

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, 21 March, 1973.*

New South Wales



ANNO VICESIMO SECUNDO

ELIZABETHÆ II REGINÆ

Act No. 8, 1973.

An Act to make further provisions with respect to licenses and certificates of registration under the Auctioneers and Agents Act, 1941, and trust accounts required to be kept under that Act; for these and other purposes to amend that Act; and for purposes connected therewith. [Assented to, 28th March, 1973.]

BE

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

J. H. BROWN,
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. **1.** This Act may be cited as the "Auctioneers and Agents (Amendment) Act, 1973".

Commence-ment. **2.** (1) This Act (section 4 excepted) shall commence on the date of assent to this Act.

(2) Section 4 shall commence on 1st April, 1973.

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

Amendment of Act No. 28, 1941. **4.** (1) The Principal Act is amended—

Sec. 8. (a) (i) by omitting from section 8 (4) (b) (i) the
(Constitu-tion of council.) words ", a country license, a district license";
 (ii) by inserting in section 8 (4) (b) (ia) after
 the word "license" the words "and no other
 auctioneer's license";

Sec. 22. (b) by omitting section 22 (2) (a) (ii) and (iii).
(Licenses.)

(2) A country or district license in force immediately before the commencement of this section shall be deemed to be a general license.

(3) An application for, or for the renewal or restoration of, a country or district license, being an application pending immediately before the commencement of this section, shall be deemed to be an application for, or for the renewal or restoration of, a general license, as the case may be.

(4)

Auctioneers and Agents (Amendment).

(4) For the purposes of section 23A of the Principal Act, a country or district license that has expired before the commencement of this section shall be deemed to have been a general license.

(5) In this section—

“country or district license” means an auctioneer’s license, being a country license or district license, under the Principal Act;

“general license” means an auctioneer’s license, being a general license.

5. (1) The Principal Act is further amended—

Further amendment of Act No. 28, 1941.

(a) by omitting section 25 (1), (1A) and (2) and by inserting instead the following subsection :—

Sec. 25.
(Fees in respect of licenses.)

(1) Each application for—

(a) a license or renewal of a license, other than a license taken out by a corporation on its own behalf or a duplicate license, shall be accompanied by a fee of ten dollars;

(b) a license or renewal of a license taken out by a corporation on its own behalf shall be accompanied by a fee of fifty dollars;

(c) a duplicate license shall be accompanied by a fee of one dollar; or

(d) the variation of a license shall be accompanied by a fee of one dollar.

(b) (i) by inserting in section 57 (6) after the word “shall” the words “, in respect of each capacity in which he applies to be registered,”;

Sec. 57.
(Proce-
dure.)

(ii) by omitting from section 57 (6) (a) the words “, whether the application is for registration in one or more capacities”;

(iii)

Auctioneers and Agents (Amendment).

- (iii) by omitting from section 57 (6) (b) the words "in respect of each capacity in which he applies to be registered,";
- (iv) by inserting in section 57 (9) (c) after the word "shall" the words ", in respect of each such certificate of registration,";
- (v) by omitting from section 57 (9) (c) (ii) the words "in respect of each such certificate of registration,";
- (vi) by omitting from section 57 (12) the words "fifty cents" and by inserting instead the words "one dollar".

(2) The amendments made to section 25 of the Principal Act by subsection (1) (a)—

- (a) apply in respect of an application for a license (not being a renewal of a license) received in the office of the registrar on or after 1st April, 1973;
- (b) do not apply in respect of an application for a license (not being a renewal of a license) received in the office of the registrar before 1st April, 1973, whether or not the license is granted before 1st April, 1973;
- (c) apply in respect of an application for renewal of a license that expires on or after 1st April, 1973, or that would, but for section 23 (6) of the Principal Act, expire on or after 1st April, 1973; and
- (d) do not apply in respect of an application for renewal of a license that expired before 1st April, 1973, or that would, but for section 23 (6) of the Principal Act, have expired before 1st April, 1973.

(3)

Auctioneers and Agents (Amendment).

(3) The amendments made to section 57 (6) of the Principal Act by subsection (1) (b)—

- (a) apply in respect of an application for registration received in the office of the registrar on or after 1st April, 1973; and
- (b) do not apply in respect of an application for registration received in the office of the registrar before 1st April, 1973, whether or not the application is granted before 1st April, 1973.

(4) The amendments made to section 57 (9) of the Principal Act by subsection (1) (b)—

- (a) apply in respect of an application for renewal of one or more certificates of registration that expires or expire on or after 1st April, 1973; and
- (b) do not apply in respect of an application for renewal of one or more certificates of registration that expired before 1st April, 1973.

(5) The amendments made to sections 25 and 57 (12) of the Principal Act by subsection (1)—

- (a) apply in respect of an application for a duplicate license or duplicate certificate of registration received in the office of the registrar on or after 1st April, 1973; and
- (b) do not apply in respect of an application for a duplicate license or duplicate certificate of registration received in the office of the registrar before 1st April, 1973.

6. The Principal Act is further amended—

Further amendment of Act No. 28, 1941.

- (a) by inserting in section 2 next after the matter relating to Part IV the following new matter :—
Sec. 2.
(Division into Parts.)

PART IVA.—AUCTIONEERS AND AGENTS
STATUTORY INTEREST ACCOUNT—ss. 63B–63D.

(b)

Auctioneers and Agents (Amendment).

Sec. 3.
(Definitions.)

- (b) by omitting from section 3 (2) the words "Divisions 2 and 3" and by inserting instead the words "Division 2 (section 36D excepted) and Division 3";

Sec. 36.
(Payment into bank.)

- (c) (i) by inserting in section 36 (1) after the words "name of the licensee" the words "or of the firm of licensees of which the licensee is a member";

- (ii) by inserting in section 36 (3) after the word "section" the words "or section 36D";

New secs.
36D-36F.

- (d) by inserting next after section 36C the following new sections :—

Licensees to deposit part of trust account with the council.
cf. Act No. 22, 1898, s. 42A.

36D. (1) Notwithstanding the provisions of subsection (1) of section 36, every licensee shall—

- (a) in the case of a licensee who is not a corporation—out of the moneys which are received by him or by any firm of which he is a member; or
- (b) in the case of a licensee that is a corporation—out of the moneys which are received by the corporation or by any employee in respect of whom the corporation has taken out a license.

being, in either case, moneys which are required to be dealt with in accordance with the provisions of that subsection—

- (c) cause to be deposited with the council, on or before the commencing date, a sum which is not less than the prescribed part of the lowest balance in the licensee's or the firm's trust account on any day during the relevant period; and

(d)

Auctioneers and Agents (Amendment).

(d) thereafter, during each period of twelve months ending on the thirty-first day of March, cause to be kept deposited with the council a sum which is not at any time less than the prescribed part of the aggregate of—

(i) the amount that was the lowest balance in the licensee's or the firm's trust account on any day during that period or the period of twelve months ending on the immediately preceding thirty-first day of March; and

(ii) any amount which, on the day on which the lowest balance or aggregate is ascertained for the purposes of subparagraph (i), was standing upon deposit by the licensee or the firm with the council in accordance with the provisions of this section.

(2) Where two or more trust accounts are in the name of a licensee or a firm of licensees on any day, the aggregate of the balances of those trust accounts on that day, excluding any separate trust account maintained on the instructions of a client of the licensee or firm for the exclusive benefit of the client, shall for the purposes of subsection (1) be deemed to be the balance in the trust account of that licensee or that firm on that day.

(3) The prescribed part of the amount, or aggregate of the amounts, referred to in subsection (1), shall be one-quarter of that amount or aggregate, or such lesser fraction as may be prescribed by the regulations.

(4)

Auctioneers and Agents (Amendment).

(4) Nothing in this section requires a licensee to cause—

- (a) to be deposited with the council a sum that is the prescribed part of the lowest balance, as referred to in paragraph (c) of subsection (1); or
- (b) to be kept deposited with the council a sum that is the prescribed part of the aggregate of the amounts, as referred to in paragraph (d) of subsection (1).

if that lowest balance or aggregate, as the case may be, is less than one thousand dollars.

(5) Any licensee who neglects or fails to comply with any of the provisions of this section shall be guilty of an offence against this Act.

(6) In this section—

“carry on business” means carry on business as an auctioneer, a stock and station agent, a real estate agent or a business agent;

“licensee” means the holder of a license, but does not include any employee of a corporation in respect of whom the corporation has taken out a license;

“the commencing date” means—

- (a) in relation to a licensee who had commenced to carry on business before 1st July, 1973, or in relation to a licensee who is a member of a firm of licensees who had so commenced to carry on business—1st July, 1973; and
- (b) in relation to a licensee who commences to carry on business on or after 1st July, 1973, or in relation

to

Auctioneers and Agents (Amendment).

to a licensee who is a member of a firm of licensees who so commence to carry on business—the first day of April next following the day on which the licensee or the firm so commences to carry on business;

“the relevant period” means—

- (a) in relation to a licensee referred to in paragraph (a) of the definition of “the commencing date” in this subsection—the period beginning on 1st April, 1972, or the day on which the licensee, or the firm of licensees of which he is a member, as the case may be, commenced to carry on business, whichever day is the later, and ending on 30th June, 1973; and
- (b) in relation to a licensee referred to in paragraph (b) of the definition of “the commencing date” in this subsection—the period beginning on the day on which the licensee, or the firm of licensees of which he is a member, as the case may be, commenced to carry on business and ending on the first day of April next following that day.

36E. (1) All moneys deposited with the council pursuant to the provisions of section 36D shall be held by the council upon trust for the person or firm depositing them and shall be repayable on demand.

Moneys deposited by licensee or firm with council to be invested, etc. cf. Act No. 22, 1898, s. 42B.

(2) The fact that any such moneys are repayable by the council on demand does not affect the obligation of a person under section 36D.

(3)

Auctioneers and Agents (Amendment).

(3) Until demanded any moneys so deposited shall be invested by the council either on deposit with a bank in New South Wales bearing interest, or upon loan to the Treasurer at a rate of interest not less than the maximum rate for the time being payable by a bank in New South Wales on fixed deposits.

(4) Any moneys repaid by the council to a person or firm out of the moneys deposited with the council pursuant to the provisions of section 36D shall be paid forthwith into a bank in New South Wales to a trust account maintained in accordance with the provisions of section 36.

Council of
Auctioneers
and Agents
Special
Account.
cf. Act No.
22, 1898,
s. 42C.

36F. An account, to be called the Council of Auctioneers and Agents Special Account, shall be kept by the council of all moneys received, dealt with and repaid pursuant to the provisions of sections 36D and 36E.

New Part
IVA.

(e) by inserting next after Part IV the following new Part :—

PART IVA.

**AUCTIONEERS AND AGENTS STATUTORY INTEREST
ACCOUNT.**

Statutory
Interest
Account.

63B. (1) The council shall establish an account to be called the Auctioneers and Agents Statutory Interest Account (which is in this Part referred to as "the Statutory Interest Account").

(2) All moneys to the credit of the Statutory Interest Account shall, pending the investment or application thereof, be paid into a bank in New South Wales.

(3)

Auctioneers and Agents (Amendment).

(3) The Statutory Interest Account shall be operated upon in such manner as the council shall from time to time determine.

63c. There shall be paid to the credit of the Statutory Interest Account—

Moneys
of the
Statutory
Interest
Account.

- (a) the interest earned on the investments made by the council under subsection (3) of section 36E and under this Part; and
- (b) any other moneys that may be lawfully paid to the credit of the Statutory Interest Account.

63d. (1) The moneys to the credit of the Statutory Interest Account shall be applied in such amounts as from time to time are determined by the council, with the consent of the Minister, to the following purposes :—

Application
of moneys
of the
Statutory
Interest
Account.

- (a) the supplementation of the fund by an amount that is not less than fifty per centum of interest earned, during each financial year, on the investments made by the council under subsection (3) of section 36E;
- (b) the establishment and conduct by the council of a scheme for the payment, at the discretion of the council, of the whole or part of the costs, charges and expenses—
 - (i) incurred by bodies or organisations in the provision of courses leading to examinations prescribed for the purposes of subsection (10A) of section 23;

(ii)

Auctioneers and Agents (Amendment).

- (ii) involved in connection with educational meetings or lectures organised by or for the council for licensees;
- (c) investment in loans to building societies registered under the Co-operation Act, 1923, or the Permanent Building Societies Act, 1967, subject to such terms and conditions as may be prescribed; and
- (d) the payment to the credit of the Auctioneers and Agents Administration Account of the costs, charges and expenses of—
 - (i) the collection of the interest earned on the investments made under subsection (3) of section 36E and under this Part; and
 - (ii) the administration of section 36D and of this Part.

(2) Without affecting the operation of paragraph (c) of subsection (1), any moneys to the credit of the Statutory Interest Account which are not immediately required for the purposes of the Statutory Interest Account may be invested in any manner in which trustees are for the time being authorised to invest trust funds, or on deposit for such period as the council deems proper with any bank or corporation prescribed by the rules of court as a bank or corporation to which trust moneys may be paid under section 15 of the Trustee Act, 1925.

(4) In this section, "financial year" means any period of twelve months ending on the thirtieth day of June.

(f)

Auctioneers and Agents (Amendment).

- (f) by inserting next after section 67 (b) the following new paragraph :— Sec. 67.
(Moneys of the fund.)
- (b1) all sums paid to or on account of the fund out of the Auctioneers and Agents Statutory Interest Account;
- (g) by inserting at the end of section 92 (2) the following new paragraphs :— Sec. 92.
(Regulations.)
- (g) specify the prescribed part for the purposes of section 36D;
- (h) prescribe the procedure to be adopted with respect to the establishment and conduct of the scheme referred to in section 63D (1) (b).

7. The Principal Act is further amended—

- Further amendment of Act No. 28, 1941.
- (a) by omitting from section 25 (6) the words “not exceeding two years”; Sec. 25.
(Fees in respect of licenses.)
- (b) by omitting from section 73 the words “not exceeding two years”; Sec. 73.
(Council may invest funds.)
- (c) by omitting from section 92 (3) the words “twenty dollars” and by inserting instead the words “one hundred dollars”. Sec. 92.
(Regulations.)

8. Each provision of the Principal Act, specified in Column 1 of the Schedule, is amended in the manner set forth opposite that provision in Column 2 of the Schedule.

Further amendment of Act No. 28, 1941.
(Statute law revision.)

SCHEDULE.

Auctioneers and Agents (Amendment).

Sec. 8.

SCHEDULE.

AMENDMENT OF THE PRINCIPAL ACT.

| Column 1. | Column 2. |
|-----------------------------|---|
| Provision of Principal Act. | Amendment. |
| Section 3 (1) | (a) Omit from the definition of "Real estate agent" the words "as amended by subsequent Acts"; (b) Omit from the definition of "Superintendent of licenses" the words "as amended by subsequent Acts". |
| Section 5 | Omit subsections (1), (2) and (4). |
| Section 9 | Omit paragraphs (a) and (b), insert instead the following paragraphs:— (a) he becomes a bankrupt, applies to have the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes any assignment of his remuneration, fees or expenses as a member, or of his estate, for their benefit; (b) he becomes a temporary patient or a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention, under Part VII of that Act. |
| Section 14 (2) | Omit "or the Sydney Corporation Act, 1932-1940, or of any Act amending or replacing those Acts,". |
| Section 17 (1) | Omit "as amended by subsequent Acts,". |
| Section 19A (2).. .. | Omit "and any Act amending that Act". |
| Section 22 (2) (b) | Omit "-1938, as amended by subsequent Acts". |
| Section 22 (5) | Omit "-1932" wherever occurring. |
| Section 23 (12).. .. | Omit "-1932" wherever occurring. |
| Section 25 (5) | Omit "Colonial". |
| Section 25 (6) | Omit "-1940". |
| Section 38E (1) (a) | Omit "as amended by subsequent Acts". |
| Section 51 | Omit from the definition of "Allotment of land" the words "as amended by subsequent Acts,". |
| Section 73 | Omit "-1940". |

SCHEDULE

*Auctioneers and Agents (Amendment).*SCHEDULE—*continued*AMENDMENT OF THE PRINCIPAL ACT—*continued.*

| Column 1. | Column 2. |
|-----------------------------|---|
| Provision of Principal Act. | Amendment. |
| Section 74 (5) | Omit "as amended by subsequent Acts,". |
| Section 88 | Omit "Crimes Act, 1900, as amended by subsequent Acts," insert instead "Crimes Act 1900,". |
| Section 92 (4) | Omit the subsection, insert instead the following subsection:— (4) Section 41 of the Interpretation Act, 1897, applies in respect of a regulation as if this Act had been passed after the commencement of the Interpretation (Amendment) Act, 1969. |

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

A. R. CUTLER,
Governor.

*Government House,
Sydney, 28th March, 1973.*

AMERICAN

SCHEDULE

AMENDMENT

CHAPTER

SECTION

ARTICLE

Section 1. The Secretary of the Interior is authorized to...

of the same and on behalf of the United States to

A. R. KUTLER

Secretary

Government Printing Office
Washington, D. C. 20540