

FIRST PRINT

**COMMERCIAL AGENTS AND PRIVATE INQUIRY AGENTS
(AMENDMENT) BILL, 1985**

EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

This Bill is cognate with the Firearms and Dangerous Weapons (Amendment) Bill, 1985.

The object of this Bill is to amend the Commercial Agents and Private Inquiry Agents Act, 1963 ("the Act")—

- (a) to exclude from the definition of "private inquiry agent" in the Act persons who are in the business of furnishing guards or watchmen or who act as guards or watchmen (Schedule 1 (2) (c));
- (b) to increase the penalties for offences under the Act (Schedule 1 (5), (6), (13) and (17) (b));
- (c) to provide that a subagent within the meaning of the Act must be specially licensed as the subagent of a commercial agent or a private inquiry agent, as the case may be (Schedule 1 (7) and (9));
- (d) to require a corporation licensed under the Act to employ, at every place at which it carries on business, a natural person holding the same kind of license as the corporation (Schedule 1 (8));
- (e) to enable the educational and other qualifications or experience which a person must have in order to obtain a license under the Act to be varied by regulation (Schedule 1 (10) (d));
- (f) to reduce the minimum qualifying age for licensees from 21 to 18 years (Schedule 1 (10) (e));
- (g) to regulate further the keeping by a licensed commercial agent of a trust account and to provide for its proper audit and for statements of account (Schedule 1 (17), (18) and (20));
- (h) to alter the procedure for the lodgment and execution of claims against a fidelity bond lodged under the Act in respect of a licensed commercial agent (Schedule 1 (23));

- (i) so as to provide for the administration of the business of a licensed commercial agent by a receiver in certain cases (Schedule 1 (24) and (28)); and
- (j) to provide for an offence of harassment by a commercial agent, private inquiry agent or subagent (Schedule 1 (25)).

The Bill contains other minor, consequential or ancillary provisions.

**COMMERCIAL AGENTS AND PRIVATE INQUIRY AGENTS
(AMENDMENT) BILL, 1985**

No. , 1985.

A BILL FOR

An Act to amend the Commercial Agents and Private Inquiry Agents Act, 1963, with respect to the authority conferred by certain licenses under that Act, with respect to the accounts and finances of businesses conducted by licensed commercial agents and for other purposes.

Commercial Agents and Private Inquiry Agents (Amendment) 1985

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:—

5 Short title.

1. This Act may be cited as the "Commercial Agents and Private Inquiry Agents (Amendment) Act, 1985".

Commencement.

2. (1) Except as provided by subsection (2), this Act shall commence 10 on the date of assent to this Act.

(2) The several provisions of Schedule 1, and section 4 in its application to those provisions, shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

15 Principal Act.

3. The Commercial Agents and Private Inquiry Agents Act, 1963, is referred to in this Act as the Principal Act.

Amendment of Act No. 4, 1963.

4. The Principal Act is amended in the manner set forth in Schedule 1.

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Transitional provision.

5. Subject to any regulations under section 5 (4) of the Principal Act, the Principal Act, as amended by this Act, applies to and in respect of applications made and licenses issued under that Act before or after the commencement of this Act.

SCHEDULE 1.

(Sec. 4.)

AMENDMENTS TO THE PRINCIPAL ACT.

- (1) Section 3—
- 10 Omit the section.
- (2) (a) Section 4, definition of “Commercial agent”—
 Before “hire-purchase”, insert “lease”.
- (b) Section 4, definitions of “Moneys”, “Moneys received for or on behalf of any person”—
- 15 Omit “Moneys” wherever occurring, insert instead “Money”.
- (c) Section 4, definition of “Private inquiry agent”—
- (i) At the end of paragraph (a), insert “or”.
- (ii) Omit paragraphs (c) and (d).
- (3) Sections 4, 31 (1)–(3), (5), 32 (2), 38 (1), 39—
- 20 Omit “moneys” wherever occurring, insert instead “money”.

Commercial Agents and Private Inquiry Agents (Amendment) 1985

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(4) Section 5 (1) (h)—

After section 5 (1) (g), insert:—

- 5 (h) the Public Trustee or any executor, administrator, trustee,
liquidator, official receiver, master of the Supreme Court,
trustee in bankruptcy of a bankrupt's estate, trustee under
a composition or scheme of arrangement or under a deed of
10 arrangement or under a deed of assignment, committee of
the estate of a person who is mentally ill, or manager of the
property of an incapable person, in the course of performing,
exercising or carrying out his or her powers, functions and
duties as such.

(5) Sections 6 (2), 8 (3)—

- 15 Omit "four hundred dollars" wherever occurring, insert instead
"\$5,000".

(6) Sections 6 (2), 8 (3), 19 (2), 38 (2)—

Omit "two hundred dollars" wherever occurring, insert instead
"\$500".

20 (7) Section 8 (1) (a)—

Omit the paragraph, insert instead:—

- (a) no person—
25 (i) shall be or act as a subagent for a licensed com-
mercial agent, unless the person is the holder of a
subagent's license authorising the person to be such a
subagent; or

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

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

(8) Section 8A—

After section 8, insert:—

Licensee to be in charge at place of business.

- 10 8A. (1) A corporation which conducts its business as a licensed commercial agent at one or more places of business shall employ, as the person in charge of that place of business or each such place of business, as the case may be, an individual who is a licensed commercial agent.

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

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

(9) Section 9 (2)—

Omit the subsection, insert instead:—

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

Commercial Agents and Private Inquiry Agents (Amendment) 1985

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(10) (a) Section 10 (1)—

5 After “form prescribed”, insert “and shall pay the prescribed application fee”.

(b) Section 10 (4) (a), (8)—

Omit “and upon payment of the prescribed fee” wherever occurring.

(c) Section 10 (4) (b), (12)—

10 Omit “and on payment of the prescribed fee” wherever occurring.

(d) Section 10 (6) (a) (iii)—

Omit the subparagraph, insert instead:—

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

(e) Section 10 (6) (a) (iv)—

Omit “twenty-one”, insert instead “18”.

(f) Section 10 (6) (a) (vii)—

20 Omit “subject to subsection (2) of section 13, that”, insert instead “that, within the period of 10 years immediately preceding the date of the application,”.

(g) Section 10 (6A)—

After section 10 (6), insert:—

25 (6A) A reference, in subsection (6) (b) (i) or (ii), to a person to be in charge of the carrying out of the functions of a corporation as the holder of a license includes a reference to each individual employed by the corporation for the purposes of section 8A.

(h) Section 10 (7)—

30 Omit the subsection.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(i) Section 10 (11) (c)—

Omit the paragraph, insert instead:—

5 (c) if it is satisfied—

(i) that the ground on which the objection was made has been established; and

(ii) that, upon that ground, the application ought to be refused,

10 shall order that the application be refused, but otherwise shall order that the application be granted.

(11) (a) Section 11 (2)—

After “ground”, insert “and that, upon that ground, an order under this subsection is warranted”.

15 (b) Section 11 (5)—

After section 11 (4), insert:—

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

25 (12) Section 13 (2)—

Omit the subsection.

(13) Section 16 (3)—

Omit the subsection, insert instead:—

30 (3) A licensed commercial agent or licensed private inquiry agent who carries on business without complying with the requirements of this section shall be liable to a penalty not exceeding \$2,000.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(14) Section 22—

Before “hire-purchase”, insert “lease,”.

5 (15) Section 29 (1)—

Before “hire-purchase”, insert “lease or a”.

(16) Part III, headings—

Omit the headings to the Part, insert instead:—

PART III.

10 FINANCIAL TRANSACTIONS OF LICENSEES.

DIVISION 1.—*Accounts of licensed commercial agents.*

(17) (a) Section 31 (1A)—

After section 31 (1), insert:—

15 (1A) A licensed commercial agent shall keep accounts of all money received which is required to be dealt with in accordance with subsection (1) and the accounts shall be kept in such a manner as to disclose the true position in regard thereto and to enable the accounts to be conveniently and properly audited.

(b) Section 31 (4)—

20 Omit “shall be guilty of an offence against this Act”, insert instead “shall be liable, in the case of a corporation, to a penalty not exceeding \$5,000 and, in the case of an individual, to a penalty not exceeding \$1,000 or to imprisonment for a term not exceeding one year, or both”.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(c) Section 31 (5)—

Omit “are”, insert instead “is”.

5 (d) Section 31 (5)—

Omit “they were”, insert instead “it was”.

(18) Section 32A—

After section 32, insert:—

Audit of licensees’ books, records, etc.

10 32A. (1) In this section, “prescribed day” means 30th June or, in respect of any particular person to whom this section applies, such other day as the Commissioner of Police may, on the application of that person, fix by order in writing addressed to that person.

(2) This section applies to—

- 15 (a) a licensed commercial agent;
- (b) a person who has been, but after the commencement of this section ceases to be, a licensed commercial agent; and
- (c) the personal representative of a licensed commercial agent who has died after the commencement of this section.

20 (3) Within 3 months after the prescribed day in every year applicable to the person, a person to whom this section applies shall—

- 25 (a) cause the books, papers, accounts and other documents relating to any money held during the year ended on that day in a trust account kept by the person in accordance with section 31 to be audited by a person qualified in accordance with the regulations; and

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5 (b) after the receipt from the auditor of a report, containing the prescribed certificate, of the result of the audit, lodge a copy of the report with the Commissioner of Police.

(4) Subsection (3) ceases to apply to a person referred to in subsection (2) (b) or (c)—

10 (a) where, at the date on which the person ceased to be a licensed commercial agent or became the personal representative of a licensed commercial agent, the person did not hold any money in any trust account kept by the person in accordance with section 31—upon the expiration of a period of 3 months after the prescribed day applicable to the person that next follows the day on which the person ceased to be a licensed commercial agent or became the personal representative, as the case may be; or

15 (b) where, at the date on which the person ceased to be a licensed commercial agent or became the personal representative of a licensed commercial agent the person held money in any trust account kept by the person in accordance with section 31—upon the expiration of a period of 3 months after the prescribed day applicable to the person that next follows the day on which the person has disbursed the last of the money in any such trust account.

25 (5) A person to whom this section applies shall obtain from the auditor making an audit for the purposes of this section a copy of the report (including the prescribed certificate) of the result of the audit signed by the auditor and preserve it for a period of at least 3 years after the date on which the report was made.

30 (6) A licensed commercial agent shall not be required under this section to cause any books, papers, accounts or other documents to be audited in respect of any period in relation to which those books, papers, accounts and other documents have already been audited for the purposes of this section.

Commercial Agents and Private Inquiry Agents (Amendment) 1985

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

5 (7) A licensed commercial agent who in the course of any year ending on the prescribed day neither received nor held any money for or on behalf of any other person shall be deemed to have complied with this section if, within the period of 3 months after that day, the licensed commercial agent makes and lodges with the Commissioner of Police a statutory declaration to that effect.

10 (8) Where, in relation to the books, papers, accounts and other documents kept by a partnership of licensed commercial agents, the provisions of this section are complied with by any one of the licensed commercial agents, those provisions shall be deemed to have been complied with by all of them.

(19) Part III, Division 2, heading—
15 Before section 33, insert:—

DIVISION 2.—*Records of transactions by licensees.*

(20) Section 33A—
After section 33, insert:—

Statement of account.

20 33A. (1) A licensed commercial agent shall at the prescribed times furnish to a person on whose behalf any money is held by the commercial agent in a trust account kept in accordance with section 31 a statement of the balance of the money standing to the credit of that person in that account.

25 (2) A licensed commercial agent shall, within 14 days of a request being made in the prescribed manner by a person directly concerned in a transaction by or with the commercial agent in the course of the commercial agent's business as such, render in the prescribed manner to the person making the request an itemised
30 account of the transaction.

*Commercial Agents and Private Inquiry Agents (Amendment) 1985*SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(21) Part III, Division 3, heading—

Before section 35, insert:—

5 DIVISION 3.—*Other provisions relating to commercial agents.*

(22) Section 37 (2), (3)—

Omit the subsections.

(23) Section 37A—

After section 37, insert:—

10 **Action on bond.**

15 37A. (1) A person who has suffered loss by reason of any act or omission of a licensed commercial agent, being an act or omission of a kind to which the condition of a fidelity bond subsisting in relation to the commercial agent applies, may apply in the prescribed manner for action to be taken by the Minister under this section.

(2) The Minister, if satisfied as to the merits of an application under subsection (1), may on behalf of the Crown sue for and recover the amount secured by the relevant fidelity bond.

20 (3) The Minister, upon receipt of an application under subsection (1)—

25 (a) where it seems likely to the Minister that no further applications will be made under that subsection in respect of the same bond, shall assess and determine the applicant's claim and may, out of the amount recovered under subsection (2), compensate the applicant for the whole of the loss alleged in the application or to such extent as to the Minister seems just; or

*Commercial Agents and Private Inquiry Agents (Amendment) 1985*SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

5 (b) where it seems likely to the Minister that more applications might be made under that subsection in respect of the same bond, may cause to be published, in such manner as the Minister considers appropriate, a notice under subsection (4).

10 (4) A notice under this subsection shall invite persons having claims in respect of any loss covered by the bond to forward those claims, in such manner and form and within such time as may be specified in the notice, to the Minister.

15 (5) The Minister shall assess and determine the claims received in respect of losses covered by the bond and may direct the payment and distribution, if necessary rateably, of the money recovered in respect thereof to the several persons appearing to the Minister to be entitled thereto in respect of the claims.

20 (6) No claim which was received after the time limited by a notice under subsection (4) or which relates to a breach of a condition of a bond which occurred more than 2 years before the claim was received shall be proceeded with unless the Minister, being satisfied that there is sufficient cause for so doing, allows the claim.

(24) Part III, Division 4—

After section 39, insert:—

DIVISION 4.—*Receivers.*

25 **Interpretation.**

39A. In this Division and in Schedule 1—

“Court” means the Supreme Court of New South Wales;

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

5 “defalcation” means any larceny, embezzlement, omitting to account, fraudulent misappropriation or other act punishable by imprisonment, of or in relation to any money or other property;

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

10 “property”, in relation to a licensee, means—

15 (a) money or other property which was in the course of or in connection with the business of the licensee, or the business of any firm of licensees of which the licensee is or has been a member, entrusted to or received on behalf of any other person by the licensee or firm or by any of his, her or their servants or agents or by any licensee with whom the licensee or firm shares remuneration and which has not been paid or delivered by the licensee or firm to the person entitled thereto or as that person has directed or otherwise according to law;

20 (b) money or other property which would, were it not for the appointment of a receiver as provided in this Division, be receivable on behalf of any other person by the licensee or firm of licensees after the appointment of that receiver;

25 (c) money received by the receiver during a receivership under this Division being interest, dividends or other income arising from any property held by the receiver in accordance with the provisions of Schedule 1; and

30 (d) ledgers, books of account, vouchers, records, deeds, files and other documents and writings, or any mechanical, electronic or other device used for the

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

5 storage of information, relating to any property as hereinbefore defined or to any accounts or transactions concerning any business carried on by the licensee.

Power of Court to appoint receiver in certain cases.

39B. (1) Where the Court, on application made by a creditor of the licensee or by the Minister, is satisfied—

- 10 (a) that any defalcation has been or may have been committed in relation to any trust account or trust fund of any licensee; or
- (b) that through—
- (i) the mental or physical infirmity of a licensee;
- 15 (ii) the death or insolvency or the sequestration or assignment for the benefit of creditors of the estate of a licensee;
- (iii) the abandonment of a licensee's business;
- (iv) a licensee having been disqualified from holding a license; or
- 20 (v) the license of a licensee having been cancelled or a licensee's application for a renewal of a license having been refused,

25 any person is unable to obtain payment or delivery of money or other property held for or on behalf of that person by the licensee or by any firm of licensees of which the licensee is or was a partner,

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

*Commercial Agents and Private Inquiry Agents (Amendment) 1985*SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

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

(25) Section 39c—

Before section 40, insert:—

Harassment.

39c. (1) A commercial agent, private inquiry agent or subagent shall not, when exercising or carrying on or attempting to exercise or carry on the functions of a commercial agent, private inquiry agent or subagent—

(a) unduly harass any person by leaving, in or outside any premises, any notice, vehicle or other object on which there is writing stating—

(i) the name of the commercial agent, private inquiry agent or subagent or that he or she is a commercial agent, private inquiry agent or subagent;

(ii) the business of a commercial agent or private inquiry agent; or

(iii) any other information,

in circumstances likely to cause a person visiting or passing by the premises reasonably to believe or infer that the commercial agent, private inquiry agent or subagent, or some person on behalf of the commercial agent, private inquiry agent or subagent, was visiting the occupier of the premises for the purpose of carrying out any of the functions of a commercial agent or private inquiry agent;

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- 5 (b) send or deliver to, or leave with, any person any document likely to cause the person receiving it reasonably to believe or infer that there would be left in or outside premises occupied by the person a notice, vehicle or object, as referred to in paragraph (a);
- 10 (c) call at any premises or communicate (whether by telephone or otherwise) with persons occupying any premises with such frequency as is, or at such times as are, unreasonable in the circumstances;
- 15 (d) disclose to a person's employer, or cause to be disclosed to a person's employer, the fact that the person is a debtor, except where that fact is disclosed, or caused to be disclosed, by a commercial agent or a subagent of a commercial agent—
- (i) with the person's consent; or
- (ii) by or in connection with the execution of any legal process for enforcement of a judgment against the person, being process the execution of which directly involves the employer; or
- 20 (e) threaten a person with disclosure, to the person's employer, of the fact that the person is a debtor, except where the threat—
- (i) is made by a commercial agent or a subagent of a commercial agent; and
- 25 (ii) is a threat of disclosure by or in connection with the execution of any legal process mentioned in paragraph (d) (ii).

30 (2) Any person who contravenes the provisions of subsection (1) shall be liable, in the case of a corporation, to a penalty not exceeding \$5,000 and, in the case of an individual, to a penalty not exceeding \$1,000 or to imprisonment for a term not exceeding 3 months, or both.

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

5 (3) In any proceedings for an offence arising by virtue of a disclosure in contravention of subsection (1) (d), the absence of any consent mentioned in subsection (1) (d) (i) shall be presumed until the court is satisfied to the contrary.

(26) (a) Section 40 (2)—

Omit “four hundred dollars”, insert instead “\$2,000”.

(b) Section 40 (4)—

10 After section 40 (3), insert:—

(4) Notwithstanding any provision of the Justices Act, 1902, proceedings for an offence arising under section 19 (2), 20 (1), 27, 31 (4), 33 (4) or 38 (2) may, with the approval of the Minister, be commenced not later than 3 years after the date alleged to be the date on which the offence was committed.

15

(27) (a) Section 44 (1) (d1)—

After section 44 (1) (d), insert:—

(d1) the surrender of licenses, the particulars to be indorsed on licenses and the notification by the licensee of any change in those particulars; and

20

(b) Section 44 (2)–(4)—

Omit section 44 (2) and (3), insert instead:—

(2) The regulations may prescribe penalties not exceeding—

(a) \$200, in the case of an individual; or

25 (b) \$1,000, in the case of a corporation,

for any breach thereof.

*Commercial Agents and Private Inquiry Agents (Amendment) 1985*SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(3) A provision of a regulation may—

- 5 (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind; or
- 10 (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

- 15 (4) Section 41 of the Interpretation Act, 1897, applies to and in respect of a regulation as if this Act had been passed after the commencement of the Interpretation (Amendment) Act, 1969.

(28) Schedule 1—

After section 44, insert:—

SCHEDULE 1.

(Sec. 39B.)

20

PROVISIONS RELATING TO RECEIVERS.

Application for appointment of receiver.

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

*Commercial Agents and Private Inquiry Agents (Amendment) 1985*SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.***Copy of order appointing receiver to be served on licensee.**

5 2. Unless the Court dispenses with service, a copy of the order of the Court appointing the receiver shall, as soon as practicable, be served on the licensee and on any other person to whom the Court directs that notice of the appointment of the receiver should be given.

Receiver may require information in respect of property.

10 3. (1) The receiver may require any person to give to the receiver such information as may reasonably be required concerning any property of which he or she has been appointed receiver.

15 (2) Any person so required to give information who, without lawful justification or excuse (the proof whereof shall lie on the person), refuses or fails so to do or otherwise hinders, obstructs or delays the receiver in the performance of the receiver's duties or the exercise of the receiver's powers under this Schedule shall be guilty of an offence against this Act.

Receiver may forbid withdrawal of money from bank.

20 4. (1) Where the receiver has reasonable grounds for believing that there is in any bank account money received for or on behalf of any person by the licensee or by the firm of licensees of which the licensee is or was a partner, the receiver may serve on the bank a notice in writing with a copy of the order of the Court attached or appended thereto forbidding, except by the receiver or on the receiver's authority, any withdrawal of money from or any dealing (including in any case the completion of any uncompleted dealing commenced before the service of the notice) with that account, whether the account is in the name of the licensee or the name of any firm of licensees of which the licensee is or was a partner or, where the licensee is dead, any account which is in that name or firm name or which was formerly in that name or firm name and is now in the name of the licensee's personal representative.

25

30 (2) Without prejudice to any other mode of service, service of any notice pursuant to this clause may be effected by leaving the notice and copy of the order attached or appended thereto with the manager, accountant or such other person as appears to be at the time of service in charge of the branch of the bank at which there is an account to which subclause (1) refers.

*Commercial Agents and Private Inquiry Agents (Amendment) 1985*SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

5 (3) The bank on which the notice is served shall not permit any withdrawal from or dealing with any account to which the notice relates except by or on the authority of the receiver.

10 (4) The receiver may withdraw all the money in any such account or from time to time withdraw any of that money and pay it into a special account or special accounts in the receiver's own name and may operate on and otherwise deal with the special account or special accounts in accordance with law.

Receiver may take possession of property.

5. (1) Subject to subclause (2), the receiver may acquire or take possession of any property of which he or she has been appointed receiver.

15 (2) All ledgers, books of account, vouchers, records, deeds, files and other documents and writings and all mechanical, electronic or other devices used for the storage of information (other than any of the foregoing which relate either to any property referred to in paragraph (a) or (b) of the definition of "property" in section 39A or to any former business of the licensee) shall, as soon as is reasonable, be returned to the licensee.

20 (3) If the licensee or any other person, on being required by the receiver to transfer or deliver to the receiver or to permit the receiver to take possession of any such property in his or her possession or at his or her disposition or under his or her control does not comply with the requirement, or if it appears to the receiver that any such person on being so required has not fully complied with the requirement, the receiver may apply to the Court for an order
25 for the transfer or delivery to the receiver of the property, whereupon the Court may make that order.

30 (4) If it appears to the receiver that an order made by the Court under subclause (3) is not complied with, the Court may, on application made by the receiver, authorise any member of the police force, or the receiver or some other person and any member of the police force, to enter any premises or other place specified in the order and to search for any property of which the receiver is entitled to take possession under the provisions of this clause and to seize any such property and remove it to such place as the receiver thinks fit and on such application the Court may make such further order in the
35 matter as to the Court seems fit.

(5) Wilful failure to comply with any order made by the Court under subclause (3) shall be punishable as a contempt of the Court.

*Commercial Agents and Private Inquiry Agents (Amendment) 1985*SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.***Improperly withdrawing money or destroying or concealing property.**

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

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

shall be guilty of an offence against this Act.

Power of receiver to deal with property.

15 7. (1) The receiver may deal with any property which the receiver has acquired or of which he or she has taken possession under the provisions of this Schedule in any manner in which the licensee or the firm of which the licensee is or was a partner might lawfully have dealt with the property and shall as soon as is reasonably practicable and to the extent to which ownership can be established, deliver the property to the persons lawfully entitled thereto.

20 (2) Without restricting or in any way derogating from the powers of the receiver under the provisions of subclause (1), the receiver may—

- (a) prove, grant, claim and draw a dividend in respect of any debt due to the licensee in connection with any property of which the receiver has been appointed receiver;
 25 (b) give receipts for any money received by him or her, which shall effectually discharge the person paying the money from all responsibility in respect of the application thereof; and
 (c) employ a barrister or solicitor or other agent to give advice or take any proceedings or otherwise act for the receiver in relation to any property of which he or she has been appointed receiver.

Application for directions.

30 8. The receiver, the licensee, any member of the firm of which the licensee is or was a partner or the personal representative of a deceased licensee, or any person who has submitted to the receiver a claim in respect of any property,
 35 may apply to the Court for directions as to the manner in which the receiver shall exercise or perform the powers or duties conferred or imposed on the

*Commercial Agents and Private Inquiry Agents (Amendment) 1985***SCHEDULE 1—continued.****AMENDMENTS TO THE PRINCIPAL ACT—continued.**

5 receiver by this Schedule either generally or in respect of any particular matter specified in the application, whereupon the Court may make such order as to the Court seems fit.

Property claimed by licensee.

9. (1) The receiver may give notice to the licensee or any other person that, if the licensee or other person has any claim to any property, he or she shall
10 within the time specified in the notice (being not less than 30 days from the giving of the notice) submit to the receiver full particulars of the property claimed and the grounds of the claim.

(2) If such a notice has been given, the receiver may disregard any claim made by the licensee or other person otherwise than in accordance with the terms of the notice.

15 (3) The licensee shall not be entitled to any payment in respect of or otherwise to enforce any such claim and shall not be entitled except as against a licensee to a lien upon any document or writing held by the receiver unless and until the proper claims of all other claimants are fully satisfied and the expenses of the receivership, as defined in clause 15, have been paid.

20 Liens for costs on property held by receiver.

10. (1) If the licensee or the firm of which the licensee is or was a partner claims a lien for costs on any document, writing or other property held by the receiver, the receiver may by notice in writing require the licensee or firm to
25 give to the receiver within a time specified in the notice (being not less than 30 days from the giving of the notice) particulars of all documents, writings and other property on which the licensee or firm claims a lien together with a detailed itemised account relating to the amount in respect of which each lien is claimed.

30 (2) If the licensee or firm fails to comply with any such requirement in respect of any lien claimed by the licensee or firm, the receiver may in dealing with the document, writing or other property disregard the lien.

35 (3) If the licensee or firm so requests in writing, the receiver shall afford to the licensee or firm or any other person on the licensee's or firm's behalf such access to all relevant books and documents as is reasonably necessary to enable the preparation of the itemised account and in such event the time specified in the notice pursuant to subclause (1) shall not commence until that access has been provided.

*Commercial Agents and Private Inquiry Agents (Amendment) 1985*SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.***Power of Court to order person to appear for examination by receiver.**

5 11. (1) The receiver may apply to the Court for an order that the licensee or any other person appear before the Court to be examined by the receiver as to any property of which the receiver has been appointed receiver, whereupon the Court may make such order as to the examination of the licensee or other person as to the Court seems fit.

10 (2) Upon any such examination before the Court, the receiver and the licensee or other person may be represented by a solicitor or barrister, and the Court may put or allow to be put to the licensee or other person such questions as it thinks fit.

(3) The licensee or other person shall be examined on oath and shall answer all such questions.

15 (4) The licensee or other person may object to any question upon the ground that the answer may tend to incriminate him or her but shall be compellable to answer the question notwithstanding the objection.

20 (5) No answer given subject to any such objection shall be admitted in evidence in any proceedings for any offence except that of perjury in connection with the examination.

Application for termination of appointment of receiver.

25 12. (1) The Minister, the receiver or the licensee or the firm of licensees of which the licensee is or was a partner may at any time apply to the Court for an order that the appointment of a receiver be terminated, whereupon the Court may make such an order and may, if it thinks fit, appoint another person to be the receiver in his or her place.

30 (2) If a receiver's appointment is terminated by an order of the Court and another person is appointed to be the receiver in his or her place, the former receiver shall, as soon as he or she reasonably may and subject to any directions given by the Court under this clause, transfer or deliver to the receiver appointed in his or her place all property and any documents, writings and other property which he or she holds by virtue of his or her appointment as receiver.

35 (3) If a receiver's appointment is terminated by order of the Court and no other person is within 14 days of the termination appointed to be receiver in his or her place, the receiver may, and upon demand in writing by the licensee or the firm of licensees of which the licensee is or was a partner

*Commercial Agents and Private Inquiry Agents (Amendment) 1985*SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

5 shall, as soon as he or she reasonably may and subject to any directions given by the Court under this section and subject to the payment by the licensee or firm of the expenses of the receivership, as defined in clause 15, transfer or deliver to the licensee or firm all property which the receiver then holds by virtue of his or her appointment as receiver.

Property not dealt with by receiver.

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

Receiver may invest money.

15 14. (1) The receiver may invest any money in his or her hands in the course of his or her receivership in any manner in which trustees are for the time being authorised by law to invest trust funds.

20 (2) Any income accruing from the investment of any such money and any profit from the sale of any such investment shall be added to and form part of the property of which he or she has been appointed receiver.

Remuneration of receiver and expenses of receivership.

25 15. (1) All money payable to the receiver as remuneration for his or her services, all costs of legal proceedings and all other expenses incurred by the receiver in the course of his or her receivership (all of which are hereafter in this clause referred to as "the expenses of the receivership") shall, to the extent that they have not otherwise been paid to the receiver under this Act, be paid to the receiver by the Minister.

30 (2) Any amount paid by the Minister for the expenses of the receivership shall be recoverable by the Minister from the licensee as a debt owing by the licensee to the Minister.

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

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.***Cost of proceedings.**

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

Re-opening of agreement as to receiver's remuneration.

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

Court may review receiver's expenses.

15 18. (1) Where proceedings are taken by the Minister under clause 15 (2) for the recovery of any amount paid for the expenses of the receivership therein referred to and there is evidence which satisfies the Court that the amounts charged for those expenses are excessive, the Court may take an account between the Minister and the receiver and relieve the licensee from payment of any sum in excess of the sum adjudged by the Court to be fairly payable in respect of those expenses.

20 (2) If any excess has been paid or allowed in account by the Minister, the Court may order the receiver to repay it.

25 (3) The Court shall have and may, on the application of the licensee or of any firm of which the licensee is or was a partner, exercise the like powers as may be exercised under this clause where proceedings are taken for the recovery of any amount paid by the Minister for the expenses of the receivership pursuant to clause 15. and the Court shall have power to entertain any such application, notwithstanding that the expenses of the receivership have not been paid to the receiver.

30 (4) No proceedings to obtain any relief under this clause shall be taken after 3 months from the time when the expenses of the receivership have been paid, but the legal personal representative of a deceased licensee may take any such proceedings at any time within 6 months from the time when those expenses were paid.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.***Power of Court to give general directions.**

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

Receiver not deemed to be personal representative.

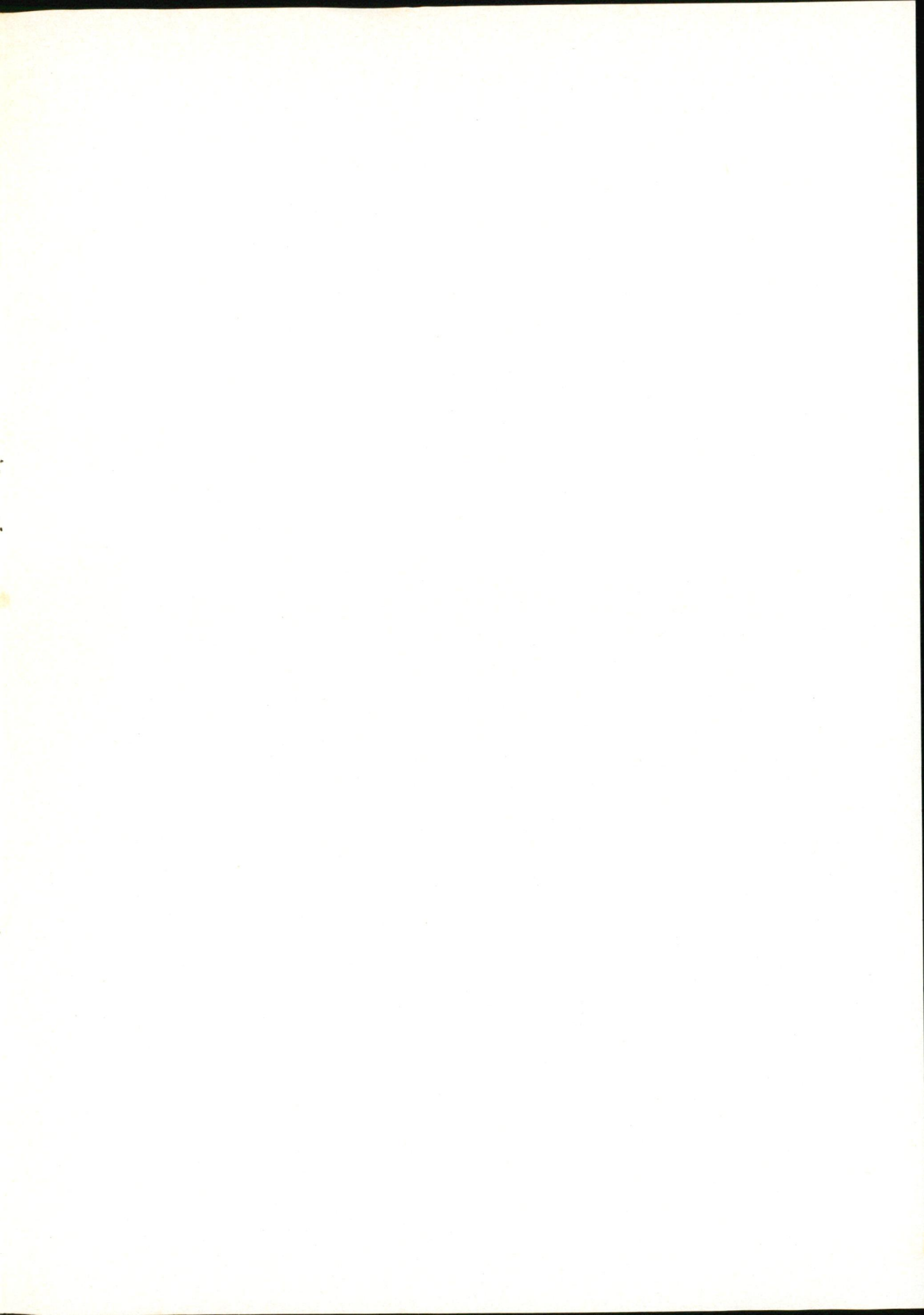
- 10 20. Where a licensee dies, a receiver in the execution of the receiver's functions under this Schedule shall not be deemed or taken to be a personal representative of the licensee.

Property held by receiver to be free from execution or attachment.

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

15 **Returns by receiver.**

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



**COMMERCIAL AGENTS AND PRIVATE INQUIRY AGENTS
(AMENDMENT) ACT, No. 53**

New South Wales



ANNO TRICESIMO QUARTO

ELIZABETHÆ II REGINÆ

Act No. 53, 1985.

An Act to amend the Commercial Agents and Private Inquiry Agents Act, 1963, with respect to the authority conferred by certain licenses under that Act, with respect to the accounts and finances of businesses conducted by licensed commercial agents and for other purposes. [Assented to, 9th May, 1985.]

Commercial Agents and Private Inquiry Agents (Amendment) 1985

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 "Commercial Agents and Private Inquiry Agents (Amendment) Act, 1985".

Commencement.

2. (1) Except as provided by subsection (2), this Act shall commence on the date of assent to this Act.

(2) The several provisions of Schedule 1, and section 4 in its application to those provisions, shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Principal Act.

3. The Commercial Agents and Private Inquiry Agents Act, 1963, is referred to in this Act as the Principal Act.

Amendment of Act No. 4, 1963.

4. The Principal Act is amended in the manner set forth in Schedule 1.

Commercial Agents and Private Inquiry Agents (Amendment) 1985

Transitional provision.

5. Subject to any regulations under section 5 (4) of the Principal Act, the Principal Act, as amended by this Act, applies to and in respect of applications made and licenses issued under that Act before or after the commencement of this Act.

SCHEDULE 1.

(Sec. 4.)

AMENDMENTS TO THE PRINCIPAL ACT.

(1) Section 3—

Omit the section.

(2) (a) Section 4, definition of “Commercial agent”—

Before “hire-purchase”, insert “lease”.

(b) Section 4, definitions of “Moneys”, “Moneys received for or on behalf of any person”—

Omit “Moneys” wherever occurring, insert instead “Money”.

(c) Section 4, definition of “Private inquiry agent”—

(i) At the end of paragraph (a), insert “or”.

(ii) Omit paragraphs (c) and (d).

(3) Sections 4, 31 (1)–(3), (5), 32 (2), 38 (1), 39—

Omit “moneys” wherever occurring, insert instead “money”.

Commercial Agents and Private Inquiry Agents (Amendment) 1985

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(4) Section 5 (1) (h)—

After section 5 (1) (g), insert:—

- (h) the Public Trustee or any executor, administrator, trustee, liquidator, official receiver, master of the Supreme Court, trustee in bankruptcy of a bankrupt's estate, trustee under a composition or scheme of arrangement or under a deed of arrangement or under a deed of assignment, committee of the estate of a person who is mentally ill, or manager of the property of an incapable person, in the course of performing, exercising or carrying out his or her powers, functions and duties as such.

(5) Sections 6 (2), 8 (3)—

Omit "four hundred dollars" wherever occurring, insert instead "\$5,000".

(6) Sections 6 (2), 8 (3), 19 (2), 38 (2)—

Omit "two hundred dollars" wherever occurring, insert instead "\$500".

(7) Section 8 (1) (a)—

Omit the paragraph, insert instead:—

(a) no person—

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

Commercial Agents and Private Inquiry Agents (Amendment) 1985

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

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

(8) Section 8A—

After section 8, insert:—

Licensee to be in charge at place of business.

8A. (1) A corporation which conducts its business as a licensed commercial agent at one or more places of business shall employ, as the person in charge of that place of business or each such place of business, as the case may be, an individual who is a licensed commercial agent.

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

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

(9) Section 9 (2)—

Omit the subsection, insert instead:—

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

Commercial Agents and Private Inquiry Agents (Amendment) 1985

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (10) (a) Section 10 (1)—
After “form prescribed”, insert “and shall pay the prescribed application fee”.
- (b) Section 10 (4) (a), (8)—
Omit “and upon payment of the prescribed fee” wherever occurring.
- (c) Section 10 (4) (b), (12)—
Omit “and on payment of the prescribed fee” wherever occurring.
- (d) Section 10 (6) (a) (iii)—
Omit the subparagraph, insert instead:—
(iii) that the applicant does not have the prescribed qualifications or experience;
- (e) Section 10 (6) (a) (iv)—
Omit “twenty-one”, insert instead “18”.
- (f) Section 10 (6) (a) (vii)—
Omit “subject to subsection (2) of section 13, that”, insert instead “that, within the period of 10 years immediately preceding the date of the application,”.
- (g) Section 10 (6A)—
After section 10 (6), insert:—
(6A) A reference, in subsection (6) (b) (i) or (ii), to a person to be in charge of the carrying out of the functions of a corporation as the holder of a license includes a reference to each individual employed by the corporation for the purposes of section 8A.
- (h) Section 10 (7)—
Omit the subsection.

Commercial Agents and Private Inquiry Agents (Amendment) 1985

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(i) Section 10 (11) (c)—

Omit the paragraph, insert instead:—

(c) if it is satisfied—

(i) that the ground on which the objection was made has been established; and

(ii) that, upon that ground, the application ought to be refused,

shall order that the application be refused, but otherwise shall order that the application be granted.

(11) (a) Section 11 (2)—

After “ground”, insert “and that, upon that ground, an order under this subsection is warranted”.

(b) Section 11 (5)—

After section 11 (4), insert:—

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

(12) Section 13 (2)—

Omit the subsection.

(13) Section 16 (3)—

Omit the subsection, insert instead:—

(3) A licensed commercial agent or licensed private inquiry agent who carries on business without complying with the requirements of this section shall be liable to a penalty not exceeding \$2,000.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(14) Section 22—

Before “hire-purchase”, insert “lease”.

(15) Section 29 (1)—

Before “hire-purchase”, insert “lease or a”.

(16) Part III, headings—

Omit the headings to the Part, insert instead:—

PART III.

FINANCIAL TRANSACTIONS OF LICENSEES.

DIVISION 1.—*Accounts of licensed commercial agents.*

(17) (a) Section 31 (1A)—

After section 31 (1), insert:—

(1A) A licensed commercial agent shall keep accounts of all money received which is required to be dealt with in accordance with subsection (1) and the accounts shall be kept in such a manner as to disclose the true position in regard thereto and to enable the accounts to be conveniently and properly audited.

(b) Section 31 (4)—

Omit “shall be guilty of an offence against this Act”, insert instead “shall be liable, in the case of a corporation, to a penalty not exceeding \$5,000 and, in the case of an individual, to a penalty not exceeding \$1,000 or to imprisonment for a term not exceeding one year, or both”.

Commercial Agents and Private Inquiry Agents (Amendment) 1985

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(c) Section 31 (5)—

Omit “are”, insert instead “is”.

(d) Section 31 (5)—

Omit “they were”, insert instead “it was”.

(18) Section 32A—

After section 32, insert:—

Audit of licensees’ books, records, etc.

32A. (1) In this section, “prescribed day” means 30th June or, in respect of any particular person to whom this section applies, such other day as the Commissioner of Police may, on the application of that person, fix by order in writing addressed to that person.

(2) This section applies to—

- (a) a licensed commercial agent;
- (b) a person who has been, but after the commencement of this section ceases to be, a licensed commercial agent; and
- (c) the personal representative of a licensed commercial agent who has died after the commencement of this section.

(3) Within 3 months after the prescribed day in every year applicable to the person, a person to whom this section applies shall—

- (a) cause the books, papers, accounts and other documents relating to any money held during the year ended on that day in a trust account kept by the person in accordance with section 31 to be audited by a person qualified in accordance with the regulations; and

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (b) after the receipt from the auditor of a report, containing the prescribed certificate, of the result of the audit, lodge a copy of the report with the Commissioner of Police.

(4) Subsection (3) ceases to apply to a person referred to in subsection (2) (b) or (c)—

- (a) where, at the date on which the person ceased to be a licensed commercial agent or became the personal representative of a licensed commercial agent, the person did not hold any money in any trust account kept by the person in accordance with section 31—upon the expiration of a period of 3 months after the prescribed day applicable to the person that next follows the day on which the person ceased to be a licensed commercial agent or became the personal representative, as the case may be; or
- (b) where, at the date on which the person ceased to be a licensed commercial agent or became the personal representative of a licensed commercial agent the person held money in any trust account kept by the person in accordance with section 31—upon the expiration of a period of 3 months after the prescribed day applicable to the person that next follows the day on which the person has disbursed the last of the money in any such trust account.

(5) A person to whom this section applies shall obtain from the auditor making an audit for the purposes of this section a copy of the report (including the prescribed certificate) of the result of the audit signed by the auditor and preserve it for a period of at least 3 years after the date on which the report was made.

(6) A licensed commercial agent shall not be required under this section to cause any books, papers, accounts or other documents to be audited in respect of any period in relation to which those books, papers, accounts and other documents have already been audited for the purposes of this section.

Commercial Agents and Private Inquiry Agents (Amendment) 1985

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(7) A licensed commercial agent who in the course of any year ending on the prescribed day neither received nor held any money for or on behalf of any other person shall be deemed to have complied with this section if, within the period of 3 months after that day, the licensed commercial agent makes and lodges with the Commissioner of Police a statutory declaration to that effect.

(8) Where, in relation to the books, papers, accounts and other documents kept by a partnership of licensed commercial agents, the provisions of this section are complied with by any one of the licensed commercial agents, those provisions shall be deemed to have been complied with by all of them.

(19) Part III, Division 2, heading—

Before section 33, insert:—

DIVISION 2.—*Records of transactions by licensees.*

(20) Section 33A—

After section 33, insert:—

Statement of account.

33A. (1) A licensed commercial agent shall at the prescribed times furnish to a person on whose behalf any money is held by the commercial agent in a trust account kept in accordance with section 31 a statement of the balance of the money standing to the credit of that person in that account.

(2) A licensed commercial agent shall, within 14 days of a request being made in the prescribed manner by a person directly concerned in a transaction by or with the commercial agent in the course of the commercial agent's business as such, render in the prescribed manner to the person making the request an itemised account of the transaction.

Commercial Agents and Private Inquiry Agents (Amendment) 1985

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (21) Part III, Division 3, heading—
Before section 35, insert:—

DIVISION 3.—*Other provisions relating to commercial agents.*

- (22) Section 37 (2), (3)—
Omit the subsections.

- (23) Section 37A—
After section 37, insert:—

Action on bond.

37A. (1) A person who has suffered loss by reason of any act or omission of a licensed commercial agent, being an act or omission of a kind to which the condition of a fidelity bond subsisting in relation to the commercial agent applies, may apply in the prescribed manner for action to be taken by the Minister under this section.

(2) The Minister, if satisfied as to the merits of an application under subsection (1), may on behalf of the Crown sue for and recover the amount secured by the relevant fidelity bond.

(3) The Minister, upon receipt of an application under subsection (1)—

- (a) where it seems likely to the Minister that no further applications will be made under that subsection in respect of the same bond, shall assess and determine the applicant's claim and may, out of the amount recovered under subsection (2), compensate the applicant for the whole of the loss alleged in the application or to such extent as to the Minister seems just; or

Commercial Agents and Private Inquiry Agents (Amendment) 1985

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (b) where it seems likely to the Minister that more applications might be made under that subsection in respect of the same bond, may cause to be published, in such manner as the Minister considers appropriate, a notice under subsection (4).

(4) A notice under this subsection shall invite persons having claims in respect of any loss covered by the bond to forward those claims, in such manner and form and within such time as may be specified in the notice, to the Minister.

(5) The Minister shall assess and determine the claims received in respect of losses covered by the bond and may direct the payment and distribution, if necessary rateably, of the money recovered in respect thereof to the several persons appearing to the Minister to be entitled thereto in respect of the claims.

(6) No claim which was received after the time limited by a notice under subsection (4) or which relates to a breach of a condition of a bond which occurred more than 2 years before the claim was received shall be proceeded with unless the Minister, being satisfied that there is sufficient cause for so doing, allows the claim.

(24) Part III, Division 4—

After section 39, insert:—

DIVISION 4.—*Receivers.*

Interpretation.

39A. In this Division and in Schedule 1—

“Court” means the Supreme Court of New South Wales;

Commercial Agents and Private Inquiry Agents (Amendment) 1985

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

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

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

“property”, in relation to a licensee, means—

- (a) money or other property which was in the course of or in connection with the business of the licensee, or the business of any firm of licensees of which the licensee is or has been a member, entrusted to or received on behalf of any other person by the licensee or firm or by any of his, her or their servants or agents or by any licensee with whom the licensee or firm shares remuneration and which has not been paid or delivered by the licensee or firm to the person entitled thereto or as that person has directed or otherwise according to law;
- (b) money or other property which would, were it not for the appointment of a receiver as provided in this Division, be receivable on behalf of any other person by the licensee or firm of licensees after the appointment of that receiver;
- (c) money received by the receiver during a receivership under this Division being interest, dividends or other income arising from any property held by the receiver in accordance with the provisions of Schedule 1; and
- (d) ledgers, books of account, vouchers, records, deeds, files and other documents and writings, or any mechanical, electronic or other device used for the

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

storage of information, relating to any property as hereinbefore defined or to any accounts or transactions concerning any business carried on by the licensee.

Power of Court to appoint receiver in certain cases.

39B. (1) Where the Court, on application made by a creditor of the licensee or by the Minister, is satisfied—

- (a) that any defalcation has been or may have been committed in relation to any trust account or trust fund of any licensee; or
- (b) that through—
 - (i) the mental or physical infirmity of a licensee;
 - (ii) the death or insolvency or the sequestration or assignment for the benefit of creditors of the estate of a licensee;
 - (iii) the abandonment of a licensee's business;
 - (iv) a licensee having been disqualified from holding a license; or
 - (v) the license of a licensee having been cancelled or a licensee's application for a renewal of a license having been refused,

any person is unable to obtain payment or delivery of money or other property held for or on behalf of that person by the licensee or by any firm of licensees of which the licensee is or was a partner,

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

Commercial Agents and Private Inquiry Agents (Amendment) 1985

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

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

(25) Section 39c—

Before section 40, insert:—

Harassment.

39c. (1) A commercial agent, private inquiry agent or subagent shall not, when exercising or carrying on or attempting to exercise or carry on the functions of a commercial agent, private inquiry agent or subagent—

- (a) unduly harass any person by leaving, in or outside any premises, any notice, vehicle or other object on which there is writing stating—
 - (i) the name of the commercial agent, private inquiry agent or subagent or that he or she is a commercial agent, private inquiry agent or subagent;
 - (ii) the business of a commercial agent or private inquiry agent; or
 - (iii) any other information,

in circumstances likely to cause a person visiting or passing by the premises reasonably to believe or infer that the commercial agent, private inquiry agent or subagent, or some person on behalf of the commercial agent, private inquiry agent or subagent, was visiting the occupier of the premises for the purpose of carrying out any of the functions of a commercial agent or private inquiry agent;

Commercial Agents and Private Inquiry Agents (Amendment) 1985

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (b) send or deliver to, or leave with, any person any document likely to cause the person receiving it reasonably to believe or infer that there would be left in or outside premises occupied by the person a notice, vehicle or object, as referred to in paragraph (a);
- (c) call at any premises or communicate (whether by telephone or otherwise) with persons occupying any premises with such frequency as is, or at such times as are, unreasonable in the circumstances;
- (d) disclose to a person's employer, or cause to be disclosed to a person's employer, the fact that the person is a debtor, except where that fact is disclosed, or caused to be disclosed, by a commercial agent or a subagent of a commercial agent—
 - (i) with the person's consent; or
 - (ii) by or in connection with the execution of any legal process for enforcement of a judgment against the person, being process the execution of which directly involves the employer; or
- (e) threaten a person with disclosure, to the person's employer, of the fact that the person is a debtor, except where the threat—
 - (i) is made by a commercial agent or a subagent of a commercial agent; and
 - (ii) is a threat of disclosure by or in connection with the execution of any legal process mentioned in paragraph (d) (ii).

(2) Any person who contravenes the provisions of subsection (1) shall be liable, in the case of a corporation, to a penalty not exceeding \$5,000 and, in the case of an individual, to a penalty not exceeding \$1,000 or to imprisonment for a term not exceeding 3 months, or both.

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(3) In any proceedings for an offence arising by virtue of a disclosure in contravention of subsection (1) (d), the absence of any consent mentioned in subsection (1) (d) (i) shall be presumed until the court is satisfied to the contrary.

(26) (a) Section 40 (2)—

Omit “four hundred dollars”, insert instead “\$2,000”.

(b) Section 40 (4)—

After section 40 (3), insert:—

(4) Notwithstanding any provision of the Justices Act, 1902, proceedings for an offence arising under section 19 (2), 20 (1), 27, 31 (4), 33 (4) or 38 (2) may, with the approval of the Minister, be commenced not later than 3 years after the date alleged to be the date on which the offence was committed.

(27) (a) Section 44 (1) (d1)—

After section 44 (1) (d), insert:—

(d1) the surrender of licenses, the particulars to be indorsed on licenses and the notification by the licensee of any change in those particulars; and

(b) Section 44 (2)–(4)—

Omit section 44 (2) and (3), insert instead:—

(2) The regulations may prescribe penalties not exceeding—

(a) \$200, in the case of an individual; or

(b) \$1,000, in the case of a corporation,

for any breach thereof.

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (3) A provision of a regulation may—
- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
 - (b) apply differently according to different factors of a specified kind; or
 - (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

(4) Section 41 of the Interpretation Act, 1897, applies to and in respect of a regulation as if this Act had been passed after the commencement of the Interpretation (Amendment) Act, 1969.

(28) Schedule 1—

After section 44, insert:—

SCHEDULE 1.

(Sec. 39B.)

PROVISIONS RELATING TO RECEIVERS.

Application for appointment of receiver.

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

Commercial Agents and Private Inquiry Agents (Amendment) 1985

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

Copy of order appointing receiver to be served on licensee.

2. Unless the Court dispenses with service, a copy of the order of the Court appointing the receiver shall, as soon as practicable, be served on the licensee and on any other person to whom the Court directs that notice of the appointment of the receiver should be given.

Receiver may require information in respect of property.

3. (1) The receiver may require any person to give to the receiver such information as may reasonably be required concerning any property of which he or she has been appointed receiver.

(2) Any person so required to give information who, without lawful justification or excuse (the proof whereof shall lie on the person), refuses or fails so to do or otherwise hinders, obstructs or delays the receiver in the performance of the receiver's duties or the exercise of the receiver's powers under this Schedule shall be guilty of an offence against this Act.

Receiver may forbid withdrawal of money from bank.

4. (1) Where the receiver has reasonable grounds for believing that there is in any bank account money received for or on behalf of any person by the licensee or by the firm of licensees of which the licensee is or was a partner, the receiver may serve on the bank a notice in writing with a copy of the order of the Court attached or appended thereto forbidding, except by the receiver or on the receiver's authority, any withdrawal of money from or any dealing (including in any case the completion of any uncompleted dealing commenced before the service of the notice) with that account, whether the account is in the name of the licensee or the name of any firm of licensees of which the licensee is or was a partner or, where the licensee is dead, any account which is in that name or firm name or which was formerly in that name or firm name and is now in the name of the licensee's personal representative.

(2) Without prejudice to any other mode of service, service of any notice pursuant to this clause may be effected by leaving the notice and copy of the order attached or appended thereto with the manager, accountant or such other person as appears to be at the time of service in charge of the branch of the bank at which there is an account to which subclause (1) refers.

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SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(3) The bank on which the notice is served shall not permit any withdrawal from or dealing with any account to which the notice relates except by or on the authority of the receiver.

(4) The receiver may withdraw all the money in any such account or from time to time withdraw any of that money and pay it into a special account or special accounts in the receiver's own name and may operate on and otherwise deal with the special account or special accounts in accordance with law.

Receiver may take possession of property.

5. (1) Subject to subclause (2), the receiver may acquire or take possession of any property of which he or she has been appointed receiver.

(2) All ledgers, books of account, vouchers, records, deeds, files and other documents and writings and all mechanical, electronic or other devices used for the storage of information (other than any of the foregoing which relate either to any property referred to in paragraph (a) or (b) of the definition of "property" in section 39A or to any former business of the licensee) shall, as soon as is reasonable, be returned to the licensee.

(3) If the licensee or any other person, on being required by the receiver to transfer or deliver to the receiver or to permit the receiver to take possession of any such property in his or her possession or at his or her disposition or under his or her control does not comply with the requirement, or if it appears to the receiver that any such person on being so required has not fully complied with the requirement, the receiver may apply to the Court for an order for the transfer or delivery to the receiver of the property, whereupon the Court may make that order.

(4) If it appears to the receiver that an order made by the Court under subclause (3) is not complied with, the Court may, on application made by the receiver, authorise any member of the police force, or the receiver or some other person and any member of the police force, to enter any premises or other place specified in the order and to search for any property of which the receiver is entitled to take possession under the provisions of this clause and to seize any such property and remove it to such place as the receiver thinks fit and on such application the Court may make such further order in the matter as to the Court seems fit.

(5) Wilful failure to comply with any order made by the Court under subclause (3) shall be punishable as a contempt of the Court.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.***Improperly withdrawing money or destroying or concealing property.**

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

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

shall be guilty of an offence against this Act.

Power of receiver to deal with property.

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

(2) Without restricting or in any way derogating from the powers of the receiver under the provisions of subclause (1), the receiver may—

- (a) prove, grant, claim and draw a dividend in respect of any debt due to the licensee in connection with any property of which the receiver has been appointed receiver;
- (b) give receipts for any money received by him or her, which shall effectually discharge the person paying the money from all responsibility in respect of the application thereof; and
- (c) employ a barrister or solicitor or other agent to give advice or take any proceedings or otherwise act for the receiver in relation to any property of which he or she has been appointed receiver.

Application for directions.

8. The receiver, the licensee, any member of the firm of which the licensee is or was a partner or the personal representative of a deceased licensee, or any person who has submitted to the receiver a claim in respect of any property, may apply to the Court for directions as to the manner in which the receiver shall exercise or perform the powers or duties conferred or imposed on the

Commercial Agents and Private Inquiry Agents (Amendment) 1985

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

receiver by this Schedule either generally or in respect of any particular matter specified in the application, whereupon the Court may make such order as to the Court seems fit.

Property claimed by licensee.

9. (1) The receiver may give notice to the licensee or any other person that, if the licensee or other person has any claim to any property, he or she shall within the time specified in the notice (being not less than 30 days from the giving of the notice) submit to the receiver full particulars of the property claimed and the grounds of the claim.

(2) If such a notice has been given, the receiver may disregard any claim made by the licensee or other person otherwise than in accordance with the terms of the notice.

(3) The licensee shall not be entitled to any payment in respect of or otherwise to enforce any such claim and shall not be entitled except as against a licensee to a lien upon any document or writing held by the receiver unless and until the proper claims of all other claimants are fully satisfied and the expenses of the receivership, as defined in clause 15, have been paid.

Liens for costs on property held by receiver.

10. (1) If the licensee or the firm of which the licensee is or was a partner claims a lien for costs on any document, writing or other property held by the receiver, the receiver may by notice in writing require the licensee or firm to give to the receiver within a time specified in the notice (being not less than 30 days from the giving of the notice) particulars of all documents, writings and other property on which the licensee or firm claims a lien together with a detailed itemised account relating to the amount in respect of which each lien is claimed.

(2) If the licensee or firm fails to comply with any such requirement in respect of any lien claimed by the licensee or firm, the receiver may in dealing with the document, writing or other property disregard the lien.

(3) If the licensee or firm so requests in writing, the receiver shall afford to the licensee or firm or any other person on the licensee's or firm's behalf such access to all relevant books and documents as is reasonably necessary to enable the preparation of the itemised account and in such event the time specified in the notice pursuant to subclause (1) shall not commence until that access has been provided.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.***Power of Court to order person to appear for examination by receiver.**

11. (1) The receiver may apply to the Court for an order that the licensee or any other person appear before the Court to be examined by the receiver as to any property of which the receiver has been appointed receiver, whereupon the Court may make such order as to the examination of the licensee or other person as to the Court seems fit.

(2) Upon any such examination before the Court, the receiver and the licensee or other person may be represented by a solicitor or barrister, and the Court may put or allow to be put to the licensee or other person such questions as it thinks fit.

(3) The licensee or other person shall be examined on oath and shall answer all such questions.

(4) The licensee or other person may object to any question upon the ground that the answer may tend to incriminate him or her but shall be compellable to answer the question notwithstanding the objection.

(5) No answer given subject to any such objection shall be admitted in evidence in any proceedings for any offence except that of perjury in connection with the examination.

Application for termination of appointment of receiver.

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

(2) If a receiver's appointment is terminated by an order of the Court and another person is appointed to be the receiver in his or her place, the former receiver shall, as soon as he or she reasonably may and subject to any directions given by the Court under this clause, transfer or deliver to the receiver appointed in his or her place all property and any documents, writings and other property which he or she holds by virtue of his or her appointment as receiver.

(3) If a receiver's appointment is terminated by order of the Court and no other person is within 14 days of the termination appointed to be receiver in his or her place, the receiver may, and upon demand in writing by the licensee or the firm of licensees of which the licensee is or was a partner

Commercial Agents and Private Inquiry Agents (Amendment) 1985

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

shall, as soon as he or she reasonably may and subject to any directions given by the Court under this section and subject to the payment by the licensee or firm of the expenses of the receivership, as defined in clause 15, transfer or deliver to the licensee or firm all property which the receiver then holds by virtue of his or her appointment as receiver.

Property not dealt with by receiver.

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

Receiver may invest money.

14. (1) The receiver may invest any money in his or her hands in the course of his or her receivership in any manner in which trustees are for the time being authorised by law to invest trust funds.

(2) Any income accruing from the investment of any such money and any profit from the sale of any such investment shall be added to and form part of the property of which he or she has been appointed receiver.

Remuneration of receiver and expenses of receivership.

15. (1) All money payable to the receiver as remuneration for his or her services, all costs of legal proceedings and all other expenses incurred by the receiver in the course of his or her receivership (all of which are hereafter in this clause referred to as "the expenses of the receivership") shall, to the extent that they have not otherwise been paid to the receiver under this Act, be paid to the receiver by the Minister.

(2) Any amount paid by the Minister for the expenses of the receivership shall be recoverable by the Minister from the licensee as a debt owing by the licensee to the Minister.

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

Commercial Agents and Private Inquiry Agents (Amendment) 1985

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

Cost of proceedings.

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

Re-opening of agreement as to receiver's remuneration.

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

Court may review receiver's expenses.

18. (1) Where proceedings are taken by the Minister under clause 15 (2) for the recovery of any amount paid for the expenses of the receivership therein referred to and there is evidence which satisfies the Court that the amounts charged for those expenses are excessive, the Court may take an account between the Minister and the receiver and relieve the licensee from payment of any sum in excess of the sum adjudged by the Court to be fairly payable in respect of those expenses.

(2) If any excess has been paid or allowed in account by the Minister, the Court may order the receiver to repay it.

(3) The Court shall have and may, on the application of the licensee or of any firm of which the licensee is or was a partner, exercise the like powers as may be exercised under this clause where proceedings are taken for the recovery of any amount paid by the Minister for the expenses of the receivership pursuant to clause 15, and the Court shall have power to entertain any such application, notwithstanding that the expenses of the receivership have not been paid to the receiver.

(4) No proceedings to obtain any relief under this clause shall be taken after 3 months from the time when the expenses of the receivership have been paid, but the legal personal representative of a deceased licensee may take any such proceedings at any time within 6 months from the time when those expenses were paid.

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

Power of Court to give general directions.

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

Receiver not deemed to be personal representative.

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

Property held by receiver to be free from execution or attachment.

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

Returns by receiver.

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

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

J. A. ROWLAND,
Governor.

*Government House,
Sydney, 9th May, 1985.*

