

# Commercial Agents and Private Inquiry Agents Act 1963 No 4

[1963-4]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**
  - [Regulatory Reduction Act 1996 No 107](#) (not commenced)
  - [Justices Legislation Repeal and Amendment Act 2001 No 121](#) (not commenced — to commence on 7.7.2003)

### Authorisation

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New South Wales

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# Commercial Agents and Private Inquiry Agents Act 1963 No 4



New South Wales

An Act to provide for the licensing and control of commercial agents, private inquiry agents and their subagents; to repeal the *Private Inquiry Agents Act 1955*; and for purposes connected therewith.

## Part 1 Preliminary

### 1 Name of Act and commencement

- (1) This Act may be cited as the *Commercial Agents and Private Inquiry Agents Act 1963*.
- (2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

### 2 Repeal and savings

- (1) The *Private Inquiry Agents Act 1955* (in this section called the **repealed Act**) is hereby repealed.
- (2) Any licence granted under the repealed Act and in force immediately before the commencement of this Act, and any application for a licence made under the repealed Act and pending at such commencement, shall be deemed respectively to be a licence, or an application for a licence, of the same class, granted or made under this Act.
- (3) The register kept by the Commissioner of Police under section 8 of the repealed Act shall form part of the register required to be kept under section 15.
- (4) Any disqualification imposed on a holder of a licence, and any suspension of a licence, under the repealed Act shall be deemed respectively to be a disqualification imposed or a suspension under the corresponding provisions of this Act.
- (5) Any proceedings commenced under the repealed Act in respect of the granting, cancellation or suspension of a licence under that Act or in respect of the disqualification of the holder of a licence under that Act, and not completed at the commencement of this Act, may be continued and completed under the corresponding

provisions of this Act.

### 3 (Repealed)

### 4 Definitions

In this Act unless the context or subject matter otherwise indicates or requires:

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

- (a) serving any writ, summons or other legal process,
- (b) ascertaining the whereabouts of, or repossessing, any goods the subject of a lease, hire-purchase agreement or bill of sale or taking possession of any goods the subject of a mortgage within the meaning of the *Credit Act 1984*, or
- (c) collecting, or requesting or demanding payment of, debts,

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

**Commercial agent's licence** means a valid and unexpired commercial agent's licence or renewed licence issued under this Act.

**Licence** means a commercial agent's licence, private inquiry agent's licence, or subagent's licence, as the case may be.

**Licensed commercial agent** means the holder of a commercial agent's licence.

**Licensed private inquiry agent** means the holder of a private inquiry agent's licence.

**Licensed subagent** means the holder of a subagent's licence.

**Money** includes an instrument for the payment of money in any case where the instrument may be paid into a bank, building society or credit union.

**Money received for or on behalf of any person** includes money held for or on behalf of any person whether originally received for or on behalf of the person or not.

**Prescribed** means prescribed by this Act or the regulations.

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

- (a) obtaining and furnishing information as to the personal character or actions of any person or as to the character or nature of the business or occupation of any person, or
- (b) searching for missing persons,

(c), (d) (Repealed)

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

**Private inquiry agent's licence** means a valid and unexpired private inquiry agent's licence or renewed licence issued under this Act.

**Register** means the register mentioned in section 15.

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

**Regulations** means regulations made under this Act.

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

- (a) any person employed by a licensed commercial agent where such person would be a subagent as hereinbefore defined by reason only that the person receives in any office of such licensed commercial agent any money paid to such licensed commercial agent in respect of a debt being collected by such licensed commercial agent on behalf of any other person, or
- (b) any person in the direct employ of, or acting for or by arrangement with, a commercial agent who is required to hold a commercial agent's licence by reason only of the provisions of paragraph (b) of subsection (3) of section 5.

**Subagent's licence** means a valid and unexpired subagent's licence or renewed licence issued under this Act.

## 5 Act not applicable to certain persons

- (1) This Act shall not be construed as requiring any of the following persons to hold a licence under this Act, that is to say:
  - (a) any member of the Commonwealth Police Force or of the police force of this State or any other State or Territory of the Commonwealth or any part of Her Majesty's Dominions in the exercise of his or her functions as such member,
  - (b) any member of the Defence Forces of the Commonwealth in the exercise of his or her functions as such member,

- (c) any officer or employee of:
    - (i) the Crown in right of the Commonwealth or of this State or of any other State,
    - (ii) any responsible Minister of the Crown, whether a Minister of the Commonwealth or of this State or of any other State, or
    - (iii) any Government Department of the Commonwealth or of this State or of any other State,in the exercise of his or her functions as such officer or employee,
  - (d) any solicitor acting in the ordinary course of his or her profession as such or any solicitor's clerk acting in the ordinary course of his or her master solicitor's profession as such,
  - (e) any registered company auditor (within the meaning of the [Corporations Act 2001](#) of the Commonwealth) acting in the ordinary course of his or her profession or calling as such, or any employee of any such auditor acting in the ordinary course of his or her employer's profession or calling as such,
  - (f) any person bona fide carrying on the business of insurance or of an insurance adjustment agency or any employee or agent of such a person in the exercise of his or her functions as such employee or agent,
  - (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 or her functions as such employee or agent,
  - (h) the Public Trustee or any executor, administrator, trustee, liquidator, official receiver, master of the Supreme Court, trustee in bankruptcy of a bankrupt's estate, trustee under a composition or scheme of arrangement or under a deed of arrangement or under a deed of assignment, committee of the estate of a person who is mentally ill, or manager of the property of an incapable person, in the course of performing, exercising or carrying out his or her powers, functions and duties as such.
- (2) The fact that any person carries on the business of obtaining or furnishing information as to the financial rating or standing of any person shall not of itself require the person carrying on that business or any employee or agent of that person to hold a licence under this Act.
- (3)
- (a) Any person employed to exercise or carry on for one employer only (such employer not being a commercial agent or private inquiry agent) any of the functions of a commercial agent or private inquiry agent (such as functions being



exercised or carried on in the course of the business exercised or carried on by that employer) shall not, by reason only of being so employed, be required by virtue of this Act to be the holder of a licence.

- (b) Paragraph (a) shall not apply to any person so as to exempt the person from the provisions of this Act requiring the person to hold a commercial agent's licence where the person:
- (i) is employed by one employer only, and
  - (ii) on behalf of such employer and for or in consideration of any payment or other remuneration (whether monetary or otherwise), exercises or carries on, in the course of the business exercised or carried on by such employer, the function of ascertaining the whereabouts of, or repossessing, any goods the subject of a hire-purchase agreement and owned by such employer.
- (c)
- (i) The provisions of sections 17 and 28, and of Part 3, shall not apply to or in respect of any person who is required to hold a commercial agent's licence by reason only of the provisions of paragraph (b).
  - (ii) The fee payable by any such person for a commercial agent's licence shall be the same fee as is payable for a subagent's licence, and a commercial agent's licence issued to any such person shall remain in force only so long as the person is required to hold a commercial agent's licence by reason only of paragraph (b).
- (4) The Governor may by regulations:
- (a) exempt to the extent prescribed any class of persons from the operation of this Act, and
  - (b) specify what provisions, if any, of this Act and the regulations are, with such modifications as are necessary or seem desirable and are specified in the regulations, to apply to any class of persons so exempted.

## **Part 2 Commercial agents, private inquiry agents and subagents—generally**

### **6 Unlicensed persons prohibited from acting as commercial agents or private inquiry agents**

- (1) Subject to this Act, no person shall:
- (a) exercise or carry on,
  - (b) advertise, notify or state that the person exercises or carries on or is willing to

exercise or carry on, or

- (c) in any way hold himself, herself or itself out to the public as ready to exercise or carry on,

the business or any of the functions:

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

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

- (2) Any person who contravenes or fails to comply with any of the provisions of this section shall be liable, in the case of a corporation, to a penalty not exceeding 50 penalty units and, in the case of an individual, to a penalty not exceeding 5 penalty units or to imprisonment for a term not exceeding six months, or to both such penalty and imprisonment.

## **7 Licensees not to assume additional powers**

- (1) A licensed commercial agent or licensed private inquiry agent or licensed subagent shall not by virtue of being the holder of a licence have any power or authority which the person would not have if this Act had not been passed.
- (2) A licensed commercial agent, licensed private inquiry agent or licensed subagent who suggests or implies that any power or authority, other than the power or authority to exercise or carry on the business or any of the functions of a commercial agent or private inquiry agent, or to act as a subagent, as the case may be, is conferred upon the person by this Act or the regulations or by the relevant licence shall be guilty of an offence against this Act.

## **8 Unlicensed persons prohibited from acting as subagents**

- (1) Subject to this Act:

(a) no person:

- (i) shall be or act as a subagent for a licensed commercial agent, unless the person is the holder of a subagent's licence authorising the person to be such a subagent, or
- (ii) shall be or act as a subagent for a licensed private inquiry agent, unless the person is the holder of a subagent's licence authorising the person to be such

a subagent, and

(b) no person shall be or act as a subagent for any person who is required by this Act to be, but is not, the holder of a commercial agent's licence or a private inquiry agent's licence, as the case may be.

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

(3) Any person who contravenes or fails to comply with any of the provisions of this section shall be liable, in the case of a corporation, to a penalty not exceeding 50 penalty units and, in the case of an individual, to a penalty not exceeding 5 penalty units or to imprisonment for a term not exceeding six months, or to both such penalty and imprisonment.

#### **8A Licensee to be in charge at place of business**

(1) A corporation which conducts its business as a licensed commercial agent at one or more places of business shall employ, as the person in charge of that place of business or each such place of business, as the case may be, an individual who is a licensed commercial agent.

(2) A corporation which conducts its business as a licensed private inquiry agent at one or more places of business shall employ, as the person in charge of that place of business or each such place of business, as the case may be, an individual who is a licensed private inquiry agent.

(3) An individual may not, for the purposes of subsection (1) or (2), be employed as the person in charge of more than one place of business at the one time.

#### **9 Licences**

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

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

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

(2) A subagent's licence shall state whether the licensee is authorised by the licence to be a subagent of a licensed commercial agent or of a licensed private inquiry agent.

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

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

## **10 Application for licences**

- (1) Every person who desires to obtain a licence or renewal of a licence shall make application in or to the effect of the form prescribed and shall pay the prescribed application fee.
- (2) Where the applicant resides in New South Wales, the application shall be lodged with the clerk of the Local Court for the district within which the applicant proposes to exercise or carry on the business or functions of a commercial agent or private inquiry agent, or proposes to act as a subagent, as the case may be, or if there is more than one such court, with the clerk of the court within that district nearest to the place where the applicant proposes to exercise or carry on such business or functions, or proposes so to act, as the case may be.
- (3) Where the applicant resides out of New South Wales the application shall be lodged with the clerk of any Local Court.
- (4) Where the application is:
  - (a) for the renewal of a licence and is made not later than the date of expiry of the licence sought to be renewed, the clerk of the court shall, subject to section 35, issue the renewal of the licence as applied for and notify, in writing, the officer in charge of police at the police station nearest to that court that the clerk has done so,
  - (b) for the grant of a licence, not being an application for the renewal of a licence, to an applicant who was the holder of a licence of the same kind that expired less than three months before the date of the application, the clerk of the court shall, subject to section 35, issue the licence as applied for and notify, in writing, the officer in charge of police at the police station nearest to that court that the clerk has done so,
  - (c) for the grant of a licence, not being an application for the renewal of a licence, to an applicant who was not the holder of a licence as referred to in paragraph (b), 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 the officer has found any ground for objection to the granting of the application, include in the 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 the applicant is not of good fame or character,

(ii) that the applicant is not a fit and proper person to hold a licence,

(iii) that the applicant does not have the prescribed qualifications or experience,

(iv) that the applicant has not attained the age of 18 years,

(v) that, except in the case of an application for a subagent's licence, the applicant has not been continuously resident in Australia during the period of twelve months immediately preceding the making of the application,

(vi) that the applicant is disqualified under this Act from holding a licence, or

(vii) that, within the period of 10 years immediately preceding the date of the application, the applicant 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 licence is a person referred to in subparagraph (i), (ii), (iv), (v), (vi) or (vii) of paragraph (a), or

(ii) that the person to be in charge of the carrying out of its functions as the holder of a licence is a person referred to in subparagraph (iii) of paragraph (a).

(6A) A reference, in subsection (6) (b) (i) or (ii), to a person to be in charge of the carrying out of the functions of a corporation as the holder of a licence includes a reference to each individual employed by the corporation for the purposes of section 8A.

(7) (Repealed)

(8) Where in the case of an application for the grant of a licence:

(a) a report referred to in subsection (5) 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 35, issue the licence applied for.

- (9) Where a report referred to in subsection (5) containing a statement objecting to the granting of the application has been furnished to the clerk before the licence is issued, 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 licence, 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.
- (10) An application set down for hearing by a Local Court in accordance with paragraph (a) of subsection (9) shall be dealt with by that court only when it is constituted by a 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 (5) containing the statement objecting to the granting of the application, and
  - (c) if it is satisfied:
    - (i) that the ground on which the objection was made has been established, and
    - (ii) that, upon that ground, the application ought to be refused,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 licence be granted, the clerk of the court shall, subject to section 35, issue the licence.
- (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 (9) and the applicant has not consented to the hearing of the objection without such a notification being served.
- (14) Where satisfactory proof has been given of the loss or destruction of a licence and

that the fidelity bond referred to in subsection (2) of section 35 is still subsisting the clerk of the court from which the licence was issued may, upon payment of the prescribed fee, issue a duplicate licence.

(15) (Repealed)

## **11 Cancellation of licence**

- (1) Any licensed commercial agent or licensed private inquiry agent or licensed subagent may, on the complaint of a member of the police force of or above the rank of sergeant, be summoned before a Local Court constituted by a magistrate to show cause why the relevant licence should not be cancelled and why the person should not be disqualified either permanently or temporarily from holding a licence under this Act, whether as a commercial agent, a private inquiry agent, or a subagent:
  - (a) on the ground that the person improperly obtained the licence contrary to the provisions of this Act,
  - (b) on the ground that the person has been convicted of any offence against this Act or the regulations, or
  - (c) on any of the grounds on which objection may be taken to the grant of a licence under subsection (6) of section 10.
- (2) Upon being satisfied of the truth of any such ground and that, upon that ground, an order under this subsection is warranted, the court may order that such commercial agent's licence, private inquiry agent's licence, or subagent's licence, as the case may be, be delivered up in accordance with the provisions of this section and cancelled, and that such commercial agent, private inquiry agent, or subagent, as the case may be, be disqualified either permanently or for such period as the court specifies from holding a licence under this Act, whether as a commercial agent, private inquiry agent, or subagent.
- (3) Any commercial agent, private inquiry agent, or subagent who upon a demand made of that person by any member of the police force to deliver up the licence to such member in accordance with any order made under subsection (2) fails to do so shall be guilty of an offence against this Act.
- (4) The clerk of the court shall transmit to the Commissioner of Police:
  - (a) as soon as practicable after the making of any such order, a copy of the order, and
  - (b) upon the delivery up to the court of a licence pursuant to any such order, the licence so delivered up.

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

- (5) A Local Court before which a licensed commercial agent, a licensed private inquiry agent or a licensed subagent is convicted of an offence against this Act or the regulations shall have and may exercise the discretion conferred on a Local Court by subsection (2), as if the licensed commercial agent, private inquiry agent or subagent, as the case may be, before the court had been summoned under subsection (1).

**12 Power of court to order commercial agent, private inquiry agent or subagent to be summoned under section 11**

- (1) If a commercial agent, private inquiry agent, or subagent is convicted in any court of any indictable offence or if in any proceedings before a court in which any commercial agent, private inquiry agent, or subagent gives evidence the court is of opinion on the evidence before it, whether that evidence is by the commercial agent, private inquiry agent, or subagent, or any other person, that such commercial agent, private inquiry agent, or subagent, as the case may be, ought to be summoned before a Local Court under section 11 to show cause why the relevant licence should not be cancelled and why the person should not be disqualified either permanently or temporarily from holding a licence under this Act, whether as a commercial agent, a private inquiry agent, or a subagent, the court before which the person is so convicted or gives evidence, as the case may be, may order:

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

- (2) Any commercial agent, private inquiry agent, or subagent who fails to comply with an order made under paragraph (b) of subsection (1) shall be guilty of an offence against this Act.

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

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

The Commissioner of Police shall retain any licence so delivered up during the period for which it is suspended under subsection (1) or subsection (5).

- (4) The Commissioner of Police shall:

- (a) forthwith upon the receipt of any such copy cause the fact of such suspension to be noted in the register,
- (b) as soon as practicable thereafter, cause the commercial agent, private inquiry agent, or subagent, as the case may be, to be summoned before a Local Court under section 11 to show cause why the licence should not be cancelled and why



the person should not be disqualified either permanently or temporarily from holding a licence under this Act, whether as a commercial agent, a private inquiry agent, or a subagent.

- (5) Where the commercial agent, private inquiry agent, or subagent, as the case may be, is so summoned during the period for which the licence is suspended under subsection (1), the court before which the proceedings are taken may, if those proceedings are not concluded before the expiration of the period for which the licence was suspended under that subsection, order that the licence be further suspended until the conclusion of those proceedings.
- (6) During the period for which a commercial agent's licence, a private inquiry agent's licence, or a subagent's licence is suspended under this section, the commercial agent, private inquiry agent, or subagent, as the case may be, shall be deemed not to be the holder of a licence.
- (7) Notice of any order made under subsection (1) or subsection (5) shall be served upon the commercial agent, private inquiry agent, or subagent concerned, by the clerk of the court that made the order, personally or by forwarding a copy thereof by post to the person's registered address.

### **13 Matters for consideration by the court in respect of applications under section 10 and proceedings under section 11**

- (1) The court, in dealing with any application made under section 10 or in any proceedings under section 11, may receive and admit on production, as evidence, the judgment and findings of any court (whether civil or criminal), the verdict or findings of a jury, or a certificate of the conviction of any person in any case where such judgment, findings, verdict or certificate are, in the opinion of the court, relevant to the application or proceedings; and may receive and admit on production, as evidence, a transcript of the depositions or of any record, duly certified as correct, of the evidence of witnesses taken in any court in any case where, in the opinion of the court, such evidence is relevant to the application or proceedings.
- (2) (Repealed)

### **14 Appeal**

Where the court refuses any application under section 10, or makes an order under subsection (2) of section 11, the person making the application or the commercial agent, private inquiry agent or subagent, as the case may be, may appeal in accordance with rules of court to the District Court exercising jurisdiction in the district within which the Local Court that refused the application or made the order is situated.

Every such appeal shall be in the nature of a rehearing, and the decision of the District Court thereon shall be final and without appeal.

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

### **15 Register to be kept by Commissioner of Police**

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

### **16 Registered address**

- (1) Every licensed commercial agent, licensed private inquiry agent and licensed subagent, shall have a registered address within New South Wales to which all communications and notices may be addressed.
- (2) Notice of the registered address and of any change thereof shall be lodged by the commercial agent, private inquiry agent or subagent, as the case may be, with the court from which the licence issued within seven days after commencing to carry on business at such registered address or changed address, and the clerk of such court shall record such notice and advise the Commissioner of Police who shall enter the address or the change therein in the register kept under section 15.
- (3) A licensed commercial agent or licensed private inquiry agent who carries on business without complying with the requirements of this section shall be liable to a penalty not exceeding 20 penalty units.

### **17 As to displaying notice on places of business etc**

- (1) Every licensed commercial agent and every licensed private inquiry agent shall paint or affix and keep painted or affixed on his or her place or places of business (or in the case of a corporation on the principal office of the corporation in New South Wales and on the premises of every branch or agency of the corporation in New South Wales) and on the premises at his, her or its registered address, in a conspicuous position a notice showing in legible characters his, her or its name and description as a licensed commercial agent or licensed private inquiry agent, as the case may be, and (if such business is not carried on in his, her or its own name) the name under which he, she or it or the firm in which he, she or it is a partner is registered or deemed to be registered under any Act for the time being in force relating to the registration of firms or of business names.
- (2) Any person:
  - (a) who contravenes or fails to comply with any of the provisions of subsection (1), or

- (b) who, not being the holder of a commercial agent's licence or private inquiry agent's licence, keeps up or exhibits on or near the person's office, house or place of business or exhibits anywhere or allows to remain unobliterated any sign, writing, painting, or other mark, implying that such office, house or place of business is that of a person licensed to carry on the business of or to act as a commercial agent or private inquiry agent,

shall be guilty of an offence against this Act.

### **18 Savings as to licensed subagents**

Nothing in this Act shall be construed as requiring any licensed subagent so far as the subagent performs for any licensed commercial agent or licensed private inquiry agent any of the functions of a commercial agent or private inquiry agent, as the case may be, and is duly authorised thereunto by such commercial agent or private inquiry agent, to hold a commercial agent's licence or a private inquiry agent's licence, as the case may be, or as requiring any licensed commercial agent or licensed private inquiry agent to hold a subagent's licence under this Act.

### **19 Certain persons not to be employed by licensees**

- (1) A licensed commercial agent or licensed private inquiry agent shall not employ in any way whatever in connection with the agent's business:
  - (a) as a subagent, any person who is not a licensed subagent,
  - (b) any person who is for the time being disqualified under this Act from holding a commercial agent's licence, a private inquiry agent's licence, or a subagent's licence, or whose application for a commercial agent's licence, or a private inquiry agent's licence, or a subagent's licence has been refused, unless such an application has been subsequently granted.
- (2) Any licensed commercial agent or licensed private inquiry agent or any person aforesaid who contravenes or fails to comply with any of the provisions of this section shall be liable for every such offence to a penalty not exceeding 5 penalty units.
- (3) It is a sufficient defence to a prosecution for an offence under this section if the person charged proves that the person used all due diligence to ensure that the employee referred to in the charge was not a person whom the person charged was prohibited from employing by subsection (1).

### **20 Misrepresentation etc by commercial agent or private inquiry agent**

- (1) Any commercial agent or private inquiry agent who, by any statement, representation or promise that is false, misleading or deceptive (whether to the agent's knowledge or not), induces any person to enter into an agreement or contract in connection with the agent's business as a commercial agent or private inquiry agent is guilty of an offence

against this Act.

- (1A) Any subagent who, by any statement, representation or promise that is false, misleading or deceptive (whether to the subagent's knowledge or not), induces any person to enter into an agreement or contract in connection with the business of the commercial agent or private inquiry agent for whom the subagent carries on any of the functions of a commercial agent or private inquiry agent is guilty of an offence against this Act.
- (2) Without limiting the generality of subsection (1) or (1A), 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 (2), that the person had reasonable grounds for believing and did in fact believe that the statement, representation or promise was true, or
  - (b) in relation to a statement, representation or promise referred to in subsection (2) that the person 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 the person acted innocently.

## **21 Advertisements**

Where any commercial agent or private inquiry agent publishes or causes to be published (whether in a newspaper or otherwise) any advertisement relating to or in connection with the agent's business as such without specifying therein:

- (a) the agent's name as a licensed commercial agent or licensed private inquiry agent, as the case may be, or (if the business is not carried on in the agent's own name) the name under which the agent or the firm in which the agent is a partner is registered or deemed to be registered under any Act for the time being in force relating to the registration of firms or business names, and
- (b) the agent's place of business,

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

## **22 Commercial agents to report repossessions**

Where a commercial agent repossesses any motor vehicle the subject of a lease, hire-purchase agreement or bill of sale or takes possession of any motor vehicle the subject of a mortgage within the meaning of the *Credit Act 1984* the agent shall within twenty-four hours after so doing deliver or send by post particulars in writing of the motor vehicle, including where applicable particulars of the registered number of the motor vehicle, to the officer in charge of police at any police station.

## **23 Production of licence**

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

## **24 Surrender of licence**

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

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

## **25 Licensee not to lend licence**

Any licensed commercial agent, licensed private inquiry agent, or licensed subagent who lets out, hires or lends the agent's or subagent's licence to any other person or permits any other person to use the licence, or who permits any other person to hold himself, herself or itself out as the holder of the licence issued to that commercial agent, private inquiry agent, or subagent, as the case may be, shall be guilty of an offence against this Act, and on conviction for such offence, and in addition to any penalty therefor, the licence shall thereupon become absolutely void and shall be delivered up to the court and cancelled.

## **26 Unlicensed persons not to recover fees**

Subject to this Act no person shall be entitled to bring any proceeding in any court to recover any commission, fee, gain or reward for any service done or performed by the person as a commercial agent, private inquiry agent, or subagent, unless the person was the holder of a commercial agent's licence, private inquiry agent's licence, or subagent's licence, as the case may be, at the time of doing or performing such service.

This section shall not apply to any service done or performed by a commercial agent,

private inquiry agent or subagent where such service was done or performed before the expiration of two months after the commencement of this Act and, in the case of any service done or performed by:

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

## **27 Furnishing incorrect information in applications etc**

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

## **28 Excessive charges may be reduced**

- (1) In any proceedings taken by a commercial agent or private inquiry agent for the recovery of money under an agreement for services rendered in the agent's capacity as such, or in any proceedings instituted under subsection (4), if it appears to the court that the amount charged directly or indirectly under the agreement by the commercial agent or private inquiry agent, as the case may be, in respect of the services rendered by the agent is excessive, the court may reopen the transaction.
- (2) The court reopening any transaction under this section may, notwithstanding any statement or settlement of accounts, reopen any account already taken between the parties and relieve the client of the commercial agent or private inquiry agent, as the case may be (or any guarantor of that client), of any liability in excess of such sum as the court adjudges to be fairly and reasonably payable for the services rendered by the commercial agent or private inquiry agent (including any expenses reasonably and necessarily incurred) and may set aside, either wholly or in part, or revise, or alter any agreement made or security given in connection with the transaction and may give a verdict or judgment for any party for such amount as, having regard to the relief, if any, that the court thinks fit to grant, is justly due to that party.
- (3) Without prejudice to the generality of the court's powers under subsection (2), the court in exercising such powers shall have regard to any services performed or continuing services to be performed under any agreement or contract between the licensed commercial agent, or licensed private inquiry agent, as the case may be, and the agent's client, and to any series of services required or undertaken, by or under any such agreement or contract, to be done or performed by the licensed commercial agent or licensed private inquiry agent, as the case may be.
- (4) Proceedings may be instituted under this subsection by the client of a commercial

agent or private inquiry agent for the purpose of obtaining relief under this section. In any such proceedings, the court shall have and may exercise all or any of the powers conferred by subsections (1) and (2).

## **29 Prohibition of charge for expenses of debt collecting etc**

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

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

- (2) If any money or money's worth is directly or indirectly paid or allowed to or received by any person in contravention of subsection (1), the amount or the value thereof to the extent of such contravention, and notwithstanding any contract to the contrary, may be recovered by the debtor from such person or if such person is the creditor or a partner, employer, employee, principal or agent of the creditor, or is in any way acting in collusion with the creditor, may be set off against the amount of the debt (and that amount shall be deemed to be reduced accordingly) or may be recovered by the debtor from such person or from the creditor.

## **30 Jurisdiction of Local Courts**

- (1) No proceedings relating to an agreement between a commercial agent or private inquiry agent and any other person for the rendering of services by the commercial agent or private inquiry agent, as the case may be, in the agent's capacity as such, shall be brought or taken in a Local Court other than a Local Court constituted by a magistrate sitting alone.
- (2) A Local Court constituted by a magistrate sitting alone shall, in addition to the jurisdiction that might be exercised by it if this section had not been enacted, have jurisdiction in respect of proceedings relating to an agreement between a commercial agent or a private inquiry agent and any other person for the rendering of services by the commercial agent or private inquiry agent, as the case may be, in the agent's capacity as such, in all cases in which the amount charged directly or indirectly under the agreement by the commercial agent or private inquiry agent in respect of the

services rendered by the agent, does not exceed five hundred dollars.

- (3) The costs of any proceedings relating to any such agreement as is referred to in subsection (1) that are brought or taken in a Local Court shall be in the discretion of the court, and the court, when allowing any costs to any party in those proceedings, may assess the amount thereof and make such order for the payment thereof as the court thinks fit.

Any order made by a Local Court under the authority of this Act for the payment of money or of costs shall operate as a judgment debt under the *Local Courts (Civil Claims) Act 1970* and be enforceable as such under the provisions of that Act.

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

## **Part 3 Financial transactions of licensees**

### **Division 1 Accounts of licensed commercial agents**

#### **31 Payment into bank, building society or credit union**

- (1) All money received for or on behalf of any person by any licensed commercial agent shall be held by such commercial agent exclusively for such person, to be paid to such person, or to be disbursed as such person directs, and until so paid or disbursed the money shall be paid into a bank, building society or credit union in New South Wales to a trust account, whether general or separate, in the name of such commercial agent and retained therein.

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

- (1A) A licensed commercial agent shall keep accounts of all money received which is required to be dealt with in accordance with subsection (1) and the accounts shall be kept in such a manner as to disclose the true position in regard thereto and to enable the accounts to be conveniently and properly audited.
- (2) The money shall not be available for the payment of the debts of the commercial agent to any other creditor of the commercial agent or be liable to be attached or taken in execution under the order or process of any court at the instance of any such other creditor.
- (3) Nothing in this section shall be construed to take away or affect any just claim or lien which any licensee may have against or upon any of the money.
- (4) Any commercial agent who neglects or fails to comply with any of the provisions of this section shall be liable, in the case of a corporation, to a penalty not exceeding 50



penalty units and, in the case of an individual, to a penalty not exceeding 10 penalty units or to imprisonment for a term not exceeding one year, or both.

- (5) Where any commercial agent neglects or fails to comply with any of the provisions of this section by reason of the agent's neglect or failure to pay any money into a bank, building society or credit union in New South Wales to a trust account or to retain any such money therein, the offence shall continue until the said money is paid to the person for or on whose behalf it was received, or disbursed in such manner as may be directed by such person.

### **32 Relief to bankers**

- (1) Subject to the provisions of this section no bank, building society or credit union shall, in connection with any transaction on any account of any commercial agent kept with it or with any other bank, building society or credit union, incur any liability or be under any obligation to make any enquiry or be deemed to have any knowledge of any right of any person to any money paid or credited to any such account which it would not incur or be under or be deemed to have in the case of an account kept by a person entitled absolutely to all the money paid or credited to it:

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

- (2) Notwithstanding anything in subsection (1) a bank, building society or credit union at which a commercial agent keeps an account for clients' money shall not, in respect of any liability of the commercial agent to the bank, building society or credit union, not being a liability in connection with that account, have or obtain any recourse or right whether by way of set-off, counter-claim, charge or otherwise, against money standing to the credit of that account:

Provided that nothing in this subsection shall deprive a bank, building society or credit union of any right existing at the time of the commencement of this Act.

### **32A Audit of licensees' books, records etc**

- (1) In this section, **prescribed day** means 30 June or, in respect of any particular person to whom this section applies, such other day as the Commissioner of Police may, on the application of that person, fix by order in writing addressed to that person.
- (2) This section applies to:
- (a) a licensed commercial agent,
  - (b) a person who has been, but after the commencement of this section ceases to be, a licensed commercial agent, and
  - (c) the personal representative of a licensed commercial agent who has died after the commencement of this section.

- (3) Within 3 months after the prescribed day in every year applicable to the person, a person to whom this section applies shall:
  - (a) cause the books, papers, accounts and other documents relating to any money held during the year ended on that day in a trust account kept by the person in accordance with section 31 to be audited by a person qualified in accordance with the regulations, and
  - (b) after the receipt from the auditor of a report, containing the prescribed certificate, of the result of the audit, lodge a copy of the report with the Commissioner of Police.
- (4) Subsection (3) ceases to apply to a person referred to in subsection (2) (b) or (c):
  - (a) where, at the date on which the person ceased to be a licensed commercial agent or became the personal representative of a licensed commercial agent, the person did not hold any money in any trust account kept by the person in accordance with section 31—upon the expiration of a period of 3 months after the prescribed day applicable to the person that next follows the day on which the person ceased to be a licensed commercial agent or became the personal representative, as the case may be, or
  - (b) where, at the date on which the person ceased to be a licensed commercial agent or became the personal representative of a licensed commercial agent the person held money in any trust account kept by the person in accordance with section 31—upon the expiration of a period of 3 months after the prescribed day applicable to the person that next follows the day on which the person has disbursed the last of the money in any such trust account.
- (5) A person to whom this section applies shall obtain from the auditor making an audit for the purposes of this section a copy of the report (including the prescribed certificate) of the result of the audit signed by the auditor and preserve it for a period of at least 3 years after the date on which the report was made.
- (6) A licensed commercial agent shall not be required under this section to cause any books, papers, accounts or other documents to be audited in respect of any period in relation to which those books, papers, accounts and other documents have already been audited for the purposes of this section.
- (7) A licensed commercial agent who in the course of any year ending on the prescribed day neither received nor held any money for or on behalf of any other person shall be deemed to have complied with this section if, within the period of 3 months after that day, the licensed commercial agent makes and lodges with the Commissioner of Police a statutory declaration to that effect.
- (8) Where, in relation to the books, papers, accounts and other documents kept by a

partnership of licensed commercial agents, the provisions of this section are complied with by any one of the licensed commercial agents, those provisions shall be deemed to have been complied with by all of them.

## **Division 2 Records of transactions by licensees**

### **33 Records to be kept**

- (1) Every licensed commercial agent or licensed private inquiry agent shall in a legible manner make:
  - (a) a written record containing full particulars of all transactions by or with the agent as a licensed commercial agent or licensed private inquiry agent, as the case may be,
  - (b) a written record containing full particulars as to the name and the work or services of and the remuneration by way of salary, wages or commission or otherwise paid in each month to every person employed (whether as an employee or a subagent or otherwise) by the agent in connection with the agent's business as a licensed commercial agent or licensed private inquiry agent, as the case may be, and
  - (c) such other written records containing such particulars as may be prescribed in respect of licensed commercial agents or licensed private inquiry agents, as the case may be.

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

- (2) Every such written record shall, for a period of three years after the date on which it was made, be preserved:
  - (a) where such agent continues to hold a licence as such under this Act or where upon ceasing to hold a licence as such under this Act or ceasing to have as such agent's registered address the place where such written record was kept, such agent does not authorise some other person to have the possession, custody or control of such written record—by such agent, or
  - (b) where any person obtains the possession, custody or control of such written record either by transfer of the business of such agent or otherwise—by such person.
- (3) Every entry in any such written record kept at the registered address of a licensed commercial agent or licensed private inquiry agent shall be deemed, unless the contrary is proved, to have been made by or with the authority of the licensed commercial agent or licensed private inquiry agent, as the case may be.

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

### **33A Statement of account**

- (1) A licensed commercial agent shall at the prescribed times furnish to a person on whose behalf any money is held by the commercial agent in a trust account kept in accordance with section 31 a statement of the balance of the money standing to the credit of that person in that account.
- (2) A licensed commercial agent shall, within 14 days of a request being made in the prescribed manner by a person directly concerned in a transaction by or with the commercial agent in the course of the commercial agent's business as such, render in the prescribed manner to the person making the request an itemised account of the transaction.

### **34 Inspection of records**

- (1) All books of account or other written records relating to the trust account on which any licensed commercial agent operates in accordance with the provisions of section 31, and the written records required to be made and kept in accordance with the provisions of section 33, shall at all reasonable times be open to inspection by any member of the police force of or above the rank of sergeant or any person duly authorised in writing in that behalf by the Minister either generally or in any particular case.
- (2) Any such member of the police force and any person authorised as aforesaid and, in the case of any such person, upon production of the person's 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 the agent's office or place of business:
- (i) to produce to him or her for inspection all books, papers, accounts or other documents relating to the trust account of the commercial agent, and
- (ii) to furnish all authorities and 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 the agent's office or place of business to produce to him or her for inspection:

- (i) all written records made and kept by that commercial agent or private inquiry agent in accordance with the provisions of section 33, 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 the agent's business as such an agent, that are in the possession, custody or control of that commercial agent or private inquiry agent.
- (3) Any such member of the police force and any person authorised as aforesaid may make notes, copies or extracts of or from any such books, papers, accounts, written records, contracts, agreements or other documents referred to in subsection (2).
- (4) The provisions of subsections (1), (2) and (3) shall apply, mutatis mutandis, to and in respect of any written record preserved in accordance with the provisions of subsection (2) of section 33 by a person who has ceased to hold a licence as a commercial agent or private inquiry agent under this Act or by any person (other than the commercial agent or private inquiry agent who made such written record) who has the possession, custody or control of such written record as required by that subsection.
- (5) Any person who:
- (a) wilfully delays or obstructs any such member or any person authorised as aforesaid in the exercise of his or her powers, authorities, duties and functions under this section,
  - (b) on demand refuses or fails to produce any books, papers, accounts, written records, contracts, agreements or other documents required for inspection under this section in the person's possession, custody, or control,
  - (c) on demand refuses or fails to furnish any authorities and orders as may reasonably be required of the person under this section, or
  - (d) on demand refuses or fails to answer truthfully any question relating to any books, papers, accounts, written records, contracts, agreements or other documents required for inspection under this section,

shall be guilty of an offence against this Act.

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

### **Division 3 Other provisions relating to commercial agents**

### **35 Fidelity bond**

- (1) A commercial agent's licence or renewal thereof shall not be issued by a clerk of a court unless the fidelity bond referred to in subsection (2) has been lodged and is still subsisting.
- (2) The fidelity bond shall be:
  - (a) a bond in the prescribed form in the sum of two thousand dollars, or such other sum as may be prescribed, from some insurance company or person approved for the purpose by the Minister, conditioned for duly accounting to the persons entitled thereto for any trust funds received by the holder of the commercial agent's licence in the course of the agent's business as a commercial agent, or
  - (b) where security approved by the Minister for the payment of an amount equal to the amount for which a bond may be required under paragraph (a) has been given to the Minister, a bond similarly conditioned from the commercial agent.

### **36 Termination of fidelity bond**

- (1)
  - (a) Any fidelity bond given pursuant to this Act may be terminated by the insurance company or surety, as the case may be, by notice in writing served personally or by post upon the licensed commercial agent concerned, the Commissioner of Police and the clerk of the court by which the licence was issued.
  - (b) Such notice shall specify the date (not being earlier than thirty days after the date of the service of the notice) upon which the bond is to be terminated.
  - (c) The obligation of the insurance company or surety, as the case may be, shall as from the date so specified, be determined so far as it relates to transactions by the commercial agent after such specified date, other than the duly accounting to the persons entitled thereto for any trust funds received by the commercial agent before such specified date.
- (2) If the bond given in respect of any commercial agent is terminated during the period for which the licence held by the commercial agent is in force, then, as from the date of such termination, and until a further bond has been lodged and is still subsisting, the licence held by such commercial agent shall be suspended and such commercial agent shall be deemed not to be the holder of a licence as such.

### **37 Inspection of fidelity bond**

- (1) Any person for whom any licensed commercial agent or any of the agent's subagents or any of the agent's employees employed by the agent in the agent's capacity as a commercial agent is acting or has acted may, on payment of a fee of twenty-five cents to the clerk of the Local Court with whom a fidelity bond in respect of such commercial

agent was lodged or by whom it is being kept, inspect the fidelity bond lodged by or on behalf of such commercial agent pursuant to section 35, and may take a copy thereof.

(2), (3) (Repealed)

### **37A Action on bond**

- (1) A person who has suffered loss by reason of any act or omission of a licensed commercial agent, being an act or omission of a kind to which the condition of a fidelity bond subsisting in relation to the commercial agent applies, may apply in the prescribed manner for action to be taken by the Minister under this section.
- (2) The Minister, if satisfied as to the merits of an application under subsection (1), may on behalf of the Crown sue for and recover the amount secured by the relevant fidelity bond.
- (3) The Minister, upon receipt of an application under subsection (1):
  - (a) where it seems likely to the Minister that no further applications will be made under that subsection in respect of the same bond, shall assess and determine the applicant's claim and may, out of the amount recovered under subsection (2), compensate the applicant for the whole of the loss alleged in the application or to such extent as to the Minister seems just, or
  - (b) where it seems likely to the Minister that more applications might be made under that subsection in respect of the same bond, may cause to be published, in such manner as the Minister considers appropriate, a notice under subsection (4).
- (4) A notice under this subsection shall invite persons having claims in respect of any loss covered by the bond to forward those claims, in such manner and form and within such time as may be specified in the notice, to the Minister.
- (5) The Minister shall assess and determine the claims received in respect of losses covered by the bond and may direct the payment and distribution, if necessary rateably, of the money recovered in respect thereof to the several persons appearing to the Minister to be entitled thereto in respect of the claims.
- (6) No claim which was received after the time limited by a notice under subsection (4) or which relates to a breach of a condition of a bond which occurred more than 2 years before the claim was received shall be proceeded with unless the Minister, being satisfied that there is sufficient cause for so doing, allows the claim.

### **38 Money received by subagents**

- (1) It shall not be necessary for any licensed subagent to pay money received by the subagent into a bank, building society or credit union to a trust account pursuant to this Act; but it shall be the duty of every subagent acting for a commercial agent to

pay forthwith to such commercial agent all money received from or on behalf of any person by the subagent in respect of any transaction in the capacity of subagent for such commercial agent.

- (2) Any subagent who commits any contravention of or fails to comply with any of the provisions of this section shall be guilty of an offence and shall for every such offence be liable to a penalty not exceeding 5 penalty units or to imprisonment for a period not exceeding six months, or to both such penalty and imprisonment.

### **39 Liability of principal for certain acts etc of subagents**

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

## **Division 4 Receivers**

### **39A Definitions**

In this Division and in Schedule 1:

**Court** means the Supreme Court of New South Wales.

**defalcation** means any larceny, embezzlement, omitting to account, fraudulent misappropriation or other act punishable by imprisonment, of or in relation to any money or other property.

**licensee** means any person who is or has been a licensee and includes, where the context so admits or requires, the personal representative of a deceased licensee.

**property**, in relation to a licensee, means:

- (a) money or other property which was in the course of or in connection with the business of the licensee, or the business of any firm of licensees of which the licensee is or has been a member, entrusted to or received on behalf of any other person by the licensee or firm or by any of the licensee's or firm's servants or agents or by any licensee with whom the licensee or firm shares remuneration and which has not been paid or delivered by the licensee or firm to the person entitled thereto or as that person has directed or otherwise according to law,
- (b) money or other property which would, were it not for the appointment of a receiver as provided in this Division, be receivable on behalf of any other person by the licensee or firm of licensees after the appointment of that receiver,
- (c) money received by the receiver during a receivership under this Division being interest, dividends or other income arising from any property held by the receiver in accordance with the provisions of Schedule 1, and



- (d) ledgers, books of account, vouchers, records, deeds, files and other documents and writings, or any mechanical, electronic or other device used for the storage of information, relating to any property as hereinbefore defined or to any accounts or transactions concerning any business carried on by the licensee.

### **39B Power of Court to appoint receiver in certain cases**

- (1) Where the Court, on application made by a creditor of the licensee or by the Minister, is satisfied:
  - (a) that any defalcation has been or may have been committed in relation to any trust account or trust fund of any licensee, or
  - (b) that through:
    - (i) the mental or physical infirmity of a licensee,
    - (ii) the death or insolvency or the sequestration or assignment for the benefit of creditors of the estate of a licensee,
    - (iii) the abandonment of a licensee's business,
    - (iv) a licensee having been disqualified from holding a licence, or
    - (v) the licence of a licensee having been cancelled or a licensee's application for a renewal of a licence having been refused,any person is unable to obtain payment or delivery of money or other property held for or on behalf of that person by the licensee or by any firm of licensees of which the licensee is or was a partner,

the Court may appoint a receiver of all or any property which is held by the licensee or the firm of licensees of which the licensee is or was a partner or by some other person on the licensee's or firm's behalf or is recoverable by the licensee or firm or, where the licensee is dead, which by reason of the licensee's death is or may be recoverable by the licensee's personal representative.

- (2) Schedule 1 has effect in respect of the appointment, powers and duties of, and other matters concerning, receivers appointed under this Division.

## **Part 4 Miscellaneous**

### **39C Harassment**

- (1) A commercial agent, private inquiry agent or subagent shall not, when exercising or carrying on or attempting to exercise or carry on the functions of a commercial agent, private inquiry agent or subagent:
  - (a) unduly harass any person by leaving, in or outside any premises, any notice,

vehicle or other object on which there is writing stating:

- (i) the name of the commercial agent, private inquiry agent or subagent or that he or she is a commercial agent, private inquiry agent or subagent,
- (ii) the business of a commercial agent or private inquiry 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 commercial agent, private inquiry agent or subagent, or some person on behalf of the commercial agent, private inquiry agent or subagent, was visiting the occupier of the premises for the purpose of carrying out any of the functions of a commercial agent or private inquiry agent,

- (b) send or deliver to, or leave 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 premises occupied by the person a notice, vehicle or object, as referred to in paragraph (a),
- (c) call at any premises or communicate (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,
- (d) disclose to a person's employer, or cause to be disclosed to a person's employer, the fact that the person is a debtor, except where that fact is disclosed, or caused to be disclosed, by a commercial agent or a subagent of a commercial agent:
  - (i) with the person's consent, or
  - (ii) by or in connection with the execution of any legal process for enforcement of a judgment against the person, being process the execution of which directly involves the employer, or
- (e) threaten a person with disclosure, to the person's employer, of the fact that the person is a debtor, except where the threat:
  - (i) is made by a commercial agent or a subagent of a commercial agent, and
  - (ii) is a threat of disclosure by or in connection with the execution of any legal process mentioned in paragraph (d) (ii).

(2) Any person who contravenes the provisions of subsection (1) shall be liable, in the case of a corporation, to a penalty not exceeding 50 penalty units and, in the case of an individual, to a penalty not exceeding 10 penalty units or to imprisonment for a term not exceeding 3 months, or both.

(3) In any proceedings for an offence arising by virtue of a disclosure in contravention of

subsection (1) (d), the absence of any consent mentioned in subsection (1) (d) (i) shall be presumed until the court is satisfied to the contrary.

#### **40 Offences against Act**

- (1) Every person who contravenes or fails to comply with any of the provisions of this Act shall be guilty of an offence against this Act.
- (2) Where no penalty is specially provided for any offence against this Act, any person guilty of such offence shall be liable to a penalty not exceeding 20 penalty units.
- (3) All proceedings for offences against this Act or the regulations shall be disposed of summarily before a Local Court constituted by a magistrate sitting alone.
- (4) Notwithstanding any provision of the *Justices Act 1902*, proceedings for an offence arising under section 19 (2), 20 (1), 27, 31 (4), 33 (4) or 38 (2) may, with the approval of the Minister, be commenced not later than 3 years after the date alleged to be the date on which the offence was committed.

#### **41 Provisions relating to offences by bodies corporate**

- (1) Where a body corporate is convicted of an offence against this Act or the regulations, every person who at the time of the commission of the offence was a director or officer of the body corporate shall be deemed to have committed the like offence and be liable to the pecuniary penalty or imprisonment or both provided by this Act or the regulations for such offence accordingly, unless the person proves that the offence was committed without the person's knowledge, or that the person used all due diligence to prevent the commission of the offence.
- (2) Where in any proceedings against a corporation which is the holder of a licence under this Act for any offence relating to its business as such holder it is necessary to prove that the offence was committed with the knowledge or intent of the offender, there shall be imputed to the corporation any knowledge or intent of any director thereof or of any officer thereof responsible for the management of its affairs.

#### **42 Certificates to be evidence of certain matters**

A certificate purporting to be signed by the Commissioner of Police or any prescribed officer of the Police Department certifying that on any date or during any period mentioned in the certificate any person was or was not the holder of any class of licence issued under this Act, or that certain particulars did or did not appear in the register, shall, without proof of the signature or of the official character of the person purporting to have signed the certificate, be prima facie evidence of the matters certified in and by the certificate.

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

Notwithstanding any proceedings against any person for an offence against this Act

(whether resulting in a conviction or otherwise) such person shall remain liable to all civil proceedings in like manner as if the proceedings for an offence had not been taken.

#### **44 Regulations**

- (1) The Governor may make regulations not inconsistent with this Act for or with respect to:
  - (a) prescribing any forms to be used under this Act,
  - (b) prescribing the fee for a commercial agent's licence, a private inquiry agent's licence, a subagent's licence and a provisional licence; and for a duplicate licence,
  - (c) the procedure on applications and other proceedings under this Act,
  - (d) exempting any class of persons from the operation of this Act and prescribing the extent of such exemptions and specifying the provisions (if any) of this Act which are to apply to any class of persons so exempted,
  - (d1) the surrender of licences, the particulars to be indorsed on licences and the notification by the licensee of any change in those particulars, and
  - (e) generally, prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The regulations may prescribe penalties not exceeding:
  - (a) 2 penalty units, in the case of an individual, or
  - (b) 10 penalty units, in the case of a corporation,for any breach thereof.
- (3), (4) (Repealed)

### **Schedule 1 Provisions relating to receivers**

(Section 39B)

#### **1 Application for appointment of receiver**

- (1) The Court may dispense with service of the originating process of an application under section 39B for the appointment of a receiver.
- (2) Unless the Court otherwise orders, the originating process shall be served upon the licensee not less than 48 hours before the hearing of the application.

#### **2 Copy of order appointing receiver to be served on licensee**

Unless the Court dispenses with service, a copy of the order of the Court appointing the

receiver shall, as soon as practicable, be served on the licensee and on any other person to whom the Court directs that notice of the appointment of the receiver should be given.

**3 Receiver may require information in respect of property**

- (1) The receiver may require any person to give to the receiver such information as may reasonably be required concerning any property of which he or she has been appointed receiver.
- (2) Any person so required to give information who, without lawful justification or excuse (the proof whereof shall lie on the person), refuses or fails so to do or otherwise hinders, obstructs or delays the receiver in the performance of the receiver's duties or the exercise of the receiver's powers under this Schedule shall be guilty of an offence against this Act.

**4 Receiver may forbid withdrawal of money from bank, building society or credit union**

- (1) Where the receiver has reasonable grounds for believing that there is in any bank, building society or credit union account money received for or on behalf of any person by the licensee or by the firm of licensees of which the licensee is or was a partner, the receiver may serve on the bank, building society or credit union a notice in writing with a copy of the order of the Court attached or appended thereto forbidding, except by the receiver or on the receiver's authority, any withdrawal of money from or any dealing (including in any case the completion of any uncompleted dealing commenced before the service of the notice) with that account, whether the account is in the name of the licensee or the name of any firm of licensees of which the licensee is or was a partner or, where the licensee is dead, any account which is in that name or firm name or which was formerly in that name or firm name and is now in the name of the licensee's personal representative.
- (2) Without prejudice to any other mode of service, service of any notice pursuant to this clause may be effected by leaving the notice and copy of the order attached or appended thereto with the manager, accountant or such other person as appears to be at the time of service in charge of the branch of the bank, building society or credit union at which there is an account to which subclause (1) refers.
- (3) The bank, building society or credit union on which the notice is served shall not permit any withdrawal from or dealing with any account to which the notice relates except by or on the authority of the receiver.
- (4) The receiver may withdraw all the money in any such account or from time to time withdraw any of that money and pay it into a special account or special accounts in the receiver's own name and may operate on and otherwise deal with the special account or special accounts in accordance with law.

## **5 Receiver may take possession of property**

- (1) Subject to subclause (2), the receiver may acquire or take possession of any property of which he or she has been appointed receiver.
- (2) All ledgers, books of account, vouchers, records, deeds, files and other documents and writings and all mechanical, electronic or other devices used for the storage of information (other than any of the foregoing which relate either to any property referred to in paragraph (a) or (b) of the definition of **property** in section 39A or to any former business of the licensee) shall, as soon as is reasonable, be returned to the licensee.
- (3) If the licensee or any other person, on being required by the receiver to transfer or deliver to the receiver or to permit the receiver to take possession of any such property in his or her possession or at his or her disposition or under his or her control does not comply with the requirement, or if it appears to the receiver that any such person on being so required has not fully complied with the requirement, the receiver may apply to the Court for an order for the transfer or delivery to the receiver of the property, whereupon the Court may make that order.
- (4) If it appears to the receiver that an order made by the Court under subclause (3) is not complied with, the Court may, on application made by the receiver, authorise any member of the police force, or the receiver or some other person and any member of the police force, to enter any premises or other place specified in the order and to search for any property of which the receiver is entitled to take possession under the provisions of this clause and to seize any such property and remove it to such place as the receiver thinks fit and on such application the Court may make such further order in the matter as to the Court seems fit.
- (5) Wilful failure to comply with any order made by the Court under subclause (3) shall be punishable as a contempt of the Court.

## **6 Improperly withdrawing money or destroying or concealing property**

Any person who at any time with intent to defeat the purposes of this Act and whether before or after a receiver has been appointed:

- (a) withdraws money from or makes any payment out of any account, or
- (b) destroys or conceals or removes from one place to another place or delivers into the possession or places under the control of any other person any property of which a receiver has been or is likely to be appointed,

shall be guilty of an offence against this Act.

## **7 Power of receiver to deal with property**

- (1) The receiver may deal with any property which the receiver has acquired or of which

he or she has taken possession under the provisions of this Schedule in any manner in which the licensee or the firm of which the licensee is or was a partner might lawfully have dealt with the property and shall as soon as is reasonably practicable and to the extent to which ownership can be established, deliver the property to the persons lawfully entitled thereto.

- (2) Without restricting or in any way derogating from the powers of the receiver under the provisions of subclause (1), the receiver may:
  - (a) prove, grant, claim and draw a dividend in respect of any debt due to the licensee in connection with any property of which the receiver has been appointed receiver,
  - (b) give receipts for any money received by him or her, which shall effectually discharge the person paying the money from all responsibility in respect of the application thereof, and
  - (c) employ a barrister or solicitor or other agent to give advice or take any proceedings or otherwise act for the receiver in relation to any property of which he or she has been appointed receiver.

## **8 Application for directions**

The receiver, the licensee, any member of the firm of which the licensee is or was a partner or the personal representative of a deceased licensee, or any person who has submitted to the receiver a claim in respect of any property, may apply to the Court for directions as to the manner in which the receiver shall exercise or perform the powers or duties conferred or imposed on the receiver by this Schedule either generally or in respect of any particular matter specified in the application, whereupon the Court may make such order as to the Court seems fit.

## **9 Property claimed by licensee**

- (1) The receiver may give notice to the licensee or any other person that, if the licensee or other person has any claim to any property, he or she shall within the time specified in the notice (being not less than 30 days from the giving of the notice) submit to the receiver full particulars of the property claimed and the grounds of the claim.
- (2) If such a notice has been given, the receiver may disregard any claim made by the licensee or other person otherwise than in accordance with the terms of the notice.
- (3) The licensee shall not be entitled to any payment in respect of or otherwise to enforce any such claim and shall not be entitled except as against a licensee to a lien upon any document or writing held by the receiver unless and until the proper claims of all other claimants are fully satisfied and the expenses of the receivership, as defined in clause 15, have been paid.

## **10 Liens for costs on property held by receiver**

- (1) If the licensee or the firm of which the licensee is or was a partner claims a lien for costs on any document, writing or other property held by the receiver, the receiver may by notice in writing require the licensee or firm to give to the receiver within a time specified in the notice (being not less than 30 days from the giving of the notice) particulars of all documents, writings and other property on which the licensee or firm claims a lien together with a detailed itemised account relating to the amount in respect of which each lien is claimed.
- (2) If the licensee or firm fails to comply with any such requirement in respect of any lien claimed by the licensee or firm, the receiver may in dealing with the document, writing or other property disregard the lien.
- (3) If the licensee or firm so requests in writing, the receiver shall afford to the licensee or firm or any other person on the licensee's or firm's behalf such access to all relevant books and documents as is reasonably necessary to enable the preparation of the itemised account and in such event the time specified in the notice pursuant to subclause (1) shall not commence until that access has been provided.

## **11 Power of Court to order person to appear for examination by receiver**

- (1) The receiver may apply to the Court for an order that the licensee or any other person appear before the Court to be examined by the receiver as to any property of which the receiver has been appointed receiver, whereupon the Court may make such order as to the examination of the licensee or other person as to the Court seems fit.
- (2) Upon any such examination before the Court, the receiver and the licensee or other person may be represented by a solicitor or barrister, and the Court may put or allow to be put to the licensee or other person such questions as it thinks fit.
- (3) The licensee or other person shall be examined on oath and shall answer all such questions.
- (4) The licensee or other person may object to any question upon the ground that the answer may tend to incriminate him or her but shall be compellable to answer the question notwithstanding the objection.
- (5) No answer given subject to any such objection shall be admitted in evidence in any proceedings for any offence except that of perjury in connection with the examination.

## **12 Application for termination of appointment of receiver**

- (1) The Minister, the receiver or the licensee or the firm of licensees of which the licensee is or was a partner may at any time apply to the Court for an order that the appointment of a receiver be terminated, whereupon the Court may make such an order and may, if it thinks fit, appoint another person to be the receiver in his or her



place.

- (2) If a receiver's appointment is terminated by an order of the Court and another person is appointed to be the receiver in his or her place, the former receiver shall, as soon as he or she reasonably may and subject to any directions given by the Court under this clause, transfer or deliver to the receiver appointed in his or her place all property and any documents, writings and other property which he or she holds by virtue of his or her appointment as receiver.
- (3) If a receiver's appointment is terminated by order of the Court and no other person is within 14 days of the termination appointed to be receiver in his or her place, the receiver may, and upon demand in writing by the licensee or the firm of licensees of which the licensee is or was a partner shall, as soon as he or she reasonably may and subject to any directions given by the Court under this clause and subject to the payment by the licensee or firm of the expenses of the receivership, as defined in clause 15, transfer or deliver to the licensee or firm all property which the receiver then holds by virtue of his or her appointment as receiver.

### **13 Property not dealt with by receiver**

All money and other property which come into the possession of the receiver in the course of the receivership and which the receiver has not dealt with in accordance with the provisions of this Schedule, other than this clause, shall be paid or delivered by the receiver to the licensee or to the firm of licensees of which the licensee is or was a partner, as the case may require.

### **14 Receiver may invest money**

- (1) The receiver may invest any money in his or her hands in the course of his or her receivership in any manner in which trustees are for the time being authorised by law to invest trust funds.
- (2) Any income accruing from the investment of any such money and any profit from the sale of any such investment shall be added to and form part of the property of which he or she has been appointed receiver.

### **15 Remuneration of receiver and expenses of receivership**

- (1) All money payable to the receiver as remuneration for his or her services, all costs of legal proceedings and all other expenses incurred by the receiver in the course of his or her receivership (all of which are hereafter in this clause referred to as **the expenses of the receivership**) shall, to the extent that they have not otherwise been paid to the receiver under this Act, be paid to the receiver by the Minister.
- (2) Any amount paid by the Minister for the expenses of the receivership shall be recoverable by the Minister from the licensee as a debt owing by the licensee to the Minister.

- (3) In default of agreement between the Minister and the receiver as to the amount to be paid to the receiver as the receiver's remuneration the Court may, on application by the Minister or the receiver, determine the amount to be so paid.

#### **16 Cost of proceedings**

In any proceedings in the Court under the provisions of this Schedule the Court may make such order as to the payment of the costs of the proceedings and costs incurred in the execution of any order made by the Court as to the Court seems fit.

#### **17 Re-opening of agreement as to receiver's remuneration**

The Court, on application by the licensee or by any firm of which the licensee is or was a partner, may re-open any agreement between the Minister and the receiver as to the amount to be paid to the receiver as the receiver's remuneration, and may determine the amount to be so paid.

#### **18 Court may review receiver's expenses**

- (1) Where proceedings are taken by the Minister under clause 15 (2) for the recovery of any amount paid for the expenses of the receivership therein referred to and there is evidence which satisfies the Court that the amounts charged for those expenses are excessive, the Court may take an account between the Minister and the receiver and relieve the licensee from payment of any sum in excess of the sum adjudged by the Court to be fairly payable in respect of those expenses.
- (2) If any excess has been paid or allowed in account by the Minister, the Court may order the receiver to repay it.
- (3) The Court shall have and may, on the application of the licensee or of any firm of which the licensee is or was a partner, exercise the like powers as may be exercised under this clause where proceedings are taken for the recovery of any amount paid by the Minister for the expenses of the receivership pursuant to clause 15, and the Court shall have power to entertain any such application, notwithstanding that the expenses of the receivership have not been paid to the receiver.
- (4) No proceedings to obtain any relief under this clause shall be taken after 3 months from the time when the expenses of the receivership have been paid, but the legal personal representative of a deceased licensee may take any such proceedings at any time within 6 months from the time when those expenses were paid.

#### **19 Power of Court to give general directions**

For carrying out the objects of this Act or the administration by a receiver of all or any property the Court may, without derogating from any other provisions of this Schedule, authorise the receiver to do such things as it thinks fit and may give directions accordingly.

**20 Receiver not deemed to be personal representative**

Where a licensee dies, a receiver in the execution of the receiver's functions under this Schedule shall not be deemed or taken to be a personal representative of the licensee.

**21 Property held by receiver to be free from execution or attachment**

Property held by a receiver under the provisions of this Schedule shall not be levied upon or taken or attached under any judgment.

**22 Returns by receiver**

Subject to any directions given by the Court, every receiver shall, at such times as the Court determines, furnish to the Court and to the Minister a report of his or her receivership containing such information as the Court requires and, upon the conclusion of the receivership, shall forthwith lodge with the Court, in addition to the final report, all documents and writings in the receiver's possession or under the receiver's control relating to the receivership and, subject to any order of the Court for their destruction or otherwise, such documents and writings shall be kept in the custody of the Court.