

**COMMERCIAL AGENTS AND PRIVATE INQUIRY
AGENTS (AMENDMENT) ACT.**

New South Wales



ANNO VICESIMO

ELIZABETHÆ II REGINÆ

Act No. 34, 1971.

An Act to alter the procedure for granting and renewing commercial agents' licenses and private inquiry agents' licenses; to enable objection to be made to the grant of a commercial agent's license or a sub-agent's license where the applicant has unduly harassed any person in certain circumstances; for these and other purposes to amend the Commercial Agents and Private Inquiry Agents Act, 1963; and for purposes connected therewith. [Assented to, 1st October, 1971.]

BE

No. 34, 1971 **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 :—

Short title. **1.** (1) This Act may be cited as the "Commercial Agents and Private Inquiry Agents (Amendment) Act, 1971".

(2) The Commercial Agents and Private Inquiry Agents Act, 1963, is in this Act referred to as the Principal Act.

Amendment of Act No. 4, 1963. (Part I—Preliminary.) **2.** The Principal Act is amended—

Sec. 3. (Division into Parts.) (a) by inserting in the matter relating to Part III in section three after the words "COMMERCIAL AGENTS" the words "AND PRIVATE INQUIRY AGENTS";

Sec. 5. (Act not applicable to certain persons.) (b) by inserting next after paragraph (f) of subsection one of section five the following new paragraph :—
(g) any person bona fide carrying on the business of banking or any employee or agent of such a person in the exercise of his functions as such employee or agent.

3.

*Commercial Agents and Private Inquiry Agents (Amendment).***3. The Principal Act is further amended—****No. 34, 1971**Further
amendment
of Act No.
4, 1963.(Part II—
Commercial
Agents,
Private
Inquiry
Agents and
Subagents—
Generally.)

- (a) by omitting subsections four, five, six, seven, eight, nine, ten, eleven, twelve and thirteen of section ten and by inserting in lieu thereof the following subsections : —

(4) Where the application is—

- (a) for the renewal of a license and is made not later than the date of expiry of the license sought to be renewed, the clerk of the court shall, subject to section thirty-five of this Act and upon payment of the prescribed fee, issue the renewal of the license as applied for and notify, in writing, the officer in charge of police at the police station nearest to that court that he has done so;
- (b) for the grant of a license, not being an application for the renewal of a license, to an applicant who was the holder of a license of the same kind that expired less than three months before the date of his application, the clerk of the court shall, subject to section thirty-five of this Act and on payment of the prescribed fee, issue the license as applied for and notify, in writing, the officer in charge of police at the police station nearest to that court that he has done so;

(c)

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- (c) for the grant of a license, not being an application for the renewal of a license, to an applicant who was not the holder of a license as referred to in paragraph (b) of this subsection, the clerk of the court shall forward particulars of the application to the officer in charge of police at the police station nearest to that court.
- (5) The officer in charge of police who has received any such particulars—
- (a) shall inquire whether there is any ground for objection to the granting of the application;
 - (b) shall furnish to the clerk of the court a report in writing on the result of that inquiry; and
 - (c) shall, if he has found any ground for objection to the granting of the application, include in his report a statement objecting to the granting of the application and setting out the nature of the objection.
- (6) Objection may be made only on one or more of the following grounds, namely :—
- (a) where the applicant is a natural person—
 - (i) that he is not of good fame or character;
 - (ii) that he is not a fit and proper person to hold a license;
 - (iii) that he is unlikely to be able to perform the duties generally performed by the holder of a license of the kind applied for by reason of the inadequacy of his educational attainments or experience;

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- (iv) that he has not attained the age of No. 34, 1971 twenty-one years;
- (v) that, except in the case of an application for a subagent's license, he has not been continuously resident in Australia during the period of twelve months immediately preceding the making of the application;
- (vi) that he is disqualified under this Act from holding a license; or
- (vii) subject to subsection two of section thirteen of this Act, that he has been convicted of an offence punishable on indictment; and

(b) where the applicant is a corporation—

- (i) that any of the directors or the secretary of the corporation, or any person employed as its manager to be in charge of the carrying out of its functions as the holder of a license is a person referred to in subparagraph (i), (ii), (iv), (v), (vi) or (vii) of paragraph (a) of this subsection; or
- (ii) that the person to be in charge of the carrying out of its functions as the holder of a license is a person referred to in subparagraph (iii) of paragraph (a) of this subsection.

(7) Without limiting the generality of subparagraph (ii) of paragraph (a) of subsection six of this section, an applicant is not a fit and proper person to hold a commercial agent's license or a

subagent's

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subagent's license if he has, as a commercial agent or subagent, and when exercising or carrying on or attempting to exercise or carry on any of the functions of a commercial agent or when acting or attempting to act as a subagent for a commercial agent, unduly harassed any person whether directly or indirectly, in any of the following ways :—

- (a) by leaving, in or outside any premises, any notice, vehicle or other object on which there was writing stating—
 - (i) his name or that he was a commercial agent or a subagent ;
 - (ii) the business of a commercial agent ;
or
 - (iii) any other information,
in circumstances likely to cause a person visiting or passing by the premises reasonably to believe or infer that the applicant, or some person on his behalf, was visiting the occupier of the premises for the purpose of carrying out any of the functions of a commercial agent ;
- (b) by sending or delivering to, or by leaving with, any person any document likely to cause the person receiving it reasonably to believe or infer that there would be left in or outside the premises he occupies a notice, vehicle or object, as referred to in paragraph (a) of this subsection ;
- (c) by calling at any premises or by communicating (whether by telephone or otherwise) with persons occupying any premises with such frequency as is, or at such times as are, unreasonable in the circumstances ; or
- (d) in any other way whatsoever.

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(8) Where in the case of an application for the No. 34, 1971 grant of a license—

- (a) a report referred to in subsection five of this section has not, at the expiration of a period of one month after the receipt of the application by the clerk of the court, been furnished to the clerk by the officer in charge of police to whom particulars of the application were forwarded; or
- (b) such a report that does not include a statement objecting to the granting of the application has, within that period, been furnished to the clerk by that officer in charge of police,

the clerk shall, subject to section thirty-five of this Act and upon payment of the prescribed fee, issue the license applied for.

(9) Where a report referred to in subsection five of this section containing a statement objecting to the granting of the application has been furnished to the clerk before he issues the license, the clerk shall—

- (a) set the application down for hearing by the court; and
- (b) in the prescribed form stating shortly the nature of the objection proposed to be made, notify the applicant and, where the application is for a subagent's license, the person specified in the application as the person for whom the applicant carries on or intends to carry on any of the functions of a commercial agent or a private inquiry agent, that the application will be objected to and of the date on which the application has been set down for hearing.

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(10) An application set down for hearing by a court of petty sessions in accordance with paragraph (a) of subsection nine of this section shall be dealt with by that court only when it is constituted by a stipendiary magistrate sitting in open court.

(11) The court in dealing with any such application—

- (a) may receive evidence in respect of any ground on which an objection to the granting of the application has been made;
- (b) shall take into consideration the report referred to in subsection five of this section containing the statement objecting to the granting of the application; and
- (c) if it is satisfied that the ground on which such an objection was made has been established, shall order that the application be refused but otherwise shall order that the application be granted.

(12) Where the court orders that an application for a license be granted, the clerk of the court shall, subject to section thirty-five of this Act and on payment of the prescribed fee, issue the license.

(13) The court may from time to time adjourn any proceedings under this section and shall adjourn the proceedings where notification of an objection has not been served on the applicant in accordance with the provisions of subsection nine of this section and the applicant has not consented to the hearing of the objection without such a notification being served.

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(14) Where satisfactory proof has been given No. 34, 1971 of the loss or destruction of a license and that the fidelity bond referred to in subsection two of section thirty-five is still subsisting the clerk of the court from which the license was issued may, upon payment of the prescribed fee, issue a duplicate license.

(15) Upon the refusal or withdrawal of an application for a license, the prescribed fee shall be refunded to the applicant, or to any other person who appears to the clerk of the court to be entitled thereto.

(b) by omitting paragraph (c) of subsection one of section eleven and by inserting in lieu thereof the following paragraph :—

(Cancellation of license.)

(c) on any of the grounds on which objection may be taken to the grant of a license under subsection six of section ten of this Act.

(c) (i) by omitting from subsection one of section nineteen the word “knowingly”;

(Certain persons not to be employed by licensees.)

(ii) by inserting next after subsection two of the same section the following new subsection :—

(3) It is a sufficient defence to a prosecution for an offence under this section if the person charged proves that he used all due diligence to ensure that the employee referred to in the charge was not a person whom he was prohibited from employing by subsection one of this section.

(d)

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Subst.
sec. 20.Misrepresentation, etc.,
by commercial agent
or private inquiry
agent.

(d) by omitting section twenty and by inserting in lieu thereof the following section :—

20. (1) Any commercial agent, private inquiry agent or subagent who, by any statement, representation or promise that is false, misleading or deceptive (whether to his knowledge or not) or by any concealment of material fact (whether intended or not), 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 or, in the case of a subagent, in connection with the business of the commercial agent or private inquiry agent for whom he carries on any of the functions of a commercial agent or private inquiry agent, as the case may be, shall be guilty of an offence against this Act.

(2) Without limiting the generality of subsection one of this section a statement, representation or promise shall, for the purposes of that subsection, be deemed to be false, misleading or deceptive if the statement, representation or promise is of such a nature that it would reasonably tend to lead to a belief in the existence of a state of affairs that does not in fact exist, whether or not the statement, representation or promise indicates that that state of affairs does exist.

(3) If any person is charged with an offence under this section it shall be sufficient defence if the person charged proves—

(a) in relation to a statement, representation or promise, not being a statement, representation or promise referred to in subsection two of this section, that he had reasonable grounds for believing and did in fact believe that the statement, representation or promise was true; or

(b)

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(b) in relation to a statement, representation or promise referred to in subsection two of this section that he had reasonable grounds for believing in the existence of the state of affairs and did in fact believe that the state of affairs existed,

and that otherwise he acted innocently.

4. The Principal Act is further amended—

Further amendment of Act No. 4, 1963. (Part III—Commercial Agents—Special Provisions.)

(a) by inserting in the heading to Part III after the words "COMMERCIAL AGENTS" the words "AND PRIVATE INQUIRY AGENTS";

(b) (i) by inserting in subsection one of section thirty-three after the words "licensed commercial agent" where firstly occurring the words "or licensed private inquiry agent";

(ii) by inserting in paragraphs (a) and (b) of the same subsection after the words "licensed commercial agent" wherever occurring the words "or licensed private inquiry agent, as the case may be";

(iii) by inserting in paragraph (c) of the same subsection after the word "prescribed" the words "in respect of licensed commercial agents or licensed private inquiry agents, as the case may be";

(iv) by inserting in the same subsection after the words "licensed commercial agent" where lastly occurring the words "or licensed private inquiry agent";

(v)

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- (v) by omitting from paragraph (a) of subsection two of the same section the word "commercial" where firstly and secondly occurring;
- (vi) by omitting from the same paragraph the words "the commercial" and by inserting in lieu thereof the word "such";
- (vii) by omitting from paragraph (b) of the same subsection the word "commercial";
- (viii) by inserting in subsection three of the same section after the words "licensed commercial agent" where firstly occurring the words "or licensed private inquiry agent";
- (ix) by inserting in the same subsection after the words "licensed commercial agent" where secondly occurring the words "or licensed private inquiry agent, as the case may be";

Sec. 34.
(Inspection
of records.)

- (c) (i) by omitting subsection two of section thirty-four and by inserting in lieu thereof the following subsection :—

(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—

- (a) a commercial agent or any servant or agent of a commercial agent having the apparent control or charge of the office or place of business of that commercial agent during the absence of that commercial agent from his office or place of business—

- (i) to produce to him for inspection all books, papers, accounts or other documents relating to the trust account of the commercial agent; and

(ii)

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- (ii) to furnish all authorities and No. 34, 1971
orders to bankers as may be
reasonably required of the
commercial agent; and
- (b) a commercial agent or private inquiry agent or any servant or agent of a commercial agent or private inquiry agent having the apparent control or charge of the office or place of business of that commercial agent or private inquiry agent during the absence of that commercial agent or private inquiry agent from his office or place of business to produce to him for inspection—
- (i) all written records made and kept by that commercial agent or private inquiry agent in accordance with the provisions of section thirty-three of this Act; and
- (ii) all contracts, agreements or other documents relating to any transaction by or with that commercial agent or private inquiry agent in connection with his business as such an agent, that are in the possession, custody or control of that commercial agent or private inquiry agent.
- (ii) by inserting in subsection four of the same section after the words “commercial agent” wherever occurring the words “or private inquiry agent”;

(d)

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Sec. 35.
(Fidelity
bond.)

(d) by omitting subsection one of section thirty-five and by inserting in lieu thereof the following subsection :—

(1) A commercial agent's license or renewal thereof shall not be issued by a clerk of a court unless the fidelity bond referred to in subsection two of this section has been lodged and is still subsisting.

Applications for licenses made before commencement of this Act. **5.** An application for a license made before, but not dealt with at, the commencement of this Act shall be dealt with in all respects as if the amendments made by section three and paragraph (d) of section four of this Act had not been made.