

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.

I. P. K. VIDLER,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 24 February, 1972.*

New South Wales



ANNO VICESIMO PRIMO

ELIZABETHÆ II REGINÆ

Act No. , 1972.

An Act to make further provisions with respect to the powers, authorities, duties and functions of the Council of Auctioneers and Agents and the carrying on of the business of an auctioneer, stock and station agent, real estate agent or business agent; to vary in certain respects the procedure for the issue of licenses and certificates of registration under the Auctioneers, Stock and Station and Real Estate Agents Act, 1941; for these and other purposes to amend that Act; and for purposes connected therewith.

BE

Auctioneers and Agents (Amendment).

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

1. (1) This Act may be cited as the "Auctioneers and Agents (Amendment) Act, 1972".

Short title, commencement and construction.

(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

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

2. Part I of the Principal Act is amended—

Amendment of Act No. 28, 1941.
(Part I.—Preliminary.)

15 (a) by omitting subsection one of section one and by inserting in lieu thereof the following subsection :—

Sec. 1.
(Short title.)

(1) This Act may be cited as the "Auctioneers and Agents Act, 1941".

20 (b) (i) by omitting from section two the figures "19" and by inserting in lieu thereof the figures and letter "19A";

Sec. 2.
(Division into Parts.)

(ii)

Auctioneers and Agents (Amendment).

- (ii) by omitting from the same section the figures and letter "50H" where firstly occurring and by inserting in lieu thereof the figures and letter "50I";
- 5 (iii) by inserting next after the matter relating to Division 4 of Part III in the same section the following new matter :—
- DIVISION 5.—*Stock and Station Agents—*
s. 50I.
- 10 (iv) by omitting from the same section the figures "63" wherever occurring and by inserting in lieu thereof the figures and letter "63A";
- (c) (i) by omitting the definition of "Chattel Sec. 3. (Definitions.) auctioneer" in subsection one of section three;
- 15 (ii) by inserting next after the definition of "Employee" in the same subsection the following new definition :—
- "Farm produce" means cereals, grain, vegetables, potatoes, onions, other edible roots and tubers, tobacco leaf, fruit, hay, chaff, dairy produce, live or dead poultry and game, and eggs.
- 20
- (iii) by omitting from the definition of "Land used for agricultural or pastoral purposes" in the same subsection the words "greater in area than five acres";
- 25
- (iv) by omitting from the definition of "Real estate agent" in the same subsection the words "in respect of land" and by inserting in lieu thereof the words "in respect of any parcel of land that is greater in area than five acres and that is";
- 30

(v)

Auctioneers and Agents (Amendment).

- (v) by inserting at the end of paragraph (c) of the definition of "Stock and station agent" in the same subsection the word "or";
- 5 (vi) by omitting from subparagraph (i) of paragraph (b) of subsection three of the same section the word "or" where thirdly occurring;
- (vii) by inserting next after the same subparagraph the following new subparagraph :—
- 10 (ia) business as an agent for the collection of contributions levied pursuant to subsection two of section fifteen of the Conveyancing (Strata Titles) Act, 1961, or for the collection of amounts payable in relation to any premises to a company by a person who is the holder of shares in the company and who, by reason of his holding those shares, is entitled to possession of those premises; or
- 15
- 20 (viii) by inserting in the same paragraph after the word "instalments" where secondly occurring the words ", contributions or amounts";
- (ix) by omitting from subsection six of the same section the words "sections thirty-nine and fifty-two" and by inserting in lieu thereof the words "sections 39AA and 52A";
- 25
- (x) by omitting from paragraph (c) of subsection eight of the same section the words "sections thirty-nine and fifty-two" and by inserting in lieu thereof the words "sections 39AA and 52A".
- 30

Auctioneers and Agents (Amendment).

3. Part II of the Principal Act is amended—

Further amendment of Act No. 28, 1941. (Part II.—The Council of Auctioneers and Agents.)

(a) (i) by inserting next after subsection one of section eight the following new subsection :— (Constitution of council.)

5 (1A) In this section, "chattel auctioneer" means an auctioneer who is the holder of a chattel auctioneer's license, but does not include an auctioneer who is the holder of a chattel auctioneer's license and any other auctioneer's license.

10 (ii) by inserting in subparagraph (i) of paragraph (b) of subsection four of the same section after the word "if" the words "(whether or not he also holds a chattel auctioneer's license)";

15 (iii) by omitting from the same subparagraph the words ", other than a chattel auctioneer's license" and by inserting in lieu thereof the words "that is a general license, a country license, a district license or a primary products license";

20 (b) (i) by omitting paragraph (b) of section nine and by inserting in lieu thereof the following paragraph :— (Vacation of office.)

25 (b) he becomes a mentally ill person, a protected person or an incapable person within the meaning of the Mental Health Act, 1958 ; or

(ii)

Auctioneers and Agents (Amendment).

(ii) by inserting at the end of paragraph (g) of the same section the following word and new paragraph :—

; or

5 (h) being an elected member, he ceases to be eligible for enrolment—

10 (i) in the case of a member referred to in subparagraph (i) of paragraph (b) of subsection two of section eight of this Act—in the roll of auctioneers, other than chattel auctioneers;

15 (ia) in the case of a member referred to in subparagraph (ia) of that paragraph—in the roll of chattel auctioneers;

20 (ii) in the case of a member referred to in subparagraph (ii) of that paragraph—in the roll of stock and station agents;

25 (iii) in the case of a member referred to in subparagraph (iii) of that paragraph—in the roll of real estate agents;

(iv) in the case of a member referred to in subparagraph (iv) of that paragraph—in the roll of business agents.

Auctioneers and Agents (Amendment).

4. Part III of the Principal Act is amended—

Further
amendment
of Act No.
28, 1941.
(Part III.—
Auctioneers,
Stock and
Station
Agents,
Real Estate
Agents and
Business
Agents.)

- 5 (a) (i) by omitting from paragraph (c) of subsection Sec. 22.
two of section twenty-two the words “in (Licenses.)
respect of any estate in land or goods,” and by
inserting in lieu thereof the words “except in
respect of goods, not”;
- (ii) by omitting from the same paragraph the
words “as defined in subsection one of section
forty-four of this Act”;
- 10 (iii) by inserting in the same paragraph after the
word “prescribed” the words “, unless he holds
or the corporation holds in respect of the
employee some other auctioneer’s license
authorising him or it so to act”;
- 15 (iv) by omitting paragraph (d) of the same subsec-
tion and by inserting in lieu thereof the
following paragraph :—
- 20 (d) Nothing in this Act shall be construed
so as to prevent a person from taking out or
holding, or a corporation from taking out or
holding in respect of an employee or different
employees, a chattel auctioneer’s license as
well as any other auctioneer’s license.

(v)

Auctioneers and Agents (Amendment).

(v) by inserting next after subsection six of the same section the following new subsection :—

5 (7) The registrar may, upon application made to him, issue a duplicate license in the place of a license that has been lost, destroyed or damaged.

10 (b) (i) by inserting in subsection three of section Sec. 23. twenty-three after the word “application” (Pro- where firstly occurring the words “(not being cedure.) a prescribed application or a special application)”;

15 (ii) by omitting from the same subsection the words “or the renewal of a license” and by inserting in lieu thereof the words “of a license (not being a renewal of a license)”;

(iii) by inserting in subsection four of the same section after the word “may” the words “, in the case of an application for a license or for the renewal of a license,”;

20 (iv) by inserting in the same subsection after the word “shall” the words “, in the case of an application (not being a prescribed application or a special application) for a license (not being a renewal of a license),”;

25 (v) by omitting from paragraph (b) of the same subsection the words “or in respect of an employee” wherever occurring;

(vi)

Auctioneers and Agents (Amendment).

(vi) by omitting subsection six of the same section and by inserting in lieu thereof the following subsection :—

5 (6) (a) Where an application for the renewal of a license is made before the day on which the license would, but for this subsection, expire (which day is, in this subsection, referred to as “the date of expiry”) and—

10 (i) the renewal of the license is not issued before the date of expiry; and

(ii) the application is not refused or withdrawn before the date of expiry,

the license shall be deemed to continue in force after the date of expiry until—

15 (iii) a renewal of license is issued;

(iv) the application is refused or withdrawn; or

(v) the expiration of twelve months after the date of expiry,

20 whichever first occurs.

(b) Where a renewal of license is, after the date of expiry, issued in respect of the license referred to in paragraph (a) of this subsection, the renewal shall take effect as from the date of expiry of the license.

25

(vii) by inserting in paragraph (b) of subsection (6A) of the same section after the word “license” where firstly occurring the words “deemed by subsection six of this section to continue in force after the day on which the license would, but for that subsection, have expired”;

30

(viii) by omitting from the same paragraph the words “provisional license had effect” and by inserting in lieu thereof the words “license was so deemed to continue in force”;

35

(ix)

Auctioneers and Agents (Amendment).

- 5 (ix) by inserting in paragraph (a) of subsection seven of the same section after the word "licenses" the words ", may object to the grant of an application (not being a prescribed application or a special application) for a license (not being a renewal of a license)";
- 10 (x) by omitting from the same paragraph the words "the application" and by inserting in lieu thereof the words "an application for a license or for the renewal of a license";
- 15 (xi) by omitting from paragraph (b) of the same subsection the words "the statement" and by inserting in lieu thereof the words "a statement so lodged by a member of the police force";
- 20 (xii) by inserting in subsection eight of the same section after the word "made" the words "pursuant to subsection seven of this section";
- 25 (xiii) by inserting in subsection nine of the same section after the word "objects" the words "pursuant to subsection seven of this section";
- 30 (xiv) by omitting from subsection (10A) of the same section the words "for an auctioneer's license (being a general license) or a business agent's license and the applicant is a person to whom such a license may be granted pursuant to the provisions of section twenty-six or twenty-seven of this Act" and by inserting in lieu thereof the words "a special application";
- 35 (xv) by inserting next after subsection (10AB) of the same section the following new subsection :—
- (10AC) Where pursuant to subsection seven of this section an application for the grant of a license (not being a renewal of a license)

Auctioneers and Agents (Amendment).

5 license) is to be heard and determined by a court of petty sessions, references in subsections (10A) and (10AB) of this section to the council shall be read and construed as references to the court.

(xvi) by inserting next after subsection (10c) of the same section the following new subsection :—

10 (10D) A license or renewal of a license shall not be granted in pursuance of an application if the application, or the statement referred to in the definition of “special application” in subsection thirteen of this section accompanying a special application, contains any matter that is false or
15 misleading in a material particular.

(xvii) by inserting next after subsection twelve of the same section the following new subsection :—

(13) In this section—
20 “interstate license” has the meaning ascribed thereto by subsection one of section twenty-six of this Act;

25 “prescribed application” means an application for a license (not being a renewal of a license) that is made by a person who is the holder of a license;

30 “special application” means an application for a license (not being a renewal of a license) that is accompanied by a statement containing the prescribed particulars and containing a declaration to the effect that, at all times during the period of five years immediately preceding the making of the application—

35 (a) where the application is made by an individual or by a corporation in respect of an
employee

Auctioneers and Agents (Amendment).

employee—the individual was the holder of, or an employee of a corporation that was, in respect of the employee, the holder of, an interstate license that is, under section twenty-six of this Act, deemed to be equivalent to a license of the same class as that applied for; or

(b) where the application is made by a corporation on its own behalf—the corporation was the holder of an interstate license that is, under section twenty-six of this Act, deemed to be equivalent to a license of the same class as that applied for.

(c) (i) by omitting from subsection three of section 23A the words “paragraphs (a) and (b) of”; Sec. 23A. (Restoration of license not renewed.)

(ii) by omitting from the same subsection the words “license or a renewal of a license” and by inserting in lieu thereof the words “renewal of a license, and shall so apply as if paragraph (b) of subsection (6A) of that section were amended by omitting the words ‘license was so deemed to continue in force’ and by inserting in lieu thereof the words ‘provisional license had effect’ ”;

(d) (i) by omitting subsection one of section twenty-four and by inserting in lieu thereof the following subsection :— Sec. 24. (Variation of license.)

(1) Where a corporation which has taken out a license in respect of an employee makes an application for the license to be varied by the

Auctioneers and Agents (Amendment).

the substitution of the name of some other employee nominated by the corporation for the purpose, the license may, subject to subsection two of this section, be so varied.

5 (ii) by omitting from subsection two of the same section the words "or a renewal of a license";

(e) by omitting section twenty-six and by inserting in lieu thereof the following section :— Subst.
sec. 26.

26. (1) In this section—

10 "interstate license" means a license issued under the law of another State, or of a Territory, of the Commonwealth; Interstate
licenses.

"State license" means a license issued under this Act.

15 (2) The registrar, if authorised to do so by the council, may, from time to time, by order published in the Gazette, declare a class of interstate licenses specified or described in the order to be, for the purposes of this section, equivalent to a class of State licenses so specified or described.

25 (3) For the purposes of the definition of "special application" in subsection thirteen of section twenty-three of this Act, an interstate license shall be deemed to be equivalent to a State license if the interstate license is of a class of interstate licenses declared, under subsection two of this section, to be, for the purposes of this section, equivalent to the class of State licenses to which the State license belongs.

30 (4) Where during the period of five years immediately preceding the making of an application referred to in the definition of "special application" in subsection thirteen of section twenty-three of this Act, a person was, for any part of that period, the holder of, or an employee of a corporation that was, in respect of the employee, the holder of, a State

license

Auctioneers and Agents (Amendment).

5 license of the same class as that applied for, that person shall, for the purposes of that definition, be deemed to have been, for that part of that period, the holder of an interstate license that is equivalent to the license applied for.

(f) by omitting section twenty-seven ;

Sec. 27.
(Grant of auctioneers' and business agents' licenses to persons resident in the Australian Capital Territory.)

(g) by omitting section twenty-eight ;

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

(h) by inserting next after section thirty the following new section :—

New sec. 30A.

10 30A. Notwithstanding anything in this Act, where, after the commencement of the Auctioneers and Agents (Amendment) Act, 1972, the court makes—

Commencement of certain determinations and orders.

(a) a determination refusing—

15 (i) an application for the renewal of a license under section twenty-three of this Act ; or

(ii) an application made under section 23A of this Act ; or

20 (b) an order under section twenty-nine of this Act,

the

Auctioneers and Agents (Amendment).

5 the determination or order shall have no force or effect until the expiration of twenty-one days after the making thereof and, where within that period of twenty-one days an appeal to a District Court is commenced under section thirty-one of this Act in relation to the determination or order, until the Court confirms the determination or order or dismisses the appeal.

10 (i) by omitting from subsection (4A) of section thirty-one the words "refusal of" and by inserting in lieu thereof the words "the determination refusing"; Sec. 31. (Appeal.)

15 (j) (i) by omitting from section 36A the word "Where" and by inserting in lieu thereof the words "Subject to subsection two of this section, where"; Sec. 36A. (Unclaimed trust moneys held by a licensee.)

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

20 (2) Subsection one of this section does not apply to moneys that are of a class specified or described in the regulations.

25 (3) The regulations may make provision for or with respect to prescribing a written record to be kept in relation to moneys referred to in subsection two of this section by a licensee who holds any such moneys.

30 (4) Without affecting the generality of section thirty-eight of this Act, a written record referred to in subsection three of this section shall be deemed to be a written record required to be made in accordance with that section.

(k)

Auctioneers and Agents (Amendment).

(k) by omitting section 38c;

Sec. 38c.
(Statement of employees, etc., and their wages to be kept by business agents.)

(l) (i) by omitting from paragraph (b) of subsection two of section 38D the word "forthwith";

Sec. 38D.
(Audit of licensees' books, records, etc.)

(ii) by inserting next after the same subsection the following new subsections :—

5

(2A) Where a person to whom this section applies receives the report referred to in subsection two of this section earlier than fourteen days before the expiration of three months after the prescribed day in any year applicable to him, he shall lodge it under that subsection not later than fourteen days after so receiving it.

10

(2B) The report referred to in subsection two of this section shall be in or to the effect of the form prescribed.

15

(m) by omitting from paragraph (b) of subsection one of section 38E the words "where the registrar is satisfied that a person so registered is not conveniently available,";

Sec. 38E.
(Qualifications and duties of auditors.)

20

(n) (i) by omitting from subsection one of section thirty-nine the words "a court of petty sessions holden before a stipendiary magistrate, and subject to such conditions as the court may impose" and by inserting in lieu thereof the words "the council";

Sec. 39.
(Certain persons not to be employed by licensees.)

25

(ii)

Auctioneers and Agents (Amendment).

(ii) by inserting next after the same subsection the following new subsection :—

5 (1A) A licensee whose application for approval under section 39AA of this Act is granted shall comply with such conditions as are imposed pursuant to that section in relation to the approval.

(o) by inserting next after section thirty-nine the following new section :—

10 39AA. (1) An application for the approval of the council referred to in subsection one of section thirty-nine of this Act, or for the removal or variation of any conditions imposed under this section in relation to the approval, shall be made by the licensee concerned in or to the effect of the form prescribed and shall be lodged with the registrar.

15 (2) The council may require an applicant under this section to supply it with any further information it considers necessary in relation to the application.

20 (3) The council may—

25 (a) in the case of an application for the approval referred to in subsection one of section thirty-nine of this Act—grant the application conditionally or unconditionally or refuse the application ; or

30 (b) in the case of an application for the removal or variation of any conditions imposed under this section—grant or refuse the application and in either case, if it thinks fit, impose other conditions,

and the registrar shall in writing notify the applicant as soon as practicable of the council's decision.

Auctioneers and Agents (Amendment).

5 (4) An applicant under this section aggrieved by a decision of the council under this section may, in the manner prescribed and within twenty-one days of being notified by the registrar of the decision, appeal to the court of petty sessions having jurisdiction under subsection eight of section three of this Act.

10 (5) An appeal under this section shall not be determined except by a court of petty sessions held before a stipendiary magistrate.

(6) An appeal under this section shall not be entertained unless at least ten days' notice, in writing, of the appeal has been given to the registrar, setting out the grounds of the appeal.

15 (7) The court may, on an appeal under this section, confirm the decision appealed against or give such directions in the matter as seem proper or otherwise determine the matter.

20 (8) The decision of the court on an appeal under this section shall be final and shall be deemed to be the decision of the council.

(9) Upon determination of an appeal under this section, the clerk of the court shall notify the decision of the court to the registrar.

25 (10) An approval given, and any conditions imposed, by a court of petty sessions under section thirty-nine of this Act and in force immediately before the commencement of the Auctioneers and Agents (Amendment) Act, 1972, shall be
30 deemed to be an approval given, and conditions imposed, by the council under this section.

(P)

Auctioneers and Agents (Amendment).

- (p) (i) by omitting from section 42A the words "two months" wherever occurring and by inserting in lieu thereof the words "twenty-one days"; Sec. 42A. (Review of commissions, fees, etc.)
- 5 (ii) by inserting next after subsection four of the same section the following new subsection :—
- (4A) The regulations may make provision for or with respect to requiring the inclusion, in statements of claim or itemised accounts referred to in this section, of a notice, in the prescribed form and manner, drawing attention to the provisions of subsection four of this section.
- 10
- (q) (i) by omitting from paragraph (b) of section forty-three the word "or" where lastly occurring; Sec. 43. (Publication of name and place of business in advertisements.)
- 15 (ii) by omitting paragraph (c) of the same section and by inserting in lieu thereof the following paragraphs :—
- (c) where such licensee is a corporation or employee of a corporation and the corporation is carrying on business in its own name, the name of the corporation and the address of its place of business; or
- 20
- (d) where such licensee is a corporation or employee of a corporation and the corporation is 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 its own name or such business name, and the address of its place of business;
- 25
- 30

(r)

Auctioneers and Agents (Amendment).

- (r) (i) by omitting subsection one of section forty-four Sec. 44.
and by inserting in lieu thereof the following (Definition.)
subsection :—
- 5 (1) In this Division, “property”, except
as provided in subsection two of this section,
does not include wool.
- 10 (ii) by omitting from subsection two of the same
section the words “the expression ‘farm
produce’, as defined in subsection one of this
section” and by inserting in lieu thereof the
words “the expression ‘property’ in this
Division”;
- 15 (s) (i) by omitting from subsection one of section Sec. 45.
forty-five the words “cattle or farm produce” (Splitting
where firstly occurring and by inserting in lieu of lots pur-
thereof the words “any property”; chased at
auction.)
- 20 (ii) by omitting from the same subsection the
words “cattle or farm produce” where
secondly, thirdly and fourthly occurring and
by inserting in lieu thereof the word
“property”;
- 25 (iii) by omitting from subsection two of the same
section the words “cattle or farm produce”
where firstly occurring and by inserting in lieu
thereof the words “any property”;
- (iv) by omitting from the same subsection the
words “cattle or farm produce” where
secondly and thirdly occurring and by insert-
ing in lieu thereof the word “property”;

(t)

Auctioneers and Agents (Amendment).

- (t) by omitting from section forty-six the words “cattle or farm produce” wherever occurring and by inserting in lieu thereof the word “property”;

Sec. 46.
(Entry by auctioneer or employee in record or book kept by auctioneer as purchaser of property sold by auction of any name other than the name of the actual successful bidder.)

- 5 (u) (i) by omitting from subsection one of section forty-seven the words “cattle or farm produce” where firstly occurring and by inserting in lieu thereof the word “property”;

Sec. 47.
(Material parts of sections to be read or recited aloud at sales by auction.)
- 10 (ii) by omitting from the same subsection the words “cattle or farm produce” where secondly occurring and by inserting in lieu thereof the words “any property”;

- (v) by omitting from section forty-eight the words “of any goods or chattels” and by inserting in lieu thereof the words “, of any property or of wool”;

Sec. 48.
(Misrepresentation as to quality, etc.)

- 15 (w) by omitting from subsection one of section 50A the words “and shall be liable to a penalty of not less than twenty dollars and not exceeding four hundred dollars or to imprisonment for a term not exceeding two years, or both” and by inserting in lieu thereof

Sec. 50A.
(Misrepresentation by business agent or salesman.)
- 20 the words “against this Act”;

(x)

Auctioneers and Agents (Amendment).

- (x) by inserting next after Division 4 of Part III the following new Division :—

New
Division
5 of
Part III.

DIVISION 5.—*Stock and Station Agents.*

50i. (1) Any stock and station agent or stock and station salesman, as defined in section fifty-one of this Act, who by any statement, representation or promise that is false, misleading or deceptive (whether to his knowledge or not) or by any concealment of material fact (whether intended or not), induces or attempts to induce any person to enter into an agreement or contract for—

Misrepresentation
by stock
and
station
agent or
salesman.

- (a) the sale, purchase, exchange, letting or taking on lease of land used for agricultural or pastoral purposes;
- (b) the collection of rents payable in respect of any lease or letting of land used for agricultural or pastoral purposes;
- (c) the sale, purchase or exchange of live stock; or
- (d) the provision of agistment for live stock or the collection of fees for such agistment,

shall be guilty of an offence against this Act.

(2) Without limiting the generality of subsection one of this section a statement, representation or promise shall, for the purposes of that subsection, be deemed to be false, misleading or deceptive if the statement, representation or promise is of such a nature that it would reasonably tend to lead to a belief in the existence of a state of affairs that does not in fact exist, whether or not the statement, representation or promise indicates that that state of affairs does exist.

(3)

Auctioneers and Agents (Amendment).

5 (3) It is a sufficient defence to a prosecution under subsection one of this section if the defendant proves that the statement, representation or promise arising out of the making of a statement, representation or promise that is false, misleading or deceptive was based upon a statement in writing made to the defendant by the owner of the land referred to in paragraph (a) or (b) of subsection one of this section or of the land to which the agistment referred to in paragraph (d) of that subsection relates or by the owner of the live stock referred to in paragraph (c) of that subsection, as the case may require.

10

5. Part IV of the Principal Act is amended—

Further amendment of Act No. 28, 1941. (Part IV.—Real Estate Dealers, Real Estate Salesmen, Trainee Auctioneers, Business Salesmen and Stock and Station Salesmen.)

- 15 (a) (i) by omitting from subparagraph (i) of paragraph (b) of the definition of “Real estate salesman” in section fifty-one the word “or” where secondly occurring; (Interpretation.)
- 20 (ii) by inserting next after subparagraph (ii) of the same paragraph the following new subparagraph :—
- (iii) collects contributions levied pursuant to subsection two of section fifteen of the Conveyancing (Strata Titles) Act, 1961,

Auctioneers and Agents (Amendment).

5 1961, or amounts payable in relation to any premises to a company by a person who is the holder of shares in the company and who, by reason of his holding those shares, is entitled to possession of those premises; or;

10 (b) (i) by omitting from subsection one of section fifty-two the words "a court of petty sessions holden before a stipendiary magistrate, and, subject to such conditions as the court may impose" and by inserting in lieu thereof the words "the council";

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

15 (ii) by inserting next after the same subsection the following new subsection :—

(1A) A real estate dealer whose application for approval under section 52A of this Act is granted shall comply with such conditions as are imposed pursuant to that section in relation to the approval.

20 (c) by inserting next after section fifty-two the following new section :—

New sec. 52A.

25 52A. (1) An application for the approval of the council referred to in subsection one of section fifty-two of this Act, or for the removal or variation of any conditions imposed under this section in relation to the approval, shall be made by the real estate dealer concerned in or to the effect of the form prescribed and shall be lodged with the registrar.

Procedure for approvals under section 52.

30 (2) The council may require an applicant under this section to supply it with any further information it considers necessary in relation to the application.

(3)

Auctioneers and Agents (Amendment).

(3) The council may—

5 (a) in the case of an application for the approval referred to in subsection one of section fifty-two of this Act—grant the application conditionally or unconditionally or refuse the application; or

10 (b) in the case of an application for the removal or variation of any conditions imposed under this section—grant or refuse the application and in either case, if it thinks fit, impose other conditions,

and the registrar shall in writing notify the applicant as soon as practicable of the council's decision.

15 (4) An applicant under this section aggrieved by a decision of the council under this section may, in the manner prescribed and within twenty-one days of being notified by the registrar of the decision, appeal to the court of petty sessions having jurisdiction under subsection eight of section 20 three of this Act.

(5) An appeal under this section shall not be determined except by a court of petty sessions held before a stipendiary magistrate.

25 (6) An appeal under this section shall not be entertained unless at least ten days' notice, in writing, of the appeal has been given to the registrar, setting out the grounds of the appeal.

30 (7) The court may, on an appeal under this section, confirm the decision appealed against or give such directions in the matter as seem proper or otherwise determine the matter.

(8) The decision of the court on an appeal under this section shall be final and shall be deemed to be the decision of the council.

(9)

Auctioneers and Agents (Amendment).

(9) Upon determination of an appeal under this section, the clerk of the court shall notify the decision of the court to the registrar.

5 (10) An approval given, and any conditions imposed, by a court of petty sessions under section fifty-two of this Act and in force immediately before the commencement of the Auctioneers and Agents (Amendment) Act, 1972, shall be deemed to be an approval given, and conditions imposed, by
10 the council under this section.

(d) by omitting from paragraph (d) of subsection two of section fifty-four the words "with the registrar, who" and by inserting in lieu thereof the words "by a real estate dealer with the registrar within the pre-
15 scribed time, and the registrar"; Sec. 54.
(Real estate dealer to have registered place of business.)

(e) (i) by omitting from subsection three of section fifty-seven the words "the application for registration or for the renewal of registration" and by inserting in lieu thereof the words "an application for registration (not being a prescribed application or an application for
20 renewal of registration)"; Sec. 57.
(Procedure.)

(ii) by inserting in subsection four of the same section after the word "may" the words ", in the case of an application for registration or renewal of registration,";
25

(iii) by omitting from the same subsection the word "shall";

(iv) by inserting in the same subsection after the word "particulars" the words ", shall, in the case of an application for registration (not being a prescribed application or an applica-
30 tion for renewal of registration)";

(v)

Auctioneers and Agents (Amendment).

- (v) by inserting in subsection (4B) of the same section after the word "registration" where firstly occurring the words "issued under subsection (4A) of this section";
- 5 (vi) by omitting from subsection (4c) of the same section the words "Where a" and by inserting in lieu thereof the words "Subject to subsection (4CA) of this section, where a";
- 10 (vii) by inserting in the same subsection after the word "refused" the words "or withdrawn";
- (viii) by omitting from the same subsection the word "twelve" and by inserting in lieu thereof the word "three";
- 15 (ix) by inserting next after the same subsection the following new subsection :—
- (4CA) (a) Subject to paragraph (d) of this subsection, where—
- 20 (i) a provisional certificate of registration (in this subsection referred to as "the firstmentioned certificate") has been issued under subsection (4A) of this section, or under this subsection, to an applicant for registration or renewal of registration ;
- 25 (ii) a certificate of registration or renewal of registration has not been granted in pursuance of his application ; and
- (iii) his application has not been refused or withdrawn,
- 30 the registrar may issue to the applicant a further provisional certificate of registration (in this subsection referred to as "the last-mentioned certificate").

(b)

Auctioneers and Agents (Amendment).

5

(b) The lastmentioned certificate shall take effect or be deemed to have taken effect on and from the expiration of three months after the firstmentioned certificate took effect.

10

(c) Subject to this subsection, the holder of the lastmentioned certificate shall, for all purposes of this Act, be deemed to be, and, where the certificate was issued after the expiration of the period of three months after the firstmentioned certificate took effect, to have been, as from the expiration of that period, the holder of the certificate of registration specified in his application until such time as a certificate of registration or renewal of a certificate of registration is issued to him pursuant to this section or until his application is refused or withdrawn or until the expiration of three months after the date on which the lastmentioned certificate took effect, whichever first occurs.

15

20

25

(d) One or more, but not more than three, provisional certificates of registration may be issued under this subsection in relation to one application.

30

(x) by inserting in subsection (4E) of the same section after the words "provisional certificate of registration" the words "issued under subsection (4A) of this section in relation to the application and any provisional certificates of registration issued under subsection (4CA) of this section in relation thereto";

35

(xi) by inserting in paragraph (a) of subsection (4F) of the same section after the word "licenses" the words ", may object to the grant of an application for registration (not being a prescribed application or an application for renewal of registration)";

(xii)

Auctioneers and Agents (Amendment).

- (xii) by omitting from the same paragraph the words “the application” and by inserting in lieu thereof the words “an application for registration or renewal of registration”;
- 5 (xiii) by omitting from paragraph (b) of the same subsection the words “the statement” and by inserting in lieu thereof the words “a statement so lodged by a member of the police force”;
- 10 (xiv) by inserting in subsection (4G) of the same section after the word “made” the words “pursuant to subsection (4F) of this section”;
- (xv) by inserting in subsection seven of the same section after the word “objects” the words
15 “pursuant to subsection (4F) of this section”;
- (xvi) by inserting next after paragraph (b) of subsection nine of the same section the following new paragraph :—
- 20 (b1) Subject to this Act, but notwithstanding anything in paragraph (a) or (b) of this subsection, where—
- 25 (i) an application for the grant or renewal of a certificate of registration (in this paragraph referred to as “the first-mentioned certificate”) is granted after the commencement of the Auctioneers and Agents (Amendment) Act, 1972; and
- (ii)

Auctioneers and Agents (Amendment).

(ii) the applicant is, at the time of the grant, the holder of one or more other certificates of registration,

5 the firstmentioned certificate shall be in force, pursuant to the grant of the application, for a period expiring on the day on which that other certificate or those other certificates are due to expire, or where two or more of those other certificates are due to expire on different
10 days, on the later or latest of those days.

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

15 (11) A certificate of registration shall not be issued if the application therefor contains any matter that is false or misleading in a material particular.

20 (12) The registrar may, upon application made to him and accompanied by a fee of fifty cents, issue a duplicate certificate of registration in the place of a certificate of registration that has been lost, destroyed or damaged.

25 (13) In this section, “prescribed application” means an application for a certificate of registration (not being an application for renewal of registration) that is made by a person to whom has been issued, and who is the holder of, a certificate of registration (not being a provisional certificate of registration).

30 (f) by inserting next after subsection six of section fifty-nine the following new subsection :—

35 (7) Where there is a change of address of the registered office of the registered employer by whom or by which the holder of a certificate of registration under this Part is, or is to be, employed,
the

Sec. 59.
(Registered employer and registered address.)

Auctioneers and Agents (Amendment).

5 the holder of the certificate shall, within the prescribed time after the change or the issue of the certificate (whichever last occurs), make application under subsection five of this section for the certificate to be varied accordingly, unless within that time he makes application under that subsection for the name of the registered employer specified therein to be substituted.

10 (g) by inserting next after subsection three of section sixty the following new subsection :— Sec. 60. (Cancellation of certificate of registration.)

(4) Upon cancellation of a certificate of registration under this section, the clerk of the court by which the certificate is cancelled shall notify the decision of the court to the registrar.

15 (h) by inserting next after section sixty the following new section :— New sec. 60A.

20 60A. Notwithstanding anything in this Act, where, after the commencement of the Auctioneers and Agents (Amendment) Act, 1972, the court makes— Commencement of certain determinations and orders.

(a) a determination refusing an application for the renewal of registration under section fifty-seven of this Act; or

25 (b) an order under section sixty of this Act, the determination or order shall have no force or effect until the expiration of twenty-one days after the making thereof and, where within that period of twenty-one days an appeal to a District Court is commenced under section sixty-one of this Act in relation to the determination or order, until the Court confirms the determination or order or dismisses the appeal.

30 (i)

Auctioneers and Agents (Amendment).

- (i) by omitting from subsection (4A) of section sixty-
one the words "refusal of" and by inserting in lieu
thereof the words "the determination refusing";
- 5 (j) by inserting next after section sixty-three the
following new section :—
- 63A. Where the court has made an order that
a certificate of registration be delivered up to the
registrar the holder of such certificate shall, if he
refuses, neglects or fails to comply with such order,
10 be guilty of an offence against this Act.
6. Part VII of the Principal Act is amended—
- (a) by inserting in subsection two of section eighty-four
after the word "land" where secondly occurring
the words "or any interest in such allotment";
- 15 (b) by omitting from paragraph (a) of subsection one
of section 84A the words "land or livestock or any
business" and by inserting in lieu thereof the word
"property";
- (c)

Sec. 61.
(Appeal.)

New sec.
63A.

Failure to
deliver up
certificate.

Further
amendment
of Act No.
28, 1941.
(Part VII.—
General.)

Sec. 84.
(Offences in
connection
with the
sale of
allotments
of land.)

Sec. 84A.
(Penalty for
publishing
false or
misleading
advertise-
ments.)

Auctioneers and Agents (Amendment).

- (c) by inserting in subsection one of section eighty-six after the word "Act" where firstly occurring the words ", or in any statement, referred to in subsection thirteen of section twenty-three of this Act, accompanying a special application (as defined in that subsection),".

Sec. 86.
(Furnishing incorrect particulars in applications.)

7. (1) Where an application, made under section twenty-three of the Principal Act for the renewal of a license, or made under section twenty-four of the Principal Act for the variation of a license, or made under section fifty-seven of the Principal Act for the renewal of registration, was pending immediately before the commencement of this Act, the provisions of the Principal Act shall continue to apply to and in respect of the application in the same manner as if this Act had not been enacted.

Savings and transitional provisions.

(2) Notwithstanding anything in subsection one of this section, the provisions of subsection six of section twenty-three of the Principal Act (as amended by this Act), in addition to applying to and in respect of a licensee who applies for a renewal of a license after the commencement of this Act, apply to and in respect of a licensee whose application for a renewal of a license was pending immediately before that commencement, whether or not a provisional license was, in relation to that application, issued under subsection six of that section (as enacted immediately before that commencement), in the same manner as if this Act had been in force at the time when that application was made.

(3) Where a statement of claim was served, or an itemised account was received or furnished, under section 42A of the Principal Act before the commencement of this Act, the provisions of that section shall continue to apply to and in respect of the statement of claim or itemised account in the same manner as if this Act had not been enacted.

Auctioneers and Agents (Amendment).

(4) Where a provisional certificate of registration issued under section fifty-seven of the Principal Act was in force immediately before the commencement of this Act, the provisions of that section shall continue to apply to and in respect of the provisional certificate in the same manner as if this Act had not been enacted.

BY AUTHORITY:
V. C. N. BLIGHT, GOVERNMENT PRINTER, NEW SOUTH WALES—1972
[30c]

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.

I. P. K. VIDLER,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 8 March, 1972.*

New South Wales



ANNO VICESIMO PRIMO

ELIZABETHÆ II REGINÆ

Act No. 12, 1972.

An Act to make further provisions with respect to the powers, authorities, duties and functions of the Council of Auctioneers and Agents and the carrying on of the business of an auctioneer, stock and station agent, real estate agent or business agent; to vary in certain respects the procedure for the issue of licenses and certificates of registration under the Auctioneers, Stock and Station and Real Estate Agents Act, 1941; for these and other purposes to amend that Act; and for purposes connected therewith. [Assented to, 22nd March, 1972.]

BE

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

L. A. PUNCH,
Chairman of Committees of the Legislative Assembly.

Auctioneers and Agents (Amendment).

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

Short title,
commence-
ment and
construc-
tion.

1. (1) This Act may be cited as the "Auctioneers and Agents (Amendment) Act, 1972".

(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

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

Amend-
ment of
Act No. 28,
1941.
(Part I.—
Prelim-
inary.)

2. Part I of the Principal Act is amended—

Sec. 1.
(Short
title.)

(a) by omitting subsection one of section one and by inserting in lieu thereof the following subsection:—

(1) This Act may be cited as the "Auctioneers and Agents Act, 1941".

Sec. 2.
(Division
into
Parts.)

(b) (i) by omitting from section two the figures "19" and by inserting in lieu thereof the figures and letter "19A";

(ii)

Auctioneers and Agents (Amendment).

- (ii) by omitting from the same section the figures and letter "50H" where firstly occurring and by inserting in lieu thereof the figures and letter "50I";
 - (iii) by inserting next after the matter relating to Division 4 of Part III in the same section the following new matter :—

DIVISION 5.—*Stock and Station Agents*—
s. 50I.
 - (iv) by omitting from the same section the figures "63" wherever occurring and by inserting in lieu thereof the figures and letter "63A";
 - (c) (i) by omitting the definition of "Chattel auctioneer" in subsection one of section three; Sec. 3. (Definitions.)
 - (ii) by inserting next after the definition of "Employee" in the same subsection the following new definition :—

"Farm produce" means cereals, grain, vegetables, potatoes, onions, other edible roots and tubers, tobacco leaf, fruit, hay, chaff, dairy produce, live or dead poultry and game, and eggs.
 - (iii) by omitting from the definition of "Land used for agricultural or pastoral purposes" in the same subsection the words "greater in area than five acres";
 - (iv) by omitting from the definition of "Real estate agent" in the same subsection the words "in respect of land" and by inserting in lieu thereof the words "in respect of any parcel of land that is greater in area than five acres and that is";
- (v)

Auctioneers and Agents (Amendment).

- (v) by inserting at the end of paragraph (c) of the definition of "Stock and station agent" in the same subsection the word "or";
- (vi) by omitting from subparagraph (i) of paragraph (b) of subsection three of the same section the word "or" where thirdly occurring;
- (vii) by inserting next after the same subparagraph the following new subparagraph :—
 - (ia) business as an agent for the collection of contributions levied pursuant to subsection two of section fifteen of the Conveyancing (Strata Titles) Act, 1961, or for the collection of amounts payable in relation to any premises to a company by a person who is the holder of shares in the company and who, by reason of his holding those shares, is entitled to possession of those premises; or
- (viii) by inserting in the same paragraph after the word "instalments" where secondly occurring the words ", contributions or amounts";
- (ix) by omitting from subsection six of the same section the words "sections thirty-nine and fifty-two" and by inserting in lieu thereof the words "sections 39AA and 52A";
- (x) by omitting from paragraph (c) of subsection eight of the same section the words "sections thirty-nine and fifty-two" and by inserting in lieu thereof the words "sections 39AA and 52A".

Auctioneers and Agents (Amendment).

3. Part II of the Principal Act is amended—

Further
amendment
of Act No.
28, 1941.
(Part II.—
The Coun-
cil of
Auctioneers
and
Agents.)

- (a) (i) by inserting next after subsection one of section eight the following new subsection :—

(1A) In this section, “chattel auctioneer” means an auctioneer who is the holder of a chattel auctioneer’s license, but does not include an auctioneer who is the holder of a chattel auctioneer’s license and any other auctioneer’s license.

- (ii) by inserting in subparagraph (i) of paragraph (b) of subsection four of the same section after the word “if” the words “(whether or not he also holds a chattel auctioneer’s license)”;

- (iii) by omitting from the same subparagraph the words “, other than a chattel auctioneer’s license” and by inserting in lieu thereof the words “that is a general license, a country license, a district license or a primary products license”;

- (b) (i) by omitting paragraph (b) of section nine and by inserting in lieu thereof the following paragraph :—

(b) he becomes a mentally ill person, a protected person or an incapable person within the meaning of the Mental Health Act, 1958 ; or

(ii)

Auctioneers and Agents (Amendment).

(ii) by inserting at the end of paragraph (g) of the same section the following word and new paragraph :—

; or

(h) being an elected member, he ceases to be eligible for enrolment—

- (i) in the case of a member referred to in subparagraph (i) of paragraph (b) of subsection two of section eight of this Act—in the roll of auctioneers, other than chattel auctioneers;
- (ia) in the case of a member referred to in subparagraph (ia) of that paragraph—in the roll of chattel auctioneers;
- (ii) in the case of a member referred to in subparagraph (ii) of that paragraph—in the roll of stock and station agents;
- (iii) in the case of a member referred to in subparagraph (iii) of that paragraph—in the roll of real estate agents;
- (iv) in the case of a member referred to in subparagraph (iv) of that paragraph—in the roll of business agents.

Auctioneers and Agents (Amendment).

4. Part III of the Principal Act is amended—

Further amendment of Act No. 28, 1941.
(Part III.—Auctioneers, Stock and Station Agents, Real Estate Agents and Business Agents.)

- (a) (i) by omitting from paragraph (c) of subsection Sec. 22. two of section twenty-two the words “in (Licenses.) respect of any estate in land or goods,” and by inserting in lieu thereof the words “except in respect of goods, not”;
- (ii) by omitting from the same paragraph the words “as defined in subsection one of section forty-four of this Act”;
- (iii) by inserting in the same paragraph after the word “prescribed” the words “, unless he holds or the corporation holds in respect of the employee some other auctioneer’s license authorising him or it so to act”;
- (iv) by omitting paragraph (d) of the same subsection and by inserting in lieu thereof the following paragraph :—

(d) Nothing in this Act shall be construed so as to prevent a person from taking out or holding, or a corporation from taking out or holding in respect of an employee or different employees, a chattel auctioneer’s license as well as any other auctioneer’s license.

(v)

Auctioneers and Agents (Amendment).

- (v) by inserting next after subsection six of the same section the following new subsection :—

(7) The registrar may, upon application made to him, issue a duplicate license in the place of a license that has been lost, destroyed or damaged.

Sec. 23.
(Pro-
cedure.)

- (b) (i) by inserting in subsection three of section twenty-three after the word “application” where firstly occurring the words “(not being a prescribed application or a special application)”;
- (ii) by omitting from the same subsection the words “or the renewal of a license” and by inserting in lieu thereof the words “of a license (not being a renewal of a license)”;
- (iii) by inserting in subsection four of the same section after the word “may” the words “, in the case of an application for a license or for the renewal of a license.”;
- (iv) by inserting in the same subsection after the word “shall” the words “, in the case of an application (not being a prescribed application or a special application) for a license (not being a renewal of a license).”;
- (v) by omitting from paragraph (b) of the same subsection the words “or in respect of an employee” wherever occurring;

(vi)

Auctioneers and Agents (Amendment).

- (vi) by omitting subsection six of the same section and by inserting in lieu thereof the following subsection :—

(6) (a) Where an application for the renewal of a license is made before the day on which the license would, but for this subsection, expire (which day is, in this subsection, referred to as “the date of expiry”) and—

- (i) the renewal of the license is not issued before the date of expiry; and
- (ii) the application is not refused or withdrawn before the date of expiry,

the license shall be deemed to continue in force after the date of expiry until—

- (iii) a renewal of license is issued;
- (iv) the application is refused or withdrawn; or
- (v) the expiration of twelve months after the date of expiry,

whichever first occurs.

(b) Where a renewal of license is, after the date of expiry, issued in respect of the license referred to in paragraph (a) of this subsection, the renewal shall take effect as from the date of expiry of the license.

- (vii) by inserting in paragraph (b) of subsection (6A) of the same section after the word “license” where firstly occurring the words “deemed by subsection six of this section to continue in force after the day on which the license would, but for that subsection, have expired”;

- (viii) by omitting from the same paragraph the words “provisional license had effect” and by inserting in lieu thereof the words “license was so deemed to continue in force”;

(ix)

Auctioneers and Agents (Amendment).

- (ix) by inserting in paragraph (a) of subsection seven of the same section after the word "licenses" the words ", may object to the grant of an application (not being a prescribed application or a special application) for a license (not being a renewal of a license)";
- (x) by omitting from the same paragraph the words "the application" and by inserting in lieu thereof the words "an application for a license or for the renewal of a license";
- (xi) by omitting from paragraph (b) of the same subsection the words "the statement" and by inserting in lieu thereof the words "a statement so lodged by a member of the police force";
- (xii) by inserting in subsection eight of the same section after the word "made" the words "pursuant to subsection seven of this section";
- (xiii) by inserting in subsection nine of the same section after the word "objects" the words "pursuant to subsection seven of this section";
- (xiv) by omitting from subsection (10A) of the same section the words "for an auctioneer's license (being a general license) or a business agent's license and the applicant is a person to whom such a license may be granted pursuant to the provisions of section twenty-six or twenty-seven of this Act" and by inserting in lieu thereof the words "a special application";
- (xv) by inserting next after subsection (10AB) of the same section the following new subsection :—
 - (10AC) Where pursuant to subsection seven of this section an application for the grant of a license (not being a renewal of a license)

Auctioneers and Agents (Amendment).

license) is to be heard and determined by a court of petty sessions, references in subsections (10A) and (10AB) of this section to the council shall be read and construed as references to the court.

(xvi) by inserting next after subsection (10c) of the same section the following new subsection :—

(10D) A license or renewal of a license shall not be granted in pursuance of an application if the application, or the statement referred to in the definition of “special application” in subsection thirteen of this section accompanying a special application, contains any matter that is false or misleading in a material particular.

(xvii) by inserting next after subsection twelve of the same section the following new subsection :—

(13) In this section—

“interstate license” has the meaning ascribed thereto by subsection one of section twenty-six of this Act;

“prescribed application” means an application for a license (not being a renewal of a license) that is made by a person who is the holder of a license;

“special application” means an application for a license (not being a renewal of a license) that is accompanied by a statement containing the prescribed particulars and containing a declaration to the effect that, at all times during the period of five years immediately preceding the making of the application—

(a) where the application is made by an individual or by a corporation in respect of an

employee

Auctioneers and Agents (Amendment).

employee—the individual was the holder of, or an employee of a corporation that was, in respect of the employee, the holder of, an interstate license that is, under section twenty-six of this Act, deemed to be equivalent to a license of the same class as that applied for ;
or

(b) where the application is made by a corporation on its own behalf—the corporation was the holder of an interstate license that is, under section twenty-six of this Act, deemed to be equivalent to a license of the same class as that applied for.

Sec. 23A.
(Restoration of license not renewed.)

(c) (i) by omitting from subsection three of section 23A the words “paragraphs (a) and (b) of”;

(ii) by omitting from the same subsection the words “license or a renewal of a license” and by inserting in lieu thereof the words “renewal of a license, and shall so apply as if paragraph (b) of subsection (6A) of that section were amended by omitting the words ‘license was so deemed to continue in force’ and by inserting in lieu thereof the words ‘provisional license had effect’ ”;

Sec. 24.
(Variation of license.)

(d) (i) by omitting subsection one of section twenty-four and by inserting in lieu thereof the following subsection :—

(1) Where a corporation which has taken out a license in respect of an employee makes an application for the license to be varied by
the

Auctioneers and Agents (Amendment).

the substitution of the name of some other employee nominated by the corporation for the purpose, the license may, subject to subsection two of this section, be so varied.

- (ii) by omitting from subsection two of the same section the words "or a renewal of a license";
- (e) by omitting section twenty-six and by inserting in lieu thereof the following section :— Subst.
sec. 26.
26. (1) In this section— Interstate
licenses.
- "interstate license" means a license issued under the law of another State, or of a Territory, of the Commonwealth;
- "State license" means a license issued under this Act.
- (2) The registrar, if authorised to do so by the council, may, from time to time, by order published in the Gazette, declare a class of interstate licenses specified or described in the order to be, for the purposes of this section, equivalent to a class of State licenses so specified or described.
- (3) For the purposes of the definition of "special application" in subsection thirteen of section twenty-three of this Act, an interstate license shall be deemed to be equivalent to a State license if the interstate license is of a class of interstate licenses declared, under subsection two of this section, to be, for the purposes of this section, equivalent to the class of State licenses to which the State license belongs.
- (4) Where during the period of five years immediately preceding the making of an application referred to in the definition of "special application" in subsection thirteen of section twenty-three of this Act, a person was, for any part of that period, the holder of, or an employee of a corporation that was, in respect of the employee, the holder of, a State
- license

Auctioneers and Agents (Amendment).

license of the same class as that applied for, that person shall, for the purposes of that definition, be deemed to have been, for that part of that period, the holder of an interstate license that is equivalent to the license applied for.

Sec. 27.
(Grant of auctioneers' and business agents' licenses to persons resident in the Australian Capital Territory.)

(f) by omitting section twenty-seven;

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

(g) by omitting section twenty-eight;

New sec.
30A.

(h) by inserting next after section thirty the following new section :—

Commencement of certain determinations and orders.

30A. Notwithstanding anything in this Act, where, after the commencement of the Auctioneers and Agents (Amendment) Act, 1972, the court makes—

(a) a determination refusing—

(i) an application for the renewal of a license under section twenty-three of this Act; or

(ii) an application made under section 23A of this Act; or

(b) an order under section twenty-nine of this Act,

the

Auctioneers and Agents (Amendment).

the determination or order shall have no force or effect until the expiration of twenty-one days after the making thereof and, where within that period of twenty-one days an appeal to a District Court is commenced under section thirty-one of this Act in relation to the determination or order, until the Court confirms the determination or order or dismisses the appeal.

- (i) by omitting from subsection (4A) of section thirty-one the words "refusal of" and by inserting in lieu thereof the words "the determination refusing"; Sec. 31. (Appeal.)
- (j) (i) by omitting from section 36A the word "Where" and by inserting in lieu thereof the words "Subject to subsection two of this section, where"; Sec. 36A. (Unclaimed trust moneys held by a licensee.)
- (ii) by inserting at the end of the same section the following new subsections :—
- (2) Subsection one of this section does not apply to moneys that are of a class specified or described in the regulations.
- (3) The regulations may make provision for or with respect to prescribing a written record to be kept in relation to moneys referred to in subsection two of this section by a licensee who holds any such moneys.
- (4) Without affecting the generality of section thirty-eight of this Act, a written record referred to in subsection three of this section shall be deemed to be a written record required to be made in accordance with that section.
- (k)

Auctioneers and Agents (Amendment).

Sec. 38c.
(Statement
of
employees,
etc., and
their wages
to be
kept by
business
agents.)

(k) by omitting section 38c;

Sec. 38D.
(Audit of
licensees'
books,
records,
etc.)

(l) (i) by omitting from paragraph (b) of subsection two of section 38D the word "forthwith";

(ii) by inserting next after the same subsection the following new subsections :—

(2A) Where a person to whom this section applies receives the report referred to in subsection two of this section earlier than fourteen days before the expiration of three months after the prescribed day in any year applicable to him, he shall lodge it under that subsection not later than fourteen days after so receiving it.

(2B) The report referred to in subsection two of this section shall be in or to the effect of the form prescribed.

Sec. 38E.
(Quali-
fications
and duties
of auditors.)

(m) by omitting from paragraph (b) of subsection one of section 38E the words "where the registrar is satisfied that a person so registered is not conveniently available,";

Sec. 39.
(Certain
persons
not to be
employed by
licensees.)

(n) (i) by omitting from subsection one of section thirty-nine the words "a court of petty sessions holden before a stipendiary magistrate, and subject to such conditions as the court may impose" and by inserting in lieu thereof the words "the council";

(ii)

Auctioneers and Agents (Amendment).

(ii) by inserting next after the same subsection the following new subsection :—

(1A) A licensee whose application for approval under section 39AA of this Act is granted shall comply with such conditions as are imposed pursuant to that section in relation to the approval.

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

39AA. (1) An application for the approval of the council referred to in subsection one of section thirty-nine of this Act, or for the removal or variation of any conditions imposed under this section in relation to the approval, shall be made by the licensee concerned in or to the effect of the form prescribed and shall be lodged with the registrar. Procedure
for
approvals
under
section 39.

(2) The council may require an applicant under this section to supply it with any further information it considers necessary in relation to the application.

(3) The council may—

- (a) in the case of an application for the approval referred to in subsection one of section thirty-nine of this Act—grant the application conditionally or unconditionally or refuse the application; or
- (b) in the case of an application for the removal or variation of any conditions imposed under this section—grant or refuse the application and in either case, if it thinks fit, impose other conditions,

and the registrar shall in writing notify the applicant as soon as practicable of the council's decision.

(4)

Auctioneers and Agents (Amendment).

(4) An applicant under this section aggrieved by a decision of the council under this section may, in the manner prescribed and within twenty-one days of being notified by the registrar of the decision, appeal to the court of petty sessions having jurisdiction under subsection eight of section three of this Act.

(5) An appeal under this section shall not be determined except by a court of petty sessions held before a stipendiary magistrate.

(6) An appeal under this section shall not be entertained unless at least ten days' notice, in writing, of the appeal has been given to the registrar, setting out the grounds of the appeal.

(7) The court may, on an appeal under this section, confirm the decision appealed against or give such directions in the matter as seem proper or otherwise determine the matter.

(8) The decision of the court on an appeal under this section shall be final and shall be deemed to be the decision of the council.

(9) Upon determination of an appeal under this section, the clerk of the court shall notify the decision of the court to the registrar.

(10) An approval given, and any conditions imposed, by a court of petty sessions under section thirty-nine of this Act and in force immediately before the commencement of the Auctioneers and Agents (Amendment) Act, 1972, shall be deemed to be an approval given, and conditions imposed, by the council under this section.

(p)

Auctioneers and Agents (Amendment).

- (p) (i) by omitting from section 42A the words "two months" wherever occurring and by inserting in lieu thereof the words "twenty-one days"; Sec. 42A. (Review of commissions, fees, etc.)
- (ii) by inserting next after subsection four of the same section the following new subsection :—
- (4A) The regulations may make provision for or with respect to requiring the inclusion, in statements of claim or itemised accounts referred to in this section, of a notice, in the prescribed form and manner, drawing attention to the provisions of subsection four of this section.
- (q) (i) by omitting from paragraph (b) of section forty-three the word "or" where lastly occurring; Sec. 43. (Publication of name and place of business in advertisements.)
- (ii) by omitting paragraph (c) of the same section and by inserting in lieu thereof the following paragraphs :—
- (c) where such licensee is a corporation or employee of a corporation and the corporation is carrying on business in its own name, the name of the corporation and the address of its place of business; or
- (d) where such licensee is a corporation or employee of a corporation and the corporation is 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 its own name or such business name, and the address of its place of business;
- (r)

Auctioneers and Agents (Amendment).

Sec. 44.
(Definition.)

- (r) (i) by omitting subsection one of section forty-four and by inserting in lieu thereof the following subsection :—

(1) In this Division, “property”, except as provided in subsection two of this section, does not include wool.

- (ii) by omitting from subsection two of the same section the words “the expression ‘farm produce’, as defined in subsection one of this section” and by inserting in lieu thereof the words “the expression ‘property’ in this Division”;

Sec. 45.
(Splitting
of lots pur-
chased at
auction.)

- (s) (i) by omitting from subsection one of section forty-five the words “cattle or farm produce” where firstly occurring and by inserting in lieu thereof the words “any property”;

- (ii) by omitting from the same subsection the words “cattle or farm produce” where secondly, thirdly and fourthly occurring and by inserting in lieu thereof the word “property”;

- (iii) by omitting from subsection two of the same section the words “cattle or farm produce” where firstly occurring and by inserting in lieu thereof the words “any property”;

- (iv) by omitting from the same subsection the words “cattle or farm produce” where secondly and thirdly occurring and by inserting in lieu thereof the word “property”;

(t)

Auctioneers and Agents (Amendment).

- (t) by omitting from section forty-six the words "cattle or farm produce" wherever occurring and by inserting in lieu thereof the word "property"; **Sec. 46.**
(Entry by auctioneer or employee in record or book kept by auctioneer as purchaser of property sold by auction of any name other than the name of the actual successful bidder.)
- (u) (i) by omitting from subsection one of section forty-seven the words "cattle or farm produce" where firstly occurring and by inserting in lieu thereof the word "property"; **Sec. 47.**
(Material parts of sections to be read or recited aloud at sales by auction.)
- (ii) by omitting from the same subsection the words "cattle or farm produce" where secondly occurring and by inserting in lieu thereof the words "any property";
- (v) by omitting from section forty-eight the words "of any goods or chattels" and by inserting in lieu thereof the words ", of any property or of wool"; **Sec. 48.**
(Misrepresentation as to quality, etc.)
- (w) by omitting from subsection one of section 50A the words "and shall be liable to a penalty of not less than twenty dollars and not exceeding four hundred dollars or to imprisonment for a term not exceeding two years, or both" and by inserting in lieu thereof the words "against this Act"; **Sec. 50A.**
(Misrepresentation by business agent or salesman.)

(x)

Auctioneers and Agents (Amendment).

New
Division
5 of
Part III.

- (x) by inserting next after Division 4 of Part III the following new Division :—

DIVISION 5.—*Stock and Station Agents.*

Misrepresentation
by stock
and
station
agent or
salesman.

50i. (1) Any stock and station agent or stock and station salesman, as defined in section fifty-one of this Act, who by any statement, representation or promise that is false, misleading or deceptive (whether to his knowledge or not) or by any concealment of material fact (whether intended or not), induces or attempts to induce any person to enter into an agreement or contract for—

- (a) the sale, purchase, exchange, letting or taking on lease of land used for agricultural or pastoral purposes;
- (b) the collection of rents payable in respect of any lease or letting of land used for agricultural or pastoral purposes;
- (c) the sale, purchase or exchange of live stock; or
- (d) the provision of agistment for live stock or the collection of fees for such agistment,

shall be guilty of an offence against this Act.

(2) Without limiting the generality of subsection one of this section a statement, representation or promise shall, for the purposes of that subsection, be deemed to be false, misleading or deceptive if the statement, representation or promise is of such a nature that it would reasonably tend to lead to a belief in the existence of a state of affairs that does not in fact exist, whether or not the statement, representation or promise indicates that that state of affairs does exist.

(3)

Auctioneers and Agents (Amendment).

(3) It is a sufficient defence to a prosecution under subsection one of this section if the defendant proves that the statement, representation or promise arising out of the making of a statement, representation or promise that is false, misleading or deceptive was based upon a statement in writing made to the defendant by the owner of the land referred to in paragraph (a) or (b) of subsection one of this section or of the land to which the agistment referred to in paragraph (d) of that subsection relates or by the owner of the live stock referred to in paragraph (c) of that subsection, as the case may require.

5. Part IV of the Principal Act is amended—

Further
amendment
of Act No.
28, 1941.
(Part IV.—
Real Estate
Dealers,
Real Estate
Salesmen,
Trainee
Auctioneers,
Business
Salesmen
and Stock
and Station
Salesmen.)

- (a) (i) by omitting from subparagraph (i) of paragraph (b) of the definition of "Real estate salesman" in section fifty-one the word "or" where secondly occurring; Sec. 51.
(Interpre-
tation.)
- (ii) by inserting next after subparagraph (ii) of the same paragraph the following new subparagraph :—
- (iii) collects contributions levied pursuant to subsection two of section fifteen of the Conveyancing (Strata Titles) Act, 1961,

Auctioneers and Agents (Amendment).

1961, or amounts payable in relation to any premises to a company by a person who is the holder of shares in the company and who, by reason of his holding those shares, is entitled to possession of those premises; or;

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

(b) (i) by omitting from subsection one of section fifty-two the words "a court of petty sessions holden before a stipendiary magistrate, and, subject to such conditions as the court may impose" and by inserting in lieu thereof the words "the council";

(ii) by inserting next after the same subsection the following new subsection :—

(1A) A real estate dealer whose application for approval under section 52A of this Act is granted shall comply with such conditions as are imposed pursuant to that section in relation to the approval.

New sec.
52A.

(c) by inserting next after section fifty-two the following new section :—

Procedure
for
approvals
under sec-
tion 52.

52A. (1) An application for the approval of the council referred to in subsection one of section fifty-two of this Act, or for the removal or variation of any conditions imposed under this section in relation to the approval, shall be made by the real estate dealer concerned in or to the effect of the form prescribed and shall be lodged with the registrar.

(2) The council may require an applicant under this section to supply it with any further information it considers necessary in relation to the application.

(3)

Auctioneers and Agents (Amendment).

(3) The council may—

- (a) in the case of an application for the approval referred to in subsection one of section fifty-two of this Act—grant the application conditionally or unconditionally or refuse the application; or
- (b) in the case of an application for the removal or variation of any conditions imposed under this section—grant or refuse the application and in either case, if it thinks fit, impose other conditions,

and the registrar shall in writing notify the applicant as soon as practicable of the council's decision.

(4) An applicant under this section aggrieved by a decision of the council under this section may, in the manner prescribed and within twenty-one days of being notified by the registrar of the decision, appeal to the court of petty sessions having jurisdiction under subsection eight of section three of this Act.

(5) An appeal under this section shall not be determined except by a court of petty sessions held before a stipendiary magistrate.

(6) An appeal under this section shall not be entertained unless at least ten days' notice, in writing, of the appeal has been given to the registrar, setting out the grounds of the appeal.

(7) The court may, on an appeal under this section, confirm the decision appealed against or give such directions in the matter as seem proper or otherwise determine the matter.

(8) The decision of the court on an appeal under this section shall be final and shall be deemed to be the decision of the council.

(9)

Auctioneers and Agents (Amendment).

(9) Upon determination of an appeal under this section, the clerk of the court shall notify the decision of the court to the registrar.

(10) An approval given, and any conditions imposed, by a court of petty sessions under section fifty-two of this Act and in force immediately before the commencement of the Auctioneers and Agents (Amendment) Act, 1972, shall be deemed to be an approval given, and conditions imposed, by the council under this section.

Sec. 54.
(Real estate
dealer to
have
registered
place of
business.)

- (d) by omitting from paragraph (d) of subsection two of section fifty-four the words "with the registrar, who" and by inserting in lieu thereof the words "by a real estate dealer with the registrar within the prescribed time, and the registrar";

Sec. 57.
(Procedure.)

- (e) (i) by omitting from subsection three of section fifty-seven the words "the application for registration or for the renewal of registration" and by inserting in lieu thereof the words "an application for registration (not being a prescribed application or an application for renewal of registration)";
- (ii) by inserting in subsection four of the same section after the word "may" the words ", in the case of an application for registration or renewal of registration,";
- (iii) by omitting from the same subsection the word "shall";
- (iv) by inserting in the same subsection after the word "particulars" the words ", shall, in the case of an application for registration (not being a prescribed application or an application for renewal of registration)";

(v)

Auctioneers and Agents (Amendment).

- (v) by inserting in subsection (4B) of the same section after the word "registration" where firstly occurring the words "issued under subsection (4A) of this section";
- (vi) by omitting from subsection (4C) of the same section the words "Where a" and by inserting in lieu thereof the words "Subject to subsection (4CA) of this section, where a";
- (vii) by inserting in the same subsection after the word "refused" the words "or withdrawn";
- (viii) by omitting from the same subsection the word "twelve" and by inserting in lieu thereof the word "three";
- (ix) by inserting next after the same subsection the following new subsection :—

(4CA) (a) Subject to paragraph (d) of this subsection, where—

- (i) a provisional certificate of registration (in this subsection referred to as "the firstmentioned certificate") has been issued under subsection (4A) of this section, or under this subsection, to an applicant for registration or renewal of registration;
- (ii) a certificate of registration or renewal of registration has not been granted in pursuance of his application; and
- (iii) his application has not been refused or withdrawn,

the registrar may issue to the applicant a further provisional certificate of registration (in this subsection referred to as "the last-mentioned certificate").

(b)

Auctioneers and Agents (Amendment).

(b) The lastmentioned certificate shall take effect or be deemed to have taken effect on and from the expiration of three months after the firstmentioned certificate took effect.

(c) Subject to this subsection, the holder of the lastmentioned certificate shall, for all purposes of this Act, be deemed to be, and, where the certificate was issued after the expiration of the period of three months after the firstmentioned certificate took effect, to have been, as from the expiration of that period, the holder of the certificate of registration specified in his application until such time as a certificate of registration or renewal of a certificate of registration is issued to him pursuant to this section or until his application is refused or withdrawn or until the expiration of three months after the date on which the lastmentioned certificate took effect, whichever first occurs.

(d) One or more, but not more than three, provisional certificates of registration may be issued under this subsection in relation to one application.

- (x) by inserting in subsection (4E) of the same section after the words "provisional certificate of registration" the words "issued under subsection (4A) of this section in relation to the application and any provisional certificates of registration issued under subsection (4CA) of this section in relation thereto";
- (xi) by inserting in paragraph (a) of subsection (4F) of the same section after the word "licenses" the words " , may object to the grant of an application for registration (not being a prescribed application or an application for renewal of registration)";

(xii)

Auctioneers and Agents (Amendment).

- (xii) by omitting from the same paragraph the words "the application" and by inserting in lieu thereof the words "an application for registration or renewal of registration";
- (xiii) by omitting from paragraph (b) of the same subsection the words "the statement" and by inserting in lieu thereof the words "a statement so lodged by a member of the police force";
- (xiv) by inserting in subsection (4G) of the same section after the word "made" the words "pursuant to subsection (4F) of this section";
- (xv) by inserting in subsection seven of the same section after the word "objects" the words "pursuant to subsection (4F) of this section";
- (xvi) by inserting next after paragraph (b) of subsection nine of the same section the following new paragraph :—

(b1) Subject to this Act, but notwithstanding anything in paragraph (a) or (b) of this subsection, where—

- (i) an application for the grant or renewal of a certificate of registration (in this paragraph referred to as "the first-mentioned certificate") is granted after the commencement of the Auctioneers and Agents (Amendment) Act, 1972; and

(ii)

Auctioneers and Agents (Amendment).

- (ii) the applicant is, at the time of the grant, the holder of one or more other certificates of registration,

the firstmentioned certificate shall be in force, pursuant to the grant of the application, for a period expiring on the day on which that other certificate or those other certificates are due to expire, or where two or more of those other certificates are due to expire on different days, on the later or latest of those days.

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

(11) A certificate of registration shall not be issued if the application therefor contains any matter that is false or misleading in a material particular.

(12) The registrar may, upon application made to him and accompanied by a fee of fifty cents, issue a duplicate certificate of registration in the place of a certificate of registration that has been lost, destroyed or damaged.

(13) In this section, "prescribed application" means an application for a certificate of registration (not being an application for renewal of registration) that is made by a person to whom has been issued, and who is the holder of, a certificate of registration (not being a provisional certificate of registration).

Sec. 59.
(Registered
employer
and
registered
address.)

- (f) by inserting next after subsection six of section fifty-nine the following new subsection :—

(7) Where there is a change of address of the registered office of the registered employer by whom or by which the holder of a certificate of registration under this Part is, or is to be, employed,
the

Auctioneers and Agents (Amendment).

the holder of the certificate shall, within the prescribed time after the change or the issue of the certificate (whichever last occurs), make application under subsection five of this section for the certificate to be varied accordingly, unless within that time he makes application under that subsection for the name of the registered employer specified therein to be substituted.

- (g) by inserting next after subsection three of section sixty the following new subsection :—

Sec. 60.
(Cancellation of certificate of registration.)

(4) Upon cancellation of a certificate of registration under this section, the clerk of the court by which the certificate is cancelled shall notify the decision of the court to the registrar.

- (h) by inserting next after section sixty the following new section :—

New sec.
60A.

60A. Notwithstanding anything in this Act, where, after the commencement of the Auctioneers and Agents (Amendment) Act, 1972, the court makes—

Commencement of certain determinations and orders.

- (a) a determination refusing an application for the renewal of registration under section fifty-seven of this Act; or

- (b) an order under section sixty of this Act,

the determination or order shall have no force or effect until the expiration of twenty-one days after the making thereof and, where within that period of twenty-one days an appeal to a District Court is commenced under section sixty-one of this Act in relation to the determination or order, until the Court confirms the determination or order or dismisses the appeal.

(i)

Auctioneers and Agents (Amendment).

Sec. 61.
(Appeal.)

- (i) by omitting from subsection (4A) of section sixty-one the words "refusal of" and by inserting in lieu thereof the words "the determination refusing";

New sec.
63A.

- (j) by inserting next after section sixty-three the following new section :—

Failure to
deliver up
certificate.

63A. Where the court has made an order that a certificate of registration be delivered up to the registrar the holder of such certificate shall, if he refuses, neglects or fails to comply with such order, be guilty of an offence against this Act.

Further
amendment
of Act No.
28, 1941.
(Part VII.—
General.)

6. Part VII of the Principal Act is amended—

Sec. 84.
(Offences in
connection
with the
sale of
allotments
of land.)

- (a) by inserting in subsection two of section eighty-four after the word "land" where secondly occurring the words "or any interest in such allotment";

Sec. 84A.
(Penalty for
publishing
false or
misleading
advertisements.)

- (b) by omitting from paragraph (a) of subsection one of section 84A the words "land or livestock or any business" and by inserting in lieu thereof the word "property";

(c)

Auctioneers and Agents (Amendment).

(c) by inserting in subsection one of section eighty-six after the word "Act" where firstly occurring the words ", or in any statement, referred to in subsection thirteen of section twenty-three of this Act, accompanying a special application (as defined in that subsection),".

Sec. 86.

(Furnishing incorrect particulars in applications.)

7. (1) Where an application, made under section twenty-three of the Principal Act for the renewal of a license, or made under section twenty-four of the Principal Act for the variation of a license, or made under section fifty-seven of the Principal Act for the renewal of registration, was pending immediately before the commencement of this Act, the provisions of the Principal Act shall continue to apply to and in respect of the application in the same manner as if this Act had not been enacted.

Savings and transitional provisions.

(2) Notwithstanding anything in subsection one of this section, the provisions of subsection six of section twenty-three of the Principal Act (as amended by this Act), in addition to applying to and in respect of a licensee who applies for a renewal of a license after the commencement of this Act, apply to and in respect of a licensee whose application for a renewal of a license was pending immediately before that commencement, whether or not a provisional license was, in relation to that application, issued under subsection six of that section (as enacted immediately before that commencement), in the same manner as if this Act had been in force at the time when that application was made.

(3) Where a statement of claim was served, or an itemised account was received or furnished, under section 42A of the Principal Act before the commencement of this Act, the provisions of that section shall continue to apply to and in respect of the statement of claim or itemised account in the same manner as if this Act had not been enacted.

(4)

Auctioneers and Agents (Amendment).

(4) Where a provisional certificate of registration issued under section fifty-seven of the Principal Act was in force immediately before the commencement of this Act, the provisions of that section shall continue to apply to and in respect of the provisional certificate in the same manner as if this Act had not been enacted.

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

A. R. CUTLER,
Governor.

*Government House,
Sydney, 22nd March, 1972.*