

**AUCTIONEERS AND AGENTS (AMENDMENT)  
ACT, 1980, No. 189**

**New South Wales**



ANNO VICESIMO NONO

**ELIZABETHÆ II REGINÆ**

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**Act No. 189, 1980.**

An Act to amend the Auctioneers and Agents Act, 1941, with respect to the licensing of stock buying agents and strata managing agents, the registration of trainee stock buying agents, the conduct of auction sales, agency and subagency agreements, the compensation payable in respect of a failure to account, penalties and business names; and to amend the Auctioneers and Agents (Amendment) Act, 1967, by way of statute law revision. [Assented to, 19th December, 1980.]

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See also Strata Titles (Auctioneers and Agents) Amendment Act, 1980.

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*Auctioneers and Agents (Amendment).*

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**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 :—

**1.** This Act may be cited as the "Auctioneers and Agents Short title. (Amendment) Act, 1980".

**2.** (1) Except as provided in subsections (2), (3) and (4), **Commence-**  
this Act shall commence on the date of assent to this Act. **ment.**

(2) Section 5 shall, in its application to a provision of Schedules 1–9, commence on the day on which that provision commences.

(3) Section 6 shall be deemed to have commenced on 18th December, 1967.

(4) Subject to subsection (5), each of the provisions of this Act specified in a paragraph of this subsection shall commence on such day as may be appointed by the Governor in respect of the provisions specified in that paragraph and as may be notified by proclamation published in the Gazette :—

- (a) Schedule 2 (1), (2), (3), (4), (5), (7), (8), (9), (10), (12), (14), (16), (17), (18), (19), (21), (22), (23), (24) and (25);
- (b) Schedule 2 (6), (11), (13), (15) and (20);
- (c) Schedule 3 (1), (2), (3), (4), (5), (7), (8), (9), (10), (12), (13), (14), (16), (17) and (18);
- (d) Schedule 3 (6), (11) and (15);
- (e) Schedule 4 (1);
- (f) Schedule 4 (2), (4) and (5);
- (g) Schedule 4 (3);
- (h) Schedules 5 (1);

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*Auctioneers and Agents (Amendment).*

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- (i) Schedule 5 (2);
- (j) Schedule 6;
- (k) Schedule 8 (1), (3) and (4);
- (l) Schedule 8 (2);
- (m) Schedule 9 (2), (3), (6) and (7).

(5) A day appointed and notified under subsection (4) in respect of the provisions of this Act specified in—

- (a) subsection (4) (b)—shall be a day which is not earlier than 3 months after the day so appointed and notified in respect of the provisions specified in subsection (4) (a); and
- (b) subsection (4) (d)—shall be a day which is not earlier than 3 months after the day so appointed and notified in respect of the provisions specified in subsection (4) (c).

(6) Where the day appointed and notified under subsection (4) in respect of the provisions of this Act specified in subsection (4) (c) is the same as, or earlier than, the day so appointed and notified in respect of the provisions of this Act specified in subsection (4) (a) then—

- (a) Schedule 2 (2) (b) shall be deemed to have been repealed immediately before the firstmentioned day; and
- (b) the reference in Schedule 3 (2) (b) to “50j” shall be read and construed as if it were a reference to “50r”.

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

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

SCHEDULE 1.—AMENDMENT TO THE PRINCIPAL ACT  
RELATING TO THE COUNCIL OF AUCTIONEERS AND  
AGENTS.

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*Auctioneers and Agents (Amendment).*

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SCHEDULE 2.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO STOCK BUYING AGENTS AND TRAINEE STOCK BUYING AGENTS.

SCHEDULE 3.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO STRATA MANAGING AGENTS.

SCHEDULE 4.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO AUCTIONS AND AUCTIONEERS.

SCHEDULE 5.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO AGENCY AND SUBAGENCY AGREEMENTS.

SCHEDULE 6.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE AUCTIONEERS AND AGENTS FIDELITY GUARANTEE FUND.

SCHEDULE 7.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO PENALTIES.

SCHEDULE 8.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE CARRYING ON OF BUSINESS BY LICENSEES.

SCHEDULE 9.—MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT.

SCHEDULE 10.—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

5. The Principal Act is amended in the manner set forth in Schedules 1–9. Amendment of Act No. 28, 1941.

6. The Auctioneers and Agents (Amendment) Act, 1967, is amended by omitting section 10 (1) (z) (iii). Amendment of Act No. 84, 1967.  
Sec. 10.  
(Further amendment of Act No. 28, 1941.)

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*Auctioneers and Agents (Amendment).*

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Savings,  
transi-  
tional and  
other  
provisions.

**7. Schedule 10 has effect.**

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Sec. 5.

**SCHEDULE 1.**

**AMENDMENT TO THE PRINCIPAL ACT RELATING TO THE  
COUNCIL OF AUCTIONEERS AND AGENTS.**

Section 6 (1A)—

After section 6 (1), insert :—

(1A) The council shall, in the exercise or performance of any power, authority, duty or function conferred or imposed upon the council by or under this Act (except in relation to the contents of any advice, report or recommendation given or made by the council to the Minister), be subject to the control and direction of the Minister.

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Sec. 5.

**SCHEDULE 2.**

**AMENDMENTS TO THE PRINCIPAL ACT RELATING TO STOCK  
BUYING AGENTS AND TRAINEE STOCK BUYING AGENTS.**

(1) Long title—

After “station agents” wherever occurring, insert “, stock buying agents”.

(2) (a) Section 2—

In the matter relating to Part III, after “STATION AGENTS,” insert “STOCK BUYING AGENTS,”.

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*Auctioneers and Agents (Amendment).*

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SCHEDULE 2—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO STOCK  
BUYING AGENTS AND TRAINEE STOCK BUYING AGENTS—  
*continued.*

(b) Section 2—

From the matter relating to Part III, omit “50I” where firstly occurring, insert instead “50J”.

(c) Section 2—

After the matter relating to Division 5 of Part III, insert :—

DIVISION 6.—*Stock Buying Agents—s. 50J.*

(d) Section 2—

From the matter relating to Part IV, omit “AND STOCK AND STATION SALESMEN”, insert instead “, STOCK AND STATION SALESMEN AND TRAINEE STOCK BUYING AGENTS”.

(e) Section 2—

From the matter relating to Division 3 of Part IV, omit “*and Stock and Station Salesmen*”, insert instead “, *Stock and Station Salesmen and Trainee Stock Buying Agents*”.

(3) (a) Section 3 (1), definition of “Stock buying agent”—

After the definition of “Stock and station agent”, insert :—

“Stock buying agent” means a person (whether or not such person carries on any other business) who, for reward (whether monetary or otherwise), carries on business as an agent for—

(a) the purchase of live stock; or

(b) the purchase of livestock and the provision of agistment for that stock.

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*Auctioneers and Agents (Amendment).*

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SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO STOCK  
BUYING AGENTS AND TRAINEE STOCK BUYING AGENTS—  
*continued.*

## (b) Section 3 (8) (b)—

Omit “or stock and station salesman” wherever occurring, insert instead “, stock and station salesman or trainee stock buying agent”.

## (4) Section 4 (2) (a), proviso—

After “station agent,”, insert “stock buying agent,”.

## (5) Part III, heading—

After “STATION AGENTS,” insert “STOCK BUYING AGENTS,”.

## (6) (a) Section 20 (2)—

Omit “from and after the expiration of three months after the commencement of this Act”.

## (b) Section 20 (2) (a1)—

After section 20 (2) (a), insert :—

(a1) shall act as or carry on or advertise, notify or state that he acts as or carries on or is willing to act as or carry on the business of a stock buying agent unless he is the holder of a stock buyer’s license; or

## (c) Section 20 (2AA)—

After section 20 (2), insert :—

(2AA) A person who is licensed as a stock and station agent in accordance with this Act may act as or carry on or advertise, notify or state that he acts as or carries on or is willing to act as or carry on the business of a stock buying agent.

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*Auctioneers and Agents (Amendment).*

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SCHEDULE 2—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO STOCK  
BUYING AGENTS AND TRAINEE STOCK BUYING AGENTS—  
*continued.*

(d) Section 20 (3)—

Omit “or of a stock and station agent or of”, insert instead “, a stock and station agent, a stock buying agent,”.

(7) Section 21 (1A)–(1C)—

After section 21 (1), insert :—

(1A) No person shall, by virtue of one stock buyer’s license, keep more than one place for the conduct of his business as a stock buying agent.

(1B) Where a person (other than a stock and station agent or a corporation) conducts his business as a stock buying agent at more than one place of business he shall employ at each such place, other than the place at which he is himself in charge, a person holding a stock buyer’s license who shall be in charge at that place.

(1C) Where a corporation (other than a corporation which conducts business as a stock and station agent) conducts its business as a stock buying agent at more than one place of business it shall employ as the person in charge of each such place of business a person who is the holder of a stock buyer’s license.

(8) Section 22 (1) (b1)—

After section 22 (1) (b), insert :—

(b1) a stock buyer’s license; or

(9) (a) Section 23 (10A) (b) (iv)—

Omit “salesman; and”, insert instead “salesman; or”.



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*Auctioneers and Agents (Amendment).*


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 SCHEDULE 2—*continued.*

 AMENDMENTS TO THE PRINCIPAL ACT RELATING TO STOCK  
 BUYING AGENTS AND TRAINEE STOCK BUYING AGENTS—  
*continued.*

## (b) Section 23 (10A) (b) (v)—

After section 23 (10A) (b) (iv), insert :—

- (v) where the license applied for is a stock buyer's license—a certificate of registration as a trainee stock buying agent; and

## (c) Section 23 (12)—

After “station agent”, insert “, a stock buying agent”.

## (10) Section 32—

After “station agent,”, insert “a stock buying agent,”.

## (11) Section 35 (3) (b) (iia)—

After section 35 (3) (b) (ii), insert :—

- (iia) as a stock buying agent—unless he is the holder of a stock buyer's license;

## (12) Section 36D (6), definition of “carry on business”—

After “station agent,”, insert “a stock buying agent,”.

## (13) (a) Section 39 (3)—

Omit “or stock and station agent”, insert instead “, stock and station agent or stock buying agent”.

## (b) Section 39 (3)—

Omit “or stock and station salesman” wherever occurring, insert instead “, stock and station salesman or trainee stock buying agent”.

## (14) Section 40 (1)—

After “station agent,”, insert “a stock buying agent,”.

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*Auctioneers and Agents (Amendment).*

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SCHEDULE 2—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO STOCK  
BUYING AGENTS AND TRAINEE STOCK BUYING AGENTS—  
*continued.*

(15) Section 42 (1) (b1)—

After section 42 (1) (b), insert :—

- (b1) as a stock buying agent unless he was the holder of a stock buyer's license or a stock and station agent's license, or employed a person so licensed, at the time of performing such service;

(16) Part III, Division 6—

After Division 5, insert :—

DIVISION 6.—*Stock Buying Agents.*

50J. (1) Any stock buying agent or trainee stock buying agent, as defined in section 51, 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 for—

Misrepresentation by stock buying agent or trainee stock buying agent.

- (a) the sale of live stock; or  
(b) the provision of agistment for live stock,

shall be guilty of an offence against this Act.

(2) Without limiting the generality of subsection (1) 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.

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*Auctioneers and Agents (Amendment).*

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SCHEDULE 2—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO STOCK  
BUYING AGENTS AND TRAINEE STOCK BUYING AGENTS—  
*continued.*

(17) Part IV, heading—

Omit “AND STOCK AND STATION SALESMEN”, insert instead “, STOCK AND STATION SALESMEN AND TRAINEE STOCK BUYING AGENTS”.

(18) (a) Section 51, definition of “Stock and station salesman”—

Omit “or a stock and station agent”, insert instead “, a stock and station agent, a stock buying agent or a trainee stock buying agent”.

(b) Section 51, definition of “Trainee stock buying agent”—

After the definition of “Trainee auctioneer”, insert :—

“Trainee stock buying agent” means a person who, for or on behalf of a stock buying agent—

- (a) induces or attempts to induce or negotiates with a view to inducing any person to sell live stock; or
- (b) arranges for the provision of agistment for live stock purchased by a stock buying agent,

but does not include a stock and station agent, a stock buying agent or a stock and station salesman.

(19) Part IV, Division 3, heading—

Omit “and Stock and Station Salesmen”, insert instead “, Stock and Station Salesmen and Trainee Stock Buying Agents”.

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*Auctioneers and Agents (Amendment).*

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SCHEDULE 2—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO STOCK  
BUYING AGENTS AND TRAINEE STOCK BUYING AGENTS—  
*continued.*

(20) (a) Section 56A (1)—

Omit “after the expiration of a period of three months after the commencement of this section,”.

(b) Section 56A (1) (b) (iii)—

Omit “salesman; or”, insert instead “salesman;”.

(c) Section 56A (1) (c) (iii)—

Omit “salesman.”, insert instead “salesman; or”.

(d) Section 56A (1) (d)—

After section 56A (1) (c), insert :—

(d) unless he is registered as a trainee stock buying agent in accordance with this Act—

(i) be or remain in the employment of any stock buying agent as a trainee stock buying agent;

(ii) represent, whether expressly or impliedly, that he is a trainee stock buying agent or that he is in the employment of a stock buying agent as a trainee stock buying agent; or

(iii) act as or carry out any of the functions of a trainee stock buying agent.

(e) Section 56A (2) (b)—

Omit “license; or”, insert instead “license;”.

(f) Section 56A (2) (c)—

Omit “license.”, insert instead “license; or”.

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*Auctioneers and Agents (Amendment).*

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SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO STOCK  
BUYING AGENTS AND TRAINEE STOCK BUYING AGENTS—  
*continued.*

## (g) Section 56A (2) (d)—

After section 56A (2) (c), insert :—

- (d) who is the holder of a certificate of registration as a trainee stock buying agent shall not act as or carry out the functions of a trainee stock buying agent unless he does so as an employee of the holder of a stock buyer's license, being the holder specified in that certificate of registration as his registered employer, or as an employee of a corporation that is so specified and that employs a person who is the holder of a stock buyer's license.

## (h) Section 56A (2A)—

After section 56A (2), insert :—

- (2A) A person who is registered as a stock and station salesman in accordance with this Act may, for or on behalf of a stock and station agent, act as or carry out any of the functions of a trainee stock buying agent.

## (21) Section 57—

Omit "or stock and station salesman" wherever occurring, insert instead ", stock and station salesman or trainee stock buying agent".

## (22) Section 60 (1)—

Omit "or stock and station salesman", insert instead ", stock and station salesman or trainee stock buying agent".

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*Auctioneers and Agents (Amendment).*

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SCHEDULE 2—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO STOCK  
BUYING AGENTS AND TRAINEE STOCK BUYING AGENTS—  
*continued.*

(23) Section 62—

Omit “or stock and station salesman”, insert instead “, stock and station salesman or trainee stock buying agent”.

(24) (a) Section 88 (a) (i)—

Omit “or a stock and station agent or”, insert instead “, a stock and station agent, a stock buying agent,”.

(b) Section 88 (c) (iii)—

Omit “or a stock and station agent or”, insert instead “a stock and station agent, a stock buying agent,”.

(25) Section 89—

Omit “or stock and station salesman”, insert instead “, stock and station salesman or trainee stock buying agent”.

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SCHEDULE 3.

Sec. 5.

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO  
STRATA MANAGING AGENTS.

(1) Long title—

Omit “and real estate agents” wherever occurring, insert instead “, real estate agents, business agents and strata managing agents”.

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*Auctioneers and Agents (Amendment).*

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SCHEDULE 3—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO  
STRATA MANAGING AGENTS—*continued.*

(2) (a) Section 2—

From the matter relating to Part III, omit “AND BUSINESS AGENTS”, insert instead “, BUSINESS AGENTS AND STRATA MANAGING AGENTS”.

(b) Section 2—

From the matter relating to Part III, omit “50J” where firstly occurring, insert instead “50L”.

(c) Section 2—

Before the matter relating to Part IV, insert :—

DIVISION 7.—*Strata Managing Agents*—ss. 50K,  
50L.

(3) (a) Section 3 (1), definition of “Strata managing agent”—

Before the definition of “Superintendent of licenses”, insert :—

“Strata managing agent” means a person (whether or not such person carries on any other business) who, for reward (whether monetary or otherwise), exercises or performs any function of a body corporate within the meaning of the Strata Titles Act, 1973, not being—

(a) a person who—

(i) is the proprietor of a lot to which the strata scheme for which the body corporate is constituted relates;

(ii) is the secretary or treasurer of the council of the body corporate; and

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*Auctioneers and Agents (Amendment).*

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SCHEDULE 3—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO  
STRATA MANAGING AGENTS—*continued.*

(iii) exercises or performs only functions of the body corporate required, by the by-laws in force in respect of the strata scheme for which the body corporate is constituted, to be exercised or performed by the secretary or treasurer of that council or of the body corporate; or

(b) a person who maintains or repairs any property for the maintenance or repair of which the body corporate is responsible.

(b) Section 3 (3) (b) (ia)—

Omit “for the collection of contributions levied pursuant to the Strata Titles Act, 1973, or”.

(c) Section 3 (3) (b)—

Omit “instalments, contributions or amounts”, insert instead “instalments or amounts”.

(d) Section 3 (3A)—

After section 3 (3), insert :—

(3A) For the purposes of this Act, a person conducts or carries on business as a strata managing agent if, at any time, he performs any function of a strata managing agent.

(4) Section 4 (2) (a), proviso—

Omit “or business agent”, insert instead “, business agent or strata managing agent”.



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*Auctioneers and Agents (Amendment).*

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SCHEDULE 3—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO  
STRATA MANAGING AGENTS—*continued.*

## (5) Part III, heading—

Omit “AND BUSINESS AGENTS”, insert instead “, BUSINESS AGENTS AND STRATA MANAGING AGENTS”.

## (6) (a) Section 20 (2B)—

After section 20 (2A), insert :—

(2B) Subject to this Act, no person shall (either by himself or as a member of a partnership) act as or carry on or advertise, notify or state that he acts as or carries on or is willing to act as or carry on the business of a strata managing agent unless he is the holder of a strata managing agent’s license.

## (b) Section 20 (3)—

Omit “or of a business agent”, insert instead “, a business agent or a strata managing agent”.

## (7) Section 21 (2B)–(2D)—

After section 21 (2A), insert :—

(2B) No person shall, by virtue of one strata managing agent’s license, keep more than one place for the conduct of his business as a strata managing agent.

(2C) Where a person (other than a corporation) conducts his business as a strata managing agent at more than one place of business he shall employ at each such place, other than the place at which he is himself in charge, a person holding a strata managing agent’s license who shall be in charge at that place.

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*Auctioneers and Agents (Amendment).*

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SCHEDULE 3—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO  
STRATA MANAGING AGENTS—*continued.*

(2D) Where a corporation conducts its business as a strata managing agent at more than one place of business it shall employ as the person in charge of each such place of business a person who is the holder of a strata managing agent's license.

(8) Section 22 (1) (e)—

After section 22 (1) (d), insert :—

(e) a strata managing agent's license.

(9) Section 23 (12)—

Omit "or a real estate agent", insert instead "a real estate agent, a business agent or a strata managing agent".

(10) Section 32—

Omit "or a business agent", insert instead "a business agent or a strata managing agent".

(11) (a) Section 35 (3) (b) (iv)—

Omit "license.", insert instead "license; or".

(b) Section 35 (3) (b) (v)—

After section 35 (3) (b) (iv), insert :—

(v) as a strata managing agent—unless he is the holder of a strata managing agent's license.

(12) Section 36D (6), definition of "carry on business"—

Omit "or a business agent", insert instead "a business agent or a strata managing agent".

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*Auctioneers and Agents (Amendment).*


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SCHEDULE 3—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO  
STRATA MANAGING AGENTS—*continued.*

## (13) Section 38B (1A)—

After section 38B (1), insert :—

(1A) Any account on which a strata managing agent operates for or on behalf of a body corporate shall, for the purposes of this section, be deemed to be a trust account.

## (14) Section 40 (1)—

Omit “or a business agent”, insert instead “, a business agent or a strata managing agent”.

## (15) (a) Section 42 (1) (d)—

Omit “service,”, insert instead “service; or”.

## (b) Section 42 (1) (e)—

After section 42 (1) (d), insert :—

(e) as a strata managing agent unless he was the holder of a strata managing agent’s license, or employed a person so licensed, at the time of performing such service,

## (16) Part III, Division 7—

Before Part IV, insert :—

DIVISION 7.—*Strata Managing Agents.*

50K. In this Division, “body corporate” has the meaning ascribed thereto by section 5 (1) of the Strata Titles Act, 1973.

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*Auctioneers and Agents (Amendment).*

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SCHEDULE 3—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO  
STRATA MANAGING AGENTS—*continued.*

50L. A strata managing agent who fails to keep, or to produce to the registrar, a member of the police force of or above the rank of sergeant or an officer of the council duly authorised in writing in that behalf by the council either generally or in any particular case upon demand by that person—

Production  
of certain  
instruments.

- (a) a copy of the instrument of his appointment as strata managing agent; or
- (b) a copy of any instrument delegating to him any powers, authorities, duties or functions of a body corporate,

is guilty of an offence against this Act.

(17) Section 51, definition of “Real estate salesman”—

From paragraph (b) (iii), omit “contributions levied pursuant to the Strata Titles Act, 1973, or”.

(18) (a) Section 88 (a) (i)—

Omit “or a business agent”, insert instead “, a business agent or a strata managing agent”.

(b) Section 88 (c) (iii)—

Omit “or a business agent”, insert instead “, a business agent or a strata managing agent”.

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*Auctioneers and Agents (Amendment).*


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Sec. 5.

## SCHEDULE 4.

 AMENDMENTS TO THE PRINCIPAL ACT RELATING TO AUCTIONS  
 AND AUCTIONEERS.

(1) Section 45—

Omit the section, insert instead :—

Collusive  
practices  
at  
auction  
sales.

45. (1) A person shall not, in relation to the sale by auction of any property, induce or attempt to induce any other person—

- (a) to abstain from bidding generally;
- (b) to abstain from bidding for any particular lot;
- (c) to bid to a certain limited extent only; or
- (d) to do any other act or thing which in any way might prevent or tend to prevent free and open competition,

by means of a promise, express or implied, that he will if he is the successful bidder for the property—

- (e) give that other person the right to elect to take over as purchaser through the auctioneer all or any of the property at the auction price; or
- (f) agree to decide by tossing or the drawing of lots or any other method who is to become the owner of all or any of the property.

(2) A person shall not, at a sale by auction of any property—

- (a) abstain or agree to abstain from bidding generally;
- (b) abstain or agree to abstain from bidding for any particular lot;

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*Auctioneers and Agents (Amendment).*

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SCHEDULE 4—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO AUCTIONS  
AND AUCTIONEERS—*continued.*

(c) bid or agree to bid to a certain limited extent only; or

(d) do or agree to do any other act or thing which in any way might prevent or tend to prevent free and open competition,

as the result of a promise, expressed or implied, given to him—

(e) that he shall have the right to elect to take over as purchaser through the auctioneer all or any of the property at the auction price; or

(f) that the ownership of all or any of the property shall be determined by tossing or the drawing of lots or any other method.

Penalty for a first offence: In the case of a corporation, \$1,000 or, in the case of an individual, \$500.

Penalty for a second or subsequent offence: In the case of a corporation, \$4,000 or, in the case of an individual, \$2,000.

(2) Section 47—

Omit the section, insert instead :—

47. An auctioneer shall not sell by auction any property unless notice is given, in the prescribed manner and in the prescribed terms (if any), of the material parts of sections 45 and 85c.

Penalty : \$400.

**Notice of material parts of ss. 45 and 85c to be given at auction sale.**

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*Auctioneers and Agents (Amendment).*


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 SCHEDULE 4—*continued.*


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 AMENDMENTS TO THE PRINCIPAL ACT RELATING TO AUCTIONS  
 AND AUCTIONEERS—*continued.*

## (3) Section 50—

After section 49, insert :—

**Live stock  
 auctions:  
 "comeback"  
 prohibited.**

50. (1) An auctioneer shall not, at an auction for the sale of live stock, sell by auction any lot for a price lower than any price bid in relation to the sale of that lot.

(2) For the purposes of subsection (1), a price is bid if—

(a) called by a prospective purchaser; or

(b) attributed to a prospective purchaser by the auctioneer as being the amount of a bid,

and not withdrawn by the prospective purchaser prior to the sale of that lot.

## (4) Sections 85A–85C—

After section 85, insert :—

**Live stock  
 auctions:  
 warranty  
 as to  
 certain  
 diseases.**

85A. Where any meat from any live stock sold by auction is, within 5 days after the sale, condemned, at any abattoir or slaughter house, under the authority of any Act as unfit for human consumption because of a disease prescribed for the purposes of this section (not being a disease to which the Cattle Compensation Act, 1951, applies or a special disease within the meaning of the Stock Diseases Act, 1923), the purchaser shall, if he was the owner of the meat at the time of condemnation, be entitled to damages from the vendor as for a breach of warranty that the meat of the live stock was not, immediately before the auction sale, affected by that disease.

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*Auctioneers and Agents (Amendment).*


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SCHEDULE 4—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO AUCTIONS  
AND AUCTIONEERS—*continued.*

85B. (1) Any provision in, or applying to, an agreement for the sale of property by auction and purporting to exclude or restrict (otherwise than in accordance with this or any other Act) the operation of the conditions (if any) prescribed as being applicable to or in respect of the sale by auction of that property or property of a class or description to which that property belongs is void.

Contracting out of prescribed terms and conditions of auction sales.

(2) A person who notifies or causes to be notified in the conditions of sale by auction of any property any provision purporting to exclude or restrict the conditions (if any) prescribed as being applicable to or in respect of the sale by auction of that property or property of a class or description to which that property belongs shall be guilty of an offence against this Act.

85C. The actual successful bidder at a sale by auction of any property shall, as soon as practicable after the auctioneer conducting the sale has indicated the actual successful bidder but not in any case later than the day of the sale, supply to the auctioneer or an employee of the auctioneer—

Auction sales: successful bidder to supply information to auctioneer, etc.

- (a) where he bid for the property on his own behalf—his name; or
- (b) where he bid for the property on behalf of another person—the name of the person on whose behalf he bid.

(5) Section 92 (2) (f1), (f2)—

After section 92 (2) (f), insert :—

- (f1) prescribe the conditions applicable to and in respect of the sale by auction of property;



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*Auctioneers and Agents (Amendment).*

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SCHEDULE 4—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO AUCTIONS  
AND AUCTIONEERS—*continued.*

- (f2) prescribe the manner in which the conditions of the sale by auction of property shall be notified;

Sec. 5.

SCHEDULE 5.

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO AGENCY  
AND SUBAGENCY AGREEMENTS.

(1) Section 39B—

After section 39A, insert :—

Subagency  
agreements,  
etc., to be  
in writing.

39B. (1) An agreement between licensees (not being licensees who are in partnership with one another or in the relationship of employer and employee with one another) to share any commission, fee, gain or reward paid or payable to a licensee in respect of any services performed by him as a licensee is unenforceable unless the agreement is in writing, is signed by the licensees and contains such terms (if any) as may be prescribed.

(2) Subsection (1) does not apply to a prescribed agreement, transaction, circumstance or person or an agreement, transaction, circumstance or person of a prescribed class or description.

(3) Any provision in, or applying to, an agreement referred to in subsection (1) and purporting to exclude or restrict the operation of the terms (if any) required to be contained in that agreement has no force or effect.

(4) A licensee who enters into an agreement that is, by virtue of subsection (1), unenforceable is guilty of an offence against this Act.

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*Auctioneers and Agents (Amendment).*

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SCHEDULE 5—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO AGENCY  
AND SUBAGENCY AGREEMENTS—*continued.*

(2) Section 42AA—

After section 42, insert :—

42AA. (1) A licensee shall not be entitled to—

(a) any remuneration by way of commission, fee, gain or reward for services performed by him in his capacity as licensee; or

(b) any sum or reimbursement for expenses or charges incurred in connection with services performed by him in his capacity as licensee,

from the person for whom or on whose behalf those services were performed unless—

(c) the agreement pursuant to which those services were performed is in writing and signed by or on behalf of—

(i) the licensee; and

(ii) that person;

(d) the agreement contains such terms (if any) as may be prescribed; and

(e) a copy of the agreement was served by the licensee on that person within 48 hours of the agreement being signed by or on behalf of that person.

Agency  
agreements  
to be in  
writing.

(2) Subsection (1) does not apply to a prescribed agreement, transaction, circumstance or person or an agreement, transaction, circumstance or person of a prescribed class or description.

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*Auctioneers and Agents (Amendment).*


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SCHEDULE 5—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO AGENCY  
AND SUBAGENCY AGREEMENTS—*continued.*

(3) Any provision in, or applying to, an agreement referred to in subsection (1) and purporting to exclude or restrict the operation of the terms (if any) required to be contained in that agreement has no force or effect.

(4) Where a licensee has recovered or retained from a person any remuneration or sum to which the licensee is not entitled by virtue of subsection (1), the person who would be entitled to the remuneration or sum so recovered or retained by the licensee had that remuneration or sum not been so recovered or retained may bring proceedings in any court of competent jurisdiction for the recovery of that remuneration or sum, or both, as a debt.

(5) A licensee who recovers or retains any remuneration or sum to which he is not entitled by virtue of subsection (1) is guilty of an offence against this Act.

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SCHEDULE 6.

## Sec. 5.

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE  
AUCTIONEERS AND AGENTS FIDELITY GUARANTEE FUND.

## (1) (a) Section 2—

From the matter relating to Part VI, omit "65" wherever occurring, insert instead "64A".

## (b) Section 2—

From the matter relating to Part VI, omit "FIDELITY GUARANTEE", insert instead "COMPENSATION".

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*Auctioneers and Agents (Amendment).*

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SCHEDULE 6—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE  
AUCTIONEERS AND AGENTS FIDELITY GUARANTEE FUND—  
*continued.*

(2) Section 3 (1), definition of “Fund”—

Omit “Fidelity Guarantee”, insert instead “Compensation”.

(3) Part VI, heading—

Omit “FIDELITY GUARANTEE”, insert instead “COM-  
PENSATION”.

(4) Section 64A—

Before section 65, insert :—

64A. (1) In this Part, except in so far as the context or  
subject-matter otherwise indicates or requires—

Interpreta-  
tion:  
Pt. VI.

“failure to account” means a failure by a licensee or  
real estate dealer to account for money or other  
valuable property entrusted to the licensee or  
real estate dealer, or to any employee or agent of  
the licensee or real estate dealer, in the course of  
his business as a licensee or real estate dealer,  
which arises from any act or omission of the  
licensee or real estate dealer or of his employee  
or agent, being an act or omission which  
occurred after the commencement of Schedule 6  
to the Auctioneers and Agents (Amendment)  
Act, 1980;

“pecuniary loss” includes—

- (a) all costs (including the legal costs and disbursements of making and proving a claim), charges and expenses which a claimant has suffered or incurred as a direct consequence of a failure to account; and

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*Auctioneers and Agents (Amendment).*


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 SCHEDULE 6—*continued.*


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 AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE  
 AUCTIONEERS AND AGENTS FIDELITY GUARANTEE FUND—  
*continued.*

- (b) all interest on money or other valuable property which a claimant would have received but for a failure to account for the money or other property, calculated to the date on which the council determines the claimant's claim to, or a judgment is recovered against the council in relation to the fund in respect of, that money or other property.

(2) For the purposes of the definition of "failure to account" in subsection (1), a reference in that definition to an employee of a licensee includes a reference to a person who has the apparent control or charge for the time being of the business of a licensee or real estate dealer or of any office at which that business is carried on.

(5) Section 65 (1)—

Omit "Fidelity Guarantee", insert instead "Compensation".

(6) Section 66—

Omit "Fidelity Guarantee", insert instead "Compensation".

(7) Section 74—

Omit the section, insert instead :—

Application  
of fund.

74. (1) Subject to this Part, the fund shall be held and applied for the purpose of compensating any person who may suffer or incur pecuniary loss by reason of a failure to account.

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*Auctioneers and Agents (Amendment).*

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SCHEDULE 6—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE  
AUCTIONEERS AND AGENTS FIDELITY GUARANTEE FUND—  
*continued.*

(2) A person who claims to have suffered or incurred pecuniary loss by reason of a failure to account may make a claim against the fund in respect of the failure to account, but only if the claim is made in writing to the council within a period of 6 months after the person has become aware of the failure to account or within a period of 2 years after the date of the failure to account, whichever period first expires.

(3) A licensee or real estate dealer shall not have a claim against the fund in respect of any pecuniary loss suffered or incurred in connection with the business conducted by him as a licensee or real estate dealer by reason of a failure to account.

(8) (a) Section 75 (1)—

Omit “commission of the theft or fraudulent misapplication”, insert instead “failure to account”.

(b) Section 75 (2)—

After “balance of the”, insert “pecuniary”.

(c) Section 75 (3)—

Omit “five hundred pounds”, insert instead “\$200,000 or, where another amount is prescribed, the prescribed amount”.

(d) Section 75 (4)–(10)—

Omit the subsections, insert instead :—

(4) Subject to subsection (5), the aggregate sum which may be applied in compensating all persons who suffer or incur pecuniary loss by reason of a failure to account, or of related failures to account, by a

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*Auctioneers and Agents (Amendment).*

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SCHEDULE 6—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE  
AUCTIONEERS AND AGENTS FIDELITY GUARANTEE FUND—  
*continued.*

licensee or a real estate dealer shall not exceed \$200,000 or, where some other amount is prescribed, the prescribed amount.

## (5) Where—

- (a) a sum has been applied in compensating persons who have suffered or incurred pecuniary loss by reason of a failure to account, or of related failures to account, by a licensee or real estate dealer;
- (b) other persons have made claims against the fund in respect of a subsequent failure to account, or of subsequent failures to account, by that licensee or real estate dealer; and
- (c) the council is satisfied that that subsequent failure to account was not, or, as the case may be, those subsequent failures to account were not, connected with the first-mentioned failure or related failures to account,

subsection (4) shall, if the council so determines, apply to and in respect of that subsequent failure or those subsequent failures as if no part of that sum had been so applied.

(6) A reference in subsections (4) and (5) (a) to a failure to account, or to related failures to account, by a licensee or real estate dealer includes a reference to theft or fraudulent misapplication committed after the commencement of this Part but before the commencement of Schedule 6 to the Auctioneers and Agents (Amendment) Act, 1980, by

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*Auctioneers and Agents (Amendment).*

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SCHEDULE 6—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE  
AUCTIONEERS AND AGENTS FIDELITY GUARANTEE FUND—  
*continued.*

that licensee or real estate dealer or by an employee of that licensee or real estate dealer in the course of his employment with that licensee or real estate dealer or by any person having the apparent control or charge of any office or business of that licensee or real estate dealer or of any money or other valuable property entrusted to that licensee or real estate dealer or to that employee or other person in the course of the business carried on by that licensee or real estate dealer.

(9) Section 77—

Omit “reimbursement”, insert instead “compensation”.

(10) Section 81 (3)—

Omit “reimbursement”, insert instead “compensation”.

(11) Section 86A (1) (c)—

Omit “Auctioneers and Agents Fidelity Guarantee Fund”, insert instead “fund”.

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SCHEDULE 7.

**Sec. 5.**

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO PENALTIES.

(1) Section 20 (4)—

Omit “ten dollars”, insert instead “\$100”.



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*Auctioneers and Agents (Amendment).*

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SCHEDULE 7—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO  
PENALTIES—*continued.*

## (2) Section 34 (5)—

Omit “ten dollars”, insert instead “\$100”.

## (3) Section 38A (6)—

Omit “ten dollars”, insert instead “\$100”.

## (4) (a) Section 38B (7)—

Omit “or imprisonment”.

## (b) Section 38B (8)—

Omit “\$10”, insert instead “\$100”.

## (5) Section 46 (1), (2)—

Omit the subsections, insert instead :—

(1) An auctioneer or an employee of an auctioneer shall not knowingly enter in any record or book kept or required to be kept by the auctioneer as the purchaser of any property sold by auction any name other than the name of the actual successful bidder for such property.

Penalty for a first offence : In the case of a corporation, \$1,000 or, in the case of an individual, \$500.

Penalty for a second or subsequent offence : In the case of a corporation, \$4,000 or, in the case of an individual, \$2,000.

(2) Any auctioneer who employs any person, being a person who enters, in any record or book required to be kept by the auctioneer, as the purchaser of any property sold by auction any name other than the name of the actual successful bidder for the property, contravenes this subsection unless the auctioneer proves to the satisfaction of the court that he did not know that a name other than the name of the actual successful bidder was so entered.

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*Auctioneers and Agents (Amendment).*

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SCHEDULE 7—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO  
PENALTIES—*continued.*

Penalty for a first offence : In the case of a corporation,  
\$1,000 or, in the case of an individual, \$500.

Penalty for a second or subsequent offence : In the case  
of a corporation, \$4,000 or, in the case of an individual,  
\$2,000.

(6) Section 51A (6)—

Omit “ten dollars”, insert instead “\$100”.

(7) Section 86 (1)—

Omit “one hundred dollars”, insert instead “\$1,000”.

(8) (a) Section 87 (2)—

Omit “eight hundred dollars”, insert instead “\$4,000”.

(b) Section 87 (2)—

Omit “four hundred dollars or to imprisonment for a  
period not exceeding two years or to both such penalty  
and imprisonment”, insert instead “\$2,000”.

(9) Section 92 (3)—

Omit “one hundred dollars for any breach thereof”, insert  
instead “\$4,000 for any breach thereof by a corporation  
and \$2,000 for any breach thereof by an individual”.

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*Auctioneers and Agents (Amendment).*


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Sec. 5.

## SCHEDULE 8.

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE  
CARRYING ON OF BUSINESS BY LICENSEES.

## (1) Section 2—

From the matter relating to Division 2 of Part III, omit “43”, insert instead “43A”.

## (2) Section 21 (4)—

After section 21 (3), insert :—

(4) No person employed as the person in charge of a place of business shall perform duties or services at that place on behalf of 2 or more licensees (whether corporations or individuals) not being individuals who are in partnership with one another.

## (3) Section 39A (2)—

Omit the subsection.

## (4) Section 43A—

After section 43, insert :—

**Business  
names.**

43A. (1) A licensee shall not, either alone or together with other persons, carry on business as a licensee under a name or advertise or hold out that he carries on business as a licensee under a name unless—

- (a) the name consists of the name of the licensee and the name of each other person, if any, with whom the licensee is carrying on, or advertising or holding out that he is carrying on, business as a licensee; or

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*Auctioneers and Agents (Amendment).*

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SCHEDULE 8—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE  
CARRYING ON OF BUSINESS BY LICENSEES—*continued.*

(b) the council has approved of the licensee carrying on, or advertising or holding out that he carries on, that business as a licensee under that name.

(2) For the purposes of subsection (1), the name of a licensee consists of—

(a) in the case of an individual—his full name, or his surname together with—

(i) his other name or names;

(ii) the initial or initials of his other name or names;

(iii) a combination of one or more of his other name or names and the initial or initials of his remaining other name or names; or

(iv) the other name or names by which he is commonly known or the initial or initials by which he is commonly known or any combination of one or more of those names or initials; or

(b) in the case of a corporation—the corporate name of the corporation.

(3) The council may refuse to approve of a licensee carrying on, or advertising or holding out that he carries on, business as a licensee under a name where—

(a) the name is the same as, or is a name nearly resembling, the name under which a person whose license has been cancelled under or in pursuance of this Act was carrying on business immediately before his license was cancelled;

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*Auctioneers and Agents (Amendment).*

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SCHEDULE 8—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE  
CARRYING ON OF BUSINESS BY LICENSEES—*continued.*

- (b) the name implies or is capable of being construed as implying that the licensee is the successor in the business, or in any way interested or concerned in continuing the business as a licensee, of a person whose license has been cancelled under or in pursuance of this Act; or
- (c) the name is, in the opinion of the council and in the circumstances of any particular case, undesirable as being contrary to the public interest.

(4) For the purposes of subsection (1), the council shall be deemed to have approved of a licensee carrying on, or advertising or holding out that he carries on, business as a licensee under a name where, immediately before the date of commencement of this section, the licensee carried on, or advertised or held out that he carried on, business as a licensee under that name.

(5) Nothing in subsection (4) applies to or in respect of a licensee who, immediately before the date of commencement of this section, carried on, or advertised or held out that he carried on, business as a licensee under a name of a kind referred to in subsection (3) (a) or (b) where the registrar had not, before that date, consented in writing to the licensee carrying on business as a licensee under that name.

(6) Nothing in this section affects the Business Names Act, 1962.

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*Auctioneers and Agents (Amendment).*

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SCHEDULE 9.

Sec. 5.

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT.

(1) Section 5 (3)—

Omit “the Schedule”, insert instead “Schedule 1”.

(2) Section 23 (2) (d)—

Omit the paragraph, insert instead :—

(d) be accompanied by—

- (i) the prescribed application fee;
- (ii) the prescribed administration fee; and
- (iii) the prescribed contribution.

(3) (a) Section 25 (1)—

Omit the subsection.

(b) Section 25 (3)—

Omit the subsection.

(c) Section 25 (4)—

Omit “The fees payable pursuant to subsection (3)”, insert instead “The administration fee required to accompany an application for a license or renewal of a license”.

(4) (a) Section 42—

Omit “done or”.

(b) Section 42—

Omit “doing or” wherever occurring.

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*Auctioneers and Agents (Amendment).*

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SCHEDULE 9—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL  
ACT—*continued.*

## (5) (a) Section 42A—

Omit “done or” wherever occurring.

## (b) Section 42A (5A), (5B)—

After section 42A (5), insert :—

(5A) A statement of claim or itemised account may be reviewed under this section regardless of whether the amount of the remuneration to which the review relates is more or less than the maximum amount (if any) of remuneration to which a licensee is entitled pursuant to this Act.

(5B) The council may find an amount of remuneration, being an amount that is less than the maximum amount (if any) of remuneration to which a licensee is entitled pursuant to this Act, to be a reasonable remuneration in the circumstances of any particular case.

## (6) (a) Section 57 (6) (a) and (b)—

Omit the paragraphs, insert instead :—

- (a) the prescribed application fee; and
- (b) the prescribed administration fee.

## (b) Section 57 (9) (c) (i) and (ii)—

Omit the subparagraphs, insert instead :—

- (i) the prescribed application fee; and
- (ii) the prescribed administration fee.

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*Auctioneers and Agents (Amendment).*

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SCHEDULE 9—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL  
ACT—*continued.*

(c) Section 57 (10)—

Omit “The administration fee prescribed by or under subsections (6) and (9)”, insert instead “The administration fee required to accompany an application for registration or renewal of a certificate of registration”.

(d) Section 57 (12)—

Omit “a fee of one dollar”, insert instead “the prescribed fee”.

(7) Section 59 (5)—

Omit “a fee of fifty cents”, insert instead “the prescribed fee”.

(8) Section 63D (4)—

Omit “(4) In”, insert instead “(3) In”.

(9) Section 68 (c)—

Omit the paragraph.

(10) Section 83c (3), (4)—

Omit the subsections.

(11) (a) Section 92 (2) (e1)—

After section 92 (2) (e), insert :—

(e1) fix the maximum amount of remuneration to which a licensee is entitled, by way of commission, fee, gain or reward, for services performed by him as a licensee;



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*Auctioneers and Agents (Amendment).*

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SCHEDULE 9—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL  
ACT—*continued.*

(b) Section 92 (2c)—

After section 92 (2B), insert :—

(2c) A provision of a regulation may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind; or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

(12) Schedule, heading—

Omit the heading, insert instead :—

SCHEDULE 1.

**Sec. 7.**

SCHEDULE 10.

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

**Interpre-**  
**tation.**

1. In this Schedule, "council" means the Council of Auctioneers and Agents constituted under the Principal Act.

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*Auctioneers and Agents (Amendment).*

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SCHEDULE 10—*continued.*

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.*

2. All money forming part of the Auctioneers and Agents Fidelity Guarantee Fund established under section 65 of the Principal Act (as in force immediately before the commencement of Schedule 6) shall, on and after that commencement, form part of the Auctioneers and Agents Compensation Fund established under that section (as in force after that commencement).

3. Where, immediately before the commencement of Schedule 6—
- (a) any claim has been made under Part VI of the Principal Act (as in force immediately before that commencement) but has not been finally determined by the council in accordance with that Part (as so in force); or
  - (b) any claim could have been made to the council under that Part (as so in force) but has not been so made,

that claim may be determined by, or, as the case may be, that claim may be made to, and received and determined by, the council as if it were a claim that could be made under that Part (as in force after that commencement), and that Part (as so in force), so far as applicable and with any necessary modifications, shall apply in respect of that claim accordingly.

Auctioneers  
and Agents  
Fidelity  
Guarantee  
Fund.

Claims  
against  
Auctioneers  
and Agents  
Fidelity  
Guarantee  
Fund.

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