

## BUSINESS AGENTS ACT.

### Act No. 7, 1935.

George V.  
No. 7, 1935.

An Act to provide for the licensing of business agents and their subagents; and for purposes connected therewith. [Assented to, 5th March, 1935.]

**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:—

Short title.

**1.** (1) This Act may be cited as the "Business Agents Act, 1935."

Commence-  
ment.

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

Interpreta-  
tion.

**2.** In this Act unless the context or subject-matter otherwise indicates or requires—

cf. Vict. Act  
No. 3,897  
(Business  
Agents Act,  
1930), s. 2.

"Auctioneer" means a person holding a license under the Auctioneers' Licensing Act, 1898, as amended by subsequent Acts.

"Business 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 any of the following functions, namely:—

(a) selling, buying or exchanging or otherwise dealing with or disposing of; or

(b) negotiating for the sale, purchase or exchange or any other dealing with or disposition of—

hotel businesses, residentials, boarding-house businesses, storekeeping businesses, manufacturing businesses, or any trading businesses whatsoever or any share or interest in or concerning

or

or the goodwill of or any stocks connected with any of such businesses on behalf of any other person or for or in consideration of any payment or other remuneration (whether monetary or otherwise).

“Business agent’s license ” means a valid and unexpired business agent’s license or renewed license issued under this Act.

“ License ” means a business agent’s license or renewed license or a subagent’s license (as the case may be).

“ Licensed business agent ” means the holder of a business agent’s license and includes a corporation by which or on behalf of which such a license is held.

“ Licensed subagent ” means the holder of a subagent’s license.

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

“ Record ” means any record required to be kept under this Act.

“ Registered office ” means—

(a) the place of business of a licensed business agent; or

(b) the principal office of a corporation being a licensed business agent,

which is for the time being entered in the register in respect of any such business agent.

“ Regulations ” means regulations made under this Act.

“ Subagent ” means any person in the direct employ of or acting for or by arrangement with a business agent who performs for such business agent any of the functions of a business agent as defined by this Act whether his remuneration be by way of salary, wages, commission or otherwise; and, where the business agent is a corporation, includes any member of the corporation who performs for such corporation any of the said functions (and whether or not he is remunerated as aforesaid) other than a member of the corporation who takes out a business agent’s license on behalf of the corporation.

“Subagent’s

No. 7, 1935.

Act not to  
apply to  
any Govern-  
ment  
Department,  
etc.  
cf. Vict.  
Act No.  
3,897, s. 3.

“ Subagent’s license ” means a valid and unexpired subagent’s license issued under this Act.

“ Trustee company ” means an incorporated company authorised by Act of Parliament of this State, to act as trustee in New South Wales.

3. (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
- (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—

(a) as requiring—

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

or under any rule, order or decree of any competent Court or made pursuant to the Impounding Act, 1898; or

- (iii) any licensed auctioneer (but so far only as he sells by auction under the Auctioneers' Licensing Act, 1898, as amended by subsequent Acts),

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 (other than the Public Trustee or a trustee company) of the estate of a deceased business agent to exercise or carry on the business of the business agent as such executor, administrator or trustee at any time after the expiration of twelve months after the death of the business agent unless such executor, administrator or trustee holds a business agent's license under this Act; or

No. 7, 1935.

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

- (b) as prohibiting—

(i) 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

(ii) any person (not being a business agent or a subagent) from performing any function exercising any power or carrying out any duty which if this Act had not passed he would have been entitled to perform, exercise or carry out under the express authority or permission of any Act; 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) (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)

No. 7, 1935.

Partial  
exemption  
as to certain  
members of  
firms.

(3) Notwithstanding anything in this Act, where at least two members of a partnership firm are duly licensed as business agents, any other member of the firm 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 business agent, or for acting as a business agent, or in any way holding himself out as ready to undertake any of the functions of a business agent without being the holder of a business agent's license, but such member of the firm 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.

(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 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.

No person  
or partner  
in a firm to  
act as  
business  
agent with-  
out a license.

Vict. Act  
No. 3,897,  
s 4.

4. (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 business agent's license—

- (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 business agent; or

(b)

(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 business agent. No. 7, 1935.

(2) Any person who commits any contravention of or fails to comply with any of the provisions of this section shall be liable to a penalty of not more than one hundred pounds or to imprisonment for a term of not more than twelve months, or to both. Penalty.

5. Where a corporation carries on the business of business agents it shall be sufficient if some person appointed in writing by the corporation takes out a business agent's license on its behalf, but no person shall be eligible to take out business agents' licenses on behalf of more than one corporation. Provision as to corporations. Vict. Act No. 3,897, s. 5.

6. (1) A business agent's license shall be either— Business agent's license. cf. Act No. 24, 1898, s. 4.

(a) a general license which shall be in force for all parts of New South Wales; or

(b) a district license which shall be in force for the police district only for which the same is taken out.

(2) No person shall act as a business agent in the metropolitan, Parramatta or Ryde police districts unless he has taken out a general license.

(3) 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.

(4) A license, unless sooner cancelled, shall 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 a further period of twelve months.

7. (1) Every person who desires to obtain a license or renewal of license shall make application in the prescribed form. Application for license. cf. Vict. Act No. 3,897, s. 6.

(2) An application for a subagent's license shall be accompanied by a certificate of the good character of the applicant signed by six respectable householders resident in New South Wales.

(3) 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 Lodgment of application. Procedure. Act No. 24, 1898, s. 5 (2).

No. 7, 1935.

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.

Applicant  
resident  
out of State.  
Act No. 24,  
1898, s. 5 (3).

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

Report by  
police.  
*Ibid.* s. 5  
(4).

(5) Upon the receipt of an application for the grant or the renewal of a license under this Act the clerk shall forthwith notify the officer in charge of police at the nearest police station who shall inquire into and report upon the character of the applicant.

Attendance  
of applicant.  
*Ibid.* s. 5  
(5).

(6) Upon the hearing of an application for a new license the applicant shall attend in person; upon the hearing of an application for the renewal of a license, the applicant shall not be so required to attend unless notified by the clerk of the court that the grant of his application will be objected to.

The notice shall set out shortly the nature of the objection proposed to be made.

Date of  
hearing.  
*Ibid.* s. 5 (6).

(7) No application shall be heard until after the expiration of seven days after the lodging of the application.

Constitution  
of Court.  
*Ibid.* s. 5 (7).

(8) No application shall be heard except by a court of petty sessions holden before a stipendiary or police magistrate.

Procedure.  
*Ibid.* s. 5  
(8).

(9) Every application shall be heard in open court, and the consideration of the application shall be deemed to be a judicial proceeding.

(10) It shall be the duty of the court to refuse the grant or the renewal of a license to any applicant who is of bad or doubtful character.

Issue of  
license.

(11) 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 annual fee and when the fidelity bond referred to in this subsection has been lodged and is still subsisting, issue the license.

The fidelity bond shall be a bond in the prescribed form in the penal sum of five hundred pounds, or, in the case of a corporation, one thousand pounds, from some insurance company or surety approved for the purpose by the Minister

Minister conditioned for duly accounting to the persons entitled thereto for any trust funds received by the business agent in the course of his business as such. No. 7, 1935.

(12) In any case where satisfactory proof has been given of the loss or destruction of the original, a stipendiary or police magistrate may order the issue of a duplicate license subject to payment of the prescribed fee. Issue of duplicate license.  
Vict. Act No. 3,897, s. 12.

8. (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 indorsement upon the license) upon application made to the clerk of such court in the prescribed form for the transfer of a business agent's license— Transfer of license.  
*Ibid.* s. 8.

- (a) by a licensed business agent or the legal personal representative of a deceased licensed business agent or the official receiver, trustee or assignee of a bankrupt or an insolvent licensed business agent who is bankrupt or who has assigned his estate for the benefit of his creditors—grant a transfer of the license to any person approved by the court in that behalf; or
- (b) 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 business agent's license granted to an individual person on his own behalf shall not be transferable to a corporation or to any person on behalf of a corporation, and a business agent's license granted to a corporation or to any person on behalf of a corporation shall not be transferable to any individual person on his own behalf.

(2) Every such application for the transfer of a business agent's license shall be lodged with the clerk of petty sessions for such court and objections to such application may be received 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 a license shall be of any force or effect unless and until the license is indorsed as aforesaid and the fee Procedure for transfer of license.

for



No. 7, 1935.

for the transfer is paid and unless and until a fidelity bond of the nature referred to in subsection eleven of section seven of this Act relating to the transferee has been lodged with the clerk of petty sessions:

Provided that no such bond shall be required in the case of a transfer of the license to a person to hold the same on behalf of a corporation in respect of which a bond has been lodged and is still subsisting.

(3) Upon receipt of an application for the transfer of a business agent's license the clerk shall forthwith notify the officer in charge of police at the nearest police station who shall inquire into and report upon the character of the proposed transferee of the license.

(4) It shall be the duty of the court to refuse the transfer of a business agent's license to any person who is of bad or doubtful character.

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

Fees payable  
for license.

**9.** The following fees shall be payable under this Act:—

- (a) For each business agent's general license or renewal thereof to an individual person—Two pounds.
- (b) For each business agent's district license or renewal thereof to an individual person—One pound.
- (c) For each business agent's general license or renewal thereof to a corporation or to a person holding the same on behalf of a corporation—Two pounds.
- (d) For each business agent's district license or renewal thereof to a corporation or to a person holding the same on behalf of a corporation—One pound.
- (e) For each subagent's license or renewal thereof—Five shillings.
- (f) For the transfer of a business agent's license—Ten shillings.
- (g) For any duplicate license—Five shillings:

Provided

Provided that in the case of a person who is the holder of a license under the Auctioneers' Licensing Act, 1898, as amended by subsequent Acts, the following provisions shall have effect:—

- (i) Where such person is the holder of an auctioneer's general license no fee shall be payable for the issue of any license or renewal thereof under this Act.
- (ii) Where such person is the holder of an auctioneer's district license no fee shall be payable for the issue of a business agent's district license or a subagent's license or renewal thereof under this Act.

**10.** (1) When 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 general business agent's license under this Act, may obtain a license to follow the occupation of a business 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 general licenses to residents in such other State.

Power to grant licenses to persons resident in reciprocating States.  
Act No. 24, 1898, s. 6;  
Act No. 28, 1924, s. 2  
(a).

(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 eleven 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.

No. 7, 1935.

Grant of  
licenses to  
persons  
resident  
in other  
States.

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

**11.** (1) A business agent's 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 business agent in all parts of that State.

(2) A district license shall not in any case be granted to any person resident out of New South Wales.

(3) A subagent's license shall not be granted to any person who is not a resident of New South Wales.

Applicant for  
license to be  
resident in  
New South  
Wales or  
reciprocating  
State.  
Act No. 28,  
1924, s. 2 (a).

**12.** Save as provided in sections ten and eleven of this Act, a person who is not a resident of New South Wales shall not be entitled to obtain a business agent's license or a renewal thereof under this Act.

Register to  
be kept by  
Registrar-  
General.

**13.** 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 General of such issue, transfer or cancellation and the Registrar General 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 fee prescribed in that behalf under the provisions of the Conveyancing Act, 1919-1932.

Cancellation  
of license.  
Vict. Act No.  
3,897, s. 22.

**14.** (1) Any licensed business agent or licensed sub-agent may on the information of a member of the police force of or above the rank of sergeant be summoned 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 business agent's license or a subagent's license (as the case may be) on the ground—

(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).

- (c) that he has been guilty of such conduct as a business agent or (as the case may be) as a subagent as renders him unfit to continue any longer to hold a license.

No. 7, 1935.

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

(3) Where the Court makes an order under this section or refuses any application under section seven or section eight of this Act, the business agent or subagent or the person making the application, as the case may be, may appeal in accordance with the rules of court to the District Court in the locality in which the business agent or subagent or applicant, as the case may be, resides.

Appeal.

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

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

**15.** (1) Every licensed business agent shall have a registered office, and every licensed subagent a registered address, within New South Wales to which all communications and notices may be addressed.

Registered office and address, Vict. Act No. 3,897, s. 13.

(2) Notice of the situation of the registered office and of any change therein or of any change in the registered address of a licensed subagent shall be lodged by the agent or subagent (as the case may be) 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 General who shall enter such change in the register kept by him.

Notice of change of address.

(3) If any licensed business 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

Penalty.

No. 7, 1935.

business, and if any licensed subagent acts as a subagent without complying with the requirements of this section he shall be liable to a penalty not exceeding five pounds.

As to displaying notice on places of business, etc.  
Viet. Act No. 3,897, s. 23.

**16.** (1) Every licensed business 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 person 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 business agent, 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 firms or of business names.

Penalty

(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 business agent's 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 business agent,

shall be guilty of an offence against this Act.

Application of trust moneys.  
*Ibid.* s. 24.

**17.** (1) Every business agent, who as such (whether himself or by any employee or subagent), 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—

- (a) shall as soon as is practicable pay such moneys into a bank to a trust account in the name of the business agent; and

(b)

No. 7, 1935.

- (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 lienor in any of such chattels, stock or book debts.

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

- (2) Any business agent who commits any contravention of or fails to comply with any of the foregoing provisions of this section shall be liable to a penalty of not less than ten pounds and not more than one hundred pounds. Penalty.

- (3) Subject to any obligations of the business 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 person. 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 said agent of any moneys drawn out of such trust account. Saving as to banks.

**18. (1) Every business agent shall—**

- (a) make or cause to be made and shall keep at his principal place of business in New South Wales a true statement in writing in the prescribed form and with the prescribed particulars as to the name and the work or services of and the salary, wages or commission paid in each month to every person employed (whether as an employee or a subagent or otherwise) by him in connection with his business as a business agent; and Statement of employees, subagents, etc., and their wages, etc., to be kept by business agent. Vict. Act No. 3,897, s. 25.

(b)

No. 7, 1935.  
Inspection  
of state-  
ment.

- (b) produce such statement for inspection during office hours whenever demanded by a member of the police force of or above the rank of sergeant or by any person authorised in writing by the Minister.

Penalty.

- (2) Any business agent who—  
(a) commits any contravention of or fails to comply with any of the provisions of this section; or  
(b) makes false entries in any such statement,  
shall be liable to a penalty not exceeding fifty pounds.

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

Vict. Act  
No. 3,897,  
s. 26.

**19.** (1) The Minister, or any other person authorised in that behalf by him in writing, may—

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

- (b) take notes, copies or extracts thereof or therefrom.

Penalty for  
obstruction,  
refusal to  
produce, etc.

- (2) Any person who—  
(a) wilfully delays or obstructs the Minister or any person so authorised (as the case may be) in the exercise of his powers under this section; or  
(b) being a business agent or employee or subagent of a business 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,

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

Power to  
communi-  
cate result  
of inspec-  
tion to client  
of agent.

(3) The Minister or the person so authorised (as the case may be) may communicate to any client of the business agent a report of the result of such inspection if and so far as it directly concerns such client.

**20.** Without affecting the generality of the provisions of the Crimes Act, 1900, as amended by subsequent Acts, any business agent 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 business 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,

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 any other person, to imprisonment for a term of not more than ten years.

**21.** Any business agent or subagent who by any wilfully false, misleading or deceptive statement, representation or promise or by any wilful concealment of material fact, induces or attempts to induce any person to enter

D

into

No. 7, 1935.

Wrongful conversion and false accounts.

Viet. Act No. 3,897, s. 27.

Misrepresentation, etc., by agent.



**No. 7, 1935.**

into an agreement or contract for the sale or purchase or lease of a business or undertaking shall be guilty of an offence and shall be liable to a penalty of not less than ten pounds and not exceeding one hundred pounds or to imprisonment for a term not exceeding three years, or both.

**Record to  
be kept.**

**22.** (1) Every business agent or subagent shall keep in a legible manner a written record containing full particulars of every business or share or interest in or concerning or the goodwill of or any stocks connected with a business which has been entrusted to him for the exercise or performance in relation thereto of any of the functions of a business agent as defined by this Act.

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

(3) Any person who contravenes the provisions of this section shall be liable to a penalty of not less than two pounds and not exceeding fifty pounds.

**Disqualification  
of business  
agent or sub-  
agent convicted  
of indictable  
offence or  
guilty of fraud.  
Vict. Act  
No. 3,897,  
s. 20.**

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

- (a) deliver up any 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 whether as a business agent or as a subagent.

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

(3)

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

No. 7, 1935.

24. 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.

Vict. Act No. 3,897, s. 21.

25. (1) A licensed business agent shall not knowingly employ in any way whatever in connection with his business as a subagent any person who is not a licensed subagent or any person—

Certain persons not to be employed by licensed business agents.

*Ibid.* s. 23.

(a) who is for the time being disqualified under this Act from holding a business agent's license or a subagent's license or disqualified under the Auctioneers' Licensing Act, 1898, or any amendment thereof for the time being in force, from holding any license under that Act or amendment; or

(b) whose application for a business agent's license or for a subagent's license under this Act, or for any license under the Auctioneers' Licensing Act, 1898, or any amendment thereof for the time being in force, has been refused, unless such an application has been subsequently granted and the license is in force; or

(c) under whose fidelity bond as a licensed business agent any moneys had been recovered or paid to meet claims in respect of any loss covered by the said bond unless and until a court of petty sessions on the application of such person permits the first mentioned licensed business 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 business agent or in the work of a licensed subagent.

Such persons not to be concerned in business of business agent or in work of subagents.

(3) Any licensed business agent or any person aforesaid who commits any contravention of or fails to comply

Penalty.

**No. 7, 1935.**

comply with any of the provisions of this section shall be liable for every such offence to a penalty of not less than five pounds and not more than one hundred pounds.

**Burden of proof.**

**Vict. Act No. 3,897, s. 29.**

**26.** 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 business agent's license or (as the case may be) of a subagent's license it shall in the absence of proof to the contrary be presumed that such person is not the holder of such a license.

**Inspection of fidelity bond.**

***Ibid.* s. 30.**

**27.** (1) Any person for whom any licensed business agent or any of his subagents or employees as such is acting or has acted may on payment of a fee of two shillings and sixpence to the clerk of the court of petty sessions with whom the same was lodged or by whom it is being kept inspect the fidelity bond lodged by or on behalf of such business agent pursuant to section seven of this Act and may take a copy thereof.

**Power to sue on bond.**

(2) Any person may, with the approval of the Minister in writing, sue upon any fidelity bond under this Act for indemnity in respect of any loss covered by the said bond.

***Ibid.* s. 31.**

(3) Any such action shall be commenced within six years after the cause of such action.

**Agents for sale of businesses to be authorised in writing.**

***Ibid.* s. 32.**

**28.** Notwithstanding anything in any Act, no action shall be brought upon any contract or sale of any of the businesses referred to in the definition of "Business agent" in this Act or any share or interest in or concerning any of such businesses, if the agreement or the memorandum or note thereof on which such action is brought is signed by any person other than the party to be charged therewith, unless such person so signing be thereunto lawfully authorised in writing signed by the party to be so charged.

**Civil remedy not affected by proceedings for an offence.**

***Ibid.* s. 33.**

**29.** 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.

**30.**

**30.** (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 business agent's license or a subagent's 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 business agent's license on its behalf, by such person.

No. 7, 1935.

Applications and notices in the case of corporations. Vict. Act No. 3,897, s. 34.

(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 a private person and shall be subject to the same pecuniary penalties as if it were a private person.

Liability of corporation, etc.

*Ibid.* s. 34 (2).

(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 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.

Liability of officers of corporation.

**31.** (1) Subject to this Act, from and after the expiration of three months after the commencement of this Act—

Subagents to be licensed.

*Ibid.* s. 35.

- (a) no person, unless he is the holder of a subagent's license, shall be or act as a subagent for any licensed business agent; and
- (b) no person shall be or act as a subagent for any person who should be but is not the holder of a business agent's license under this Act.

(2) Any person who commits any contravention of or fails to comply with any of the provisions of this section shall be liable to a penalty not exceeding one hundred pounds or to imprisonment for a term of not more than twelve months or to both such penalty and imprisonment.

Penalty.

No. 7, 1935.

Subagent acting for licensed business agent to be authorised by him.

Vict. Act No. 3,897, s. 38.

**32.** (1) Notwithstanding anything in this Act or any law to the contrary, no licensed subagent shall perform for any licensed business agent any of the functions of a business agent as defined by this Act unless such subagent was theretofore lawfully authorised in writing thereunto by the said licensed business agent.

Contravention an offence.

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

False representation of authority an offence.

(3) Any licensed subagent who makes any false representation (whether verbally or in writing or by conduct) to any person to the effect that such subagent is authorised to act as a subagent for any specified licensed business agent shall be guilty of an offence and shall for every such offence be liable to a fine not exceeding ten pounds or to imprisonment for a term of not more than three months, or to both.

Saying as to licensed subagents, etc.

*Ibid.* s. 39.

**33.** Nothing in this Act shall be construed as requiring any licensed subagent, so far as he performs for any licensed business agent any of the functions of a business agent and is duly authorised thereunto by such business agent, to hold a business agent's license under this Act, or as requiring any licensed business agent to hold a subagent's license under this Act.

As to moneys received by sub-agents.  
*Ibid.* s. 40.

**34.** (1) It shall not be necessary for any licensed subagent to pay moneys received by him into a bank to a trust account pursuant to this Act; but it shall be the duty of every subagent to pay forthwith to the licensed business agent for whom he is acting as a subagent all moneys received from or on behalf of any person by the subagent in respect of any transaction in his capacity of subagent for the licensed business agent.

Penalty.

(2) Any subagent who commits any contravention of or fails to comply with any of the provisions of this section shall be guilty of an offence and shall for every such offence be liable to a penalty of not less than ten pounds and not exceeding one hundred pounds or to imprisonment for a term of not more than twelve months or to both such penalty and imprisonment.

**35.**

**35.** Every licensed business agent shall be personally liable for all moneys received from or on behalf of any person by any subagent acting as a subagent for him, in respect of any transaction in the capacity of subagent for the licensed business agent.

No. 7, 1935.

Liability of principal for certain acts, etc., of subagents.  
 Vict. Act No. 3,897, s. 41.

**36.** Every licensed business agent shall on demand, at the premises upon which he carries on his business, and every licensed subagent shall on demand, produce his license to any member of the police force of or above the rank of sergeant, or to any person with whom such business agent or subagent is transacting or attempting to transact any business as a business agent or as a subagent (as the case may be).

Production of license by business agent or subagent.  
*Ibid.* s. 17.

**37.** Any business agent or any subagent 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.

Business agent or subagent not to lend license.  
*Ibid.* s. 18.

**38.** 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 business agent or subagent unless he was the holder of a business agent's license or of a subagent's license (as the case may be) at the time of doing or performing such service.

Unlicensed business agent not to recover fee.  
*Ibid.* s. 19.

**39.** 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.  
*Ibid.* s. 43.

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

Offences against Act.  
*Ibid.* s. 44.

No. 7, 1925.

Penalty for  
offences not  
otherwise  
provided for

(2) Where no penalty is specially provided for any offence against this Act any person guilty of such offence shall be liable to a penalty not exceeding fifty pounds.

(3) 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.

Offences,  
etc. by two  
or more  
persons.

(4) 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.

Publication  
of name  
and place  
of business  
in advertise-  
ments.

Vict. Act  
No. 3,897,  
s. 45.

**41.** Any business 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 has taken out 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 business 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 firms or of business names, and his or its place of business shall be guilty of an offence against this Act.

Regulations.

**42.** (1) The Governor may make regulations not inconsistent with this Act for or with respect to—

- (a) prescribing any forms to be used under this Act;
- (b) the procedure on applications and other proceedings under this Act;
- (c) prescribing a scale of fees and/or commissions to be charged by business agents;
- (d) exempting any class of persons from the operation of this Act and prescribing the extent of such exemptions and specifying the provisions (if any) of this Act which are to apply to any class of persons so exempted; and

(e)

- (e) generally, 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. No. 7, 1935.
- (2) The regulations may prescribe penalties not exceeding ten pounds for any breach thereof.
- (3) All regulations shall— Publication.
- (a) be published in the Gazette;
  - (b) take effect from the date of publication or from a later date 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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