

**AUCTIONEERS, STOCK AND STATION, REAL  
ESTATE AND BUSINESS AGENTS (AMEND-  
MENT) ACT.**

**Act No. 15, 1957.**

An Act to include in the Auctioneers, Stock and Station and Real Estate Agents Act, 1941-1954, provisions for licensing and regulating business agents and business sub-agents; to reconstitute the council constituted under that Act; to increase the annual contributions to the Auctioneers, Stock and Station and Real Estate Agents Fidelity Guarantee Fund established under that Act; to increase the maximum amount payable out of that Fund in respect of theft or fraudulent misapplication by any one licensee; to repeal the Business Agents Act, 1935; for these and other purposes to amend the Auctioneers, Stock and Station and Real Estate Agents Act, 1941-1954, and certain other Acts; and for purposes connected therewith [Assented to, 12th April, 1957.]

Elizabeth II,  
No. 15, 1957.

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

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

Short title,  
citation and  
commence-  
ment.

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

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

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

Operation  
of Business  
Agents Act,  
1935-1941.

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

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

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

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

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

(5) Notwithstanding anything contained in subsections two and three of this section every business agent or subagent under the Business Agents Act, 1935-1941, shall keep the written record referred to in subsection one of section twenty-two of that Act for a period of not less than three years after the date on which it was made, and shall at all reasonable times produce such written record for inspection if required so to do by any officer of the police force of or above the rank of sergeant

or

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or the registrar under the Principal Act, as amended by **No. 15, 1957.**  
this Act, or any officer of the council under such Principal  
Act, as so amended, duly authorised in writing in that  
behalf by such council, but in the case of such authorised  
officer, on production of his written authority.

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

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

**3. Part I of the Principal Act is amended—**

(a) (i) by omitting from the matter relating to  
Part II in section two the words "and Real  
Estate" and by inserting in lieu thereof  
the words ", Real Estate Agents and Busi-  
ness;"

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

(ii) by omitting from the matter relating to  
Part III in the same section the words "and  
Real Estate Agents—ss. 20-50" and by  
inserting in lieu thereof the words ", Real  
Estate Agents and Business Agents—ss.  
20-50H;"

(iii) by inserting at the end of the same matter  
the following words, figures and letters:—

"DIVISION 4.—*Business Agents and Busi-  
ness Subagents—ss. 50A-50H.*"

(iv)

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(iv) by omitting from the matter relating to Part VI in the same section the words "and Real Estate" and by inserting in lieu thereof the words ", Real Estate and Business";

**Sec. 3.**  
(Defini-  
tions.)

(b) (i) by omitting from subsection one of section three the definition of "Council" and by inserting in lieu thereof the following definitions:—

"Business agent" means any person (whether or not such person carries on any other business) who for reward (whether monetary or otherwise) exercises or carries on business as an agent for performing any of the following functions, namely:—

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

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

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

"Business subagent" means any person who is in the direct employ of or acts for or by arrangement with a business agent and who performs for such business agent any of the functions of a business agent as defined

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defined by this section whether his remuneration is by way of salary, wages, commission or otherwise but does not include an employee of a corporation in respect of whom such corporation has taken out a business agent's license.

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

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

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

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

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

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

Heading.

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Sec. 6.  
(The  
council.)

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

Subst.  
sec. 7.

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

First  
council  
with repre-  
sentation for  
business  
agents.

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

- (a) the persons who immediately before the appointed day were the members of the council as then constituted; and
- (b) a person, who shall be appointed by the Governor and shall be the holder of a business agent's license under the Business Agents Act, 1935-1941.

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

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

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

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

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

- (a) by inserting next after the word “license” the words “under this Act or under the Business Agents Act, 1935-1941”; and
  - (b) by omitting the words “to renew the same upon its expiry” and by inserting in lieu thereof the words “upon the expiry of his license under the Business Agents Act, 1935-1941, to procure the issue to him of a business agent’s license under this Act, and to renew such lastmentioned license upon its expiry”.
- (d) (i) by omitting from subsection one of section eight the word “forty-three” and by inserting in lieu thereof the word “fifty-eight”;
- Sec. 8.**  
(Constitution of subsequent councils.)
- (ii) by omitting from the same subsection the word “ten” and by inserting in lieu thereof the word “thirteen”;
  - (iii) by omitting from the same subsection the word “nine” and by inserting in lieu thereof the word “twelve”;
  - (iv) by omitting from subparagraph (iii) of paragraph (b) of subsection two of the same section the word “three” and by inserting in lieu thereof the word “four”;
- (v)

(v) by inserting at the end of the same paragraph the following new subparagraph:—

(iv) two shall be business agents.

(vi) by inserting at the end of paragraph (a) of subsection four of the same section the following new subparagraph:—

(iv) business agents.

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

(iv) on the roll of business agents, if he holds a business agent's license,

(viii) by inserting at the end of paragraph (c) of the same subsection the following new subparagraph:—

(iv) as a business agent—unless his name is on the roll of business agents.

(ix) by omitting from paragraph (d) of the same subsection the words "Each such roll shall" and by inserting in lieu thereof the words "The roll of auctioneers, the roll of stock and station agents and the roll of business agents shall each";

(x) by inserting at the end of the same paragraph the following words:—

"The roll of real estate agents shall be divided into three parts to be known respectively as Part I, Part II and Part III.

In Part I of such roll shall be entered the names of all persons eligible for enrolment on such roll whose places of business are situated within the county of Cumberland, excluding therefrom such part of the police district of Wollongong as is within that county.



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

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

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

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

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

- (xii) by omitting from subsection five of the same section the word "forty-three" and by inserting in lieu thereof the word "fifty-eight";
- (e) (i) by inserting in subsection one of section Sec. 14. fourteen after the words "five guineas" the words ", or such other amount as may be (Fees and expenses.) prescribed in lieu thereof,";
- (ii) by inserting in the same subsection after the words "two guineas" the words ", or such other amount as may be prescribed in lieu thereof,".

(2)

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

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

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

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

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

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

Heading.

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

(b)

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

Sec. 20.

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

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

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

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

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

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

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

Sec. 21.

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

(b)

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

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

Sec. 22.  
(Licenses.)

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

“; or

(d) a business agent's license; or

(e) a business subagent's license.”;

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

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

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

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

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

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

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

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

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

(ii)

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

(bi) Where the application is for a business agent's license and the applicant resides in any other State of the Commonwealth of Australia or in the Australian Capital Territory the application shall be lodged with the clerk of any court of petty sessions.

- (iii) by inserting in paragraph (a) of subsection six of the same section after the words "prescribed fees and" the words ", except in the case of a person applying for a business subagent's license,";

- (iv) by inserting at the end of paragraph (b) of the same subsection the words "or until the expiration of twelve months after the date upon which such provisional license took effect whichever first occurs";

- (v) by inserting in subsection eight of the same section after the words "prescribed fees and" the words ", except in the case of a person applying for a business subagent's license,";

- (vi) by inserting in subsection nine of the same section after the words "prescribed fees and" the words ", except in the case of a person applying for a business subagent's license,";

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

(10A) A license shall not, after the expiration of the prescribed period from the day appointed pursuant to subsection four of section one of the Auctioneers, Stock and Station, Real Estate and Business Agents (Amendment) Act, 1957, be granted to an applicant,

applicant, not being a corporation, nor to a corporation in respect of an employee, unless such applicant or employee has—

- (a) passed the prescribed examination conducted by the Department of Technical Education or such other examination as may be prescribed; or
- (b) produced to the court satisfactory evidence that he is competent to perform the functions and duties generally performed by the holder of such a license.

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

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

- (f) (i) by omitting from subparagraph (i) of paragraph (a) of subsection one of section twenty-five the words "fifteen pounds" and by inserting in lieu thereof the words "sixteen pounds";
- (ii) by omitting from subparagraph (ii) of the same paragraph the words "five pounds" and by inserting in lieu thereof the words "six pounds";
- (iii) by omitting from subparagraph (iii) of the same paragraph the words "two pounds" and by inserting in lieu thereof the words "three pounds";
- (iv) by omitting from subparagraph (iv) of the same paragraph the words "two pounds" and by inserting in lieu thereof the words "three pounds";

Sec. 25.  
(Fees payable for license.)

(v)

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- (v) by omitting from paragraph (b) of the same subsection the words "one pound" and by inserting in lieu thereof the words "two pounds";
  - (vi) by omitting from paragraph (c) of the same subsection the words "one pound" and by inserting in lieu thereof the words "two pounds";
  - (vii) by omitting paragraphs (d), (e) and (f) of the same subsection and by inserting in lieu thereof the following paragraphs:—
    - (d) for an auctioneer's license (being a general license) and any one or more of the following licenses:—
      - a stock and station agent's license, a real estate agent's license or a business agent's license—sixteen pounds;
    - (e) for an auctioneer's license (being a country license) and any one or more of the following licenses:—
      - a stock and station agent's license, a real estate agent's license or a business agent's license—six pounds;
    - (f) for an auctioneer's license (being a district license or a primary products license) and any one or more of the following licenses:—
      - a stock and station agent's license, a real estate agent's license or a business agent's license—four pounds;
    - (fi) for a business agent's license—three pounds;
    - (fii) for a business subagent's license—ten shillings;
- (viii)



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- (viii) by omitting from paragraph (h) of the same subsection the words "five pounds" and by inserting in lieu thereof the words "six pounds";
- (ix) by omitting from subsection three of the same section the words "not exceeding one pound";
- (x) by omitting from subsection four of the same section the words "Auctioneers, Stock and Station and Real Estate Agents Administration Account" and by inserting in lieu thereof the words "Auctioneers, Stock and Station, Real Estate and Business Agents Administration Account";
- (g) (i) by inserting in subsection one of section twenty-six after the words and symbols "(being a general license)" the words "or a business agent's license"; Sec. 26.  
(Power to grant auctioneers' licenses to persons resident in reciprocating States.)
- (ii) by inserting in the same subsection after the word "auctioneer" the words "or a business agent, as the case may be,";
- (iii) by inserting in the same subsection after the words and symbols "(being general licenses)" the words "or business agents' licenses, as the case may be,";
- (iv) by inserting next after subsection three of the same section the following new subsection:—
- (3A) Any notification declaring that the Business Agents Act, 1935-1941, shall extend and apply to the granting in New South Wales of general licenses to residents in any other State, which was published pursuant to section ten of that Act and which was still in force immediately before the day appointed pursuant to subsection four of section one of the Auctioneers, Stock and Station, Real Estate and Business Agents

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

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

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

(h) (i) by inserting in section twenty-seven after the words and symbols "(being general licenses or country licenses or district licenses)" the words "or business agents' licenses";

(ii) by inserting in the same section after the words and symbols "(being a general license or a country license or a district license)" where firstly occurring the words "or a business agent's license";

(iii) by inserting in the same section after the words "auctioneer's license" where secondly occurring the words ", or a business agent's license, as the case may be";

(iv) by inserting in the same section after the words and symbols "(being a general license or a country license or a district license)" where secondly occurring the words "or a business agent's license";

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- (v) by inserting in the same section after the words "auctioneer's license" where lastly occurring the words ", or a business agent's license, as the case may be,";
- (i) by omitting from section twenty-eight the words "or a renewal thereof" wherever occurring and by inserting in lieu thereof the words "or a business agent's license, or a renewal of either such license,";
- (j) by inserting at the end of section twenty-nine the following new subsection:—
- (4) The foregoing provisions of this section shall apply mutatis mutandis to and in respect of a business subagent's license and the holder of a business subagent's license.
- (k) (i) by inserting in subsection one of section thirty-one after the word "licensee" the words "or the employee, or the holder of a business subagent's license";
- (ii) by inserting in paragraph (b) of subsection four of the same section after the word "employee" the words ", or holder of a business subagent's license,";
- (iii) by inserting next after the same subsection the following new subsection:—
- (4A) An appeal under this section in any case to which paragraph (a) of subsection one of this section applies shall not be commenced after the expiration of twenty-one days after the date of refusal of the application or the date of the order under section twenty-nine of this Act, as the case may be.

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

Sec. 29.  
(Cancellation of license.)

Sec. 31.  
(Appeal.)

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Sec. 32.  
(Effect of  
disqualifica-  
tion on  
membership,  
etc., of  
corporation.)

- (l) by omitting from section thirty-two the words “or a real estate agent” and by inserting in lieu thereof the words “, a real estate agent, a business agent or a business subagent,”;

Sec. 34.  
(Registered  
office and  
address.)

- (m) (i) by inserting next after subsection three of section thirty-four the following new subsections:—

(3A) Every business subagent shall have a registered address within New South Wales.

(3B) The address specified in the application for a business subagent’s license as the address at which the applicant then resides, shall, upon the grant of the application, be deemed for the purposes of this Act to be the registered address of the business subagent.

- (ii) by inserting in subsection four of the same section after the words “registered office” the words “or the registered address”;

- (iii) by inserting in the same subsection after the word “licensee” the words “or the holder of the business subagent’s license, as the case may be,”;

- (iv) by inserting in subsection five of the same section after the word “business” where firstly occurring the words “or if any licensed business subagent acts or carries on as a business subagent”;

Sec. 35.  
(Publication  
of name of  
licensee.)

- (n) by inserting at the end of paragraph (b) of subsection three of section thirty-five the following new subparagraph:—

“(iv) as a business agent—unless he is the holder of a business agent’s license”;

(o)

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- (o) (i) by inserting at the end of subsection one of section thirty-six the words "and in any other case the trust account shall be in the name of the licensee. The words 'Trust Account' shall appear in the name of the trust account and in the description of the trust account in the books and records of the licensee and also on all cheques drawn on the trust account";
- (ii) by inserting next after subsection four of the same section the following new subsection:—
- (4A) Where any licensee neglects or fails to comply with any of the provisions of this section by reason of his neglect or failure to pay any moneys into a bank in New South Wales to a trust account or to retain any such moneys therein, the offence shall continue until the said moneys are paid to the person for or on whose behalf they were received, or disbursed in such manner as may be directed by such person.
- (p) (i) by inserting in subsection one of section thirty-eight after the word "licensee" where secondly occurring the words "and such other written records relating to his business as licensee as may be prescribed";
- (ii) by omitting from the same subsection the word "record" where secondly occurring and by inserting in lieu thereof the word "records";
- (iii) by omitting from subsection two of the same section the words "The written record" and by inserting in lieu thereof the words "Every such written record";
- (iv) by omitting from subsection three of the same section the words "the written record" and by inserting in lieu thereof the words "any such written record";
- (q)

Sec. 36.

(Payment into bank.)

Sec. 38.

(Record to be kept.)

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

No. 15, 1957.

Sec. 38B.  
(Inspection  
of records.)

(q) by omitting from subsection one of section 38B the word "record" and by inserting in lieu thereof the word "records";

New sec.  
38C.

(r) by inserting next after section 38B the following new section:—

Statement of  
employees,  
subagents,  
etc., and  
their wages  
to be kept  
by business  
agents.

cf. Act No. 7,  
1935, s. 18.

38C. (1) Every business agent—

(a) shall make or cause to be made a true statement in writing in the prescribed form and with the prescribed particulars as to the name and the work or services of and the salary, wages or commission paid in each month to every person employed (whether as an employee or a subagent or otherwise) by him in connection with his business as a business agent and shall, for a period of three years after the date on which the statement was made or caused to be made, keep such statement at his principal place of business in New South Wales;

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

(2) Any business agent who—

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

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

shall be guilty of an offence against this Act.

(s)

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

**99**

No. 15, 1957.

- (s) (i) by inserting in subsection one of section thirty-nine after the word "business" the words "and the holder of a business subagent's license shall not, except with such approval and subject to any such conditions, knowingly employ in any way whatever in connection with his work as a business subagent,";
- (ii) by inserting in paragraph (a) of the same subsection after the word "Act" where lastly occurring the words "or whose license under this Act or the Business Agents Act, 1935, has been cancelled, unless a license has been subsequently granted to him";
- (iii) by inserting at the end of the same subsection the following word and new paragraphs:—
- or
- (c) who is for the time being disqualified under this Act from holding a certificate of registration as a real estate salesman, or whose certificate of registration as a real estate salesman has been cancelled, unless a certificate has been subsequently granted to him; or
- (d) whose application for a certificate of registration as a real estate salesman under this Act has been refused, unless such an application has been subsequently granted.
- (iv) by inserting at the end of subsection two of the same section the words "or in the work of a business subagent";
- (v) by inserting in subsection four of the same section after the word "licensee" the words "or any holder of a business subagent's license";

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

(t)

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

No. 15, 1957.

New  
sec. 39A.

Licensee not  
to share  
commission,  
etc., with  
certain  
persons.

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

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

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

- (a) under the name, or a name nearly resembling the name, whereunder a person whose license has been cancelled under or in pursuance of this Act or the Business Agents Act, 1935, was carrying on business as a licensee immediately before his license was cancelled; or
- (b) under a name implying or capable of being construed as implying that he is the successor in the business, or in any way interested or concerned in continuing the business as a licensee, of a person whose license has been cancelled under or in pursuance of this Act or the Business Agents Act, 1935:

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

(u)



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

**101**

**No. 15, 1957.**

- (u) (i) by omitting from section forty the words "or a real estate agent" and by inserting in lieu thereof the words "a real estate agent or a business agent"; Sec. 40. (Production of license.)
- (ii) by inserting at the end of the same section the following new subsection:—
- (2) Every business subagent shall, on demand, produce his license to any member of the police force of or above the rank of sergeant, or to any person with whom such business subagent is transacting or attempting to transact any business on behalf of a business agent.
- (v) by inserting in section forty-one after the word "licensee" the words "or holder of a business subagent's license"; Sec. 41. (Licensee not to lend license.)
- (w) by inserting at the end of paragraph (c) of subsection one of section forty-two the following new paragraph:— Sec. 42. (Provisions as to commission, etc.)
- (d) as a business agent or business subagent unless he was the holder of a business agent's license or of a business subagent's license, as the case may be, at the time of doing or performing such service.
- (x) (i) by omitting from paragraph (a) of section forty-three the words "or a name other than his own name,"; Sec. 43. (Publication of name and place of business in advertisements.)
- (ii) by inserting next after the same paragraph the following new paragraph:—
- (ai) where such licensee is an individual carrying on business under a business name registered or deemed to be registered under any Act for the time being in force relating to the registration of business names, then either his name or such business name and the address of his place of business;
- (y)

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Agents (Amendment) Act.**

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New  
Division  
4.

(y) by inserting next after section fifty the following new Division:—

DIVISION 4.—*Business Agents and Business  
Subagents.*

Misrepresentation by  
business  
agent or  
subagent.  
cf. Act No.  
7, 1935,  
s. 2L.

50A. Any business agent or business subagent who by any wilfully false, misleading or deceptive statement, representation or promise or by any wilful concealment of material fact, induces or attempts to induce any person to enter into an agreement or contract for the sale or purchase or lease of a business or undertaking shall be guilty of an offence and shall be liable to a penalty of not less than ten pounds and not exceeding two hundred pounds or to imprisonment for a term not exceeding two years, or both.

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

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

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

(3)

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

**103**

**No. 15, 1957.**

(3) Any person who—

- (a) wilfully delays or obstructs the registrar, such member of the police force or such authorised officer in the exercise of his powers, authorities, duties and functions under subsection two of this section; or
- (b) being a business agent or business subagent refuses or fails, upon being required to produce any such written record kept by him under this section, to do so;

shall be guilty of an offence against this Act.

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

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

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

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

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

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

(2)

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

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

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

Saving as to  
licensed  
business  
subagents,  
etc.

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

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

Disposal of  
moneys  
received by  
business  
subagent.

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

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

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

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

(2) (a) The amendments made by subparagraph (ii) of paragraph (b) of subsection one of this section shall not apply to a corporation which is the holder of a  
business

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Agents (Amendment) Act.**

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No. 15, 197.

business agent's license under the Business Agents Act, 1935-1941, or on whose behalf a person has taken out a license under that Act while such license is in force but upon the expiration of such license such amendments shall thereupon in all respects have full force and effect with respect to such corporation.

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

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

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

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

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

Sec. 51.  
(Interpre-  
tation.)

(ii)

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

"Real estate salesman" means a person who, for or on behalf of any real estate agent or real estate dealer, induces or attempts to induce or negotiates with a view to inducing any person—

- (a) to buy, sell or otherwise dispose of any land, including any allotment of land; or
- (b) to make any offer to buy, sell or otherwise dispose of any land, including any allotment of land; or
- (c) to accept any offer to buy, sell or otherwise dispose of any land, including any allotment of land; or
- (d) to enter into any contract for the purchase, sale or other disposal of any land, including any allotment of land,

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

Sec. 52.  
(Provisions  
as to employ-  
ment of  
certain  
persons by  
real estate  
dealers.)

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

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

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

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

- (a) by omitting from the heading thereto the words "and Real Estate" and by inserting in lieu thereof the words ", Real Estate and Business"; Heading.
- (b) by omitting from subsection one of section sixty-five the words "and Real Estate" and by inserting in lieu thereof the words ", Real Estate and Business"; Sec. 65.  
(The fund.)
- (c) by omitting from section sixty-six the words "and Real Estate" and by inserting in lieu thereof the words ", Real Estate and Business"; Sec. 66.  
(Separate  
bank  
account.)
- (d) (i) by omitting from subsection three of section seventy-one the words "not less than" wherever occurring; Sec. 71.  
(Contributions  
to fund.)
- (ii) by omitting from the same subsection the words "shall not be required to pay any further amount by way of contributions under this section" and by inserting in lieu thereof the words "shall after paying such amount pay annually a contribution of one pound";
- (iii) by inserting at the end of the same subsection the following new paragraph:—
- This subsection shall apply whether any such amount was paid before or after the day appointed pursuant to subsection four of section one of the Auctioneers, Stock and Station, Real Estate and Business Agents (Amendment) Act, 1957.
- (e)

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

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Sec. 74.  
(Application  
of fund.)

(c) (i) by inserting in subsection one of section seventy-four after the words "real estate agent" the words "or a business agent";

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

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

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

Sec. 75.  
(Claims  
against  
the fund.)

(f) by inserting at the end of subsection six of section seventy-five the following new subsection:—

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

(g)



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

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

- (a) where the amount claimed does not exceed fifty pounds in a court of petty sessions holden before a stipendiary magistrate;
- (b) where the amount claimed exceeds fifty pounds but does not exceed one thousand pounds in a district court;
- (c) where the amount claimed exceeds one thousand pounds in the Supreme Court.

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

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

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

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

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

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

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

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

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

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

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

shall be guilty of an offence against this Act.

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

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

(b)

(b) publicly exhibited—

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

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

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

(d) broadcast by wireless transmission.

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

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

(5)

**University and College Lands (Saint Paul's College and Wesley College) Act.**

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

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

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**SCHEDULE.**

**Sec. 2 (3).**

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

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