

**AUCTIONEERS AND AGENTS (AMENDMENT)
ACT, 1978, No. 103**

New South Wales



ANNO VICESIMO SEPTIMO

ELIZABETHÆ II REGINÆ

Act No. 103, 1978.

An Act to amend the Auctioneers and Agents Act, 1941, to provide for the reconstitution of the Council of Auctioneers and Agents, to provide for restricted licenses under that Act and to make further provision with respect to the Auctioneers and Agents Fidelity Guarantee Fund. [Assented to, 20th December, 1978.]

See also Statutory and Other Offices Remuneration (Auctioneers and Agents) Amendment Act, 1978.

Auctioneers and Agents (Amendment).

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.** This Act may be cited as the "Auctioneers and Agents (Amendment) Act, 1978".

Commence-ment. **2.** (1) Except as provided in subsections (2) and (3), this Act shall commence on the date of assent to this Act.

(2) Section 5 shall, in its application to a provision of Schedule 1, 2 or 3, commence on the day on which the provision commences.

(3) Schedules 1, 2 and 3 shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Principal Act. **3.** The Auctioneers and Agents Act, 1941, is in this Act referred to as the Principal Act.

Schedules. **4.** This Act contains the following Schedules :—

**SCHEDULE 1.—AMENDMENTS TO THE PRINCIPAL ACT
RECONSTITUTING THE COUNCIL OF AUCTIONEERS AND
AGENTS.**

**SCHEDULE 2.—AMENDMENTS TO THE PRINCIPAL ACT
WITH RESPECT TO LICENSES.**

Auctioneers and Agents (Amendment).

SCHEDULE 3.—FURTHER AMENDMENTS TO THE
PRINCIPAL ACT.

SCHEDULE 4.—SAVINGS AND TRANSITIONAL PROVISIONS.

5. The Principal Act is amended in the manner set forth in Schedules 1, 2 and 3. **Amendment
of Act No.
28, 1941.**

6. Schedule 4 has effect.

**Savings and
transitional
provisions.**

SCHEDULE 1.

Sec. 5.

AMENDMENTS TO THE PRINCIPAL ACT RECONSTITUTING
THE COUNCIL OF AUCTIONEERS AND AGENTS.

(1) Section 2—

Omit "SCHEDULE.", insert instead "SCHEDULES."

(2) (a) Section 3 (1), paragraph (c) of the definition of
"Business agent"—

Omit "disposal of", insert instead "disposal by".

(b) Section 3 (1), definition of "Chairman"—

Before the definition of "Council", insert :—

"Chairman" means the chairman of the council
appointed under section 8A (1).

(c) Section 3 (1), definition of "Member"—

After the definition of "Live stock", insert :—

"Member" means a member of the council.

Auctioneers and Agents (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RECONSTITUTING THE
COUNCIL OF AUCTIONEERS AND AGENTS—*continued.*

(3) (a) Section 8 (1)—

Omit the subsection, insert instead :—

(1) The council shall consist of a chairman appointed under section 8A (1), an official member appointed under subsection (3) and 15 elected members.

(b) Section 8 (1B)—

After section 8 (1A), insert :—

(1B) In this section, “stock and station salesman” has the meaning ascribed thereto in section 51.

(c) Section 8 (2) (b) (iv)—

Omit “agents.”, insert instead :—

agents;

(v) one shall be a stock and station salesman;

(vi) two shall be members of the Real Estate Salesmen’s Association of New South Wales.

(d) Section 8 (2A)—

After section 8 (2), insert :—

(2A) Each of the elected members referred to in subsection (2) (b) (vi) shall be—

(a) a holder of a real estate agent’s license; or

Auctioneers and Agents (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RECONSTITUTING THE
COUNCIL OF AUCTIONEERS AND AGENTS—*continued.*

(b) a holder of a certificate of registration as
a real estate salesman.

elected for the purpose of this section by the members
of the Real Estate Salesmen's Association of New
South Wales and certified by that Association to have
been so elected.

(e) Section 8 (4) (a) (iv)—

Omit "agents.", insert instead :—
agents;

(v) stock and station salesmen.

(f) Section 8 (4) (b) (iv)—

Omit "license:", insert instead :—
license;

(v) on the roll of stock and station salesmen, if
he holds a certificate of registration as a stock
and station salesman

(g) Section 8 (4) (c) (iv)—

Omit "agents.", insert instead :—
agents;

(v) as a stock and station salesman—unless his
name is on the roll of stock and station sales-
men.

(h) Section 8 (7)—

Omit the subsection.

Auctioneers and Agents (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RECONSTITUTING THE
COUNCIL OF AUCTIONEERS AND AGENTS—*continued.*

(i) Section 8 (8)–(10)—

After section 8 (7), insert :—

(8) The chairman and the official member—

- (a) shall assume office on the day on which the elected members assume office;
- (b) shall hold office for 3 years; and
- (c) shall be eligible for re-appointment.

(9) A person is not eligible for appointment as chairman or official member, or for election as a member, or for appointment under section 11, 12 or 13, if he has attained the age of 70 years.

(10) The provisions of the Public Service Act, 1902, do not apply to or in respect of the chairman or the official member and they are not subject to those provisions during their respective terms of office.

(4) Section 8A—

After section 8, insert :—

Chairman
of council.

8A. (1) The chairman shall be appointed by the Governor on the recommendation of the Minister and shall devote the whole of his time to the duties of his office.

Auctioneers and Agents (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RECONSTITUTING THE
COUNCIL OF AUCTIONEERS AND AGENTS—*continued.*

- (2) The chairman is entitled to be paid—
- (a) remuneration in accordance with the Statutory and Other Offices Remuneration Act, 1975; and
 - (b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of him.
- (3) Section 9 (e) does not apply to or in respect of the chairman but the chairman shall be deemed to have vacated his office if he resigns his office by writing under his hand delivered to the Minister and the Governor accepts the resignation.
- (4) Except to the extent of any inconsistency with this section, a reference in this Act to a member includes a reference to the chairman.
- (5) Schedule 2 has effect.
- (5) (a) Section 9 (g)—
- Omit “or an appointed member, his license”, insert instead “, his license or registration”.
- (b) Section 9 (h)—
- Omit “agents.”, insert instead :—
- agents; or
- (v) in the case of a member referred to in subparagraph (v) of that paragraph—
in the roll of stock and station salesmen; or

Auctioneers and Agents (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RECONSTITUTING THE
COUNCIL OF AUCTIONEERS AND AGENTS—*continued.*

- (i) being a member referred to in section 8 (2)
- (b) (vi), he ceases to be a member of the Real Estate Salesmen's Association of New South Wales, or holds neither a real estate agent's license nor a certificate of registration as a real estate salesman; or

- (j) he attains the age of 70 years.

(6) (a) Section 11—

Omit "council", insert instead "Governor on the recommendation of the Minister".

(b) Section 11 (2), (3)—

At the end of section 11, insert :—

(2) Where a vacancy occurs in the office of the chairman or the official member, the vacancy shall be filled—

- (a) in the case of the chairman—by a person appointed to the vacancy by the Governor on the recommendation of the Minister; or
- (b) in the case of the official member—by a practising solicitor of the Supreme Court of New South Wales appointed to the vacancy by the Governor.

(3) A person appointed to an office under subsection (2) holds the office for the residue of the term of office of his predecessor.

Auctioneers and Agents (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RECONSTITUTING THE
COUNCIL OF AUCTIONEERS AND AGENTS—*continued.*

(7) Section 14—

Omit the section, insert instead :—

14. (1) A member other than the chairman is entitled to be paid such remuneration and such travelling and subsistence allowances as the Minister may from time to time determine in respect of him. ^{Fees and expenses.}

(2) The office of a member other than the chairman shall, for the purposes of the Constitution Act, 1902, be deemed not to be an office or place of profit under the Crown.

(8) Section 15 (1)—

Omit “Six”, insert instead “Nine”.

(9) Section 16 (3)—

Omit “The chairman or member presiding, as the case may be,”, insert instead “The person presiding at any meeting of the council”.

(10) Schedule 2—

At the end of the Act, insert :—

SCHEDULE 2.

Sec. 8A.

1. In this Schedule—

“statutory body” means a statutory body representing the Crown and any body declared under clause 6 to be a statutory body for the purposes of this Schedule;

Auctioneers and Agents (Amendment).

 SCHEDULE 1—*continued.*

 AMENDMENTS TO THE PRINCIPAL ACT RECONSTITUTING THE
 COUNCIL OF AUCTIONEERS AND AGENTS—*continued.*

“superannuation scheme” means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under an Act.

2. Subject to clause 3 and to the terms of his appointment, where the chairman was, immediately before his appointment as chairman—

- (a) an officer of the Public Service;
- (b) an officer of the Teaching Service within the meaning of the Teaching Service Act, 1970;
- (c) a contributor to a superannuation scheme;
- (d) an officer employed by a statutory body; or
- (e) a person in respect of whom provision was made by an Act that he retain any rights accrued or accruing to him as an officer or employee,

he —

- (f) shall retain any rights accrued or accruing to him as such an officer, contributor or person;
- (g) may continue to contribute to any superannuation scheme to which he was a contributor immediately before his appointment as chairman; and
- (h) shall be entitled to receive any deferred or extended leave and any payment, pension or gratuity,

as if he had continued to be such an officer, contributor or person during his service as chairman and—

- (i) his service as chairman shall be deemed to be service as an officer or employee for the purpose of any law under which those rights accrued or were accruing, under which he continues to contribute or by which that entitlement is conferred; and
- (j) he shall be deemed to be an officer or employee, and the council shall be deemed to be his employer, for the purpose of the superannuation scheme to which he is entitled to contribute under this clause.

Auctioneers and Agents (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RECONSTITUTING THE
COUNCIL OF AUCTIONEERS AND AGENTS—*continued.*

3. If the chairman would, but for this clause, be entitled under clause 2 to contribute to a superannuation scheme or to receive any payment, pension or gratuity under the scheme he shall not be so entitled upon his becoming (whether upon his appointment as chairman or at any later time while he holds office as chairman) a contributor to any other superannuation scheme and the provisions of clause 2 (j) cease to apply to or in respect of him and the council upon his becoming a contributor to that other superannuation scheme.

4. Clause 3 does not prevent the payment to the chairman upon his ceasing to be a contributor to a superannuation scheme of such amount as would have been payable to him if he had ceased, by reason of his resignation, to be an officer or employee for the purposes of the scheme.

5. (1) In this clause, "retiring age" means—

- (a) in relation to a person who was, immediately before his appointment as chairman, an officer of the Public Service or an officer of the Teaching Service within the meaning of the Teaching Service Act, 1970—the age of 60 years; and
- (b) in relation to a person who was, immediately before his appointment as chairman, an officer or employee of a statutory body—the age at which officers or employees (being officers or employees of the class to which the person belonged immediately before his appointment as chairman), as the case may be, of the statutory body are entitled to retire.

(2) A person who ceases to be chairman by reason of the expiration of his term of office or his resignation under section 8A (3) shall, if he has not attained his retiring age, be entitled to be appointed where, immediately before his appointment as chairman, he was—

- (a) an officer of the Public Service—to some office in the Public Service;
- (b) an officer of the Teaching Service—to some office in the Teaching Service; or

Auctioneers and Agents (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RECONSTITUTING THE
COUNCIL OF AUCTIONEERS AND AGENTS—*continued.*

(c) an officer or employee of a statutory body—to some office in the service of the statutory body,

not lower in classification and salary than that which he held immediately before his appointment as chairman.

6. The Governor may, by proclamation published in the Gazette, declare any body constituted by an Act to be a statutory body for the purposes of this Schedule.

Sec. 5.

SCHEDULE 2.

AMENDMENTS TO THE PRINCIPAL ACT WITH RESPECT TO
LICENSES.

(1) Section 22 (1A), (1B)—

After section 22 (1), insert :—

(1A) A license may be expressed to be restricted in its operation to a specified region or place or to a specified purpose or to a specified region or place for a specified purpose.

(1B) A person who takes out a license referred to in subsection (1A)—

(a) shall be deemed, in the case of a license of a class specified in subsection (1) taken out by a person other than a corporation, not to be the holder of a license of that class; or

Auctioneers and Agents (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT WITH RESPECT TO
LICENSES—*continued.*

(b) shall be deemed, in the case of a license taken out by a corporation, not to be the holder of a license,

except in relation to things done or omitted in the region or place, or for the purpose, to which the operation of the license is expressed to be restricted.

(2) Section 22 (2) (a) (i)—

After “which”, insert “, subject to subsections (1A) and (1B),”.

(3) Section 22 (2) (a) (v)—

After “which”, insert “, subject to subsections (1A) and (1B),”.

SCHEDULE 3.

Sec. 5.

FURTHER AMENDMENTS TO THE PRINCIPAL ACT.

(1) Section 3 (1), definition of “Real estate dealer”—

After the definition of “Real estate agent”, insert :—

“Real estate dealer” means a person (not being the holder of a license as a real estate agent) whose sole or principal business is the selling, as owner, of allotments of land as defined in section 51.

Auctioneers and Agents (Amendment).

SCHEDULE 3—*continued.*FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(2) Section 23 (9C)—

After section 23 (9B), insert :—

(9C) The Minister may for any reason which appears to him sufficient exempt a corporation from the operation of subsection (9B).

(3) Section 43 (2)—

At the end of section 43, insert :—

(2) Where a licensee has an interest in any real or personal property as a principal, he is guilty of an offence against this Act if, in a newspaper or otherwise, he publishes an advertisement relating to or in connection with the property without disclosing that interest in the advertisement.

(4) Section 51, definition of "Real estate dealer"—

Omit the definition.

(5) Section 51A (1A)—

After section 51A (1), insert :—

(1A) An application under subsection (1) shall be accompanied by the same fees and contribution as would be required if the application were an application for a license.

Auctioneers and Agents (Amendment).

SCHEDULE 3—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(6) Section 51C (1) (b1)—

After section 51C (1) (b), insert :—

(b1) that he has failed to pay a contribution under section 71 (1A);

(7) Section 67 (a)—

After “licensees”, insert “and real estate dealers”.

(8) (a) Section 68 (c)—

After “licensees”, insert “and real estate dealers”.

(b) Section 68 (e)—

Omit “or variations or cancellations of licenses”, insert instead “of licenses or for registration as a real estate dealer or for variations or cancellations of licenses or of any such registration,”.

(9) Section 71 (1A), (1B)—

After section 71 (1), insert :—

(1A) A real estate dealer shall, at the prescribed times, pay to the fund a contribution equal in amount to the contribution he would be required to make if he were a licensee at the time he makes the payment.

Auctioneers and Agents (Amendment).

SCHEDULE 3—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(1B) For the purposes of subsection (1A), the prescribed times in relation to a real estate dealer are—

(a) before the expiration of—

(i) three months after the date of assent to the Auctioneers and Agents (Amendment) Act, 1978, in the case of a real estate dealer registered before that date;
or

(ii) the year that next succeeds his registration as a real estate dealer, in the case of a real estate dealer registered on or after that date of assent; and

(b) before the expiration of each year that succeeds the latest time prescribed for the real estate dealer by paragraph (a).

(10) (a) Section 72 (1)—

After “licensee”, insert “and real estate dealer”.

(b) Section 72 (3)—

After “licensee” where firstly and secondly occurring, insert “or real estate dealer”.

(c) Section 72 (3)—

Omit “unpaid the licensee shall be deemed not to be the holder of a license under this Act.”, insert **instead :—**

unpaid—

(a) in the case of a licensee—he shall be deemed not to be the holder of a license;
or

Auctioneers and Agents (Amendment).

SCHEDULE 3—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) in the case of a real estate dealer—he shall be deemed not to be registered under this Act as a real estate dealer.

(11) Section 73—

After “1925”, insert “, or, to an extent involving the expenditure of not more than 60 per cent of the money at credit in the fund and with the consent of the Minister, in the purchase of shares in a permanent building society registered under the Permanent Building Societies Act, 1967”.

(12) (a) Section 74 (4A)—

After section 74 (4), insert :—

(4A) The determination under subsection (4) by the council that a person is entitled to claim against the fund in respect of any loss through theft or fraudulent misapplication by a licensee or real estate dealer, or the settlement under section 75 by the council of that claim shall not subject the council, its members or any person acting under its direction to liability under any action, claim or demand by the licensee or real estate dealer, as the case may be.

(b) Section 74 (6)—

After section 74 (5), insert:—

(6) This section applies to and in respect of a real estate dealer in the same way as it applies to and in respect of a licensee and so applies as if—

(a) the reference in subsection (1) to the business of the licensee as an auctioneer or a stock and station agent or a real estate

Auctioneers and Agents (Amendment).

 SCHEDULE 3—*continued.*

 FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

agent or a business agent were a reference to the business of the real estate dealer as such;

(b) subsection (1A) had been omitted;

(c) the reference in subsection (2) to the commencement of this Act were a reference to the date of assent to the Auctioneers and Agents (Amendment) Act, 1978; and

(d) subsection (2A) had been omitted.

(13) Section 75 (10)—

After section 75 (9), insert :—

(10) In respect of any theft or fraudulent misapplication after 1st September, 1977, subsections (3) and (4) shall be construed as though the words “five hundred pounds” wherever occurring were omitted therefrom and the matter “\$200,000” substituted therefor.

(14) Section 76 —

After “licensee”, insert “or real estate dealer”.

(15) Section 78 (2)—

After “licensee”, insert “or real estate dealer”.

(16) Section 79 —

After “licensee”, insert “or real estate dealer”.

Auctioneers and Agents (Amendment).

SCHEDULE 3—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(17) Section 80 —

After “licensee”, insert “or real estate dealer”.

(18) (a) Section 83 (1) and (3)—

After “licensee” wherever occurring, insert “or real estate dealer”.

(b) Section 83 (3)—

After “38”, insert “or 55”.

(19) (a) Section 84 (1)—

Omit “, as defined in section 51,”.

(b) Section 84 (1)—

Omit “any such”.

(20) (a) Section 84A (1)—

Omit “, as defined in section 51,”.

(b) Section 84A (1) (a)—

After “sale”, insert “or lease”.

(21) (a) Section 86A (1) (a)—

Omit the paragraph, insert instead :—

(a) to the court before which any proceedings are pending or being taken for—

(i) the grant of a license to or the renewal, restoration or cancellation of a license of;

Auctioneers and Agents (Amendment).

SCHEDULE 3—*continued.*FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(ii) the registration or cancellation of the registration of; or

(iii) the disqualification under section 29A or 51D of,

the person to whom the information is relevant;
or

(b) Section 86A (2)—

After “licensee” where firstly occurring, insert “or real estate dealer”.

(c) Section 86A (2)—

After “licensee” where secondly occurring, insert “or real estate dealer, as the case may be,”.

(22) (a) Section 87 (3)—

After “imposed,” insert “order that the registration of that person be cancelled or”.

(b) Section 87 (3)—

After “whereupon such”, insert “registration or”.

(23) Section 89—

After “salesman” where lastly occurring, insert “or registered as a real estate dealer”.

Auctioneers and Agents (Amendment).

SCHEDULE 3—*continued.*

FURTHER AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(24) Section 92 (2A), (2B)—

After section 92 (2), insert :—

(2A) The regulations may prescribe rules of conduct to be observed in the course of carrying on his business by a licensee, the holder of a certificate of registration or a registered real estate dealer.

(2B) A provision of the regulations requiring the keeping of any accounting or other records in the form of a book shall be deemed to have been complied with if those accounting or other records are kept in another form approved by the registrar.

SCHEDULE 4.

Sec. 6.

SAVINGS AND TRANSITIONAL PROVISIONS.

1. Words and expressions used in this Schedule have the same meaning as they have in the Principal Act, as amended by this Act.

2. Notwithstanding anything in the Principal Act, as amended by this Act, the first chairman appointed under the Principal Act, as so amended, shall not hold office beyond the expiration of the term of office of the elected members at the time of his assumption of office, but he shall, if qualified, be eligible for re-appointment.

3. Notwithstanding anything in the Principal Act, as amended by this Act, the official member holding office immediately before the commencement of Schedule 1 shall not continue in that office after that commencement beyond the expiration of the term of office for which the elected members holding office immediately before that commencement were elected but he shall, if qualified, be eligible for re-appointment.

Auctioneers and Agents (Amendment).

SCHEDULE 4—*continued.*SAVINGS AND TRANSITIONAL PROVISIONS—*continued.*

4. Notwithstanding anything in the Principal Act, as amended by this Act, the Governor may, on the recommendation of the Minister, appoint as members of the council 1 person registered under that Act as a stock and station salesman and 2 persons registered under that Act as real estate salesmen who are members of the Real Estate Salesmen's Association of New South Wales and the persons so appointed—

- (a) shall assume office on the commencement of Schedule 1;
- (b) on assuming office shall be deemed to be the elected members referred to in section 8 (2) (b) (v) and (vi) of that Act, as so amended;
- (c) subject to paragraph (d), shall not hold office beyond the expiration of the term of office for which the elected members holding office immediately before that commencement were elected; and
- (d) if qualified, shall be eligible for election or appointment as members of the council.

5. Where a member of the council who, but for this clause, would be holding office immediately before the commencement of Schedule 1 attained the age of 70 years before that commencement, he shall be deemed to have vacated his office immediately before that commencement and a member of the council so holding office who attains that age before the expiration of the term of office for which he was elected shall be deemed to have vacated his office on attaining that age.

6. A vacancy in the office of a member of the council existing immediately before the commencement of Schedule 1 (whether pursuant to clause 5 or otherwise) shall be filled in accordance with the provisions of the Principal Act, as amended by this Act.

7. Subject to this Schedule and the Principal Act, as amended by this Act, the elected members holding office immediately before the commencement of Schedule 1 shall continue in office as members after that commencement until the expiration of the term of office for which they were elected.
