

**COMMERCIAL AGENTS AND PRIVATE
INQUIRY AGENTS ACT.**

Act No. 4, 1963.

**Elizabeth II,
No. 4, 1963** An Act to provide for the licensing and control of commercial agents, private inquiry agents and their subagents; to repeal the Private Inquiry Agents Act, 1955; and for purposes connected therewith. [Assented to, 12th March, 1963.]

BE it enacted by the Queen'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.

**Short title
and com-
mencement.**

1. (1) This Act may be cited as the "Commercial Agents and Private Inquiry Agents Act, 1963".

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

**Repeal and
savings.**

2. (1) The Private Inquiry Agents Act, 1955 (in this section called the "repealed Act"), is hereby repealed.

(2) Any license granted under the repealed Act and in force immediately before the commencement of this Act, and any application for a license made under the repealed Act and pending at such commencement, shall be deemed respectively to be a license, or an application for a license, of the same class, granted or made under this Act.

(3) The register kept by the Commissioner of Police under section eight of the repealed Act shall form part of the register required to be kept by him under section fifteen of this Act.

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(4) Any disqualification imposed on a holder of a license, and any suspension of a license, under the repealed Act shall be deemed respectively to be a disqualification imposed or a suspension under the corresponding provisions of this Act. No. 4, 1963

(5) Any proceedings commenced under the repealed Act in respect of the granting, cancellation or suspension of a license under that Act or in respect of the disqualification of the holder of a license under that Act, and not completed at the commencement of this Act, may be continued and completed under the corresponding provisions of this Act.

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

Division
into Parts.

PART I.—PRELIMINARY—ss. 1–5.

PART II.—COMMERCIAL AGENTS, PRIVATE INQUIRY AGENTS AND SUBAGENTS — GENERALLY — ss. 6–30.

PART III.—COMMERCIAL AGENTS—SPECIAL PROVISIONS—ss. 31–39.

PART IV.—MISCELLANEOUS—ss. 40–44.

4. In this Act unless the context or subject matter otherwise indicates or requires— Interpre-
tation.

“Commercial agent” means any person (whether or not he carries on any other business) who exercises or carries on any of the following functions, namely : —

- (a) serving any writ, summons or other legal process;
- (b) ascertaining the whereabouts of, or repossessing, any goods the subject of a hire-purchase agreement or bill of sale; or
- (c) collecting, or requesting or demanding payment of, debts,

on

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on behalf of any other person and for or in consideration of any payment or other remuneration (whether monetary or otherwise), but does not include any employee of a licensed commercial agent.

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

“License” means a commercial agent’s license, private inquiry agent’s license, or subagent’s license, as the case may be.

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

“Licensed private inquiry agent” means the holder of a private inquiry agent’s license.

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

“Moneys” includes an instrument for the payment of money in any case where the instrument may be paid into a bank.

“Moneys received for or on behalf of any person” includes moneys held for or on behalf of any person whether originally received for or on his behalf or not.

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

“Private inquiry agent” means any person (whether or not he carries on any other business) who exercises or carries on any of the following functions, namely : —

- (a) obtaining and furnishing information as to the personal character or actions of any person or as to the character or nature of the business or occupation of any person ;
- (b) searching for missing persons ;
- (c) furnishing guards or watchmen ; or
- (d) acting as a guard or watchman,

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on behalf of any other person and for or in consideration of any payment or other remuneration (whether monetary or otherwise), but does not include any employee of a licensed private inquiry agent. No. 4, 1963

“Private inquiry agent’s license” means a valid and unexpired private inquiry agent’s license or renewed license issued under this Act.

“Register” means the register mentioned in section fifteen of this Act.

“Registered address” in relation to a commercial agent, private inquiry agent, or subagent means the address that is for the time being entered in the register in respect of the commercial agent, private inquiry agent or subagent, as the case may be.

“Regulations” means regulations made under this Act.

“Subagent” means any person in the direct employ of, or acting for or by arrangement with, a commercial agent or private inquiry agent who exercises or carries on for such commercial agent or private inquiry agent any of the functions of a commercial agent, or private inquiry agent, as the case may be, whether his remuneration is by way of salary, wages, commission or otherwise but does not include—

- (a) any person employed by a licensed commercial agent where such person would be a subagent as hereinbefore defined by reason only that he receives in any office of such licensed commercial agent any moneys paid to such licensed commercial agent in respect of a debt being collected by such licensed commercial agent on behalf of any other person; or
- (b) any person in the direct employ of, or acting for or by arrangement with, a commercial agent who is required to hold a commercial agent’s

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agent's license by reason only of the provisions of paragraph (b) of subsection three of section five of this Act.

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

Act not
applicable
to certain
persons.

5. (1) This Act shall not be construed as requiring any of the following persons to hold a license under this Act, that is to say—

- (a) any member of the Commonwealth Police Force or of the police force of this State or any other State or Territory of the Commonwealth or any part of Her Majesty's Dominions in the exercise of his functions as such member;
- (b) any member of the Defence Forces of the Commonwealth in the exercise of his functions as such member;
- (c) any officer or employee of—
 - (i) the Crown in right of the Commonwealth or of this State or of any other State;
 - (ii) any responsible Minister of the Crown, whether a Minister of the Commonwealth or of this State or of any other State; or
 - (iii) any Government Department of the Commonwealth or of this State or of any other State,
 in the exercise of his functions as such officer or employee;
- (d) any solicitor acting in the ordinary course of his profession as such or any solicitor's clerk acting in the ordinary course of his master solicitor's profession as such;
- (e) any public accountant registered under the Public Accountants Registration Act, 1945, as amended by subsequent Acts, acting in the ordinary course of his profession or calling as such, or any employee
of

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of any such registered public accountant acting in the ordinary course of his employer's profession or calling as such; No. 4, 1963

- (f) any person bona fide carrying on the business of insurance or of an insurance adjustment agency or any employee or agent of such a person in the exercise of his functions as such employee or agent.

(2) The fact that any person carries on the business of obtaining or furnishing information as to the financial rating or standing of any person shall not of itself require the person carrying on that business or any employee or agent of that person to hold a license under this Act.

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

(b) Paragraph (a) of this subsection shall not apply to any person so as to exempt him from the provisions of this Act requiring him to hold a commercial agent's license where such person—

- (i) is employed by one employer only; and
- (ii) on behalf of such employer and for or in consideration of any payment or other remuneration (whether monetary or otherwise), exercises or carries on, in the course of the business exercised or carried on by such employer, the function of ascertaining the whereabouts of, or repossessing, any goods the subject of a hire-purchase agreement and owned by such employer.

(c) (i) The provisions of sections seventeen and twenty-eight, and of Part III, of this Act shall not apply to or in respect of any person who is required to hold a commercial agent's license by reason only of the provisions of paragraph (b) of this subsection.

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(ii) The fee payable by any such person for a commercial agent's license shall be the same fee as is payable for a subagent's license, and a commercial agent's license issued to any such person shall remain in force only so long as such person is required to hold a commercial agent's license by reason only of paragraph (b) of this subsection.

(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 and are specified in the regulations, to apply to any class of persons so exempted.

PART II.
**COMMERCIAL AGENTS, PRIVATE INQUIRY AGENTS AND
SUBAGENTS—GENERALLY.**

Unlicensed
persons
prohibited
from
acting as
commercial agents
or private
inquiry
agents.

6. (1) Subject to this Act, no person shall—

- (a) exercise or carry on;
- (b) advertise, notify or state that he exercises or carries on or is willing to exercise or carry on; or
- (c) in any way hold himself out to the public as ready to exercise or carry on,

the business or any of the functions—

- (i) of a commercial agent, unless he is the holder of a commercial agent's license; or
- (ii) of a private inquiry agent, unless he is the holder of a private inquiry agent's license.

Until the expiration of three months after the commencement of this Act, this subsection shall not apply to any commercial agent, nor to any private inquiry agent to whom the Private Inquiry Agents Act, 1955, did not apply.

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(2) Any person who contravenes or fails to comply with any of the provisions of this section shall be liable, in the case of a corporation, to a penalty not exceeding two hundred pounds and, in the case of an individual, to a penalty not exceeding one hundred pounds or to imprisonment for a term not exceeding six months, or to both such penalty and imprisonment. No. 4, 1963

7. (1) A licensed commercial agent or licensed private inquiry agent or licensed subagent shall not by virtue of his being the holder of a license have any power or authority which he would not have if this Act had not been passed. Licensees not to assume additional powers.

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

8. (1) Subject to this Act—

- (a) no person, unless he is the holder of a subagent's license, shall be or act as a subagent for any licensed commercial agent or licensed private inquiry agent; and Unlicensed persons prohibited from acting as sub-agents.
- (b) no person shall be or act as a subagent for any person who is required by this Act to be, but is not, the holder of a commercial agent's license or a private inquiry agent's license, as the case may be.

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

(3) Any person who contravenes or fails to comply with any of the provisions of this section shall be liable, in the case of a corporation, to a penalty not exceeding two hundred pounds and, in the case of an individual, to a penalty not exceeding one hundred pounds or to imprisonment for a term not exceeding six months, or to both such penalty and imprisonment.

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Licenses.

9. (1) A license shall be in or to the effect of the form prescribed.

In the case of a license issued to a person other than a corporation, the license shall set forth the name, place of business and place of abode of the person taking out the license.

In the case of a license issued to a corporation the license shall set forth the name of the corporation and the address of its sole or principal place of business.

(2) The fee payable for a license shall be such amount as may be prescribed.

(3) Subject to this Act, a license shall be in force for a period of twelve months from the date of its issue.

(4) A license may be renewed, and on each renewal shall, subject to this Act, be in force for a further period of twelve months.

**Application
for licenses.**

10. (1) Every person who desires to obtain a license or renewal of a license shall make application in or to the effect of the form prescribed.

(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 exercise or carry on the business or functions of a commercial agent or private inquiry agent, or proposes to act as a subagent, as the case may be, or if there is more than one such court, with the clerk of the court within that district nearest to the place where the applicant proposes to exercise or carry on such business or functions, or proposes so to act, as the case may be.

(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) Where the application is made—

(a) for a subagent's license by the employee of a licensed commercial agent or a licensed private inquiry agent; or

(b)

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- (b) for a commercial agent's license by a person referred to in paragraph (b) of subsection three of section five of this Act, No. 4, 1963

the clerk of petty sessions shall, if so requested by the applicant, and on payment of the prescribed fee, issue to such employee or person a provisional license in the prescribed form.

Any such provisional license shall continue in force until—

- (i) the application for the subagent's license or commercial agent's license, as the case may be, has been determined; or
- (ii) notice of objection has been notified to the applicant in accordance with paragraph (c) of subsection five of this section,

whichever first happens, and the holder of any such provisional license shall be deemed to be a licensed subagent, or licensed commercial agent, as the case may be.

(5) (a) Upon the receipt of an application for the grant or the renewal of a license, the clerk of the court receiving the application shall forthwith notify the officer in charge of police at the police station nearest to that court who shall inquire into the applicant's character and suitability to hold the license for which he has applied, and report in writing thereon to the court.

(b) The officer in charge of police may object to the grant of the application and where he proposes so to object he shall include in his report a statement setting out that he proposes so to object and the nature of the objection proposed to be made.

Any such objection may be made only on one or more of the grounds upon which the court may refuse the grant or renewal of a license under subsection ten of this section.

(c) Where any such report contains such a statement the clerk of the court to which the report is furnished shall notify the applicant and, where the application is in respect of a subagent's license, the person specified in the application as the person for whom the applicant exercises
or

No. 4, 1963 or carries on or intends to exercise or carry on any of the functions of a commercial agent or private inquiry agent, that the application will be objected to and of the date on which it is proposed that the application will be heard by the court.

Any such notification shall be in or to the effect of the form prescribed, and shall state shortly the nature of the objection proposed to be made.

(d) The court in dealing with an application for the grant or renewal of a license under this Act may call and receive evidence as to the character and suitability of the applicant to hold the license for which he has applied, and shall take into consideration the report referred to in paragraph (a) of this subsection.

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

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

(8) Where an application is made for the renewal of a license it shall not be necessary for the applicant to attend before the court unless a notification that the application will be objected to has been served upon him personally or by forwarding it to his registered address at least three clear days before the hearing.

(9) No application shall be heard except by a court of petty sessions held before a stipendiary magistrate.

(10) (a) It shall be the duty of the court of petty sessions to refuse the grant or renewal of a license unless it is satisfied that such applicant—

- (i) is of good fame and character;
- (ii) is a fit and proper person to hold a license;
- (iii) is of the age of twenty-one years or upwards;
- (iv) is a natural born or naturalised subject of Her Majesty;
- (v) has been continuously resident in Australia for a period of twelve months immediately preceding the making of the application;

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- (vi) is not disqualified under this Act from holding a No. 4, 1963 license; and
- (vii) subject to subsection two of section thirteen of this Act, has not been convicted of any offence punishable on indictment.

Subparagraph (iv) of this paragraph shall not apply to an applicant for a commercial agent's license who is required to hold such a license by reason only of the provisions of paragraph (b) of subsection three of section five of this Act.

(b) A reference in paragraph (a) of this subsection to an applicant shall in the case of an applicant, being a corporation, be read and construed as a reference to the directors of the corporation.

(c) Without limiting the generality of subparagraph (ii) of paragraph (a) of this subsection, a person shall be deemed not to be a fit and proper person to hold a commercial agent's license or a subagent's license if he has, as a commercial agent or a subagent, unduly harassed any person, whether directly or indirectly, when exercising or carrying on, or attempting to exercise or carry on, any of the functions of a commercial agent or, as the case may be, acting as a subagent for a commercial agent.

(11) The court may from time to time adjourn any proceedings under this section and shall adjourn any proceedings on an application for a license or renewal of a license where—

- (a) an objection to the grant or renewal of the license is made by an officer in charge of police;
- (b) notification of such objection has not been served on the applicant in accordance with the provisions of subsection five of this section; and
- (c) the applicant has not consented to the hearing of the application without such notification being so served.

(12) Subject to section thirty-five of this Act, 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, issue the license.

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(13) In any case where satisfactory proof has been given of the loss or destruction of a license, a stipendiary magistrate may order the issue of a duplicate license subject to payment of the prescribed fee.

Cancellat-
tion of
license.

11. (1) Any licensed commercial agent or licensed private inquiry agent or licensed subagent may, on the complaint of a member of the police force of or above the rank of sergeant, be summoned before a court of petty sessions held before a stipendiary 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 under this Act, whether as a commercial agent, a private inquiry agent, or a subagent—

- (a) on the ground that he improperly obtained his license contrary to the provisions of this Act;
- (b) on the ground that he has been convicted of any offence against this Act or the regulations; or
- (c) on any of the grounds on which the court may refuse the grant or renewal of a license under subsection ten of section ten of this Act.

(2) Upon being satisfied of the truth of any such ground, the court may order that such commercial agent's license, private inquiry agent's license, or subagent's license, as the case may be, be delivered up in accordance with the provisions of this section and cancelled, and that such commercial agent, private inquiry agent, or subagent, as the case may be, be disqualified either permanently or for such period as the court specifies from holding a license under this Act, whether as a commercial agent, private inquiry agent, or subagent.

(3) Any commercial agent, private inquiry agent, or subagent who upon a demand made of him by any member of the police force to deliver up his license to such member in accordance with any order made under subsection two of this section fails to do so shall be guilty of an offence against this Act.

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(4) The clerk of the court shall transmit to the Commissioner of Police— No. 4, 1963

- (a) as soon as practicable after the making of any such order, a copy of the order; and
- (b) upon the delivery up to the court of a license pursuant to any such order, the license so delivered up.

The Commissioner of Police shall forthwith upon the receipt of any such copy cause the fact of such cancellation and disqualification to be noted in the register and shall retain any license so delivered up.

12. (1) If a commercial agent, private inquiry agent, or subagent is convicted in any court of any indictable offence or if in any proceedings before a court in which any commercial agent, private inquiry agent, or subagent gives evidence the court is of opinion on the evidence before it, whether that evidence is by the commercial agent, private inquiry agent, or subagent, or any other person, that such commercial agent, private inquiry agent, or subagent, as the case may be, ought to be summoned before a court of petty sessions under section eleven of this Act 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 under this Act, whether as a commercial agent, a private inquiry agent, or a subagent, the court before which he is so convicted or gives evidence, as the case may be, may order—

Power of court to order commercial agent, private inquiry agent or subagent to be summoned under section eleven.

- (a) that his license be suspended for a period not exceeding twenty-eight days; and
- (b) that he deliver up his license to the court within such time as may be specified in the order for transmission to the Commissioner of Police.

(2) Any commercial agent, private inquiry agent, or subagent who fails to comply with an order made under paragraph (b) of subsection one of this section shall be guilty of an offence against this Act.

(3)

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(3) The clerk of the court shall transmit to the Commissioner of Police—

- (a) as soon as practicable after the making of any such order, a copy of the order; and
- (b) upon the delivery up to the court of a license pursuant to any such order, the license so delivered up.

The Commissioner of Police shall retain any license so delivered up during the period for which it is suspended under subsection one or subsection five of this section.

(4) The Commissioner of Police shall—

- (a) forthwith upon the receipt of any such copy cause the fact of such suspension to be noted in the register;
- (b) as soon as practicable thereafter, cause the commercial agent, private inquiry agent, or subagent, as the case may be, to be summoned before a court of petty sessions under section eleven of this Act 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 under this Act, whether as a commercial agent, a private inquiry agent, or a subagent.

(5) Where the commercial agent, private inquiry agent, or subagent, as the case may be, is so summoned during the period for which his license is suspended under subsection one of this section, the court before which the proceedings are taken may, if those proceedings are not concluded before the expiration of the period for which his license was suspended under that subsection, order that the license be further suspended until the conclusion of those proceedings.

(6) During the period for which a commercial agent's license, a private inquiry agent's license, or a subagent's license is suspended under this section, the commercial agent, private inquiry agent, or subagent, as the case may be, shall be deemed not to be the holder of a license.

(7)

(7) Notice of any order made under subsection one or subsection five of this section shall be served upon the commercial agent, private inquiry agent, or subagent concerned, by the clerk of the court that made the order, personally or by forwarding a copy thereof by post to his registered address.

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13. (1) The court, in dealing with any application made under section ten of this Act or in any proceedings under section eleven of this Act, may receive and admit on production, as evidence, the judgment and findings of any court (whether civil or criminal), the verdict or findings of a jury, or a certificate of the conviction of any person in any case where such judgment, findings, verdict or certificate are, in the opinion of the court, relevant to the application or proceedings; and may receive and admit on production, as evidence, a transcript of the depositions or of any record, duly certified as correct, of the evidence of witnesses taken in any court in any case where, in the opinion of the court, such evidence is relevant to the application or proceedings.

Matters for consideration by the court in respect of applications under section ten and proceedings under section eleven of this Act.

(2) Where, in dealing with any application made under section ten of this Act for the grant or renewal of a subagent's license, or in any proceedings under section eleven of this Act in respect of a subagent's license, the court is satisfied that the applicant or, as the case may be, the person in respect of whom such proceedings have been instituted has been convicted of an offence punishable on indictment, it may grant the application or decline to make, under subsection two of the said section eleven, an order in any such proceedings if, in the opinion of the court, the offence is such that, either from its nature or from the circumstances in which it was committed, it ought not, having regard to the public interest, to disqualify the applicant or such person from being or acting as a subagent.

14. Where the court refuses any application under section ten, or makes an order under subsection two of section eleven, of this Act, the person making the application or the commercial agent, private inquiry agent or subagent, as the case may

Appeal.

may

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No. 4, 1963 — may be, may appeal in accordance with rules of court to the District Court exercising jurisdiction in the district within which the court of petty sessions that refused the application or made the order is situated.

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.

Register to be kept by Commissioner of Police.

15. Within seven days after the issue of a license granted by the court or after the cancellation of a license by the court, the clerk of the court shall notify the Commissioner of Police of such issue or cancellation, and the Commissioner of Police shall keep a register of the issue, renewal and cancellation of all such licenses, which register shall be available for perusal by any member of the public upon payment of the fee prescribed in that behalf.

Registered address.

16. (1) Every licensed commercial agent, licensed private inquiry agent and licensed subagent, shall have a registered address within New South Wales to which all communications and notices may be addressed.

(2) Notice of the registered address and of any change thereof shall be lodged by the commercial agent, private inquiry agent or subagent, as the case may be, with the court from which the license issued within seven days after his commencing to carry on business at such registered address or changed address, and the clerk of such court shall record such notice and advise the Commissioner of Police who shall enter the address or the change therein in the register kept by him.

(3) Any licensed commercial agent or licensed private inquiry agent who carries on business without complying with the requirements of this section shall be liable

liable to a penalty not exceeding five pounds for every day upon which he so carries on business; and any licensed subagent who acts as a subagent without complying with the provisions of this section shall be liable to a penalty not exceeding five pounds for every day upon which he so acts. No. 4, 1963
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17. (1) Every licensed commercial agent and every licensed private inquiry agent shall paint or affix and keep painted or affixed on his place or places of business (or in the case 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 the premises at his or its registered address, in a conspicuous position a notice showing in legible characters his or its name and description as a licensed commercial agent or licensed private inquiry agent, as the case may be, 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. As to
displaying
notice on
places of
business,
etc.

(2) Any person—

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

shall be guilty of an offence against this Act.

18. Nothing in this Act shall be construed as requiring any licensed subagent so far as he performs for any licensed commercial agent or licensed private inquiry agent any of the functions Savings as
to licensed
subagents.

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No. 4, 1963 — functions of a commercial agent or private inquiry agent, as the case may be, and is duly authorised thereunto by such commercial agent or private inquiry agent, to hold a commercial agent's license or a private inquiry agent's license, as the case may be, or as requiring any licensed commercial agent or licensed private inquiry agent to hold a subagent's license under this Act.

Certain persons not to be employed by licensees.

19. (1) A licensed commercial agent or licensed private inquiry agent shall not knowingly employ in any way whatever in connection with his business—

- (a) as a subagent, any person who is not a licensed subagent;
- (b) any person who is for the time being disqualified under this Act from holding a commercial agent's license, a private inquiry agent's license, or a subagent's license, or whose application for a commercial agent's license, or a private inquiry agent's license, or a subagent's license has been refused, unless such an application has been subsequently granted.

(2) Any licensed commercial agent or licensed private inquiry agent or any person aforesaid who contravenes or fails to comply with any of the provisions of this section shall be liable for every such offence to a penalty not exceeding one hundred pounds.

Misrepresentation, etc., by commercial agent or private inquiry agent.

20. Any commercial agent or private inquiry agent who, by any wilfully false, misleading or deceptive statement, representation or promise or by any wilful concealment of material fact, induces or attempts to induce any person to enter into an agreement or contract in connection with his business as a commercial agent or private inquiry agent, as the case may be, shall be guilty of an offence against this Act.

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

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Adver-
tisements.

- (a) his name as a licensed commercial agent or licensed private inquiry agent, as the case may be, or (if the business is not carried on in his own name) the name under which he or the firm in which he 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 business names; and
- (b) his place of business,

such commercial agent or private inquiry agent shall be guilty of an offence against this Act.

22. Where a commercial agent repossesses any motor vehicle the subject of a hire-purchase agreement or bill of sale he shall within twenty-four hours after so doing deliver or send by post particulars in writing of the motor vehicle repossessed by him, including where applicable particulars of the registered number of the motor vehicle, to the officer in charge of police at any police station.

Commercial
agents to
report re-
possessions.

23. Every licensed commercial agent, licensed private inquiry agent, and licensed subagent shall on demand made by any member of the police force of or above the rank of sergeant or by any person with whom such commercial agent or private inquiry agent or subagent is transacting or attempting to transact any business as such produce his license to such member or person.

Production
of license.

24. Where the holder of a license desires to surrender the license held by him he may in writing notify the clerk of the court from which the license issued that he desires to surrender such license and deliver such license to the clerk of that court.

Surrender
of license.

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The clerk of the court shall, upon receipt of such notification and license, endorse on the license the word "surrendered" and forward such notification and license to the Commissioner of Police and upon his entering such information in the register such license shall be deemed to be surrendered.

**Licensee
not to lend
license.**

25. Any licensed commercial agent, licensed private inquiry agent, or licensed subagent who lets out, hires or lends his license to any other person or permits any other person to use his license, or who permits any other person to hold himself out as the holder of the license issued to that commercial agent, private inquiry agent, or subagent, as the case may be, 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.

**Unlicensed
persons not
to recover
fees.**

26. 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 commercial agent, private inquiry agent, or subagent, unless he was the holder of a commercial agent's license, private inquiry agent's license, or subagent's license, as the case may be, at the time of doing or performing such service.

This section shall not apply to any service done or performed by a commercial agent, private inquiry agent or subagent where such service was done or performed before the expiration of two months after the commencement of this Act and, in the case of any service done or performed by—

- (a) a private inquiry agent, such service was done or performed by a private inquiry agent to whom the Private Inquiry Agents Act, 1955, did not apply; or
- (b) a subagent, such work was done or performed by a subagent for a commercial agent or a private inquiry agent to whom the Private Inquiry Agents Act, 1955, did not apply.

27. Any person who in any application or other statement made under or for the purposes of this Act or the regulations knowingly makes any statement which is not correct or furnishes any particulars which are not correct or knowingly omits to furnish any particulars by this Act or the regulations required to be furnished shall be guilty of an offence against this Act.

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Furnishing
incorrect
information in
applica-
tions, etc.

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

Excessive
charges
may be
reduced.

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

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

(4)

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

Prohibition
of charge
for expenses
of debt
collecting,
etc.

29. (1) It shall not be lawful for any person, whether or not he is required to hold a license under this Act, who exercises or carries on any of the functions of a commercial agent, or any person acting for or in collusion with any such firstmentioned person, to charge, recover, or receive from any debtor of a creditor any sum as for or on account of any costs, charges, or expenses (other than stamp duties and fees payable to the Registrar-General and legal costs) any remuneration or payment whatsoever for or in connection with the collection of the debt, and any person aforesaid who so charges, recovers, or receives, or attempts so to charge, recover, or receive, shall be guilty of an offence against this Act.

Nothing in this subsection extends to any sum charged recovered or received as for or on account of the reasonable costs incurred by an owner of, and incidental to his taking steps to take possession of, goods the subject of a hire-purchase agreement where the owner of the goods, at the request of the hirer, forbears to take possession of the goods.

(2) If any money or money's worth is directly or indirectly paid or allowed to or received by any person in contravention of subsection one of this section, the amount or the value thereof to the extent of such contravention, and notwithstanding any contract to the contrary, may be recovered by the debtor from such person or if such person is the creditor or a partner, employer, employee, principal or agent of the creditor, or is in any way acting in collusion with him, may be set off against the amount of the debt (and that amount shall be deemed to be reduced accordingly) or may be recovered by the debtor from such person or from the creditor.

Jurisdic-
tion of
courts of
petty
sessions.

30. (1) No proceedings relating to an agreement between a commercial agent or private inquiry agent and any other person for the rendering of services by the commercial agent

or

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or private inquiry agent, as the case may be, in his capacity as such, shall be brought or taken in a court of petty sessions other than a court of petty sessions held before a stipendiary magistrate sitting alone. No. 4, 1963
—

(2) A court of petty sessions held before a stipendiary magistrate sitting alone shall, in addition to the jurisdiction that might be exercised by it if this section had not been enacted, have jurisdiction in respect of proceedings relating to an agreement between a commercial agent or a private inquiry agent and any other person for the rendering of services by the commercial agent or private inquiry agent, as the case may be, in his capacity as such, in all cases in which the amount charged directly or indirectly under the agreement by the commercial agent or private inquiry agent in respect of the services rendered by him, does not exceed two hundred and fifty pounds.

(3) The costs of any proceedings relating to any such agreement as is referred to in subsection one of this section that are brought or taken in a court of petty sessions shall be in the discretion of the court, and the court, when allowing any costs to any party in those proceedings, may assess the amount thereof and make such order for the payment thereof as the court thinks fit.

Any order made by a court of petty sessions under the authority of this Act for the payment of money or of costs shall operate as an order for the payment of money under the Small Debts Recovery Act, 1912, as amended by subsequent Acts, and be enforceable as such under the provisions of that Act.

This subsection shall not be construed so as to affect in any way the jurisdiction of any other court in relation to costs.

PART III.

COMMERCIAL AGENTS—SPECIAL PROVISIONS.

31. (1) All moneys received for or on behalf of any person by any licensed commercial agent shall be held by such commercial agent exclusively for such person, to be paid to such Payment
into bank.

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No. 4, 1963 such person, or to be disbursed as he directs, and until so paid or disbursed the moneys shall be paid into a bank in New South Wales to a trust account, whether general or separate, in the name of such commercial agent and retained therein.

The words "Trust Account" shall appear in the name of the trust account and in the description of the trust account in the books and records of the licensee and also on all cheques drawn on the trust account.

(2) The moneys shall not be available for the payment of the debts of the commercial agent to any other creditor of the commercial agent 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 creditor.

(3) Nothing in this section shall be construed to take away or affect any just claim or lien which any licensee may have against or upon any of the moneys.

(4) Any commercial agent who neglects or fails to comply with any of the provisions of this section shall be guilty of an offence against this Act.

(5) Where any commercial agent neglects or fails to comply with any of the provisions of this section by reason of his neglect or failure to pay any moneys into a bank in New South Wales to a trust account or to retain any such moneys therein, the offence shall continue until the said moneys are paid to the person for or on whose behalf they were received, or disbursed in such manner as may be directed by such person.

Relief to
bankers.

32. (1) Subject to the provisions of this section no bank shall, in connection with any transaction on any account of any commercial agent kept with it or with any other bank, incur any liability or be under any obligation to make any enquiry or be deemed to have any knowledge of any right of any person to any money paid or credited to any such account

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account which it would not incur or be under or be deemed to have in the case of an account kept by a person entitled absolutely to all the money paid or credited to it : No. 4, 1963

Provided that nothing in this subsection shall relieve a bank from any liability or obligation under which it would be apart from this Act.

(2) Notwithstanding anything in subsection one of this section a bank at which a commercial agent keeps an account for clients' money shall not, in respect of any liability of the commercial agent to the bank, not being a liability in connection with that account, have or obtain any recourse or right whether by way of set-off, counter-claim, charge or otherwise, against moneys standing to the credit of that account :

Provided that nothing in this subsection shall deprive a bank of any right existing at the time of the commencement of this Act.

33. (1) Every licensed commercial agent shall in a legible manner make— Records
to be kept.

- (a) a written record containing full particulars of all transactions by or with him as a licensed commercial agent;
- (b) a written record containing full particulars as to the name and the work or services of and the remuneration by way of salary, wages or commission or otherwise 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 licensed commercial agent; and
- (c) such other written records containing such particulars as may be prescribed.

Every such written record shall be kept in the prescribed manner, shall be made within such time as may be prescribed in relation thereto and shall be kept at the registered address of the licensed commercial agent concerned.

(2)

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(2) Every such written record shall, for a period of three years after the date on which it was made, be preserved—

- (a) where such commercial agent continues to hold a license as such under this Act or where upon ceasing to hold a license as such under this Act or ceasing to have as his registered address the place where such written record was kept, such commercial agent does not authorise some other person to have the possession, custody or control of such written record—by the commercial agent; or
- (b) where any person obtains the possession, custody or control of such written record either by transfer of the business of such commercial agent or otherwise—by such person.

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

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

Inspection
of records.

34. (1) All books of account or other written records relating to the trust account on which any licensed commercial agent operates in accordance with the provisions of section thirty-one of this Act, and the written records required to be made and kept in accordance with the provisions of section thirty-three of this Act, shall at all reasonable times be open to inspection by any member of the police force of or above the rank of sergeant or any person duly authorised in writing in that behalf by the Minister either generally or in any particular case.

(2) Any such member of the police force and any person authorised as aforesaid and in the case of any such person upon production of his written authority, may require
any

any commercial agent or in the absence of such commercial agent any servant or agent of such commercial agent for the time being having the apparent control or charge of the office or place of business of such commercial agent—

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- (a) to produce for inspection—
 - (i) all books, papers, accounts or other documents relating to the trust account of such commercial agent;
 - (ii) all written records made and kept by the commercial agent in accordance with the provisions of section thirty-three of this Act;
 - (iii) all contracts, agreements or other documents relating to any transaction by or with such commercial agent in connection with his business as a commercial agent, in the possession, custody or control of such commercial agent;
- (b) to furnish all authorities and orders to bankers as may be reasonably required of him.

(3) Any such member of the police force and any person authorised as aforesaid may make notes, copies or extracts of or from any such books, papers, accounts, written records, contracts, agreements or other documents referred to in subsection two of this section.

(4) The provisions of subsections one, two and three of this section shall apply, *mutatis mutandis*, to and in respect of any written record preserved in accordance with the provisions of subsection two of section thirty-three of this Act by a person who has ceased to hold a license as a commercial agent under this Act or by any person (other than the commercial agent who made such written record) who has the possession, custody or control of such written record as required by that subsection.

(5) Any person who—

- (a) wilfully delays or obstructs any such member or any person authorised as aforesaid in the exercise of his powers, authorities, duties and functions under this section;
- (b)

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- (b) on demand refuses or fails to produce any books, papers, accounts, written records, contracts, agreements or other documents required for inspection under this section in his possession, custody, or control;
- (c) on demand refuses or fails to furnish any authorities and orders as may reasonably be required of him under this section; or
- (d) on demand refuses or fails to answer truthfully any question relating to any books, papers, accounts, written records, contracts, agreements or other documents required for inspection under this section,

shall be guilty of an offence against this Act.

Any statement furnished to a member of the police force or any person authorised as aforesaid pursuant to this subsection shall not, if the person making the statement objected, at the time of making it, to doing so on the ground that by doing so he might tend to incriminate himself, be admissible in evidence in any prosecution against such person for any offence not being an offence under paragraph (d) of this subsection.

**Fidelity
bond.**

35. (1) Where the court grants an application for, or renewal of, a commercial agent's license, the clerk of the court shall not issue the license unless the fidelity bond referred to in subsection two of this section has been lodged and is still subsisting.

(2) The fidelity bond shall be—

- (a) a bond in the prescribed form in the sum of one thousand pounds, or such other sum as may be prescribed, from some insurance company or person approved for the purpose by the Minister, conditioned for duly accounting to the persons entitled thereto for any trust funds received by the holder of the commercial agent's license in the course of his business as a commercial agent; or
- (b)

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- (b) where security approved by the Minister for the payment of an amount equal to the amount for which a bond may be required under paragraph (a) of this subsection has been given to the Minister, a bond similarly conditioned from the commercial agent.

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36. (1) (a) Any fidelity bond given pursuant to this Act may be terminated by the insurance company or surety, as the case may be, by notice in writing served personally or by post upon the licensed commercial agent concerned, the Commissioner of Police and the clerk of the court by which the license was issued.

Termination
of fidelity
bond.

(b) Such notice shall specify the date (not being earlier than thirty days after the date of the service of the notice) upon which the bond is to be terminated.

(c) The obligation of the insurance company or surety, as the case may be, shall as from the date so specified, be determined so far as it relates to transactions by the commercial agent after such specified date, other than the duly accounting to the persons entitled thereto for any trust funds received by the commercial agent before such specified date.

(2) If the bond given in respect of any commercial agent is terminated during the period for which the license held by the commercial agent is in force, then, as from the date of such termination, and until a further bond has been lodged and is still subsisting, the license held by such commercial agent shall be suspended and such commercial agent shall be deemed not to be the holder of a license as such.

37. (1) Any person for whom any licensed commercial agent or any of his subagents or any of his employees employed by him in his capacity as a commercial agent is acting

Inspection
of fidelity
bond.

No. 4, 1963 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 a fidelity bond in respect of such commercial agent was lodged or by whom it is being kept, inspect the fidelity bond lodged by or on behalf of such commercial agent pursuant to section thirty-five of this Act, and may take a copy thereof.

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

(3) Any such action shall be taken within two years after the date upon which the cause of such action arises.

Moneys received by subagents.

38. (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 acting for a commercial agent to pay forthwith to such commercial agent all moneys received from or on behalf of any person by the subagent in respect of any transaction in his capacity of subagent for such commercial agent.

(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 not exceeding one hundred pounds or to imprisonment for a period not exceeding six months, or to both such penalty and imprisonment.

Liability of principal for certain acts, etc., of subagents.

39. Every licensed commercial agent shall be personally liable for all moneys received from or on behalf of any person by any subagent acting in his capacity as a subagent for such licensed commercial agent.

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PART IV.

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MISCELLANEOUS.

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

(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 two hundred pounds.

(3) All proceedings for offences against this Act or the regulations shall be disposed of summarily before a court of petty sessions held before a stipendiary magistrate sitting alone.

41. (1) Where a person convicted of an offence against this Act or the regulations is a body corporate, every person who at the time of the commission of the offence was a director or officer of the body corporate shall be deemed to have committed the like offence and be liable to the pecuniary penalty or imprisonment or both provided by this Act or the regulations for such offence accordingly, unless he proves that the offence was committed without his knowledge, or that he used all due diligence to prevent the commission of the offence. Provisions relating to offences by bodies corporate.

(2) Where in any proceedings against a corporation which is the holder of a license under this Act for any offence relating to its business as such holder it is necessary to prove that the offence was committed with the knowledge or intent of the offender, there shall be imputed to the corporation any knowledge or intent of any director thereof or of any officer thereof responsible for the management of its affairs.

42. A certificate purporting to be signed by the Commissioner of Police or any prescribed officer of the Police Department certifying that on any date or during any period mentioned Certificates to be evidence of certain matters.

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No. 4, 1963 — mentioned in the certificate any person was or was not the holder of any class of license issued under this Act, or that certain particulars did or did not appear in the register, shall, without proof of the signature or of the official character of the person purporting to have signed the certificate, be prima facie evidence of the matters certified in and by the certificate.

Civil remedy not affected by proceedings for an offence. **43.** 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.

Regulations. **44.** (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) prescribing the fee for a commercial agent's license, a private inquiry agent's license, a subagent's license and a provisional license; and for a duplicate license;
- (c) the procedure on applications and other proceedings under this Act;
- (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;
- (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.

(2) The regulations may prescribe penalties not exceeding fifty pounds for any breach thereof.

(3) 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)

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- (c) be laid before both Houses of Parliament within **No. 4, 1963** fourteen sitting days after publication 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 thereof shall thereupon cease to have effect.
