid of any eleemosynary or charitable institution where the gross proceeds of the sale are to be devoted to such funds.

Act not to apply to sale at bazaar.  
Act No. 24, 1898, s. 2A.

5. (1) After the commencement of this Act no license or renewal of license under the Auctioneers Licensing Act, 1898-1934, shall be granted.

Operation of Auctioneers Licensing Act, 1898-1934.

(2) The provisions of the Auctioneers Licensing Act, 1898-1934, shall, after the commencement of this Act, apply only with respect to licenses issued under that Act and in force immediately before the commencement of this Act, and for that purpose shall continue in force until such time as the Governor, by proclamation published in the Gazette, notifies that he is satisfied that all such licenses have expired.

(3) As from the date of publication of the proclamation referred to in subsection two of this section, the Acts mentioned in the Schedule to this Act are hereby repealed.

(4) Notwithstanding anything in subsections two and three of this section, the auctioneer shall keep the written record referred to in section eleven of the Auctioneers Licensing Act, 1898-1934, for a period of not less than three years after the date upon which it was made.

PART II.

THE COUNCIL OF THE AUCTIONEERS, STOCK AND STATION AND REAL ESTATE AGENTS.

6. (1) There shall be constituted a council which shall have and may exercise and perform the powers, authorities, duties and functions conferred and imposed upon the council by or under this Act.

The council.

(2)

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(2) The council shall be a body corporate with perpetual succession and a common seal, and shall, for the purposes and subject to the provisions of this Act, be capable of purchasing, holding, granting, demising, disposing of or otherwise dealing with real and personal property, and of doing and suffering all such other acts and things as bodies corporate may by law do and suffer.

(3) The corporate name of the council shall be "The Council of the Auctioneers, Stock and Station Agents and Real Estate Agents."

7. (1) The council first constituted under this Act shall consist of eleven members, ten of whom shall be appointed by the Governor and one of whom shall be the person who, for the time being, holds the office of Under Secretary, Department of Justice. First council.

(2) Of the members so appointed—

- (a) three shall be auctioneers who are holders of auctioneers' licenses under the Auctioneers Licensing Act, 1898-1934;
- (b) three shall be stock and station agents;
- (c) three shall be real estate agents; and
- (d) one shall be a practising solicitor of the Supreme Court of New South Wales.

(3) The members appointed pursuant to paragraphs (a), (b) and (c) of subsection two of this section are in this Act referred to as "appointed members."

The Under Secretary, Department of Justice, and the member appointed pursuant to paragraph (d) of subsection two of this section are in this Act referred to as "official members."

(4) The council shall appoint one of its members to be chairman of the council.

(5) The members of the council first constituted under this Act shall, subject to this Act, hold office until the first day of January, one thousand nine hundred and forty-one



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forty-one and shall be eligible for reappointment or for election as members of the council.

(6) If any member of the council appointed pursuant to paragraph (b) or paragraph (c) of subsection two of this section neglects or fails to take out a license under this Act as a stock and station agent or as a real estate agent, as the case may be, within a period of three months from the commencement of this Act, he shall, upon the expiration of that period, be deemed to have vacated his office.

(7) Where any vacancy occurs in the office of a member of the council first constituted under this Act the Governor may appoint a person to the vacant office.

8. (1) On and from the first day of January, one thousand nine hundred and forty-one the council shall consist of eleven members, of whom nine shall be elected members and two shall be official members.

Constitution of subsequent councils.

(2) (a) The elected members shall be elected as provided in this section.

(b) Of the elected members—

- (i) three shall be auctioneers;
- (ii) three shall be stock and station agents;
- (iii) three shall be real estate agents.

(3) The official members shall be—

- (a) a practising solicitor of the Supreme Court of New South Wales who shall be appointed by the Governor; and
- (b) the person who, for the time being, holds the office of Under Secretary, Department of Justice.

(4) (a) The council shall cause separate rolls to be prepared and revised in the prescribed manner of—

- (i) auctioneers;
- (ii) stock and station agents;
- (iii) real estate agents.

(b)

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(b) Any person shall be eligible for enrolment—

- (i) on the roll of auctioneers, if he holds an auctioneer's license;
- (ii) on the roll of stock and station agents, if he holds a stock and station agent's license;
- (iii) on the roll of real estate agents, if he holds a real estate agent's license:

Provided that if any person possesses the qualification for enrolment on more than one such roll he shall be eligible for enrolment on only one such roll; and any such person may, by instrument in writing addressed to the council, elect on which such roll he shall be enrolled.

(c) No person shall be qualified to vote or to become a candidate for election as a member of the board—

- (i) as an auctioneer, unless his name is on the roll of auctioneers;
- (ii) as a stock and station agent, unless his name is on the roll of stock and station agents;
- (iii) as a real estate agent, unless his name is on the roll of real estate agents.

(5) Elections of elected members shall be held in the month of August or in the month of September in the year one thousand nine hundred and forty and in each third year thereafter.

The persons elected at any such election shall assume office as elected members on the first day of January next after their election, and, subject to this Act, shall hold office for a period of three years and shall be eligible for re-election.

(6) All elections of elected members shall be held and conducted in the manner prescribed.

9. (1) A member (including an elected member) of the council, other than the Under Secretary, Department of

Vacation  
of office.

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of Justice, shall be deemed to have vacated his office if he—

- (a) becomes bankrupt within the meaning of the law in force for the time being relating to bankruptcy or compounds with his creditors; or
- (b) becomes an insane person or patient or an incapable person within the meaning of the Lunacy Act of 1898; or
- (c) is absent from three consecutive ordinary meetings of the council without leave granted by the council; or
- (d) dies; or
- (e) resigns his office by writing under his hand delivered to the registrar; or
- (f) is removed from office by the Governor.

(2) An elected member of the council shall be deemed to have vacated his office if his license is suspended or cancelled or if he neglects or fails to renew the same upon its expiry.

**10.** The Governor may, for any cause which appears to him to be sufficient, remove any member of the council other than the Under Secretary, Department of Justice, from office. Removal  
of member.

**11.** Where a vacancy occurs in the office of an elected member the vacancy shall be filled by appointment by the council of a person whose name is on the same roll as the person in whose office the vacancy occurred. Filling of  
vacancy.

Any person appointed to fill a vacancy shall hold office for the residue of the term for which his predecessor was elected and shall, for the purposes of this Act, be deemed to be an elected member.

**12.** (1) If a member of the council first constituted under this Act who was appointed pursuant to paragraph (a), paragraph (b) or paragraph (c) of subsection two of section seven of this Act is, through illness or any other just cause, likely to be absent from meetings of the council for more than three months, such Deputies.  
member

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member may, with the consent of the Under Secretary, Department of Justice, appoint a deputy (who shall have the same qualification as the member making the appointment) to act for such member during such absence.

(2) If an elected member is, through illness or any other just cause, likely to be absent from meetings of the council for more than three months, such member may, with the consent of the Under Secretary, Department of Justice, appoint a deputy (who shall be a person whose name is on the same roll as the member making the appointment) to act for such member during such absence.

(3) If the member appointed pursuant to paragraph (d) of subsection two of section seven, or to paragraph (a) of subsection three of section eight of this Act is, through illness or any other just cause, likely to be absent from meetings of the council for more than three months, such member may, with the consent of the Under Secretary, Department of Justice, appoint a deputy (who shall be a solicitor of the Supreme Court of New South Wales) to act during his absence.

(4) The Under Secretary, Department of Justice, may appoint any officer of the Department of Justice to act as his deputy at any meeting of the council.

(5) Any deputy appointed under this section, whilst acting as such deputy, shall have the like powers, authorities, duties and functions as the member for whom he is appointed to act.

**13.** In any of the following cases, that is to say— **Vacancies.**

(a) where no proper election of elected members or of any elected member takes place upon the date appointed for the holding of an election of members; or

(b) where a vacancy occurs in the office of an elected member and such vacancy is not filled within two months after the occurrence thereof,

the Governor may appoint to the vacant office such person or persons as are qualified to be elected members of the council and are necessary to constitute the council.

**14.**

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**14.** (1) The chairman and members of the council may be paid such fees for services rendered and travelling and sustenance expenses as are approved by the Governor. **Fees.**

(2) The office of chairman or of member of the council shall not, for the purposes of the Constitution Act, 1902, or the Sydney Corporation Act, 1932, or of any Act amending or replacing those Acts, be deemed to be an office or place of profit under the Crown.

**15.** (1) (a) Six appointed members, together with one official member, shall form a quorum of the council first constituted under this Act. **Quorum.**

(b) Six elected members, together with one official member, shall form a quorum of the council as constituted under section eight of this Act.

(2) Any duly convened meeting of the council at which a quorum is present shall be competent to transact the business of the council.

(3) The procedure for the calling of meetings of the council and for the conduct of business at meetings shall, subject to any regulations made in relation thereto, be as determined by the council.

**16.** (1) The chairman shall preside at any meeting of the council at which he is present. **Powers of chairman and casting vote.**

(2) If the chairman is absent from any meeting of the council the members present shall elect one of their number to preside at the meeting.

(3) The chairman or member presiding, as the case may be, shall have a deliberative vote and, if the voting is equal, a second or casting vote.

**17.** (1) The Governor may, under and subject to the Public Service Act, 1902, as amended by subsequent Acts, appoint a registrar. **Officers.**

(2) The registrar shall have and may exercise and perform the powers, authorities, duties and functions conferred and imposed upon the registrar by or under this Act.

**18.**

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**18.** (1) No act or proceeding of the council shall be invalidated or prejudiced by reason only of the fact that at the time when such act or proceeding was done, taken or commenced there was a vacancy in the office of any member of the council.

Validity of acts and proceedings. cf. Act No. 37, 1938, s. 12.

(2) All acts and proceedings of the council shall, notwithstanding the subsequent discovery of any defect in the appointment or election of any member thereof, or that any member was disqualified to act, be as valid as if such member had been duly appointed or elected, as the case may be, and was qualified to act and had acted as a member of the council, and as if the council had been properly and fully constituted.

**19.** The council shall each year furnish to the Minister for presentation to Parliament a report giving information as to its work and as to its general decisions in the course thereof.

Annual report.

**20.** No matter or thing done by the chairman or any member of the council or any person acting under the direction of the council shall, if the matter or thing was done bona fide for the purpose of giving effect to any authority conferred by this Act or by the regulations, subject them or any of them personally to any action, liability, claim or demand whatsoever.

Freedom from liability.

PART III.

AUCTIONEERS, STOCK AND STATION AND REAL ESTATE AGENTS.

DIVISION 1.—*Licenses.*

**21.** (1) No person shall act as an auctioneer unless he is the holder of an auctioneer's license issued under the Auctioneers Licensing Act, 1898-1934, or under this Act.

No person or partner in a firm to act without a license.

(2)

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(2) Subject to this Act, from and after the expiration of three months after the commencement of this Act no person (either by himself or as a member of a partnership)—

- (a) shall act as or carry on or advertise, notify or state that he acts as or carries on or is willing to act as or carry on the business of a stock and station agent unless he is the holder of a stock and station agent's license;
- (b) shall act as or carry on or advertise, notify or state that he acts as or carries on or is willing to act as or carry on the business of a real estate agent unless he is the holder of a real estate agent's license.

(3) Where a corporation carries on the business of an auctioneer or of a stock and station agent or of a real estate agent, as the case may be, the license shall be taken out on behalf of the corporation by some person appointed in writing by the corporation for the purpose, but no person shall be eligible to take out a license on behalf of more than one corporation.

(4) Any person who commits any contravention of or fails to comply with any of the provisions of this section shall be guilty of an offence against this Act. Penalty.

(5) The Auctioneers Licensing Act, 1898-1934, is amended by omitting sections three and nineteen. Amendment of Act No. 24, 1898, ss. 3 and 19.

**22.** (1) (a) No person shall, by virtue of one stock and station agent's license, keep more than one place for the conduct of his business as a stock and station agent. Each separate place of business to be in charge of licensee.

(b) Where a person conducts his business as a stock and station agent at more than one place of business he shall employ at each such place, other than the place at which he is himself in charge, a person holding a stock and station agent's license who shall be in charge at that place.

(2) (a) No person shall, by virtue of one real estate agent's license, keep more than one place for the conduct of his business as a real estate agent.

(b)

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(b) Where a person conducts his business as a real estate agent at more than one place of business he shall employ at each such place, other than the place at which he is himself in charge, a person holding a real estate agent's license who shall be in charge at that place.

**23.** (1) A license under this Act shall be one of the Licenses. following, namely:—

- (a) an auctioneer's license; or
- (b) a stock and station agent's license; or
- (c) a real estate agent's license.

An auctioneer's license shall be in force for all parts of New South Wales.

(2) A license shall be in the form prescribed and shall set forth the name and place of abode of the person taking out the same, and, where the license is held on behalf of a corporation, the name and the address of the registered office of the corporation.

A stock and station agent's license or a real estate agent's license shall, in addition, set forth the address of the place of business in respect of which it is taken out.

(3) A license shall, unless sooner cancelled, be in force for twelve months from the date of its issue.

A license may be renewed and on each renewal shall take effect for twelve months from the date of its issue or last renewal, as the case may be, unless sooner cancelled.

**24.** (1) An application for a license or for the renewal of a license shall be made in triplicate in the form prescribed. Procedure.  
cf. Act  
No. 24,  
1898, s. 5.

(2) Such application shall—

- (a) contain such particulars as are prescribed;
- (b) specify the nature of the license desired by the applicant.

(3) (a) Where the application is for an auctioneer's license and the applicant resides in New South Wales, the application shall be lodged with the clerk of the court of the petty sessions district within which the applicant



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applicant resides, or, if there is more than one such court, then with the clerk of the court within such district nearest to the place where the applicant resides.

(b) Where the application is for a stock and station agent's license or for a real estate agent's license and the applicant resides in New South Wales the application shall be lodged with the clerk of the court of the petty sessions district within which the applicant proposes to carry on business, or if there is more than one such court then with the clerk of the court within such district nearest to the place where the applicant proposes to carry on business.

(4) Where the applicant resides out of New South Wales the application shall be lodged with the clerk of any court of petty sessions.

(5) Upon the receipt of an application for the grant or the renewal of a license by any person, the clerk shall forthwith forward—

- (a) one copy of the application to the registrar; and
- (b) one copy of the application to the officer in charge of police at the nearest police station.

Upon receipt of such copy such officer shall inquire into and report upon the character of the applicant.

(6) If the council objects to the grant of the application the registrar shall furnish to the clerk of the court a statement setting out the nature of the objection proposed to be made.

If the officer in charge of police objects to the grant of the application, he shall include in his report a statement setting out the nature of the objection proposed to be made.

(7) Where the council or such officer in charge of police does not object to the grant of the application, the clerk with whom the application was lodged shall, on payment to him of the prescribed fee and the prescribed contribution, issue the license.

(8)

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(8) Where the council or such officer in charge of police objects to the grant of the application—

- (a) the clerk of the court shall notify the applicant that the grant of his application will be objected to, and shall set out shortly in the notice the nature of the objection proposed to be made;
- (b) the application shall be heard and determined by the court, which for that purpose shall be constituted by a stipendiary or police magistrate;
- (c) such hearing shall not take place until after the expiration of twenty-one days after the lodging of the application;
- (d) the hearing of the application shall be in open court and the consideration of the application shall be deemed to be a judicial proceeding;
- (e) the applicant shall appear personally and may be assisted by his counsel or attorney;
- (f) the council may appear at such hearing either by its authorised officer or counsel or attorney;
- (g) if the court grants the application, the clerk of the court shall, on payment to him of the prescribed fee and the prescribed contribution, issue the license.

(9) A license or a renewal of a license shall not be granted—

- (a) to a corporation; or
- (b) to an applicant who is of bad or doubtful character; or
- (c) to a person appointed by a corporation to take out the same on behalf of the corporation, where the court is satisfied that the corporation is substantially owned or controlled by a person who is disqualified from holding a license under this Act.

(10) An auctioneer's license or a renewal of an auctioneer's license shall not be granted to an applicant who is the holder of a license under the Pawnbrokers Act, 1902.

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**25.** (1) The court of petty sessions may (by endorsement upon the license) upon application made to the clerk of such court in the prescribed form for the transfer of a license—

**Transfer of  
license.**  
Act No. 7,  
1935, s. 8.

- (a) by the holder of a license—grant a transfer of the license to any person approved by the court in that behalf; or
- (b) by a person holding the license on behalf of a corporation—grant a transfer of the license from the person holding the same on behalf of the corporation to any other person to hold the same on its behalf:

Provided that a license granted to an individual on his own behalf shall not be transferable to a person to hold on behalf of a corporation, and a license granted to a person to hold on behalf of a corporation shall not be transferable to an individual on his own behalf.

(2) The provisions of section twenty-four of this Act shall, mutatis mutandis, apply to and in respect of an application for the transfer of a license in all respects as if the same were an application for a license or a renewal of a license.

(3) The clerk of the court shall in the prescribed manner notify the transfer of a license to the registrar who shall note such transfer in the register kept by him.

**26.** The following fees shall be payable in respect of the several matters hereinafter referred to:—

**Fees  
payable  
for license.**

- (a) for an auctioneer's license—five pounds;
- (b) for a stock and station agent's license—two pounds;
- (c) for a real estate agent's license—two pounds;
- (d) for an auctioneer's license and either a stock and station agent's license or a real estate agent's license or both (when issued upon applications made by the same person and at the same time)—five pounds;

(e)

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- (e) for a stock and station agent's license and a real estate agent's license (when issued upon applications made by the same person and at the same time)—three pounds;
- (f) for the transfer of any license—one pound;
- (g) for a duplicate license—five shillings;
- (h) for renewal of any license or licenses—the same fee as that payable upon the issue of the license or licenses.

27. (1) (a) Where the Governor is satisfied that in any State of the Commonwealth of Australia (other than New South Wales) an Act is in force under which any person resident in New South Wales and holding an auctioneer's license may obtain a license to follow the occupation of an auctioneer in all parts of such other State, the Governor may by notification published in the Gazette declare that on and after a date to be specified in the notification, and while the notification remains in force, this Act shall extend and apply to the granting in New South Wales of auctioneers' licenses to residents in such other State.

Power to grant licenses to persons resident in reciprocating States. cf. Act No. 7, 1935, s. 10.

(b) Where the Governor is satisfied that in any State of the Commonwealth of Australia (other than New South Wales) an Act is in force under which any person resident in New South Wales and holding a stock and station agent's license may obtain a license to follow the occupation of a stock and station agent in such other State, the Governor may, by notification published in the Gazette, declare that on and after a date to be specified in the notification, and while the notification remains in force, this Act shall extend and apply to the granting in New South Wales of stock and station agents' licenses to residents in such other State.

(c) Where the Governor is satisfied that in any State of the Commonwealth of Australia (other than New South Wales) an Act is in force under which any person resident in New South Wales and holding a real estate agent's license may obtain a license to follow the occupation of a real estate agent in such other State, the

Governor

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Governor may, by notification published in the Gazette, declare that on and after a date to be specified in the notification, and while the notification remains in force, this Act shall extend and apply to the granting in New South Wales of real estate agents' licenses to residents in such other State.

(2) The Governor may, if he thinks fit, revoke any such notification.

(3) The power to grant licenses to persons resident in a reciprocating State shall also extend to the granting of licenses to persons resident in the Australian Capital Territory.

For the purpose of giving effect to this provision the expression "State of the Commonwealth of Australia (other than New South Wales)" in subsection one of this section and the expression "State of the Commonwealth of Australia" in section twenty-eight of this Act shall be deemed to include the said Territory, and any ordinance for the time being in force in the said Territory relating to the licensing of auctioneers or stock and station agents or real estate agents, as the case may be, shall be deemed to be an Act in force in the said Territory.

28. In the case of a resident in any State of the Commonwealth of Australia with respect to which a notification as aforesaid is in force—

Grant of licenses to persons resident in other States.

- (a) an auctioneer's license shall be granted to such resident only if he holds a license to follow the occupation of an auctioneer in all parts of that State;
- (b) a stock and station agent's license shall be granted to such person only if he holds a stock and station agent's license in that State;
- (c) a real estate agent's license shall be granted to such person only if he holds a real estate agent's license in that State.

Act No. 24, 1898, s. 7.  
Act No. 28, 1924, s. 2 (a).

29. Save as provided in sections twenty-seven and twenty-eight of this Act, a person who is not a resident of New South Wales shall not be entitled to obtain a license or a renewal thereof under this Act.

Applicant for license to be resident in New South Wales or reciprocating State.

30. Act No. 28, 1924, s. 2 (a).

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30. The clerk of petty sessions shall within seven days after the issue of a license or renewal thereof or after the transfer or cancellation thereof under this Act notify the registrar of such issue, transfer or cancellation.

Register to be kept by registrar.

The registrar shall keep a register of all such licenses and of all renewals, transfers and cancellations of licenses, which register shall be available for perusal by any member of the public upon payment of the prescribed fee.

31. (1) Upon complaint being made to him by the registrar or by a member of the police force of or above the rank of sergeant any justice of the peace may summon a licensee to appear before a court of petty sessions holden before a stipendiary or police magistrate to show cause why his license should not be cancelled and why he should not be disqualified either permanently or temporarily from holding a license on the ground—

Cancellation of license. cf. Act No. 7, 1935, s. 14.

- (a) that he improperly obtained his license contrary to the provisions of this Act; or
- (b) that he is not a fit and proper person to continue any longer to hold a license; or
- (c) that he has been guilty of such conduct as renders him unfit to continue any longer to hold a license.

(2) If upon the day and at the time and place appointed by the summons issued in accordance with the provisions of subsection one of this section the licensee named therein does not appear then upon proof in the manner hereinafter prescribed of the due service of the summons upon him a reasonable time before the time appointed for his appearance, such court of petty sessions may proceed to hear and determine the matter of such complaint in the absence of such licensee.

(3) Upon being satisfied of the truth of any of the grounds aforesaid the court may order that the license of such licensee be delivered up to the court forthwith and cancelled and that such licensee be disqualified either permanently or for such period as the court specifies from holding a license under this Act, and upon the making

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making of such order such license shall thereafter be deemed and taken to be cancelled.

**32.** (1) Where the court refuses any application under section twenty-four or under section twenty-five or makes an order under section thirty-one of this Act the person making the application or the licensee, as the case may be, may appeal in accordance with the rules of court of the District Court to the District Court.

Appeal.

The District Court to which such appeal may be made shall be—

- (a) in any case where the appellant is an applicant for or the holder of an auctioneer's license—the District Court for the district in which the appellant resides;
- (b) in any case where the appellant is an applicant for or the holder of a stock and station agent's license or a real estate agent's license—the District Court for the district in which the appellant proposes to carry on business or is carrying on business.

(2) Every such appeal shall be in the nature of a rehearing.

(3) Notice of appeal shall be given to such persons as may be prescribed by rules of court of the District Court, or as the District Court may direct.

**33.** (1) If a licensee is convicted in any court of any indictable offence or if in any proceeding before a court to which any licensee is a party the court is satisfied that such licensee has been guilty of fraud and that he ought to be disqualified from carrying on business under a license granted under this Act, such court may order that—

Disqualification of agent convicted of indictable offence or guilty of fraud.

cf. Act No. 7, 1935, s. 23.

- (a) the license or licenses issued to such licensee be cancelled, and upon the making of such order such license or licenses shall thereafter be deemed and taken to be cancelled;
- (b) such licensee be disqualified either permanently or for such period as the court specifies from holding any license under this Act.

(2)

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(2) The clerk of the court shall forthwith transmit to the registrar a copy of any such order.

(3) Upon receipt of such copy the registrar shall forthwith cause the fact of such cancellation and disqualification to be noted in the register kept by him under this Act.

DIVISION 2.—*Licensees generally.*

**34.** A person disqualified under this Act shall not, while his disqualification continues, be capable of becoming or continuing a director, manager or employee of any corporation or a partner in any firm or partnership carrying on business in New South Wales as an auctioneer, a stock and station agent or a real estate agent.

Effect of disqualification on membership, etc., of corporation  
cf. ActNo. 7, 1935, s. 24.

**35.** Where the court has made an order that a license be delivered up to the court the holder of such license shall, if he refuses, neglects or fails to comply with such order, be guilty of an offence against this Act.

Failure to deliver up license.

**36.** (1) Every licensee shall have a registered office within New South Wales.

Registered office and address.

(2) All writs, summonses, notices or other documents required or authorised to be served on or given to a licensee shall be deemed to be duly served or given if left for him at his registered office.

*Ibid.* s. 15.

(3) The address specified in the application as the address at which the applicant proposes to carry on business shall, upon the grant, renewal or transfer of the license, be deemed to be the registered office of the licensee.

(4) Notice of any change in the situation of the registered office shall be lodged by the licensee with the court from which the license issued within the prescribed time, and the clerk of such court shall record such notice and advise the registrar who shall enter such change in the register.

(5) If any licensee carries on business without complying with the requirements of this section he shall be



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be liable to a penalty not exceeding five pounds for every day during which he so carries on business.

37. (1) Every licensee shall paint or affix up and keep painted or affixed on his place or places of business (or, in the case of a corporation or firm or a person who has taken out a license on behalf of a corporation, on the principal office of the corporation or firm in New South Wales and on the premises of every branch or agency of the corporation or firm in New South Wales) and on his or its registered office, so as to be easily read from outside such place or places or principal office or premises or registered office, his or its name and description as a licensee, and (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.

As to displaying notice on places of business, etc.

cf. Act No. 7, 1935, s. 16.

(2) Any person shall be guilty of an offence against this Act who—

- (a) commits any contravention of or fails to comply with any of the provisions of subsection one of this section; or
- (b) after the expiration of three months after the commencement of this Act, keeps up or exhibits or allows to remain unobliterated on or near to his office, house or place of business or exhibits anywhere any sign, writing, painting or other mark implying that such office, house or place of business is that of a person licensed—
  - (i) as an auctioneer—unless he is the holder of an auctioneer’s license granted under the Auctioneers Licensing Act, 1898-1934, or under this Act;
  - (ii) as a stock and station agent—unless he is the holder of a stock and station agent’s license;
  - (iii) as a real estate agent—unless he is the holder of a real estate agent’s license.

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**38.** (1) Every licensee who, as such (whether himself or by any employee) pending the completion of any transaction, receives any moneys on behalf of any person in respect of any transaction or holds any moneys so received as a stakeholder or in trust—

Application of trust moneys. cf. Act No. 7, 1935, s. 17.

- (a) shall as soon as is practicable pay such moneys into a bank to a trust account in the name of the licensee; and
- (b) shall not withdraw such moneys therefrom save for the purpose of paying the same to the person or persons entitled thereto including, where the ownership of any chattels, stock or book debts has been agreed to be transferred as part of such transaction, any person other than the parties to the transaction who has any right as mortgagee or licensee in any of such chattels, stock or book debts.

All such moneys shall be kept and accounted for separately from the moneys of the licensee.

(2) Any licensee who commits any contravention of or fails to comply with any of the provisions of this section shall be guilty of an offence against this Act.

(3) Subject to any obligation of the licensee as a stakeholder or trustee as aforesaid moneys so paid into any trust account shall not be available for the payment of any debt or claim of any person other than the person or persons entitled thereto as aforesaid or be liable to be attached or taken in execution under the order or process of any court at the instance of any such other persons.

Availability of such money, attachment, etc.

(4) Notwithstanding anything in this Act a bank shall not be under any obligation to control or supervise the operations upon any such trust account or to see to the application by the licensee of any moneys drawn out of such trust account.

**39.** (1) Any person authorised by the council in writing in that behalf may—

Power to inspect documents relating to trust account, etc., of licensee. cf. *Ibid.* s. 19.

- (a) inspect any books, accounts, documents or writings in the custody or control of any licensee—
  - (i) relating to any trust account in any bank in the name of the licensee; or

(ii)

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- (ii) for the purpose of ascertaining whether or not the licensee has any partners; and
- (b) take notes, copies or extracts thereof or therefrom.

(2) Any person who—

- (a) wilfully delays or obstructs the person so authorised in the exercise of his powers under this section; or
- (b) being a licensee or employee of a licensee refuses—
  - (i) to produce such books, accounts, documents or writings; or
  - (ii) to answer any question relating to such books or accounts; or
- (c) knowingly gives any untruthful answer to any such question,

Penalty for obstruction, refusal to produce, etc.

shall be liable to a penalty not exceeding one hundred pounds.

(3) The council may communicate to any client of the licensee a report of the result of such inspection if and so far as it directly concerns such client<sup>4</sup>.

Power to communicate result of inspection to client of agent.

**40.** (1) Every licensee shall keep in a legible manner a written record containing full particulars of all transactions by or with him as licensee.

Record to be kept.

(2) The written record shall be preserved by the licensee for a period of not less than three years after the date upon which it was made.

cf. Act No. 7, 1935, s. 22.

(3) The written record shall be open to inspection at all reasonable times by a member of the police force of or above the rank of sergeant, and every licensee, upon being required so to do, shall produce the written record kept by him for inspection by such officer.

(4) Every entry in the written record kept at the registered office of a licensee shall be deemed, unless the contrary is proved, to have been made by or with the authority of the licensee.

(5) Any person who contravenes any of the provisions of this section shall be guilty of an offence against this Act.

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**41.** (1) A licensee shall not knowingly employ in any way whatever in connection with his business any person—

- (a) who is for the time being disqualified under this Act from holding a license or disqualified under the Business Agents Act, 1935, from holding a license under that Act; or
- (b) whose application for a license under this Act, or the Auctioneers Licensing Act, 1898-1934, or the Business Agents Act, 1935, as the case may be, has been refused, unless such an application has been subsequently granted; or
- (c) in relation to whom a claim made against the council under Part IV of this Act has been sustained unless and until a court of petty sessions on the application of such person permits the licensee to employ such person.

(2) Subject to this section no such person shall participate or be in any way concerned in the business of a licensee.

(3) Any licensee or any person aforesaid who commits any contravention of or fails to comply with any of the provisions of this section shall be guilty of an offence against this Act.

**42.** Every licensee shall be personally liable for all moneys received from or on behalf of any person by any employee of the licensee in respect of any transaction in the capacity of employee of the licensee.

Certain persons not to be employed by licensed agents. cf. Act No. 7, 1935, s. 25.

Liability of principal for certain acts, etc., of employees. cf. *Ibid.* s. 35.

**43.** Every licensee shall on demand, at the premises upon which he carries on his business, produce his license to any member of the police force of or above the rank of sergeant, or to any person with whom such licensee is transacting or attempting to transact any business as an auctioneer, a stock and station agent or a real estate agent, as the case may be.

Production of license. *Ibid.* s. 36.

**44.** Any licensee who lets out, hires or lends any license held by him to any other person or permits any other person to use his license shall be guilty of an offence against this Act, and on conviction for such offence, and in

Licensed agent not to lend license. *Ibid.* s. 37.

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in addition to any penalty therefor, any license held by him shall thereupon become absolutely void and shall be delivered up to the court and cancelled.

45. Subject to this Act, 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—

Provisions as to commission, etc. cf. Act No. 7, 1935, s. 38.

- (a) as an auctioneer unless he was the holder of an auctioneer's license issued under the Auctioneers Licensing Act, 1898-1934, or under this Act at the time of doing or performing such service;
- (b) as a stock and station agent unless he was the holder of a stock and station agent's license at the time of doing or performing such service or such service was done or performed before the expiration of three months after the commencement of this Act;
- (c) as a real estate agent unless he was the holder of a real estate agent's license at the time of doing or performing such service or such service was done or performed before the expiration of three months after the commencement of this Act.

46. Any licensee who publishes (whether in a newspaper or otherwise) any advertisement relating to or in connection with his business (or in the case of a corporation or firm or a person who holds a license on behalf of a corporation relating to or in connection with the business of the corporation or firm) without specifying therein his or its name as a licensee and (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 his or its place of business, shall be guilty of an offence against this Act.

Publication of name and place of business in advertisements. cf. *Ibid.* s. 41.

DIVISION

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DIVISION 3.—*Auctioneers.*

Definitions.

47. (1) In this Division—

“Cattle” means horses, mares, fillies, foals, geldings, colts, bulls, bullocks, cows, heifers, steers, calves, ewes, wethers, rams, lambs and swine. cf. Vict. Act No. 4323, 1935, s. 2.

“Farm produce” means cereals, grain, vegetables, potatoes, onions, other edible roots and tubers, tobacco leaf, fruit, hay, chaff, dairy produce, live or dead poultry and game, and eggs. cf. Vict. Act No. 4420, 1936, s. 2.

(2) Upon a day to be appointed by the Governor and notified by proclamation published in the Gazette, the meaning of the expression “farm produce,” as defined in subsection one of this section, shall extend to include wool. cf. Vict. Act No. 4323, 1935, s. 3.

48. (1) Any person who induces or attempts to induce any other person to abstain from bidding at a sale by auction of cattle or farm produce either generally or for any particular lot, by means of a promise, express or implied, that he will if he is the successful bidder for the cattle or farm produce— Splitting of lots purchased at auction. cf. Vict. Acts Nos. 4323, 1935, s. 3, and 4420, 1936, s. 2.

- (a) give such other person the right to elect to take over as purchaser through the auctioneer all or any of the said cattle or farm produce at the auction price; or
- (b) agree to decide by tossing or the drawing of lots or other method who is to become the owner of all or any of the said cattle or farm produce,

shall be liable for a first offence to a penalty of not more than ten pounds and for a second or any subsequent offence to a penalty of not more than twenty-five pounds or to imprisonment for a term of not more than one month.

(2) Any person who abstains or agrees to abstain from bidding at a sale by auction of cattle or farm produce as the result of a promise, express or implied, given to him—

- (a) that he shall have the right to elect to take over as purchaser through the auctioneer all or any of the said cattle or farm produce at the auction price; or
- (b)

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(b) that the ownership of all or any of the said cattle or farm produce shall be determined by tossing or the drawing of lots or any other method,

shall be liable for a first offence to a penalty of not more than ten pounds and for a second or any subsequent offence to a penalty of not more than twenty-five pounds or to imprisonment for a term of not more than one month.

49. (1) Any auctioneer or any clerk of an auctioneer who knowingly enters in any record or book kept or required to be kept by such auctioneer as the purchaser of any cattle or farm produce sold by auction any name other than the name of the actual successful bidder for such cattle or farm produce shall be liable for a first offence to a penalty of not more than ten pounds and for a second or any subsequent offence to a penalty of not more than twenty-five pounds or to imprisonment for a term of not more than one month.

Entry by auctioneer or clerk in record or book kept by auctioneer as purchaser of cattle or farm produce sold by auction of any name other than the name of the actual successful bidder.

(2) If the clerk of any auctioneer enters in any registry or book kept or required to be kept by such auctioneer as the purchaser of any cattle or farm produce sold by auction any name other than the name of the actual successful bidder for such cattle or farm produce the auctioneer shall, unless he proves to the satisfaction of the court that he did not know that a name other than the name of the actual successful bidder was entered as aforesaid, be guilty of an offence and shall be liable for a first offence to a penalty of not more than ten pounds and for a second or any subsequent offence to a penalty of not more than twenty-five pounds or to imprisonment for a term of not more than one month.

cf. Vict. Acts Nos. 4323, 1935, s. 4, and 4420, 1936, s. 2.

(3) Notwithstanding anything in subsection one or subsection two of this section, where the actual successful bidder at a sale by auction of any cattle or farm produce immediately after the auctioneer conducting such sale has indicated such actual successful bidder informs such auctioneer—

Provision for entry in registry or book of name other than name of actual successful bidder in certain cases.

(a) that he bid for such cattle or farm produce on behalf of another person; and

(b)

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(b) of the name of such other person, the said auctioneer or clerk shall not be guilty of an offence against the provisions of subsection one or subsection two of this section by reason of the fact that he enters in the record or book aforesaid as purchaser of such cattle or farm produce the name of such other person.

**50.** (1) Every auctioneer shall before beginning any sale by auction of any cattle or farm produce read or recite aloud a statement of the material parts of sections forty-eight and forty-nine of this Act:

Material parts of sections to be read or recited aloud at sales by auction of cattle.

Provided that where on any day successive sales by auction of cattle or farm produce are held at the same selling place and the foregoing provisions of this subsection are complied with by the auctioneer conducting the first of such sales no auctioneer thereafter conducting any of such successive sales shall be required before commencing any of such sales to comply with such provisions.

cf. Vict. Acts Nos. 4323, 1935, s. 5, and 4420, 1936, s. 2.

(2) Any auctioneer who fails to comply with the provisions of subsection one of this section shall be liable to a penalty of not more than ten pounds.

**51.** Any auctioneer who knowingly misrepresents, or causes or permits to be misrepresented, the value, composition, structure, character or quality, or the origin of manufacture of any goods or chattels put up for sale at an auction sale conducted by him, shall be guilty of an offence against this Act.

Misrepresentation as to quality, etc., of goods and chattels. Act No. 24, 1898, s. 10.

**52.** (1) Where a sale by auction is not notified in the conditions of sale to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or for the seller or the auctioneer to employ any person to bid at the sale, or for the auctioneer knowingly to take any bid from the seller or any such person.

Bidding by seller. *Ibid.* s. 12.

(2) Whosoever contravenes the provisions of this section shall be guilty of an offence against this Act.

**53.**



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**53.** No auctioneer shall attempt to sell, offer for sale or sell by way of public auction any land, goods or effects except wool not being on the skin, after sunset or before sunrise of any day throughout the year and every such auctioneer who offends against this section shall be guilty of an offence against this Act.

No auction sales after sunset (sales of wool excepted).  
Act No. 24, 1898, s. 18.

DIVISION 4.—*Real Estate Agents.*

**54.** In this Division—

“Allotment of land” means a parcel of land offered for sale as suitable or intended wholly or mainly for residential or retail commercial trade purposes but on which no building suitable for human occupation is erected.

**55.** (1) Any real estate agent or any partner or employee of a real estate agent who, with the intention of inducing a prospective purchaser to buy an allotment of land or any interest in an allotment of land—

Offences in connection with the sale of allotments of land.

- (a) makes any false representation; or
- (b) states that he or some other person named by him will buy, at a profit to be received in the future by such prospective purchaser, the said allotment of land or any part thereof or any interest therein or any other land or chattel owned by the prospective purchaser; or
- (c) states that he or some other person named by him will at some future time obtain for the prospective purchaser a profit on the sale of such allotment of land or any part thereof or any interest therein,

shall be guilty of an offence against this Act.

(2) If any person is charged with an offence against this Act by reason of a contravention of paragraph (a) of subsection one of this section, it shall be a sufficient defence if the person charged proves—

- (a) that he had reasonable grounds for believing and did in fact believe that the representation was true; and
- (b) that otherwise he acted innocently.

**56.**

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**56.** (1) Any contract for the sale of an allotment of land or any interest in an allotment of land made after the commencement of this Act shall be voidable at the option of the purchaser at any time within six months from the making thereof unless—

Contracts relating to allotments of land voidable in certain cases.

- (a) it contains the following particulars, namely:—
  - (i) the name, address and description of the vendor;
  - (ii) a statement whether or not a plan of subdivision relating to the land sold has been lodged in the office of the Registrar-General and the name (if any) of the subdivision and the number of the plan (if registered); and
  - (iii) the name, address and description of some person to whom all moneys falling due under the contract may be paid; and
- (b) the signature by the purchaser upon the contract or the memorandum or note thereof, is attested by a witness who is not the real estate agent who acted in the sale of the allotment of land or any partner or employee of such real estate agent.

(2) A purchaser shall not be deemed to have elected to affirm a contract which is voidable under this section by reason of any payments of money made by him pursuant to the contract within the period of six months aforesaid.

Payments under voidable contracts hereunder not deemed election to affirm same.

(3) Any agreement whereby a purchaser purports to waive the right to avoid a contract conferred upon him by this section shall be void and have no effect.

Prohibition of contracting out.

**57.** No term or provision of any agreement (whether entered into before or after the commencement of this Act) for the sale and purchase of an allotment of land or any interest therein shall be so construed as to prevent the purchaser from claiming or being awarded damages or any other relief in respect of any fraudulent misrepresentation in connection with the sale and purchase of such allotment of land or interest therein.

Contracting out.

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PART IV.

THE AUCTIONEERS, STOCK AND STATION AND REAL ESTATE AGENTS FIDELITY GUARANTEE FUND.

58. (1) There shall be a fund called the Auctioneers, Stock and Station and Real Estate Agents Fidelity Guarantee Fund. The fund. Act No. 22, 1898, s. 46.

(2) The fund shall be the property of the council and shall be applied for the purposes set out in this Part.

59. All moneys belonging to the fund shall, pending the investment or application thereof, be paid into a bank in New South Wales to the credit of a separate account to be called the "Auctioneers, Stock and Station and Real Estate Agents Fidelity Guarantee Account" and such account shall be operated upon in such manner as the council shall from time to time determine. Separate bank account. Ibid. s. 47.

60. The fund shall consist of—

- (a) all sums paid by way of contribution or levy by licensees in accordance with this Act;
- (b) one-half of the prescribed fees paid upon applications made under this Act;
- (c) the interest from time to time accruing from the investment of the fund;
- (d) any other moneys that may be lawfully paid into the fund.

Moneys of the fund. Ibid. s. 48.

61. There shall from time to time be paid out of the fund as required and in such order as the council deems proper—

- (a) all legal expenses in connection with claims made against the fund or the council in respect of the fund or otherwise incurred in relation to the fund;
- (b) the amount of all claims, including costs, allowed or established against the council in respect of the fund as provided in this Act;
- (c) all refunds made to licensees or their personal representatives pursuant to this Act;

Expenditure. Ibid. s. 49.

(d)

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- (d) the expenses involved in the administration of the fund including allowances to members of the council;
- (e) the expenses incurred by the council in or in relation to appearances before courts of petty sessions with respect to applications for licenses or renewals or transfers or cancellations of licenses under this Act;
- (f) any other moneys payable out of the fund in accordance with any of the provisions of this Act.

**62.** The accounts of the fund shall be audited annually by an accountant approved by the Minister and appointed for the purpose by the council.

Audit.  
Act No. 22,  
1898, s. 50.

**63.** The fund shall be administered by the council.

Administration  
of fund.

**64.** (1) A contribution to the fund of five pounds shall, subject to this section, be paid annually by every licensee.

*Ibid.* s. 51.  
Contributions  
to fund.  
*Ibid.* s. 52.

Where a person holds more than one license only one contribution shall be payable by him under this section in respect of all licenses held by him.

(2) Where a license is transferred the transferee shall pay a contribution to the fund as follows:—

- (a) where at the date of transfer the license has more than six months to run—the sum of five pounds;
- (b) where at the date of transfer the license has less than six months to run—the sum of two pounds ten shillings.

(3) Such contributions shall be in addition to any fee prescribed.

(4) Where a person has paid by way of contributions an amount of not less than fifteen pounds, and no claim has been made, or, if made, has been sustained against the fund in respect of such person, and no refund of such contributions has been made under section seventy-five of this Act, such person shall not be required to pay any further amount by way of contributions under this section.

**65.**

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**65.** (1) If at any time or times the fund is, in the opinion of the council, not sufficient to satisfy the liabilities of the council in relation thereto, the council may, subject as hereinafter provided, by resolution, impose on every licensēe, for payment into the fund, a levy of such amount as the council thinks fit not exceeding ten pounds.

Levies.  
cf. Act No.  
22, 1898,  
ss. 53 & 54.

(2) The amount of the levy shall become payable on a date and in a manner to be fixed by the council. The council may, in any special case, allow time for the payment of any levy or part thereof.

(3) A licensee shall not be required to pay by way of levy under this section more than ten pounds in any one year nor more than fifty pounds during the whole of the period in which he carries on the business of an auctioneer or a stock and station agent or a real estate agent.

(4) If a licensee does not, after the prescribed notice, pay any levy, the council shall report to the registrar that such licensee has not paid the levy.

The registrar shall make due record of the fact in the register and so long as the levy remains unpaid the licensee shall be deemed not to be the holder of a license under this Act.

**66.** Any moneys in the fund which are not immediately required for the purposes of the fund may be invested in any manner in which trustees are for the time being authorised to invest trust funds, or on deposit for such period not exceeding two years as the council deems proper with any bank or corporation prescribed by the rules of court as a bank or corporation to which trust moneys may be paid under section fifteen of the Trustee Act, 1925-1938.

Council may  
invest  
funds.  
cf. *Ibid.*  
s. 55.

**67.** (1) Subject to the provisions of this Act, the fund shall be held and applied for the purpose of reimbursing persons who may suffer pecuniary loss by reason of the theft or fraudulent misapplication by a licensee of any money or other valuable property intrusted to him or to his employee in the course of his business as an auctioneer or a stock and station agent or a real estate agent.

Application  
of fund.  
cf. *Ibid.*  
s. 56.

(2)

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(2) No person shall have any claim against the fund in respect of any theft or fraudulent misapplication committed before the commencement of this Act.

(3) In respect of any theft or fraudulent misapplication that may be committed after such commencement no person shall have a claim against the fund unless notice of such theft or fraudulent misapplication is given in writing to the council as soon as reasonably practicable after the claimant has become aware of the theft or fraudulent misapplication but in any event within a period of six months after having become so aware, or within a period of two years from the date of the commission of such theft or misapplication, whichever is the shorter period.

(4) No person shall be entitled to claim against the fund in respect of any loss through such theft or fraudulent misapplication unless and until there shall have been a conviction of such licensee for such theft or fraudulent misapplication unless the Supreme Court or a judge thereof, for reasons which to such court or judge, shall be good and sufficient, shall have by an order certified that the person claiming to have suffered loss should be permitted to claim against the fund notwithstanding that such licensee has not been convicted in respect of such theft or fraudulent misapplication.

68. (1) The council may receive and settle any claim against the fund at any time after the commission of the theft or fraudulent misapplication in respect of which the claim arose but no person shall be entitled, without the leave of the council, to commence any action in relation to the fund unless the council shall have disallowed his claim, and unless and until the claimant has exhausted all relevant rights of action and other legal remedies available against the defaulting licensee or any other person in respect of the loss suffered by him.

66

Claims  
against  
the fund.  
cf. Act No.  
22, 1898,  
s. 57.

(2) No person shall be entitled to recover from the council out of the fund by action as aforesaid an amount greater than the balance of the loss suffered by him after deducting from the total amount of such loss the

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the amount or value of all moneys or other benefits received or recovered or which in the opinion of the council might, but for his neglect or default, have been received or recovered by him from any source other than the fund in reduction of such loss.

(3) The total amount which any person shall be entitled to recover from the fund shall not in any case or in any event exceed five hundred pounds.

(4) The aggregate sum which may be applied in the reimbursement of all persons who suffer loss through theft or fraudulent misapplication by the same licensee shall not in any case or in any event exceed the sum of one thousand pounds.

(5) No amount shall be paid or be payable out of the fund as interest on the amount of any judgment obtained or of any claim allowed against the fund.

**69.** The council may cause to be published a notice, in or to the effect of the prescribed form, in a newspaper published and circulating in the district in which the defaulting licensee, being an auctioneer, is or was residing, or being a stock and station agent or a real estate agent, is or was carrying on business, and also in a daily newspaper published and circulating in Sydney, and such notice shall fix a date not being earlier than three months after the publication, or the first publication, as the case may be, within which claims must be made.

Advertisement relating to defaulting licensee and claims. cf. Act No. 22, 1898, s. 58.

Any claim not made in writing on or before the date so fixed shall be barred unless the council otherwise determines.

**70.** After the date so fixed the council shall be at liberty to distribute the sum from time to time available to be applied in reimbursement under section sixty-eight of this Act having regard only to judgments obtained and claims allowed against the fund.

Council may distribute. cf. *Ibid.* s. 59.

**71.** Any proceedings brought against the council in relation to any claim upon the fund shall be by action at law in the Supreme Court as for a debt due by the council, and in any such action all defences which would have been available to the licensee in relation to whom the

Defences. *Ibid.* s. 60.

the

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the claim arose shall be available to the council, and in any such action all questions of costs shall be in the discretion of the Court or the presiding judge.

**72.** On payment out of the fund of moneys in settlement in whole or in part of any claim under this Act, the council shall be subrogated, to the extent of such payment, to all the rights and remedies of the claimant against the licensee in relation to whom the claim arose, or any other person.

Subroga-  
tion,  
Act No. 22,  
1898, s. 61.

**73.** The council may at any time and from time to time require production and delivery up of securities and documents necessary to support any claim made, or available for that purpose, or for the purpose of exercising its rights against any defaulting licensee and may in default of delivery up of any such securities or documents reject any claim.

Council may  
require pro-  
duction,  
etc., of  
documents.  
*Ibid.* s. 62.

**74.** (1) No moneys or other property belonging to the council, other than the fund, shall be available for the satisfaction of any judgment obtained against the council in relation to the fund, or for the payment of any claim allowed by the council; and if at any time the fund is not sufficient to provide for the satisfaction of all such judgments and claims, they shall (subject to the limitations fixed by this Act) to the extent to which they are not so satisfied, be satisfied out of future accumulations of the fund.

Insufficiency  
of fund.  
*Ibid.* s. 63.

(2) No proceedings based upon the enforcement of any such judgment shall be taken without leave of the Supreme Court.

(3) Where the total amount of the judgments obtained and claims allowed exceeds the aggregate sum which may be applied in reimbursement under section sixty-eight of this Act, the council may, in its uncontrolled discretion, determine the division and allocation amongst the claimants respectively or any one or more of them, exclusively of the other or others of them, of the moneys for the time being payable out of the fund.



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**75.** In the event of the death or on the retirement from business of any licensee in respect of whom no claim has been made under this Act, or if any such claim has been made, in respect of whom such claim has not been sustained, the council may, in its discretion, pay to him or to his personal representatives, as the case may be, a sum not exceeding the aggregate amount of his contributions to the fund.

Refund to representative of deceased agent or retiring agent.  
cf. Act No. 22, 1898, s. 64.

**76.** (1) For the purpose of safeguarding the fund the council may at any time and from time to time appoint an accountant to examine the trust accounts of any licensee specified in the appointment and to furnish to the council a confidential report as to any irregularity or alleged or suspected irregularity in the accounts of such licensee that may be disclosed by such examination, or as to any other matter that in the opinion of such accountant should, in the interest of the fund, be further investigated.

Examination of account.  
*Ibid.* s. 65.

(2) A copy of the report shall forthwith be sent by post by the council to the licensee concerned.

(3) Upon production by such accountant of the instrument of his appointment as aforesaid, he may require the licensee in respect of whom the appointment has been made, or in the absence of such licensee, any servant or agent of such licensee having the apparent control or charge for the time being of the office or business of such licensee to produce to the accountant and any assistant of the accountant all books, papers, accounts, securities or other documents relating to the business or accounts of such licensee, and to give all information in relation thereto and to furnish all authorities and orders to bankers and others that may be reasonably required of him or them, and if any such person without lawful justification or excuse, the proof whereof shall lie on him, refuses or fails so to do, or otherwise hinders, obstructs or delays the accountant in the performance of his duties or the exercise of his powers under this section, he shall be guilty of an offence against this Act.

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(4) No accountant appointed to make any examination of accounts for the purposes of this section shall communicate that fact or any matter which may come to his knowledge in the course of the examination to any person except in the course of his report to the council.

No assistant of any such accountant shall communicate the fact of the appointment of such accountant or any matter which may come to his knowledge in the course of the examination to any person except to the accountant appointed to make the examination, or if so required, to the council.

(5) It shall not be lawful for any member of the council or any of its officers to publish, except to the court before which proceedings relating to the renewal, transfer or cancellation of the license of the licensee are pending, any information disclosed in such report.

(6) Any person who commits a breach of any of the provisions of this section shall, in addition to any other proceedings, penalty or punishment to which he may be liable, be guilty of an offence against this Act.

PART V.

GENERAL.

77. Any person who in any application made pursuant to this Act makes any statement which is not correct or furnishes any particulars which are not correct or knowingly omits to furnish any particulars required to be furnished by or under this Act shall be liable to a penalty not exceeding fifty pounds.

Furnishing incorrect particulars in applications. cf. Act No. 7, 1935, s. 39.

78. (1) Every person who commits any contravention of or fails to comply with any of the provisions of this Act shall be guilty of an offence against this Act.

Offences against Act. Ibid. s. 40.

(2)

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(2) Where no penalty is specially provided for any offence against this Act any person guilty of such offence shall be liable, if a corporation, to a penalty not exceeding four hundred pounds, and, if an individual, to a penalty not exceeding two hundred pounds or to imprisonment for a period not exceeding two years or to both such penalty and imprisonment.

(3) Where any person is convicted of an offence against this Act the court may, in addition to any penalty or imprisonment imposed, order that the license or licenses (if any) held by such person be delivered up and cancelled, whereupon such license or licenses shall thereafter be deemed and taken to be cancelled and/or that such person be disqualified, for such period as the court may think fit, for holding a license.

(4) Any penalty imposed by this Act or by the regulations may be recovered in a summary manner in a court of petty sessions holden before a stipendiary or police magistrate.

(5) Where two or more persons commit or knowingly authorise or permit the commission of any offence against this Act each of such persons shall be liable therefor and the liability of each of them shall be independent of the liability of the other or others.

**79.** Without affecting the generality of the provisions of the Crimes Act, 1900, as amended by subsequent Acts, any licensee who—

(a) fraudulently converts to his own use—

(i) any moneys received by him on behalf of any person in respect of any transaction in his capacity as an auctioneer or a stock and station agent or a real estate agent; or

(ii) any moneys so received which are held by him as a stakeholder or in trust pending the completion of any transaction,

or any part of any such moneys; or

(b)

Wrongful  
conversion  
and false  
accounts.

cf. Act No.  
7, 1935,  
s. 20.

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- (b) fraudulently omits to account for, deliver or pay—
  - (i) any such moneys received by him as aforesaid on behalf of any person or any part thereof to such person; or
  - (ii) any such moneys received by him as aforesaid which are or were held by him as a stakeholder or in trust as aforesaid pending the completion of the transaction or any part of such moneys to the person or persons entitled to such moneys; or
- (c) fraudulently renders an account—
  - (i) of any moneys received by him as aforesaid on behalf of any person or any part of such moneys; or
  - (ii) of any moneys received by him as aforesaid which are or were held by him as a stakeholder or in trust pending the completion of any transaction or any part of such moneys; or
  - (iii) of expenses, commission or other charges incidental to any transaction or proposed or contemplated transaction as an auctioneer, or a stock and station agent or a real estate agent,

knowing such account to be false in any material particular,

shall be liable to imprisonment for a term of not more than ten years.

**80.** (1) When in any proceedings under this Act or the regulations against any person it is alleged in the information that such person is not the holder of a license of the class specified in the allegation it shall, in the absence of proof to the contrary, be presumed that such person is not the holder of a license.

Facilitation  
of proof.  
cf. Act No.  
7, 1935,  
s. 26.

(2) A certificate signed by the registrar and certifying that—

- (a) on a specified day or days or during the whole of a specified period a particular person was or was

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was not the holder of a license of the class specified in the certificate; or

- (b) on a specified day the license of the class specified in the certificate of a particular person was cancelled; or
- (c) as from a specified day a particular person was disqualified for holding a license either generally or for a specified period,

shall be conclusive evidence of the matters certified in and by such certificate.

**81.** Notwithstanding any proceedings against any person for an offence against this Act (whether resulting in a conviction or otherwise) such person shall remain liable to all civil proceedings in like manner as if the proceedings for an offence had not been taken.

Civil remedy not affected by proceedings for an offence.  
Act No. 7, 1935, s. 29.

**82.** (1) Except where special provision is made to the contrary, a corporation shall be liable for any offence against this Act as if such corporation were an individual and shall be subject to the same pecuniary penalties as if it were an individual.

Corporations.

(2) Where any act which by this Act is declared to be an offence and which is committed by a body corporate is proved to have been committed with the consent or approval of or to have been facilitated by any wilful neglect on the part of any director, manager, secretary or other officer of the body corporate, he, as well as the body corporate, shall be deemed to be guilty of the offence, and he may be proceeded against and shall be liable to the pecuniary penalty or imprisonment or both provided by this Act in the case of an offence by a person who is not a corporation.

**83.** (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Regulations.

(2)

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(2) Without prejudice to the generality of the power conferred by subsection one of this section the Governor may, in and by the regulations—

- (a) exempt to the extent prescribed any class of persons from the operation of this Act;
- (b) specify what provisions (if any) of this Act and the regulations are, with such modifications as are necessary or seem desirable, to apply to any class of persons so exempted;
- (c) prescribe any forms to be used under this Act;
- (d) prescribe the procedure to be followed on applications and other proceedings under this Act;
- (e) prescribe the method of election of members of the council;
- (f) prescribe the procedure to be followed at meetings of the council;
- (g) prescribe the duties and functions of the registrar.

(3) The regulations may prescribe penalties not exceeding ten pounds for any breach thereof.

(4) All regulations shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified in the regulations; and
- (c) be laid before both Houses of Parliament within fourteen sitting days after the publication thereof if Parliament is then in session, and, if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

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[CONFIDENTIAL.]

(Rough Draft for Consideration Only.)

No. , 1939.

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# A BILL

To authorise the proclamation of half-holidays; for that and other purposes to amend the Banks and Bank Holidays Act, 1912, and certain other Acts; and for purposes connected therewith.

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**B**E it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

**1.** (1) This Act may be cited as the "Banks and Bank Holidays (Amendment) Act, 1939." Short title.

(2) The Banks and Bank Holidays Act, 1912, as amended by subsequent Acts, is herein referred to as the Principal Act.

(3) The Principal Act, as amended by this Act, may be cited as the Banks and Bank Holidays Act, 1912-39.