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[CONFIDENTIAL.]

(Rough Draft for Consideration Only.)

No. , 1938.

A BILL

To provide for the licensing and regulation of stock and station agents; to provide for the establishment and maintenance of a stock and station agent's fidelity guarantee fund; 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 "Stock and Station Agents Licensing Act, 1938."

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(2)

Short title and commencement

Stock and Station Agents Licensing.

(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:—

Parts of Act.

PART I.—PRELIMINARY—SS. 1-4.

PART II.—THE COUNCIL OF THE STOCK AND STATION AGENTS—SS. 5-19.

PART III.—LICENSING AND REGULATION OF STOCK AND STATION AGENTS—SS. 20-46.

PART IV.—THE STOCK AND STATION AGENTS FIDELITY GUARANTEE FUND—SS. 47-65.

PART V.—GENERAL—SS. 66-73.

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

Definitions.

“Stock and station agent” means any person (whether or not he carries on any other business) who exercises or carries on or advertises or notifies or states that he exercises or carries on or that he is willing to exercise or carry on in New South Wales or in any way holds himself out to the public as ready to undertake for reward (whether monetary or otherwise) any of the following functions, namely —

- (a) letting or arranging or negotiating for the sale, purchase, exchange, letting or taking on lease of agricultural or pastoral land of any tenure; or
- (b) arranging or negotiating for the sale, purchase or exchange of live stock; or
- (c) arranging or negotiating for the agistment of live stock or collecting, on behalf of another, fees for agistment of live stock.

“Council” means the council of the stock and station agents.

“Firm”

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“Firm” means an unincorporated body of two or more individuals or one or more individuals and one or more corporations or two or more corporations who or which have entered into partnership with one another.

“Fund” means the Stock and Station Agents Fidelity Guarantee Fund.

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

“Letting” includes every form of leasing or letting of agricultural or pastoral land of any tenure or any estate or interest in agricultural or pastoral land of any tenure; and the function or business of “letting” includes the collection or receipt of rents for such lands by an agent on behalf of his principal whether such agent has or has not let the land or estate or interest in question.

“License” means a license issued under this Act.

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

“Licensed agent” means the holder of a license issued under this Act and includes a corporation by which or on behalf of which such a license is held.

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

“Regulations” means regulations made under this Act.

“Registrar” means the registrar appointed under this Act.

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

(a) any responsible 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

Act not to apply to any Government department etc.

cf. Act No. 7, 1935, s. 3.

(c)

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- (c) the Municipal Council of Sydney or any council within the meaning of the Local Government Act, 1919; or
- (d) any public statutory authority specified 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,

to hold a license under this Act.

(2) Nothing in this Act shall be construed as requiring—

- (a) any licensed auctioneer (but so far only as he sells by auction under the Auctioneers' Licensing Act, 1898-1934); or
- (b) any land agent registered under the Land Agents Act, 1927 (but so far only as he operates as a land agent within the meaning of that Act),

to hold a license under this Act.

(3) 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.

(4) 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 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.

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PART II.

THE COUNCIL OF THE STOCK AND STATION AGENTS.

5. (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) 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 Stock and Station Agents."

6. (1) The council first constituted under this Act shall consist of seven members who shall be appointed by the Governor. Appoint-
ment of
first
council.

(2) Of the members so appointed—

- (a) five shall be persons each of whom was, at the commencement of this Act, engaged in the business of a stock and station agent, either on his own behalf or in the employ of a corporation, firm or person carrying on the business of a stock and station agent; and
- (b) one other shall be a solicitor of the Supreme Court of New South Wales; and
- (c) one other shall be the person who, for the time being, holds the office of Under Secretary, Department of Justice.

The members holding office by virtue of paragraphs (b) and (c) of this subsection are in this Act referred to as "official members."

(3) The council shall, at its first meeting, appoint one of its members to be chairman of the council.

(4) The members appointed to the council under the authority of this section shall, subject to this Act, hold office

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office until the first day of January one thousand nine hundred and forty and shall be eligible for reappointment or for election as members of the council.

(5) If any member of the council appointed pursuant to paragraph (a) of subsection two of this section neglects or fails to take out a licence under this Act 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.

Where any vacancy in the office of a member so occurs the Governor may appoint a licensed agent to the vacant office.

7. (1) On and from the first day of January one thousand nine hundred and forty the council shall consist of seven members of whom—

Constitution of subsequent councils.

- (a) five members (in this Act hereinafter referred to as "elected members"), each of whom shall be a licensed agent, shall be elected, in the manner prescribed, by licensed agents;
- (b) one member, who shall be a solicitor of the Supreme Court of New South Wales, shall be appointed by the Governor by notification published in the Gazette and shall hold office during the Governor's pleasure;
- (c) one member shall be the person who, for the time being, holds the office of Under Secretary, Department of Justice.

The members holding office by virtue of paragraphs (b) and (c) of this subsection are in this Act referred to as "official members."

(2) 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 thirty-nine 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.

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

8. An elected member of the council shall be deemed to have vacated his office if he— Vacation of office.

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

9. The Governor may, for any cause which appears to him to be sufficient, remove any member of the council from office. Removal of member.

10. Where a vacancy occurs in the office of an elected member the vacancy shall be filled by appointment by the council, of a licensed agent. 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.

11. (1) 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, the chairman of the council may appoint a deputy (who shall be a licensed agent) to act for such member during such absence. Deputy member.

Such deputy, whilst so acting, shall have the like powers, authorities, duties and functions and shall be liable to disqualification for the like cause as the member for whom he is appointed to act.

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(2) If the member appointed pursuant to paragraph (b) of subsection two of section six or to paragraph (b) of subsection one 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 member may appoint a deputy (who shall be a solicitor of the Supreme Court of New South Wales) to act during his absence.

Such deputy, whilst so acting, shall have the like powers, authorities, duties and functions as the member for whom he is appointed to act.

(3) The Under Secretary, Department of Justice, may appoint any officer of the Department of Justice to act in his stead at any meeting of the council, and such officer, whilst so acting, shall have the like powers, authorities, duties and functions as the Under Secretary would have had as a member.

12. 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.

13. (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.

14.

14. (1) Three elected members, together with one official member, shall form a quorum of the council. Quorum.

(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.

15. (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 shall have a deliberative vote and, if the voting is equal, a second or casting vote.

16. (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.

17. 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.

18. 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.

19. 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 Freedom from liability.

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.

PART III.

LICENSING AND REGULATION OF STOCK AND STATION AGENTS.

20. (1) 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) unless he is the holder of a licence—

No person or partner in a firm to act as stock and station agent without a licence. cf. Act No. 7, 1935, s. 4.

- (a) shall exercise or carry on or advertise notify or state that he exercises or carries on or is willing to exercise or carry on the business of or shall act as a stock and station agent; or
- (b) shall in any way hold himself out to the public as ready to undertake for payment or other remuneration (whether monetary or otherwise) any of the functions of a stock and station agent.

(2) 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.

21. Where a corporation carries on the business of a stock and station agent it shall be sufficient if some person appointed in writing by the corporation takes out a license on its behalf, but no person shall be eligible to take out a license on behalf of more than one corporation.

Provision as to corporations. Ibid. s. 5.

22. (1) No licensed agent shall, by virtue of one 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 licensed agent.

(2) Where a licensed agent 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 licensed agent who shall be in charge of that place.

23.

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23. (1) A license shall be in force for all parts of Licenses.
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.

(3) A license shall, unless sooner cancelled, be in force for a period of one year expiring on the thirty-first day of December.

A license may be renewed and on each renewal shall take effect for a further period of one year.

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

(2) Where 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.

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

(4) Upon the receipt of an application for the grant or the renewal of a license by a person who is not the holder of an auctioneer's license issued under the Auctioneers' Licensing Act, 1898-1934, the clerk shall forthwith—

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

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.

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

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If the officer 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.

(5) Upon the receipt of an application for the grant or renewal of a license by a person who is the holder of an auctioneer's license issued under the Auctioneers' Licensing Act, 1898-1934, the clerk shall forthwith forward one copy of the application to the registrar.

(6) Where the applicant is the holder of an auctioneer's license issued under the Auctioneers' Licensing Act, 1898-1934, or where the council or such officer 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.

(7) Where the council or such officer 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) where the court grants an application for a license or renewal of a license, the clerk of the court shall, on payment to him of the prescribed fee and the prescribed contribution, issue the license.

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

- (a) to an applicant who is of bad or doubtful character; or

(b)

- (b) to a corporation or to a person to hold the same on behalf of a 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.

25. (1) The court of petty sessions for the petty sessions district within which the place where the applicant carries on business is situated 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. 24,
1898, 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 corporation or to any person on behalf of a corporation, and a license granted to a corporation or to any person on behalf of a corporation shall not be transferable to an individual on his own behalf.

(2) Every such application for the transfer of a license shall be lodged in duplicate with the clerk of petty sessions for such court and objections to such application may be received and notice of such objection shall be given and the application and objections (if any) shall be heard and determined as far as may be in all respects as if the application were an application for the grant of such a license; but no transfer of such license shall be of any force or effect unless and until the license is endorsed as aforesaid and the prescribed fee for the transfer and the prescribed contribution to the fund are paid to the clerk of the court.

Procedure for transfer of license.

(3) Upon receipt of an application for the transfer of a license to a person who is not the holder of an auctioneer's license issued under the Auctioneers' Licensing Act, 1898-1934, the clerk shall forthwith—

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

Upon receipt of such notice such officer shall inquire into and report upon the character of the proposed transferee of the license.

(4) Upon receipt of an application for the transfer of a license to a person who is the holder of an auctioneer's license issued under the Auctioneers' Licensing Act, 1898-1934, the clerk shall forthwith forward one copy of the application to the registrar.

(5) It shall be the duty of the court to refuse the transfer of a license—

- (a) to any person who is of bad or doubtful character; or
- (b) to a corporation or to a person to hold the same on behalf of a corporation when the court is satisfied that the corporation is substantially owned and controlled by a person who is disqualified from holding a license under this Act.

(6) 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 under this Act—

Fees payable for license.

- (a) for each license or renewal thereof to an individual—Two pounds;
- (b) for each license or renewal thereof to a corporation or to a person holding the same on behalf of a corporation—Two pounds;
- (c) for the transfer of a license—Ten shillings;
- (d) for any duplicate license—Five shillings.

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27. (1) 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 license under this Act, may obtain a license to follow the occupation of a stock and station agent 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 licenses to residents in such other State.

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

(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 Federal Territory for the Seat of Government.

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 business agents shall be deemed to be an Act in force in the said Territory.

28. A license shall, 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, be granted only to such resident if he holds a license to follow the occupation of a stock and station agent in all parts of that State.

Grant of licenses to persons resident in other States.
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 an officer of the council duly authorised in that behalf or by a member of the police force of or above the rank of sergeant any justice of the peace may summon a licensed agent 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 an agent as renders him unfit to continue any longer to hold a license.

(2) Upon being satisfied of the truth of any of the grounds aforesaid the court may order that such licensed agent's license be delivered up to the court forthwith and cancelled and that such agent be disqualified either permanently or for such period as the court specifies from holding a license under this Act.

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 licensed agent, as the case may be, may appeal in accordance with the rules of court to the District Court in the locality in which the applicant or licensed agent, as the case may be, resides.

Appeal.

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

(3)

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

33. (1) If a licensed agent is convicted in any court of any indictable offence or if in any proceeding before a court to which any licensed agent is a party the court is satisfied that such licensed agent has been guilty of fraud and that he ought to be disqualified from carrying on the business of a stock and station agent such court may order that such agent—

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

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

- (a) deliver up the license held by him to the court for cancellation; and
- (b) be disqualified either permanently or for such period as the court specifies from holding a license under this Act.

(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.

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 holding a license under this Act.

Effect of disqualification on membership, etc. of corporation licensed as a business agent.

cf. *Ibid.* 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 licensed agent shall have a registered office within New South Wales.

Registered office and address.

Ibid. s. 15.

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

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

(4)

(4) Notice of any change in the situation of the registered office shall be lodgēd by the licensed agent 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 rēgistrar who shall enter such change in the register.

(5) If any licensed agent carries on business without complying with the requirements of this section he shall be liable to a penalty not exceeding *five* pounds for every day during which he so carries on business.

37. (1) Every licensed agent shall paint or affix and keep painted or affixed on his place or places of business (or, in the case of a corporation or a pērson who has taken out a license on behalf of a corporation, on the principal office of the corporation in New South Wales and on the premises of every branch or agency of the corporation 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 licensed agēnt, 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 dēmed 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. *Ibid.* s. 16.

(2) Any person—

- (a) who commits any contravention of or fails to comply with any of the provisions of subsection one of this section; or
- (b) who, not being the holder of a license, keeps up or exhibits on or near to his office, house or place of business or exhibits anywhere or allows to remain unobliterated any sign, writing, painting or other mark implying that such office, house or place of business is that of a person licensed to carry on the business of or to act as a stock and station agent,

shall be guilty of an offence against this Act.

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38. (1) Every licensed agent, 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 licensed agent; 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 lienee in any of such chattels, stock or book debts.

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

(2) Any licensed agent 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 licensed agent 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 licensed agent of any moneys drawn out of such trust account.

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

- (a) inspect any books, accounts, documents or writings in the custody or control of any licensed agent—
 - (i) relating to any trust account in any bank in the name of the licensed agent; or
 - (ii) for the purpose of ascertaining whether or not the licensed agent has any partners; and
- (b) take notes, copies or extracts thereof or therefrom.

Power to inspect documents relating to trust account, etc. of licensed agent.

cf. Act No. 7, 1935, s. 19.

(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 licensed agent or employee of a licensed agent 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 licensed agent a report of the result of such inspection if and so far as it directly concerns such client.

Power to communicate result of inspection to client of agent.

40. (1) Every licensed agent shall keep in a legible manner a written record containing full particulars of all transactions by or with him as a stock and station agent.

Record to be kept. cf. *Ibid.* s. 22.

(2) 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 licensed agent, upon being required so to do, shall produce the written record kept by him for inspection by such officer.

(3)

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

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

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

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

(a) who is for the time being disqualified under this Act from holding a license or disqualified under the Auctioneers' Licensing Act, 1898-1934, or the Business Agents Act, 1935, as the case may be, from holding any license under either of those Acts; or

(b) whose application for a license under this Act, or for any license under 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 and the license is in force; 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 licensed agent 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 licensed agent.

(3) Any licensed agent 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 licensed agent shall be personally liable for all moneys received from or on behalf of any person by any employee of the licensed agent in respect of any transaction in the capacity of employee of the licensed agent.

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

43.

43. Every licensed agent 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 licensed agent is transacting or attempting to transact any business as a licensed agent.

Production of license by business agent or sub-agent. cf. Act No. 7, 1935, s. 36.

44. Any licensed agent who lets out, hires or lends his license 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 addition to any penalty therefor, his license shall thereupon become absolutely void and shall be delivered up to the court and cancelled.

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

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 as a stock and station agent unless he was the holder of a license under this Act at the time of doing or performing such service.

Provisions as to commission, etc. cf. Ibid. s. 38.

46. Any licensed agent 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 a person who holds a license on behalf of a corporation relating to or in connection with the business of the corporation) without specifying therein his or its name as a licensed agent 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 places of business, shall be guilty of an offence against this Act.

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

PART IV.

THE STOCK AND STATION AGENTS FIDELITY GUARANTEE
FUND.

47. (1) There shall be a fund called the Stock and Station 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.

48. 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 "Stock and Station 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.

49. The fund shall consist of—

Moneys of
the fund.
Ibid. s. 48.

- (a) all sums paid by way of contribution or levy by licensed agents in accordance with this Act;
- (b) one-half of the prescribed fee 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.

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

Expendi-
ture.
Ibid. s. 49.

- (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 licensed agents or their personal representatives pursuant to this Act;
- (d)

- (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 of licenses under this Act;
- (f) any other moneys payable out of the fund in accordance with any of the provisions of this Act.

51. 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.

52. The fund shall be administered by the council.

Administration
of fund.
Ibid. s. 51.

53. (1) A contribution to the fund of five pounds annually shall be paid by every licensed agent.

Contribu-
tions to
fund.

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

Ibid. s. 52.

- (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 license fee prescribed.

54. (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 licensed agent, for payment into the fund, a levy of such amount as the council thinks fit not exceeding ten pounds.

Levies.
cf. *Ibid.*
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)

(3) A licensed agent 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 a stock and station agent.

(4) If a licensed agent does not, after the prescribed notice, pay any levy, the council shall report to the registrar that such licensed agent 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 licensed agent shall be deemed not to be the holder of a license under this Act.

55. 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.

Council may invest funds.
cf. Act No. 22, 1898, s. 55.

56. (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 licensed agent of any money or other valuable property entrusted to him or to his employee in the course of his business as a stock and station agent.

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

(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 six months

months after having become so aware, or 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 licensed agent 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 licensed agent has not been convicted in respect of such theft or fraudulent misapplication.

57. (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 licensed agent or any other person in respect of the loss suffered by him.

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 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

theft or fraudulent misapplication by the same licensed agent 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 any claim against the fund.

58. 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 licensed 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 agent 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.

59. 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 fifty-seven of this Act having regard only to judgments obtained and claims allowed against the fund.

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

60. 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 licensed agent in relation to whom 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.

Defences.
Ibid. s. 60.

61. 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 licensed agent in relation to whom the claim arose, or any other person.

Subrogation.
Ibid. s. 61.

62.

62. 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 licensed agent and may in default of delivery up of any such securities or documents reject any claim.

Board may require production, etc., of documents.
Act No. 22, 1898, s. 62.

63. (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 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 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 fifty-seven 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.

64. In the event of the death or on the retirement from business of any licensed agent 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. *Ibid.* s. 64.

65. (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 licensed agent specified in the appointment and to furnish

Examination of account.
Ibid. s. 65.

furnish to the council a confidential report as to any irregularity or alleged or suspected irregularity in the accounts of such licensed agent 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.

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

(3) Upon production by such accountant of the instrument of his appointment as aforesaid, he may require the licensed agent in respect of whom the appointment has been made, or in the absence of such licensed agent, any servant or agent of such licensed agent having the apparent control or charge for the time being of the office or business of such licensed agent 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 licensed agent 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.

(4) No accountant appointed to make any examination of accounts for the purpose 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 any information disclosed in such report.

(6)

(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.

66. 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.

67. (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) 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 (if any) held by such person be delivered up and 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 any court of petty sessions holden before a stipendiary or police magistrate.

(5)

(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.

68. Without affecting the generality of the provisions of the Crimes Act, 1900, as amended by subsequent Acts, any licensed agent who—

Wrongful conversion and false accounts.

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

(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 a stock and station 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) 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 in trust pending the completion of any transaction or any part of such moneys; or

(iii)

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- (iii) of expenses, commission or other charges incidental to any transaction or proposed or contemplated transaction as a stock and station agent,

knowing such account to be false in any material particular,

shall be liable, if a corporation, to a penalty not exceeding *one thousand* pounds or, if an individual, to imprisonment for a term of not more than *ten* years.

69. (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 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 not a licensed agent; or
- (b) on a specified day the license 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.

70. 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. *Ibid.* s. 29.

71. (1) Where any notice or application is by or under this Act authorised or required to be given or made by any person in connection with a license the same may in the case of a corporation be given or made on behalf of the corporation by any chairman, member of the governing body, director, manager, secretary or officer of the corporation or, where the corporation appoints a person to take out a license on its behalf, by such person.

Applications and notices in the case of corporations. *Ibid.* s. 30.

(2)

(2) 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.

(3) 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.

72. 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 as a stock and station agent unless he was the holder of a license at the time of doing or performing such service.

Unlicensed stock and station agent not to recover fee.

Act No. 7, 1935, s. 38.

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

- (a) prescribe any forms to be used under this Act;
- (b) prescribe the procedure to be followed on applications and other proceedings under this Act;
- (c) prescribe the method of election of members of the council;
- (d) prescribe the procedure to be followed at meetings of the council;
- (e) prescribe the duties and functions of the registrar and other officers of the council.

(3)

Stock and Station Agents Licensing.

(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.
