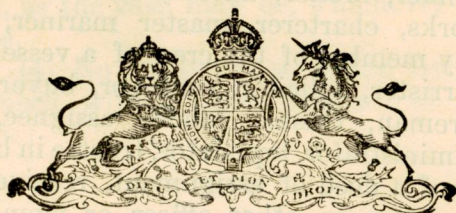


New South Wales.



ANNO DECIMO

GEORGI V REGIS.

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Act No. 26, 1919.

An Act for the prohibition of secret commissions, and for the prevention of fraud ; and for other purposes. [Assented to, 9th December, 1919.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

*Preliminary.*

1. This Act may be cited as the "Secret Commissions Prohibition Act, 1919," and shall come into operation on the first day of January, one thousand nine hundred and twenty.

Short title  
and com-  
mencement.

2.



*Secret Commissions Prohibition.*

Interpre-  
tation.

Vict. Crimes  
Act, 1915,  
s. 1(9).

2. (1) In the construction of this Act, unless the context otherwise requires,—

“Agent” includes any corporation, firm, or person acting or having been acting, or desirous or intending to act, for or on behalf of any corporation, firm, or person, whether as agent, partner, co-owner, clerk, servant, employee, banker, broker, auctioneer, architect, clerk of works, charterer, master mariner, purser or any member of the crew of a vessel, engineer, barrister, solicitor, surveyor, buyer, salesman, foreman, trustee, official assignee, executor, administrator, liquidator, trustee in bankruptcy, or of a deed of assignment, receiver, director, manager or other officer or member of the committee or governing body of any corporation, club, partnership, or association, or in any other capacity, either alone or jointly with any other corporation, firm, or person, and whether in his own name or in the name of his principal or otherwise, and a person serving under the Crown.

“Contract” includes contract of sale or of employment, or any other contract whatever, including an order for any commodity.

“Court” means magistrate or justices having jurisdiction with respect to an offence against this Act.

“Principal” includes a corporation or other person for or on behalf of whom the agent acts, has acted, or is desirous or intending to act.

“Trustee” includes the public trustee, an executor, administrator, liquidator, official assignee, or trustee in bankruptcy, receiver, committee of an estate under the Lunacy Acts, person having power to appoint a trustee or person entitled to obtain probate of the will or letters of administration to the estate of a deceased person, or any other person occupying a fiduciary position.

“Valuable



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*Secret Commissions Prohibition.*

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“Valuable consideration” includes any money, loan, office, place, employment, agreement to give employment, benefit, or advantage whatsoever, and any commission or rebate, payment in excess of actual value of the goods or service, deduction or percentage, bonus or discount, or any forbearance to demand any money or money's worth or valuable thing, and the acceptance of any of the said things shall be deemed the receipt of a valuable consideration.

The offer of any valuable consideration includes any offer of any agreement or promise to give, and every holding out of any expectation of valuable consideration.

The receipt of any valuable consideration includes any acceptance of any agreement, promise, or offer to give, or of any holding out of any expectation of valuable consideration.

The words “solicit any valuable consideration” and “valuable consideration solicited,” and words to the like effect, shall be construed with the following directions, namely:—That every agent who diverts, obstructs, gives untruthful reports, or interferes with the proper course of business or manufacture, or impedes or obstructs, or fails to use due diligence in the prosecution of any negotiation or business with the intent to obtain the gift of any valuable consideration from any other person interested in the said negotiation or business, or with intent to injure any such person, shall be deemed to have solicited a valuable consideration from a person having business relations with the principal of such agent.

The words “person having business relations with the principal” include every corporation or other person, whether as principal or agent, carrying on or having carried on or desirous or intending to carry on any negotiation or business with any principal, or engaged or interested or having been engaged or interested in the performance



*Secret Commissions Prohibition.*

performance of any contract with or in the execution of any work or business for or in the supply of any goods or chattels to any principal, and also include any agent or employee of such corporation or other person.

The words "in relation to his principal's affairs or business" imply the additional words "whether within the scope of his authority or course of his employment as agent or not"; and

The words "advice given," and words to the like effect, include every report, certificate, statement, and suggestion intended to influence the person to whom the same is made or given, and every influence exercised by one person over another.

Prohibition  
of indirect  
acts.

(2) Any act or thing prohibited by this Act is prohibited whether done directly or indirectly by the person mentioned or by or through any other person.

*Offences against this Act.*

Receipt or  
solicitation of  
secret  
commission  
by an agent.  
Vict. Crimes  
Act, 1915,  
s. 170.

3. If any agent corruptly receives or solicits from any person for himself or for any other person any valuable consideration—

- (a) as an inducement or reward for or otherwise on account of doing or forbearing to do, or having done or forborne to do, any act in relation to his principal's affairs or business; or
- (b) the receipt or any expectation of which would in any way tend to influence him to show, or to forbear to show, favour or disfavour to any person in relation to his principal's affairs or business; or

Gift or offer  
of secret  
commission to  
an agent.

if any person corruptly gives or offers to any agent any valuable consideration—

- (a) as an inducement or reward for or otherwise on account of the agent doing, or forbearing to do, or having done or forborne to do, any act in relation to his principal's affairs or business; or
- (b) the receipt or any expectation of which would in any way tend to influence the agent to show,

or



*Secret Commissions Prohibition.*

or to forbear to show, favour or disfavour to any person in relation to his principal's affairs or business,

he shall be guilty of an offence against this Act.

**4.** (1) Any valuable consideration received or solicited by any parent, husband, wife, or child of any agent, or by his partner, clerk, or employee, from any person having business relations with the principal of such agent, shall be deemed to have been received or solicited by the agent, unless it be proved that the valuable consideration was so received or solicited without the consent, knowledge, or privity of the agent.

Secret gifts received by parent, wife, child, partner, &c., of agent.  
Vict. Crimes Act, 1915, s. 171.

(2) Any valuable consideration given or offered to any parent, husband, wife, or child of any agent, or to his partner, clerk, or employee, or at the agent's request to any person by any person having business relations with the principal of such agent, shall be deemed to have been given or offered to the agent.

Secret gifts to parents, wife, child, partner, &c., of agent.

**5.** If, with intent to deceive or defraud the principal, any person gives to any agent, or any agent receives or uses or gives to the principal any receipt, invoice, account, or document in respect of which or in relation to a dealing, transaction, or matter in which the principal is interested, and which—

False or misleading receipt or account.  
*Ibid.* s. 172.

- (a) contains any statement which is false or erroneous or defective in any important particular, or contains an overcharge, or is in any way likely to mislead the principal; or
- (b) omits to state explicitly and fully the fact of any commission, percentage, bonus, discount, rebate, repayment, gratuity, or deduction having been made, given, or allowed, or agreed to be made, given, or allowed,

he shall be guilty of an offence against this Act.

**6.** (1) Whenever any advice is given by one person to another, and such advice is in any way intended or likely to induce or influence the person advised—

Secret commission for advice given.  
*Ibid.* s. 173.

- (a) to enter into a contract with any third person; or
- (b) to appoint or join with another in the appointment, or to vote for or to aid in obtaining the election



*Secret Commissions Prohibition.*

election or appointment, or to authorise or join with another in authorising the appointment, of any third person as trustee, director, manager or official,

and any valuable consideration is, without the assent of the person advised, given by such third person to the person giving the advice, the gift or receipt of the valuable consideration shall be an offence against this Act; but this subsection shall not apply when the person giving the advice was, to the knowledge of the person advised, the agent of such third person, or when the valuable consideration was not given in respect of such advice.

Offer or solicitation of secret commission in return for advice given or to be given.

(2) Any offer or solicitation of a valuable consideration in respect of any advice given, or to be given, by one person to another with a view to induce or influence the person advised—

- (a) to enter into a contract with the person offering or solicited; or
- (b) to appoint or join with another in appointing, or to vote for or to aid in obtaining the election or appointment, or to authorise or join with another in authorising the appointment of the person offering or solicited as trustee, director, manager or official,

and with the intent that the gift or receipt of such valuable consideration is not to be made known to the person advised, shall be an offence against this Act; but this subsection shall not apply when such first-mentioned person is the agent of the person offering or solicited.

Secret commission to trustee in return for substituted appointment.  
Vict. Crimes Act, 1915, s. 174.

**7.** If any person offers or gives any valuable consideration to a trustee, or if any trustee receives or solicits any valuable consideration for himself or for any other person without the assent of the persons beneficially entitled to the estate or of a judge of the Supreme Court, as an inducement or reward for appointing or having appointed, or for joining or having joined with another in appointing, or for authorising or having authorised, or for joining or having joined with another

in



*Secret Commissions Prohibition.*

in authorising any person to be appointed in his stead or instead of him and any other person as trustee, he shall be guilty of an offence against this Act.

**8.** Any person who, being within New South Wales, knowingly aids, abets, counsels, or procures, or attempts or takes part in or is in any way privy to—

- (a) the doing of any act or thing in contravention of this Act; or
- (b) the doing of any act or thing outside New South Wales, or partly within and partly outside New South Wales, which, if done within New South Wales, would be in contravention of this Act,

Aiding and abetting offences within or without New South Wales.  
Vict. Crimes Act, 1915, s. 175.

shall be guilty of an offence against this Act.

**9.** Any director, manager, or officer of a company, or any officer or member of the crew of any vessel, or any person acting for another, who knowingly takes part in or is in any way privy to doing, or attempts to do, any act or thing without authority which, if authorised, would be in contravention of any of the provisions of this Act, shall be guilty of an offence against this Act.

Liability of director, &c., acting without authority.  
*Ibid.* s. 176.

**10.** Any person guilty of an offence against this Act shall, on conviction by a stipendiary or police magistrate, or any two justices,—

Penalty on conviction.

- (a) be liable, if a corporation, to a penalty not exceeding one thousand pounds, and if any other person to imprisonment for any period not exceeding six months, with or without hard labour, or to a penalty not exceeding five hundred pounds, or to imprisonment and penalty as aforesaid; and
- (b) in addition be liable to be ordered to pay to such person and in such manner as the court directs the amount or value, according to the estimation of the court, of any valuable consideration received or given by him, or any part thereof, and such order shall be enforceable in the same manner as an order of the court.

*Procedure.*



*Secret Commissions Prohibition.**Procedure.*

Court may order withdrawal of trifling or technical cases.

Vict. Crimes Act, 1915, s. 177.

Witness giving answers criminating himself.

*Ibid.* s. 178.

**11.** If in any prosecution under this Act it appears to the court that the offence charged is, in the particular case, of a trifling or merely technical nature, or that in the particular circumstances it is inexpedient to proceed to a conviction, the court may in its discretion, and for reasons stated on the application of the accused, dismiss the case.

**12.** (1) A person who is called as a witness in any proceeding under this Act shall not be excused from answering any question relating to any offence against this Act on the ground that the answer thereto may criminate, or tend to criminate, him.

(2) An answer to a question in any such proceeding shall not, except in the said proceeding or in the case of any prosecution for perjury in respect of such answer, be in any proceeding, civil or criminal, admissible in evidence against the person so answering.

Certificate to witness.

*Ibid.* s. 178.

**13.** (1) A witness in any proceeding under this Act who, in the judgment of the court, answers truly all questions which he is required by the court to answer shall be entitled to receive a certificate from the court stating that such witness has so answered.

Stay of proceedings against such witness.

*Ibid.* s. 179.

(2) When a person has received a certificate as aforesaid, and any criminal proceeding is at any time instituted against him in respect of the offence which was in question in the proceeding in which the said person was called as a witness, the court having cognizance of the case shall, on proof of the certificate and of the identity of the offence in question in the two cases, stay the proceedings.

Custom of itself no defence.

*Ibid.* s. 180 (a).

**14.** (1) In any prosecution under this Act it shall not amount to a defence to show that the receiving, soliciting, giving, or offering of any valuable consideration therein mentioned or referred to is customary in any trade, business, or calling.

Burden of proof that gift not secret commission.

*Ibid.* s. 180 (b).

(2) If in any prosecution under this Act it is proved that any valuable consideration has been received or solicited by an agent from or given or offered to an agent by any person having business relations with the principal,



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*Secret Commissions Prohibition.*

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principal, without the assent of the principal, the burden of proving that such valuable consideration was not received, solicited, given, or offered in contravention of any of the provisions of this Act shall be on the accused.

(3) No prosecution under this Act shall be commenced after the expiration of two years from the commission of the offence charged, or six months from the first discovery thereof by the principal or the person advised, as the case may be, whichever expiration first happens. Limit of time for prosecution. Vict. Crimes Act, 1915, s. 180 (c).

(4) No prosecution under this Act shall be commenced without the consent of the Attorney-General. Consent to prosecution. Ibid. s. 180 (d).

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By Authority :

Reprinted by ALFRED JAMES KENT, Government Printer, Sydney, 1928.

[6d.]







*I Certify that this PUBLIC BILL, which originated in the LEGISLATIVE COUNCIL, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.*

W. L. S. COOPER,  
*Clerk of the Parliaments.*

*Legislative Council Chamber,  
Sydney, 3rd December, 1919.*

## New South Wales.



ANNO DECIMO

## GEORGII V REGIS.

\*\*\*\*\*

### Act No. 26, 1919.

An Act for the prohibition of secret commissions,  
and for the prevention of fraud ; and for other  
purposes. [Assented to, 9th December, 1919.]

**B**E it enacted by the King's Most Excellent Majesty,  
by and with the advice and consent of the Legis-  
lative Council and Legislative Assembly of New South  
Wales in Parliament assembled, and by the authority of  
the same, as follows :—

#### *Preliminary.*

**1.** This Act may be cited as the “Secret Commissions  
Prohibition Act, 1919,” and shall come into operation  
on the first day of January, one thousand nine hundred  
and twenty.

Short title  
and com-  
mencement.

**2.**



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*Secret Commissions Prohibition.*

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Interpre-  
tation.  
Vict. Crimes  
Act, 1915,  
s. 169.

**2. (1)** In the construction of this Act, unless the context otherwise requires,—

“Agent” includes any corporation, firm, or person acting or having been acting, or desirous or intending to act, for or on behalf of any corporation, firm, or person, whether as agent, partner, co-owner, clerk, servant, employee, banker, broker, auctioneer, architect, clerk of works, charterer, master mariner, purser or any member of the crew of a vessel, engineer, barrister, solicitor, surveyor, buyer, salesman, foreman, trustee, official assignee, executor, administrator, liquidator, trustee in bankruptcy, or of a deed of assignment, receiver, director, manager or other officer or member of the committee or governing body of any corporation, club, partnership, or association, or in any other capacity, either alone or jointly with any other corporation, firm, or person, and whether in his own name or in the name of his principal or otherwise, and a person serving under the Crown.

“Contract” includes contract of sale or of employment, or any other contract whatever, including an order for any commodity.

“Court” means magistrate or justices having jurisdiction with respect to an offence against this Act.

“Principal” includes a corporation or other person for or on behalf of whom the agent acts, has acted, or is desirous or intending to act.

“Trustee” includes the public trustee, an executor, administrator, liquidator, official assignee, or trustee in bankruptcy, receiver, committee of an estate under the Lunacy Acts, person having power to appoint a trustee or person entitled to obtain probate of the will or letters of administration to the estate of a deceased person, or any other person occupying a fiduciary position.

“Valuable



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*Secret Commissions Prohibition.*

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“Valuable consideration” includes any money, loan, office, place, employment, agreement to give employment, benefit, or advantage whatsoever, and any commission or rebate, payment in excess of actual value of the goods or service, deduction or percentage, bonus or discount, or any forbearance to demand any money or money's worth or valuable thing, and the acceptance of any of the said things shall be deemed the receipt of a valuable consideration.

The offer of any valuable consideration includes any offer of any agreement or promise to give, and every holding out of any expectation of valuable consideration.

The receipt of any valuable consideration includes any acceptance of any agreement, promise, or offer to give, or of any holding out of any expectation of valuable consideration.

The words “solicit any valuable consideration” and “valuable consideration solicited,” and words to the like effect, shall be construed with the following directions, namely:—That every agent who diverts, obstructs, gives untruthful reports, or interferes with the proper course of business or manufacture, or impedes or obstructs, or fails to use due diligence in the prosecution of any negotiation or business with the intent to obtain the gift of any valuable consideration from any other person interested in the said negotiation or business, or with intent to injure any such person, shall be deemed to have solicited a valuable consideration from a person having business relations with the principal of such agent.

The words “person having business relations with the principal” include every corporation or other person, whether as principal or agent, carrying on or having carried on or desirous or intending to carry on any negotiation or business with any principal, or engaged or interested or having been engaged or interested in the performance



*Secret Commissions Prohibition.*

performance of any contract with or in the execution of any work or business for or in the supply of any goods or chattels to any principal, and also include any agent or employee of such corporation or other person.

The words "in relation to his principal's affairs or business" imply the additional words "whether within the scope of his authority or course of his employment as agent or not"; and

The words "advice given," and words to the like effect, include every report, certificate, statement, and suggestion intended to influence the person to whom the same is made or given, and every influence exercised by one person over another.

Prohibition  
of indirect  
acts.

(2) Any Act or thing prohibited by this Act is prohibited whether done directly or indirectly by the person mentioned or by or through any other person.

*Offences against this Act.*

Receipt or  
solicitation of  
secret  
commission  
by an agent.  
Vict. Crimes  
Act, 1915,  
s. 170.

3. If any agent corruptly receives or solicits from any person for himself or for any other person any valuable consideration—

- (a) as an inducement or reward for or otherwise on account of doing or forbearing to do, or having done or forborne to do, any act in relation to his principal's affairs or business; or
- (b) the receipt or any expectation of which would in any way tend to influence him to show, or to forbear to show, favour or disfavour to any person in relation to his principal's affairs or business; or

Gift or offer  
of secret  
commission to  
an agent.

if any person corruptly gives or offers to any agent any valuable consideration—

- (a) as an inducement or reward for or otherwise on account of the agent doing, or forbearing to do, or having done or forborne to do, any act in relation to his principal's affairs or business; or
- (b) the receipt or any expectation of which would in any way tend to influence the agent to show,  
or



*Secret Commissions Prohibition.*

or to forbear to show, favour or disfavour to any person in relation to his principal's affairs or business,

he shall be guilty of an offence against this Act

**4.** (1) Any valuable consideration received or solicited by any parent, husband, wife, or child of any agent, or by his partner, clerk, or employee, from any person having business relations with the principal of such agent, shall be deemed to have been received or solicited by the agent, unless it be proved that the valuable consideration was so received or solicited without the consent, knowledge, or privity of the agent.

*Secret gifts received by parent, wife, child, partner, &c., of agent. Vict. Crimes Act, 1915, s. 171.*

(2) Any valuable consideration given or offered to any parent, husband, wife, or child of any agent, or to his partner, clerk, or employee, or at the agent's request to any person by any person having business relations with the principal of such agent, shall be deemed to have been given or offered to the agent.

*Secret gifts to parents, wife, child, partner, &c., of agent.*

**5.** If, with intent to deceive or defraud the principal, any person gives to any agent, or any agent receives or uses or gives to the principal any receipt, invoice, account, or document in respect of which or in relation to a dealing, transaction, or matter in which the principal is interested, and which—

*False or misleading receipt or account. Ibid. s. 172.*

- (a) contains any statement which is false or erroneous or defective in any important particular, or contains an overcharge, or is in any way likely to mislead the principal; or
- (b) omits to state explicitly and fully the fact of any commission, percentage, bonus, discount, rebate, repayment, gratuity, or deduction having been made, given, or allowed, or agreed to be made, given, or allowed,

he shall be guilty of an offence against this Act.

**6.** (1) Whenever any advice is given by one person to another, and such advice is in any way intended or likely to induce or influence the person advised—

*Secret commission for advice given. Ibid. s. 173.*

- (a) to enter into a contract with any third person; or
- (b) to appoint or join with another in the appointment, or to vote for or to aid in obtaining the election



*Secret Commissions Prohibition.*

election or appointment, or to authorise or join with another in authorising the appointment, of any third person as trustee, director, manager or official,

and any valuable consideration is, without the assent of the person advised, given by such third person to the person giving the advice, the gift or receipt of the valuable consideration shall be an offence against this Act; but this subsection shall not apply when the person giving the advice was, to the knowledge of the person advised, the agent of such third person, or when the valuable consideration was not given in respect of such advice.

Offer or solicitation of secret commission in return for advice given or to be given.

(2) Any offer or solicitation of a valuable consideration in respect of any advice given, or to be given, by one person to another with a view to induce or influence the person advised—

- (a) to enter into a contract with the person offering or solicited; or
- (b) to appoint or join with another in appointing, or to vote for or to aid in obtaining the election or appointment, or to authorise or join with another in authorising the appointment of the person offering or solicited as trustee, director, manager or official,

and with the intent that the gift or receipt of such valuable consideration is not to be made known to the person advised, shall be an offence against this Act; but this subsection shall not apply when such first-mentioned person is the agent of the person offering or solicited.

Secret commission to trustee in return for substituted appointment.  
 Vict. Crimes Act, 1915, s. 174.

7. If any person offers or gives any valuable consideration to a trustee, or if any trustee receives or solicits any valuable consideration for himself or for any other person without the assent of the persons beneficially entitled to the estate or of a judge of the Supreme Court, as an inducement or reward for appointing or having appointed, or for joining or having joined with another in appointing, or for authorising or having authorised, or for joining or having joined with another in



*Secret Commissions Prohibition.*

in authorising any person to be appointed in his stead or instead of him and any other person as trustee, he shall be guilty of an offence against this Act.

**8.** Any person who, being within New South Wales, knowingly aids, abets, counsels, or procures, or attempts or takes part in or is in any way privy to—

- (a) the doing of any act or thing in contravention of this Act; or
- (b) the doing of any act or thing outside New South Wales, or partly within and partly outside New South Wales, which, if done within New South Wales, would be in contravention of this Act,

Aiding and abetting offences within or without New South Wales. Vict. Crimes Act, 1915, s. 175.

shall be guilty of an offence against this Act.

**9.** Any director, manager, or officer of a company, or any officer or member of the crew of any vessel, or any person acting for another, who knowingly takes part in or is in any way privy to doing, or attempts to do, any act or thing without authority which, if authorised, would be in contravention of any of the provisions of this Act, shall be guilty of an offence against this Act.

Liability of director, &c., acting without authority. Ibid. s. 176.

**10.** Any person guilty of an offence against this Act shall, on conviction by a stipendiary or police magistrate, or any two justices,—

Penalty on conviction.

- (a) be liable, if a corporation, to a penalty not exceeding one thousand pounds, and if any other person to imprisonment for any period not exceeding six months, with or without hard labour, or to a penalty not exceeding five hundred pounds, or to imprisonment and penalty as aforesaid; and
- (b) in addition be liable to be ordered to pay to such person and in such manner as the court directs the amount or value, according to the estimation of the court, of any valuable consideration received or given by him, or any part thereof, and such order shall be enforceable in the same manner as an order of the court.

*Procedure*



*Secret Commissions Prohibition.**Procedure.*

Court may  
order  
withdrawal  
of trifling or  
technical  
cases.

Vict. Crimes  
Act, 1915,  
s 177.

Witness  
giving  
answers  
criminating  
himself.

*Ibid.* s. 178.

Certificate to  
witness.

*Ibid.* s. 178.

Stay of  
proceedings  
against such  
witness.

*Ibid.* s. 179.

Custom of  
itself no  
defence.

*Ibid.* s. 180  
(a).

Burden of  
proof that gift  
not secret  
commission.

*Ibid.* s. 180  
(b).

**11.** If in any prosecution under this Act it appears to the court that the offence charged is, in the particular case, of a trifling or merely technical nature, or that in the particular circumstances it is inexpedient to proceed to a conviction, the court may in its discretion, and for reasons stated on the application of the accused, dismiss the case.

**12.** (1) A person who is called as a witness in any proceeding under this Act shall not be excused from answering any question relating to any offence against this Act on the ground that the answer thereto may criminate, or tend to criminate, him.

(2) An answer to a question in any such proceeding shall not, except in the said proceeding or in the case of any prosecution for perjury in respect of such answer, be in any proceeding, civil or criminal, admissible in evidence against the person so answering.

**13.** (1) A witness in any proceeding under this Act who, in the judgment of the court, answers truly all questions which he is required by the court to answer shall be entitled to receive a certificate from the court stating that such witness has so answered.

(2) When a person has received a certificate as aforesaid, and any criminal proceeding is at any time instituted against him in respect of the offence which was in question in the proceeding in which the said person was called as a witness, the court having cognizance of the case shall, on proof of the certificate and of the identity of the offence in question in the two cases, stay the proceedings.

**14.** (1) In any prosecution under this Act it shall not amount to a defence to show that the receiving, soliciting, giving, or offering of any valuable consideration therein mentioned or referred to is customary in any trade, business, or calling.

(2) If in any prosecution under this Act it is proved that any valuable consideration has been received or solicited by an agent from or given or offered to an agent by any person having business relations with the principal,



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*Secret Commissions Prohibition.*

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principal, without the assent of the principal, the burden of proving that such valuable consideration was not received, solicited, given, or offered in contravention of any of the provisions of this Act shall be on the accused.

(3) No prosecution under this Act shall be commenced after the expiration of two years from the commission of the offence charged, or six months from the first discovery thereof by the principal or the person advised, as the case may be, whichever expiration first happens. Limit of time for prosecution. Vict. Crimes Act, 1915, s. 180 (c).

(4) No prosecution under this Act shall be commenced without the consent of the Attorney-General. Consent to prosecution. Ibid. s. 180 (d).

*In the name and on behalf of His Majesty I assent to this Act.*

*Government House,  
Sydney, 9th December, 1919.*

W. E. DAVIDSON,  
*Governor.*







## SECRET COMMISSIONS PROHIBITION BILL.

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### *SCHEDULE of Legislative Assembly's Amendments.*

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- Page 2, clause 2, line 9. *After* "works" *insert* "charterer, master mariner, purser,  
"or any member of the crew of a vessel"
- Page 2, clause 2, line 24. *After* "whatever" *insert* "including an order for any  
"commodity"
- Page 3, clause 2, line 4. *After* "rebate" *insert* "payment in excess of actual value  
"of the goods or service"
- Page 3, clause 2, line 23. *After* "obstructs" *insert* "gives untruthful reports"
- Page 4, clause 2, line 4. *After* "agent" *insert* "or employee"
- Page 5, clause 5, line 26. *After* "or" (secondly occurring) *insert* "contains an over-  
"charge, or"
- Page 6, clause 6, line 3. *After* "trustee" *insert* "director, manager or official"
- Page 6, clause 6, line 24. *After* "trustee" *insert* "director, manager or official"
- Page 7, clause 9, line 15. *After* "company" *insert* "or any officer or member of the  
"crew of any vessel"
-



*This PUBLIC BILL originated in the LEGISLATIVE COUNCIL, and, having this day passed, is now ready for presentation to the LEGISLATIVE ASSEMBLY for its concurrence.*

W. L. S. COOPER,  
*Clerk of the Parliaments.*

*Legislative Council Chamber,  
Sydney, 25th November, 1919.*

*The LEGISLATIVE ASSEMBLY has this day agreed to this Bill with Amendments.*

W. S. MOWLE,  
*Clerk of the Legislative Assembly.*

*Legislative Assembly Chamber,  
Sydney, 2 December, 1919.*

**New South Wales.**



ANNO DECIMO

**GEORGI V REGIS.**

\*\*\*\*\*

**Act No. , 1919.**

**An Act for the prohibition of secret commissions, and for the prevention of fraud ; and for other purposes.**

**BE** it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

*Preliminary.*

**1.** This Act may be cited as the "Secret Commissions Prohibition Act, 1919," and shall come into operation on the first day of January, one thousand nine hundred and twenty.

Short title  
and com-  
mencement.

56911

C 74—A

**2.**

NOTE.—The words to be inserted are printed in black letter.



*Secret Commissions Prohibition.*

**2. (1)** In the construction of this Act, unless the context otherwise requires,—

Interpre-  
tation.

Vict. Crimes  
Act, 1915,  
s. 169.

“Agent” includes any corporation, firm, or person acting or having been acting, or desirous or intending to act, for or on behalf of any corporation, firm, or person, whether as agent, partner, co-owner, clerk, servant, employee, banker, broker, auctioneer, architect, clerk of works, charterer, master mariner, purser or any member of the crew of a vessel, engineer, barrister, solicitor, surveyor, buyer, salesman, foreman, trustee, official assignee, executor, administrator, liquidator, trustee in bankruptcy, or of a deed of assignment, receiver, director, manager or other officer or member of the committee or governing body of any corporation, club, partnership, or association, or in any other capacity, either alone or jointly with any other corporation, firm, or person, and whether in his own name or in the name of his principal or otherwise, and a person serving under the Crown.

“Contract” includes contract of sale or of employment, or any other contract whatever, including an order for any commodity.

“Court” means magistrate or justices having jurisdiction with respect to an offence against this Act.

“Principal” includes a corporation or other person for or on behalf of whom the agent acts, has acted, or is desirous or intending to act.

“Trustee” includes the public trustee, an executor, administrator, liquidator, official assignee, or trustee in bankruptcy, receiver, committee of an estate under the Lunacy Acts, person having power to appoint a trustee or person entitled to obtain probate of the will or letters of administration to the estate of a deceased person, or any other person occupying a fiduciary position.

“Valuable



*Secret Commissions Prohibition.*

- 5       “Valuable consideration” includes any money, loan,  
office, place, employment, agreement to give  
employment, benefit, or advantage whatso-  
ever, and any commission or rebate, **payment**  
**in excess of actual value of the goods or service,**  
deduction or percentage, bonus or discount,  
or any forbearance to demand any money or  
money's worth or valuable thing, and the  
10       acceptance of any of the said things shall be  
deemed the receipt of a valuable consideration.
- 15       The offer of any valuable consideration includes  
any offer of any agreement or promise to give,  
and every holding out of any expectation of  
valuable consideration.
- 20       The receipt of any valuable consideration includes  
any acceptance of any agreement, promise, or  
offer to give, or of any holding out of any  
expectation of valuable consideration.
- 25       The words “solicit any valuable consideration” and  
“valuable consideration solicited,” and words  
to the like effect, shall be construed with  
the following directions, namely:—That every  
agent who diverts, obstructs, **gives untruthful**  
**reports,** or interferes with the proper course of  
business or manufacture, or impedes or ob-  
structs, or fails to use due diligence in the  
prosecution of any negotiation or business with  
the intent to obtain the gift of any valuable  
consideration from any other person interested  
30       in the said negotiation or business, or with  
intent to injure any such person, shall be  
deemed to have solicited a valuable considera-  
tion from a person having business relations  
with the principal of such agent.
- 35       The words “person having business relations with  
the principal” include every corporation or  
other person, whether as principal or agent,  
carrying on or having carried on or desirous or  
intending to carry on any negotiation or busi-  
ness with any principal, or engaged or interested  
40       or having been engaged or interested in the  
performance



*Secret Commissions Prohibition.*

- performance of any contract with or in the execution of any work or business for or in the supply of any goods or chattels to any principal, and also include any agent **or employee** of such corporation or other person.
- 5 The words "in relation to his principal's affairs or business" imply the additional words "whether within the scope of his authority or course of his employment as agent or not"; and
- 10 The words "advice given," and words to the like effect, include every report, certificate, statement, and suggestion intended to influence the person to whom the same is made or given, and every influence exercised by one person
- 15 over another.

(2) Any Act or thing prohibited by this Act is prohibited whether done directly or indirectly by the person mentioned or by or through any other person.

Prohibition of indirect acts.

*Offences against this Act.*

- 20 **3.** If any agent corruptly receives or solicits from any person for himself or for any other person any valuable consideration—
- (a) as an inducement or reward for or otherwise on account of doing or forbearing to do, or having
- 25 done or forborne to do, any act in relation to his principal's affairs or business; or
- (b) the receipt or any expectation of which would in any way tend to influence him to show, or to forbear to show, favour or disfavour to any
- 30 person in relation to his principal's affairs or business; or
- if any person corruptly gives or offers to any agent any valuable consideration—
- (a) as an inducement or reward for or otherwise on account of the agent doing, or forbearing to do, or having done or forborne to do, any act in relation to his principal's affairs or business; or
- 35 or
- (b) the receipt or any expectation of which would in any way tend to influence the agent to show,
- 40 or

Receipt or solicitation of secret commission by an agent. Vict. Crimes Act, 1915, s. 170.

Gift or offer of secret commission to an agent.



*Secret Commissions Prohibition.*

or to forbear to show, favour or disfavour to any person in relation to his principal's affairs or business,

he shall be guilty of an offence against this Act.

- 5 4. (1) Any valuable consideration received or solicited by any parent, husband, wife, or child of any agent, or by his partner, clerk, or employee, from any person having business relations with the principal of such agent, shall be deemed to have been received or solicited by the agent, unless it be proved that the valuable consideration was so received or solicited without the consent, knowledge, or privity of the agent.

Secret gifts received by parent, wife, child, partner, &c., of agent. Vict. Crimes Act, 1915, s. 171.

- (2) Any valuable consideration given or offered to any parent, husband, wife, or child of any agent, or to his partner, clerk, or employee, or at the agent's request to any person by any person having business relations with the principal of such agent, shall be deemed to have been given or offered to the agent.

Secret gifts to parents, wife, child, partner, &c., of agent.

5. If, with intent to deceive or defraud the principal, any person gives to any agent, or any agent receives or uses or gives to the principal any receipt, invoice, account, or document in respect of which or in relation to a dealing, transaction, or matter in which the principal is interested, and which—

False or misleading receipt or account. Ibid. s. 172.

- 25 (a) contains any statement which is false or erroneous or defective in any important particular, or contains an overcharge, or is in any way likely to mislead the principal; or
- 30 (b) omits to state explicitly and fully the fact of any commission, percentage, bonus, discount, rebate, repayment, gratuity, or deduction having been made, given, or allowed, or agreed to be made, given, or allowed,

he shall be guilty of an offence against this Act.

- 35 6. (1) Whenever any advice is given by one person to another, and such advice is in any way intended or likely to induce or influence the person advised—

Secret commission for advice given. Ibid. s. 173.

- (a) to enter into a contract with any third person; or
- 40 (b) to appoint or join with another in the appointment, or to vote for or to aid in obtaining the election.



*Secret Commissions Prohibition.*

election or appointment, or to authorise or join with another in authorising the appointment, of any third person as trustee, **director, manager or official,**

5 and any valuable consideration is, without the assent of the person advised, given by such third person to the person giving the advice, the gift or receipt of the valuable consideration shall be an offence against this Act; but this subsection shall not apply when the  
10 person giving the advice was, to the knowledge of the person advised, the agent of such third person, or when the valuable consideration was not given in respect of such advice.

(2) Any offer or solicitation of a valuable con-  
15 sideration in respect of any advice given, or to be given, by one person to another with a view to induce or influence the person advised—

Offer or solici-  
tation of  
secret com-  
mission in  
return for  
advice given  
or to be given.

- (a) to enter into a contract with the person offering or solicited; or
- 20 (b) to appoint or join with another in appointing, or to vote for or to aid in obtaining the election or appointment, or to authorise or join with another in authorising the appointment of the person offering or solicited as trustee, **director,**  
25 **manager or official,**

and with the intent that the gift or receipt of such valuable consideration is not to be made known to the person advised, shall be an offence against this Act; but this subsection shall not apply when such first-  
30 mentioned person is the agent of the person offering or solicited.

**7.** If any person offers or gives any valuable con-  
sideration to a trustee, or if any trustee receives or solicits any valuable consideration for himself or for any  
35 other person without the assent of the persons beneficially entitled to the estate or of a judge of the Supreme Court, as an inducement or reward for appointing or having appointed, or for joining or having joined with another in appointing, or for authorising or having  
40 authorised, or for joining or having joined with another in

Secret  
commission  
to trustee in  
return for  
substituted  
appointment.  
Vict. Crimes  
Act, 1915,  
s. 174.



*Secret Commissions Prohibition.*

in authorising any person to be appointed in his stead or instead of him and any other person as trustee, he shall be guilty of an offence against this Act.

**8.** Any person who, being within New South Wales, knowingly aids, abets, counsels, or procures, or attempts or takes part in or is in any way privy to—

- (a) the doing of any act or thing in contravention of this Act; or
- (b) the doing of any act or thing outside New South Wales, or partly within and partly outside New South Wales, which, if done within New South Wales, would be in contravention of this Act,

Aiding and abetting offences within or without New South Wales. Vict. Crimes Act, 1915, s. 175.

shall be guilty of an offence against this Act.

**9.** Any director, manager, or officer of a company, or any officer or member of the crew of any vessel, or any person acting for another, who knowingly takes part in or is in any way privy to doing, or attempts to do, any act or thing without authority which, if authorised, would be in contravention of any of the provisions of this Act, shall be guilty of an offence against this Act.

Liability of director, &c., acting without authority. *Ibid.* s. 176.

**10.** Any person guilty of an offence against this Act shall, on conviction by a stipendiary or police magistrate, or any two justices,—

Penalty on conviction.

- (a) be liable, if a corporation, to a penalty not exceeding one thousand pounds, and if any other person to imprisonment for any period not exceeding six months, with or without hard labour, or to a penalty not exceeding five hundred pounds, or to imprisonment and penalty as aforesaid; and
- (b) in addition be liable to be ordered to pay to such person and in such manner as the court directs the amount or value, according to the estimation of the court, of any valuable consideration received or given by him, or any part thereof, and such order shall be enforceable in the same manner as an order of the court.

*Procedure*



*Secret Commissions Prohibition.**Procedure.*

**11.** If in any prosecution under this Act it appears to the court that the offence charged is, in the particular case, of a trifling or merely technical nature, or that in the particular circumstances it is inexpedient to proceed to a conviction, the court may in its discretion, and for reasons stated on the application of the accused, dismiss the case.

Court may  
order  
withdrawal  
of trifling or  
technical  
cases.  
Vict. Crimes  
Act. 1915,  
s. 177

**12.** (1) A person who is called as a witness in any proceeding under this Act shall not be excused from answering any question relating to any offence against this Act on the ground that the answer thereto may criminate, or tend to criminate, him.

Witness  
giving  
answers  
criminating  
himself.  
*Ibid.* s. 178.

(2) An answer to a question in any such proceeding shall not, except in the said proceeding or in the case of any prosecution for perjury in respect of such answer, be in any proceeding, civil or criminal, admissible in evidence against the person so answering.

**13.** (1) A witness in any proceeding under this Act who, in the judgment of the court, answers truly all questions which he is required by the court to answer shall be entitled to receive a certificate from the court stating that such witness has so answered.

Certificate to  
witness.  
*Ibid.* s. 178.

(2) When a person has received a certificate as aforesaid, and any criminal proceeding is at any time instituted against him in respect of the offence which was in question in the proceeding in which the said person was called as a witness, the court having cognizance of the case shall, on proof of the certificate and of the identity of the offence in question in the two cases, stay the proceedings.

Stay of  
proceedings  
against such  
witness.  
*Ibid.* s. 179.

**14.** (1) In any prosecution under this Act it shall not amount to a defence to show that the receiving, soliciting, giving, or offering of any valuable consideration therein mentioned or referred to is customary in any trade, business, or calling.

Custom of  
itself no  
defence.  
*Ibid.* s. 180  
(a).

(2) If in any prosecution under this Act it is proved that any valuable consideration has been received or solicited by an agent from or given or offered to an agent by any person having business relations with the principal,

Burden of  
proof that gift  
not secret  
commission.  
*Ibid.* s. 180  
(b).



*Secret Commissions Prohibition.*

principal, without the assent of the principal, the burden of proving that such valuable consideration was not received, solicited, given, or offered in contravention of any of the provisions of this Act shall be on the accused.

5 (3) No prosecution under this Act shall be commenced after the expiration of two years from the commission of the offence charged, or six months from the first discovery thereof by the principal or the person advised, as the case may be, whichever expiration first  
 10 happens.

Limit of  
time for  
prosecution.  
Vict. Crimes  
Act, 1915,  
s. 180 (c).

(4) No prosecution under this Act shall be commenced without the consent of the Attorney-  
 General.

Consent to  
prosecution.  
*Ibid.* s. 180  
(d).

c 74—B

Sydney : William Applegate Gullick, Government Printer. —1919.

[10d.]







*This PUBLIC BILL originated in the LEGISLATIVE COUNCIL, and, having this day passed, is now ready for presentation to the LEGISLATIVE ASSEMBLY for its concurrence.*

W. L. S. COOPER,  
*Clerk of the Parliaments.*

*Legislative Council Chamber,  
Sydney, 25th November, 1919.*

## New South Wales.



ANNO DECIMO

## GEORGII V REGIS.

\*\*\*\*\*

Act No. , 1919.

An Act for the prohibition of secret commissions,  
and for the prevention of fraud ; and for other  
purposes.

**B**E it enacted by the King's Most Excellent Majesty,  
by and with the advice and consent of the Legis-  
lative Council and Legislative Assembly of New South  
Wales in Parliament assembled, and by the authority of  
5 the same, as follows :—

### *Preliminary.*

**1.** This Act may be cited as the "Secret Commissions  
Prohibition Act, 1919," and shall come into operation  
on the first day of January, one thousand nine hundred  
10 and twenty.

Short title  
and com-  
mencement.



*Secret Commissions Prohibition.*

**2. (1)** In the construction of this Act, unless the context otherwise requires,—

Interpre-  
tation.

Vict. Crimes  
Act, 1915,  
s. 169.

“Agent” includes any corporation, firm, or person  
acting or having been acting, or desirous or  
intending to act, for or on behalf of any cor-  
poration, firm, or person, whether as agent,  
partner, co-owner, clerk, servant, employee,  
banker, broker, auctioneer, architect, clerk of  
works, engineer, barrister, solicitor, surveyor,  
buyer, salesman, foreman, trustee, official  
assignee, executor, administrator, liquidator,  
trustee in bankruptcy, or of a deed of assign-  
ment, receiver, director, manager or other  
officer or member of the committee or govern-  
ing body of any corporation, club, partnership,  
or association, or in any other capacity, either  
alone or jointly with any other corporation,  
firm, or person, and whether in his own name  
or in the name of his principal or otherwise,  
and a person serving under the Crown.

“Contract” includes contract of sale or of employ-  
ment, or any other contract whatever.

“Court” means magistrate or justices having juris-  
diction with respect to an offence against this  
Act.

“Principal” includes a corporation or other person  
for or on behalf of whom the agent acts, has  
acted, or is desirous or intending to act.

“Trustee” includes the public trustee, an executor,  
administrator, liquidator, official assignee, or  
trustee in bankruptcy, receiver, committee of  
an estate under the Lunacy Acts, person  
having power to appoint a trustee or person  
entitled to obtain probate of the will or letters  
of administration to the estate of a deceased  
person, or any other person occupying a  
fiduciary position.

“Valuable consideration” includes any money,  
loan, office, place, employment, agreement  
to give employment, benefit, or advantage  
whatsoever, and any commission or rebate,  
deduction



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*Secret Commissions Prohibition.*

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5 deduction or percentage, bonus or discount,  
or any forbearance to demand any money or  
money's worth or valuable thing, and the  
acceptance of any of the said things shall be  
deemed the receipt of a valuable consideration.

The offer of any valuable consideration includes  
any offer of any agreement or promise to give,  
and every holding out of any expectation of  
valuable consideration.

10 The receipt of any valuable consideration includes  
any acceptance of any agreement, promise, or  
offer to give, or of any holding out of any  
expectation of valuable consideration.

15 The words "solicit any valuable consideration" and  
"valuable consideration solicited," and words  
to the like effect, shall be construed with  
the following directions, namely:—That every  
agent who diverts, obstructs, or interferes with  
20 the proper course of business or manufacture,  
or impedes or obstructs, or fails to use due  
diligence in the prosecution of any negotiation  
or business with the intent to obtain the gift  
of any valuable consideration from any other  
25 person interested in the said negotiation or  
business, or with intent to injure any such  
person, shall be deemed to have solicited a  
valuable consideration from a person having  
business relations with the principal of such  
agent.

30 The words "person having business relations with  
the principal" include every corporation or  
other person, whether as principal or agent,  
carrying on or having carried on or desirous or  
intending to carry on any negotiation or busi-  
35 ness with any principal, or engaged or interested  
or having been engaged or interested in the  
performance of any contract with or in the  
execution of any work or business for or in the  
supply of any goods or chattels to any prin-  
40 cipal, and also include any agent of such  
corporation or other person.

The



*Secret Commissions Prohibition.*

- The words "in relation to his principal's affairs or business" imply the additional words "whether within the scope of his authority or course of his employment as agent or not"; and
- 5 The words "advice given," and words to the like effect, include every report, certificate, statement, and suggestion intended to influence the person to whom the same is made or given, and every influence exercised by one person
- 10 over another.
- (2) Any Act or thing prohibited by this Act is prohibited whether done directly or indirectly by the person mentioned or by or through any other person.
- Prohibition of indirect acts.

*Offences against this Act.*

- 15 **3.** If any agent corruptly receives or solicits from any person for himself or for any other person any valuable consideration—
- (a) as an inducement or reward for or otherwise on account of doing or forbearing to do, or having
- 20 done or forborne to do, any act in relation to his principal's affairs or business; or
- (b) the receipt or any expectation of which would in any way tend to influence him to show, or to forbear to show, favour or disfavour to any
- 25 person in relation to his principal's affairs or business; or
- if any person corruptly gives or offers to any agent any valuable consideration—
- (a) as an inducement or reward for or otherwise on account of the agent doing, or forbearing to do, or having done or forborne to do, any act in
- 30 relation to his principal's affairs or business; or
- (b) the receipt or any expectation of which would in any way tend to influence the agent to show, or to forbear to show, favour or disfavour to any person in relation to his principal's affairs or business,
- 35 he shall be guilty of an offence against this Act
- Receipt or solicitation of secret commission by an agent. Vict. Crimes Act, 1915, s. 170.
- Gift or offer of secret commission to an agent.



*Secret Commissions Prohibition.*

4. (1) Any valuable consideration received or solicited by any parent, husband, wife, or child of any agent, or by his partner, clerk, or employee, from any person having business relations with the principal of such agent, shall be deemed to have been received or solicited by the agent, unless it be proved that the valuable consideration was so received or solicited without the consent, knowledge, or privity of the agent.
- (2) Any valuable consideration given or offered to any parent, husband, wife, or child of any agent, or to his partner, clerk, or employee, or at the agent's request to any person by any person having business relations with the principal of such agent, shall be deemed to have been given or offered to the agent.
5. If, with intent to deceive or defraud the principal, any person gives to any agent, or any agent receives or uses or gives to the principal any receipt, invoice, account, or document in respect of which or in relation to a dealing, transaction, or matter in which the principal is interested, and which—
- (a) contains any statement which is false or erroneous or defective in any important particular, or is in any way likely to mislead the principal; or
  - (b) omits to state explicitly and fully the fact of any commission, percentage, bonus, discount, rebate, repayment, gratuity, or deduction having been made, given, or allowed, or agreed to be made, given, or allowed,
- he shall be guilty of an offence against this Act.
6. (1) Whenever any advice is given by one person to another, and such advice is in any way intended or likely to induce or influence the person advised—
- (a) to enter into a contract with any third person; or
  - (b) to appoint or join with another in the appointment, or to vote for or to aid in obtaining the election or appointment, or to authorise or join with another in authorising the appointment, of any third person as trustee,
- and any valuable consideration is, without the assent of the person advised, given by such third person to the person

Secret gifts received by parent, wife, child, partner, &c., of agent.

*Ibid.* s. 171.

Secret gifts to parents, wife, child, partner, &c., of agent.

False or misleading receipt or account.

Vict. Crimes Act, 1915, s. 172.

Secret commission for advice given.

*Ibid.* s. 173.



*Secret Commissions Prohibition.*

person giving the advice, the gift or receipt of the valuable consideration shall be an offence against this Act; but this subsection shall not apply when the person giving the advice was, to the knowledge of the person advised, the agent of such third person, or when the valuable consideration was not given in respect of such advice.

(2) Any offer or solicitation of a valuable consideration in respect of any advice given, or to be given, by one person to another with a view to induce or influence the person advised—

Offer or solicitation of secret commission in return for advice given or to be given.

(a) to enter into a contract with the person offering or solicited; or

(b) to appoint or join with another in appointing, or to vote for or to aid in obtaining the election or appointment, or to authorise or join with another in authorising the appointment of the person offering or solicited as trustee,

and with the intent that the gift or receipt of such valuable consideration is not to be made known to the person advised, shall be an offence against this Act; but this subsection shall not apply when such first-mentioned person is the agent of the person offering or solicited.

7. If any person offers or gives any valuable consideration to a trustee, or if any trustee receives or solicits any valuable consideration for himself or for any other person without the assent of the persons beneficially entitled to the estate or of a judge of the Supreme Court, as an inducement or reward for appointing or having appointed, or for joining or having joined with another in appointing, or for authorising or having authorised, or for joining or having joined with another in authorising any person to be appointed in his stead or instead of him and any other person as trustee, he shall be guilty of an offence against this Act.

Secret commission to trustee in return for substituted appointment. Vict. Crimes Act, 1915, s. 174.

8. Any person who, being within New South Wales, knowingly aids, abets, counsels, or procures, or attempts or takes part in or is in any way privy to—

Aiding and abetting offences within or without New South Wales. *Ibid.* s. 175.

(a) the doing of any act or thing in contravention of this Act; or

(b)



*Secret Commissions Prohibition.*

(b) the doing of any act or thing outside New South Wales, or partly within and partly outside New South Wales, which, if done within New South Wales, would be in contravention of this Act,

shall be guilty of an offence against this Act.

**9.** Any director, manager, or officer of a company, or any person acting for another, who knowingly takes part in or is in any way privy to doing, or attempts to do, any act or thing without authority which, if authorised, would be in contravention of any of the provisions of this Act, shall be guilty of an offence against this Act.

Liability of director, &c., acting without authority. Vict. Crimes Act, 1915, s. 176.

**10.** Any person guilty of an offence against this Act shall, on conviction by a stipendiary or police magistrate, or any two justices,—

Penalty on conviction.

(a) be liable, if a corporation, to a penalty not exceeding one thousand pounds, and if any other person to imprisonment for any period not exceeding six months, with or without hard labour, or to a penalty not exceeding five hundred pounds, or to imprisonment and penalty as aforesaid; and

(b) in addition be liable to be ordered to pay to such person and in such manner as the court directs the amount or value, according to the estimation of the court, of any valuable consideration received or given by him, or any part thereof, and such order shall be enforceable in the same manner as an order of the court.

*Procedure.*

**11.** If in any prosecution under this Act it appears to the court that the offence charged is, in the particular case, of a trifling or merely technical nature, or that in the particular circumstances it is inexpedient to proceed to a conviction, the court may in its discretion, and for reasons stated on the application of the accused, dismiss the case.

Court may order withdrawal of trifling or technical cases. Ibid. s. 177.

**12.**



*Secret Commissions Prohibition.*

**12.** (1) A person who is called as a witness in any proceeding under this Act shall not be excused from answering any question relating to any offence against this Act on the ground that the answer thereto may  
Witness giving answers incriminating himself. Ibid. s. 178.

(2) An answer to a question in any such proceeding shall not, except in the said proceeding or in the case of any prosecution for perjury in respect of such answer, be in any proceeding, civil or criminal, admissible in evidence against the person so answering.

**13.** (1) A witness in any proceeding under this Act who, in the judgment of the court, answers truly all questions which he is required by the court to answer shall be entitled to receive a certificate from the court  
Certificate to witness. Vict. Crimes Act, 1915, s. 178.

stating that such witness has so answered.

(2) When a person has received a certificate as aforesaid, and any criminal proceeding is at any time instituted against him in respect of the offence which was in question in the proceeding in which the said person  
Stay of proceedings against such witness. Ibid. s. 179.

**14.** (1) In any prosecution under this Act it shall not amount to a defence to show that the receiving, soliciting, giving, or offering of any valuable consideration therein mentioned or referred to is customary in any trade, business, or calling.  
Custom of itself no defence. Ibid. s. 180 (a).

(2) If in any prosecution under this Act it is proved that any valuable consideration has been received or solicited by an agent from or given or offered to an agent by any person having business relations with the principal, without the assent of the principal, the burden of proving that such valuable consideration was not  
Burden of proof that gift not secret commission. Ibid. s. 180 (b).

(3) No prosecution under this Act shall be commenced after the expiration of two years from the commission of the offence charged, or six months from the first discovery thereof by the principal or the person advised, as the case may be, whichever expiration first happens.  
Limit of time for prosecution. Ibid. s. 180 (c).

(4) No prosecution under this Act shall be commenced without the consent of the Attorney-General.  
Consent to prosecution. Ibid. s. 180 (d).



Legislative Council.

No. , 1919.

## A BILL

For the prohibition of secret commissions, and  
for the prevention of fraud ; and for other  
purposes.

[MR. GARLAND ;—20 November, 1919.]

**B**E it enacted by the King's Most Excellent Majesty,  
by and with the advice and consent of the Legis-  
lative Council and Legislative Assembly of New South  
Wales in Parliament assembled, and by the authority of  
5 the same, as follows :—

### *Preliminary.*

**1.** This Act may be cited as the "Secret Commissions  
Prohibition Act, 1919," and shall come into operation  
on the                      day of                      , one thousand  
10 nine hundred and                      .

Short title  
and com-  
mencement.



Interpre-  
tation.  
Vict. Crimes  
Act, 1915,  
s. 169.

**2.** (1) In the construction of this Act, unless the context otherwise requires,—

“Agent” includes any corporation, firm, or person acting or having been acting, or desirous or intending to act, for or on behalf of any cor- 5  
poration, firm, or person, whether as agent, partner, co-owner, clerk, servant, employee, banker, broker, auctioneer, architect, clerk of works, engineer, barrister, solicitor, surveyor, buyer, salesman, foreman, trustee, official 10  
assignee, executor, administrator, liquidator, trustee in bankruptcy, or of a deed of assignment, receiver, director, manager or other officer or member of the committee or governing body of any corporation, club, partnership, 15  
or association, or in any other capacity, either alone or jointly with any other corporation, firm, or person, and whether in his own name or in the name of his principal or otherwise, and a person serving under the Crown. 20

“Contract” includes contract of sale or of employment, or any other contract whatever.

“Court” means magistrate or justices having jurisdiction with respect to an offence against this Act. 25

“Principal” includes a corporation or other person for or on behalf of whom the agent acts, has acted, or is desirous or intending to act.

“Trustee” includes the public trustee, an executor, administrator, liquidator, official assignee, or 30  
trustee in bankruptcy, receiver, committee of an estate under the Lunacy Acts, person having power to appoint a trustee or person entitled to obtain probate of the will or letters of administration to the estate of a deceased 35  
person, or any other person occupying a fiduciary position.

“Valuable consideration” includes any money, loan, office, place, employment, agreement to give employment, benefit, or advantage 40  
whatsoever, and any commission or rebate, deduction.



- deduction or percentage, bonus or discount, or any forbearance to demand any money or money's worth or valuable thing, and the acceptance of any of the said things shall be deemed the receipt of a valuable consideration.
- 5     The offer of any valuable consideration includes any offer of any agreement or promise to give, and every holding out of any expectation of valuable consideration.
- 10    The receipt of any valuable consideration includes any acceptance of any agreement, promise, or offer to give, or of any holding out of any expectation of valuable consideration.
- 15    The words "solicit any valuable consideration" and "valuable consideration solicited," and words to the like effect, shall be construed with the following directions, namely:—That every agent who diverts, obstructs, or interferes with the proper course of business or manufacture, or impedes or obstructs, or fails to use due diligence in the prosecution of any negotiation or business with the intent to obtain the gift of any valuable consideration from any other person interested in the said negotiation or business, or with intent to injure any such person, shall be deemed to have solicited a valuable consideration from a person having business relations with the principal of such agent.
- 20
- 25
- 30    The words "person having business relations with the principal" include every corporation or other person, whether as principal or agent, carrying on or having carried on or desirous or intending to carry on any negotiation or business with any principal, or engaged or interested or having been engaged or interested in the performance of any contract with or in the execution of any work or business for or in the supply of any goods or chattels to any principal, and also include any agent of such corporation or other person.
- 35
- 40

The



The words "in relation to his principal's affairs or business" imply the additional words "whether within the scope of his authority or course of his employment as agent or not"; and

The words "advice given," and words to the like effect, include every report, certificate, statement, and suggestion intended to influence the person to whom the same is made or given, and every influence exercised by one person over another. 5 10

Prohibition  
of indirect  
acts.

(2) Any Act or thing prohibited by this Act is prohibited whether done directly or indirectly by the person mentioned or by or through any other person.

*Offences against this Act.*

Receipt or  
solicitation of  
secret  
commission  
by an agent.  
Vict. Crimes  
Act, 1915,  
s. 170.

3. If any agent corruptly receives or solicits from any person for himself or for any other person any valuable consideration— 15

- (a) as an inducement or reward for or otherwise on account of doing or forbearing to do, or having done or forborne to do, any act in relation to his principal's affairs or business; or 20
- (b) the receipt or any expectation of which would in any way tend to influence him to show, or to forbear to show, favour or disfavour to any person in relation to his principal's affairs or business; or 25

Gift or offer  
of secret  
commission to  
an agent.

if any person corruptly gives or offers to any agent any valuable consideration—

- (a) as an inducement or reward for or otherwise on account of the agent doing, or forbearing to do, or having done or forborne to do, any act in relation to his principal's affairs or business; or 30
- (b) the receipt or any expectation of which would in any way tend to influence the agent to show, or to forbear to show, favour or disfavour to any person in relation to his principal's affairs or business, 35

he shall be guilty of an offence against this Act.



4. (1) Any valuable consideration received or solicited by any parent, husband, wife, or child of any agent, or by his partner, clerk, or employee, from any person having business relations with the principal of such agent, shall be deemed to have been received or solicited by the agent, unless it be proved that the valuable consideration was so received or solicited without the consent, knowledge, or privity of the agent.

Secret gifts received by parent, wife, child, partner, &c., of agent.  
*Ibid.* s. 171.

(2) Any valuable consideration given or offered to any parent, husband, wife, or child of any agent, or to his partner, clerk, or employee, or at the agent's request to any person by any person having business relations with the principal of such agent, shall be deemed to have been given or offered to the agent.

Secret gifts to parents, wife, child, partner, &c., of agent.

5. If, with intent to deceive or defraud the principal, any person gives to any agent, or any agent receives or uses or gives to the principal any receipt, invoice, account, or document in respect of which or in relation to a dealing, transaction, or matter in which the principal is interested, and which—

False or misleading receipt or account.  
Vict. Crimes Act, 1915, s. 172.

(a) contains any statement which is false or erroneous or defective in any important particular, or is in any way likely to mislead the principal; or

(b) omits to state explicitly and fully the fact of any commission, percentage, bonus, discount, rebate, repayment, gratuity, or deduction having been made, given, or allowed, or agreed to be made, given, or allowed,

he shall be guilty of an offence against this Act.

6. (1) Whenever any advice is given by one person to another, and such advice is in any way intended or likely to induce or influence the person advised—

Secret commission for advice given.  
*Ibid.* s. 173.

(a) to enter into a contract with any third person; or

(b) to appoint or join with another in the appointment, or to vote for or to aid in obtaining the election or appointment, or to authorise or join with another in authorising the appointment, of any third person as trustee,

and any valuable consideration is, without the assent of the person advised, given by such third person to the person



person giving the advice, the gift or receipt of the valuable consideration shall be an offence against this Act; but this subsection shall not apply when the person giving the advice was, to the knowledge of the person advised, the agent of such third person, or when 5 the valuable consideration was not given in respect of such advice.

Offer or solicitation of secret commission in return for advice given or to be given.

(2) Any offer or solicitation of a valuable consideration in respect of any advice given, or to be given, by one person to another with a view to induce or 10 influence the person advised—

- (a) to enter into a contract with the person offering or solicited; or
- (b) to appoint or join with another in appointing, or to vote for or to aid in obtaining the election 15 or appointment, or to authorise or join with another in authorising the appointment of the person offering or solicited as trustee,

and with the intent that the gift or receipt of such valuable consideration is not to be made known to the 20 person advised, shall be an offence against this Act; but this subsection shall not apply when such first-mentioned person is the agent of the person offering or solicited.

Secret commission to trustee in return for substituted appointment. Viet. Crimes Act, 1915, s. 174.

**7.** If any person offers or gives any valuable con- 25 sideration to a trustee, or if any trustee receives or solicits any valuable consideration for himself or for any other person without the assent of the persons beneficially entitled to the estate or of a judge of the Supreme Court, as an inducement or reward for appointing or 30 having appointed, or for joining or having joined with another in appointing, or for authorising or having authorised, or for joining or having joined with another in authorising any person to be appointed in his stead or instead of him and any other person as trustee, he shall 35 be guilty of an offence against this Act.

Aiding and abetting offences within or without New South Wales. *Ibid.* s. 175.

**8.** Any person who, being within New South Wales, knowingly aids, abets, counsels, or procures, or attempts or takes part in or is in any way privy to—

- (a) the doing of any act or thing in contravention 40 of this Act; or

(b)



(b) the doing of any act or thing outside New South Wales, or partly within and partly outside New South Wales, which, if done within New South Wales, would be in contravention of this Act,  
5 shall be guilty of an offence against this Act.

**9.** Any director, manager, or officer of a company, or any person acting for another, who knowingly takes part in or is in any way privy to doing, or attempts to do,  
10 any act or thing without authority which, if authorised, would be in contravention of any of the provisions of this Act, shall be guilty of an offence against this Act.

Liability of director, &c., acting without authority. Vict. Crimes Act, 1915, s. 176.

**10.** Any person guilty of an offence against this Act shall, on the conviction of a stipendiary or police  
15 magistrate, or any two justices,—

Penalty on conviction.

(a) be liable, if a corporation, to a penalty not exceeding                      pounds, and if any other person to be imprisoned for any period not exceeding                      , with or without hard  
20 labour, or to pay a penalty not exceeding                      pounds, or to imprisonment and penalty as aforesaid ; and

(b) in addition be liable to be ordered to pay to such person and in such manner as the court directs the amount or value, according to the  
25 estimation of the court, of any valuable consideration received or given by him, or any part thereof, and such order shall be enforceable in the same manner as an order of the court.

30 *Procedure.*

**11.** If in any prosecution under this Act it appears to the court that the offence charged is, in the particular case, of a trifling or merely technical nature, or that in the particular circumstances it is inexpedient to  
35 proceed to a conviction, the court may in its discretion, and for reasons stated on the application of the accused, dismiss the case ; but the court may, if it thinks fit, make the order mentioned in the last preceding section.

Court may order withdrawal of trifling or technical cases. *Ibid.* s. 177.

**12.**



Witness  
giving  
answers  
criminating  
himself.  
*Ibid.* s. 178.

**12.** (1) A person who is called as a witness in any proceeding under this Act shall not be excused from answering any question relating to any offence against this Act on the ground that the answer thereto may criminate, or tend to criminate, him.

5

(2) An answer to a question in any such proceeding shall not, except in the said proceeding or in the case of any prosecution for perjury in respect of such answer, be in any proceeding, civil or criminal, admissible in evidence against the person so answering.

10

Certificate to  
witness.  
Vict. Crimes  
Act, 1915,  
s. 178.

**13.** (1) A witness in any proceeding under this Act who, in the judgment of the court, answers truly all questions which he is required by the court to answer shall be entitled to receive a certificate from the court stating that such witness has so answered.

15

Stay of  
proceedings  
against such  
witness.  
*Ibid.* s. 179.

(2) When a person has received a certificate as aforesaid, and any criminal proceeding is at any time instituted against him in respect of the offence which was in question in the proceeding in which the said person was called as a witness, the court having cognizance of the case shall, on proof of the certificate and of the identity of the offence in question in the two cases, stay the proceedings.

20

Custom of  
itself no  
defence.  
*Ibid.* s. 180  
(a).

**14.** (1) In any prosecution under this Act it shall not amount to a defence to show that the receiving, soliciting, giving, or offering of any valuable consideration therein mentioned or referred to is customary in any trade, business, or calling.

25

Burden of  
proof that gift  
not secret  
commission.  
*Ibid.* s. 180  
(b).

(2) If in any prosecution under this Act it is proved that any valuable consideration has been received or solicited by an agent from or given or offered to an agent by any person having business relations with the principal, without the assent of the principal, the burden of proving that such valuable consideration was not received, solicited, given, or offered in contravention of any of the provisions of this Act shall be on the accused.

35

Limit of  
time for  
prosecution.  
*Ibid.* s. 180  
(c).

(3) No prosecution under this Act shall be commenced after the expiration of two years from the commission of the offence charged, or six months from the first discovery thereof by the principal or the person advised, as the case may be, whichever expiration first happens.

40

Consent to  
prosecution.  
*Ibid.* s. 180  
(d).

(4) No prosecution under this Act shall be commenced without the consent of the Attorney-General.

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