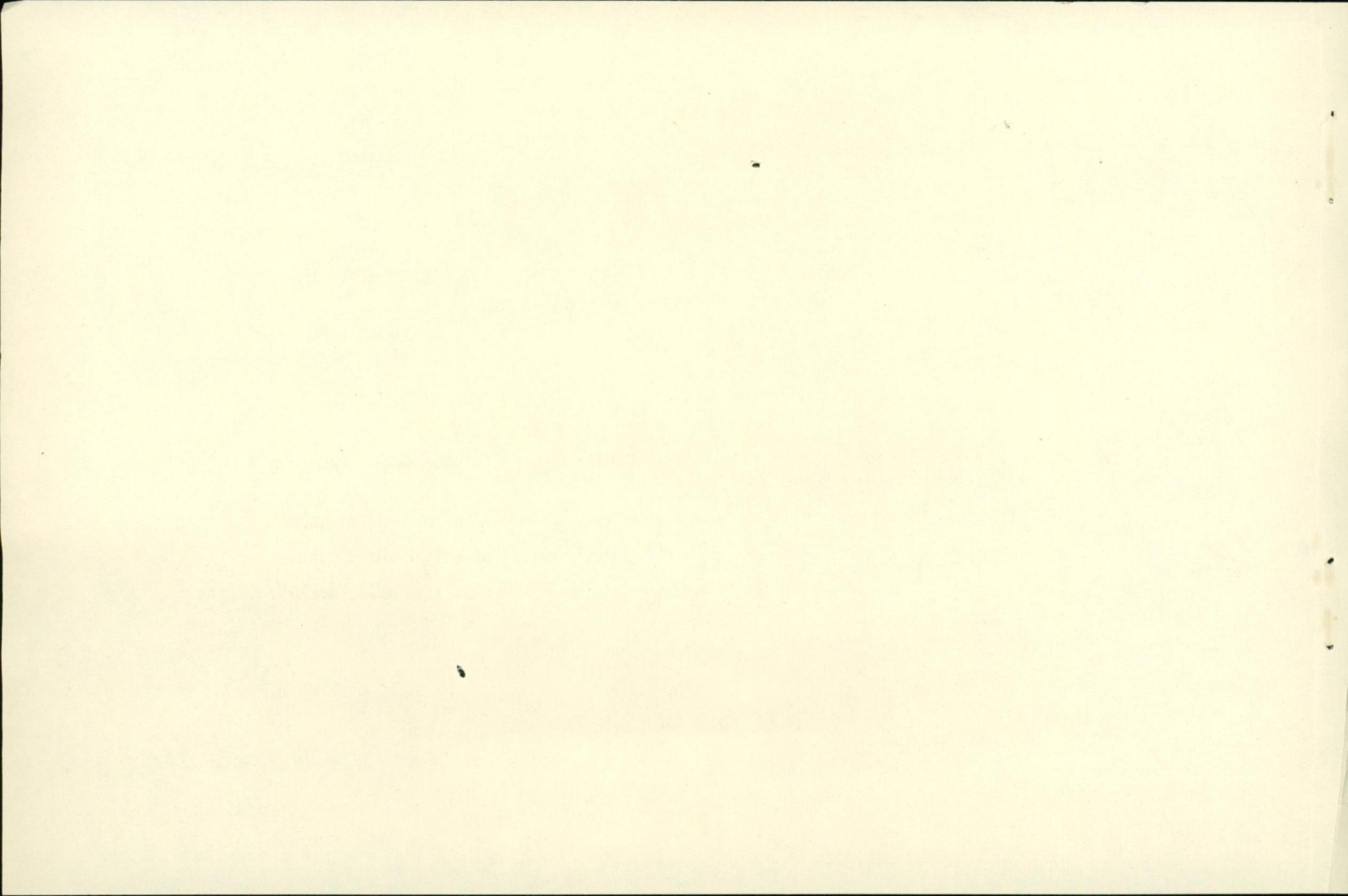


AUCTIONEERS, STOCK AND STATION, REAL ESTATE AND BUSINESS
AGENTS (AMENDMENT) BILL, 1957

*Schedule of Amendments referred to in Legislative Council's
Message of 3 April, 1957.*

- No. 1.—Page 36, clause 8, line 16. *After* “licensee” *insert* “**or real estate dealer, as defined in section fifty-one of this Act,**”.
- No. 2.—Page 36, clause 8, line 24. *After* “licensee” *insert* “**or real estate dealer**”.
- No. 3.—Page 37, clause 8, line 15. *After* “licensee” *insert* “**or a real estate dealer**”.
- No. 4.—Page 37, clause 8, line 19. *After* “licensee” *insert* “**or the real estate dealer**”.



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

ALLAN PICKERING,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 27 March, 1957.*

The LEGISLATIVE COUNCIL has this day agreed to this Bill with Amendments.

J. R. STEVENSON,
Clerk of the Parliaments.

*Legislative Council Chamber,
Sydney, 3 April, 1957.*

New South Wales



ANNO SEXTO

ELIZABETHÆ II REGINÆ

Act No. , 1957.

An Act to include in the Auctioneers, Stock and Station and Real Estate Agents Act, 1941-1954, provisions for licensing and regulating business agents and business sub-agents; to reconstitute the council constituted under that Act; to increase the annual contributions to the Auctioneers, Stock and Station and Real Estate Agents Fidelity Guarantee Fund established under that Act; to increase the maximum amount payable out of that Fund in respect of theft or fraudulent misapplication by any one licensee; to repeal the Business Agents Act, 1935; for these and other purposes to amend the Auctioneers, Stock and Station and Real Estate Agents Act, 1941-1954, and certain other Acts; and for purposes connected therewith.

*Auctioneers, Stock and Station, Real Estate and Business Agents
(Amendment).*

BE it enacted by the Queen'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 :—

1. (1) This Act may be cited as the "Auctioneers, Stock and Station, Real Estate and Business Agents (Amendment) Act, 1957." Short title, citation and commencement.

(2) The Auctioneers, Stock and Station and Real
10 Estate Agents Act, 1941-1954, is in this Act referred to as the Principal Act.

(3) The Auctioneers, Stock and Station and Real
Estate Agents Act, 1941, as amended by subsequent Acts
and by this Act, may be cited as the Auctioneers, Stock
15 and Station, Real Estate and Business Agents Act, 1941-1957.

(4) This Act shall, except where otherwise
expressly provided, commence upon a day to be
appointed by the Governor and notified by proclamation
20 published in the Gazette, which day is in this Act referred to as the "appointed day."

2. (1) On and from the appointed day no license or
renewal of a license under the Business Agents Act, 1935-
1941, shall be granted. Operation of Business Agents Act, 1935-1941.

(2) The provisions of the Business Agents Act,
25 1935-1941, shall, on and from the appointed day, apply only with respect to licenses issued under that Act and in force immediately before such commencement, and to persons holding such licenses, and for those purposes
30 shall continue in force in relation to any such license or person, only until such license has expired or is cancelled.

(3) As on and from the first anniversary of the
appointed day the Acts mentioned in the Schedule to this
Act are to the extent therein specified hereby repealed.

(4)

*Auctioneers, Stock and Station, Real Estate and Business Agents
(Amendment).*

(4) (a) Nothing in this section shall affect the liability of any person under any fidelity bond given pursuant to the Business Agents Act, 1935-1941.

(b) Notwithstanding anything contained in 5 subsections two and three of this section, section twenty-seven of the Business Agents Act, 1935-1941, shall continue to apply to and in respect of every such fidelity bond.

(5) Notwithstanding anything contained in sub- 10 sections two and three of this section every business agent or subagent under the Business Agents Act, 1935-1941, shall keep the written record referred to in subsection one of section twenty-two of that Act for a period of not less than three years after the date on which it was 15 made, and shall at all reasonable times produce such written record for inspection if required so to do by any officer of the police force of or above the rank of sergeant or the registrar under the Principal Act, as amended by this Act, or any officer of the council under such Principal 20 Act, as so amended, duly authorised in writing in that behalf by such council, but in the case of such authorised officer, on production of his written authority.

Any person who contravenes any of the provisions of this subsection shall be deemed to be guilty of an offence 25 against the Principal Act, as amended by this Act, and shall be liable to a penalty of not less than two pounds and not exceeding fifty pounds.

(6) Where an application is made for a business agent's license or a business subagent's license under the 30 Principal Act, as amended by this Act, by any person who at the time of the application is the holder of a business agent's license or a subagent's license, as the case may be, under the Business Agents Act, 1935-1941, the person making such application shall, for the 35 purposes of subsection six of section twenty-three of the Principal Act, as so amended, be deemed to be already

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(Amendment).*

already the holder of a license under the said Principal Act, as so amended, of the same class as that referred to in his application or of any other class.

3. Part I of the Principal Act is amended—

- 5 (a) (i) by omitting from the matter relating to Part II in section two the words “and Real Estate” and by inserting in lieu thereof the words “, Real Estate Agents and Business;”
- 10 (ii) by omitting from the matter relating to Part III in the same section the words “and Real Estate Agents—ss. 20-50” and by inserting in lieu thereof the words “, Real Estate Agents and Business Agents—ss. 20-50H;”
- 15 (iii) by inserting at the end of the same matter the following words, figures and letters:—
“DIVISION 4.—*Business Agents and Business Subagents—ss. 50A-50H.*”
- 20 (iv) by omitting from the matter relating to Part VI in the same section the words “and Real Estate” and by inserting in lieu thereof the words “, Real Estate and Business”;
- 25 (b) (i) by omitting from subsection one of section three the definition of “Council” and by inserting in lieu thereof the following definitions:—
- 30 “Business agent” means any person (whether or not such person carries on any other business) who for reward (whether monetary or otherwise)

Amendment
of Act No.
28, 1941,
Part I.
(Preliminary.)
Sec. 2.
(Division
into Parts.)

Sec. 3.
(Definitions.)

*Auctioneers, Stock and Station, Real Estate and Business Agents
(Amendment).*

otherwise) exercises or carries on business as an agent for performing any of the following functions, namely:—

5 (a) selling, buying or exchanging or otherwise dealing with or disposing of; or

10 (b) negotiating for the sale, purchase or exchange or any other dealing with or disposition of,

15 hotel businesses, residential businesses, boarding-house businesses, storekeeping businesses, manufacturing businesses or any trading businesses whatsoever or any share or interest in or concerning or the goodwill of or any stocks connected with any of such businesses, but
20 does not include a business subagent in his capacity as such.

25 “Business subagent” means any person who is in the direct employ of or acts for or by arrangement with a business agent and who performs for such business agent any of the functions of a business agent as defined by this section whether his
30 remuneration is by way of salary, wages, commission or otherwise but does not include an employee of a corporation in respect of whom such corporation has taken out a
35 business agent’s license.

“Council”

*Auctioneers, Stock and Station, Real Estate and Business Agents
(Amendment).*

“Council” means the Council of the Auctioneers, Stock and Station Agents, Real Estate Agents and Business Agents constituted under this Act.

5

(ii) by inserting in the same subsection at the end of the definition of “Licensee” the words “but does not include the holder of a business subagent’s license”;

10

(c) (i) by omitting from the proviso to paragraph (a) of subsection two of section four the words “or real estate agent” and by inserting in lieu thereof the words “, real estate agent or business agent”;

Sec. 4.
(Act not to apply to any Government department, etc.)

15

(ii) by omitting from the same proviso the words “a license” and by inserting in lieu thereof the words “an appropriate license”.

4. (1) Part II of the Principal Act is amended—

Amendment of Act No. 28, 1941, Part II. (The Council of the Auctioneers, Stock and Station Agents and Real Estate Agents.)

20

(a) by omitting from the heading to the Part the words “and Real Estate” and by inserting in lieu thereof the words “, Real Estate Agents and Business”;

Heading.

25

(b) by omitting from subsection three of section six the words “and Real Estate” and by inserting in lieu thereof the words “, Real Estate Agents and Business”;

Sec. 6.
(The council.)

(c)

*Auctioneers, Stock and Station, Real Estate and Business Agents
(Amendment).*

(c) by omitting section seven and by inserting in lieu thereof the following section:—

Subst.
sec. 7.

5 7. (1) On and from the day appointed pursuant to subsection four of section one of the Auctioneers, Stock and Station, Real Estate and Business Agents (Amendment) Act, 1957 (in this section referred to as the “appointed day”) the council shall be reconstituted and shall consist of—

First
council
with repre-
sentation for
business
agents.

10 (a) the persons who immediately before the appointed day were the members of the council as then constituted; and

15 (b) a person, who shall be appointed by the Governor and shall be the holder of a business agent’s license under the Business Agents Act, 1935-1941.

20 (2) Of the members referred to in paragraph (a) of subsection one of this section, the member who was appointed under the provisions of subsection three of section eight of this Act to be a member of the council as constituted immediately before the appointed day is in this Act referred to as the “official member” and the remaining members referred to in that paragraph and the member referred to in paragraph (b) of the said subsection one are in this Act referred to as “elected members”.

25 (3) The council as so reconstituted shall appoint one of its members to be chairman of the council.

30 (4) Subject to the provisions of this Act, the members of the council as so reconstituted shall hold office until the thirtieth day of June, one thousand nine hundred and fifty-eight, and shall be eligible for reappointment or for election as members of the council.

35

(5)

*Auctioneers, Stock and Station, Real Estate and Business Agents
(Amendment).*

5 (5) If immediately before the appointed day there was a vacancy in the office of any member of the council, the Governor may, in respect of that vacancy, appoint a person to the council as reconstituted under this section.

10 (6) For the purposes only of the application of the provisions of paragraph (g) of section nine of this Act to the member of the council appointed pursuant to paragraph (b) of subsection one of this section, the said paragraph (g) shall be deemed to be amended—

15 (a) by inserting next after the word “license” the words “under this Act or under the Business Agents Act, 1935-1941”; and

20 (b) by omitting the words “to renew the same upon its expiry” and by inserting in lieu thereof the words “upon the expiry of his license under the Business Agents Act, 1935-1941, to procure the issue to him of a business agent’s license under this Act, and to renew such lastmentioned license upon its expiry”.

25 (d) (i) by omitting from subsection one of section eight the word “forty-three” and by inserting in lieu thereof the word “fifty-eight”; Sec. 8.
(Constitution
of subsequent
councils.)

30 (ii) by omitting from the same subsection the word “ten” and by inserting in lieu thereof the word “thirteen”;

(iii) by omitting from the same subsection the word “nine” and by inserting in lieu thereof the word “twelve”;

35 (iv) by omitting from subparagraph (iii) of paragraph (b) of subsection two of the same section the word “three” and by inserting in lieu thereof the word “four”;

(v)

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(Amendment).*

- (v) by inserting at the end of the same paragraph the following new subparagraph:—
 (iv) two shall be business agents.
- 5 (vi) by inserting at the end of paragraph (a) of subsection four of the same section the following new subparagraph:—
 (iv) business agents.
- 10 (vii) by inserting next after subparagraph (iii) of paragraph (b) of the same subsection the following new subparagraph:—
 (iv) on the roll of business agents, if he holds a business agent's license,
- 15 (viii) by inserting at the end of paragraph (c) of the same subsection the following new subparagraph:—
 (iv) as a business agent—unless his name is on the roll of business agents.
- 20 (ix) by omitting from paragraph (d) of the same subsection the words "Each such roll shall" and by inserting in lieu thereof the words "The roll of auctioneers, the roll of stock and station agents and the roll of business agents shall each";
- 25 (x) by inserting at the end of the same paragraph the following words:—
 "The roll of real estate agents shall be divided into three parts to be known respectively as Part I, Part II and Part III.
- 30 In Part I of such roll shall be entered the names of all persons eligible for enrolment on such roll whose places of business are situated within the county of Cumberland, excluding therefrom such part of the police
- 35 district of Wollongong as is within that
 county

*Auctioneers, Stock and Station, Real Estate and Business Agents
(Amendment).*

county, or the county of Northumberland, excluding therefrom the police district of Newcastle.

5 In Part II of such roll shall be entered the names of all persons eligible for enrolment on such roll whose places of business are situated within the police districts of Newcastle and Wollongong.

10 In Part III of such roll shall be entered the names of all persons eligible for enrolment on such roll whose places of business are situated in any part of New South Wales, not being a part in respect of which they are eligible for enrolment on Part I or
15 Part II of such roll."

(xi) by inserting at the end of paragraph (e) of the same subsection the words "and the persons whose names are on Part III of that roll shall elect one member of the
20 council.

The persons whose names are on Part I of the roll of business agents shall elect one member of the council and the persons whose names are on Part II of that roll shall
25 elect one member of the council";

(xii) by omitting from subsection five of the same section the word "forty-three" and by inserting in lieu thereof the word "fifty-eight";

30 (e) (i) by inserting in subsection one of section Sec. 14. fourteen after the words "five guineas" the (Fees and expenses.) words ", or such other amount as may be prescribed in lieu thereof,";

35 (ii) by inserting in the same subsection after the words "two guineas" the words ", or such other amount as may be prescribed in lieu thereof,".

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(Amendment).*

(2) (a) The amendments made by subsection one of this section shall not prejudice or affect in any way the continuity of the body corporate constituted under Part II of the Principal Act but the same shall continue
5 notwithstanding the provisions of this section.

(b) The said body corporate shall continue and shall be deemed always to have continued notwithstanding that there are or have been at any time or times vacancies in the offices of all of the members of the body
10 corporate or of any one or more of them.

(3) (a) For the purposes only of the reconstitution to be effected by the amendments made by paragraph (c) of subsection one of this section and of any matters necessary for or incidental to such appointment or reconstitu-
15 tion, such amendments shall commence on the day upon which the assent of Her Majesty to this Act is signified.

(b) The persons to be members of the Council of the Auctioneers, Stock and Station Agents, Real Estate Agents and Business Agents as so reconstituted shall
20 assume their offices on the appointed day and on that day the amendments made by paragraph (c) of subsection one of this section shall come into force for all purposes.

5. (1) Part III of the Principal Act is amended—

Amendment
of Act No.
28, 1941,
Part III.
(Auctioneers,
Stock and
Station
Agents and
Real Estate
Agents.)

(a) by omitting from the heading thereto the words
25 "and Real Estate" and by inserting in lieu thereof the words ", Real Estate Agents and Business";

Heading.

(b)

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(Amendment).*

(b) (i) by inserting next after subsection two of section twenty the following new subsection:—

Sec. 20.
(No person or partner in a firm to act without a license.)

(2A) No person (either by himself or as a member of a partnership)—

5 (a) shall act as or carry on or advertise, notify or state that he acts as or carries on or is willing to act as or carry on the business of a business agent unless he is the holder of a business agent's license under the Business Agents Act, 1935-1941, or a business agent's license;

10 (b) shall act as or carry on or advertise, notify or state that he acts as or carries on or is willing to act as or carry on as a business subagent unless he is the holder of a subagent's license under the Business Agents Act, 1935-1941, or a business subagent's license.

15 (ii) by inserting in subsection three of the same section after the words "real estate agent" the words "or of a business agent";

20 (iii) by inserting in the same subsection after the word "appropriate." the following new paragraph:—

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

25 (c) by inserting next after subsection two of section twenty-one the following new subsection:—

Sec. 21.
(Each separate place of business to be in charge of licensee.)

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

30 (b)

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(Amendment).*

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

10 (c) Where a corporation conducts its business as a business agent at more than one place of business it shall employ at each such place a person in respect of whom it has taken out a license, and such person shall be in charge at that place.

15 (d) (i) by inserting in subsection one of section twenty-two after the word "license" where lastly occurring the following word and new paragraphs:—
Sec. 22.
(Licenses.)
 " ; or

(d) a business agent's license ; or

20 (e) a business subagent's license.'';

25 (ii) by inserting in paragraph (b) of subsection three of the same section after the words "taking out the same and" the words ", except in the case of a business subagent's license,";

(iii) by inserting next after paragraph (b) of subsection four of the same section the following new paragraph:—

30 (c) Where the holder of a license desires to surrender the license held by him he may in writing notify the clerk of the court by which the license was issued that he desires to surrender such license and deliver such license to the clerk of that court.

The

*Auctioneers, Stock and Station, Real Estate and Business Agents
(Amendment).*

The clerk of the court shall, upon receipt of such notification and license, endorse on the license the word "surrendered" and forward such notification to the registrar.

- 5 (e) (i) by omitting subsection three of section Sec. 23.
twenty-three and by inserting in lieu thereof (Procedure.)
the following subsection:—

(3) (a) Where the applicant resides in
New South Wales—

- 10 (i) an application for a license other
than a business subagent's license
shall be lodged with the clerk of
the court of the petty sessions
15 district within which the place of
business of the applicant in respect
of which the application is made is
situated or proposed to be situated;

- 20 (ii) an application for a business sub-
agent's license shall be lodged with
the clerk of the court of the petty
sessions district within which the
applicant resides.

- 25 (b) Where under this subsection
there is more than one court with the clerk
of which an application may be lodged such
application shall be lodged—

- 30 (i) in the case of an application for a
license other than a business sub-
agent's license, with the clerk of
the court within such district
nearest to the place where the place
of business to which the application
relates is situated or proposed to
be situated; or

(ii)

*Auctioneers, Stock and Station, Real Estate and Business Agents
(Amendment).*

- 5 (ii) in the case of an application for a business subagent's license, with the clerk of the court within such district nearest to the place where the applicant resides.
- (ii) by inserting next after paragraph (b) of subsection four of the same section the following new paragraph:—
- 10 (bi) Where the application is for a business agent's license and the applicant resides in any other State of the Commonwealth of Australia or in the Australian Capital Territory the application shall be lodged with the clerk of any court of petty sessions.
- 15 (iii) by inserting in paragraph (a) of subsection six of the same section after the words "prescribed fees and" the words ", except in the case of a person applying for a business subagent's license,";
- 20 (iv) by inserting at the end of paragraph (b) of the same subsection the words "or until the expiration of twelve months after the date upon which such provisional license took effect whichever first occurs";
- 25 (v) by inserting in subsection eight of the same section after the words "prescribed fees and" the words ", except in the case of a person applying for a business subagent's license,";
- 30 (vi) by inserting in subsection nine of the same section after the words "prescribed fees and" the words ", except in the case of a person applying for a business subagent's license,";
- 35 (vii)

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(Amendment).*

(vii) by inserting next after subsection ten of the same section the following new subsections:—

5 (10A) A license shall not, after the expiration of the prescribed period from the day appointed pursuant to subsection four of section one of the Auctioneers, Stock and Station, Real Estate and Business Agents (Amendment) Act, 1957, be granted to an applicant, not being a corporation, nor to a corporation in respect of an employee, unless such applicant or employee has—

15 (a) passed the prescribed examination conducted by the Department of Technical Education or such other examination as may be prescribed; or

20 (b) produced to the court satisfactory evidence that he is competent to perform the functions and duties generally performed by the holder of such a license.

25 This subsection shall not apply to any person to whom an auctioneer's license (being a general license) or a business agent's license may be granted pursuant to the provisions of section twenty-six or twenty-seven of this Act.

30 (10B) A business subagent's license shall not be granted to any person who is not a resident of New South Wales.

35 (f) (i) by omitting from subparagraph (i) of paragraph (a) of subsection one of section twenty-five the words "fifteen pounds" and by inserting in lieu thereof the words "sixteen pounds";

(ii)

Sec. 25.
(Fees payable for license.)

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(Amendment).*

- (ii) by omitting from subparagraph (ii) of the same paragraph the words "five pounds" and by inserting in lieu thereof the words "six pounds";
- 5 (iii) by omitting from subparagraph (iii) of the same paragraph the words "two pounds" and by inserting in lieu thereof the words "three pounds";
- 10 (iv) by omitting from subparagraph (iv) of the same paragraph the words "two pounds" and by inserting in lieu thereof the words "three pounds";
- 15 (v) by omitting from paragraph (b) of the same subsection the words "one pound" and by inserting in lieu thereof the words "two pounds";
- 20 (vi) by omitting from paragraph (c) of the same subsection the words "one pound" and by inserting in lieu thereof the words "two pounds";
- (vii) by omitting paragraphs (d), (e) and (f) of the same subsection and by inserting in lieu thereof the following paragraphs:—
- 25 (d) for an auctioneer's license (being a general license) and any one or more of the following licenses:—
a stock and station agent's license, a real estate agent's license or a business agent's license—
30 sixteen pounds;
- (e) for an auctioneer's license (being a country license) and any one or more of the following licenses:—
a stock and station agent's
35 license, a real estate agent's license or a business agent's license—
202—B six pounds; (f)

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(Amendment).*

- (f) for an auctioneer's license (being a district license or a primary products license) and any one or more of the following licenses:—
- 5 a stock and station agent's license, a real estate agent's license or a business agent's license—four pounds;
- (fi) for a business agent's license—
- 10 three pounds;
- (fii) for a business subagent's license—ten shillings;
- (viii) by omitting from paragraph (h) of the same subsection the words "five pounds" and by inserting in lieu thereof the words "six pounds";
- 15 (ix) by omitting from subsection three of the same section the words "not exceeding one pound";
- (x) by omitting from subsection four of the same section the words "Auctioneers, Stock and Station and Real Estate Agents Administration Account" and by inserting
- 20 in lieu thereof the words "Auctioneers, Stock and Station, Real Estate and Business Agents Administration Account";
- 25 (g) (i) by inserting in subsection one of section Sec. 26. twenty-six after the words and symbols (Power to grant " (being a general license) " the words "or auctioneers' licenses to persons a business agent's license"; resident in reciprocating States.)
- 30 (ii) by inserting in the same subsection after the word "auctioneer" the words "or a business agent, as the case may be,";
- (iii)

*Auctioneers, Stock and Station, Real Estate and Business Agents
(Amendment).*

(iii) by inserting in the same subsection after the words and symbols “(being general licenses)” the words “or business agents’ licenses, as the case may be,”;

5 (iv) by inserting next after subsection three of the same section the following new subsection:—

10 (3A) Any notification declaring that the Business Agents Act, 1935-1941, shall extend and apply to the granting in New South Wales of general licenses to residents in any other State, which was published pursuant to section ten of that Act and which was still in force immediately before the day
15 appointed pursuant to subsection four of section one of the Auctioneers, Stock and Station, Real Estate and Business Agents (Amendment) Act, 1957, shall, as from such day and until revoked by a notification published pursuant to this Act, have and take effect as if it were a notification published pursuant to subsection one of this
20 section declaring that, as from such day, and while the notification remains in force, this Act shall extend and apply to the granting in New South Wales of business agents’ licenses to residents in such other States as
25 is mentioned in such notification.

30 (v) by inserting in paragraph (a) of subsection four of the same section after the words and symbols “(being a general license)” the words “or a business agent’s license”;

35 (vi) by inserting in the same paragraph after the word “auctioneer” the words “or a business agent, as the case may be,”;

(h)

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(Amendment).*

- 5 (h) (i) by inserting in section twenty-seven after the words and symbols “(being general licenses or country licenses or district licenses)” the words “or business agents’ licenses”;
- 10 (ii) by inserting in the same section after the words and symbols “(being a general license or a country license or a district license)” where firstly occurring the words “or a business agent’s license”;
- 15 (iii) by inserting in the same section after the words “auctioneer’s license” where secondly occurring the words “, or a business agent’s license, as the case may be”;
- 20 (iv) by inserting in the same section after the words and symbols “(being a general license or a country license or a district license)” where secondly occurring the words “or a business agent’s license”;
- 25 (v) by inserting in the same section after the words “auctioneer’s license” where lastly occurring the words “, or a business agent’s license, as the case may be,”;
- 25 (i) by omitting from section twenty-eight the words “or a renewal thereof” wherever occurring and by inserting in lieu thereof the words “or a business agent’s license, or a renewal of either such license,”;
- 30 (j) by inserting at the end of section twenty-nine the following new subsection:—
- (4) The foregoing provisions of this section shall apply mutatis mutandis to and in respect of a business subagent’s license and the holder of a business subagent’s license.

Sec. 27.
(Grant of auctioneers’ licenses to persons resident in the Australian Capital Territory.)

Sec. 28.
(Applicant for auctioneer’s license to be resident in New South Wales or reciprocating State.)

Sec. 29.
(Cancellation of license.)

(k)

*Auctioneers, Stock and Station, Real Estate and Business Agents
(Amendment).*

- (k) (i) by inserting in subsection one of section thirty-one after the word "licensee" the words "or the employee, or the holder of a business subagent's license";
- 5 (ii) by inserting in paragraph (b) of subsection four of the same section after the word "employee" the words ", or holder of a business subagent's license,";
- (iii) by inserting next after the same subsection the following new subsection:—
- 10 (4A) An appeal under this section in any case to which paragraph (a) of subsection one of this section applies shall not be commenced after the expiration of twenty-one days after the date of refusal of the application or the date of the order under section twenty-nine of this Act, as the case may be.
- 15 (l) by omitting from section thirty-two the words "or a real estate agent" and by inserting in lieu thereof the words ", a real estate agent, a business agent or a business subagent,";
- 20 (m) (i) by inserting next after subsection three of section thirty-four the following new subsections:—
- 25 (3A) Every business subagent shall have a registered address within New South Wales.
- (3B) The address specified in the application for a business subagent's license as the address at which the applicant then resides, shall, upon the grant of the application, be deemed for the purposes of this Act to be the registered address of the business subagent.
- 30 (ii) by inserting in subsection four of the same section after the words "registered office" the words "or the registered address";
- 35 (iii)

Sec. 31.
(Appeal.)

Sec. 32.
(Effect of disqualification on membership, etc., of corporation.)

Sec. 34.
(Registered office and address.)

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(Amendment).*

- (iii) by inserting in the same subsection after the word "licensee" the words "or the holder of the business subagent's license, as the case may be,";
- 5 (iv) by inserting in subsection five of the same section after the word "business" where firstly occurring the words "or if any licensed business subagent acts or carries on as a business subagent";
- 10 (n) by inserting at the end of paragraph (b) of subsection three of section thirty-five the following new subparagraph:— Sec. 35.
(Publication of name of licensee.)
- “(iv) as a business agent—unless he is the holder of a business agent's license”;
- 15 (o) (i) by inserting at the end of subsection one of section thirty-six the words “and in any other case the trust account shall be in the name of the licensee. 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”; Sec. 36.
(Payment into bank.)
- 20
- 25 (ii) by inserting next after subsection four of the same section the following new subsection:—
- (4A) Where any licensee neglects or fails to comply with any of the provisions of this section by reason of his neglect or failure to pay any moneys into a bank in New South Wales to a trust account or to retain any such moneys therein, the offence shall continue until the said moneys are paid to the person for or on whose behalf they were received, or disbursed in such manner as may be directed by such person.
- 30
- 35
- (p)

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- 5 (p) (i) by inserting in subsection one of section thirty-eight after the word "licensee" where secondly occurring the words "and such other written records relating to his business as licensee as may be prescribed";
- (ii) by omitting from the same subsection the word "record" where secondly occurring and by inserting in lieu thereof the word "records";
- 10 (iii) by omitting from subsection two of the same section the words "The written record" and by inserting in lieu thereof the words "Every such written record";
- 15 (iv) by omitting from subsection three of the same section the words "the written record" and by inserting in lieu thereof the words "any such written record";
- 20 (q) by omitting from subsection one of section 38B the word "record" and by inserting in lieu thereof the word "records";
- (r) by inserting next after section 38B the following new section:—
- 25 38c. (1) Every business agent—
- (a) shall make or cause to be made a true statement in writing in the prescribed form and with the prescribed particulars as to the name and the work or services of and the salary, wages or commission paid in each month to every person employed (whether as an employee or a subagent or otherwise) by him in connection with his business as a business agent and shall, for a period of three years after the date on which the statement was made or caused to be made, keep such statement at his principal place of business in New South Wales;
- 30
- 35
- (b)

Sec. 38.
(Record to
be kept.)

Sec. 38B.
(Inspection
of records.)

New sec.
38c.

Statement of
employees,
subagents,
etc., and
their wages
to be kept
by business
agents.
cf. Act No. 7,
1935, s. 18.

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5 (b) shall, at all reasonable times, produce
such statement for inspection if
required to do so by the registrar, a
member of the police force of or above
the rank of sergeant, or an officer of
the council duly authorised by the
council in writing in that behalf, but
in the case of such authorised officer
upon production of his written
10 authority.

(2) Any business agent who—

(a) commits any contravention of or fails
to comply with any of the provisions
of this section; or

15 (b) makes any false entries in any such
statement;

shall be guilty of an offence against this Act.

20 (s) (i) by inserting in subsection one of section Sec. 39.
thirty-nine after the word "business" the (Certain persons not
words ", and the holder of a business to be
subagent's license shall not, except with employed by
such approval and subject to any such licensees.)
conditions, knowingly employ in any way
whatever in connection with his work as a
25 business subagent,";

(ii) by inserting in paragraph (a) of the same
subsection after the word "Act" where
lastly occurring the words "or whose
30 license under this Act or the Business
Agents Act, 1935, has been cancelled, unless
a license has been subsequently granted to
him";

(iii) by inserting at the end of the same sub-
section the following word and new
35 paragraphs:—

or

(c)

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5 (c) who is for the time being disqualified under this Act from holding a certificate of registration as a real estate salesman, or whose certificate of registration as a real estate salesman has been cancelled, unless a certificate has been subsequently granted to him; or

10 (d) whose application for a certificate of registration as a real estate salesman under this Act has been refused, unless such an application has been subsequently granted.

15 (iv) by inserting at the end of subsection two of the same section the words "or in the work of a business subagent";

20 (v) by inserting in subsection four of the same section after the word "licensee" the words "or any holder of a business subagent's license";

(t) by inserting next after section thirty-nine the following new section:— New sec. 39A.

25 39A. (1) A licensee or a holder of a business subagent's license shall not knowingly enter into any arrangement or act in conjunction with any person, not being an employee in his business as a licensee or in his work as a licensed business subagent, who is not licensed under this Act whereby such person is entitled to a share of the commission, fee, gain or reward payable to such licensee or the holder of such a license in respect of any transaction by or with him as a licensee or holder of a business subagent's license, or generally. Licensee not to share commission, etc., with certain persons.

(2)

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(2) A licensee shall not, without the prior consent in writing of the registrar, carry on business as such or advertise or in any manner whatsoever hold out that he carries on business as such—

5

(a) under the name, or a name nearly resembling the name, whereunder a person whose license has been cancelled under or in pursuance of this Act or the Business Agents Act, 1935, was carrying on business as a licensee immediately before his license was cancelled; or

10

(b) under a name implying or capable of being construed as implying that he is the successor in the business, or in any way interested or concerned in continuing the business as a licensee, of a person whose license has been cancelled under or in pursuance of this Act or the Business Agents Act, 1935:

15

20

Provided that nothing in this subsection shall prohibit the carrying on by a licensee of his business as such under his true name without any addition or adaptation whatsoever.

25

(u) (i) by omitting from section forty the words Sec. 40. "or a real estate agent" and by inserting (Production of license.) in lieu thereof the words "a real estate agent or a business agent";

30

(ii) by inserting at the end of the same section the following new subsection:—

(2) Every business subagent shall, on demand, produce his license to any member of the police force of or above the rank of sergeant, or to any person with whom such business subagent is transacting or attempting to transact any business on behalf of a business agent.

35

(v)

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- (v) by inserting in section forty-one after the word "licensee" the words "or holder of a business subagent's license"; Sec. 41.
(Licensee not to lend license.)
- 5 (w) by inserting at the end of paragraph (c) of subsection one of section forty-two the following new paragraph:— Sec. 42.
(Provisions as to commission, etc.)
- 10 (d) as a business agent or business subagent unless he was the holder of a business agent's license or of a business subagent's license, as the case may be, at the time of doing or performing such service.
- 15 (x) (i) by omitting from paragraph (a) of section forty-three the words ", or a name other than his own name,"; Sec. 43.
(Publication of name and place of business in advertisements.)
- (ii) by inserting next after the same paragraph the following new paragraph:—
- 20 (ai) where such licensee is an individual carrying on business under a business name registered or deemed to be registered under any Act for the time being in force relating to the registration of business names, then either his name or such business name and the address of his place of business;
- 25 (y) by inserting next after section fifty the following new Division:— New
Division
4.
- 30 DIVISION 4.—*Business Agents and Business Subagents.*
- 35 50A. Any business agent or business subagent who by any wilfully false, misleading or deceptive statement, representation or promise or by any wilful concealment of material fact, induces or attempts to induce any person to enter into Misrepresentation by business agent or subagent.
cf. Act No. 7, 1935,
s. 2L.

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5 an agreement or contract for the sale or purchase or lease of a business or undertaking shall be guilty of an offence and shall be liable to a penalty of not less than ten pounds and not exceeding two hundred pounds or to imprisonment for a term not exceeding two years, or both.

10 50B. (1) Every business agent and business subagent shall keep in a legible manner a written record containing full particulars of every business or share or interest in or concerning or the goodwill of or any stocks connected with a business which has been entrusted to him for the exercise or performance in relation thereto of any of the functions of a business agent as defined by this Act.

15

Record to be kept by business agent. cf. Act No. 7, 1935, s. 22.

20 (2) Such written record shall be open to inspection at all reasonable times by the registrar, a member of the police force of or above the rank of sergeant, or an officer of the council duly authorised in writing in that behalf and in the case of such authorised officer upon production of his written authority, and every business agent or business subagent upon being required so to do shall produce such written record for inspection by the registrar, such member of the police force or such authorised officer.

25

(3) Any person who—

30 (a) wilfully delays or obstructs the registrar, such member of the police force or such authorised officer in the exercise of his powers, authorities, duties and functions under subsection two of this section; or

(b)

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5 (b) being a business agent or business sub-agent refuses or fails, upon being required to produce any such written record kept by him under this section, to do so;

shall be guilty of an offence against this Act.

10 50c. The holder of a business agent's license shall not, in any way whatever in connection with his business, knowingly employ as a business subagent any person who is not the holder of a business subagent's license. Business agent not to employ unlicensed subagent. cf. Act No. 7, 1935, s. 25.

15 50d. Notwithstanding anything in any Act, no action shall be brought upon any contract or sale of any of the businesses referred to in the definition of "Business agent" in section three of this Act or any share or interest in or concerning any of such businesses, if the agreement or the memorandum or note thereof on which such action is brought is signed by any person other than the party to be charged therewith, unless such person so signing be thereunto lawfully authorised in writing signed by the party to be so charged. Agents for sale of businesses to be authorised in writing. cf. Act No. 7, 1935, s. 28.

25 50e. (1) Notwithstanding anything in this Act or any law to the contrary, no business subagent shall carry out any of the work of a business subagent unless such business subagent was theretofore lawfully authorised in writing thereunto by a business agent. Business subagent acting for business agent to be authorised by him. cf. Act No. 7, 1935, s. 32.

30 (2) Every business subagent shall at all reasonable times produce the written authority referred to in subsection one of this section whenever demanded by the registrar, a member of the police force of or above the rank of sergeant or an officer of the council duly authorised in that behalf, but in the case of such authorised officer upon production of his written authority.

35

(3)

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(Amendment).*

5 (3) Any business subagent who makes any false representation (whether verbally or in writing or by conduct) to any person to the effect that such business subagent is authorised to act as a business subagent for any specified business agent shall be guilty of an offence against this Act.

10 50F. Nothing in this Act shall be construed as requiring any holder of a business subagent's license, so far as he performs for any holder of a business agent's license any of the functions of a business agent and is duly authorised there-
15 unto by such business agent, to hold a business agent's license under this Act, or as requiring any holder of a business agent's license to hold a business subagent's license under this Act.

*Saving as to licensed business subagents, etc.
cf. Act No. 7, 1935, s. 33.*

20 50G. Every business subagent shall, as soon as practicable after receiving any moneys from or on behalf of any person in respect of any trans-
25 action, in his capacity as a business subagent, pay such moneys to the business agent for whom he is acting in such transaction.

Disposal of moneys received by business subagent.

25 50H. Every business agent shall be personally liable for all moneys received from or on behalf of any person by any business subagent acting in his capacity as a business subagent for such business agent.

*Liability on principal for certain acts, etc., of sub-agents.
cf. Act No. 7, 1935, s. 35.*

30 (2) (a) The amendments made by subparagraph (ii) of paragraph (b) of subsection one of this section shall not apply to a corporation which is the holder of a business agent's license under the Business Agents Act, 1935-1941, or on whose behalf a person has taken out a license under that Act while such license is in force but
35 upon the expiration of such license such amendments shall thereupon in all respects have full force and effect with respect to such corporation.

(b)

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(Amendment).*

(b) The amendment made by paragraph (c) of subsection one of this section shall not apply to any person who is the holder of a business agent's license issued under the Business Agents Act, 1935-1941, nor to
5 any corporation which is the holder of any such license or on whose behalf any person has taken out any such license, while such license is in force, but upon the expiration of such license such amendments shall thereupon in all respects have full force and effect with respect to such
10 person or corporation as the case may be.

(3) All moneys which immediately before the appointed day stood to the credit of the Auctioneers, Stock and Station and Real Estate Agents Administration Account, and all investments which immediately
15 before that day were held by the council in connection with that account shall upon such day respectively be moneys standing to the credit of and investments held by the council in connection with the Auctioneers, Stock and Station, Real Estate and Business Agents Administration Account.
20

6. (1) Part IV of the Principal Act is amended—

Amendment
of Act
No. 28,
1941,
Part IV.
(Real Estate
Dealers and
Real Estate
Salesmen.)
Sec. 51.
(Interpre-
tation.)

(a) (i) by omitting from the definition of "Real estate dealer" in section fifty-one the words
25 "land in allotments" and by inserting in lieu thereof the words "allotments of land";

(ii) by omitting the definition of "Real estate salesman" in the same section and by inserting in lieu thereof the following
30 definition:—

"Real estate salesman" means a person who, for or on behalf of any real estate agent or real estate dealer,
induces

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induces or attempts to induce or negotiates with a view to inducing any person—

5 (a) to buy, sell or otherwise dispose of any land, including any allotment of land; or

10 (b) to make any offer to buy, sell or otherwise dispose of any land, including any allotment of land; or

(c) to accept any offer to buy, sell or otherwise dispose of any land, including any allotment of land; or

15 (d) to enter into any contract for the purchase, sale or other disposal of any land, including any allotment of land,

20 but does not include an auctioneer, a stock and station agent or a real estate agent.

25 (b) by inserting in paragraph (a) of subsection one of section fifty-two after the word "Act" where lastly occurring the words "or whose license under this Act or the Business Agents Act, 1935, has been cancelled, unless a license has been subsequently granted to him".

Sec. 52.
(Provisions as to employment of certain persons by real estate dealers.)

(2) The amendments made by subsection one of this section shall commence upon the expiration of a 30 period of three months after the appointed day.

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(Amendment).*

7. (1) Part VI of the Principal Act is amended—

Amendment
of Act No.
28, 1941,
Part VI.
(The Auc-
tioneers,
Stock and
Station and
Real Estate
Agents
Fidelity
Guarantee
Fund.)

- 5 (a) by omitting from the heading thereto the words Heading.
“and Real Estate” and by inserting in lieu
thereof the words “, Real Estate and
Business”;
- (b) by omitting from subsection one of section Sec. 65.
sixty-five the words “and Real Estate” and by (The fund.)
inserting in lieu thereof the words “, Real
Estate and Business”;
- 10 (c) by omitting from section sixty-six the words Sec. 66.
“and Real Estate” and by inserting in lieu (Separate
bank
account.)
thereof the words “, Real Estate and
Business”;
- 15 (d) (i) by omitting from subsection three of Sec. 71.
section seventy-one the words “not less (Contribu-
tions
to fund.)
than” wherever occurring;
- 20 (ii) by omitting from the same subsection the
words “shall not be required to pay any
further amount by way of contributions
under this section” and by inserting in lieu
thereof the words “shall after paying such
amount pay annually a contribution of one
pound”;
- 25 (iii) by inserting at the end of the same sub-
section the following new paragraph:—
This subsection shall apply whether any
such amount was paid before or after the
day appointed pursuant to subsection four
of

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of section one of the Auctioneers, Stock and
Station, Real Estate and Business Agents
(Amendment) Act, 1957.

5 (e) (i) by inserting in subsection one of section Sec. 74.
seventy-four after the words "real estate (Application
agent" the words "or a business agent"; of fund.)

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

10 (2A) No person shall have any claim
against the fund in respect of any theft or
fraudulent misapplication committed in the
course of the business of a business agent
15 unless such theft or fraudulent mis-
application was committed at a time when
such business agent was the holder of a
business agent's license under this Act.

20 (iii) by omitting from subsection three of the
same section the words "that may be
committed after such commencement" and
by inserting in lieu thereof the words ", in
respect of which any claim against the fund
arose,".

25 (f) by inserting at the end of subsection six of Sec. 75.
section seventy-five the following new sub- (Claims
section:— against
the fund.)

30 (7) In respect of any theft or fraudulent
misapplication after the day appointed pursuant
to subsection four of section one of the
Auctioneers, Stock and Station, Real Estate and
Business Agents (Amendment) Act, 1957,
subsections three and four of this section shall
be read as though the words "five hundred"
were omitted therefrom and the words "ten
35 thousand" substituted therefor.

(g)

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(g) by omitting section seventy-eight and by inserting in lieu thereof the following section:—

Subst.
sec. 78.

5 78. (1) Any proceedings brought against the council in relation to any claim upon the fund shall be by action at law as for a debt due by the council and shall be brought—

Defences.

10 (a) where the amount claimed does not exceed fifty pounds in a court of petty sessions holden before a stipendiary magistrate;

(b) where the amount claimed exceeds fifty pounds but does not exceed one thousand pounds in a district court;

15 (c) where the amount claimed exceeds one thousand pounds in the Supreme Court.

20 (2) In any of the actions referred to in subsection one of this section all defences which would have been available to the licensee in relation to whom the claim arose shall be available to the council, and in any such action all questions of costs shall be in the discretion of the court or the presiding judge.

25 (3) Any order for the payment of costs made by a court of petty sessions under the provisions of subsection two of this section shall operate as an order for the recovery of money under the Small Debts Recovery Act, 1912, as amended by subsequent Acts, and be enforceable as such under the provisions of that Act, as amended.

35 (2) All moneys which immediately before the appointed day stood to the credit of the Auctioneers, Stock and Station and Real Estate Agents Fidelity Guarantee Fund or the Auctioneers, Stock and Station and Real Estate Agents Fidelity Guarantee Account shall upon that day become and be respectively moneys standing

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standing to the credit of the Auctioneers, Stock and
Station, Real Estate and Business Agents Fidelity
Guarantee Fund and the Auctioneers, Stock and Station,
Real Estate and Business Agents Fidelity Guarantee
5 Account.

(3) All investments which immediately before the
appointed day were held by the council in connection with
the Auctioneers, Stock and Station and Real Estate
Agents Fidelity Guarantee Fund shall upon that day
10 become and be investments held by the council in con-
nection with the Auctioneers, Stock and Station, Real
Estate and Business Agents Fidelity Guarantee Fund.

8. Part VII of the Principal Act is amended by insert-
ing next after section eighty-four the following new
15 section:—

Amendment
of Act
No. 28, 1941,
Part VII.
(General.)
New
sec. 84A.

84A. (1) Any licensee or real estate dealer, as
defined in section fifty-one of this Act, who publishes
or causes to be published in the course of his business
as such, or the holder of a business subagent's license
20 who publishes or causes to be published in connection
with any matter in which he is acting as a business
subagent, any statement which—

Penalty for
publishing
false or mis-
leading ad-
vertisements.
cf. Act No.
39, 1912,
s. 97.

(a) is intended or apparently intended by such
licensee or real estate dealer or holder of
25 a business subagent's license to promote the
sale of any land or livestock or any business;
and

(b) is to his knowledge false or misleading in
any material particular,

30 shall be guilty of an offence against this Act.

(2) A statement shall be deemed to be pub-
lished within the meaning of this section if it is—

(a) inserted in any newspaper or any other pub-
lication printed and published in New
35 South Wales; or

(b)

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(Amendment).*

(b) publicly exhibited—

- 5 (i) in, on, over or under any building,
vehicle or place (whether or not
a public place and whether on land
or water); or
- (ii) in the air in view of persons being
or passing in or on any street or
public place; or
- 10 (c) contained in any document gratuitously
sent or delivered to any person or thrown
or left upon premises in the occupation of
any person; or
- (d) broadcast by wireless transmission.

15 (3) In any proceedings under this section
against a licensee **or a real estate dealer** or the holder
of a business subagent's license for publishing any
statement aforesaid or causing the same to be pub-
lished, if it is proved that such statement was false
or misleading in any material particular, the licensee
20 **or the real estate dealer** or the holder of the business
subagent's license who published the statement or
caused the same to be published shall be deemed to
have published the same or to have caused the same
to be published with knowledge of its falsity or
25 misleading character, as the case may be, unless he
proves that having taken all reasonable precautions
against committing an offence under this section he
had reasonable grounds to believe and did believe
30 that the statement was true and had no reason to
suspect that the statement was false or misleading.

(4) Notwithstanding any proceedings against
any person for an offence under this section (whether
resulting in a conviction or otherwise) such person
shall remain liable to all civil proceedings in like
35 manner as if the proceedings for an offence had not
been taken.

(5)

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(Amendment).*

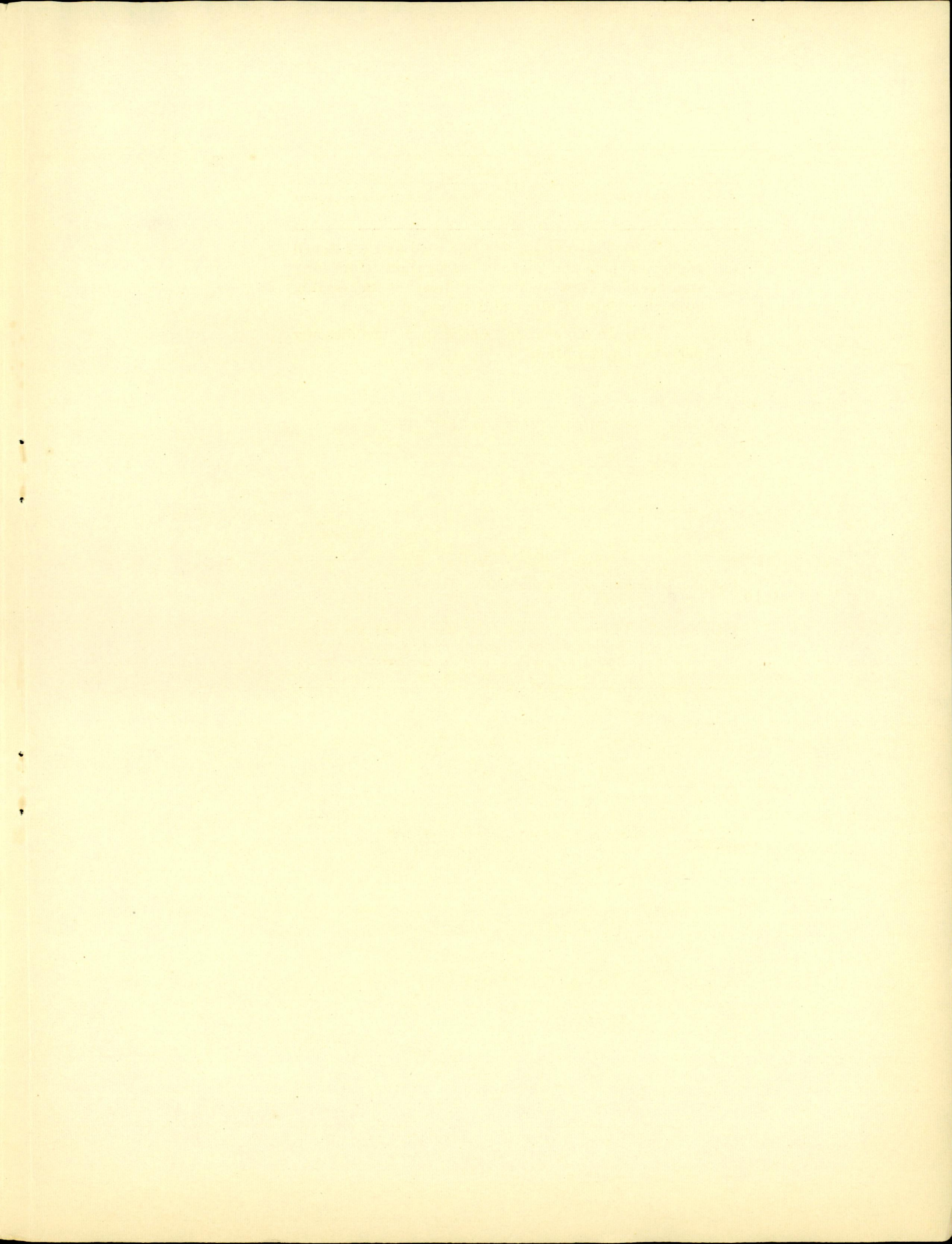
(5) This section shall be read and construed as in aid of and not in derogation from any enactment or law relating to false or misleading advertisements or other statements.

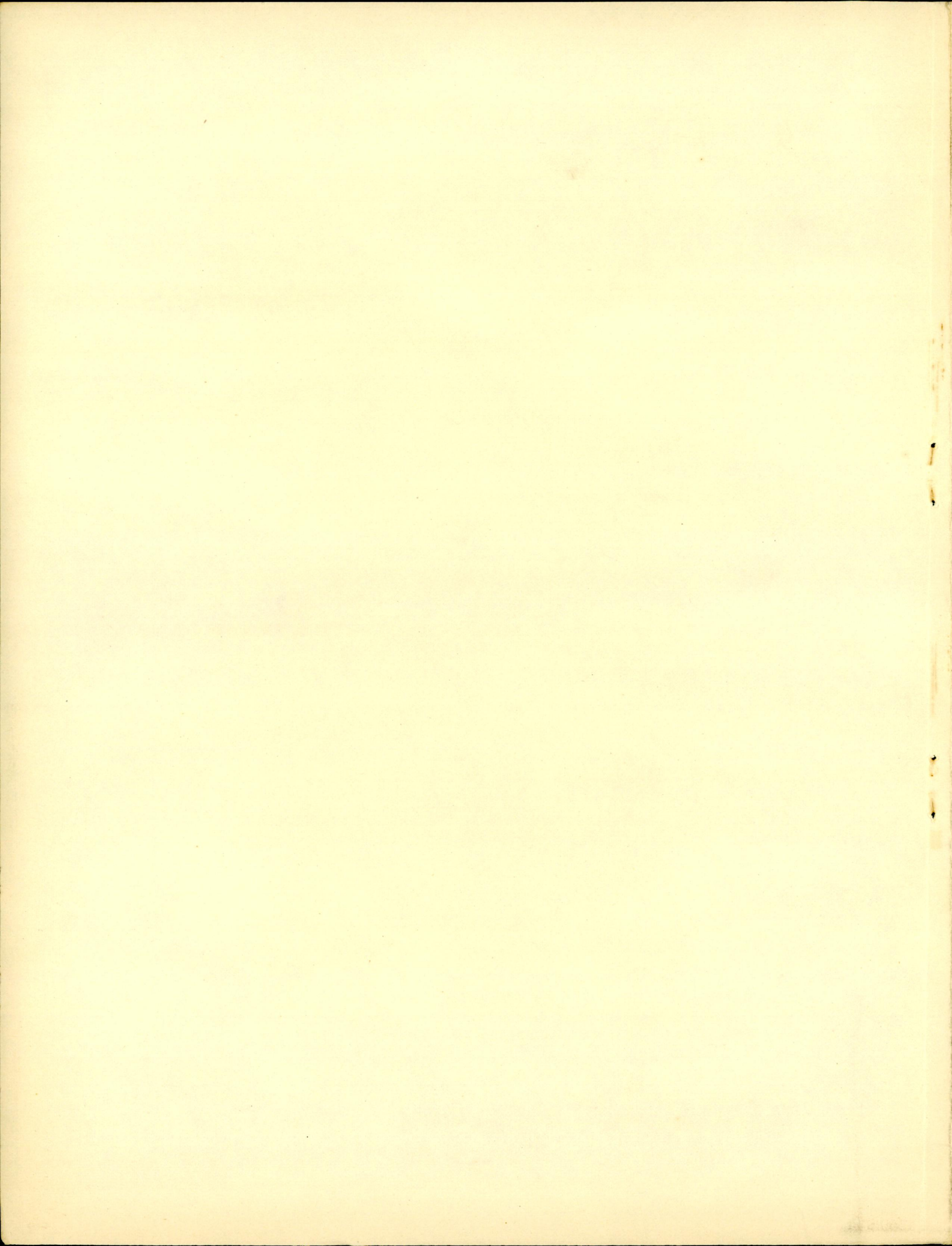
5 (6) In this section "newspaper" includes any periodical publication.

SCHEDULE.

Sec. 2 (3).

No. of Act.	Name of Act.	Extent of Repeal.
10 1935, No. 7 ...	Business Agents Act, 1935.	The whole.
1941, No. 28...	Auctioneers, Stock and Station and Real Estate Agents Act, 1941.	Part V and the matter relating to Part V in section two.





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

ALLAN PICKERING,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 27 March, 1957.*

The LEGISLATIVE COUNCIL has this day agreed to this Bill with Amendments.

Clerk of the Parliaments.

*Legislative Council Chamber,
Sydney, April, 1957.*

New South Wales



ANNO SEXTO

ELIZABETHÆ II REGINÆ

Act No. , 1957.

An Act to include in the Auctioneers, Stock and Station and Real Estate Agents Act, 1941-1954, provisions for licensing and regulating business agents and business sub-agents; to reconstitute the council constituted under that Act; to increase the annual contributions to the Auctioneers, Stock and Station and Real Estate Agents Fidelity Guarantee Fund established under that Act; to increase the maximum amount payable out of that Fund in respect of theft or fraudulent misapplication by any one licensee; to repeal the Business Agents Act, 1935; for these and other purposes to amend the Auctioneers, Stock and Station and Real Estate Agents Act, 1941-1954, and certain other Acts; and for purposes connected therewith.

*Auctioneers, Stock and Station, Real Estate and Business Agents
(Amendment).*

BE it enacted by the Queen'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 :—

1. (1) This Act may be cited as the "Auctioneers, Stock and Station, Real Estate and Business Agents (Amendment) Act, 1957." Short title, citation and commencement.

(2) The Auctioneers, Stock and Station and Real
10 Estate Agents Act, 1941-1954, is in this Act referred to as the Principal Act.

(3) The Auctioneers, Stock and Station and Real
Estate Agents Act, 1941, as amended by subsequent Acts
and by this Act, may be cited as the Auctioneers, Stock
15 and Station, Real Estate and Business Agents Act, 1941-1957.

(4) This Act shall, except where otherwise
expressly provided, commence upon a day to be
appointed by the Governor and notified by proclamation
20 published in the Gazette, which day is in this Act referred to as the "appointed day."

2. (1) On and from the appointed day no license or
renewal of a license under the Business Agents Act, 1935-
1941, shall be granted. Operation of Business Agents Act, 1935-1941.

(2) The provisions of the Business Agents Act,
25 1935-1941, shall, on and from the appointed day, apply only with respect to licenses issued under that Act and in force immediately before such commencement, and to persons holding such licenses, and for those purposes
30 shall continue in force in relation to any such license or person, only until such license has expired or is cancelled.

(3) As on and from the first anniversary of the
appointed day the Acts mentioned in the Schedule to this
Act are to the extent therein specified hereby repealed.

(4)

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(4) (a) Nothing in this section shall affect the liability of any person under any fidelity bond given pursuant to the Business Agents Act, 1935-1941.

(b) Notwithstanding anything contained in 5 subsections two and three of this section, section twenty-seven of the Business Agents Act, 1935-1941, shall continue to apply to and in respect of every such fidelity bond.

(5) Notwithstanding anything contained in sub- 10 sections two and three of this section every business agent or subagent under the Business Agents Act, 1935-1941, shall keep the written record referred to in subsection one of section twenty-two of that Act for a period of not less than three years after the date on which it was 15 made, and shall at all reasonable times produce such written record for inspection if required so to do by any officer of the police force of or above the rank of sergeant or the registrar under the Principal Act, as amended by this Act, or any officer of the council under such Principal 20 Act, as so amended, duly authorised in writing in that behalf by such council, but in the case of such authorised officer, on production of his written authority.

Any person who contravenes any of the provisions of this subsection shall be deemed to be guilty of an offence 25 against the Principal Act, as amended by this Act, and shall be liable to a penalty of not less than two pounds and not exceeding fifty pounds.

(6) Where an application is made for a business agent's license or a business subagent's license under the 30 Principal Act, as amended by this Act, by any person who at the time of the application is the holder of a business agent's license or a subagent's license, as the case may be, under the Business Agents Act, 1935-1941, the person making such application shall, for the 35 purposes of subsection six of section twenty-three of the Principal Act, as so amended, be deemed to be already

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already the holder of a license under the said Principal Act, as so amended, of the same class as that referred to in his application or of any other class.

3. Part I of the Principal Act is amended—

- 5 (a) (i) by omitting from the matter relating to Part II in section two the words “and Real Estate” and by inserting in lieu thereof the words “, Real Estate Agents and Business;”
- 10 (ii) by omitting from the matter relating to Part III in the same section the words “and Real Estate Agents—ss. 20-50” and by inserting in lieu thereof the words “, Real Estate Agents and Business Agents—ss. 20-50H;”
- 15 (iii) by inserting at the end of the same matter the following words, figures and letters:—
“DIVISION 4.—*Business Agents and Business Subagents*—ss. 50A-50H.”
- 20 (iv) by omitting from the matter relating to Part VI in the same section the words “and Real Estate” and by inserting in lieu thereof the words “, Real Estate and Business”;
- 25 (b) (i) by omitting from subsection one of section three the definition of “Council” and by inserting in lieu thereof the following definitions:—
- 30 “Business agent” means any person (whether or not such person carries on any other business) who for reward (whether monetary or otherwise)

Amendment
of Act No.
28, 1941,
Part I.
(Preliminary.)
Sec. 2.
(Division
into Parts.)

Sec. 3.
(Definitions.)

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otherwise) exercises or carries on business as an agent for performing any of the following functions, namely:—

5 (a) selling, buying or exchanging or otherwise dealing with or disposing of; or

10 (b) negotiating for the sale, purchase or exchange or any other dealing with or disposition of,

15 hotel businesses, residential businesses, boarding-house businesses, storekeeping businesses, manufacturing businesses or any trading businesses whatsoever or any share or interest in or concerning or the goodwill of or any stocks connected with any of such businesses, but
20 does not include a business sub-agent in his capacity as such.

25 “Business subagent” means any person who is in the direct employ of or acts for or by arrangement with a business agent and who performs for such business agent any of the functions of a business agent as defined by this section whether his
30 remuneration is by way of salary, wages, commission or otherwise but does not include an employee of a corporation in respect of whom such corporation has taken out a
35 business agent’s license.

“Council”

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5 “Council” means the Council of the
Auctioneers, Stock and Station
Agents, Real Estate Agents and
Business Agents constituted under
this Act.

(ii) by inserting in the same subsection at the
end of the definition of “Licensee” the
words “but does not include the holder of
a business subagent’s license”;

10 (c) (i) by omitting from the proviso to paragraph **Sec. 4.**
(a) of subsection two of section four the (Act not to
words “or real estate agent” and by insert- apply to any
ing in lieu thereof the words “, real estate Government
agent or business agent”; department,
etc.)

15 (ii) by omitting from the same proviso the
words “a license” and by inserting in lieu
thereof the words “an appropriate
license”.

4. (1) Part II of the Principal Act is amended—

**Amendment
of Act
No. 28,
1941,
Part II.
(The
Council of
the
Auctioneers,
Stock and
Station
Agents and
Real Estate
Agents.)**

20 (a) by omitting from the heading to the Part the **Heading.**
words “and Real Estate” and by inserting in
lieu thereof the words “, Real Estate Agents
and Business”;

25 (b) by omitting from subsection three of section **Sec. 6.**
six the words “and Real Estate” and by insert- (The
ing in lieu thereof the words “, Real Estate council.)
Agents and Business”;

(c)

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(c) by omitting section seven and by inserting in lieu thereof the following section:—

Subst.
sec. 7.

5 7. (1) On and from the day appointed pursuant to subsection four of section one of the Auctioneers, Stock and Station, Real Estate and Business Agents (Amendment) Act, 1957 (in this section referred to as the "appointed day") the council shall be reconstituted and shall consist of—

First
council
with repre-
sentation for
business
agents.

10 (a) the persons who immediately before the appointed day were the members of the council as then constituted; and

15 (b) a person, who shall be appointed by the Governor and shall be the holder of a business agent's license under the Business Agents Act, 1935-1941.

20 (2) Of the members referred to in paragraph (a) of subsection one of this section, the member who was appointed under the provisions of subsection three of section eight of this Act to be a member of the council as constituted immediately before the appointed day is in this Act referred to as the "official member" and

25 the remaining members referred to in that paragraph and the member referred to in paragraph (b) of the said subsection one are in this Act referred to as "elected members".

30 (3) The council as so reconstituted shall appoint one of its members to be chairman of the council.

35 (4) Subject to the provisions of this Act, the members of the council as so reconstituted shall hold office until the thirtieth day of June, one thousand nine hundred and fifty-eight, and shall be eligible for reappointment or for election as members of the council.

(5)

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5 (5) If immediately before the appointed day there was a vacancy in the office of any member of the council, the Governor may, in respect of that vacancy, appoint a person to the council as reconstituted under this section.

10 (6) For the purposes only of the application of the provisions of paragraph (g) of section nine of this Act to the member of the council appointed pursuant to paragraph (b) of subsection one of this section, the said paragraph (g) shall be deemed to be amended—

15 (a) by inserting next after the word “license” the words “under this Act or under the Business Agents Act, 1935-1941”; and

20 (b) by omitting the words “to renew the same upon its expiry” and by inserting in lieu thereof the words “upon the expiry of his license under the Business Agents Act, 1935-1941, to procure the issue to him of a business agent’s license under this Act, and to renew such lastmentioned license upon its expiry”.

25 (d) (i) by omitting from subsection one of section eight the word “forty-three” and by inserting in lieu thereof the word “fifty-eight”; Sec. 8.
(Constitution
of subsequent
councils.)

30 (ii) by omitting from the same subsection the word “ten” and by inserting in lieu thereof the word “thirteen”;

(iii) by omitting from the same subsection the word “nine” and by inserting in lieu thereof the word “twelve”;

35 (iv) by omitting from subparagraph (iii) of paragraph (b) of subsection two of the same section the word “three” and by inserting in lieu thereof the word “four”;

(v)

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- (v) by inserting at the end of the same paragraph the following new subparagraph:—
 (iv) two shall be business agents.
- 5 (vi) by inserting at the end of paragraph (a) of subsection four of the same section the following new subparagraph:—
 (iv) business agents.
- 10 (vii) by inserting next after subparagraph (iii) of paragraph (b) of the same subsection the following new subparagraph:—
 (iv) on the roll of business agents, if he holds a business agent's license,
- 15 (viii) by inserting at the end of paragraph (c) of the same subsection the following new subparagraph:—
 (iv) as a business agent—unless his name is on the roll of business agents.
- 20 (ix) by omitting from paragraph (d) of the same subsection the words "Each such roll shall" and by inserting in lieu thereof the words "The roll of auctioneers, the roll of stock and station agents and the roll of business agents shall each";
- 25 (x) by inserting at the end of the same paragraph the following words:—
 "The roll of real estate agents shall be divided into three parts to be known respectively as Part I, Part II and Part III.
- 30 In Part I of such roll shall be entered the names of all persons eligible for enrolment on such roll whose places of business are situated within the county of Cumberland, excluding therefrom such part of the police
- 35 district of Wollongong as is within that
 county

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county, or the county of Northumberland, excluding therefrom the police district of Newcastle.

5 In Part II of such roll shall be entered the names of all persons eligible for enrolment on such roll whose places of business are situated within the police districts of Newcastle and Wollongong.

10 In Part III of such roll shall be entered the names of all persons eligible for enrolment on such roll whose places of business are situated in any part of New South Wales, not being a part in respect of which they are eligible for enrolment on Part I or
15 Part II of such roll."

(xi) by inserting at the end of paragraph (e) of the same subsection the words "and the persons whose names are on Part III of that roll shall elect one member of the
20 council.

The persons whose names are on Part I of the roll of business agents shall elect one member of the council and the persons whose names are on Part II of that roll shall
25 elect one member of the council";

(xii) by omitting from subsection five of the same section the word "forty-three" and by inserting in lieu thereof the word "fifty-eight";

30 (e) (i) by inserting in subsection one of section Sec. 14. fourteen after the words "five guineas" the (Fees and expenses.) words ", or such other amount as may be prescribed in lieu thereof,";

35 (ii) by inserting in the same subsection after the words "two guineas" the words ", or such other amount as may be prescribed in lieu thereof,".

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(2) (a) The amendments made by subsection one of this section shall not prejudice or affect in any way the continuity of the body corporate constituted under Part II of the Principal Act but the same shall continue notwithstanding the provisions of this section.

(b) The said body corporate shall continue and shall be deemed always to have continued notwithstanding that there are or have been at any time or times vacancies in the offices of all of the members of the body corporate or of any one or more of them.

(3) (a) For the purposes only of the reconstitution to be effected by the amendments made by paragraph (c) of subsection one of this section and of any matters necessary for or incidental to such appointment or reconstitution, such amendments shall commence on the day upon which the assent of Her Majesty to this Act is signified.

(b) The persons to be members of the Council of the Auctioneers, Stock and Station Agents, Real Estate Agents and Business Agents as so reconstituted shall assume their offices on the appointed day and on that day the amendments made by paragraph (c) of subsection one of this section shall come into force for all purposes.

5. (1) Part III of the Principal Act is amended—

Amendment
of Act No.
28, 1941,
Part III.
(Auctioneers,
Stock and
Station
Agents and
Real Estate
Agents.)

(a) by omitting from the heading thereto the words "and Real Estate" and by inserting in lieu thereof the words ", Real Estate Agents and Business";

(b)

25

Heading.

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(b) (i) by inserting next after subsection two of section twenty the following new subsection:—
(2A) No person (either by himself or as a member of a partnership)—

Sec. 20.
(No person or partner in a firm to act without a license.)

5 (a) shall act as or carry on or advertise, notify or state that he acts as or carries on or is willing to act as or carry on the business of a business agent unless he is the holder of a business agent's license under the Business Agents Act, 1935-1941, or a business agent's license;

15 (b) shall act as or carry on or advertise, notify or state that he acts as or carries on or is willing to act as or carry on as a business subagent unless he is the holder of a subagent's license under the Business Agents Act, 1935-1941, or a business subagent's license.

20 (ii) by inserting in subsection three of the same section after the words "real estate agent" the words "or of a business agent";

25 (iii) by inserting in the same subsection after the word "appropriate." the following new paragraph:—

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

30 (c) by inserting next after subsection two of section twenty-one the following new subsection:—
(2A) (a) No person shall, by virtue of one business agent's license, keep more than one place for the conduct of his business as a business agent.

Sec. 21.
(Each separate place of business to be in charge of licensee.)

(b)

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

10 (c) Where a corporation conducts its business as a business agent at more than one place of business it shall employ at each such place a person in respect of whom it has taken out a license, and such person shall be in charge at that place.

15 (d) (i) by inserting in subsection one of section twenty-two after the word "license" where Sec. 22.
(Licenses.) lastly occurring the following word and new paragraphs:—
" ; or

(d) a business agent's license ; or

20 (e) a business subagent's license." ;

(ii) by inserting in paragraph (b) of subsection three of the same section after the words "taking out the same and" the words " , except in the case of a business subagent's license, " ;

25

(iii) by inserting next after paragraph (b) of subsection four of the same section the following new paragraph:—

30 (c) Where the holder of a license desires to surrender the license held by him he may in writing notify the clerk of the court by which the license was issued that he desires to surrender such license and deliver such license to the clerk of that court.

The

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The clerk of the court shall, upon receipt of such notification and license, endorse on the license the word "surrendered" and forward such notification to the registrar.

- 5 (e) (i) by omitting subsection three of section Sec. 23.
twenty-three and by inserting in lieu thereof (Procedure.)
the following subsection:—

(3) (a) Where the applicant resides in
New South Wales—

- 10 (i) an application for a license other
than a business subagent's license
shall be lodged with the clerk of
the court of the petty sessions
15 district within which the place of
business of the applicant in respect
of which the application is made is
situated or proposed to be situated;

- 20 (ii) an application for a business sub-
agent's license shall be lodged with
the clerk of the court of the petty
sessions district within which the
applicant resides.

- 25 (b) Where under this subsection
there is more than one court with the clerk
of which an application may be lodged such
application shall be lodged—

- 30 (i) in the case of an application for a
license other than a business sub-
agent's license, with the clerk of
the court within such district
nearest to the place where the place
of business to which the application
relates is situated or proposed to
be situated; or

(ii)

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- 5 (ii) in the case of an application for a business subagent's license, with the clerk of the court within such district nearest to the place where the applicant resides.
- (ii) by inserting next after paragraph (b) of subsection four of the same section the following new paragraph:—
- 10 (bi) Where the application is for a business agent's license and the applicant resides in any other State of the Commonwealth of Australia or in the Australian Capital Territory the application shall be lodged with the clerk of any court of petty sessions.
- 15
- (iii) by inserting in paragraph (a) of subsection six of the same section after the words "prescribed fees and" the words ", except in the case of a person applying for a business subagent's license,";
- 20
- (iv) by inserting at the end of paragraph (b) of the same subsection the words "or until the expiration of twelve months after the date upon which such provisional license took effect whichever first occurs";
- 25
- (v) by inserting in subsection eight of the same section after the words "prescribed fees and" the words ", except in the case of a person applying for a business subagent's license,";
- 30
- (vi) by inserting in subsection nine of the same section after the words "prescribed fees and" the words ", except in the case of a person applying for a business subagent's license,";
- 35
- (vii)

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(vii) by inserting next after subsection ten of the same section the following new subsections:—

5 (10A) A license shall not, after the expiration of the prescribed period from the day appointed pursuant to subsection four of section one of the Auctioneers, Stock and Station, Real Estate and Business Agents (Amendment) Act, 1957, be granted to an applicant, not being a corporation, nor to a corporation in respect of an employee, unless such applicant or employee has—

15 (a) passed the prescribed examination conducted by the Department of Technical Education or such other examination as may be prescribed; or

20 (b) produced to the court satisfactory evidence that he is competent to perform the functions and duties generally performed by the holder of such a license.

25 This subsection shall not apply to any person to whom an auctioneer's license (being a general license) or a business agent's license may be granted pursuant to the provisions of section twenty-six or twenty-seven of this Act.

30 (10B) A business subagent's license shall not be granted to any person who is not a resident of New South Wales.

35 (f) (i) by omitting from subparagraph (i) of paragraph (a) of subsection one of section twenty-five the words "fifteen pounds" and by inserting in lieu thereof the words "sixteen pounds";

(ii)

Sec. 25.
(Fees payable for license.)

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- (ii) by omitting from subparagraph (ii) of the same paragraph the words "five pounds" and by inserting in lieu thereof the words "six pounds";
- 5 (iii) by omitting from subparagraph (iii) of the same paragraph the words "two pounds" and by inserting in lieu thereof the words "three pounds";
- 10 (iv) by omitting from subparagraph (iv) of the same paragraph the words "two pounds" and by inserting in lieu thereof the words "three pounds";
- 15 (v) by omitting from paragraph (b) of the same subsection the words "one pound" and by inserting in lieu thereof the words "two pounds";
- 20 (vi) by omitting from paragraph (e) of the same subsection the words "one pound" and by inserting in lieu thereof the words "two pounds";
- (vii) by omitting paragraphs (d), (e) and (f) of the same subsection and by inserting in lieu thereof the following paragraphs:—
 - 25 (d) for an auctioneer's license (being a general license) and any one or more of the following licenses:—
 - a stock and station agent's license, a real estate agent's license or a business agent's license—
 - 30 sixteen pounds;
 - (e) for an auctioneer's license (being a country license) and any one or more of the following licenses:—
 - 35 a stock and station agent's license, a real estate agent's license or a business agent's license—
 - 202—B six pounds; (f)

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- (f) for an auctioneer's license (being a district license or a primary products license) and any one or more of the following licenses:—
- 5 a stock and station agent's license, a real estate agent's license or a business agent's license—four pounds;
- 10 (fi) for a business agent's license—three pounds;
- (fii) for a business subagent's license—ten shillings;
- (viii) by omitting from paragraph (h) of the same subsection the words "five pounds" and by
- 15 inserting in lieu thereof the words "six pounds";
- (ix) by omitting from subsection three of the same section the words "not exceeding one pound";
- 20 (x) by omitting from subsection four of the same section the words "Auctioneers, Stock and Station and Real Estate Agents Administration Account" and by inserting in lieu thereof the words "Auctioneers,
- 25 Stock and Station, Real Estate and Business Agents Administration Account";
- (g) (i) by inserting in subsection one of section Sec. 26. twenty-six after the words and symbols " (being a general license) " the words "or grant a business agent's license"; auctioneers' licenses to persons resident in reciprocating States.)
- 30 (ii) by inserting in the same subsection after the word "auctioneer" the words "or a business agent, as the case may be,";
- (iii)

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- (iii) by inserting in the same subsection after the words and symbols "(being general licenses)" the words "or business agents' licenses, as the case may be,";
- 5 (iv) by inserting next after subsection three of the same section the following new subsection:—
- (3A) Any notification declaring that the
10 Business Agents Act, 1935-1941, shall extend and apply to the granting in New South Wales of general licenses to residents in any other State, which was published pursuant to section ten of that Act and which was still in force immediately before the day
15 appointed pursuant to subsection four of section one of the Auctioneers, Stock and Station, Real Estate and Business Agents (Amendment) Act, 1957, shall, as from such day and until revoked by a notification published pursuant to this Act, have and take effect as if it were a notification published pursuant to subsection one of this
20 section declaring that, as from such day, and while the notification remains in force, this Act shall extend and apply to the granting in New South Wales of business agents' licenses to residents in such other States as is mentioned in such notification.
- 25
- (v) by inserting in paragraph (a) of subsection four of the same section after the words and symbols "(being a general license)" the words "or a business agent's license";
- 30
- (vi) by inserting in the same paragraph after the word "auctioneer" the words "or a
35 business agent, as the case may be,";
- (h)

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- 5 (h) (i) by inserting in section twenty-seven after the words and symbols “(being general licenses or country licenses or district licenses)” the words “or business agents’ licenses”;
- (ii) by inserting in the same section after the words and symbols “(being a general license or a country license or a district license)” where firstly occurring the words “or a business agent’s license”;
- 10 (iii) by inserting in the same section after the words “auctioneer’s license” where secondly occurring the words “, or a business agent’s license, as the case may be”;
- 15 (iv) by inserting in the same section after the words and symbols “(being a general license or a country license or a district license)” where secondly occurring the words “or a business agent’s license”;
- 20 (v) by inserting in the same section after the words “auctioneer’s license” where lastly occurring the words “, or a business agent’s license, as the case may be,”;
- 25 (i) by omitting from section twenty-eight the words “or a renewal thereof” wherever occurring and by inserting in lieu thereof the words “or a business agent’s license, or a renewal of either such license,”;
- 30 (j) by inserting at the end of section twenty-nine the following new subsection:—
- (4) The foregoing provisions of this section shall apply mutatis mutandis to and in respect of a business subagent’s license and the holder of a business subagent’s license.

Sec. 27.
(Grant of auctioneers’ licenses to persons resident in the Australian Capital Territory.)

Sec. 28.
(Applicant for auctioneer’s license to be resident in New South Wales or reciprocating State.)

Sec. 29.
(Cancellation of license.)

(k)

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- (k) (i) by inserting in subsection one of section thirty-one after the word "licensee" the words "or the employee, or the holder of a business subagent's license";
- 5 (ii) by inserting in paragraph (b) of subsection four of the same section after the word "employee" the words ", or holder of a business subagent's license,";
- 10 (iii) by inserting next after the same subsection the following new subsection:—
- (4A) An appeal under this section in any case to which paragraph (a) of subsection one of this section applies shall not be commenced after the expiration of twenty-one days after the date of refusal of the application or the date of the order under section twenty-nine of this Act, as the case may be.
- 15
- (l) by omitting from section thirty-two the words "or a real estate agent" and by inserting in lieu thereof the words ", a real estate agent, a business agent or a business subagent,";
- 20
- (m) (i) by inserting next after subsection three of section thirty-four the following new subsections:—
- 25 (3A) Every business subagent shall have a registered address within New South Wales.
- (3B) The address specified in the application for a business subagent's license as the address at which the applicant then resides, shall, upon the grant of the application, be deemed for the purposes of this Act to be the registered address of the business subagent.
- 30
- (ii) by inserting in subsection four of the same section after the words "registered office" the words "or the registered address";
- 35 (iii)

Sec. 31.
(Appeal.)

Sec. 32.
(Effect of disqualification on membership, etc., of corporation.)

Sec. 34.
(Registered office and address.)

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- (iii) by inserting in the same subsection after the word "licensee" the words "or the holder of the business subagent's license, as the case may be,";
- 5 (iv) by inserting in subsection five of the same section after the word "business" where firstly occurring the words "or if any licensed business subagent acts or carries on as a business subagent";
- 10 (n) by inserting at the end of paragraph (b) of subsection three of section thirty-five the following new subparagraph:—
- Sec. 35.
(Publication
of name of
licensee.)
- “(iv) as a business agent—unless he is the holder of a business agent's license”;
- 15 (o) (i) by inserting at the end of subsection one of section thirty-six the words “and in any other case the trust account shall be in the name of the licensee. 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”;
- Sec. 36.
(Payment
into bank.)
- 20
- 25 (ii) by inserting next after subsection four of the same section the following new subsection:—
- (4A) Where any licensee neglects or fails to comply with any of the provisions of this section by reason of his neglect or failure to pay any moneys into a bank in New South Wales to a trust account or to retain any such moneys therein, the offence shall continue until the said moneys are paid to the person for or on whose behalf they were received, or disbursed in such manner as may be directed by such person.
- 30
- 35
- (p)

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- 5 (p) (i) by inserting in subsection one of section thirty-eight after the word "licensee" where secondly occurring the words "and such other written records relating to his business as licensee as may be prescribed";
- (ii) by omitting from the same subsection the word "record" where secondly occurring and by inserting in lieu thereof the word "records";
- 10 (iii) by omitting from subsection two of the same section the words "The written record" and by inserting in lieu thereof the words "Every such written record";
- 15 (iv) by omitting from subsection three of the same section the words "the written record" and by inserting in lieu thereof the words "any such written record";
- 20 (q) by omitting from subsection one of section 38B the word "record" and by inserting in lieu thereof the word "records";
- (r) by inserting next after section 38B the following new section:—
- 25 38c. (1) Every business agent—
- (a) shall make or cause to be made a true statement in writing in the prescribed form and with the prescribed particulars as to the name and the work or services of and the salary, wages or commission paid in each month to every person employed (whether as an employee or a subagent or otherwise) by him in connection with his business as a business agent and shall, for a period of three years after the date on which the statement was made or caused to be made, keep such statement at his principal place of business in New South Wales;
- 30
- 35
- (b)

Sec. 38.
(Record to
be kept.)

Sec. 38B.
(Inspection
of records.)

New sec.
38c.

Statement of
employees,
subagents,
etc., and
their wages
to be kept
by business
agents.
cf. Act No. 7,
1935, s. 18.

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5 (b) shall, at all reasonable times, produce
such statement for inspection if
required to do so by the registrar, a
member of the police force of or above
the rank of sergeant, or an officer of
the council duly authorised by the
council in writing in that behalf, but
10 upon production of his written
authority.

(2) Any business agent who—

- 15 (a) commits any contravention of or fails
to comply with any of the provisions
of this section; or
(b) makes any false entries in any such
statement;

shall be guilty of an offence against this Act.

20 (s) (i) by inserting in subsection one of section Sec. 39.
thirty-nine after the word "business" the (Certain persons not
to be employed by
licensees.)
words ", and the holder of a business
subagent's license shall not, except with
such approval and subject to any such
conditions, knowingly employ in any way
whatever in connection with his work as a
25 business subagent,";

30 (ii) by inserting in paragraph (a) of the same
subsection after the word "Act" where
lastly occurring the words "or whose
license under this Act or the Business
Agents Act, 1935, has been cancelled, unless
a license has been subsequently granted to
him";

35 (iii) by inserting at the end of the same sub-
section the following word and new
paragraphs:—

or

(c)

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(Amendment).*

5 (c) who is for the time being disqualified under this Act from holding a certificate of registration as a real estate salesman, or whose certificate of registration as a real estate salesman has been cancelled, unless a certificate has been subsequently granted to him; or

10 (d) whose application for a certificate of registration as a real estate salesman under this Act has been refused, unless such an application has been subsequently granted.

15 (iv) by inserting at the end of subsection two of the same section the words "or in the work of a business subagent";

20 (v) by inserting in subsection four of the same section after the word "licensee" the words "or any holder of a business subagent's license";

(t) by inserting next after section thirty-nine the following new section:— New sec. 39A.

25 39A. (1) A licensee or a holder of a business subagent's license shall not knowingly enter into any arrangement or act in conjunction with any person, not being an employee in his business as a licensee or in his work as a licensed business subagent, who is not licensed under this Act whereby such person is entitled to a share of the commission, fee, gain or reward payable to such licensee or the holder of such a license in respect of any transaction by or with him as a licensee or holder of a business subagent's license, or generally. Licensee not to share commission, etc., with certain persons.

(2)

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5 (2) A licensee shall not, without the prior consent in writing of the registrar, carry on business as such or advertise or in any manner whatsoever hold out that he carries on business as such—

10 (a) under the name, or a name nearly resembling the name, whereunder a person whose license has been cancelled under or in pursuance of this Act or the Business Agents Act, 1935, was carrying on business as a licensee immediately before his license was cancelled; or

15 (b) under a name implying or capable of being construed as implying that he is the successor in the business, or in any way interested or concerned in continuing the business as a licensee, of a person whose license has been cancelled
20 under or in pursuance of this Act or the Business Agents Act, 1935:

25 Provided that nothing in this subsection shall prohibit the carrying on by a licensee of his business as such under his true name without any addition or adaptation whatsoever.

(u) (i) by omitting from section forty the words Sec. 40. "or a real estate agent" and by inserting (Production of license.) in lieu thereof the words " , a real estate agent or a business agent";

30 (ii) by inserting at the end of the same section the following new subsection:—

35 (2) Every business subagent shall, on demand, produce his license to any member of the police force of or above the rank of sergeant, or to any person with whom such business subagent is transacting or attempting to transact any business on behalf of a business agent.

(v)

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- (v) by inserting in section forty-one after the word "licensee" the words "or holder of a business subagent's license";
- 5 (w) by inserting at the end of paragraph (c) of subsection one of section forty-two the following new paragraph:—
- 10 (d) as a business agent or business subagent unless he was the holder of a business agent's license or of a business subagent's license, as the case may be, at the time of doing or performing such service.
- 15 (x) (i) by omitting from paragraph (a) of section forty-three the words " , or a name other than his own name,";
- (ii) by inserting next after the same paragraph the following new paragraph:—
- 20 (ai) where such licensee is an individual carrying on business under a business name registered or deemed to be registered under any Act for the time being in force relating to the registration of business names, then either his name or
- 25 such business name and the address of his place of business;
- (y) by inserting next after section fifty the following new Division:—
- 30 DIVISION 4.—*Business Agents and Business Subagents.*
- 35 50A. Any business agent or business subagent who by any wilfully false, misleading or deceptive statement, representation or promise or by any wilful concealment of material fact, induces or attempts to induce any person to enter into an
- Sec. 41.
(Licensee not to lend license.)
- Sec. 42.
(Provisions as to commission, etc.)
- Sec. 43.
(Publication of name and place of business in advertisements.)
- New Division 4.
- Misrepresentation by business agent or subagent.
cf. Act No. 7, 1935, s. 21.

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5 an agreement or contract for the sale or purchase or lease of a business or undertaking shall be guilty of an offence and shall be liable to a penalty of not less than ten pounds and not exceeding two hundred pounds or to imprisonment for a term not exceeding two years, or both.

10 50B. (1) Every business agent and business subagent shall keep in a legible manner a written record containing full particulars of every business or share or interest in or concerning or the goodwill of or any stocks connected with a business which has been entrusted to him for the exercise or performance in relation thereto of any of the functions of a business agent as defined by this Act.

15

Record to be kept by business agent. cf. Act No. 7, 1935, s. 22.

20 (2) Such written record shall be open to inspection at all reasonable times by the registrar, a member of the police force of or above the rank of sergeant, or an officer of the council duly authorised in writing in that behalf and in the case of such authorised officer upon production of his written authority, and every business agent or business subagent upon being required so to do shall produce such written record for inspection by the registrar, such member of the police force or such authorised officer.

25

(3) Any person who—

30 (a) wilfully delays or obstructs the registrar, such member of the police force or such authorised officer in the exercise of his powers, authorities, duties and functions under subsection two of this section; or

(b)

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(b) being a business agent or business sub-agent refuses or fails, upon being required to produce any such written record kept by him under this section, to do so;

5

shall be guilty of an offence against this Act.

50c. The holder of a business agent's license shall not, in any way whatever in connection with his business, knowingly employ as a business subagent any person who is not the holder of a business subagent's license.

10

Business agent not to employ unlicensed subagent. cf. Act No. 7, 1935, s. 25.

50d. Notwithstanding anything in any Act, no action shall be brought upon any contract or sale of any of the businesses referred to in the definition of "Business agent" in section three of this Act or any share or interest in or concerning any of such businesses, if the agreement or the memorandum or note thereof on which such action is brought is signed by any person other than the party to be charged therewith, unless such person so signing be thereunto lawfully authorised in writing signed by the party to be so charged.

15

20

Agents for sale of businesses to be authorised in writing. cf. Act No. 7, 1935, s. 28.

50E. (1) Notwithstanding anything in this Act or any law to the contrary, no business subagent shall carry out any of the work of a business subagent unless such business subagent was theretofore lawfully authorised in writing thereunto by a business agent.

25

Business subagent acting for business agent to be authorised by him. cf. Act No. 7, 1935, s. 32.

30

(2) Every business subagent shall at all reasonable times produce the written authority referred to in subsection one of this section whenever demanded by the registrar, a member of the police force of or above the rank of sergeant or an officer of the council duly authorised in that behalf, but in the case of such authorised officer upon production of his written authority.

35

(3)

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5 (3) Any business subagent who makes any false representation (whether verbally or in writing or by conduct) to any person to the effect that such business subagent is authorised to act as a business subagent for any specified business agent shall be guilty of an offence against this Act.

10 50F. Nothing in this Act shall be construed as requiring any holder of a business subagent's license, so far as he performs for any holder of a business agent's license any of the functions of a business agent and is duly authorised there-
15 unto by such business agent, to hold a business agent's license under this Act, or as requiring any holder of a business agent's license to hold a business subagent's license under this Act.

Saving as to licensed business subagents, etc.
cf. Act No. 7 1935, s. 33.

20 50G. Every business subagent shall, as soon as practicable after receiving any moneys from or on behalf of any person in respect of any trans-
action, in his capacity as a business subagent, pay such moneys to the business agent for whom he is acting in such transaction.

Disposal of moneys received by business subagent.

25 50H. Every business agent shall be personally liable for all moneys received from or on behalf of any person by any business subagent acting in his capacity as a business subagent for such business agent.

Liability on principal for certain acts etc., of sub-agents.
cf. Act No. 7, 1935, s. 35.

30 (2) (a) The amendments made by subparagraph (ii) of paragraph (b) of subsection one of this section shall not apply to a corporation which is the holder of a business agent's license under the Business Agents Act, 1935-1941, or on whose behalf a person has taken out a license under that Act while such license is in force but
35 shall thereupon in all respects have full force and effect with respect to such corporation.

(b)

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(b) The amendment made by paragraph (c) of subsection one of this section shall not apply to any person who is the holder of a business agent's license issued under the Business Agents Act, 1935-1941, nor to
5 any corporation which is the holder of any such license or on whose behalf any person has taken out any such license, while such license is in force, but upon the expiration of such license such amendments shall thereupon in all respects have full force and effect with respect to such
10 person or corporation as the case may be.

(3) All moneys which immediately before the appointed day stood to the credit of the Auctioneers, Stock and Station and Real Estate Agents Administration Account, and all investments which immediately
15 before that day were held by the council in connection with that account shall upon such day respectively be moneys standing to the credit of and investments held by the council in connection with the Auctioneers, Stock and Station, Real Estate and Business Agents Administration Account.
20

6. (1) Part IV of the Principal Act is amended—

Amendment
of Act
No. 28,
1941,
Part IV.
(Real Estate
Dealers and
Real Estate
Salesmen.)

(a) (i) by omitting from the definition of "Real estate dealer" in section fifty-one the words
25 "land in allotments" and by inserting in lieu thereof the words "allotments of land";

Sec. 51.
(Interpre-
tation.)

(ii) by omitting the definition of "Real estate salesman" in the same section and by inserting in lieu thereof the following
30 definition:—

"Real estate salesman" means a person who, for or on behalf of any real estate agent or real estate dealer,
induces

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induces or attempts to induce or negotiates with a view to inducing any person—

5 (a) to buy, sell or otherwise dispose of any land, including any allotment of land; or

10 (b) to make any offer to buy, sell or otherwise dispose of any land, including any allotment of land; or

(c) to accept any offer to buy, sell or otherwise dispose of any land, including any allotment of land; or

15 (d) to enter into any contract for the purchase, sale or other disposal of any land, including any allotment of land,

20 but does not include an auctioneer, a stock and station agent or a real estate agent.

25 (b) by inserting in paragraph (a) of subsection one of section fifty-two after the word "Act" where lastly occurring the words "or whose license under this Act or the Business Agents Act, 1935, has been cancelled, unless a license has been subsequently granted to him".

Sec. 52.
(Provisions as to employment of certain persons by real estate dealers.)

(2) The amendments made by subsection one of this section shall commence upon the expiration of a 30 period of three months after the appointed day.

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7. (1) Part VI of the Principal Act is amended—

Amendment
of Act No.
28, 1941,
Part VI.
(The Auc-
tioneers,
Stock and
Station and
Real Estate
Agents
Fidelity
Guarantee
Fund.)

- 5 (a) by omitting from the heading thereto the words "and Real Estate" and by inserting in lieu thereof the words ", Real Estate and Business"; Heading.
- (b) by omitting from subsection one of section sixty-five the words "and Real Estate" and by inserting in lieu thereof the words ", Real Estate and Business"; Sec. 65.
(The fund.)
- 10 (c) by omitting from section sixty-six the words "and Real Estate" and by inserting in lieu thereof the words ", Real Estate and Business"; Sec. 66.
(Separate
bank
account.)
- 15 (d) (i) by omitting from subsection three of section seventy-one the words "not less than" wherever occurring; Sec. 71.
(Contribu-
tions
to fund.)
- (ii) by omitting from the same subsection the words "shall not be required to pay any further amount by way of contributions under this section" and by inserting in lieu thereof the words "shall after paying such amount pay annually a contribution of one pound";
- 20 (iii) by inserting at the end of the same subsection the following new paragraph:—
- 25 This subsection shall apply whether any such amount was paid before or after the day appointed pursuant to subsection four
- 202—C of

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of section one of the Auctioneers, Stock and
Station, Real Estate and Business Agents
(Amendment) Act, 1957.

5 (e) (i) by inserting in subsection one of section Sec. 74.
seventy-four after the words "real estate (Application
agent" the words "or a business agent"; of fund.)

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

10 (2A) No person shall have any claim
against the fund in respect of any theft or
fraudulent misapplication committed in the
course of the business of a business agent
15 unless such theft or fraudulent mis-
application was committed at a time when
such business agent was the holder of a
business agent's license under this Act.

20 (iii) by omitting from subsection three of the
same section the words "that may be
committed after such commencement" and
by inserting in lieu thereof the words " , in
respect of which any claim against the fund
arose,".

25 (f) by inserting at the end of subsection six of Sec. 75.
section seventy-five the following new sub- (Claims
section:— against
the fund.)

30 (7) In respect of any theft or fraudulent
misapplication after the day appointed pursuant
to subsection four of section one of the
Auctioneers, Stock and Station, Real Estate and
Business Agents (Amendment) Act, 1957,
subsections three and four of this section shall
be read as though the words "five hundred"
were omitted therefrom and the words "ten
35 thousand" substituted therefor.

(g)

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(g) by omitting section seventy-eight and by inserting in lieu thereof the following section:—

Subst.
sec. 78.

5 78. (1) Any proceedings brought against the council in relation to any claim upon the fund shall be by action at law as for a debt due by the council and shall be brought—

Defences.

10 (a) where the amount claimed does not exceed fifty pounds in a court of petty sessions holden before a stipendiary magistrate;

(b) where the amount claimed exceeds fifty pounds but does not exceed one thousand pounds in a district court;

15 (c) where the amount claimed exceeds one thousand pounds in the Supreme Court.

20 (2) In any of the actions referred to in subsection one of this section all defences which would have been available to the licensee in relation to whom the claim arose shall be available to the council, and in any such action all questions of costs shall be in the discretion of the court or the presiding judge.

25 (3) Any order for the payment of costs made by a court of petty sessions under the provisions of subsection two of this section shall operate as an order for the recovery of money under the Small Debts Recovery Act, 1912, as amended by subsequent Acts, and be enforceable as such under the provisions of that Act, as so amended.

30 (2) All moneys which immediately before the appointed day stood to the credit of the Auctioneers, Stock and Station and Real Estate Agents Fidelity Guarantee Fund or the Auctioneers, Stock and Station and Real Estate Agents Fidelity Guarantee Account shall upon that day become and be respectively moneys standing

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standing to the credit of the Auctioneers, Stock and
Station, Real Estate and Business Agents Fidelity
Guarantee Fund and the Auctioneers, Stock and Station,
Real Estate and Business Agents Fidelity Guarantee
5 Account.

(3) All investments which immediately before the
appointed day were held by the council in connection with
the Auctioneers, Stock and Station and Real Estate
Agents Fidelity Guarantee Fund shall upon that day
10 become and be investments held by the council in con-
nection with the Auctioneers, Stock and Station, Real
Estate and Business Agents Fidelity Guarantee Fund.

8. Part VII of the Principal Act is amended by insert-
ing next after section eighty-four the following new
15 section:—

Amendment
of Act
No. 28, 1941,
Part VII.
(General.)
New
sec. 84A.

84A. (1) Any licensee or real estate dealer, as
defined in section fifty-one of this Act, who publishes
or causes to be published in the course of his business
as such, or the holder of a business subagent's license
20 who publishes or causes to be published in connection
with any matter in which he is acting as a business
subagent, any statement which—

Penalty for
publishing
false or mis-
leading ad-
vertisements.
cf. Act No.
39, 1912,
s. 97.

(a) is intended or apparently intended by such
licensee or real estate dealer or holder of
25 a business subagent's license to promote the
sale of any land or livestock or any business;
and

(b) is to his knowledge false or misleading in
any material particular,

30 shall be guilty of an offence against this Act.

(2) A statement shall be deemed to be pub-
lished within the meaning of this section if it is—

(a) inserted in any newspaper or any other pub-
lication printed and published in New
35 South Wales; or

(b)

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(Amendment).*

(b) publicly exhibited—

5 (i) in, on, over or under any building,
vehicle or place (whether or not
a public place and whether on land
or water); or

(ii) in the air in view of persons being
or passing in or on any street or
public place; or

10 (c) contained in any document gratuitously
sent or delivered to any person or thrown
or left upon premises in the occupation of
any person; or

(d) broadcast by wireless transmission.

15 (3) In any proceedings under this section
against a licensee **or a real estate dealer** or the holder
of a business subagent's license for publishing any
statement aforesaid or causing the same to be pub-
lished, if it is proved that such statement was false
20 **or the real estate dealer** or the holder of the business
subagent's license who published the statement or
caused the same to be published shall be deemed to
have published the same or to have caused the same
to be published with knowledge of its falsity or
25 misleading character, as the case may be, unless he
proves that having taken all reasonable precautions
against committing an offence under this section he
had reasonable grounds to believe and did believe
30 that the statement was true and had no reason to
suspect that the statement was false or misleading.

35 (4) Notwithstanding any proceedings against
any person for an offence under this section (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.

(5)

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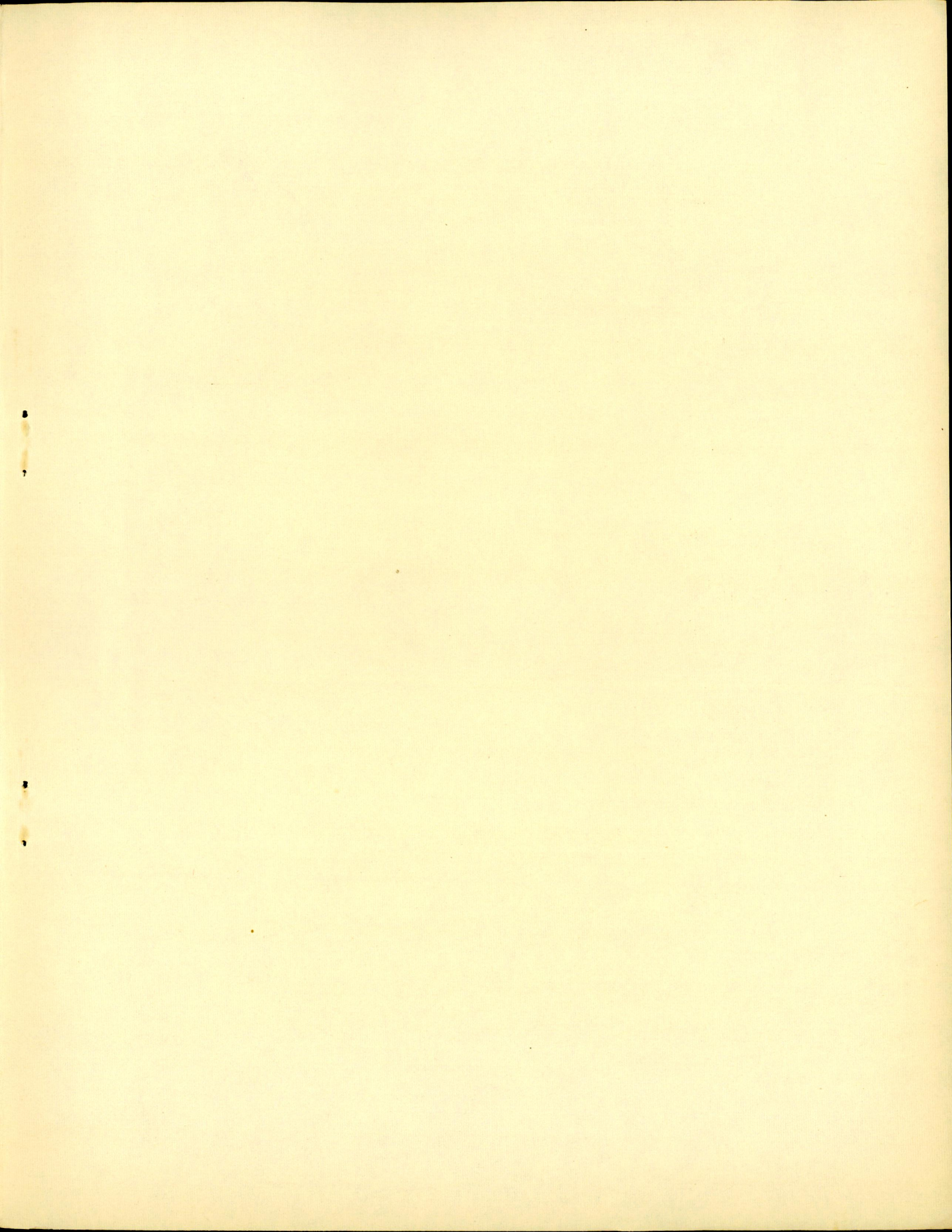
(5) This section shall be read and construed as in aid of and not in derogation from any enactment or law relating to false or misleading advertisements or other statements.

5 (6) In this section "newspaper" includes any periodical publication.

SCHEDULE.

Sec. 2 (3).

No. of Act.	Name of Act.	Extent of Repeal.
10 1935, No. 7 ...	Business Agents Act, 1935.	The whole.
1941, No. 28...	Auctioneers, Stock and Station and Real Estate Agents Act, 1941.	Part V and the matter relating to Part V in section two.



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

ALLAN PICKERING,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 27 March, 1957.*

New South Wales



ANNO SEXTO

ELIZABETHÆ II REGINÆ

Act No. , 1957.

An Act to include in the Auctioneers, Stock and Station and Real Estate Agents Act, 1941-1954, provisions for licensing and regulating business agents and business sub-agents; to reconstitute the council constituted under that Act; to increase the annual contributions to the Auctioneers, Stock and Station and Real Estate Agents Fidelity Guarantee Fund established under that Act; to increase the maximum amount payable out of that Fund in respect of theft or fraudulent misapplication by any one licensee; to repeal the Business Agents Act, 1935; for these and other purposes to amend the Auctioneers, Stock and Station and Real Estate Agents Act, 1941-1954, and certain other Acts; and for purposes connected therewith.

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(Amendment).*

BE it enacted by the Queen'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 :—

1. (1) This Act may be cited as the "Auctioneers, Stock and Station, Real Estate and Business Agents (Amendment) Act, 1957." Short title, citation and commencement.

(2) The Auctioneers, Stock and Station and Real
10 Estate Agents Act, 1941-1954, is in this Act referred to as the Principal Act.

(3) The Auctioneers, Stock and Station and Real
Estate Agents Act, 1941, as amended by subsequent Acts
and by this Act, may be cited as the Auctioneers, Stock
15 and Station, Real Estate and Business Agents Act, 1941-1957.

(4) This Act shall, except where otherwise
expressly provided, commence upon a day to be
appointed by the Governor and notified by proclamation
20 published in the Gazette, which day is in this Act referred to as the "appointed day."

2. (1) On and from the appointed day no license or
renewal of a license under the Business Agents Act, 1935-
1941, shall be granted. Operation of Business Agents Act, 1935-1941.

(2) The provisions of the Business Agents Act,
25 1935-1941, shall, on and from the appointed day, apply only with respect to licenses issued under that Act and in force immediately before such commencement, and to persons holding such licenses, and for those purposes
30 shall continue in force in relation to any such license or person, only until such license has expired or is cancelled.

(3) As on and from the first anniversary of the
appointed day the Acts mentioned in the Schedule to this
Act are to the extent therein specified hereby repealed.

(4)

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(4) (a) Nothing in this section shall affect the liability of any person under any fidelity bond given pursuant to the Business Agents Act, 1935-1941.

(b) Notwithstanding anything contained in 5 subsections two and three of this section, section twenty-seven of the Business Agents Act, 1935-1941, shall continue to apply to and in respect of every such fidelity bond.

(5) Notwithstanding anything contained in sub- 10 sections two and three of this section every business agent or subagent under the Business Agents Act, 1935-1941, shall keep the written record referred to in subsection one of section twenty-two of that Act for a period of not less than three years after the date on which it was 15 made, and shall at all reasonable times produce such written record for inspection if required so to do by any officer of the police force of or above the rank of sergeant or the registrar under the Principal Act, as amended by this Act, or any officer of the council under such Principal 20 Act, as so amended, duly authorised in writing in that behalf by such council, but in the case of such authorised officer, on production of his written authority.

Any person who contravenes any of the provisions of this subsection shall be deemed to be guilty of an offence 25 against the Principal Act, as amended by this Act, and shall be liable to a penalty of not less than two pounds and not exceeding fifty pounds.

(6) Where an application is made for a business agent's license or a business subagent's license under the 30 Principal Act, as amended by this Act, by any person who at the time of the application is the holder of a business agent's license or a subagent's license, as the case may be, under the Business Agents Act, 1935-1941, the person making such application shall, for the 35 purposes of subsection six of section twenty-three of the Principal Act, as so amended, be deemed to be already

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already the holder of a license under the said Principal Act, as so amended, of the same class as that referred to in his application or of any other class.

3. Part I of the Principal Act is amended—

- 5 (a) (i) by omitting from the matter relating to Part II in section two the words “and Real Estate” and by inserting in lieu thereof the words “, Real Estate Agents and Business;”
- 10 (ii) by omitting from the matter relating to Part III in the same section the words “and Real Estate Agents—ss. 20-50” and by inserting in lieu thereof the words “, Real Estate Agents and Business Agents—ss. 20-50_H;”
- 15 (iii) by inserting at the end of the same matter the following words, figures and letters:—
- “DIVISION 4.—*Business Agents and Business Subagents*—ss. 50_A-50_H.”
- 20 (iv) by omitting from the matter relating to Part VI in the same section the words “and Real Estate” and by inserting in lieu thereof the words “, Real Estate and Business”;
- 25 (b) (i) by omitting from subsection one of section three the definition of “Council” and by inserting in lieu thereof the following definitions:—
- “Business agent” means any person (whether or not such person carries on any other business) who for reward (whether monetary or otherwise)

Amendment
of Act No.
28, 1941,
Part I.
(Preliminary.)
Sec. 2.
(Division
into Parts.)

Sec. 3.
(Definitions.)

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otherwise) exercises or carries on business as an agent for performing any of the following functions, namely:—

5 (a) selling, buying or exchanging or otherwise dealing with or disposing of; or

10 (b) negotiating for the sale, purchase or exchange or any other dealing with or disposition of,

15 hotel businesses, residential businesses, boarding-house businesses, storekeeping businesses, manufacturing businesses or any trading businesses whatsoever or any share or interest in or concerning or the goodwill of or any stocks connected with any of such businesses, but
20 does not include a business subagent in his capacity as such.

25 “Business subagent” means any person who is in the direct employ of or acts for or by arrangement with a business agent and who performs for such business agent any of the functions of a business agent as defined by this section whether his
30 remuneration is by way of salary, wages, commission or otherwise but does not include an employee of a corporation in respect of whom such corporation has taken out a
35 business agent’s license.

“Council”

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- 5 “Council” means the Council of the Auctioneers, Stock and Station Agents, Real Estate Agents and Business Agents constituted under this Act.
- (ii) by inserting in the same subsection at the end of the definition of “Licensee” the words “but does not include the holder of a business subagent’s license”;
- 10 (c) (i) by omitting from the proviso to paragraph (a) of subsection two of section four the words “or real estate agent” and by inserting in lieu thereof the words “, real estate agent or business agent”;
- 15 (ii) by omitting from the same proviso the words “a license” and by inserting in lieu thereof the words “an appropriate license”.
4. (1) Part II of the Principal Act is amended—
- Amendment of Act No. 28, 1941, Part II. (The Council of the Auctioneers, Stock and Station Agents and Real Estate Agents.)
- 20 (a) by omitting from the heading to the Part the words “and Real Estate” and by inserting in lieu thereof the words “, Real Estate Agents and Business”;
- 25 (b) by omitting from subsection three of section six the words “and Real Estate” and by inserting in lieu thereof the words “, Real Estate Agents and Business”;
- Heading. Sec. 6. (The council.)

(c)

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(c) by omitting section seven and by inserting in lieu thereof the following section:—

Subst.
sec. 7.

5 7. (1) On and from the day appointed pursuant to subsection four of section one of the Auctioneers, Stock and Station, Real Estate and Business Agents (Amendment) Act, 1957 (in this section referred to as the "appointed day") the council shall be reconstituted and shall consist of—

First
council
with repre-
sentation for
business
agents.

10 (a) the persons who immediately before the appointed day were the members of the council as then constituted; and

15 (b) a person, who shall be appointed by the Governor and shall be the holder of a business agent's license under the Business Agents Act, 1935-1941.

20 (2) Of the members referred to in paragraph (a) of subsection one of this section, the member who was appointed under the provisions of subsection three of section eight of this Act to be a member of the council as constituted immediately before the appointed day is in this Act referred to as the "official member" and the remaining members referred to in that paragraph and the member referred to in paragraph (b) of the said subsection one are in this Act referred to as "elected members".

25 (3) The council as so reconstituted shall appoint one of its members to be chairman of the council.

30 (4) Subject to the provisions of this Act, the members of the council as so reconstituted shall hold office until the thirtieth day of June, one thousand nine hundred and fifty-eight, and shall be eligible for reappointment or for election as members of the council.

(5)

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- 5 (5) If immediately before the appointed day there was a vacancy in the office of any member of the council, the Governor may, in respect of that vacancy, appoint a person to the council as reconstituted under this section.
- 10 (6) For the purposes only of the application of the provisions of paragraph (g) of section nine of this Act to the member of the council appointed pursuant to paragraph (b) of subsection one of this section, the said paragraph (g) shall be deemed to be amended—
- 15 (a) by inserting next after the word “license” the words “under this Act or under the Business Agents Act, 1935-1941”; and
- 20 (b) by omitting the words “to renew the same upon its expiry” and by inserting in lieu thereof the words “upon the expiry of his license under the Business Agents Act, 1935-1941, to procure the issue to him of a business agent’s license under this Act, and to renew such lastmentioned license upon its expiry”.
- 25 (d) (i) by omitting from subsection one of section Sec. 8. eight the word “forty-three” and by in- (Constitution of subsequent councils.)serting in lieu thereof the word “fifty-eight”;
- 30 (ii) by omitting from the same subsection the word “ten” and by inserting in lieu thereof the word “thirteen”;
- (iii) by omitting from the same subsection the word “nine” and by inserting in lieu thereof the word “twelve”;
- 35 (iv) by omitting from subparagraph (iii) of paragraph (b) of subsection two of the same section the word “three” and by inserting in lieu thereof the word “four”;
- (v)

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- (v) by inserting at the end of the same paragraph the following new subparagraph:—
 (iv) two shall be business agents.
- 5 (vi) by inserting at the end of paragraph (a) of subsection four of the same section the following new subparagraph:—
 (iv) business agents.
- 10 (vii) by inserting next after subparagraph (iii) of paragraph (b) of the same subsection the following new subparagraph:—
 (iv) on the roll of business agents, if he holds a business agent's license;
- 15 (viii) by inserting at the end of paragraph (c) of the same subsection the following new subparagraph:—
 (iv) as a business agent—unless his name is on the roll of business agents.
- 20 (ix) by omitting from paragraph (d) of the same subsection the words "Each such roll shall" and by inserting in lieu thereof the words "The roll of auctioneers, the roll of stock and station agents and the roll of business agents shall each";
- 25 (x) by inserting at the end of the same paragraph the following words:—
 "The roll of real estate agents shall be divided into three parts to be known respectively as Part I, Part II and Part III.
- 30 In Part I of such roll shall be entered the names of all persons eligible for enrolment on such roll whose places of business are situated within the county of Cumberland, excluding therefrom such part of the police district of Wollongong as is within that
- 35 county

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county, or the county of Northumberland, excluding therefrom the police district of Newcastle.

5 In Part II of such roll shall be entered the names of all persons eligible for enrolment on such roll whose places of business are situated within the police districts of Newcastle and Wollongong.

10 In Part III of such roll shall be entered the names of all persons eligible for enrolment on such roll whose places of business are situated in any part of New South Wales, not being a part in respect of which they are eligible for enrolment on Part I or
15 Part II of such roll."

(xi) by inserting at the end of paragraph (e) of the same subsection the words "and the persons whose names are on Part III of that roll shall elect one member of the
20 council.

The persons whose names are on Part I of the roll of business agents shall elect one member of the council and the persons whose names are on Part II of that roll shall
25 elect one member of the council";

(xii) by omitting from subsection five of the same section the word "forty-three" and by inserting in lieu thereof the word "fifty-eight";

30 (e) (i) by inserting in subsection one of section Sec. 14. fourteen after the words "five guineas" the (Fees and expenses.) words ", or such other amount as may be prescribed in lieu thereof,";

35 (ii) by inserting in the same subsection after the words "two guineas" the words ", or such other amount as may be prescribed in lieu thereof,".

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(2) (a) The amendments made by subsection one of this section shall not prejudice or affect in any way the continuity of the body corporate constituted under Part II of the Principal Act but the same shall continue
5 notwithstanding the provisions of this section.

(b) The said body corporate shall continue and shall be deemed always to have continued notwithstanding that there are or have been at any time or times vacancies in the offices of all of the members of the body
10 corporate or of any one or more of them.

(3) (a) For the purposes only of the reconstitution to be effected by the amendments made by paragraph (c) of subsection one of this section and of any matters necessary for or incidental to such appointment or reconstitu-
15 tion, such amendments shall commence on the day upon which the assent of Her Majesty to this Act is signified.

(b) The persons to be members of the Council of the Auctioneers, Stock and Station Agents, Real Estate Agents and Business Agents as so reconstituted shall
20 assume their offices on the appointed day and on that day the amendments made by paragraph (c) of subsection one of this section shall come into force for all purposes.

5. (1) Part III of the Principal Act is amended—

Amendment
of Act No.
28, 1941,
Part III.
(Auctioneers,
Stock and
Station
Agents and
Real Estate
Agents.)

(a) by omitting from the heading thereto the words
25 “and Real Estate” and by inserting in lieu thereof the words “, Real Estate Agents and Business”;

(b)

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(b) (i) by inserting next after subsection two of section twenty the following new subsection:—

Sec. 20.
(No person or partner in a firm to act without a license.)

(2A) No person (either by himself or as a member of a partnership)—

5 (a) shall act as or carry on or advertise, notify or state that he acts as or carries on or is willing to act as or carry on the business of a business agent unless he is the holder of a business agent's license under the Business Agents Act, 1935-1941, or a business agent's license;

15 (b) shall act as or carry on or advertise, notify or state that he acts as or carries on or is willing to act as or carry on as a business subagent unless he is the holder of a subagent's license under the Business Agents Act, 1935-1941, or a business subagent's license.

20 (ii) by inserting in subsection three of the same section after the words "real estate agent" the words "or of a business agent";

25 (iii) by inserting in the same subsection after the word "appropriate." the following new paragraph:—

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

30 (c) by inserting next after subsection two of section twenty-one the following new subsection:—

Sec. 21.
(Each separate place of business to be in charge of licensee.)

35 (2A) (a) No person shall, by virtue of one business agent's license, keep more than one place for the conduct of his business as a business agent.

(b)

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

10 (c) Where a corporation conducts its business as a business agent at more than one place of business it shall employ at each such place a person in respect of whom it has taken out a license, and such person shall be in charge at that place.

15 (d) (i) by inserting in subsection one of section twenty-two after the word "license" where lastly occurring the following word and new paragraphs:—

" ; or

(d) a business agent's license; or

20 (e) a business subagent's license.";

(ii) by inserting in paragraph (b) of subsection three of the same section after the words "taking out the same and" the words " , except in the case of a business subagent's license,";

25 (iii) by inserting next after paragraph (b) of subsection four of the same section the following new paragraph:—

30 (c) Where the holder of a license desires to surrender the license held by him he may in writing notify the clerk of the court by which the license was issued that he desires to surrender such license and deliver such license to the clerk of that court.

The

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The clerk of the court shall, upon receipt of such notification and license, endorse on the license the word "surrendered" and forward such notification to the registrar.

- 5 (e) (i) by omitting subsection three of section Sec. 23. twenty-three and by inserting in lieu thereof (Procedure.) the following subsection:—

(3) (a) Where the applicant resides in New South Wales—

- 10 (i) an application for a license other than a business subagent's license shall be lodged with the clerk of the court of the petty sessions district within which the place of business of the applicant in respect of which the application is made is situated or proposed to be situated;

15

- (ii) an application for a business subagent's license shall be lodged with the clerk of the court of the petty sessions district within which the applicant resides.

20

- (b) Where under this subsection there is more than one court with the clerk of which an application may be lodged such application shall be lodged—

25

- (i) in the case of an application for a license other than a business subagent's license, with the clerk of the court within such district nearest to the place where the place of business to which the application relates is situated or proposed to be situated; or

30

(ii)

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- 5 (ii) in the case of an application for a business subagent's license, with the clerk of the court within such district nearest to the place where the applicant resides.
- (ii) by inserting next after paragraph (b) of subsection four of the same section the following new paragraph:—
- 10 (bi) Where the application is for a business agent's license and the applicant resides in any other State of the Commonwealth of Australia or in the Australian Capital Territory the application shall be lodged with the clerk of any court of petty sessions.
- 15 (iii) by inserting in paragraph (a) of subsection six of the same section after the words "prescribed fees and" the words ", except in the case of a person applying for a business subagent's license,";
- 20 (iv) by inserting at the end of paragraph (b) of the same subsection the words "or until the expiration of twelve months after the date upon which such provisional license took effect whichever first occurs";
- 25 (v) by inserting in subsection eight of the same section after the words "prescribed fees and" the words ", except in the case of a person applying for a business subagent's license,";
- 30 (vi) by inserting in subsection nine of the same section after the words "prescribed fees and" the words ", except in the case of a person applying for a business subagent's license,";
- 35 (vii)

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(vii) by inserting next after subsection ten of the same section the following new subsections:—

5 (10A) A license shall not, after the expiration of the prescribed period from the day appointed pursuant to subsection four of section one of the Auctioneers, Stock and Station, Real Estate and Business Agents (Amendment) Act, 1957, be granted to an applicant, not being a corporation, nor to a corporation in respect of an employee, unless such applicant or employee has—

15 (a) passed the prescribed examination conducted by the Department of Technical Education or such other examination as may be prescribed; or

20 (b) produced to the court satisfactory evidence that he is competent to perform the functions and duties generally performed by the holder of such a license.

25 This subsection shall not apply to any person to whom an auctioneer's license (being a general license) or a business agent's license may be granted pursuant to the provisions of section twenty-six or twenty-seven of this Act.

30 (10B) A business subagent's license shall not be granted to any person who is not a resident of New South Wales.

35 (f) (i) by omitting from subparagraph (i) of paragraph (a) of subsection one of section twenty-five the words "fifteen pounds" and by inserting in lieu thereof the words "sixteen pounds";

(ii)

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- (ii) by omitting from subparagraph (ii) of the same paragraph the words "five pounds" and by inserting in lieu thereof the words "six pounds";
- 5 (iii) by omitting from subparagraph (iii) of the same paragraph the words "two pounds" and by inserting in lieu thereof the words "three pounds";
- 10 (iv) by omitting from subparagraph (iv) of the same paragraph the words "two pounds" and by inserting in lieu thereof the words "three pounds";
- 15 (v) by omitting from paragraph (b) of the same subsection the words "one pound" and by inserting in lieu thereof the words "two pounds";
- 20 (vi) by omitting from paragraph (c) of the same subsection the words "one pound" and by inserting in lieu thereof the words "two pounds";
- 25 (vii) by omitting paragraphs (d), (e) and (f) of the same subsection and by inserting in lieu thereof the following paragraphs:—
- (d) for an auctioneer's license (being a general license) and any one or more of the following licenses:—
a stock and station agent's license, a real estate agent's license or a business agent's license—
30 sixteen pounds;
- (e) for an auctioneer's license (being a country license) and any one or more of the following licenses:—
a stock and station agent's license, a real estate agent's license or a business agent's license—
35 six pounds; (f)
- 202—B

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- (f) for an auctioneer's license (being a district license or a primary products license) and any one or more of the following licenses:—
- 5 a stock and station agent's license, a real estate agent's license or a business agent's license—four pounds;
- 10 (fi) for a business agent's license—three pounds;
- (ffii) for a business subagent's license—ten shillings;
- (viii) by omitting from paragraph (h) of the same subsection the words “five pounds” and by inserting in lieu thereof the words “six pounds”;
- 15 (ix) by omitting from subsection three of the same section the words “not exceeding one pound”;
- 20 (x) by omitting from subsection four of the same section the words “Auctioneers, Stock and Station and Real Estate Agents Administration Account” and by inserting in lieu thereof the words “Auctioneers, Stock and Station, Real Estate and Business Agents Administration Account”;
- 25 (g) (i) by inserting in subsection one of section Sec. 26, twenty-six after the words and symbols “(being a general license)” the words “or a business agent's license”;
- 30 (Power to grant auctioneers' licenses to persons resident in reciprocating States.)
- (ii) by inserting in the same subsection after the word “auctioneer” the words “or a business agent, as the case may be,”;
- (iii)

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- (iii) by inserting in the same subsection after the words and symbols "(being general licenses)" the words "or business agents' licenses, as the case may be,";
- 5 (iv) by inserting next after subsection three of the same section the following new subsection:—
- (3A) Any notification declaring that the
10 Business Agents Act, 1935-1941, shall extend and apply to the granting in New South Wales of general licenses to residents in any other State, which was published pursuant to section ten of that Act and which was still in force immediately before the day
15 appointed pursuant to subsection four of section one of the Auctioneers, Stock and Station, Real Estate and Business Agents (Amendment) Act, 1957, shall, as from such day and until revoked by a notification published pursuant to this Act, have and take effect as if it were a notification published pursuant to subsection one of this
20 section declaring that, as from such day, and while the notification remains in force, this Act shall extend and apply to the granting in New South Wales of business agents' licenses to residents in such other States as is mentioned in such notification.
- 25
- (v) by inserting in paragraph (a) of subsection four of the same section after the words and symbols "(being a general license)" the words "or a business agent's license";
- 30
- (vi) by inserting in the same paragraph after the word "auctioneer" the words "or a
35 business agent, as the case may be,";
- (h)

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- 5 (h) (i) by inserting in section twenty-seven after the words and symbols “(being general licenses or country licenses or district licenses)” the words “or business agents’ licenses”;
- (ii) by inserting in the same section after the words and symbols “(being a general license or a country license or a district license)” where firstly occurring the words “or a business agent’s license”;
- 10 (iii) by inserting in the same section after the words “auctioneer’s license” where secondly occurring the words “, or a business agent’s license, as the case may be”;
- 15 (iv) by inserting in the same section after the words and symbols “(being a general license or a country license or a district license)” where secondly occurring the words “or a business agent’s license”;
- 20 (v) by inserting in the same section after the words “auctioneer’s license” where lastly occurring the words “, or a business agent’s license, as the case may be,”;
- 25 (i) by omitting from section twenty-eight the words “or a renewal thereof” wherever occurring and by inserting in lieu thereof the words “or a business agent’s license, or a renewal of either such license,”;
- (j) by inserting at the end of section twenty-nine the following new subsection:—
- 30 (4) The foregoing provisions of this section shall apply mutatis mutandis to and in respect of a business subagent’s license and the holder of a business subagent’s license.

Sec. 27.
(Grant of auctioneers’ licenses to persons resident in the Australian Capital Territory.)

Sec. 28.
(Applicant for auctioneer’s license to be resident in New South Wales or reciprocating State.)

Sec. 29.
(Cancellation of license.)

(k)

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- (k) (i) by inserting in subsection one of section thirty-one after the word "licensee" the words "or the employee, or the holder of a business subagent's license";
- 5 (ii) by inserting in paragraph (b) of subsection four of the same section after the word "employee" the words " , or holder of a business subagent's license,";
- 10 (iii) by inserting next after the same subsection the following new subsection:—
- (4A) An appeal under this section in any case to which paragraph (a) of subsection one of this section applies shall not be commenced after the expiration of twenty-one days after the date of refusal of the application or the date of the order under section twenty-nine of this Act, as the case may be.
- 15
- (l) by omitting from section thirty-two the words "or a real estate agent" and by inserting in lieu thereof the words " , a real estate agent, a business agent or a business subagent,";
- 20
- (m) (i) by inserting next after subsection three of section thirty-four the following new subsections:—
- 25 (3A) Every business subagent shall have a registered address within New South Wales.
- (3B) The address specified in the application for a business subagent's license as the address at which the applicant then resides, shall, upon the grant of the application, be deemed for the purposes of this Act to be the registered address of the business subagent.
- 30
- 35 (ii) by inserting in subsection four of the same section after the words "registered office" the words "or the registered address";
- (iii)

Sec. 31.
(Appeal.)

Sec. 32.
(Effect of disqualification on membership, etc., of corporation.)

Sec. 34.
(Registered office and address.)

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- (iii) by inserting in the same subsection after the word "licensee" the words "or the holder of the business subagent's license, as the case may be,";
- 5 (iv) by inserting in subsection five of the same section after the word "business" where firstly occurring the words "or if any licensed business subagent acts or carries on as a business subagent";
- 10 (n) by inserting at the end of paragraph (b) of subsection three of section thirty-five the following new subparagraph:—
- Sec. 35.
(Publication
of name of
licensee.)
- “(iv) as a business agent—unless he is the holder of a business agent's license”;
- 15 (o) (i) by inserting at the end of subsection one of section thirty-six the words “and in any other case the trust account shall be in the name of the licensee. 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”;
- Sec. 36.
(Payment
into bank.)
- 20
- 25 (ii) by inserting next after subsection four of the same section the following new subsection:—
- (4A) Where any licensee neglects or fails to comply with any of the provisions of this section by reason of his neglect or failure to pay any moneys into a bank in New South Wales to a trust account or to retain any such moneys therein, the offence shall continue until the said moneys are paid to the person for or on whose behalf they were received, or disbursed in such manner as may be directed by such person.
- 30
- 35
- (p)

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- 5 (p) (i) by inserting in subsection one of section thirty-eight after the word "licensee" where secondly occurring the words "and such other written records relating to his business as licensee as may be prescribed"; Sec. 38.
(Record to be kept.)
- (ii) by omitting from the same subsection the word "record" where secondly occurring and by inserting in lieu thereof the word "records";
- 10 (iii) by omitting from subsection two of the same section the words "The written record" and by inserting in lieu thereof the words "Every such written record";
- 15 (iv) by omitting from subsection three of the same section the words "the written record" and by inserting in lieu thereof the words "any such written record";
- 20 (q) by omitting from subsection one of section 38B the word "record" and by inserting in lieu thereof the word "records"; Sec. 38B.
(Inspection of records.)
- (r) by inserting next after section 38B the following new section:— New sec.
38c.
- 25 38c. (1) Every business agent—
- (a) shall make or cause to be made a true statement in writing in the prescribed form and with the prescribed particulars as to the name and the work or services of and the salary, wages or commission paid in each month to every person employed (whether as an employee or a subagent or otherwise) by him in connection with his business as a business agent and shall, for a period of three years after the date on which the statement was made or caused to be made, keep such statement at his principal place of business in New South Wales; Statement of employees, subagents, etc., and their wages to be kept by business agents.
cf. Act No. 7, 1935, s. 18.
- 35 (b)

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5 (b) shall, at all reasonable times, produce
such statement for inspection if
required to do so by the registrar, a
member of the police force of or above
the rank of sergeant, or an officer of
the council duly authorised by the
council in writing in that behalf, but
in the case of such authorised officer
upon production of his written
10 authority.

(2) Any business agent who—

(a) commits any contravention of or fails
to comply with any of the provisions
of this section; or

15 (b) makes any false entries in any such
statement;

shall be guilty of an offence against this Act.

20 (s) (i) by inserting in subsection one of section Sec. 39.
thirty-nine after the word "business" the (Certain
words ", and the holder of a business persons not
subagent's license shall not, except with to be
such approval and subject to any such employed by
conditions, knowingly employ in any way licensees.)
whatever in connection with his work as a
25 business subagent,";

(ii) by inserting in paragraph (a) of the same
subsection after the word "Act" where
lastly occurring the words "or whose
30 license under this Act or the Business
Agents Act, 1935, has been cancelled, unless
a license has been subsequently granted to
him";

(iii) by inserting at the end of the same sub-
section the following word and new
35 paragraphs:—

or

(c)

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5 (c) who is for the time being dis-qualified under this Act from holding a certificate of registration as a real estate salesman, or whose certificate of registration as a real estate salesman has been cancelled, unless a certificate has been subsequently granted to him; or

10 (d) whose application for a certificate of registration as a real estate salesman under this Act has been refused, unless such an application has been subsequently granted.

15 (iv) by inserting at the end of subsection two of the same section the words "or in the work of a business subagent";

20 (v) by inserting in subsection four of the same section after the word "licensee" the words "or any holder of a business subagent's license";

(t) by inserting next after section thirty-nine the following new section:— New sec. 39A.

25 39A. (1) A licensee or a holder of a business subagent's license shall not knowingly enter into any arrangement or act in conjunction with any person, not being an employee in his business as a licensee or in his work as a licensed business subagent, who is not licensed under this Act whereby such person is entitled to a share of the commission, fee, gain or reward payable to such licensee or the holder of such a license in respect of any transaction by or with him as a licensee or holder of a business subagent's license, or generally. Licensee not to share commission, etc., with certain persons.

(2)

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(2) A licensee shall not, without the prior consent in writing of the registrar, carry on business as such or advertise or in any manner whatsoever hold out that he carries on business as such—

5

(a) under the name, or a name nearly resembling the name, whereunder a person whose license has been cancelled under or in pursuance of this Act or the Business Agents Act, 1935, was carrying on business as a licensee immediately before his license was cancelled; or

10

(b) under a name implying or capable of being construed as implying that he is the successor in the business, or in any way interested or concerned in continuing the business as a licensee, of a person whose license has been cancelled under or in pursuance of this Act or the Business Agents Act, 1935:

15

20

Provided that nothing in this subsection shall prohibit the carrying on by a licensee of his business as such under his true name without any addition or adaptation whatsoever.

25

(u) (i) by omitting from section forty the words Sec. 40. "or a real estate agent" and by inserting (Production of license.) in lieu thereof the words ", a real estate agent or a business agent";

30

(ii) by inserting at the end of the same section the following new subsection:—

35

(2) Every business subagent shall, on demand, produce his license to any member of the police force of or above the rank of sergeant, or to any person with whom such business subagent is transacting or attempting to transact any business on behalf of a business agent.

(v)

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- (v) by inserting in section forty-one after the word "licensee" the words "or holder of a business subagent's license"; Sec. 41.
(Licensee not to lend license.)
- 5 (w) by inserting at the end of paragraph (c) of subsection one of section forty-two the following new paragraph:— Sec. 42.
(Provisions as to commission, etc.)
- 10 (d) as a business agent or business subagent unless he was the holder of a business agent's license or of a business subagent's license, as the case may be, at the time of doing or performing such service.
- 15 (x) (i) by omitting from paragraph (a) of section forty-three the words ", or a name other than his own name,"; Sec. 43.
(Publication of name and place of business in advertisements.)
- (ii) by inserting next after the same paragraph the following new paragraph:—
- 20 (ai) where such licensee is an individual carrying on business under a business name registered or deemed to be registered under any Act for the time being in force relating to the registration of business names, then either his name or
- 25 such business name and the address of his place of business;
- (y) by inserting next after section fifty the following new Division:— New
Division
4.
- 30 DIVISION 4.—*Business Agents and Business Subagents.*
- 35 50A. Any business agent or business subagent who by any wilfully false, misleading or deceptive statement, representation or promise or by any wilful concealment of material fact, induces or attempts to induce any person to enter into Misrepresentation by business agent or subagent.
cf. Act No. 7, 1935,
an s. 21.

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5 an agreement or contract for the sale or purchase or lease of a business or undertaking shall be guilty of an offence and shall be liable to a penalty of not less than ten pounds and not exceeding two hundred pounds or to imprisonment for a term not exceeding two years, or both.

10 50B. (1) Every business agent and business subagent shall keep in a legible manner a written record containing full particulars of every business or share or interest in or concerning or the goodwill of or any stocks connected with a business which has been entrusted to him for the exercise or performance in relation thereto of any of the functions of a business agent as defined by this Act.

15

Record to be kept by business agent. cf. Act No. 7, 1935, s. 22.

20 (2) Such written record shall be open to inspection at all reasonable times by the registrar, a member of the police force of or above the rank of sergeant, or an officer of the council duly authorised in writing in that behalf and in the case of such authorised officer upon production of his written authority, and every business agent or business subagent upon being required so to do shall produce such written record for inspection by the registrar, such member of the police force or such authorised officer.

25

(3) Any person who—

30 (a) wilfully delays or obstructs the registrar, such member of the police force or such authorised officer in the exercise of his powers, authorities, duties and functions under subsection two of this section; or

(b)

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(b) being a business agent or business sub-agent refuses or fails, upon being required to produce any such written record kept by him under this section, to do so;

5

shall be guilty of an offence against this Act.

50c. The holder of a business agent's license shall not, in any way whatever in connection with his business, knowingly employ as a business subagent any person who is not the holder of a business subagent's license.

10

Business agent not to employ unlicensed subagent. cf. Act No. 7, 1935, s. 25.

50d. Notwithstanding anything in any Act, no action shall be brought upon any contract or sale of any of the businesses referred to in the definition of "Business agent" in section three of this Act or any share or interest in or concerning any of such businesses, if the agreement or the memorandum or note thereof on which such action is brought is signed by any person other than the party to be charged therewith, unless such person so signing be thereunto lawfully authorised in writing signed by the party to be so charged.

15

20

Agents for sale of businesses to be authorised in writing. cf. Act No. 7, 1935, s. 28.

50e. (1) Notwithstanding anything in this Act or any law to the contrary, no business subagent shall carry out any of the work of a business subagent unless such business subagent was theretofore lawfully authorised in writing thereunto by a business agent.

25

Business subagent acting for business agent to be authorised by him. cf. Act No. 7, 1935, s. 32.

(2) Every business subagent shall at all reasonable times produce the written authority referred to in subsection one of this section whenever demanded by the registrar, a member of the police force of or above the rank of sergeant or an officer of the council duly authorised in that behalf, but in the case of such authorised officer upon production of his written authority.

30

35

(3)

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(Amendment).*

5 (3) Any business subagent who makes any false representation (whether verbally or in writing or by conduct) to any person to the effect that such business subagent is authorised to act as a business subagent for any specified business agent shall be guilty of an offence against this Act.

10 50F. Nothing in this Act shall be construed as requiring any holder of a business subagent's license, so far as he performs for any holder of a business agent's license any of the functions of a business agent and is duly authorised there-
15 unto by such business agent, to hold a business agent's license under this Act, or as requiring any holder of a business agent's license to hold a business subagent's license under this Act.

Saving as to licensed business subagents, etc.

cf. Act No. 7, 1935, s. 33.

20 50G. Every business subagent shall, as soon as practicable after receiving any moneys from or on behalf of any person in respect of any trans-
25 action, in his capacity as a business subagent, pay such moneys to the business agent for whom he is acting in such transaction.

Disposal of moneys received by business subagent.

25 50H. Every business agent shall be personally liable for all moneys received from or on behalf of any person by any business subagent acting in his capacity as a business subagent for such business agent.

Liability on principal for certain acts, etc., of sub-agents.

cf. Act No. 7, 1935, s. 35.

30 (2) (a) The amendments made by subparagraph (ii) of paragraph (b) of subsection one of this section shall not apply to a corporation which is the holder of a business agent's license under the Business Agents Act, 1935-1941, or on whose behalf a person has taken out a license under that Act while such license is in force but
35 upon the expiration of such license such amendments shall thereupon in all respects have full force and effect with respect to such corporation.

(b)

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(b) The amendment made by paragraph (c) of subsection one of this section shall not apply to any person who is the holder of a business agent's license issued under the Business Agents Act, 1935-1941, nor to
5 any corporation which is the holder of any such license or on whose behalf any person has taken out any such license, while such license is in force, but upon the expiration of such license such amendments shall thereupon in all respects have full force and effect with respect to such
10 person or corporation as the case may be.

(3) All moneys which immediately before the appointed day stood to the credit of the Auctioneers, Stock and Station and Real Estate Agents Administration Account, and all investments which immediately
15 before that day were held by the council in connection with that account shall upon such day respectively be moneys standing to the credit of and investments held by the council in connection with the Auctioneers, Stock and Station, Real Estate and Business Agents Administration Account.
20

6. (1) Part IV of the Principal Act is amended—

Amendment
of Act
No. 28,
1941,
Part IV.
(Real Estate
Dealers and
Real Estate
Salesmen.)
Sec. 51.
(Interpre-
tation.)

(a) (i) by omitting from the definition of "Real estate dealer" in section fifty-one the words "land in allotments" and by inserting in
25 lieu thereof the words "allotments of land";

(ii) by omitting the definition of "Real estate salesman" in the same section and by inserting in lieu thereof the following
30 definition:—

"Real estate salesman" means a person who, for or on behalf of any real estate agent or real estate dealer,
induces

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induces or attempts to induce or negotiates with a view to inducing any person—

5 (a) to buy, sell or otherwise dispose of any land, including any allotment of land; or

10 (b) to make any offer to buy, sell or otherwise dispose of any land, including any allotment of land; or

(c) to accept any offer to buy, sell or otherwise dispose of any land, including any allotment of land; or

15 (d) to enter into any contract for the purchase, sale or other disposal of any land, including any allotment of land,

20 but does not include an auctioneer, a stock and station agent or a real estate agent.

25 (b) by inserting in paragraph (a) of subsection one of section fifty-two after the word "Act" where lastly occurring the words "or whose license under this Act or the Business Agents Act, 1935, has been cancelled, unless a license has been subsequently granted to him".

Sec. 52.
(Provisions as to employment of certain persons by real estate dealers.)

(2) The amendments made by subsection one of this section shall commence upon the expiration of a 30 period of three months after the appointed day.

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(Amendment).*

7. (1) Part VI of the Principal Act is amended—

Amendment
of Act No.
28, 1941,
Part VI.
(The Auc-
tioneers,
Stock and
Station and
Real Estate
Agents
Fidelity
Guarantee
Fund.)

- 5 (a) by omitting from the heading thereto the words
“and Real Estate” and by inserting in lieu
thereof the words “, Real Estate and
Business”;
- 10 (b) by omitting from subsection one of section
sixty-five the words “and Real Estate” and by
inserting in lieu thereof the words “, Real
Estate and Business”;
- 15 (c) by omitting from section sixty-six the words
“and Real Estate” and by inserting in lieu
thereof the words “, Real Estate and
Business”;
- 20 (d) (i) by omitting from subsection three of
section seventy-one the words “not less
than” wherever occurring;
- 25 (ii) by omitting from the same subsection the
words “shall not be required to pay any
further amount by way of contributions
under this section” and by inserting in lieu
thereof the words “shall after paying such
amount pay annually a contribution of one
pound”;
- (iii) by inserting at the end of the same sub-
section the following new paragraph:—
This subsection shall apply whether any
such amount was paid before or after the
day appointed pursuant to subsection four
of

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(Amendment).*

of section one of the Auctioneers, Stock and Station, Real Estate and Business Agents (Amendment) Act, 1957.

- 5 (e) (i) by inserting in subsection one of section Sec. 74.
seventy-four after the words "real estate (Application
agent" the words "or a business agent"; of fund.)
- (ii) by inserting next after subsection two of the same section the following new subsection:—
- 10 (2A) No person shall have any claim
against the fund in respect of any theft or
fraudulent misapplication committed in the
course of the business of a business agent
15 unless such theft or fraudulent mis-
application was committed at a time when
such business agent was the holder of a
business agent's license under this Act.
- (iii) by omitting from subsection three of the
20 same section the words "that may be
committed after such commencement" and
by inserting in lieu thereof the words "in
respect of which any claim against the fund
arose,".
- 25 (f) by inserting at the end of subsection six of Sec. 75.
section seventy-five the following new sub- (Claims
section:— against
the fund.)
- 30 (7) In respect of any theft or fraudulent
misapplication after the day appointed pursuant
to subsection four of section one of the
Auctioneers, Stock and Station, Real Estate and
Business Agents (Amendment) Act, 1957,
subsections three and four of this section shall
be read as though the words "five hundred"
were omitted therefrom and the words "ten
35 thousand" substituted therefor.
- (g)

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(g) by omitting section seventy-eight and by inserting in lieu thereof the following section:—

Subst.
sec. 78.

5 78. (1) Any proceedings brought against the council in relation to any claim upon the fund shall be by action at law as for a debt due by the council and shall be brought—

Defences.

10 (a) where the amount claimed does not exceed fifty pounds in a court of petty sessions holden before a stipendiary magistrate;

(b) where the amount claimed exceeds fifty pounds but does not exceed one thousand pounds in a district court;

15 (c) where the amount claimed exceeds one thousand pounds in the Supreme Court.

20 (2) In any of the actions referred to in subsection one of this section all defences which would have been available to the licensee in relation to whom the claim arose shall be available to the council, and in any such action all questions of costs shall be in the discretion of the court or the presiding judge.

25 (3) Any order for the payment of costs made by a court of petty sessions under the provisions of subsection two of this section shall operate as an order for the recovery of money under the Small Debts Recovery Act, 1912, as amended by subsequent Acts, and be enforceable as such under the provisions of that Act, as so

30 amended.

(2) All moneys which immediately before the appointed day stood to the credit of the Auctioneers, Stock and Station and Real Estate Agents Fidelity Guarantee Fund or the Auctioneers, Stock and Station and Real Estate Agents Fidelity Guarantee Account shall upon that day become and be respectively moneys standing

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standing to the credit of the Auctioneers, Stock and Station, Real Estate and Business Agents Fidelity Guarantee Fund and the Auctioneers, Stock and Station, Real Estate and Business Agents Fidelity Guarantee
5 Account.

(3) All investments which immediately before the appointed day were held by the council in connection with the Auctioneers, Stock and Station and Real Estate Agents Fidelity Guarantee Fund shall upon that day
10 become and be investments held by the council in connection with the Auctioneers, Stock and Station, Real Estate and Business Agents Fidelity Guarantee Fund.

8. Part VII of the Principal Act is amended by inserting next after section eighty-four the following new
15 section:—

Amendment of Act No. 28, 1941, Part VII.
(General.)
New sec. 84A.

84A. (1) Any licensee who publishes or causes to be published in the course of his business as such, or the holder of a business subagent's license who publishes or causes to be published in connection
20 with any matter in which he is acting as a business subagent, any statement which—

Penalty for publishing false or misleading advertisements. cf. Act No. 39, 1912, s. 97.

(a) is intended or apparently intended by such licensee or holder of a business subagent's license to promote the sale of any land or
25 livestock or any business; and

(b) is to his knowledge false or misleading in any material particular,

shall be guilty of an offence against this Act.

(2) A statement shall be deemed to be published within the meaning of this section if it is—
30

(a) inserted in any newspaper or any other publication printed and published in New South Wales; or

(b)

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(b) publicly exhibited—

5 (i) in, on, over or under any building,
vehicle or place (whether or not
a public place and whether on land
or water); or

(ii) in the air in view of persons being
or passing in or on any street or
public place; or

10 (c) contained in any document gratuitously
sent or delivered to any person or thrown
or left upon premises in the occupation of
any person; or

(d) broadcast by wireless transmission.

15 (3) In any proceedings under this section
against a licensee or the holder of a business sub-
agent's license for publishing any statement afore-
said or causing the same to be published, if it is
proved that such statement was false or misleading
20 in any material particular, the licensee or the holder
of the business subagent's license who published
the statement or caused the same to be pub-
lished shall be deemed to have published the same
or to have caused the same to be published with
25 knowledge of its falsity or misleading character, as
the case may be, unless he proves that having taken
all reasonable precautions against committing an
offence under this section he had reasonable grounds
to believe and did believe that the statement was true
30 and had no reason to suspect that the statement was
false or misleading.

35 (4) Notwithstanding any proceedings against
any person for an offence under this section (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.

(5)

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(5) This section shall be read and construed as in aid of and not in derogation from any enactment or law relating to false or misleading advertisements or other statements.

5 (6) In this section "newspaper" includes any periodical publication.

SCHEDULE.

Sec. 2 (3).

No. of Act.	Name of Act.	Extent of Repeal.
10 1935, No. 7 ...	Business Agents Act, 1935.	The whole.
1941, No. 28...	Auctioneers, Stock and Station and Real Estate Agents Act, 1941.	Part V and the matter relating to Part V in section two.

No. , 1957.

A BILL

To include in the Auctioneers, Stock and Station and Real Estate Agents Act, 1941-1954, provisions for licensing and regulating business agents and business sub-agents; to reconstitute the council constituted under that Act; to increase the annual contributions to the Auctioneers, Stock and Station and Real Estate Agents Fidelity Guarantee Fund established under that Act; to increase the maximum amount payable out of that Fund in respect of theft or fraudulent misapplication by any one licensee; to repeal the Business Agents Act, 1935; for these and other purposes to amend the Auctioneers, Stock and Station and Real Estate Agents Act, 1941-1954, and certain other Acts; and for purposes connected therewith.

[Mr. SHEAHAN;—13 *March*, 1957.]

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BE it enacted by the Queen'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:—

1. (1) This Act may be cited as the "Auctioneers, Stock and Station, Real Estate and Business Agents (Amendment) Act, 1957." Short title, citation and commencement.

(2) The Auctioneers, Stock and Station and Real
10 Estate Agents Act, 1941-1954, is in this Act referred to as the Principal Act.

(3) The Auctioneers, Stock and Station and Real
Estate Agents Act, 1941, as amended by subsequent Acts
and by this Act, may be cited as the Auctioneers, Stock
15 and Station, Real Estate and Business Agents Act, 1941-1957.

(4) This Act shall, except where otherwise
expressly provided, commence upon a day to be
appointed by the Governor and notified by proclamation
20 published in the Gazette, which day is in this Act referred to as the "appointed day."

2. (1) On and from the appointed day no license or
renewal of a license under the Business Agents Act, 1935-
1941, shall be granted. Operation of Business Agents Act, 1935-1941.

(2) The provisions of the Business Agents Act,
25 1935-1941, shall, on and from the appointed day, apply only with respect to licenses issued under that Act and in force immediately before such commencement, and to persons holding such licenses, and for those purposes
30 shall continue in force in relation to any such license or person, only until such license has expired or is cancelled.

(3) As on and from the first anniversary of the
appointed day the Acts mentioned in the Schedule to this
Act are to the extent therein specified hereby repealed.

(4)

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(4) (a) Nothing in this section shall affect the liability of any person under any fidelity bond given pursuant to the Business Agents Act, 1935-1941.

(b) Notwithstanding anything contained in 5 subsections two and three of this section, section twenty-seven of the Business Agents Act, 1935-1941, shall continue to apply to and in respect of every such fidelity bond.

(5) Notwithstanding anything contained in sub-10 sections two and three of this section every business agent or subagent under the Business Agents Act, 1935-1941, shall keep the written record referred to in subsection one of section twenty-two of that Act for a period of not less than three years after the date on which it was 15 made, and shall at all reasonable times produce such written record for inspection if required so to do by any officer of the police force of or above the rank of sergeant or the registrar under the Principal Act, as amended by this Act, or any officer of the council under such Principal 20 Act, as so amended, duly authorised in writing in that behalf by such council, but in the case of such authorised officer, on production of his written authority.

Any person who contravenes any of the provisions of this subsection shall be deemed to be guilty of an offence 25 against the Principal Act, as amended by this Act, and shall be liable to a penalty of not less than two pounds and not exceeding fifty pounds.

(6) Where an application is made for a business agent's license or a business subagent's license under the 30 Principal Act, as amended by this Act, by any person who at the time of the application is the holder of a business agent's license or a subagent's license, as the case may be, under the Business Agents Act, 1935-1941, the person making such application shall, for the 35 purposes of subsection six of section twenty-three of the Principal Act, as so amended, be deemed to be already

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(Amendment).

already the holder of a license under the said Principal Act, as so amended, of the same class as that referred to in his application or of any other class.

3. Part I of the Principal Act is amended—

- 5 (a) (i) by omitting from the matter relating to Part II in section two the words “and Real Estate” and by inserting in lieu thereof the words “, Real Estate Agents and Business;”
- 10 (ii) by omitting from the matter relating to Part III in the same section the words “and Real Estate Agents—ss. 20-50” and by inserting in lieu thereof the words “, Real Estate Agents and Business Agents—ss. 20-50H;”
- 15 (iii) by inserting at the end of the same matter the following words, figures and letters:—
“DIVISION 4.—*Business Agents and Business Subagents*—ss. 50A-50H.”
- 20 (iv) by omitting from the matter relating to Part VI in the same section the words “and Real Estate” and by inserting in lieu thereof the words “, Real Estate and Business”;
- 25 (b) (i) by omitting from subsection one of section three the definition of “Council” and by inserting in lieu thereof the following definitions:—
- 30 “Business agent” means any person (whether or not such person carries on any other business) who for reward (whether monetary or otherwise)

Amendment
of Act No.
28, 1941,
Part I.
(Preliminary.)
Sec. 2.
(Division
into Parts.)

Sec. 3.
(Definitions.)

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(Amendment).*

otherwise) exercises or carries on business as an agent for performing any of the following functions, namely:—

5

(a) selling, buying or exchanging or otherwise dealing with or disposing of; or

10

(b) negotiating for the sale, purchase or exchange or any other dealing with or disposition of,

15

hotel businesses, residential businesses, boarding-house businesses, storekeeping businesses, manufacturing businesses or any trading businesses whatsoever or any share or interest in or concerning or the goodwill of or any stocks connected with any of such businesses, but does not include a business sub-agent in his capacity as such.

20

25

“Business subagent” means any person who is in the direct employ of or acts for or by arrangement with a business agent and who performs for such business agent any of the functions of a business agent as defined by this section whether his remuneration is by way of salary, wages, commission or otherwise but does not include an employee of a corporation in respect of whom such corporation has taken out a business agent’s license.

30

35

“Council”

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(Amendment).*

5 “Council” means the Council of the Auctioneers, Stock and Station Agents, Real Estate Agents and Business Agents constituted under this Act.

- (ii) by inserting in the same subsection at the end of the definition of “Licensee” the words “but does not include the holder of a business subagent’s license”;
- 10 (c) (i) by omitting from the proviso to paragraph (a) of subsection two of section four the words “or real estate agent” and by inserting in lieu thereof the words “, real estate agent or business agent”;
- 15 (ii) by omitting from the same proviso the words “a license” and by inserting in lieu thereof the words “an appropriate license”.

4. (1) Part II of the Principal Act is amended—

Amendment
of Act
No. 28,
1941,
Part II.
(The
Council of
the
Auctioneers,
Stock and
Station
Agents and
Real Estate
Agents.)

- 20 (a) by omitting from the heading to the Part the words “and Real Estate” and by inserting in lieu thereof the words “, Real Estate Agents and Business”;
- 25 (b) by omitting from subsection three of section six the words “and Real Estate” and by inserting in lieu thereof the words “, Real Estate Agents and Business”;

(c)

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(Amendment).*

(e) by omitting section seven and by inserting in lieu thereof the following section:—

Subst.
sec. 7.

5 7. (1) On and from the day appointed pursuant to subsection four of section one of the Auctioneers, Stock and Station, Real Estate and Business Agents (Amendment) Act, 1957 (in this section referred to as the "appointed day") the council shall be reconstituted and shall consist of—

First
council
with repre-
sentation for
business
agents.

10 (a) the persons who immediately before the appointed day were the members of the council as then constituted; and

15 (b) a person, who shall be appointed by the Governor and shall be the holder of a business agent's license under the Business Agents Act, 1935-1941.

20 (2) Of the members referred to in paragraph (a) of subsection one of this section, the member who was appointed under the provisions of subsection three of section eight of this Act to be a member of the council as constituted immediately before the appointed day is in this Act referred to as the "official member" and the remaining members referred to in that paragraph and the member referred to in paragraph (b) of the said subsection one are in this Act referred to as "elected members".

25 (3) The council as so reconstituted shall appoint one of its members to be chairman of the council.

30 (4) Subject to the provisions of this Act, the members of the council as so reconstituted shall hold office until the thirtieth day of June, one thousand nine hundred and fifty-eight, and shall be eligible for reappointment or for election as members of the council.

35

(5)

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(Amendment).*

5 (5) If immediately before the appointed day there was a vacancy in the office of any member of the council, the Governor may, in respect of that vacancy, appoint a person to the council as reconstituted under this section.

10 (6) For the purposes only of the application of the provisions of paragraph (g) of section nine of this Act to the member of the council appointed pursuant to paragraph (b) of subsection one of this section, the said paragraph (g) shall be deemed to be amended—

15 (a) by inserting next after the word “license” the words “under this Act or under the Business Agents Act, 1935-1941”; and

20 (b) by omitting the words “to renew the same upon its expiry” and by inserting in lieu thereof the words “upon the expiry of his license under the Business Agents Act, 1935-1941, to procure the issue to him of a business agent’s license under this Act, and to renew such lastmentioned license upon its expiry”.

25 (d) (i) by omitting from subsection one of section eight the word “forty-three” and by inserting in lieu thereof the word “fifty-eight”; Sec. 8.
(Constitution
of subsequent
councils.)

30 (ii) by omitting from the same subsection the word “ten” and by inserting in lieu thereof the word “thirteen”;

(iii) by omitting from the same subsection the word “nine” and by inserting in lieu thereof the word “twelve”;

35 (iv) by omitting from subparagraph (iii) of paragraph (b) of subsection two of the same section the word “three” and by inserting in lieu thereof the word “four”;

(v)

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(Amendment).*

- (v) by inserting at the end of the same paragraph the following new subparagraph:—
(iv) two shall be business agents.
- 5 (vi) by inserting at the end of paragraph (a) of subsection four of the same section the following new subparagraph:—
(iv) business agents.
- 10 (vii) by inserting next after subparagraph (iii) of paragraph (b) of the same subsection the following new subparagraph:—
(iv) on the roll of business agents, if he holds a business agent's license;
- 15 (viii) by inserting at the end of paragraph (c) of the same subsection the following new subparagraph:—
(iv) as a business agent—unless his name is on the roll of business agents.
- 20 (ix) by omitting from paragraph (d) of the same subsection the words "Each such roll shall" and by inserting in lieu thereof the words "The roll of auctioneers, the roll of stock and station agents and the roll of business agents shall each";
- 25 (x) by inserting at the end of the same paragraph the following words:—
"The roll of real estate agents shall be divided into three parts to be known respectively as Part I, Part II and Part III.
- 30 In Part I of such roll shall be entered the names of all persons eligible for enrolment on such roll whose places of business are situated within the county of Cumberland, excluding therefrom such part of the police district of Wollongong as is within that
- 35 county

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(Amendment).*

county, or the county of Northumberland, excluding therefrom the police district of Newcastle.

5 In Part II of such roll shall be entered the names of all persons eligible for enrolment on such roll whose places of business are situated within the police districts of Newcastle and Wollongong.

10 In Part III of such roll shall be entered the names of all persons eligible for enrolment on such roll whose places of business are situated in any part of New South Wales, not being a part in respect of which they are eligible for enrolment on Part I or
15 Part II of such roll."

(xi) by inserting at the end of paragraph (e) of the same subsection the words "and the persons whose names are on Part III of that roll shall elect one member of the
20 council.

The persons whose names are on Part I of the roll of business agents shall elect one member of the council and the persons whose names are on Part II of that roll shall
25 elect one member of the council";

(xii) by omitting from subsection five of the same section the word "forty-three" and by inserting in lieu thereof the word "fifty-eight";

30 (e) (i) by inserting in subsection one of section Sec. 14. fourteen after the words "five guineas" the (Fees and expenses.) words ", or such other amount as may be prescribed in lieu thereof,";

35 (ii) by inserting in the same subsection after the words "two guineas" the words ", or such other amount as may be prescribed in lieu thereof,".

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(Amendment).*

(2) (a) The amendments made by subsection one of this section shall not prejudice or affect in any way the continuity of the body corporate constituted under Part II of the Principal Act but the same shall continue
5 notwithstanding the provisions of this section.

(b) The said body corporate shall continue and shall be deemed always to have continued notwithstanding that there are or have been at any time or times vacancies in the offices of all of the members of the body
10 corporate or of any one or more of them.

(3) (a) For the purposes only of the reconstitution to be effected by the amendments made by paragraph (c) of subsection one of this section and of any matters necessary for or incidental to such appointment or reconstitu-
15 tion, such amendments shall commence on the day upon which the assent of Her Majesty to this Act is signified.

(b) The persons to be members of the Council of the Auctioneers, Stock and Station Agents, Real Estate Agents and Business Agents as so reconstituted shall
20 assume their offices on the appointed day and on that day the amendments made by paragraph (c) of subsection one of this section shall come into force for all purposes.

5. (1) Part III of the Principal Act is amended—

Amendment
of Act No.
28, 1941,
Part III.
(Auctioneers,
Stock and
Station
Agents and
Real Estate
Agents.)

(a) by omitting from the heading thereto the words
25 "and Real Estate" and by inserting in lieu thereof the words ", Real Estate Agents and Business";

(b)

Heading.

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(Amendment).*

(b) (i) by inserting next after subsection two of section twenty the following new subsection:—
(2A) No person (either by himself or as a member of a partnership)—

Sec. 20.
(No person or partner in a firm to act without a license.)

5 (a) shall act as or carry on or advertise, notify or state that he acts as or carries on or is willing to act as or carry on the business of a business agent unless he is the holder of a business agent's license under the Business Agents Act, 1935-1941, or a business agent's license;

10
15 (b) shall act as or carry on or advertise, notify or state that he acts as or carries on or is willing to act as or carry on as a business subagent unless he is the holder of a subagent's license under the Business Agents Act, 1935-1941, or a business subagent's license.

20
25 (ii) by inserting in subsection three of the same section after the words "real estate agent" the words "or of a business agent";

(iii) by inserting in the same subsection after the word "appropriate." the following new paragraph:—

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

30 (c) by inserting next after subsection two of section twenty-one the following new subsection:—
(2A) (a) No person shall, by virtue of one business agent's license, keep more than one place for the conduct of his business as a business agent.

Sec. 21.
(Each separate place of business to be in charge of licensee.)

35 (b)

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

10 (c) Where a corporation conducts its business as a business agent at more than one place of business it shall employ at each such place a person in respect of whom it has taken out a license, and such person shall be in charge at that place.

15 (d) (i) by inserting in subsection one of section twenty-two after the word "license" where lastly occurring the following word and new paragraphs:—
Sec. 22.
(Licenses.)
"; or

20 (d) a business agent's license; or

(e) a business subagent's license.";

25 (ii) by inserting in paragraph (b) of subsection three of the same section after the words "taking out the same and" the words ", except in the case of a business subagent's license,";

(iii) by inserting next after paragraph (b) of subsection four of the same section the following new paragraph:—

30 (c) Where the holder of a license desires to surrender the license held by him he may in writing notify the clerk of the court by which the license was issued that he desires to surrender such license and deliver such license to the clerk of that court.

The

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The clerk of the court shall, upon receipt of such notification and license, endorse on the license the word "surrendered" and forward such notification to the registrar.

- 5 (e) (i) by omitting subsection three of section Sec. 23.
twenty-three and by inserting in lieu thereof (Procedure.)
the following subsection:—

(3) (a) Where the applicant resides in
New South Wales—

- 10 (i) an application for a license other
than a business subagent's license
shall be lodged with the clerk of
the court of the petty sessions
15 district within which the place of
business of the applicant in respect
of which the application is made is
situated or proposed to be situated;

- 20 (ii) an application for a business sub-
agent's license shall be lodged with
the clerk of the court of the petty
sessions district within which the
applicant resides.

- 25 (b) Where under this subsection
there is more than one court with the clerk
of which an application may be lodged such
application shall be lodged—

- 30 (i) in the case of an application for a
license other than a business sub-
agent's license, with the clerk of
the court within such district
nearest to the place where the place
of business to which the application
relates is situated or proposed to
be situated; or

(ii)

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- 5 (ii) in the case of an application for a business subagent's license, with the clerk of the court within such district nearest to the place where the applicant resides.
- (ii) by inserting next after paragraph (b) of subsection four of the same section the following new paragraph:—
- 10 (bi) Where the application is for a business agent's license and the applicant resides in any other State of the Commonwealth of Australia or in the Australian Capital Territory the application shall be lodged with the clerk of any court of petty sessions.
- 15 (iii) by inserting in paragraph (a) of subsection six of the same section after the words "prescribed fees and" the words ", except in the case of a person applying for a business subagent's license,";
- 20 (iv) by inserting at the end of paragraph (b) of the same subsection the words "or until the expiration of twelve months after the date upon which such provisional license took effect whichever first occurs";
- 25 (v) by inserting in subsection eight of the same section after the words "prescribed fees and" the words ", except in the case of a person applying for a business subagent's license,";
- 30 (vi) by inserting in subsection nine of the same section after the words "prescribed fees and" the words ", except in the case of a person applying for a business subagent's license,";
- 35 (vii)

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(vii) by inserting next after subsection ten of the same section the following new subsections:—

5 (10A) A license shall not, after the expiration of the prescribed period from the day appointed pursuant to subsection four of section one of the Auctioneers, Stock and Station, Real Estate and Business Agents (Amendment) Act, 1957, be granted to an applicant, not being a corporation, nor to a corporation in respect of an employee, unless such applicant or employee has—

15 (a) passed the prescribed examination conducted by the Department of Technical Education or such other examination as may be prescribed; or

20 (b) produced to the court satisfactory evidence that he is competent to perform the functions and duties generally performed by the holder of such a license.

25 This subsection shall not apply to any person to whom an auctioneer's license (being a general license) or a business agent's license may be granted pursuant to the provisions of section twenty-six or twenty-seven of this Act.

30 (10B) A business subagent's license shall not be granted to any person who is not a resident of New South Wales.

35 (f) (i) by omitting from subparagraph (i) of paragraph (a) of subsection one of section twenty-five the words "fifteen pounds" and by inserting in lieu thereof the words "sixteen pounds";

(ii)

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- (ii) by omitting from subparagraph (ii) of the same paragraph the words "five pounds" and by inserting in lieu thereof the words "six pounds";
- 5 (iii) by omitting from subparagraph (iii) of the same paragraph the words "two pounds" and by inserting in lieu thereof the words "three pounds";
- 10 (iv) by omitting from subparagraph (iv) of the same paragraph the words "two pounds" and by inserting in lieu thereof the words "three pounds";
- 15 (v) by omitting from paragraph (b) of the same subsection the words "one pound" and by inserting in lieu thereof the words "two pounds";
- 20 (vi) by omitting from paragraph (c) of the same subsection the words "one pound" and by inserting in lieu thereof the words "two pounds";
- (vii) by omitting paragraphs (d), (e) and (f) of the same subsection and by inserting in lieu thereof the following paragraphs:—
- 25 (d) for an auctioneer's license (being a general license) and any one or more of the following licenses:—
a stock and station agent's license, a real estate agent's license or a business agent's license—
30 sixteen pounds;
- (e) for an auctioneer's license (being a country license) and any one or more of the following licenses:—
35 a stock and station agent's license, a real estate agent's license or a business agent's license—
202—B (iii) six pounds; (f)

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- (f) for an auctioneer's license (being a district license or a primary products license) and any one or more of the following licenses:—
- 5 a stock and station agent's license, a real estate agent's license or a business agent's license—four pounds;
- (fi) for a business agent's license—
- 10 three pounds;
- (fii) for a business subagent's license—
- ten shillings;
- (viii) by omitting from paragraph (h) of the same subsection the words "five pounds" and by
- 15 inserting in lieu thereof the words "six pounds";
- (ix) by omitting from subsection three of the same section the words "not exceeding one pound";
- 20 (x) by omitting from subsection four of the same section the words "Auctioneers, Stock and Station and Real Estate Agents Administration Account" and by inserting
- 25 in lieu thereof the words "Auctioneers, Stock and Station, Real Estate and Business Agents Administration Account";
- (g) (i) by inserting in subsection one of section Sec. 26. twenty-six after the words and symbols (Power to
- 30 " (being a general license) " the words " or grant auctioneers' licenses to persons resident in reciprocating States.) a business agent's license";
- (ii) by inserting in the same subsection after the word "auctioneer" the words "or a business agent, as the case may be,";
- (iii)

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- (iii) by inserting in the same subsection after the words and symbols "(being general licenses)" the words "or business agents' licenses, as the case may be,";
- 5 (iv) by inserting next after subsection three of the same section the following new subsection:—
- (3A) Any notification declaring that the
10 Business Agents Act, 1935-1941, shall extend and apply to the granting in New South Wales of general licenses to residents in any other State, which was published pursuant to section ten of that Act and which was still in force immediately before the day
15 appointed pursuant to subsection four of section one of the Auctioneers, Stock and Station, Real Estate and Business Agents (Amendment) Act, 1957, shall, as from such day and until revoked by a notification published pursuant to this Act, have and take effect as if it were a notification published pursuant to subsection one of this
20 section declaring that, as from such day, and while the notification remains in force, this Act shall extend and apply to the granting in New South Wales of business agents' licenses to residents in such other States as is mentioned in such notification.
- 25
- 30 (v) by inserting in paragraph (a) of subsection four of the same section after the words and symbols "(being a general license)" the words "or a business agent's license";
- 35 (vi) by inserting in the same paragraph after the word "auctioneer" the words "or a business agent, as the case may be,";
- (h)

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- 5 (h) (i) by inserting in section twenty-seven after the words and symbols “(being general licenses or country licenses or district licenses)” the words “or business agents’ licenses”;
- 10 (ii) by inserting in the same section after the words and symbols “(being a general license or a country license or a district license)” where firstly occurring the words “or a business agent’s license”;
- 15 (iii) by inserting in the same section after the words “auctioneer’s license” where secondly occurring the words “, or a business agent’s license, as the case may be”;
- 20 (iv) by inserting in the same section after the words and symbols “(being a general license or a country license or a district license)” where secondly occurring the words “or a business agent’s license”;
- 25 (v) by inserting in the same section after the words “auctioneer’s license” where lastly occurring the words “, or a business agent’s license, as the case may be,”;
- 25 (i) by omitting from section twenty-eight the words “or a renewal thereof” wherever occurring and by inserting in lieu thereof the words “or a business agent’s license, or a renewal of either such license,”;
- 30 (j) by inserting at the end of section twenty-nine the following new subsection:—
- (4) The foregoing provisions of this section shall apply mutatis mutandis to and in respect of a business subagent’s license and the holder of a business subagent’s license.

Sec. 27.

(Grant of auctioneers’ licenses to persons resident in the Australian Capital Territory.)

Sec. 28.

(Applicant for auctioneer’s license to be resident in New South Wales or reciprocating State.)

Sec. 29.

(Cancellation of license.)

(k)

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- (k) (i) by inserting in subsection one of section thirty-one after the word "licensee" the words "or the employee, or the holder of a business subagent's license";
- 5 (ii) by inserting in paragraph (b) of subsection four of the same section after the word "employee" the words ", or holder of a business subagent's license,";
- 10 (iii) by inserting next after the same subsection the following new subsection:—
- (4A) An appeal under this section in any case to which paragraph (a) of subsection one of this section applies shall not be commenced after the expiration of twenty-one days after the date of refusal of the application or the date of the order under section twenty-nine of this Act, as the case may be.
- 15 (l) by omitting from section thirty-two the words "or a real estate agent" and by inserting in lieu thereof the words ", a real estate agent, a business agent or a business subagent,";
- 20 (m) (i) by inserting next after subsection three of section thirty-four the following new subsections:—
- (3A) Every business subagent shall have a registered address within New South Wales.
- (3B) The address specified in the application for a business subagent's license as the address at which the applicant then resides, shall, upon the grant of the application, be deemed for the purposes of this Act to be the registered address of the business subagent.
- 25 (ii) by inserting in subsection four of the same section after the words "registered office" the words "or the registered address";
- 30 (iii)
- 35

Sec. 31.
(Appeal.)

Sec. 32.
(Effect of disqualification on membership, etc., of corporation.)

Sec. 34.
(Registered office and address.)

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- (iii) by inserting in the same subsection after the word "licensee" the words "or the holder of the business subagent's license, as the case may be,";
- 5 (iv) by inserting in subsection five of the same section after the word "business" where firstly occurring the words "or if any licensed business subagent acts or carries on as a business subagent";
- 10 (n) by inserting at the end of paragraph (b) of subsection three of section thirty-five the following new subparagraph:—
- Sec. 35.
(Publication
of name of
licensee.)
- “(iv) as a business agent—unless he is the holder of a business agent's license”;
- 15 (o) (i) by inserting at the end of subsection one of section thirty-six the words “and in any other case the trust account shall be in the name of the licensee. 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”;
- Sec. 36.
(Payment
into bank.)
- 20
- 25 (ii) by inserting next after subsection four of the same section the following new subsection:—
- (4A) Where any licensee neglects or fails to comply with any of the provisions of this section by reason of his neglect or failure to pay any moneys into a bank in New South Wales to a trust account or to retain any such moneys therein, the offence shall continue until the said moneys are paid to the person for or on whose behalf they were received, or disbursed in such manner as may be directed by such person.
- 30
- 35
- (p)

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- 5 (p) (i) by inserting in subsection one of section thirty-eight after the word "licensee" where secondly occurring the words "and such other written records relating to his business as licensee as may be prescribed";
- (ii) by omitting from the same subsection the word "record" where secondly occurring and by inserting in lieu thereof the word "records";
- 10 (iii) by omitting from subsection two of the same section the words "The written record" and by inserting in lieu thereof the words "Every such written record";
- 15 (iv) by omitting from subsection three of the same section the words "the written record" and by inserting in lieu thereof the words "any such written record";
- 20 (q) by omitting from subsection one of section 38B the word "record" and by inserting in lieu thereof the word "records";
- (r) by inserting next after section 38B the following new section:—
- 25 38c. (1) Every business agent—
- (a) shall make or cause to be made a true statement in writing in the prescribed form and with the prescribed particulars as to the name and the work or services of and the salary, wages or commission paid in each month to every person employed (whether as an employee or a subagent or otherwise) by him in connection with his business as a business agent and shall, for a period of three years after the date on which the statement was made or caused to be made, keep such statement at his principal place of business in New South Wales;
- 30
- 35
- (b)

Sec. 38.
(Record to be kept.)

Sec. 38B.
(Inspection of records.)

New sec.
38c.

Statement of employees, subagents, etc., and their wages to be kept by business agents.
cf. Act No. 7, 1935, s. 18.

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5 (b) shall, at all reasonable times, produce
such statement for inspection if
required to do so by the registrar, a
member of the police force of or above
the rank of sergeant, or an officer of
the council duly authorised by the
council in writing in that behalf, but
in the case of such authorised officer
upon production of his written
10 authority.

(2) Any business agent who—
15 (a) commits any contravention of or fails
to comply with any of the provisions
of this section; or
(b) makes any false entries in any such
statement;

shall be guilty of an offence against this Act.

20 (s) (i) by inserting in subsection one of section thirty-nine after the word "business" the words "and the holder of a business subagent's license shall not, except with such approval and subject to any such conditions, knowingly employ in any way whatever in connection with his work as a business subagent,";
Sec. 39. (Certain persons not to be employed by licensees.)

25 (ii) by inserting in paragraph (a) of the same subsection after the word "Act" where lastly occurring the words "or whose license under this Act or the Business Agents Act, 1935, has been cancelled, unless a license has been subsequently granted to him";

30 (iii) by inserting at the end of the same subsection the following word and new paragraphs:—
35

or

(c)

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5 (c) who is for the time being dis-qualified under this Act from holding a certificate of registration as a real estate salesman, or whose certificate of registration as a real estate salesman has been cancelled, unless a certificate has been subsequently granted to him; or

10 (d) whose application for a certificate of registration as a real estate salesman under this Act has been refused, unless such an application has been subsequently granted.

15 (iv) by inserting at the end of subsection two of the same section the words "or in the work of a business subagent";

20 (v) by inserting in subsection four of the same section after the word "licensee" the words "or any holder of a business subagent's license";

(t) by inserting next after section thirty-nine the following new section:— New sec. 39A.

25 39A. (1) A licensee or a holder of a business subagent's license shall not knowingly enter into any arrangement or act in conjunction with any person, not being an employee in his business as a licensee or in his work as a licensed business subagent, who is not licensed under this Act whereby such person is entitled to a share of the commission, fee, gain or reward payable to such licensee or the holder of such a license in respect of any transaction by or with him as a licensee or holder of a business subagent's license, or generally. Licensee not to share commission, etc., with certain persons.

30

(2).

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(2) A licensee shall not, without the prior consent in writing of the registrar, carry on business as such or advertise or in any manner whatsoever hold out that he carries on business as such—

5

(a) under the name, or a name nearly resembling the name, whereunder a person whose license has been cancelled under or in pursuance of this Act or the Business Agents Act, 1935, was carrying on business as a licensee immediately before his license was cancelled; or

10

(b) under a name implying or capable of being construed as implying that he is the successor in the business, or in any way interested or concerned in continuing the business as a licensee, of a person whose license has been cancelled under or in pursuance of this Act or the Business Agents Act, 1935:

15

20

Provided that nothing in this subsection shall prohibit the carrying on by a licensee of his business as such under his true name without any addition or adaptation whatsoever.

25

(u) (i) by omitting from section forty the words Sec. 40. "or a real estate agent" and by inserting (Production of license.) in lieu thereof the words " , a real estate agent or a business agent";

30

(ii) by inserting at the end of the same section the following new subsection:—

(2) Every business subagent shall, on demand, produce his license to any member of the police force of or above the rank of sergeant, or to any person with whom such business subagent is transacting or attempting to transact any business on behalf of a business agent.

35

(v)

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- (v) by inserting in section forty-one after the word "licensee" the words "or holder of a business subagent's license";
- 5 (w) by inserting at the end of paragraph (c) of subsection one of section forty-two the following new paragraph:—
- 10 (d) as a business agent or business subagent unless he was the holder of a business agent's license or of a business subagent's license, as the case may be, at the time of doing or performing such service.
- 15 (x) (i) by omitting from paragraph (a) of section forty-three the words " , or a name other than his own name,";
- (ii) by inserting next after the same paragraph the following new paragraph:—
- 20 (ai) where such licensee is an individual carrying on business under a business name registered or deemed to be registered under any Act for the time being in force relating to the registration of business names, then either his name or
- 25 such business name and the address of his place of business;
- (y) by inserting next after section fifty the following new Division:—
- 30 DIVISION 4.—*Business Agents and Business Subagents.*
- 35 50A. Any business agent or business subagent who by any wilfully false, misleading or deceptive statement, representation or promise or by any wilful concealment of material fact, induces or attempts to induce any person to enter into

Sec. 41.
(Licensee not to lend license.)

Sec. 42.
(Provisions as to commission, etc.)

Sec. 43.
(Publication of name and place of business in advertisements.)

New Division 4.

Misrepresentation by business agent or subagent.
cf. Act No. 7, 1935, s. 21.

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5 an agreement or contract for the sale or purchase or lease of a business or undertaking shall be guilty of an offence and shall be liable to a penalty of not less than ten pounds and not exceeding two hundred pounds or to imprisonment for a term not exceeding two years, or both.

10 50B. (1) Every business agent and business subagent shall keep in a legible manner a written record containing full particulars of every business or share or interest in or concerning the goodwill of or any stocks connected with a business which has been entrusted to him for the exercise or performance in relation thereto of any of the functions of a business agent as defined by this Act.

15

Record to be kept by business agent. cf. Act No. 7, 1935, s. 22.

20 (2) Such written record shall be open to inspection at all reasonable times by the registrar, a member of the police force of or above the rank of sergeant, or an officer of the council duly authorised in writing in that behalf and in the case of such authorised officer upon production of his written authority, and every business agent or business subagent upon being required so to do shall produce such written record for inspection by the registrar, such member of the police force or such authorised officer.

25

(3) Any person who—

30 (a) wilfully delays or obstructs the registrar, such member of the police force or such authorised officer in the exercise of his powers, authorities, duties and functions under subsection two of this section; or

(b)

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(b) being a business agent or business sub-agent refuses or fails, upon being required to produce any such written record kept by him under this section, to do so;

5

shall be guilty of an offence against this Act.

50c. The holder of a business agent's license shall not, in any way whatever in connection with his business, knowingly employ as a business subagent any person who is not the holder of a business subagent's license.

10

Business agent not to employ unlicensed subagent.
cf. Act No. 7, 1935, s. 25.

50d. Notwithstanding anything in any Act, no action shall be brought upon any contract or sale of any of the businesses referred to in the definition of "Business agent" in section three of this Act or any share or interest in or concerning any of such businesses, if the agreement or the memorandum or note thereof on which such action is brought is signed by any person other than the party to be charged therewith, unless such person so signing be thereunto lawfully authorised in writing signed by the party to be so charged.

15

20

Agents for sale of businesses to be authorised in writing.
cf. Act No. 7, 1935, s. 28.

50e. (1) Notwithstanding anything in this Act or any law to the contrary, no business subagent shall carry out any of the work of a business subagent unless such business subagent was theretofore lawfully authorised in writing thereunto by a business agent.

25

Business subagent acting for business agent to be authorised by him.
cf. Act No. 7, 1935, s. 32.

30

(2) Every business subagent shall at all reasonable times produce the written authority referred to in subsection one of this section whenever demanded by the registrar, a member of the police force of or above the rank of sergeant or an officer of the council duly authorised in that behalf, but in the case of such authorised officer upon production of his written authority.

35

(3)

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(3) Any business subagent who makes any false representation (whether verbally or in writing or by conduct) to any person to the effect that such business subagent is authorised to act as a business subagent for any specified business agent shall be guilty of an offence against this Act.

50F. Nothing in this Act shall be construed as requiring any holder of a business subagent's license, so far as he performs for any holder of a business agent's license any of the functions of a business agent and is duly authorised thereunto by such business agent, to hold a business agent's license under this Act, or as requiring any holder of a business agent's license to hold a business subagent's license under this Act.

Saving as to licensed business subagents, etc.

cf. Act No. 7, 1935, s. 33.

50G. Every business subagent shall, as soon as practicable after receiving any moneys from or on behalf of any person in respect of any transaction, in his capacity as a business subagent, pay such moneys to the business agent for whom he is acting in such transaction.

Disposal of moneys received by business subagent.

50H. Every business agent shall be personally liable for all moneys received from or on behalf of any person by any business subagent acting in his capacity as a business subagent for such business agent.

Liability on principal for certain acts, etc., of subagents.
cf. Act No. 7, 1935, s. 35.

(2) (a) The amendments made by subparagraph (ii) of paragraph (b) of subsection one of this section shall not apply to a corporation which is the holder of a business agent's license under the Business Agents Act, 1935-1941, or on whose behalf a person has taken out a license under that Act while such license is in force but upon the expiration of such license such amendments shall thereupon in all respects have full force and effect with respect to such corporation.

(b)

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(b) The amendment made by paragraph (c) of subsection one of this section shall not apply to any person who is the holder of a business agent's license issued under the Business Agents Act, 1935-1941, nor to
 5 any corporation which is the holder of any such license or on whose behalf any person has taken out any such license, while such license is in force, but upon the expiration of such license such amendments shall thereupon in all respects have full force and effect with respect to such
 10 person or corporation as the case may be.

(3) All moneys which immediately before the appointed day stood to the credit of the Auctioneers, Stock and Station and Real Estate Agents Administration Account, and all investments which immediately
 15 before that day were held by the council in connection with that account shall upon such day respectively be moneys standing to the credit of and investments held by the council in connection with the Auctioneers, Stock and Station, Real Estate and Business Agents Administration
 20 Account.

6. (1) Part IV of the Principal Act is amended—

Amendment
 of Act
 No. 28,
 1941,
 Part IV.
 (Real Estate
 Dealers and
 Real Estate
 Salesmen.)
 Sec. 51.
 (Interpre-
 tation.)

(a) (i) by omitting from the definition of "Real estate dealer" in section fifty-one the words
 25 "land in allotments" and by inserting in lieu thereof the words "allotments of land";

(ii) by omitting the definition of "Real estate salesman" in the same section and by inserting in lieu thereof the following
 30 definition:—

"Real estate salesman" means a person who, for or on behalf of any real estate agent or real estate dealer,
 induces

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induces or attempts to induce or negotiates with a view to inducing any person—

5 (a) to buy, sell or otherwise dispose of any land, including any allotment of land; or

10 (b) to make any offer to buy, sell or otherwise dispose of any land, including any allotment of land; or

(c) to accept any offer to buy, sell or otherwise dispose of any land, including any allotment of land; or

15 (d) to enter into any contract for the purchase, sale or other disposal of any land, including any allotment of land,

20 but does not include an auctioneer, a stock and station agent or a real estate agent.

25 (b) by inserting in paragraph (a) of subsection one of section fifty-two after the word "Act" where lastly occurring the words "or whose license under this Act or the Business Agents Act, 1935, has been cancelled, unless a license has been subsequently granted to him".

Sec. 52.
(Provisions as to employment of certain persons by real estate dealers.)

(2) The amendments made by subsection one of this section shall commence upon the expiration of a 30 period of three months after the appointed day.

*Auctioneers, Stock and Station, Real Estate and Business Agents
(Amendment).*

7. (1) Part VI of the Principal Act is amended—

Amendment
of Act No.
28, 1941,
Part VI.
(The Auc-
tioneers,
Stock and
Station and
Real Estate
Agents
Fidelity
Guarantee
Fund.)

- 5 (a) by omitting from the heading thereto the words "and Real Estate" and by inserting in lieu thereof the words ", Real Estate and Business"; Heading.
- (b) by omitting from subsection one of section sixty-five the words "and Real Estate" and by inserting in lieu thereof the words ", Real Estate and Business"; Sec. 65.
(The fund.)
- 10 (c) by omitting from section sixty-six the words "and Real Estate" and by inserting in lieu thereof the words ", Real Estate and Business"; Sec. 66.
(Separate
bank
account.)
- 15 (d) (i) by omitting from subsection three of section seventy-one the words "not less than" wherever occurring; Sec. 71.
(Contribu-
tions
to fund.)
- (ii) by omitting from the same subsection the words "shall not be required to pay any further amount by way of contributions under this section" and by inserting in lieu thereof the words "shall after paying such amount pay annually a contribution of one pound";
- 20 (iii) by inserting at the end of the same subsection the following new paragraph:—
- 25 This subsection shall apply whether any such amount was paid before or after the day appointed pursuant to subsection four
- of

*Auctioneers, Stock and Station, Real Estate and Business Agents
(Amendment).*

of section one of the Auctioneers, Stock and
Station, Real Estate and Business Agents
(Amendment) Act, 1957.

- 5 (e) (i) by inserting in subsection one of section Sec. 74.
seventy-four after the words "real estate (Application
agent" the words "or a business agent"; of fund.)
- (ii) by inserting next after subsection two of
the same section the following new sub-
section:—
- 10 (2A) No person shall have any claim
against the fund in respect of any theft or
fraudulent misapplication committed in the
course of the business of a business agent
unless such theft or fraudulent mis-
15 application was committed at a time when
such business agent was the holder of a
business agent's license under this Act.
- (iii) by omitting from subsection three of the
same section the words "that may be
20 committed after such commencement" and
by inserting in lieu thereof the words " , in
respect of which any claim against the fund
arose,".
- (f) by inserting at the end of subsection six of Sec. 75.
25 section seventy-five the following new sub- (Claims
section:— against
the fund.)
- (7) In respect of any theft or fraudulent
misapplication after the day appointed pursuant
to subsection four of section one of the
30 Auctioneers, Stock and Station, Real Estate and
Business Agents (Amendment) Act, 1957,
subsections three and four of this section shall
be read as though the words "five hundred"
were omitted therefrom and the words "ten
35 thousand" substituted therefor.
- (g)

*Auctioneers, Stock and Station, Real Estate and Business Agents
(Amendment).*

(g) by omitting section seventy-eight and by inserting in lieu thereof the following section:—

Subst.
sec. 78.

5 78. (1) Any proceedings brought against the council in relation to any claim upon the fund shall be by action at law as for a debt due by the council and shall be brought—

Defences.

10 (a) where the amount claimed does not exceed fifty pounds in a court of petty sessions holden before a stipendiary magistrate;

(b) where the amount claimed exceeds fifty pounds but does not exceed one thousand pounds in a district court;

15 (c) where the amount claimed exceeds one thousand pounds in the Supreme Court.

20 (2) In any of the actions referred to in subsection one of this section all defences which would have been available to the licensee in relation to whom the claim arose shall be available to the council, and in any such action all questions of costs shall be in the discretion of the court or the presiding judge.

25 (3) Any order for the payment of costs made by a court of petty sessions under the provisions of subsection two of this section shall operate as an order for the recovery of money under the Small Debts Recovery Act, 1912, as amended by subsequent Acts, and be enforceable as such under the provisions of that Act, as so amended.

35 (2) All moneys which immediately before the appointed day stood to the credit of the Auctioneers, Stock and Station and Real Estate Agents Fidelity Guarantee Fund or the Auctioneers, Stock and Station and Real Estate Agents Fidelity Guarantee Account shall upon that day become and be respectively moneys standing

*Auctioneers, Stock and Station, Real Estate and Business Agents
(Amendment).*

standing to the credit of the Auctioneers, Stock and
Station, Real Estate and Business Agents Fidelity
Guarantee Fund and the Auctioneers, Stock and Station,
Real Estate and Business Agents Fidelity Guarantee
5 Account.

(3) All investments which immediately before the
appointed day were held by the council in connection with
the Auctioneers, Stock and Station, and Real Estate
Agents Fidelity Guarantee Fund shall upon that day
10 become and be investments held by the council in con-
nection with the Auctioneers, Stock and Station, Real
Estate and Business Agents Fidelity Guarantee Fund.

8. Part VII of the Principal Act is amended by insert-
ing next after section eighty-four the following new
15 section:—

Amendment
of Act
No. 28, 1941,
Part VII.

(General.)

New
sec. 84A.

84A. (1) Any licensee who publishes or causes to
be published in the course of his business as such,
or the holder of a business subagent's license who
publishes or causes to be published in connection
20 with any matter in which he is acting as a business
subagent, any statement which—

Penalty for
publishing
false or mis-
leading ad-
vertisements.
cf. Act No.
39, 1912,
s. 97.

(a) is intended or apparently intended by such
licensee or holder of a business subagent's
license to promote the sale of any land or
25 livestock or any business; and

(b) is to his knowledge false or misleading in
any material particular,

shall be guilty of an offence against this Act.

(2) A statement shall be deemed to be pub-
30 lished within the meaning of this section if it is—

(a) inserted in any newspaper or any other pub-
lication printed and published in New
South Wales; or

(b)

*Auctioneers, Stock and Station, Real Estate and Business Agents
(Amendment).*

(b) publicly exhibited—

(i) in, on, over or under any building,
vehicle or place (whether or not
a public place and whether on land
or water); or

(ii) in the air in view of persons being
or passing in or on any street or
public place; or

(c) contained in any document gratuitously
sent or delivered to any person or thrown
or left upon premises in the occupation of
any person; or

(d) broadcast by wireless transmission.

(3) In any proceedings under this section
against a licensee or the holder of a business sub-
agent's license for publishing any statement afore-
said or causing the same to be published, if it is
proved that such statement was false or misleading
in any material particular, the licensee or the holder
of the business subagent's license who published
the statement or caused the same to be pub-
lished shall be deemed to have published the same
or to have caused the same to be published with
knowledge of its falsity or misleading character, as
the case may be, unless he proves that having taken
all reasonable precautions against committing an
offence under this section he had reasonable grounds
to believe and did believe that the statement was true
and had no reason to suspect that the statement was
false or misleading.

(4) Notwithstanding any proceedings against
any person for an offence under this section (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.

(5)

*Auctioneers, Stock and Station, Real Estate and Business Agents
(Amendment).*

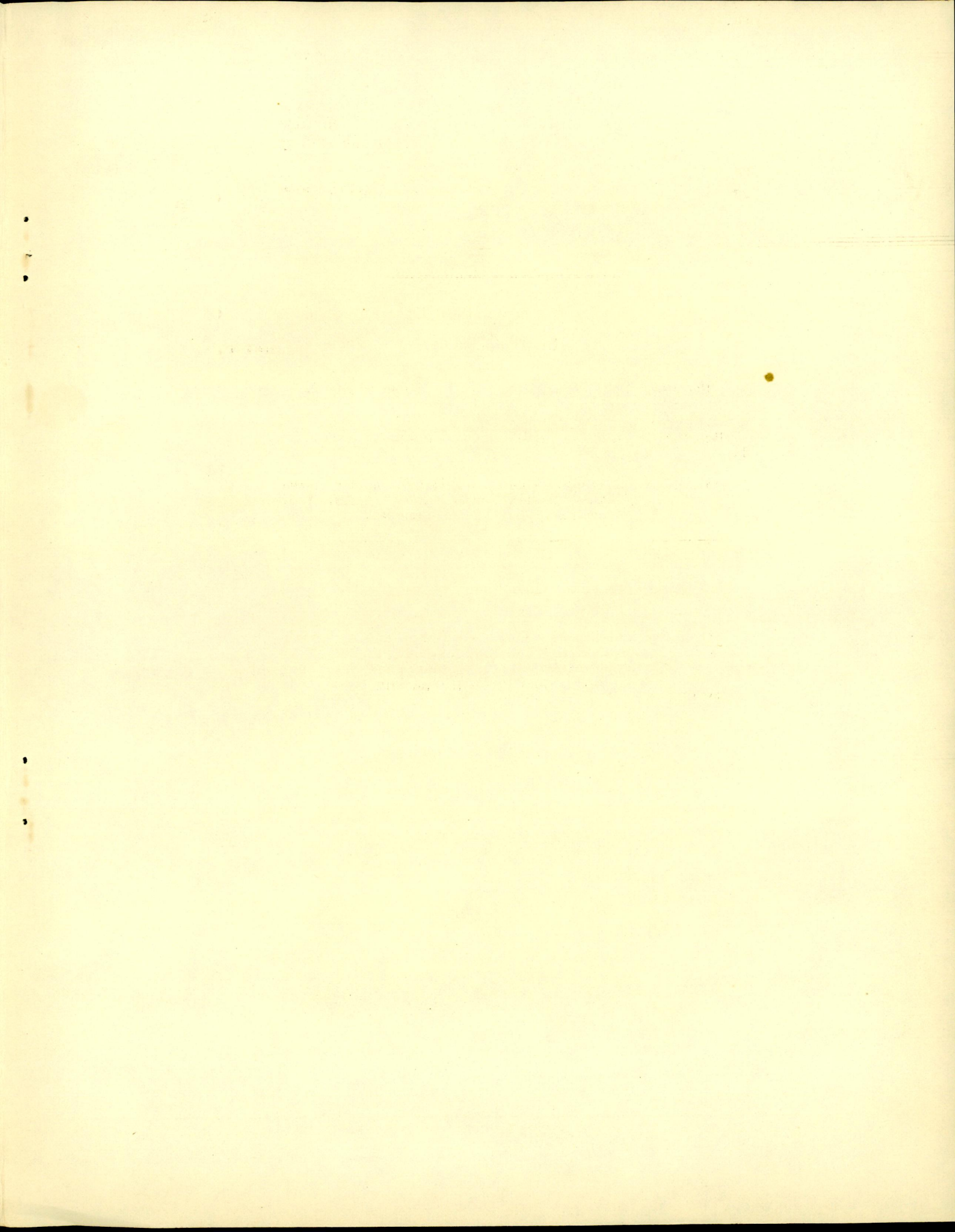
(5) This section shall be read and construed as in aid of and not in derogation from any enactment or law relating to false or misleading advertisements or other statements.

5 (6) In this section "newspaper" includes any periodical publication.

SCHEDULE.

Sec. 2 (3).

No. of Act.	Name of Act.	Extent of Repeal.
10 1935, No. 7 ...	Business Agents Act, 1935.	The whole.
1941, No. 28...	Auctioneers, Stock and Station and Real Estate Agents Act, 1941.	Part V and the matter relating to Part V in section two.



**AUCTIONEERS, STOCK AND STATION, REAL ESTATE AND
BUSINESS AGENTS (AMENDMENT) BILL, 1957.**

EXPLANATORY NOTE.

THE objects of this Bill are—

- (a) to repeal the Business Agents Act, 1935, as on and from the first anniversary of the appointed day under the Bill;
- (b) to include in the Auctioneers, Stock and Station and Real Estate Agents Act, 1941, as amended by subsequent Acts, provisions for licensing and regulating business agents and business subagents;
- (c) to reconstitute the Council of the Auctioneers, Stock and Station Agents and Real Estate Agents so as to provide business agents with representation thereon;
- (d) to allow real estate agents an additional representative on the council;
- (e) to authorise the surrender of licenses by persons holding licenses under the Act;
- (f) to prohibit licenses being granted to future applicants unless they have satisfied the court as to their examination qualifications or competency;
- (g) to increase by one pound the fees payable for licenses;
- (h) to remove the limit on the administration fee payable by licensees under the Act;
- (i) to limit to twenty-one days the period within which appeal may be lodged against the court's decision to refuse a license or a variation of a license, or to cancel a license;
- (j) to require the words "trust account" to appear in the name of the trust account required to be kept by licensees, and in certain other documents;
- (k) to require licensees to keep prescribed records and to require business agents to keep certain records in respect of business subagents employed by them;
- (l) to extend the class of persons who may not be employed by licensees without the approval of the court;
- (m) to prohibit licensees sharing commissions with unlicensed persons;
- (n) to prohibit any licensee carrying on business under the name of, or a name nearly resembling that of, a person whose license has been cancelled;
- (o) to extend the definition of "real estate salesman" so as to include salesmen dealing in built-on land as well as salesmen dealing in vacant land;
- (p) to require licensees who have contributed the prescribed amount to the Auctioneers, Stock and Station, Real Estate and Business Agents Fidelity Guarantee Fund to continue to contribute one pound per annum to that Fund;
- (q) to increase to ten thousand pounds the maximum amount payable from the Fund in respect of any one licensee;
- (r) to permit actions against the Council in respect of certain claims against the Fund to be brought in a court of petty sessions or the district court;
- (s) to prohibit persons holding licenses under the Act from publishing false or misleading advertisements in relation to certain matters;
- (t) to make other provisions of a minor or ancillary character.

ABSTRACTS OF THE PROCEEDINGS OF THE
CONFERENCE ON THE HISTORY OF THE UNITED STATES

EXPLANATION

The following is a list of the abstracts of the papers presented at the conference on the history of the United States, held at the University of California, Berkeley, California, from June 15 to 17, 1961.

The abstracts are arranged in alphabetical order of the author's name. The author's name is given in full, and the title of the paper is given in full. The abstracts are given in full, and the page number of the paper is given in full.

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PROOF

No. , 1957.

A BILL

To include in the Auctioneers, Stock and Station and Real Estate Agents Act, 1941-1954, provisions for licensing and regulating business agents and business sub-agents; to reconstitute the council constituted under that Act; to increase the annual contributions to the Auctioneers, Stock and Station and Real Estate Agents Fidelity Guarantee Fund established under that Act; to increase the maximum amount payable out of that Fund in respect of theft or fraudulent misapplication by any one licensee; to repeal the Business Agents Act, 1935; for these and other purposes to amend the Auctioneers, Stock and Station and Real Estate Agents Act, 1941-1954, and certain other Acts; and for purposes connected therewith.

[MR. SHEAHAN;—13 March, 1957.]

*Auctioneers, Stock and Station, Real Estate and Business Agents
(Amendment).*

BE it enacted by the Queen'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 :—

1. (1) This Act may be cited as the “Auctioneers,
Stock and Station, Real Estate and Business Agents
(Amendment) Act, 1957.”

Short title,
citation and
commence-
ment.

(2) The Auctioneers, Stock and Station and Real
10 Estate Agents Act, 1941-1954, is in this Act referred to
as the Principal Act.

(3) The Auctioneers, Stock and Station and Real
Estate Agents Act, 1941, as amended by subsequent Acts
and by this Act, may be cited as the Auctioneers, Stock
15 and Station, Real Estate and Business Agents Act, 1941-
1957.

(4) This Act shall, except where otherwise
expressly provided, commence upon a day to be
appointed by the Governor and notified by proclamation
20 published in the Gazette, which day is in this Act referred
to as the “appointed day.”

2. (1) On and from the appointed day no license or
renewal of a license under the Business Agents Act, 1935-
1941, shall be granted.

Operation
of Business
Agents Act,
1935-1941.

(2) The provisions of the Business Agents Act,
25 1935-1941, shall, on and from the appointed day, apply
only with respect to licenses issued under that Act and in
force immediately before such commencement, and to
persons holding such licenses, and for those purposes
30 shall continue in force in relation to any such license or
person, only until such license has expired or is cancelled.

(3) As on and from the first anniversary of the
appointed day the Acts mentioned in the Schedule to this
Act are to the extent therein specified hereby repealed.

(4)

*Auctioneers, Stock and Station, Real Estate and Business Agents
(Amendment).*

(4) (a) Nothing in this section shall affect the liability of any person under any fidelity bond given pursuant to the Business Agents Act, 1935-1941.

(b) Notwithstanding anything contained in
5 subsections two and three of this section, section twenty-seven of the Business Agents Act, 1935-1941, shall continue to apply to and in respect of every such fidelity bond.

(5) Notwithstanding anything contained in sub-
10 sections two and three of this section every business agent or subagent under the Business Agents Act, 1935-1941, shall keep the written record referred to in subsection one of section twenty-two of that Act for a period of not less than three years after the date on which it was
15 made, and shall at all reasonable times produce such written record for inspection if required so to do by any officer of the police force of or above the rank of sergeant or the registrar under the Principal Act, as amended by this Act, or any officer of the council under such Principal
20 Act, as so amended, duly authorised in writing in that behalf by such council, but in the case of such authorised officer, on production of his written authority.

Any person who contravenes any of the provisions of this subsection shall be deemed to be guilty of an offence
25 against the Principal Act, as amended by this Act, and shall be liable to a penalty of not less than two pounds and not exceeding fifty pounds.

(6) Where an application is made for a business agent's license or a business subagent's license under the
30 Principal Act, as amended by this Act, by any person who at the time of the application is the holder of a business agent's license or a subagent's license, as the case may be, under the Business Agents Act, 1935-1941, the person making such application shall, for the
35 purposes of subsection six of section twenty-three of the Principal Act, as so amended, be deemed to be
already

*Auctioneers, Stock and Station, Real Estate and Business Agents
(Amendment).*

already the holder of a license under the said Principal Act, as so amended, of the same class as that referred to in his application or of any other class.

3. Part I of the Principal Act is amended—

- 5 (a) (i) by omitting from the matter relating to Part II in section two the words “and Real Estate” and by inserting in lieu thereof the words “, Real Estate Agents and Business;”
- 10 (ii) by omitting from the matter relating to Part III in the same section the words “and Real Estate Agents—ss. 20-50” and by inserting in lieu thereof the words “, Real Estate Agents and Business Agents—ss. 20-50_H;”
- 15 (iii) by inserting at the end of the same matter the following words, figures and letters:—
“DIVISION 4.—*Business Agents and Business Subagents*—ss. 50_A-50_H.”
- 20 (iv) by omitting from the matter relating to Part VI in the same section the words “and Real Estate” and by inserting in lieu thereof the words “, Real Estate and Business”;
- 25 (b) (i) by omitting from subsection one of section three the definition of “Council” and by inserting in lieu thereof the following definitions:—
- 30 “Business agent” means any person (whether or not such person carries on any other business) who for reward (whether monetary or otherwise)

Amendment
of Act No.
28, 1941,
Part I.
(Prelimin-
ary.)
Sec. 2.
(Division
into Parts.)

Sec. 3.
(Defini-
tions.)

*Auctioneers, Stock and Station, Real Estate and Business Agents
(Amendment).*

otherwise) exercises or carries on business as an agent for performing any of the following functions, namely:—

- 5 (a) selling, buying or exchanging or otherwise dealing with or disposing of; or
- 10 (b) negotiating for the sale, purchase or exchange or any other dealing with or disposition of,

15 hotel businesses, residential businesses, boarding-house businesses, storekeeping businesses, manufacturing businesses or any trading businesses whatsoever or any share or interest in or concerning or the goodwill of or any stocks connected with any of such businesses, but

20 does not include a business subagent in his capacity as such.

25 “Business subagent” means any person who is in the direct employ of or acts for or by arrangement with a business agent and who performs for such business agent any of the functions of a business agent as defined by this section whether his remuneration is by way of salary, wages, commission or otherwise but does not include an employee of a corporation in respect of whom

30 such corporation has taken out a business agent’s license.

35

“Council”

*Auctioneers, Stock and Station, Real Estate and Business Agents
(Amendment).*

5 “Council” means the Council of the Auctioneers, Stock and Station Agents, Real Estate Agents and Business Agents constituted under this Act.

(ii) by inserting in the same subsection at the end of the definition of “Licensee” the words “but does not include the holder of a business subagent’s license”;

10 (c) (i) by omitting from the proviso to paragraph (a) of subsection two of section four the words “or real estate agent” and by inserting in lieu thereof the words “, real estate agent or business agent”;

Sec. 4.
(Act not to apply to any Government department, etc.)

15 (ii) by omitting from the same proviso the words “a license” and by inserting in lieu thereof the words “an appropriate license”.

4. (1) Part II of the Principal Act is amended—

Amendment of Act No. 28, 1941, Part II. (The Council of the Auctioneers, Stock and Station Agents and Real Estate Agents.)

20 (a) by omitting from the heading to the Part the words “and Real Estate” and by inserting in lieu thereof the words “, Real Estate Agents and Business”;

Heading.

25 (b) by omitting from subsection three of section six the words “and Real Estate” and by inserting in lieu thereof the words “, Real Estate Agents and Business”;

Sec. 6. (The council.)

(c)

*Auctioneers, Stock and Station, Real Estate and Business Agents
(Amendment).*

(c) by omitting section seven and by inserting in lieu thereof the following section:— Subst.
sec. 7.

5 7. (1) On and from the day appointed pursuant to subsection four of section one of the Auctioneers, Stock and Station, Real Estate and Business Agents (Amendment) Act, 1957 (in this section referred to as the "appointed day") the council shall be reconstituted and shall consist of— First
council
with repre-
sentation for
business
agents.

10 (a) the persons who immediately before the appointed day were the members of the council as then constituted; and

15 (b) a person, who shall be appointed by the Governor and shall be the holder of a business agent's license under the Business Agents Act, 1935-1941.

20 (2) Of the members referred to in paragraph (a) of subsection one of this section, the member who was appointed under the provisions of subsection three of section eight of this Act to be a member of the council as constituted immediately before the appointed day is in this Act referred to as the "official member" and the remaining members referred to in that paragraph and the member referred to in paragraph (b) of the said subsection one are in this Act referred to as "elected members".

25 (3) The council as so reconstituted shall appoint one of its members to be chairman of the council.

30 (4) Subject to the provisions of this Act, the members of the council as so reconstituted shall hold office until the thirtieth day of June, one thousand nine hundred and fifty-eight, and shall be eligible for reappointment or for election as members of the council.

(5)

*Auctioneers, Stock and Station, Real Estate and Business Agents
(Amendment).*

5 (5) If immediately before the appointed day there was a vacancy in the office of any member of the council, the Governor may, in respect of that vacancy, appoint a person to the council as reconstituted under this section.

10 (6) For the purposes only of the application of the provisions of paragraph (g) of section nine of this Act to the member of the council appointed pursuant to paragraph (b) of subsection one of this section, the said paragraph (g) shall be deemed to be amended—

15 (a) by inserting next after the word “license” the words “under this Act or under the Business Agents Act, 1935-1941”; and

20 (b) by omitting the words “to renew the same upon its expiry” and by inserting in lieu thereof the words “upon the expiry of his license under the Business Agents Act, 1935-1941, to procure the issue to him of a business agent’s license under this Act, and to renew such lastmentioned license upon its expiry”.

25 (d) (i) by omitting from subsection one of section eight the word “forty-three” and by inserting in lieu thereof the word “fifty-eight”; Sec. 8.
(Constitution
of subsequent
councils.)

30 (ii) by omitting from the same subsection the word “ten” and by inserting in lieu thereof the word “thirteen”;

(iii) by omitting from the same subsection the word “nine” and by inserting in lieu thereof the word “twelve”;

35 (iv) by omitting from subparagraph (iii) of paragraph (b) of subsection two of the same section the word “three” and by inserting in lieu thereof the word “four”;

(v)

*Auctioneers, Stock and Station, Real Estate and Business Agents
(Amendment).*

- (v) by inserting at the end of the same paragraph the following new subparagraph:—
(iv) two shall be business agents.
- 5 (vi) by inserting at the end of paragraph (a) of subsection four of the same section the following new subparagraph:—
(iv) business agents.
- 10 (vii) by inserting next after subparagraph (iii) of paragraph (b) of the same subsection the following new subparagraph:—
(iv) on the roll of business agents, if he holds a business agent's license;
- 15 (viii) by inserting at the end of paragraph (c) of the same subsection the following new subparagraph:—
(iv) as a business agent—unless his name is on the roll of business agents.
- 20 (ix) by omitting from paragraph (d) of the same subsection the words "Each such roll shall" and by inserting in lieu thereof the words "The roll of auctioneers, the roll of stock and station agents and the roll of business agents shall each";
- 25 (x) by inserting at the end of the same paragraph the following words:—
"The roll of real estate agents shall be divided into three parts to be known respectively as Part I, Part II and Part III.
- 30 In Part I of such roll shall be entered the names of all persons eligible for enrolment on such roll whose places of business are situated within the county of Cumberland, excluding therefrom such part of the police district of Wollongong as is within that
- 35 county

*Auctioneers, Stock and Station, Real Estate and Business Agents
(Amendment).*

county, or the county of Northumberland, excluding therefrom the police district of Newcastle.

5 In Part II of such roll shall be entered the names of all persons eligible for enrolment on such roll whose places of business are situated within the police districts of Newcastle and Wollongong.

10 In Part III of such roll shall be entered the names of all persons eligible for enrolment on such roll whose places of business are situated in any part of New South Wales, not being a part in respect of which they are eligible for enrolment on Part I or
15 Part II of such roll."

(xi) by inserting at the end of paragraph (e) of the same subsection the words "and the persons whose names are on Part III of that roll shall elect one member of the
20 council.

The persons whose names are on Part I of the roll of business agents shall elect one member of the council and the persons whose names are on Part II of that roll shall
25 elect one member of the council";

(xii) by omitting from subsection five of the same section the word "forty-three" and by inserting in lieu thereof the word "fifty-eight";

30 (e) (i) by inserting in subsection one of section fourteen after the words "five guineas" the words ", or such other amount as may be prescribed in lieu thereof,"; Sec. 14.
(Fees and expenses.)

35 (ii) by inserting in the same subsection after the words "two guineas" the words ", or such other amount as may be prescribed in lieu thereof,".

*Auctioneers, Stock and Station, Real Estate and Business Agents
(Amendment).*

(2) (a) The amendments made by subsection one of this section shall not prejudice or affect in any way the continuity of the body corporate constituted under Part II of the Principal Act but the same shall continue 5 notwithstanding the provisions of this section.

(b) The said body corporate shall continue and shall be deemed always to have continued notwithstanding that there are or have been at any time or times vacancies in the offices of all of the members of the body 10 corporate or of any one or more of them.

(3) (a) For the purposes only of the reconstitution to be effected by the amendments made by paragraph (c) of subsection one of this section and of any matters necessary for or incidental to such appointment or reconstitu- 15 tion, such amendments shall commence on the day upon which the assent of Her Majesty to this Act is signified.

(b) The persons to be members of the Council of the Auctioneers, Stock and Station Agents, Real Estate Agents and Business Agents as so reconstituted shall 20 assume their offices on the appointed day and on that day the amendments made by paragraph (c) of subsection one of this section shall come into force for all purposes.

5. (1) Part III of the Principal Act is amended—

Amendment
of Act No.
28, 1941,
Part III.
(Auctioneers,
Stock and
Station
Agents and
Real Estate
Agents.)

(a) by omitting from the heading thereto the words 25 “and Real Estate” and by inserting in lieu thereof the words “, Real Estate Agents and Business”;

(b)

*Auctioneers, Stock and Station, Real Estate and Business Agents
(Amendment).*

(b) (i) by inserting next after subsection two of section twenty the following new subsection:—
(2A) No person (either by himself or as a member of a partnership)—

Sec. 20.
(No person or partner in a firm to act without a license.)

5 (a) shall act as or carry on or advertise, notify or state that he acts as or carries on or is willing to act as or carry on the business of a business agent unless he is the holder of a business agent's license under the Business Agents Act, 1935-1941, or a business agent's license;

10 (b) shall act as or carry on or advertise, notify or state that he acts as or carries on or is willing to act as or carry on as a business subagent unless he is the holder of a subagent's license under the Business Agents Act, 1935-1941, or a business subagent's license.

15 (ii) by inserting in subsection three of the same section after the words "real estate agent" the words "or of a business agent";

20 (iii) by inserting in the same subsection after the word "appropriate." the following new paragraph:—

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

25 (c) by inserting next after subsection two of section twenty-one the following new subsection:—

Sec. 21.
(Each separate place of business to be in charge of licensee.)

30 (2A) (a) No person shall, by virtue of one business agent's license, keep more than one place for the conduct of his business as a business agent.

35 (b)

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

10 (c) Where a corporation conducts its business as a business agent at more than one place of business it shall employ at each such place a person in respect of whom it has taken out a license, and such person shall be in charge at that place.

15 (d) (i) by inserting in subsection one of section twenty-two after the word "license" where lastly occurring the following word and new paragraphs:—
" ; or

Sec. 22.
(Licenses.)

20 (d) a business agent's license; or

(e) a business subagent's license.";

25 (ii) by inserting in paragraph (b) of subsection three of the same section after the words "taking out the same and" the words ", except in the case of a business subagent's license,";

(iii) by inserting next after paragraph (b) of subsection four of the same section the following new paragraph:—

30 (c) Where the holder of a license desires to surrender the license held by him he may in writing notify the clerk of the court by which the license was issued that he desires to surrender such license and deliver such license to the clerk of that court.

The

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The clerk of the court shall, upon receipt of such notification and license, endorse on the license the word "surrendered" and forward such notification to the registrar.

- 5 (e) (i) by omitting subsection three of section Sec. 23. twenty-three and by inserting in lieu thereof (Procedure.) the following subsection:—

(3) (a) Where the applicant resides in New South Wales—

- 10 (i) an application for a license other than a business subagent's license shall be lodged with the clerk of the court of the petty sessions district within which the place of
- 15 business of the applicant in respect of which the application is made is situated or proposed to be situated;

- (ii) an application for a business subagent's license shall be lodged with
- 20 the clerk of the court of the petty sessions district within which the applicant resides.

(b) Where under this subsection there is more than one court with the clerk of which an application may be lodged such

25 application shall be lodged—

- (i) in the case of an application for a license other than a business subagent's license, with the clerk of the court within such district nearest to the place where the place of business to which the application relates is situated or proposed to be situated; or
- 30

(ii)

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5 (ii) in the case of an application for a business subagent's license, with the clerk of the court within such district nearest to the place where the applicant resides.

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

10 (bi) Where the application is for a business agent's license and the applicant resides in any other State of the Commonwealth of Australia or in the Australian Capital Territory the application shall be lodged with the clerk of any court of petty sessions.

15

(iii) by inserting in paragraph (a) of subsection six of the same section after the words "prescribed fees and" the words ", except in the case of a person applying for a business subagent's license,";

20

(iv) by inserting at the end of paragraph (b) of the same subsection the words "or until the expiration of twelve months after the date upon which such provisional license took effect whichever first occurs";

25

(v) by inserting in subsection eight of the same section after the words "prescribed fees and" the words ", except in the case of a person applying for a business subagent's license,";

30

(vi) by inserting in subsection nine of the same section after the words "prescribed fees and" the words ", except in the case of a person applying for a business subagent's license,";

35

(vii)

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(vii) by inserting next after subsection ten of the same section the following new subsections:—

5 (10A) A license shall not, after the expiration of the prescribed period from the day appointed pursuant to subsection four of section one of the Auctioneers, Stock and Station, Real Estate and Business Agents (Amendment) Act, 1957, be granted to an applicant, not being a corporation, nor to a corporation in respect of an employee, unless such applicant or employee has—

15 (a) passed the prescribed examination conducted by the Department of Technical Education or such other examination as may be prescribed; or

20 (b) produced to the court satisfactory evidence that he is competent to perform the functions and duties generally performed by the holder of such a license.

25 This subsection shall not apply to any person to whom an auctioneer's license (being a general license) or a business agent's license may be granted pursuant to the provisions of section twenty-six or twenty-seven of this Act.

30 (10B) A business subagent's license shall not be granted to any person who is not a resident of New South Wales.

35 (f) (i) by omitting from subparagraph (i) of paragraph (a) of subsection one of section twenty-five the words "fifteen pounds" and by inserting in lieu thereof the words "sixteen pounds";

Sec. 25.
(Fees payable for license.)

(ii)

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- (ii) by omitting from subparagraph (ii) of the same paragraph the words "five pounds" and by inserting in lieu thereof the words "six pounds";
- 5 (iii) by omitting from subparagraph (iii) of the same paragraph the words "two pounds" and by inserting in lieu thereof the words "three pounds";
- 10 (iv) by omitting from subparagraph (iv) of the same paragraph the words "two pounds" and by inserting in lieu thereof the words "three pounds";
- 15 (v) by omitting from paragraph (b) of the same subsection the words "one pound" and by inserting in lieu thereof the words "two pounds";
- (vi) by omitting from paragraph (c) of the same subsection the words "one pound" and by inserting in lieu thereof the words "two pounds";
- 20 (vii) by omitting paragraphs (d), (e) and (f) of the same subsection and by inserting in lieu thereof the following paragraphs:—
- 25 (d) for an auctioneer's license (being a general license) and any one or more of the following licenses:—
a stock and station agent's license, a real estate agent's license or a business agent's license—
30 sixteen pounds;
- (e) for an auctioneer's license (being a country license) and any one or more of the following licenses:—
35 a stock and station agent's license, a real estate agent's license or a business agent's license—
202—B six pounds; (f)

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- (f) for an auctioneer's license (being a district license or a primary products license) and any one or more of the following licenses:—
- 5 a stock and station agent's license, a real estate agent's license or a business agent's license—four pounds;
- 10 (fi) for a business agent's license—three pounds;
- (fii) for a business subagent's license—ten shillings;
- (viii) by omitting from paragraph (h) of the same subsection the words "five pounds" and by
- 15 inserting in lieu thereof the words "six pounds";
- (ix) by omitting from subsection three of the same section the words "not exceeding one pound";
- 20 (x) by omitting from subsection four of the same section the words "Auctioneers, Stock and Station and Real Estate Agents Administration Account" and by inserting
- 25 in lieu thereof the words "Auctioneers, Stock and Station, Real Estate and Business Agents Administration Account";
- (g) (i) by inserting in subsection one of section twenty-six after the words and symbols
- 30 "(being a general license)" the words "or a business agent's license";
- (ii) by inserting in the same subsection after the word "auctioneer" the words "or a business agent, as the case may be,";
- (iii)
- Sec. 26.
(Power to grant auctioneers' licenses to persons resident in reciprocating States.)

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- (iii) by inserting in the same subsection after the words and symbols "(being general licenses)" the words "or business agents' licenses, as the case may be,";
- 5 (iv) by inserting next after subsection three of the same section the following new subsection:—
- (3A) Any notification declaring that the
10 Business Agents Act, 1935-1941, shall extend and apply to the granting in New South Wales of general licenses to residents in any other State, which was published pursuant to section ten of that Act and which
15 was still in force immediately before the day appointed pursuant to subsection four of section one of the Auctioneers, Stock and Station, Real Estate and Business Agents (Amendment) Act, 1957, shall, as
20 from such day and until revoked by a notification published pursuant to this Act, have and take effect as if it were a notification published pursuant to subsection one of this section declaring that, as from such day,
25 and while the notification remains in force, this Act shall extend and apply to the granting in New South Wales of business agents' licenses to residents in such other States as is mentioned in such notification.
- 30 (v) by inserting in paragraph (a) of subsection four of the same section after the words and symbols "(being a general license)" the words "or a business agent's license";
- 35 (vi) by inserting in the same paragraph after the word "auctioneer" the words "or a business agent, as the case may be,";
- (h)

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- 5 (h) (i) by inserting in section twenty-seven after the words and symbols “(being general licenses or country licenses or district licenses)” the words “or business agents’ licenses”;
- 10 (ii) by inserting in the same section after the words and symbols “(being a general license or a country license or a district license)” where firstly occurring the words “or a business agent’s license”;
- 15 (iii) by inserting in the same section after the words “auctioneer’s license” where secondly occurring the words “, or a business agent’s license, as the case may be”;
- 20 (iv) by inserting in the same section after the words and symbols “(being a general license or a country license or a district license)” where secondly occurring the words “or a business agent’s license”;
- 25 (v) by inserting in the same section after the words “auctioneer’s license” where lastly occurring the words “, or a business agent’s license, as the case may be,”;
- 25 (i) by omitting from section twenty-eight the words “or a renewal thereof” wherever occurring and by inserting in lieu thereof the words “or a business agent’s license, or a renewal of either such license,”;
- 30 (j) by inserting at the end of section twenty-nine the following new subsection:—
- (4) The foregoing provisions of this section shall apply mutatis mutandis to and in respect of a business subagent’s license and the holder of a business subagent’s license.
- (k)

Sec. 27.
(Grant of
auctioneers’
licenses to
persons
resident
in the
Australian
Capital
Territory.)

Sec. 28.
(Applicant
for
auctioneer’s
license to
be resi-
dent in
New South
Wales or
reciprocating
State.)

Sec. 29.
(Cancell-
ation of
license.)

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- (k) (i) by inserting in subsection one of section thirty-one after the word "licensee" the words "or the employee, or the holder of a business subagent's license";
- 5 (ii) by inserting in paragraph (b) of subsection four of the same section after the word "employee" the words ", or holder of a business subagent's license,";
- (iii) by inserting next after the same subsection the following new subsection:—
- 10 (4A) An appeal under this section in any case to which paragraph (a) of subsection one of this section applies shall not be commenced after the expiration of twenty-one days after the date of refusal of the application or the date of the order under section twenty-nine of this Act, as the case may be.
- (l) by omitting from section thirty-two the words "or a real estate agent" and by inserting in lieu thereof the words ", a real estate agent, a business agent or a business subagent,";
- 20 (m) (i) by inserting next after subsection three of section thirty-four the following new subsections:—
- 25 (3A) Every business subagent shall have a registered address within New South Wales.
- (3B) The address specified in the application for a business subagent's license as the address at which the applicant then resides, shall, upon the grant of the application, be deemed for the purposes of this Act to be the registered address of the business subagent.
- 30 (ii) by inserting in subsection four of the same section after the words "registered office" the words "or the registered address";
- 35 (iii)

Sec. 31.
(Appeal.)

Sec. 32.
(Effect of
disqualifica-
tion on
membership,
etc., of
corporation.)

Sec. 34.
(Registered
office and
address.)

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- (iii) by inserting in the same subsection after the word "licensee" the words "or the holder of the business subagent's license, as the case may be,";
- 5 (iv) by inserting in subsection five of the same section after the word "business" where firstly occurring the words "or if any licensed business subagent acts or carries on as a business subagent";
- 10 (n) by inserting at the end of paragraph (b) of subsection three of section thirty-five the following new subparagraph:— Sec. 35.
(Publication of name of license.)
- "(iv) as a business agent—unless he is the holder of a business agent's license";
- 15 (o) (i) by inserting at the end of subsection one of section thirty-six the words "and in any other case the trust account shall be in the name of the licensee. 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"; Sec. 36.
(Payment into bank.)
- 20 (ii) by inserting next after subsection four of the same section the following new subsection:—
- 25 (4A) Where any licensee neglects or fails to comply with any of the provisions of this section by reason of his neglect or failure to pay any moneys into a bank in New South Wales to a trust account or to retain any such moneys therein, the offence shall continue until the said moneys are paid to the person for or on whose behalf they were received, or disbursed in such manner as may be directed by such person.
- 30
- 35
- (p)

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- 5 (p) (i) by inserting in subsection one of section thirty-eight after the word "licensee" where secondly occurring the words "and such other written records relating to his business as licensee as may be prescribed";
- (ii) by omitting from the same subsection the word "record" where secondly occurring and by inserting in lieu thereof the word "records";
- 10 (iii) by omitting from subsection two of the same section the words "The written record" and by inserting in lieu thereof the words "Every such written record";
- 15 (iv) by omitting from subsection three of the same section the words "the written record" and by inserting in lieu thereof the words "any such written record";
- 20 (q) by omitting from subsection one of section 38B the word "record" and by inserting in lieu thereof the word "records";
- (r) by inserting next after section 38B the following new section:—
- 25 38c. (1) Every business agent—
- (a) shall make or cause to be made a true statement in writing in the prescribed form and with the prescribed particulars as to the name and the work or services of and the salary, wages or commission paid in each month to every person employed (whether as an employee or a subagent or otherwise) by him in connection with his business as a business agent and shall, for a period of three years after the date on which the statement was made or caused to be made, keep such statement at his principal place of business in New South Wales;
- 30
- 35
- (b)

Sec. 38.
(Record to
be kept.)

Sec. 38B.
(Inspection
of records.)

New sec.
38c.

Statement of
employees,
subagents,
etc., and
their wages
to be kept
by business
agents.
cf. Act No. 7,
1935, s. 18.

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(b) shall, at all reasonable times, produce such statement for inspection if required to do so by the registrar, a member of the police force of or above the rank of sergeant, or an officer of the council duly authorised by the council in writing in that behalf, but in the case of such authorised officer upon production of his written authority.

(2) Any business agent who—

(a) commits any contravention of or fails to comply with any of the provisions of this section; or

(b) makes any false entries in any such statement;

shall be guilty of an offence against this Act.

(s) (i) by inserting in subsection one of section thirty-nine after the word "business" the words "and the holder of a business subagent's license shall not, except with such approval and subject to any such conditions, knowingly employ in any way whatever in connection with his work as a business subagent,";

Sec. 39.
(Certain persons not to be employed by licensees.)

(ii) by inserting in paragraph (a) of the same subsection after the word "Act" where lastly occurring the words "or whose license under this Act or the Business Agents Act, 1935, has been cancelled, unless a license has been subsequently granted to him";

(iii) by inserting at the end of the same subsection the following word and new paragraphs:—

or

(c)

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5 (c) who is for the time being disqualified under this Act from holding a certificate of registration as a real estate salesman, or whose certificate of registration as a real estate salesman has been cancelled, unless a certificate has been subsequently granted to him; or

10 (d) whose application for a certificate of registration as a real estate salesman under this Act has been refused, unless such an application has been subsequently granted.

15 (iv) by inserting at the end of subsection two of the same section the words "or in the work of a business subagent";

20 (v) by inserting in subsection four of the same section after the word "licensee" the words "or any holder of a business subagent's license";

(t) by inserting next after section thirty-nine the following new section:— New sec. 39A.

25 39A. (1) A licensee or a holder of a business subagent's license shall not knowingly enter into any arrangement or act in conjunction with any person, not being an employee in his business as a licensee or in his work as a licensed business subagent, who is not licensed under this Act whereby such person is entitled to a share of the commission, fee, gain or reward payable to such licensee or the holder of such a license in respect of any transaction by or with him as a licensee or holder of a business subagent's license, or generally. Licensee not to share commission, etc., with certain persons.

30 (2)

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(2) A licensee shall not, without the prior consent in writing of the registrar, carry on business as such or advertise or in any manner whatsoever hold out that he carries on business as such—

5

(a) under the name, or a name nearly resembling the name, whereunder a person whose license has been cancelled under or in pursuance of this Act or the Business Agents Act, 1935, was carrying on business as a licensee immediately before his license was cancelled; or

10

(b) under a name implying or capable of being construed as implying that he is the successor in the business, or in any way interested or concerned in continuing the business as a licensee, of a person whose license has been cancelled under or in pursuance of this Act or the Business Agents Act, 1935:

15

20

Provided that nothing in this subsection shall prohibit the carrying on by a licensee of his business as such under his true name without any addition or adaptation whatsoever.

25

(u) (i) by omitting from section forty the words Sec. 40. "or a real estate agent" and by inserting in lieu thereof the words "a real estate (Production of license.) agent or a business agent";

30

(ii) by inserting at the end of the same section the following new subsection:—

(2) Every business subagent shall, on demand, produce his license to any member of the police force of or above the rank of sergeant, or to any person with whom such business subagent is transacting or attempting to transact any business on behalf of a business agent.

35

(v)

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- 80
- 5 (v) by inserting in section forty-one after the word "licensee" the words "or holder of a business subagent's license"; Sec. 41.
(Licensee not to lend license.)
- 10 (w) by inserting at the end of paragraph (c) of subsection one of section forty-two the following new paragraph:— Sec. 42.
(Provisions as to commission, etc.)
- 15 (d) as a business agent or business subagent unless he was the holder of a business agent's license or of a business subagent's license, as the case may be, at the time of doing or performing such service.
- 20 (x) (i) by omitting from paragraph (a) of section forty-three the words ", or a name other than his own name,"; Sec. 43.
(Publication of name and place of business in advertisements.)
- 25 (ii) by inserting next after the same paragraph the following new paragraph:—
- 30 (ai) where such licensee is an individual carrying on business under a business name registered or deemed to be registered under any Act for the time being in force relating to the registration of business names, then either his name or such business name and the address of his place of business;
- 35 (y) by inserting next after section fifty the following new Division:— New Division 4
- DIVISION 4.—*Business Agents and Business Subagents.*
- 50A. Any business agent or business subagent who by any wilfully false, misleading or deceptive statement, representation or promise or by any wilful concealment of material fact, induces or attempts to induce any person to enter into an Misrepresentation by business agent or subagent.
cf. Act No. 7, 1935, s. 21.

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5 an agreement or contract for the sale or purchase or lease of a business or undertaking shall be guilty of an offence and shall be liable to a penalty of not less than ten pounds and not exceeding two hundred pounds or to imprisonment for a term not exceeding two years, or both.

10 50B. (1) Every business agent and business subagent shall keep in a legible manner a written record containing full particulars of every business or share or interest in or concerning the goodwill of or any stocks connected with a business which has been entrusted to him for the exercise or performance in relation thereto of any of the functions of a business agent as defined by this Act.

Record to be kept by business agent. cf. Act No. 7, 1935, s. 22.

20 (2) Such written record shall be open to inspection at all reasonable times by the registrar, a member of the police force of or above the rank of sergeant, or an officer of the council duly authorised in writing in that behalf and in the case of such authorised officer upon production of his written authority, and every business agent or business subagent upon being required so to do shall produce such written record for inspection by the registrar, such member of the police force or such authorised officer.

25 (3) Any person who—

30 (a) wilfully delays or obstructs the registrar, such member of the police force or such authorised officer in the exercise of his powers, authorities, duties and functions under subsection two of this section; or

(b)

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(b) being a business agent or business sub-agent refuses or fails, upon being required to produce any such written record kept by him under this section, to do so;

5

shall be guilty of an offence against this Act.

50c. The holder of a business agent's license shall not, in any way whatever in connection with his business, knowingly employ as a business subagent any person who is not the holder of a business subagent's license.

10

Business agent not to employ unlicensed subagent. cf. Act No. 7, 1935, s. 25.

50d. Notwithstanding anything in any Act, no action shall be brought upon any contract or sale of any of the businesses referred to in the definition of "Business agent" in section three of this Act or any share or interest in or concerning any of such businesses, if the agreement or the memorandum or note thereof on which such action is brought is signed by any person other than the party to be charged therewith, unless such person so signing be thereunto lawfully authorised in writing signed by the party to be so charged.

15

Agents for sale of businesses to be authorised in writing. cf. Act No. 7, 1935, s. 28.

20

50e. (1) Notwithstanding anything in this Act or any law to the contrary, no business subagent shall carry out any of the work of a business subagent unless such business subagent was theretofore lawfully authorised in writing thereunto by a business agent.

25

Business subagent acting for business agent to be authorised by him. cf. Act No. 7, 1935, s. 32.

30

(2) Every business subagent shall at all reasonable times produce the written authority referred to in subsection one of this section whenever demanded by the registrar, a member of the police force of or above the rank of sergeant or an officer of the council duly authorised in that behalf, but in the case of such authorised officer upon production of his written authority.

35

(3)

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(3) Any business subagent who makes any false representation (whether verbally or in writing or by conduct) to any person to the effect that such business subagent is authorised to act as a business subagent for any specified business agent shall be guilty of an offence against this Act.

50F. Nothing in this Act shall be construed as requiring any holder of a business subagent's license, so far as he performs for any holder of a business agent's license any of the functions of a business agent and is duly authorised thereunto by such business agent, to hold a business agent's license under this Act, or as requiring any holder of a business agent's license to hold a business subagent's license under this Act.

Saving as to licensed business subagents, etc.
cf. Act No. 7, 1935, s. 33.

50G. Every business subagent shall, as soon as practicable after receiving any moneys from or on behalf of any person in respect of any transaction, in his capacity as a business subagent, pay such moneys to the business agent for whom he is acting in such transaction.

Disposal of moneys received by business subagent.

50H. Every business agent shall be personally liable for all moneys received from or on behalf of any person by any business subagent acting in his capacity as a business subagent for such business agent.

Liability on principal for certain acts, etc., of sub-agents.
cf. Act No. 7, 1935, s. 35.

(2) (a) The amendments made by subparagraph (ii) of paragraph (b) of subsection one of this section shall not apply to a corporation which is the holder of a business agent's license under the Business Agents Act, 1935-1941, or on whose behalf a person has taken out a license under that Act while such license is in force but upon the expiration of such license such amendments shall thereupon in all respects have full force and effect with respect to such corporation.

(b)

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(b) The amendment made by paragraph (c) of subsection one of this section shall not apply to any person who is the holder of a business agent's license issued under the Business Agents Act, 1935-1941, nor to
5 any corporation which is the holder of any such license or on whose behalf any person has taken out any such license, while such license is in force, but upon the expiration of such license such amendments shall thereupon in all respects have full force and effect with respect to such
10 person or corporation as the case may be.

(3) All moneys which immediately before the appointed day stood to the credit of the Auctioneers, Stock and Station and Real Estate Agents Administration Account, and all investments which immediately
15 before that day were held by the council in connection with that account shall upon such day respectively be moneys standing to the credit of and investments held by the council in connection with the Auctioneers, Stock and Station, Real Estate and Business Agents Administration Account.
20

6. (1) Part IV of the Principal Act is amended—

Amendment
of Act
No. 28,
1941,
Part IV.
(Real Estate
Dealers and
Real Estate
Salesmen.)

(a) (i) by omitting from the definition of "Real estate dealer" in section fifty-one the words
25 "land in allotments" and by inserting in lieu thereof the words "allotments of land";

Sec. 51.
(Interpre-
tation.)

(ii) by omitting the definition of "Real estate salesman" in the same section and by inserting in lieu thereof the following
30 definition:—

"Real estate salesman" means a person who, for or on behalf of any real estate agent or real estate dealer, induces

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induces or attempts to induce or negotiates with a view to inducing any person—

5 (a) to buy, sell or otherwise dispose of any land, including any allotment of land; or

10 (b) to make any offer to buy, sell or otherwise dispose of any land, including any allotment of land; or

(c) to accept any offer to buy, sell or otherwise dispose of any land, including any allotment of land; or

15 (d) to enter into any contract for the purchase, sale or other disposal of any land, including any allotment of land,

20 but does not include an auctioneer, a stock and station agent or a real estate agent.

25 (b) by inserting in paragraph (a) of subsection one of section fifty-two after the word "Act" where lastly occurring the words "or whose license under this Act or the Business Agents Act, 1935, has been cancelled, unless a license has been subsequently granted to him".

Sec. 52.
(Provisions as to employment of certain persons by real estate dealers.)

(2) The amendments made by subsection one of this section shall commence upon the expiration of a 30 period of three months after the appointed day.

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(Amendment).*

7. (1) Part VI of the Principal Act is amended—

Amendment
of Act No.
28, 1941,
Part VI.
(The Auc-
tioneers,
Stock and
Station and
Real Estate
Agents
Fidelity
Guarantee
Fund.)

- 5 (a) by omitting from the heading thereto the words "and Real Estate" and by inserting in lieu thereof the words ", Real Estate and Business"; Heading. 01
- (b) by omitting from subsection one of section sixty-five the words "and Real Estate" and by inserting in lieu thereof the words ", Real Estate and Business"; Sec. 65. (The fund.) 01
- 10 (c) by omitting from section sixty-six the words "and Real Estate" and by inserting in lieu thereof the words ", Real Estate and Business"; Sec. 66. (Separate bank account.) 02
- 15 (d) (i) by omitting from subsection three of section seventy-one the words "not less than" wherever occurring; Sec. 71. (Contributions to fund.) 03
- 20 (ii) by omitting from the same subsection the words "shall not be required to pay any further amount by way of contributions under this section" and by inserting in lieu thereof the words "shall after paying such amount pay annually a contribution of one pound"; 03
- 25 (iii) by inserting at the end of the same subsection the following new paragraph:—
This subsection shall apply whether any such amount was paid before or after the day appointed pursuant to subsection four of 03

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of section one of the Auctioneers, Stock and Station, Real Estate and Business Agents (Amendment) Act, 1957.

- 5 (e) (i) by inserting in subsection one of section seventy-four after the words "real estate agent" the words "or a business agent";
- (ii) by inserting next after subsection two of the same section the following new subsection:—
- 10 (2A) No person shall have any claim against the fund in respect of any theft or fraudulent misapplication committed in the course of the business of a business agent unless such theft or fraudulent mis-
- 15 application was committed at a time when such business agent was the holder of a business agent's license under this Act.
- (iii) by omitting from subsection three of the same section the words "that may be committed after such commencement" and by inserting in lieu thereof the words "in respect of which any claim against the fund arose,".
- 20 (f) by inserting at the end of subsection six of section seventy-five the following new subsection:—
- 25 (7) In respect of any theft or fraudulent misapplication after the day appointed pursuant to subsection four of section one of the Auctioneers, Stock and Station, Real Estate and Business Agents (Amendment) Act, 1957, subsections three and four of this section shall be read as though the words "five hundred" were omitted therefrom and the words "ten thousand" substituted therefor.
- 30 (g)
- 35

Sec. 74.

(Application of fund.)

Sec. 75.

(Claims against the fund.)

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(Amendment).*

(g) by omitting section seventy-eight and by inserting in lieu thereof the following section:—

Subst.
sec. 78.

5 78. (1) Any proceedings brought against the council in relation to any claim upon the fund shall be by action at law as for a debt due by the council and shall be brought—

Defences.

10 (a) where the amount claimed does not exceed fifty pounds in a court of petty sessions holden before a stipendiary magistrate;

(b) where the amount claimed exceeds fifty pounds but does not exceed one thousand pounds in a district court;

15 (c) where the amount claimed exceeds one thousand pounds in the Supreme Court.

20 (2) In any of the actions referred to in subsection one of this section all defences which would have been available to the licensee in relation to whom the claim arose shall be available to the council, and in any such action all questions of costs shall be in the discretion of the court or the presiding judge.

25 (3) Any order for the payment of costs made by a court of petty sessions under the provisions of subsection two of this section shall operate as an order for the recovery of money under the Small Debts Recovery Act, 1912, as amended by subsequent Acts, and be enforceable as such under the provisions of that Act, as so amended.

30 (2) All moneys which immediately before the appointed day stood to the credit of the Auctioneers, Stock and Station and Real Estate Agents Fidelity Guarantee Fund or the Auctioneers, Stock and Station and Real Estate Agents Fidelity Guarantee Account shall upon that day become and be respectively moneys standing

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standing to the credit of the Auctioneers, Stock and Station, Real Estate and Business Agents Fidelity Guarantee Fund and the Auctioneers, Stock and Station, Real Estate and Business Agents Fidelity Guarantee
5 Account.

(3) All investments which immediately before the appointed day were held by the council in connection with the Auctioneers, Stock and Station, and Real Estate Agents Fidelity Guarantee Fund shall upon that day
10 become and be investments held by the council in connection with the Auctioneers, Stock and Station, Real Estate and Business Agents Fidelity Guarantee Fund.

8. Part VII of the Principal Act is amended by inserting next after section eighty-four the following new
15 section:—

Amendment of Act No. 28, 1941, Part VII. (General.) New sec. 84A.

84A. (1) Any licensee who publishes or causes to be published in the course of his business as such, or the holder of a business subagent's license who publishes or causes to be published in connection
20 with any matter in which he is acting as a business subagent, any statement which—

Penalty for publishing false or misleading advertisements. cf. Act No. 39, 1912, s. 97.

(a) is intended or apparently intended by such licensee or holder of a business subagent's license to promote the sale of any land or
25 livestock or any business; and

(b) is to his knowledge false or misleading in any material particular,

shall be guilty of an offence against this Act.

(2) A statement shall be deemed to be published within the meaning of this section if it is—
30

(a) inserted in any newspaper or any other publication printed and published in New South Wales; or

(b)

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(Amendment).*

(b) publicly exhibited—

5 (i) in, on, over or under any building,
vehicle or place (whether or not
a public place and whether on land
or water); or

(ii) in the air in view of persons being
or passing in or on any street or
public place; or

10 (c) contained in any document gratuitously
sent or delivered to any person or thrown
or left upon premises in the occupation of
any person; or

(d) broadcast by wireless transmission.

15 (3) In any proceedings under this section
against a licensee or the holder of a business sub-
agent's license for publishing any statement afore-
said or causing the same to be published, if it is
proved that such statement was false or misleading
20 in any material particular, the licensee or the holder
of the business subagent's license who published
the statement or caused the same to be pub-
lished shall be deemed to have published the same
or to have caused the same to be published with
25 knowledge of its falsity or misleading character, as
the case may be, unless he proves that having taken
all reasonable precautions against committing an
offence under this section he had reasonable grounds
to believe and did believe that the statement was true
30 and had no reason to suspect that the statement was
false or misleading.

(4) Notwithstanding any proceedings against
any person for an offence under this section (whether
resulting in a conviction or otherwise) such person
shall remain liable to all civil proceedings in like
35 manner as if the proceedings for an offence had not
been taken.

(5)

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(5) This section shall be read and construed as in aid of and not in derogation from any enactment or law relating to false or misleading advertisements or other statements.

5 (6) In this section "newspaper" includes any periodical publication.

SCHEDULE.

Sec. 2 (3).

No. of Act.	Name of Act.	Extent of Repeal.
10 1935, No. 7 ...	Business Agents Act, 1935.	The whole.
1941, No. 28...	Auctioneers, Stock and Station and Real Estate Agents Act, 1941.	Part V and the matter relating to Part V in section two.

New South Wales.



ANNO SEXTO

ELIZABETHÆ II REGINÆ

Act No. 15, 1957.

An Act to include in the Auctioneers, Stock and Station and Real Estate Agents Act, 1941-1954, provisions for licensing and regulating business agents and business sub-agents; to reconstitute the council constituted under that Act; to increase the annual contributions to the Auctioneers, Stock and Station and Real Estate Agents Fidelity Guarantee Fund established under that Act; to increase the maximum amount payable out of that Fund in respect of theft or fraudulent misapplication by any one licensee; to repeal the Business Agents Act, 1935; for these and other purposes to amend the Auctioneers, Stock and Station and Real Estate Agents Act, 1941-1954, and certain other Acts; and for purposes connected therewith [Assented to, 12th April, 1957.]

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(Amendment).*

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

Short title,
citation and
commence-
ment.

1. (1) This Act may be cited as the "Auctioneers, Stock and Station, Real Estate and Business Agents (Amendment) Act, 1957."

(2) The Auctioneers, Stock and Station and Real Estate Agents Act, 1941-1954, is in this Act referred to as the Principal Act.

(3) The Auctioneers, Stock and Station and Real Estate Agents Act, 1941, as amended by subsequent Acts and by this Act, may be cited as the Auctioneers, Stock and Station, Real Estate and Business Agents Act, 1941-1957.

(4) This Act shall, except where otherwise expressly provided, commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette, which day is in this Act referred to as the "appointed day."

Operation
of Business
Agents Act,
1935-1941.

2. (1) On and from the appointed day no license or renewal of a license under the Business Agents Act, 1935-1941, shall be granted.

(2) The provisions of the Business Agents Act, 1935-1941, shall, on and from the appointed day, apply only with respect to licenses issued under that Act and in force immediately before such commencement, and to persons holding such licenses, and for those purposes shall continue in force in relation to any such license or person, only until such license has expired or is cancelled.

(3) As on and from the first anniversary of the appointed day the Acts mentioned in the Schedule to this Act are to the extent therein specified hereby repealed.

(4)

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(Amendment).*

(4) (a) Nothing in this section shall affect the liability of any person under any fidelity bond given pursuant to the Business Agents Act, 1935-1941.

(b) Notwithstanding anything contained in subsections two and three of this section, section twenty-seven of the Business Agents Act, 1935-1941, shall continue to apply to and in respect of every such fidelity bond.

(5) Notwithstanding anything contained in subsections two and three of this section every business agent or subagent under the Business Agents Act, 1935-1941, shall keep the written record referred to in subsection one of section twenty-two of that Act for a period of not less than three years after the date on which it was made, and shall at all reasonable times produce such written record for inspection if required so to do by any officer of the police force of or above the rank of sergeant or the registrar under the Principal Act, as amended by this Act, or any officer of the council under such Principal Act, as so amended, duly authorised in writing in that behalf by such council, but in the case of such authorised officer, on production of his written authority.

Any person who contravenes any of the provisions of this subsection shall be deemed to be guilty of an offence against the Principal Act, as amended by this Act, and shall be liable to a penalty of not less than two pounds and not exceeding fifty pounds.

(6) Where an application is made for a business agent's license or a business subagent's license under the Principal Act, as amended by this Act, by any person who at the time of the application is the holder of a business agent's license or a subagent's license, as the case may be, under the Business Agents Act, 1935-1941, the person making such application shall, for the purposes of subsection six of section twenty-three of the Principal Act, as so amended, be deemed to be already

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(Amendment).*

already the holder of a license under the said Principal Act, as so amended, of the same class as that referred to in his application or of any other class.

Amendment
of Act No.
28, 1941,
Part I.
(Prelimin-
ary.)
Sec. 2.
(Division
into Parts.)

3. Part I of the Principal Act is amended—

(a) (i) by omitting from the matter relating to Part II in section two the words “and Real Estate” and by inserting in lieu thereof the words “, Real Estate Agents and Business;”

(ii) by omitting from the matter relating to Part III in the same section the words “and Real Estate Agents—ss. 20-50” and by inserting in lieu thereof the words “, Real Estate Agents and Business Agents—ss. 20-50H;”

(iii) by inserting at the end of the same matter the following words, figures and letters:—

“DIVISION 4.—*Business Agents and Business Subagents—ss. 50A-50H.*”

(iv) by omitting from the matter relating to Part VI in the same section the words “and Real Estate” and by inserting in lieu thereof the words “, Real Estate and Business”;

Sec. 3.
(Defini-
tions.)

(b) (i) by omitting from subsection one of section three the definition of “Council” and by inserting in lieu thereof the following definitions:—

“Business agent” means any person (whether or not such person carries on any other business) who for reward (whether monetary or otherwise)

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(Amendment).*

otherwise) exercises or carries on business as an agent for performing any of the following functions, namely:—

- (a) selling, buying or exchanging or otherwise dealing with or disposing of; or
- (b) negotiating for the sale, purchase or exchange or any other dealing with or disposition of,

hotel businesses, residential businesses, boarding-house businesses, storekeeping businesses, manufacturing businesses or any trading businesses whatsoever or any share or interest in or concerning or the goodwill of or any stocks connected with any of such businesses, but does not include a business subagent in his capacity as such.

“Business subagent” means any person who is in the direct employ of or acts for or by arrangement with a business agent and who performs for such business agent any of the functions of a business agent as defined by this section whether his remuneration is by way of salary, wages, commission or otherwise but does not include an employee of a corporation in respect of whom such corporation has taken out a business agent’s license.

“Council”

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(Amendment).*

“Council” means the Council of the Auctioneers, Stock and Station Agents, Real Estate Agents and Business Agents constituted under this Act.

(ii) by inserting in the same subsection at the end of the definition of “Licensee” the words “but does not include the holder of a business subagent’s license”;

Sec. 4.
(Act not to apply to any Government department, etc.)

(c) (i) by omitting from the proviso to paragraph (a) of subsection two of section four the words “or real estate agent” and by inserting in lieu thereof the words “, real estate agent or business agent”;

(ii) by omitting from the same proviso the words “a license” and by inserting in lieu thereof the words “an appropriate license”.

Amendment of Act No. 28, 1941, Part II.

4. (1) Part II of the Principal Act is amended—

(The Council of the Auctioneers, Stock and Station Agents and Real Estate Agents.)

Heading.

(a) by omitting from the heading to the Part the words “and Real Estate” and by inserting in lieu thereof the words “, Real Estate Agents and Business”;

Sec. 6.
(The council.)

(b) by omitting from subsection three of section six the words “and Real Estate” and by inserting in lieu thereof the words “, Real Estate Agents and Business”;

(c)

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(Amendment).*

(c) by omitting section seven and by inserting in lieu thereof the following section:— Subst.
sec. 7.

7. (1) On and from the day appointed pursuant to subsection four of section one of the Auctioneers, Stock and Station, Real Estate and Business Agents (Amendment) Act, 1957 (in this section referred to as the "appointed day") the council shall be reconstituted and shall consist of— First
council
with repre-
sentation for
business
agents.

(a) the persons who immediately before the appointed day were the members of the council as then constituted; and

(b) a person, who shall be appointed by the Governor and shall be the holder of a business agent's license under the Business Agents Act, 1935-1941.

(2) Of the members referred to in paragraph (a) of subsection one of this section, the member who was appointed under the provisions of subsection three of section eight of this Act to be a member of the council as constituted immediately before the appointed day is in this Act referred to as the "official member" and the remaining members referred to in that paragraph and the member referred to in paragraph (b) of the said subsection one are in this Act referred to as "elected members".

(3) The council as so reconstituted shall appoint one of its members to be chairman of the council.

(4) Subject to the provisions of this Act, the members of the council as so reconstituted shall hold office until the thirtieth day of June, one thousand nine hundred and fifty-eight, and shall be eligible for reappointment or for election as members of the council.

(5)

*Auctioneers, Stock and Station, Real Estate and Business Agents
(Amendment).*

(5) If immediately before the appointed day there was a vacancy in the office of any member of the council, the Governor may, in respect of that vacancy, appoint a person to the council as reconstituted under this section.

(6) For the purposes only of the application of the provisions of paragraph (g) of section nine of this Act to the member of the council appointed pursuant to paragraph (b) of subsection one of this section, the said paragraph (g) shall be deemed to be amended—

(a) by inserting next after the word “license” the words “under this Act or under the Business Agents Act, 1935-1941”; and

(b) by omitting the words “to renew the same upon its expiry” and by inserting in lieu thereof the words “upon the expiry of his license under the Business Agents Act, 1935-1941, to procure the issue to him of a business agent’s license under this Act, and to renew such lastmentioned license upon its expiry”.

Sec. 8.
(Constitution
of subsequent
councils.)

(d) (i) by omitting from subsection one of section eight the word “forty-three” and by inserting in lieu thereof the word “fifty-eight”;

(ii) by omitting from the same subsection the word “ten” and by inserting in lieu thereof the word “thirteen”;

(iii) by omitting from the same subsection the word “nine” and by inserting in lieu thereof the word “twelve”;

(iv) by omitting from subparagraph (iii) of paragraph (b) of subsection two of the same section the word “three” and by inserting in lieu thereof the word “four”;

(v)

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(Amendment).*

(v) by inserting at the end of the same paragraph the following new subparagraph:—

(iv) two shall be business agents.

(vi) by inserting at the end of paragraph (a) of subsection four of the same section the following new subparagraph:—

(iv) business agents.

(vii) by inserting next after subparagraph (iii) of paragraph (b) of the same subsection the following new subparagraph:—

(iv) on the roll of business agents, if he holds a business agent's license,

(viii) by inserting at the end of paragraph (c) of the same subsection the following new subparagraph:—

(iv) as a business agent—unless his name is on the roll of business agents.

(ix) by omitting from paragraph (d) of the same subsection the words "Each such roll shall" and by inserting in lieu thereof the words "The roll of auctioneers, the roll of stock and station agents and the roll of business agents shall each";

(x) by inserting at the end of the same paragraph the following words:—

"The roll of real estate agents shall be divided into three parts to be known respectively as Part I, Part II and Part III.

In Part I of such roll shall be entered the names of all persons eligible for enrolment on such roll whose places of business are situated within the county of Cumberland, excluding therefrom such part of the police district of Wollongong as is within that
county,

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(Amendment).*

county, or the county of Northumberland, excluding therefrom the police district of Newcastle.

In Part II of such roll shall be entered the names of all persons eligible for enrolment on such roll whose places of business are situated within the police districts of Newcastle and Wollongong.

In Part III of such roll shall be entered the names of all persons eligible for enrolment on such roll whose places of business are situated in any part of New South Wales, not being a part in respect of which they are eligible for enrolment on Part I or Part II of such roll."

- (xi) by inserting at the end of paragraph (e) of the same subsection the words "and the persons whose names are on Part III of that roll shall elect one member of the council.

The persons whose names are on Part I of the roll of business agents shall elect one member of the council and the persons whose names are on Part II of that roll shall elect one member of the council";

- (xii) by omitting from subsection five of the same section the word "forty-three" and by inserting in lieu thereof the word "fifty-eight";

Sec. 14.
(Fees and
expenses.)

- (e) (i) by inserting in subsection one of section fourteen after the words "five guineas" the words ", or such other amount as may be prescribed in lieu thereof,";
- (ii) by inserting in the same subsection after the words "two guineas" the words ", or such other amount as may be prescribed in lieu thereof,".

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(Amendment).*

(2) (a) The amendments made by subsection one of this section shall not prejudice or affect in any way the continuity of the body corporate constituted under Part II of the Principal Act but the same shall continue notwithstanding the provisions of this section.

(b) The said body corporate shall continue and shall be deemed always to have continued notwithstanding that there are or have been at any time or times vacancies in the offices of all of the members of the body corporate or of any one or more of them.

(3) (a) For the purposes only of the reconstitution to be effected by the amendments made by paragraph (c) of subsection one of this section and of any matters necessary for or incidental to such appointment or reconstitution, such amendments shall commence on the day upon which the assent of Her Majesty to this Act is signified.

(b) The persons to be members of the Council of the Auctioneers, Stock and Station Agents, Real Estate Agents and Business Agents as so reconstituted shall assume their offices on the appointed day and on that day the amendments made by paragraph (c) of subsection one of this section shall come into force for all purposes.

5. (1) Part III of the Principal Act is amended—

**Amendment
of Act No.
28, 1941,
Part III.
(Auctioneers
Stock and
Station
Agents and
Real Estate
Agents.)**

(a) by omitting from the heading thereto the words "and Real Estate" and by inserting in lieu thereof the words ", Real Estate Agents and Business";

Heading.

(b)

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(Amendment).*

Sec. 20.

(No person or partner in a firm to act without a license.)

(b) (i) by inserting next after subsection two of section twenty the following new subsection:—

(2A) No person (either by himself or as a member of a partnership)—

(a) shall act as or carry on or advertise, notify or state that he acts as or carries on or is willing to act as or carry on the business of a business agent unless he is the holder of a business agent's license under the Business Agents Act, 1935-1941, or a business agent's license;

(b) shall act as or carry on or advertise, notify or state that he acts as or carries on or is willing to act as or carry on as a business subagent unless he is the holder of a subagent's license under the Business Agents Act, 1935-1941, or a business subagent's license.

(ii) by inserting in subsection three of the same section after the words "real estate agent" the words "or of a business agent";

(iii) by inserting in the same subsection after the word "appropriate." the following new paragraph:—

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

Sec. 21.

(Each separate place of business to be in charge of licensee.)

(c) by inserting next after subsection two of section twenty-one the following new subsection:—

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

(b)

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(Amendment).*

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

(c) Where a corporation conducts its business as a business agent at more than one place of business it shall employ at each such place a person in respect of whom it has taken out a license, and such person shall be in charge at that place.

(d) (i) by inserting in subsection one of section twenty-two after the word "license" where lastly occurring the following word and new paragraphs:—

Sec. 22.
(Licenses.)

“; or

(d) a business agent's license; or

(e) a business subagent's license.”;

(ii) by inserting in paragraph (b) of subsection three of the same section after the words "taking out the same and" the words “, except in the case of a business subagent's license,”;

(iii) by inserting next after paragraph (b) of subsection four of the same section the following new paragraph:—

(c) Where the holder of a license desires to surrender the license held by him he may in writing notify the clerk of the court by which the license was issued that he desires to surrender such license and deliver such license to the clerk of that court.

The

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The clerk of the court shall, upon receipt of such notification and license, endorse on the license the word "surrendered" and forward such notification to the registrar.

Sec. 23.
(Procedure.)

(e) (i) by omitting subsection three of section twenty-three and by inserting in lieu thereof the following subsection:—

(3) (a) Where the applicant resides in New South Wales—

(i) an application for a license other than a business subagent's license shall be lodged with the clerk of the court of the petty sessions district within which the place of business of the applicant in respect of which the application is made is situated or proposed to be situated;

(ii) an application for a business subagent's license shall be lodged with the clerk of the court of the petty sessions district within which the applicant resides.

(b) Where under this subsection there is more than one court with the clerk of which an application may be lodged such application shall be lodged—

(i) in the case of an application for a license other than a business subagent's license, with the clerk of the court within such district nearest to the place where the place of business to which the application relates is situated or proposed to be situated; or

(ii)

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- (ii) in the case of an application for a business subagent's license, with the clerk of the court within such district nearest to the place where the applicant resides.
- (ii) by inserting next after paragraph (b) of subsection four of the same section the following new paragraph:—
- (bi) Where the application is for a business agent's license and the applicant resides in any other State of the Commonwealth of Australia or in the Australian Capital Territory the application shall be lodged with the clerk of any court of petty sessions.
- (iii) by inserting in paragraph (a) of subsection six of the same section after the words "prescribed fees and" the words ", except in the case of a person applying for a business subagent's license,";
- (iv) by inserting at the end of paragraph (b) of the same subsection the words "or until the expiration of twelve months after the date upon which such provisional license took effect whichever first occurs";
- (v) by inserting in subsection eight of the same section after the words "prescribed fees and" the words ", except in the case of a person applying for a business subagent's license,";
- (vi) by inserting in subsection nine of the same section after the words "prescribed fees and" the words ", except in the case of a person applying for a business subagent's license,";

(vii)

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(Amendment).*

(vii) by inserting next after subsection ten of the same section the following new subsections:—

(10A) A license shall not, after the expiration of the prescribed period from the day appointed pursuant to subsection four of section one of the Auctioneers, Stock and Station, Real Estate and Business Agents (Amendment) Act, 1957, be granted to an applicant, not being a corporation, nor to a corporation in respect of an employee, unless such applicant or employee has—

(a) passed the prescribed examination conducted by the Department of Technical Education or such other examination as may be prescribed; **or**

(b) produced to the court satisfactory evidence that he is competent to perform the functions and duties generally performed by the holder of such a license.

This subsection shall not apply to any person to whom an auctioneer's license (being a general license) or a business agent's license may be granted pursuant to the provisions of section twenty-six or twenty-seven of this Act.

(10B) A business subagent's license shall not be granted to any person who is not a resident of New South Wales.

Sec. 25.
(Fees payable for license.)

(f) (i) by omitting from subparagraph (i) of paragraph (a) of subsection one of section twenty-five the words "fifteen pounds" and by inserting in lieu thereof the words "sixteen pounds";

(ii)

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- (ii) by omitting from subparagraph (ii) of the same paragraph the words "five pounds" and by inserting in lieu thereof the words "six pounds";
- (iii) by omitting from subparagraph (iii) of the same paragraph the words "two pounds" and by inserting in lieu thereof the words "three pounds";
- (iv) by omitting from subparagraph (iv) of the same paragraph the words "two pounds" and by inserting in lieu thereof the words "three pounds";
- (v) by omitting from paragraph (b) of the same subsection the words "one pound" and by inserting in lieu thereof the words "two pounds";
- (vi) by omitting from paragraph (c) of the same subsection the words "one pound" and by inserting in lieu thereof the words "two pounds";
- (vii) by omitting paragraphs (d), (e) and (f) of the same subsection and by inserting in lieu thereof the following paragraphs:—
 - (d) for an auctioneer's license (being a general license) and any one or more of the following licenses:—
 - a stock and station agent's license, a real estate agent's license or a business agent's license—
sixteen pounds;
 - (e) for an auctioneer's license (being a country license) and any one or more of the following licenses:—
 - a stock and station agent's license, a real estate agent's license or a business agent's license—
six pounds;
 - (f)

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- (f) for an auctioneer's license (being a district license or a primary products license) and any one or more of the following licenses:—
- a stock and station agent's license, a real estate agent's license or a business agent's license—four pounds;
- (fi) for a business agent's license—three pounds;
- (fii) for a business subagent's license—ten shillings;
- (viii) by omitting from paragraph (h) of the same subsection the words "five pounds" and by inserting in lieu thereof the words "six pounds";
- (ix) by omitting from subsection three of the same section the words "not exceeding one pound";
- (x) by omitting from subsection four of the same section the words "Auctioneers, Stock and Station and Real Estate Agents Administration Account" and by inserting in lieu thereof the words "Auctioneers, Stock and Station, Real Estate and Business Agents Administration Account";
- Sec. 26. (g) (i) by inserting in subsection one of section (Power to grant auctioneers' licenses to persons resident in reciprocating States.) twenty-six after the words and symbols "(being a general license)" the words "or a business agent's license";
- (ii) by inserting in the same subsection after the word "auctioneer" the words "or a business agent, as the case may be,";
- (iii)

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(Amendment).*

(iii) by inserting in the same subsection after the words and symbols “(being general licenses)” the words “or business agents’ licenses, as the case may be,”;

(iv) by inserting next after subsection three of the same section the following new subsection:—

(3A) Any notification declaring that the Business Agents Act, 1935-1941, shall extend and apply to the granting in New South Wales of general licenses to residents in any other State, which was published pursuant to section ten of that Act and which was still in force immediately before the day appointed pursuant to subsection four of section one of the Auctioneers, Stock and Station, Real Estate and Business Agents (Amendment) Act, 1957, shall, as from such day and until revoked by a notification published pursuant to this Act, have and take effect as if it were a notification published pursuant to subsection one of this section declaring that, as from such day, and while the notification remains in force, this Act shall extend and apply to the granting in New South Wales of business agents’ licenses to residents in such other States as is mentioned in such notification.

(v) by inserting in paragraph (a) of subsection four of the same section after the words and symbols “(being a general license)” the words “or a business agent’s license”;

(vi) by inserting in the same paragraph after the word “auctioneer” the words “or a business agent, as the case may be,”;

(h)

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(Amendment).*

Sec. 27.

(Grant of
auctioneers'
licenses to
persons
resident
in the
Australian
Capital
Territory.)

- (h) (i) by inserting in section twenty-seven after the words and symbols "(being general licenses or country licenses or district licenses)" the words "or business agents' licenses";
- (ii) by inserting in the same section after the words and symbols "(being a general license or a country license or a district license)" where firstly occurring the words "or a business agent's license";
- (iii) by inserting in the same section after the words "auctioneer's license" where secondly occurring the words ", or a business agent's license, as the case may be";
- (iv) by inserting in the same section after the words and symbols "(being a general license or a country license or a district license)" where secondly occurring the words "or a business agent's license";
- (v) by inserting in the same section after the words "auctioneer's license" where lastly occurring the words ", or a business agent's license, as the case may be,";

Sec. 28.

(Applicant
for
auctioneer's
license to
be resi-
dent in
New South
Wales or
reciprocating
State.)

- (i) by omitting from section twenty-eight the words "or a renewal thereof" wherever occurring and by inserting in lieu thereof the words "or a business agent's license, or a renewal of either such license,";

Sec. 29.

(Cancell-
ation of
license.)

- (j) by inserting at the end of section twenty-nine the following new subsection:—

(4) The foregoing provisions of this section shall apply mutatis mutandis to and in respect of a business subagent's license and the holder of a business subagent's license.

(k)

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(Amendment).*

- (k) (i) by inserting in subsection one of section thirty-one after the word "licensee" the words "or the employee, or the holder of a business subagent's license"; Sec. 31.
(Appeal.)
- (ii) by inserting in paragraph (b) of subsection four of the same section after the word "employee" the words ", or holder of a business subagent's license,";
- (iii) by inserting next after the same subsection the following new subsection:—
- (4A) An appeal under this section in any case to which paragraph (a) of subsection one of this section applies shall not be commenced after the expiration of twenty-one days after the date of refusal of the application or the date of the order under section twenty-nine of this Act, as the case may be.
- (l) by omitting from section thirty-two the words "or a real estate agent" and by inserting in lieu thereof the words ", a real estate agent, a business agent or a business subagent,"; Sec. 32.
(Effect of disqualification on membership, etc., of corporation.)
- (m) (i) by inserting next after subsection three of section thirty-four the following new subsections:—
- (3A) Every business subagent shall have a registered address within New South Wales.
- (3B) The address specified in the application for a business subagent's license as the address at which the applicant then resides, shall, upon the grant of the application, be deemed for the purposes of this Act to be the registered address of the business subagent.
- (ii) by inserting in subsection four of the same section after the words "registered office" the words "or the registered address"; Sec. 34.
(Registered office and address.)
- (iii)

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(iii) by inserting in the same subsection after the word "licensee" the words "or the holder of the business subagent's license, as the case may be,";

(iv) by inserting in subsection five of the same section after the word "business" where firstly occurring the words "or if any licensed business subagent acts or carries on as a business subagent";

Sec. 35.
(Publication
of name of
licensee.)

(n) by inserting at the end of paragraph (b) of subsection three of section thirty-five the following new subparagraph:—

“(iv) as a business agent—unless he is the holder of a business agent's license”;

Sec. 36.
(Payment
into bank.)

(o) (i) by inserting at the end of subsection one of section thirty-six the words “and in any other case the trust account shall be in the name of the licensee. 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”;

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

(4A) Where any licensee neglects or fails to comply with any of the provisions of this section by reason of his neglect or failure to pay any moneys into a bank in New South Wales to a trust account or to retain any such moneys therein, the offence shall continue until the said moneys are paid to the person for or on whose behalf they were received, or disbursed in such manner as may be directed by such person.

(p)

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(Amendment).*

- (p) (i) by inserting in subsection one of section thirty-eight after the word "licensee" where secondly occurring the words "and such other written records relating to his business as licensee as may be prescribed"; Sec. 38.
(Record to be kept.)
- (ii) by omitting from the same subsection the word "record" where secondly occurring and by inserting in lieu thereof the word "records";
- (iii) by omitting from subsection two of the same section the words "The written record" and by inserting in lieu thereof the words "Every such written record";
- (iv) by omitting from subsection three of the same section the words "the written record" and by inserting in lieu thereof the words "any such written record";
- (q) by omitting from subsection one of section 38B the word "record" and by inserting in lieu thereof the word "records"; Sec. 38B.
(Inspection of records.)
- (r) by inserting next after section 38B the following new section:—
- 38c. (1) Every business agent—
- (a) shall make or cause to be made a true statement in writing in the prescribed form and with the prescribed particulars as to the name and the work or services of and the salary, wages or commission paid in each month to every person employed (whether as an employee or a subagent or otherwise) by him in connection with his business as a business agent and shall, for a period of three years after the date on which the statement was made or caused to be made, keep such statement at his principal place of business in New South Wales;

Statement of employees, subagents, etc., and their wages to be kept by business agents.
cf. Act No. 7, 1935, s. 18.

(b)

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(Amendment).*

(b) shall, at all reasonable times, produce such statement for inspection if required to do so by the registrar, a member of the police force of or above the rank of sergeant, or an officer of the council duly authorised by the council in writing in that behalf, but in the case of such authorised officer upon production of his written authority.

(2) Any business agent who—

(a) commits any contravention of or fails to comply with any of the provisions of this section; or

(b) makes any false entries in any such statement;

shall be guilty of an offence against this Act.

Sec. 39.

(Certain persons not to be employed by licensees.)

(s) (i) by inserting in subsection one of section thirty-nine after the word "business" the words "and the holder of a business subagent's license shall not, except with such approval and subject to any such conditions, knowingly employ in any way whatever in connection with his work as a business subagent,";

(ii) by inserting in paragraph (a) of the same subsection after the word "Act" where lastly occurring the words "or whose license under this Act or the Business Agents Act, 1935, has been cancelled, unless a license has been subsequently granted to him";

(iii) by inserting at the end of the same subsection the following word and new paragraphs:—

or

(c)

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- (c) who is for the time being disqualified under this Act from holding a certificate of registration as a real estate salesman, or whose certificate of registration as a real estate salesman has been cancelled, unless a certificate has been subsequently granted to him; or
- (d) whose application for a certificate of registration as a real estate salesman under this Act has been refused, unless such an application has been subsequently granted.
- (iv) by inserting at the end of subsection two of the same section the words "or in the work of a business subagent";
- (v) by inserting in subsection four of the same section after the word "licensee" the words "or any holder of a business subagent's license";
- (t) by inserting next after section thirty-nine the following new section:—

New
sec. 39A.

39A. (1) A licensee or a holder of a business subagent's license shall not knowingly enter into any arrangement or act in conjunction with any person, not being an employee in his business as a licensee or in his work as a licensed business subagent, who is not licensed under this Act whereby such person is entitled to a share of the commission, fee, gain or reward payable to such licensee or the holder of such a license in respect of any transaction by or with him as a licensee or holder of a business subagent's license, or generally.

Licensee not to share commission, etc., with certain persons.

(2)

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(Amendment).*

(2) A licensee shall not, without the prior consent in writing of the registrar, carry on business as such or advertise or in any manner whatsoever hold out that he carries on business as such—

(a) under the name, or a name nearly resembling the name, whereunder a person whose license has been cancelled under or in pursuance of this Act or the Business Agents Act, 1935, was carrying on business as a licensee immediately before his license was cancelled; or

(b) under a name implying or capable of being construed as implying that he is the successor in the business, or in any way interested or concerned in continuing the business as a licensee, of a person whose license has been cancelled under or in pursuance of this Act or the Business Agents Act, 1935:

Provided that nothing in this subsection shall prohibit the carrying on by a licensee of his business as such under his true name without any addition or adaptation whatsoever.

Sec. 40.
(Production
of
license.)

(u) (i) by omitting from section forty the words “or a real estate agent” and by inserting in lieu thereof the words “, a real estate agent or a business agent”;

(ii) by inserting at the end of the same section the following new subsection:—

(2) Every business subagent shall, on demand, produce his license to any member of the police force of or above the rank of sergeant, or to any person with whom such business subagent is transacting or attempting to transact any business on behalf of a business agent.

(v)

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- (v) by inserting in section forty-one after the word "licensee" the words "or holder of a business subagent's license"; Sec. 41.
(Licensee not to lend license.)
- (w) by inserting at the end of paragraph (c) of subsection one of section forty-two the following new paragraph:— Sec. 42.
(Provisions as to commission, etc.)
- (d) as a business agent or business subagent unless he was the holder of a business agent's license or of a business subagent's license, as the case may be, at the time of doing or performing such service.
- (x) (i) by omitting from paragraph (a) of section forty-three the words " , or a name other than his own name,"; Sec. 43.
(Publication of name and place of business in advertisements.)
- (ii) by inserting next after the same paragraph the following new paragraph:—
- (ai) where such licensee is an individual carrying on business under a business name registered or deemed to be registered under any Act for the time being in force relating to the registration of business names, then either his name or such business name and the address of his place of business;
- (y) by inserting next after section fifty the following new Division:— New Division 4.

DIVISION 4.—*Business Agents and Business Subagents.*

50A. Any business agent or business subagent who by any wilfully false, misleading or deceptive statement, representation or promise or by any wilful concealment of material fact, induces or attempts to induce any person to enter into an Misrepresentation by business agent or subagent.
cf. Act No. 7, 1935,
s. 21.

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an agreement or contract for the sale or purchase or lease of a business or undertaking shall be guilty of an offence and shall be liable to a penalty of not less than ten pounds and not exceeding two hundred pounds or to imprisonment for a term not exceeding two years, or both.

Record
to be
kept by
business
agent.
cf. Act
No. 7,
1935, s. 22.

50B. (1) Every business agent and business subagent shall keep in a legible manner a written record containing full particulars of every business or share or interest in or concerning or the goodwill of or any stocks connected with a business which has been entrusted to him for the exercise or performance in relation thereto of any of the functions of a business agent as defined by this Act.

(2) Such written record shall be open to inspection at all reasonable times by the registrar, a member of the police force of or above the rank of sergeant, or an officer of the council duly authorised in writing in that behalf and in the case of such authorised officer upon production of his written authority, and every business agent or business subagent upon being required so to do shall produce such written record for inspection by the registrar, such member of the police force or such authorised officer.

(3) Any person who—

(a) wilfully delays or obstructs the registrar, such member of the police force or such authorised officer in the exercise of his powers, authorities, duties and functions under subsection two of this section; or

(b)

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- (b) being a business agent or business subagent refuses or fails, upon being required to produce any such written record kept by him under this section, to do so;

shall be guilty of an offence against this Act.

50c. The holder of a business agent's license shall not, in any way whatever in connection with his business, knowingly employ as a business subagent any person who is not the holder of a business subagent's license.

Business agent not to employ unlicensed subagent.
cf. Act No. 7, 1935, s. 25.

50d. Notwithstanding anything in any Act, no action shall be brought upon any contract or sale of any of the businesses referred to in the definition of "Business agent" in section three of this Act or any share or interest in or concerning any of such businesses, if the agreement or the memorandum or note thereof on which such action is brought is signed by any person other than the party to be charged therewith, unless such person so signing be thereunto lawfully authorised in writing signed by the party to be so charged.

Agents for sale of businesses to be authorised in writing.
cf. Act No. 7, 1935, s. 28.

50e. (1) Notwithstanding anything in this Act or any law to the contrary, no business subagent shall carry out any of the work of a business subagent unless such business subagent was theretofore lawfully authorised in writing thereunto by a business agent.

Business subagent acting for business agent to be authorised by him.
cf. Act No. 7, 1935, s. 32.

(2) Every business subagent shall at all reasonable times produce the written authority referred to in subsection one of this section whenever demanded by the registrar, a member of the police force of or above the rank of sergeant or an officer of the council duly authorised in that behalf, but in the case of such authorised officer upon production of his written authority.

(3)

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(Amendment).*

(3) Any business subagent who makes any false representation (whether verbally or in writing or by conduct) to any person to the effect that such business subagent is authorised to act as a business subagent for any specified business agent shall be guilty of an offence against this Act.

Saving as to licensed business subagents, etc.

cf. Act No. 7, 1935, s. 33.

50F. Nothing in this Act shall be construed as requiring any holder of a business subagent's license, so far as he performs for any holder of a business agent's license any of the functions of a business agent and is duly authorised thereunto by such business agent, to hold a business agent's license under this Act, or as requiring any holder of a business agent's license to hold a business subagent's license under this Act.

Disposal of moneys received by business subagent.

50G. Every business subagent shall, as soon as practicable after receiving any moneys from or on behalf of any person in respect of any transaction, in his capacity as a business subagent, pay such moneys to the business agent for whom he is acting in such transaction.

Liability on principal for certain acts, etc., of subagents.

cf. Act No. 7, 1935, s. 35.

50H. Every business agent shall be personally liable for all moneys received from or on behalf of any person by any business subagent acting in his capacity as a business subagent for such business agent.

(2) (a) The amendments made by subparagraph (ii) of paragraph (b) of subsection one of this section shall not apply to a corporation which is the holder of a business agent's license under the Business Agents Act, 1935-1941, or on whose behalf a person has taken out a license under that Act while such license is in force but upon the expiration of such license such amendments shall thereupon in all respects have full force and effect with respect to such corporation.

(b)

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(Amendment).*

(b) The amendment made by paragraph (c) of subsection one of this section shall not apply to any person who is the holder of a business agent's license issued under the Business Agents Act, 1935-1941, nor to any corporation which is the holder of any such license or on whose behalf any person has taken out any such license, while such license is in force, but upon the expiration of such license such amendments shall thereupon in all respects have full force and effect with respect to such person or corporation as the case may be.

(3) All moneys which immediately before the appointed day stood to the credit of the Auctioneers, Stock and Station and Real Estate Agents Administration Account, and all investments which immediately before that day were held by the council in connection with that account shall upon such day respectively be moneys standing to the credit of and investments held by the council in connection with the Auctioneers, Stock and Station, Real Estate and Business Agents Administration Account.

6. (1) Part IV of the Principal Act is amended—

Amendment
of Act
No. 28,
1941,
Part IV.

(Real Estate
Dealers and
Real Estate
Salesmen.)

Sec. 51.

(Interpre-
tation.)

(a) (i) by omitting from the definition of "Real estate dealer" in section fifty-one the words "land in allotments" and by inserting in lieu thereof the words "allotments of land";

(ii) by omitting the definition of "Real estate salesman" in the same section and by inserting in lieu thereof the following definition:—

"Real estate salesman" means a person who, for or on behalf of any real estate agent or real estate dealer, induces

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(Amendment).*

induces or attempts to induce or negotiates with a view to inducing any person—

- (a) to buy, sell or otherwise dispose of any land, including any allotment of land; or
- (b) to make any offer to buy, sell or otherwise dispose of any land, including any allotment of land; or
- (c) to accept any offer to buy, sell or otherwise dispose of any land, including any allotment of land; or
- (d) to enter into any contract for the purchase, sale or other disposal of any land, including any allotment of land,

but does not include an auctioneer, a stock and station agent or a real estate agent.

Sec. 52.

(Provisions as to employment of certain persons by real estate dealers.)

- (b) by inserting in paragraph (a) of subsection one of section fifty-two after the word "Act" where lastly occurring the words "or whose license under this Act or the Business Agents Act, 1935, has been cancelled, unless a license has been subsequently granted to him".

(2) The amendments made by subsection one of this section shall commence upon the expiration of a period of three months after the appointed day.

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(Amendment).*

7. (1) Part VI of the Principal Act is amended—

Amendment
of Act No.
28, 1941,
Part VI.
(The Auc-
tioneers,
Stock and
Station and
Real Estate
Agents
Fidelity
Guarantee
Fund.)

- (a) by omitting from the heading thereto the words "and Real Estate" and by inserting in lieu thereof the words ", Real Estate and Business"; Heading.
- (b) by omitting from subsection one of section sixty-five the words "and Real Estate" and by inserting in lieu thereof the words ", Real Estate and Business"; Sec. 65.
(The fund.)
- (c) by omitting from section sixty-six the words "and Real Estate" and by inserting in lieu thereof the words ", Real Estate and Business"; Sec. 66.
(Separate
bank
account.)
- (d) (i) by omitting from subsection three of section seventy-one the words "not less than" wherever occurring; Sec. 71.
(Contribu-
tions
to fund.)
- (ii) by omitting from the same subsection the words "shall not be required to pay any further amount by way of contributions under this section" and by inserting in lieu thereof the words "shall after paying such amount pay annually a contribution of one pound";
- (iii) by inserting at the end of the same subsection the following new paragraph:—

This subsection shall apply whether any such amount was paid before or after the day appointed pursuant to subsection four

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of section one of the Auctioneers, Stock and Station, Real Estate and Business Agents (Amendment) Act, 1957.

Sec. 74.
(Application
of fund.)

(e) (i) by inserting in subsection one of section seventy-four after the words "real estate agent" the words "or a business agent";

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

(2A) No person shall have any claim against the fund in respect of any theft or fraudulent misapplication committed in the course of the business of a business agent unless such theft or fraudulent misapplication was committed at a time when such business agent was the holder of a business agent's license under this Act.

(iii) by omitting from subsection three of the same section the words "that may be committed after such commencement" and by inserting in lieu thereof the words "in respect of which any claim against the fund arose,".

Sec. 75.
(Claims
against
the fund.)

(f) by inserting at the end of subsection six of section seventy-five the following new subsection:—

(7) In respect of any theft or fraudulent misapplication after the day appointed pursuant to subsection four of section one of the Auctioneers, Stock and Station, Real Estate and Business Agents (Amendment) Act, 1957, subsections three and four of this section shall be read as though the words "five hundred" were omitted therefrom and the words "ten thousand" substituted therefor.

(g)

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(Amendment).*

(g) by omitting section seventy-eight and by inserting in lieu thereof the following section:— Subst.
sec. 78.

78. (1) Any proceedings brought against the council in relation to any claim upon the fund shall be by action at law as for a debt due by the council and shall be brought— Defences.

(a) where the amount claimed does not exceed fifty pounds in a court of petty sessions holden before a stipendiary magistrate;

(b) where the amount claimed exceeds fifty pounds but does not exceed one thousand pounds in a district court;

(c) where the amount claimed exceeds one thousand pounds in the Supreme Court.

(2) In any of the actions referred to in subsection one of this section all defences which would have been available to the licensee in relation to whom the claim arose shall be available to the council, and in any such action all questions of costs shall be in the discretion of the court or the presiding judge.

(3) Any order for the payment of costs made by a court of petty sessions under the provisions of subsection two of this section shall operate as an order for the recovery of money under the Small Debts Recovery Act, 1912, as amended by subsequent Acts, and be enforceable as such under the provisions of that Act, as so amended.

(2) All moneys which immediately before the appointed day stood to the credit of the Auctioneers, Stock and Station and Real Estate Agents Fidelity Guarantee Fund or the Auctioneers, Stock and Station and Real Estate Agents Fidelity Guarantee Account shall upon that day become and be respectively moneys **standing**

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standing to the credit of the Auctioneers, Stock and Station, Real Estate and Business Agents Fidelity Guarantee Fund and the Auctioneers, Stock and Station, Real Estate and Business Agents Fidelity Guarantee Account.

(3) All investments which immediately before the appointed day were held by the council in connection with the Auctioneers, Stock and Station and Real Estate Agents Fidelity Guarantee Fund shall upon that day become and be investments held by the council in connection with the Auctioneers, Stock and Station, Real Estate and Business Agents Fidelity Guarantee Fund.

S. Part VII of the Principal Act is amended by inserting next after section eighty-four the following new section:—

Amendment
of Act
No. 28, 1941,
Part VII.
(General.)

New
sec. 84A.

Penalty for
publishing
false or mis-
leading ad-
vertisements.

cf. Act No.
39, 1912,
s. 97.

84A. (1) Any licensee or real estate dealer, as defined in section fifty-one of this Act, who publishes or causes to be published in the course of his business as such, or the holder of a business subagent's license who publishes or causes to be published in connection with any matter in which he is acting as a business subagent, any statement which—

- (a) is intended or apparently intended by such licensee or real estate dealer or holder of a business subagent's license to promote the sale of any land or livestock or any business; and
- (b) is to his knowledge false or misleading in any material particular,

shall be guilty of an offence against this Act.

(2) A statement shall be deemed to be published within the meaning of this section if it is—

- (a) inserted in any newspaper or any other publication printed and published in New South Wales; or

(b)

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(b) publicly exhibited—

- (i) in, on, over or under any building, vehicle or place (whether or not a public place and whether on land or water); or
 - (ii) in the air in view of persons being or passing in or on any street or public place; or
- (c) contained in any document gratuitously sent or delivered to any person or thrown or left upon premises in the occupation of any person; or
- (d) broadcast by wireless transmission.

(3) In any proceedings under this section against a licensee or a real estate dealer or the holder of a business subagent's license for publishing any statement aforesaid or causing the same to be published, if it is proved that such statement was false or misleading in any material particular, the licensee or the real estate dealer or the holder of the business subagent's license who published the statement or caused the same to be published shall be deemed to have published the same or to have caused the same to be published with knowledge of its falsity or misleading character, as the case may be, unless he proves that having taken all reasonable precautions against committing an offence under this section he had reasonable grounds to believe and did believe that the statement was true and had no reason to suspect that the statement was false or misleading.

(4) Notwithstanding any proceedings against any person for an offence under this section (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.

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(Amendment).*

(5) This section shall be read and construed as in aid of and not in derogation from any enactment or law relating to false or misleading advertisements or other statements.

(6) In this section "newspaper" includes any periodical publication.

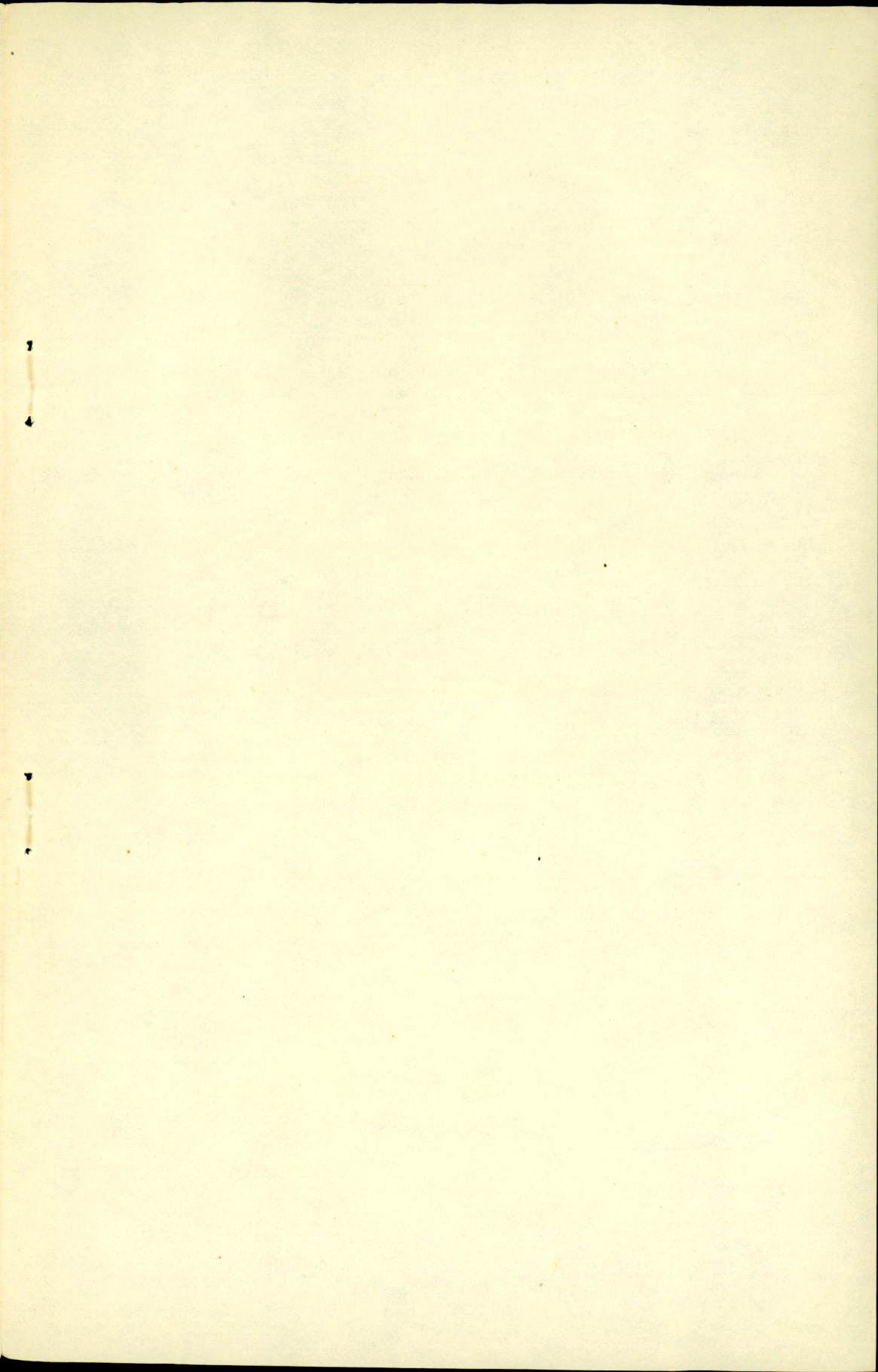
Sec. 2 (3).

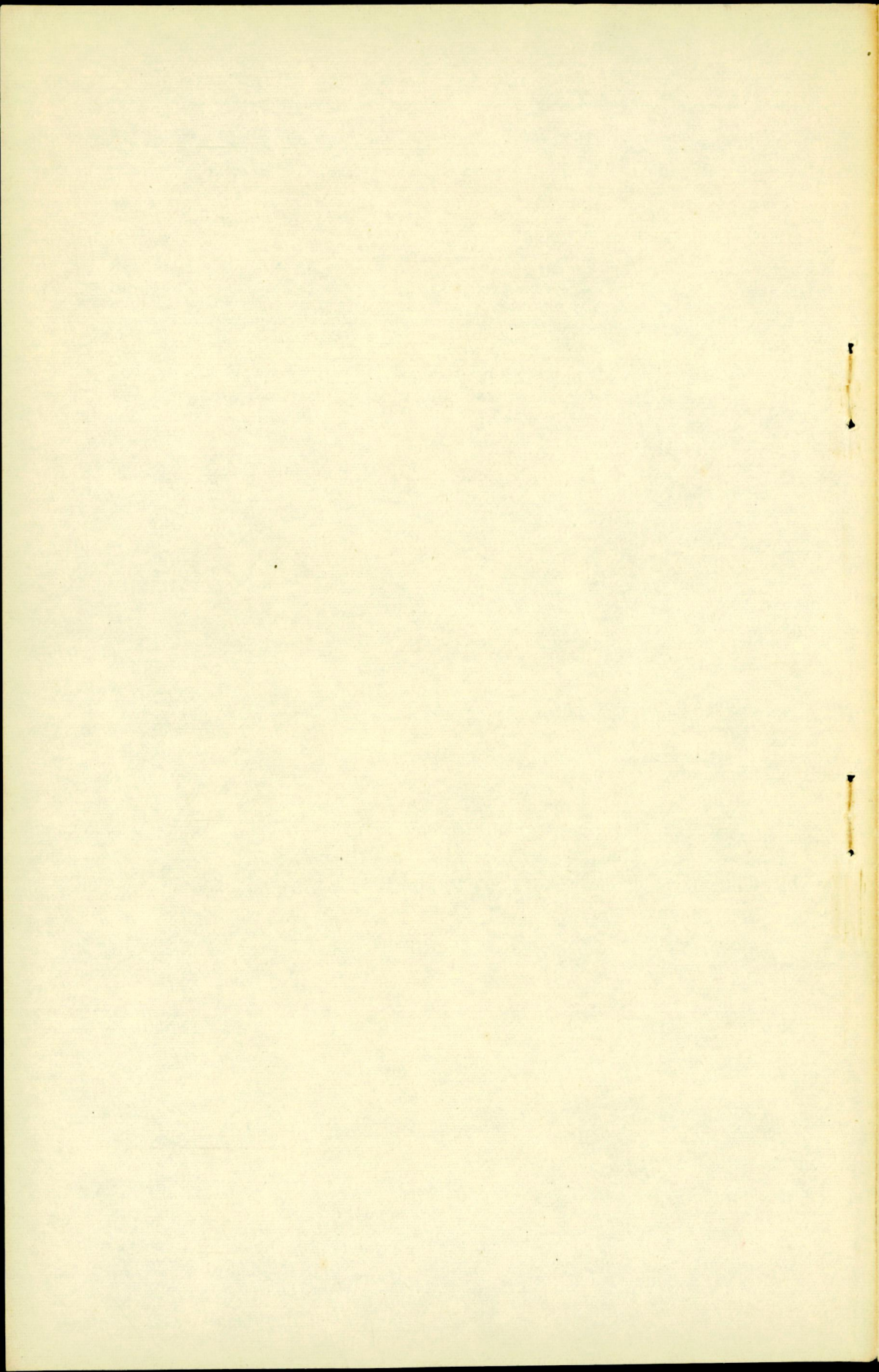
SCHEDULE.

No. of Act.	Name of Act.	Extent of Repeal.
1935, No. 7 ...	Business Agents Act, 1935.	The whole.
1941, No. 28...	Auctioneers, Stock and Station and Real Estate Agents Act, 1941.	Part V and the matter relating to Part V in section two.

By Authority:

A. H. PETTIFER, Government Printer, Sydney, 1957.





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

ALLAN PICKERING,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 9 April, 1957.*

New South Wales



ANNO SEXTO

ELIZABETHÆ II REGINÆ

Act No. 15, 1957.

An Act to include in the Auctioneers, Stock and Station and Real Estate Agents Act, 1941-1954, provisions for licensing and regulating business agents and business sub-agents; to reconstitute the council constituted under that Act; to increase the annual contributions to the Auctioneers, Stock and Station and Real Estate Agents Fidelity Guarantee Fund established under that Act; to increase the maximum amount payable out of that Fund in respect of theft or fraudulent misapplication by any one licensee; to repeal the Business Agents Act, 1935; for these and other purposes to amend the Auctioneers, Stock and Station and Real Estate Agents Act, 1941-1954, and certain other Acts; and for purposes connected therewith. [Assented to, 12th April, 1957.]

BE

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

G. BOOTH,
Chairman of Committees of the Legislative Assembly.

*Auctioneers, Stock and Station, Real Estate and Business Agents
(Amendment).*

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

Short title,
citation and
commence-
ment.

1. (1) This Act may be cited as the "Auctioneers, Stock and Station, Real Estate and Business Agents (Amendment) Act, 1957."

(2) The Auctioneers, Stock and Station and Real Estate Agents Act, 1941-1954, is in this Act referred to as the Principal Act.

(3) The Auctioneers, Stock and Station and Real Estate Agents Act, 1941, as amended by subsequent Acts and by this Act, may be cited as the Auctioneers, Stock and Station, Real Estate and Business Agents Act, 1941-1957.

(4) This Act shall, except where otherwise expressly provided, commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette, which day is in this Act referred to as the "appointed day."

Operation
of Business
Agents Act,
1935-1941.

2. (1) On and from the appointed day no license or renewal of a license under the Business Agents Act, 1935-1941, shall be granted.

(2) The provisions of the Business Agents Act, 1935-1941, shall, on and from the appointed day, apply only with respect to licenses issued under that Act and in force immediately before such commencement, and to persons holding such licenses, and for those purposes shall continue in force in relation to any such license or person, only until such license has expired or is cancelled.

(3) As on and from the first anniversary of the appointed day the Acts mentioned in the Schedule to this Act are to the extent therein specified hereby repealed.

(4).

*Auctioneers, Stock and Station, Real Estate and Business Agents
(Amendment).*

(4) (a) Nothing in this section shall affect the liability of any person under any fidelity bond given pursuant to the Business Agents Act, 1935-1941.

(b) Notwithstanding anything contained in subsections two and three of this section, section twenty-seven of the Business Agents Act, 1935-1941, shall continue to apply to and in respect of every such fidelity bond.

(5) Notwithstanding anything contained in subsections two and three of this section every business agent or subagent under the Business Agents Act, 1935-1941, shall keep the written record referred to in subsection one of section twenty-two of that Act for a period of not less than three years after the date on which it was made, and shall at all reasonable times produce such written record for inspection if required so to do by any officer of the police force of or above the rank of sergeant or the registrar under the Principal Act, as amended by this Act, or any officer of the council under such Principal Act, as so amended, duly authorised in writing in that behalf by such council, but in the case of such authorised officer, on production of his written authority.

Any person who contravenes any of the provisions of this subsection shall be deemed to be guilty of an offence against the Principal Act, as amended by this Act, and shall be liable to a penalty of not less than two pounds and not exceeding fifty pounds.

(6) Where an application is made for a business agent's license or a business subagent's license under the Principal Act, as amended by this Act, by any person who at the time of the application is the holder of a business agent's license or a subagent's license, as the case may be, under the Business Agents Act, 1935-1941, the person making such application shall, for the purposes of subsection six of section twenty-three of the Principal Act, as so amended, be deemed to be
already

Auctioneers, Stock and Station, Real Estate and Business Agents
(Amendment).

already the holder of a license under the said Principal Act, as so amended, of the same class as that referred to in his application or of any other class.

Amendment
of Act No.
28, 1941,
Part I.
(Prelimin-
ary.)
Sec. 2.
(Division
into Parts.)

3. Part I of the Principal Act is amended—

(a) (i) by omitting from the matter relating to Part II in section two the words “and Real Estate” and by inserting in lieu thereof the words “, Real Estate Agents and Business;”

(ii) by omitting from the matter relating to Part III in the same section the words “and Real Estate Agents—ss. 20-50” and by inserting in lieu thereof the words “, Real Estate Agents and Business Agents—ss. 20-50H;”

(iii) by inserting at the end of the same matter the following words, figures and letters:—

“DIVISION 4.—*Business Agents and Business Subagents—ss. 50A-50H.*”

(iv) by omitting from the matter relating to Part VI in the same section the words “and Real Estate” and by inserting in lieu thereof the words “, Real Estate and Business”;

Sec. 3.
(Defini-
tions.)

(b) (i) by omitting from subsection one of section three the definition of “Council” and by inserting in lieu thereof the following definitions:—

“Business agent” means any person
(whether or not such person
carries on any other business) who
for reward (whether monetary or
otherwise)

*Auctioneers, Stock and Station, Real Estate and Business Agents
(Amendment).*

otherwise) exercises or carries on business as an agent for performing any of the following functions, namely:—

- (a) selling, buying or exchanging or otherwise dealing with or disposing of; or
- (b) negotiating for the sale, purchase or exchange or any other dealing with or disposition of,

hotel businesses, residential businesses, boarding-house businesses, storekeeping businesses, manufacturing businesses or any trading businesses whatsoever or any share or interest in or concerning or the goodwill of or any stocks connected with any of such businesses, but does not include a business subagent in his capacity as such.

“Business subagent” means any person who is in the direct employ of or acts for or by arrangement with a business agent and who performs for such business agent any of the functions of a business agent as defined by this section whether his remuneration is by way of salary, wages, commission or otherwise but does not include an employee of a corporation in respect of whom such corporation has taken out a business agent’s license.

“Council”

*Auctioneers, Stock and Station, Real Estate and Business Agents
(Amendment).*

“Council” means the Council of the Auctioneers, Stock and Station Agents, Real Estate Agents and Business Agents constituted under this Act.

(ii) by inserting in the same subsection at the end of the definition of “Licensee” the words “but does not include the holder of a business subagent’s license”;

Sec. 4.
(Act not to apply to any Government department, etc.)

(c) (i) by omitting from the proviso to paragraph (a) of subsection two of section four the words “or real estate agent” and by inserting in lieu thereof the words “, real estate agent or business agent”;

(ii) by omitting from the same proviso the words “a license” and by inserting in lieu thereof the words “an appropriate license”.

Amendment of Act No. 28, 1941, Part II.
(The Council of the Auctioneers, Stock and Station Agents and Real Estate Agents.)

4. (1) Part II of the Principal Act is amended—

Heading.

(a) by omitting from the heading to the Part the words “and Real Estate” and by inserting in lieu thereof the words “, Real Estate Agents and Business”;

Sec. 6.
(The council.)

(b) by omitting from subsection three of section six the words “and Real Estate” and by inserting in lieu thereof the words “, Real Estate Agents and Business”;

(c)

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(Amendment).*

(c) by omitting section seven and by inserting in lieu thereof the following section:— Subst.
sec. 7.

7. (1) On and from the day appointed pursuant to subsection four of section one of the Auctioneers, Stock and Station, Real Estate and Business Agents (Amendment) Act, 1957 (in this section referred to as the "appointed day") the council shall be reconstituted and shall consist of— First
council
with repre-
sentation for
business
agents.

- (a) the persons who immediately before the appointed day were the members of the council as then constituted; and
- (b) a person, who shall be appointed by the Governor and shall be the holder of a business agent's license under the Business Agents Act, 1935-1941.

(2) Of the members referred to in paragraph (a) of subsection one of this section, the member who was appointed under the provisions of subsection three of section eight of this Act to be a member of the council as constituted immediately before the appointed day is in this Act referred to as the "official member" and the remaining members referred to in that paragraph and the member referred to in paragraph (b) of the said subsection one are in this Act referred to as "elected members".

(3) The council as so reconstituted shall appoint one of its members to be chairman of the council.

(4) Subject to the provisions of this Act, the members of the council as so reconstituted shall hold office until the thirtieth day of June, one thousand nine hundred and fifty-eight, and shall be eligible for reappointment or for election as members of the council.

(5)

*Auctioneers, Stock and Station, Real Estate and Business Agents
(Amendment).*

(5) If immediately before the appointed day there was a vacancy in the office of any member of the council, the Governor may, in respect of that vacancy, appoint a person to the council as reconstituted under this section.

(6) For the purposes only of the application of the provisions of paragraph (g) of section nine of this Act to the member of the council appointed pursuant to paragraph (b) of subsection one of this section, the said paragraph (g) shall be deemed to be amended—

(a) by inserting next after the word "license" the words "under this Act or under the Business Agents Act, 1935-1941"; and

(b) by omitting the words "to renew the same upon its expiry" and by inserting in lieu thereof the words "upon the expiry of his license under the Business Agents Act, 1935-1941, to procure the issue to him of a business agent's license under this Act, and to renew such lastmentioned license upon its expiry".

Sec. 8.
(Constitution
of subsequent
councils.)

(d) (i) by omitting from subsection one of section eight the word "forty-three" and by inserting in lieu thereof the word "fifty-eight";

(ii) by omitting from the same subsection the word "ten" and by inserting in lieu thereof the word "thirteen";

(iii) by omitting from the same subsection the word "nine" and by inserting in lieu thereof the word "twelve";

(iv) by omitting from subparagraph (iii) of paragraph (b) of subsection two of the same section the word "three" and by inserting in lieu thereof the word "four";

(v)

Act No. 15, 1957.

9

Auctioneers, Stock and Station, Real Estate and Business Agents
(Amendment).

- (v) by inserting at the end of the same paragraph the following new subparagraph:—
 - (iv) two shall be business agents.
- (vi) by inserting at the end of paragraph (a) of subsection four of the same section the following new subparagraph:—
 - (iv) business agents.
- (vii) by inserting next after subparagraph (iii) of paragraph (b) of the same subsection the following new subparagraph:—
 - (iv) on the roll of business agents, if he holds a business agent's license;
- (viii) by inserting at the end of paragraph (c) of the same subsection the following new subparagraph:—
 - (iv) as a business agent—unless his name is on the roll of business agents.
- (ix) by omitting from paragraph (d) of the same subsection the words "Each such roll shall" and by inserting in lieu thereof the words "The roll of auctioneers, the roll of stock and station agents and the roll of business agents shall each";
- (x) by inserting at the end of the same paragraph the following words:—

"The roll of real estate agents shall be divided into three parts to be known respectively as Part I, Part II and Part III.

In Part I of such roll shall be entered the names of all persons eligible for enrolment on such roll whose places of business are situated within the county of Cumberland, excluding therefrom such part of the police district of Wollongong as is within that
county

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(Amendment).*

county, or the county of Northumberland, excluding therefrom the police district of Newcastle.

In Part II of such roll shall be entered the names of all persons eligible for enrolment on such roll whose places of business are situated within the police districts of Newcastle and Wollongong.

In Part III of such roll shall be entered the names of all persons eligible for enrolment on such roll whose places of business are situated in any part of New South Wales, not being a part in respect of which they are eligible for enrolment on Part I or Part II of such roll."

- (xi) by inserting at the end of paragraph (e) of the same subsection the words "and the persons whose names are on Part III of that roll shall elect one member of the council.

The persons whose names are on Part I of the roll of business agents shall elect one member of the council and the persons whose names are on Part II of that roll shall elect one member of the council";

- (xii) by omitting from subsection five of the same section the word "forty-three" and by inserting in lieu thereof the word "fifty-eight";

Sec. 14.
(Fees and
expenses.)

- (e) (i) by inserting in subsection one of section fourteen after the words "five guineas" the words ", or such other amount as may be prescribed in lieu thereof,";
- (ii) by inserting in the same subsection after the words "two guineas" the words ", or such other amount as may be prescribed in lieu thereof,".

(2)

*Auctioneers, Stock and Station, Real Estate and Business Agents
(Amendment).*

(2) (a) The amendments made by subsection one of this section shall not prejudice or affect in any way the continuity of the body corporate constituted under Part II of the Principal Act but the same shall continue notwithstanding the provisions of this section.

(b) The said body corporate shall continue and shall be deemed always to have continued notwithstanding that there are or have been at any time or times vacancies in the offices of all of the members of the body corporate or of any one or more of them.

(3) (a) For the purposes only of the reconstitution to be effected by the amendments made by paragraph (c) of subsection one of this section and of any matters necessary for or incidental to such appointment or reconstitution, such amendments shall commence on the day upon which the assent of Her Majesty to this Act is signified.

(b) The persons to be members of the Council of the Auctioneers, Stock and Station Agents, Real Estate Agents and Business Agents as so reconstituted shall assume their offices on the appointed day and on that day the amendments made by paragraph (c) of subsection one of this section shall come into force for all purposes.

5. (1) Part III of the Principal Act is amended—

Amendment
of Act No.
28, 1941,
Part III.
(Auctioneers
Stock and
Station
Agents and
Real Estate
Agents.)

(a) by omitting from the heading thereto the words "and Real Estate" and by inserting in lieu thereof the words "Real Estate Agents and Business";

Heading.

(b)

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(Amendment).*

Sec. 20.
(No person
or partner
in a firm
to act
without a
license.)

(b) (i) by inserting next after subsection two of section twenty the following new subsection:—

(2A) No person (either by himself or as a member of a partnership)—

(a) shall act as or carry on or advertise, notify or state that he acts as or carries on or is willing to act as or carry on the business of a business agent unless he is the holder of a business agent's license under the Business Agents Act, 1935-1941, or a business agent's license;

(b) shall act as or carry on or advertise, notify or state that he acts as or carries on or is willing to act as or carry on as a business subagent unless he is the holder of a subagent's license under the Business Agents Act, 1935-1941, or a business subagent's license.

(ii) by inserting in subsection three of the same section after the words "real estate agent" the words "or of a business agent";

(iii) by inserting in the same subsection after the word "appropriate." the following new paragraph:—

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

Sec. 21.
(Each
separate
place of
business
to be
in charge
of
licensee.)

(c) by inserting next after subsection two of section twenty-one the following new subsection:—

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

(b)

*Auctioneers, Stock and Station, Real Estate and Business Agents
(Amendment).*

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

(c) Where a corporation conducts its business as a business agent at more than one place of business it shall employ at each such place a person in respect of whom it has taken out a license, and such person shall be in charge at that place.

(d) (i) by inserting in subsection one of section ^{Sec. 22.} twenty-two after the word "license" where _(Licenses.) lastly occurring the following word and new paragraphs:—
“; or

(d) a business agent's license; or

(e) a business subagent's license.”;

(ii) by inserting in paragraph (b) of subsection three of the same section after the words “taking out the same and” the words “, except in the case of a business subagent's license,”;

(iii) by inserting next after paragraph (b) of subsection four of the same section the following new paragraph:—

(c) Where the holder of a license desires to surrender the license held by him he may in writing notify the clerk of the court by which the license was issued that he desires to surrender such license and deliver such license to the clerk of that court.

The

*Auctioneers, Stock and Station, Real Estate and Business Agents
(Amendment).*

The clerk of the court shall, upon receipt of such notification and license, endorse on the license the word "surrendered" and forward such notification to the registrar.

Sec. 23.
(Procedure.)

(e) (i) by omitting subsection three of section twenty-three and by inserting in lieu thereof the following subsection:—

(3) (a) Where the applicant resides in New South Wales—

- (i) an application for a license other than a business subagent's license shall be lodged with the clerk of the court of the petty sessions district within which the place of business of the applicant in respect of which the application is made is situated or proposed to be situated;
- (ii) an application for a business subagent's license shall be lodged with the clerk of the court of the petty sessions district within which the applicant resides.

(b) Where under this subsection there is more than one court with the clerk of which an application may be lodged such application shall be lodged—

- (i) in the case of an application for a license other than a business subagent's license, with the clerk of the court within such district nearest to the place where the place of business to which the application relates is situated or proposed to be situated; or

(ii)

*Auctioneers, Stock and Station, Real Estate and Business Agents
(Amendment).*

- (ii) in the case of an application for a business subagent's license, with the clerk of the court within such district nearest to the place where the applicant resides.
- (ii) by inserting next after paragraph (b) of subsection four of the same section the following new paragraph:—
- (bi) Where the application is for a business agent's license and the applicant resides in any other State of the Commonwealth of Australia or in the Australian Capital Territory the application shall be lodged with the clerk of any court of petty sessions.
- (iii) by inserting in paragraph (a) of subsection six of the same section after the words "prescribed fees and" the words ", except in the case of a person applying for a business subagent's license,";
- (iv) by inserting at the end of paragraph (b) of the same subsection the words "or until the expiration of twelve months after the date upon which such provisional license took effect whichever first occurs";
- (v) by inserting in subsection eight of the same section after the words "prescribed fees and" the words ", except in the case of a person applying for a business subagent's license,";
- (vi) by inserting in subsection nine of the same section after the words "prescribed fees and" the words ", except in the case of a person applying for a business subagent's license,";
- (vii)

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(Amendment).*

(vii) by inserting next after subsection ten of the same section the following new subsections:—

(10A) A license shall not, after the expiration of the prescribed period from the day appointed pursuant to subsection four of section one of the Auctioneers, Stock and Station, Real Estate and Business Agents (Amendment) Act, 1957, be granted to an applicant, not being a corporation, nor to a corporation in respect of an employee, unless such applicant or employee has—

- (a) passed the prescribed examination conducted by the Department of Technical Education or such other examination as may be prescribed; or
- (b) produced to the court satisfactory evidence that he is competent to perform the functions and duties generally performed by the holder of such a license.

This subsection shall not apply to any person to whom an auctioneer's license (being a general license) or a business agent's license may be granted pursuant to the provisions of section twenty-six or twenty-seven of this Act.

(10B) A business subagent's license shall not be granted to any person who is not a resident of New South Wales.

Sec. 25.
(Fees payable for license.)

- (f) (i) by omitting from subparagraph (i) of paragraph (a) of subsection one of section twenty-five the words "fifteen pounds" and by inserting in lieu thereof the words "sixteen pounds";

(ii)

Auctioneers, Stock and Station, Real Estate and Business Agents
(Amendment).

- (ii) by omitting from subparagraph (ii) of the same paragraph the words "five pounds" and by inserting in lieu thereof the words "six pounds";
- (iii) by omitting from subparagraph (iii) of the same paragraph the words "two pounds" and by inserting in lieu thereof the words "three pounds";
- (iv) by omitting from subparagraph (iv) of the same paragraph the words "two pounds" and by inserting in lieu thereof the words "three pounds";
- (v) by omitting from paragraph (b) of the same subsection the words "one pound" and by inserting in lieu thereof the words "two pounds";
- (vi) by omitting from paragraph (c) of the same subsection the words "one pound" and by inserting in lieu thereof the words "two pounds";
- (vii) by omitting paragraphs (d), (e) and (f) of the same subsection and by inserting in lieu thereof the following paragraphs:—
 - (d) for an auctioneer's license (being a general license) and any one or more of the following licenses:—
 - a stock and station agent's license, a real estate agent's license or a business agent's license—
sixteen pounds;
 - (e) for an auctioneer's license (being a country license) and any one or more of the following licenses:—
 - a stock and station agent's license, a real estate agent's license or a business agent's license—
six pounds;
 - (f)

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(Amendment).*

(f) for an auctioneer's license (being a district license or a primary products license) and any one or more of the following licenses:—

a stock and station agent's license, a real estate agent's license or a business agent's license—four pounds;

(fi) for a business agent's license—three pounds;

(fii) for a business subagent's license—ten shillings;

(viii) by omitting from paragraph (h) of the same subsection the words "five pounds" and by inserting in lieu thereof the words "six pounds";

(ix) by omitting from subsection three of the same section the words "not exceeding one pound";

(x) by omitting from subsection four of the same section the words "Auctioneers, Stock and Station and Real Estate Agents Administration Account" and by inserting in lieu thereof the words "Auctioneers, Stock and Station, Real Estate and Business Agents Administration Account";

Sec. 26.
(Power to grant auctioneers' licenses to persons resident in reciprocating States.)

(g) (i) by inserting in subsection one of section twenty-six after the words and symbols "(being a general license)" the words "or a business agent's license";

(ii) by inserting in the same subsection after the word "auctioneer" the words "or a business agent, as the case may be,";

(iii)

*Auctioneers, Stock and Station, Real Estate and Business Agents
(Amendment).*

(iii) by inserting in the same subsection after the words and symbols "(being general licenses)" the words "or business agents' licenses, as the case may be,";

(iv) by inserting next after subsection three of the same section the following new subsection:—

(3A) Any notification declaring that the Business Agents Act, 1935-1941, shall extend and apply to the granting in New South Wales of general licenses to residents in any other State, which was published pursuant to section ten of that Act and which was still in force immediately before the day appointed pursuant to subsection four of section one of the Auctioneers, Stock and Station, Real Estate and Business Agents (Amendment) Act, 1957, shall, as from such day and until revoked by a notification published pursuant to this Act, have and take effect as if it were a notification published pursuant to subsection one of this section declaring that, as from such day, and while the notification remains in force, this Act shall extend and apply to the granting in New South Wales of business agents' licenses to residents in such other States as is mentioned in such notification.

(v) by inserting in paragraph (a) of subsection four of the same section after the words and symbols "(being a general license)" the words "or a business agent's license";

(vi) by inserting in the same paragraph after the word "auctioneer" the words "or a business agent, as the case may be,";

(h)

*Auctioneers, Stock and Station, Real Estate and Business Agents
(Amendment).*

Sec. 27.
(Grant of
auctioneers'
licenses to
persons
resident
in the
Australian
Capital
Territory.)

- (h) (i) by inserting in section twenty-seven after the words and symbols "(being general licenses or country licenses or district licenses)" the words "or business agents' licenses";
- (ii) by inserting in the same section after the words and symbols "(being a general license or a country license or a district license)" where firstly occurring the words "or a business agent's license";
- (iii) by inserting in the same section after the words "auctioneer's license" where secondly occurring the words ", or a business agent's license, as the case may be";
- (iv) by inserting in the same section after the words and symbols "(being a general license or a country license or a district license)" where secondly occurring the words "or a business agent's license";
- (v) by inserting in the same section after the words "auctioneer's license" where lastly occurring the words ", or a business agent's license, as the case may be,";

Sec. 28.
(Applicant
for
auctioneer's
license to
be resi-
dent in
New South
Wales or
reciprocating
State.)

- (i) by omitting from section twenty-eight the words "or a renewal thereof" wherever occurring and by inserting in lieu thereof the words "or a business agent's license, or a renewal of either such license,";

Sec. 29.
(Cancell-
ation of
license.)

- (j) by inserting at the end of section twenty-nine the following new subsection:—

(4) The foregoing provisions of this section shall apply mutatis mutandis to and in respect of a business subagent's license and the holder of a business subagent's license.

(k)

*Auctioneers, Stock and Station, Real Estate and Business Agents
(Amendment).*

- (k) (i) by inserting in subsection one of section thirty-one after the word "licensee" the words "or the employee, or the holder of a business subagent's license"; Sec. 31.
(Appeal.)
- (ii) by inserting in paragraph (b) of subsection four of the same section after the word "employee" the words ", or holder of a business subagent's license,";
- (iii) by inserting next after the same subsection the following new subsection:—
- (4A) An appeal under this section in any case to which paragraph (a) of subsection one of this section applies shall not be commenced after the expiration of twenty-one days after the date of refusal of the application or the date of the order under section twenty-nine of this Act, as the case may be.
- (l) by omitting from section thirty-two the words "or a real estate agent" and by inserting in lieu thereof the words ", a real estate agent, a business agent or a business subagent,"; Sec. 32.
(Effect of disqualification on membership, etc., of corporation.)
- (m) (i) by inserting next after subsection three of section thirty-four the following new subsections:— Sec. 34.
(Registered office and address.)
- (3A) Every business subagent shall have a registered address within New South Wales.
- (3B) The address specified in the application for a business subagent's license as the address at which the applicant then resides, shall, upon the grant of the application, be deemed for the purposes of this Act to be the registered address of the business subagent.
- (ii) by inserting in subsection four of the same section after the words "registered office" the words "or the registered address";
- (iii)

*Auctioneers, Stock and Station, Real Estate and Business Agents
(Amendment).*

(iii) by inserting in the same subsection after the word "licensee" the words "or the holder of the business subagent's license, as the case may be,";

(iv) by inserting in subsection five of the same section after the word "business" where firstly occurring the words "or if any licensed business subagent acts or carries on as a business subagent";

Sec. 35.
(Publication
of name of
licensee.)

(n) by inserting at the end of paragraph (b) of subsection three of section thirty-five the following new subparagraph:—

“(iv) as a business agent—unless he is the holder of a business agent's license”;

Sec. 36.
(Payment
into bank.)

(o) (i) by inserting at the end of subsection one of section thirty-six the words “and in any other case the trust account shall be in the name of the licensee. 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”;

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

(4A) Where any licensee neglects or fails to comply with any of the provisions of this section by reason of his neglect or failure to pay any moneys into a bank in New South Wales to a trust account or to retain any such moneys therein, the offence shall continue until the said moneys are paid to the person for or on whose behalf they were received, or disbursed in such manner as may be directed by such person.

(p)

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(Amendment).*

- (p) (i) by inserting in subsection one of section thirty-eight after the word "licensee" where secondly occurring the words "and such other written records relating to his business as licensee as may be prescribed"; Sec. 38.
(Record to be kept.)
- (ii) by omitting from the same subsection the word "record" where secondly occurring and by inserting in lieu thereof the word "records";
- (iii) by omitting from subsection two of the same section the words "The written record" and by inserting in lieu thereof the words "Every such written record";
- (iv) by omitting from subsection three of the same section the words "the written record" and by inserting in lieu thereof the words "any such written record";
- (q) by omitting from subsection one of section 38B the word "record" and by inserting in lieu thereof the word "records"; Sec. 38B.
(Inspection of records.)
- (r) by inserting next after section 38B the following new section:— New sec.
38C.

38c. (1) Every business agent—

- (a) shall make or cause to be made a true statement in writing in the prescribed form and with the prescribed particulars as to the name and the work or services of and the salary, wages or commission paid in each month to every person employed (whether as an employee or a subagent or otherwise) by him in connection with his business as a business agent and shall, for a period of three years after the date on which the statement was made or caused to be made, keep such statement at his principal place of business in New South Wales;
- Statement of employees, subagents, etc., and their wages to be kept by business agents.
cf. Act No. 7, 1935, s. 18.

(b)

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(Amendment).*

(b) shall, at all reasonable times, produce such statement for inspection if required to do so by the registrar, a member of the police force of or above the rank of sergeant, or an officer of the council duly authorised by the council in writing in that behalf, but in the case of such authorised officer upon production of his written authority.

(2) Any business agent who—

- (a) commits any contravention of or fails to comply with any of the provisions of this section; or
- (b) makes any false entries in any such statement;

shall be guilty of an offence against this Act.

Sec. 39.
(Certain persons not to be employed by licensees.)

- (s) (i) by inserting in subsection one of section thirty-nine after the word "business" the words ", and the holder of a business subagent's license shall not, except with such approval and subject to any such conditions, knowingly employ in any way whatever in connection with his work as a business subagent,";
- (ii) by inserting in paragraph (a) of the same subsection after the word "Act" where lastly occurring the words "or whose license under this Act or the Business Agents Act, 1935, has been cancelled, unless a license has been subsequently granted to him";
- (iii) by inserting at the end of the same subsection the following word and new paragraphs:—

or

(c)

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(Amendment).*

- (c) who is for the time being disqualified under this Act from holding a certificate of registration as a real estate salesman, or whose certificate of registration as a real estate salesman has been cancelled, unless a certificate has been subsequently granted to him; or
- (d) whose application for a certificate of registration as a real estate salesman under this Act has been refused, unless such an application has been subsequently granted.
- (iv) by inserting at the end of subsection two of the same section the words "or in the work of a business subagent";
- (v) by inserting in subsection four of the same section after the word "licensee" the words "or any holder of a business subagent's license";
- (t) by inserting next after section thirty-nine the following new section:—

New
sec. 39A.

39A. (1) A licensee or a holder of a business subagent's license shall not knowingly enter into any arrangement or act in conjunction with any person, not being an employee in his business as a licensee or in his work as a licensed business subagent, who is not licensed under this Act whereby such person is entitled to a share of the commission, fee, gain or reward payable to such licensee or the holder of such a license in respect of any transaction by or with him as a licensee or holder of a business subagent's license, or generally.

Licensee not
to share
commission,
etc., with
certain
persons.

(2)

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(Amendment).*

(2) A licensee shall not, without the prior consent in writing of the registrar, carry on business as such or advertise or in any manner whatsoever hold out that he carries on business as such—

- (a) under the name, or a name nearly resembling the name, whereunder a person whose license has been cancelled under or in pursuance of this Act or the Business Agents Act, 1935, was carrying on business as a licensee immediately before his license was cancelled; or
- (b) under a name implying or capable of being construed as implying that he is the successor in the business, or in any way interested or concerned in continuing the business as a licensee, of a person whose license has been cancelled under or in pursuance of this Act or the Business Agents Act, 1935:

Provided that nothing in this subsection shall prohibit the carrying on by a licensee of his business as such under his true name without any addition or adaptation whatsoever.

Sec. 40.
(Production
of
license.)

- (u) (i) by omitting from section forty the words "or a real estate agent" and by inserting in lieu thereof the words " , a real estate agent or a business agent";
- (ii) by inserting at the end of the same section the following new subsection:—

(2) Every business subagent shall, on demand, produce his license to any member of the police force of or above the rank of sergeant, or to any person with whom such business subagent is transacting or attempting to transact any business on behalf of a business agent.

(v)

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(Amendment).*

- (v) by inserting in section forty-one after the word "licensee" the words "or holder of a business subagent's license"; Sec. 41.
(Licensee not to lend license.)
- (w) by inserting at the end of paragraph (c) of subsection one of section forty-two the following new paragraph:— Sec. 42.
(Provisions as to commission, etc.)
- (d) as a business agent or business subagent unless he was the holder of a business agent's license or of a business subagent's license, as the case may be, at the time of doing or performing such service.
- (x) (i) by omitting from paragraph (a) of section forty-three the words ", or a name other than his own name,"; Sec. 43.
(Publication of name and place of business in advertisements.)
- (ii) by inserting next after the same paragraph the following new paragraph:—
- (ai) where such licensee is an individual carrying on business under a business name registered or deemed to be registered under any Act for the time being in force relating to the registration of business names, then either his name or such business name and the address of his place of business;
- (y) by inserting next after section fifty the following new Division:— New
Division
4.

DIVISION 4.—*Business Agents and Business Subagents.*

50A. Any business agent or business subagent who by any wilfully false, misleading or deceptive statement, representation or promise or by any wilful concealment of material fact, induces or attempts to induce any person to enter into Misrepresentation by business agent or subagent.
cf. Act No. 7, 1935,
an s. 21.

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an agreement or contract for the sale or purchase or lease of a business or undertaking shall be guilty of an offence and shall be liable to a penalty of not less than ten pounds and not exceeding two hundred pounds or to imprisonment for a term not exceeding two years, or both.

Record
to be
kept by
business
agent.
cf. Act
No. 7,
1935, s. 22.

50B. (1) Every business agent and business subagent shall keep in a legible manner a written record containing full particulars of every business or share or interest in or concerning or the goodwill of or any stocks connected with a business which has been entrusted to him for the exercise or performance in relation thereto of any of the functions of a business agent as defined by this Act.

(2) Such written record shall be open to inspection at all reasonable times by the registrar, a member of the police force of or above the rank of sergeant, or an officer of the council duly authorised in writing in that behalf and in the case of such authorised officer upon production of his written authority, and every business agent or business subagent upon being required so to do shall produce such written record for inspection by the registrar, such member of the police force or such authorised officer.

(3) Any person who—

(a) wilfully delays or obstructs the registrar, such member of the police force or such authorised officer in the exercise of his powers, authorities, duties and functions under subsection two of this section; or

(b)

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(Amendment).*

(b) being a business agent or business sub-agent refuses or fails, upon being required to produce any such written record kept by him under this section, to do so;

shall be guilty of an offence against this Act.

50c. The holder of a business agent's license shall not, in any way whatever in connection with his business, knowingly employ as a business subagent any person who is not the holder of a business subagent's license.

Business agent not to employ unlicensed subagent.
cf. Act No. 7, 1935, s. 25.

50b. Notwithstanding anything in any Act, no action shall be brought upon any contract or sale of any of the businesses referred to in the definition of "Business agent" in section three of this Act or any share or interest in or concerning any of such businesses, if the agreement or the memorandum or note thereof on which such action is brought is signed by any person other than the party to be charged therewith, unless such person so signing be thereunto lawfully authorised in writing signed by the party to be so charged.

Agents for sale of businesses to be authorised in writing.
cf. Act No. 7, 1935, s. 28.

50e. (1) Notwithstanding anything in this Act or any law to the contrary, no business subagent shall carry out any of the work of a business subagent unless such business subagent was theretofore lawfully authorised in writing thereunto by a business agent.

Business subagent acting for business agent to be authorised by him.
cf. Act No. 7, 1935, s. 32.

(2) Every business subagent shall at all reasonable times produce the written authority referred to in subsection one of this section whenever demanded by the registrar, a member of the police force of or above the rank of sergeant or an officer of the council duly authorised in that behalf, but in the case of such authorised officer upon production of his written authority.

(3)

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(Amendment).*

(3) Any business subagent who makes any false representation (whether verbally or in writing or by conduct) to any person to the effect that such business subagent is authorised to act as a business subagent for any specified business agent shall be guilty of an offence against this Act.

Saving as to licensed business subagents, etc.

cf. Act No. 7, 1935, s. 33.

50F. Nothing in this Act shall be construed as requiring any holder of a business subagent's license, so far as he performs for any holder of a business agent's license any of the functions of a business agent and is duly authorised thereunto by such business agent, to hold a business agent's license under this Act, or as requiring any holder of a business agent's license to hold a business subagent's license under this Act.

Disposal of moneys received by business subagent.

50G. Every business subagent shall, as soon as practicable after receiving any moneys from or on behalf of any person in respect of any transaction, in his capacity as a business subagent, pay such moneys to the business agent for whom he is acting in such transaction.

Liability on principal for certain acts, etc., of subagents.

cf. Act No. 7, 1935, s. 35.

50H. Every business agent shall be personally liable for all moneys received from or on behalf of any person by any business subagent acting in his capacity as a business subagent for such business agent.

(2) (a) The amendments made by subparagraph (ii) of paragraph (b) of subsection one of this section shall not apply to a corporation which is the holder of a business agent's license under the Business Agents Act, 1935-1941, or on whose behalf a person has taken out a license under that Act while such license is in force but upon the expiration of such license such amendments shall thereupon in all respects have full force and effect with respect to such corporation.

(b)

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(b) The amendment made by paragraph (c) of subsection one of this section shall not apply to any person who is the holder of a business agent's license issued under the Business Agents Act, 1935-1941, nor to any corporation which is the holder of any such license or on whose behalf any person has taken out any such license, while such license is in force, but upon the expiration of such license such amendments shall thereupon in all respects have full force and effect with respect to such person or corporation as the case may be.

(3) All moneys which immediately before the appointed day stood to the credit of the Auctioneers, Stock and Station and Real Estate Agents Administration Account, and all investments which immediately before that day were held by the council in connection with that account shall upon such day respectively be moneys standing to the credit of and investments held by the council in connection with the Auctioneers, Stock and Station, Real Estate and Business Agents Administration Account.

6. (1) Part IV of the Principal Act is amended—

Amendment
of Act
No. 28,
1941,
Part IV.
(Real Estate
Dealers and
Real Estate
Salesmen.)

(a) (i) by omitting from the definition of "Real estate dealer" in section fifty-one the words "land in allotments" and by inserting in lieu thereof the words "allotments of land";

Sec. 51.
(Interpre-
tation.)

(ii) by omitting the definition of "Real estate salesman" in the same section and by inserting in lieu thereof the following definition:—

"Real estate salesman" means a person who, for or on behalf of any real estate agent or real estate dealer, induces

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induces or attempts to induce or negotiates with a view to inducing any person—

- (a) to buy, sell or otherwise dispose of any land, including any allotment of land; or
- (b) to make any offer to buy, sell or otherwise dispose of any land, including any allotment of land; or
- (c) to accept any offer to buy, sell or otherwise dispose of any land, including any allotment of land; or
- (d) to enter into any contract for the purchase, sale or other disposal of any land, including any allotment of land,

but does not include an auctioneer, a stock and station agent or a real estate agent.

Sec. 52.
(Provisions
as to employ-
ment of
certain
persons by
real estate
dealers.)

- (b) by inserting in paragraph (a) of subsection one of section fifty-two after the word "Act" where lastly occurring the words "or whose license under this Act or the Business Agents Act, 1935, has been cancelled, unless a license has been subsequently granted to him".

(2) The amendments made by subsection one of this section shall commence upon the expiration of a period of three months after the appointed day.

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(Amendment).*

7. (1) Part VI of the Principal Act is amended—

Amendment
of Act No.
28, 1941,
Part VI.
(The Auc-
tioneers,
Stock and
Station and
Real Estate
Agents
Fidelity
Guarantee
Fund.)

- (a) by omitting from the heading thereto the words Heading. “and Real Estate” and by inserting in lieu thereof the words “, Real Estate and Business”;
- (b) by omitting from subsection one of section Sec. 65. sixty-five the words “and Real Estate” and by (The fund.) inserting in lieu thereof the words “, Real Estate and Business”;
- (c) by omitting from section sixty-six the words Sec. 66. “and Real Estate” and by inserting in lieu (Separate bank account.) thereof the words “, Real Estate and Business”;
- (d) (i) by omitting from subsection three of Sec. 71. section seventy-one the words “not less (Contributions to fund.) than” wherever occurring;
- (ii) by omitting from the same subsection the words “shall not be required to pay any further amount by way of contributions under this section” and by inserting in lieu thereof the words “shall after paying such amount pay annually a contribution of one pound”;
- (iii) by inserting at the end of the same subsection the following new paragraph:—
- This subsection shall apply whether any such amount was paid before or after the day appointed pursuant to subsection four
- of

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(Amendment).*

of section one of the Auctioneers, Stock and Station, Real Estate and Business Agents (Amendment) Act, 1957.

Sec. 74.
(Application
of fund.)

- (e) (i) by inserting in subsection one of section seventy-four after the words "real estate agent" the words "or a business agent";
- (ii) by inserting next after subsection two of the same section the following new subsection:—

(2A) No person shall have any claim against the fund in respect of any theft or fraudulent misapplication committed in the course of the business of a business agent unless such theft or fraudulent misapplication was committed at a time when such business agent was the holder of a business agent's license under this Act.

- (iii) by omitting from subsection three of the same section the words "that may be committed after such commencement" and by inserting in lieu thereof the words "in respect of which any claim against the fund arose,".

Sec. 75.
(Claims
against
the fund.)

- (f) by inserting at the end of subsection six of section seventy-five the following new subsection:—

(7) In respect of any theft or fraudulent misapplication after the day appointed pursuant to subsection four of section one of the Auctioneers, Stock and Station, Real Estate and Business Agents (Amendment) Act, 1957, subsections three and four of this section shall be read as though the words "five hundred" were omitted therefrom and the words "ten thousand" substituted therefor.

(g)

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(Amendment).*

(g) by omitting section seventy-eight and by inserting in lieu thereof the following section:—

Subst.
sec. 78.

78. (1) Any proceedings brought against the council in relation to any claim upon the fund shall be by action at law as for a debt due by the council and shall be brought—

Defences.

- (a) where the amount claimed does not exceed fifty pounds in a court of petty sessions holden before a stipendiary magistrate;
- (b) where the amount claimed exceeds fifty pounds but does not exceed one thousand pounds in a district court;
- (c) where the amount claimed exceeds one thousand pounds in the Supreme Court.

(2) In any of the actions referred to in subsection one of this section all defences which would have been available to the licensee in relation to whom the claim arose shall be available to the council, and in any such action all questions of costs shall be in the discretion of the court or the presiding judge.

(3) Any order for the payment of costs made by a court of petty sessions under the provisions of subsection two of this section shall operate as an order for the recovery of money under the Small Debts Recovery Act, 1912, as amended by subsequent Acts, and be enforceable as such under the provisions of that Act, as so amended.

(2) All moneys which immediately before the appointed day stood to the credit of the Auctioneers, Stock and Station and Real Estate Agents Fidelity Guarantee Fund or the Auctioneers, Stock and Station and Real Estate Agents Fidelity Guarantee Account shall upon that day become and be respectively moneys standing

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standing to the credit of the Auctioneers, Stock and Station, Real Estate and Business Agents Fidelity Guarantee Fund and the Auctioneers, Stock and Station, Real Estate and Business Agents Fidelity Guarantee Account.

(3) All investments which immediately before the appointed day were held by the council in connection with the Auctioneers, Stock and Station and Real Estate Agents Fidelity Guarantee Fund shall upon that day become and be investments held by the council in connection with the Auctioneers, Stock and Station, Real Estate and Business Agents Fidelity Guarantee Fund.

Amendment
of Act
No. 28, 1941,
Part VII.
(General.)
New
sec. 84A.

8. Part VII of the Principal Act is amended by inserting next after section eighty-four the following new section:—

Penalty for
publishing
false or mis-
leading ad-
vertisements.
cf. Act No.
39, 1912,
s. 97.

84A. (1) Any licensee or real estate dealer, as defined in section fifty-one of this Act, who publishes or causes to be published in the course of his business as such, or the holder of a business subagent's license who publishes or causes to be published in connection with any matter in which he is acting as a business subagent, any statement which—

(a) is intended or apparently intended by such licensee or real estate dealer or holder of a business subagent's license to promote the sale of any land or livestock or any business; and

(b) is to his knowledge false or misleading in any material particular,

shall be guilty of an offence against this Act.

(2) A statement shall be deemed to be published within the meaning of this section if it is—

(a) inserted in any newspaper or any other publication printed and published in New South Wales; or

(b)

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(b) publicly exhibited—

(i) in, on, over or under any building, vehicle or place (whether or not a public place and whether on land or water); or

(ii) in the air in view of persons being or passing in or on any street or public place; or

(c) contained in any document gratuitously sent or delivered to any person or thrown or left upon premises in the occupation of any person; or

(d) broadcast by wireless transmission.

(3) In any proceedings under this section against a licensee or a real estate dealer or the holder of a business subagent's license for publishing any statement aforesaid or causing the same to be published, if it is proved that such statement was false or misleading in any material particular, the licensee or the real estate dealer or the holder of the business subagent's license who published the statement or caused the same to be published shall be deemed to have published the same or to have caused the same to be published with knowledge of its falsity or misleading character, as the case may be, unless he proves that having taken all reasonable precautions against committing an offence under this section he had reasonable grounds to believe and did believe that the statement was true and had no reason to suspect that the statement was false or misleading.

(4) Notwithstanding any proceedings against any person for an offence under this section (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.

(5)

Act No. 15, 1957.

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(Amendment).*

(5) This section shall be read and construed as in aid of and not in derogation from any enactment or law relating to false or misleading advertisements or other statements.

(6) In this section "newspaper" includes any periodical publication.

Sec. 2 (3).

SCHEDULE.

No. of Act.	Name of Act.	Extent of Repeal.
1935, No. 7 ...	Business Agents Act, 1935.	The whole.
1941, No. 28...	Auctioneers, Stock and Station and Real Estate Agents Act, 1941.	Part V and the matter relating to Part V in section two.

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

J. NORTHCOTT,
Governor.

*Government House,
Sydney, 12th April, 1957.*

