

COMMERCIAL AND INQUIRY AGENTS ACT 1974

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COMMERCIAL AND INQUIRY AGENTS

No. 88 of 1974

AN ACT to provide for the licensing and control of commercial and inquiry agents.

[24 January 1975]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

PART I

PRELIMINARY

1—(1) This Act may be cited as the *Commercial and Inquiry Agents Act 1974*. Short title and commencement.

(2) This Act shall commence on a date to be fixed by proclamation.

2 In this Act, unless the contrary intention appears—

Interpretation.

“ agent ” means any such person as is referred to in section 3 (1);

“ authorized officer ” means a person authorized, in writing, by the Minister;

“ clerk ” means a clerk of a court of petty sessions and, when used in relation to any such court or to a licence, means the clerk of that court or the clerk to whom, if the licence were due for renewal, application for that renewal would have to be made;

• “ commercial agent ” means a person who, for monetary or other consideration, performs on behalf of any other person any of the following functions:—

(a) The ascertainment of the whereabouts, or the repossession, of goods or chattels that are the subject of a hire-purchase agreement or bill of sale;

(b) The collection, or the requesting of the payment, of debts;

(c) The execution of legal process for the enforcement of a judgment or order of a court;

(d) The levying of distress; or

(e) Any other function prescribed for the purposes of this Act as a function of a commercial agent;

“ commercial agent’s licence ” means a licence authorizing the holder thereof to act as a commercial agent;

“ commercial sub-agent ” means a person in the employment of, or acting for or by arrangement with, a commercial agent who, for monetary or other consideration, performs for that agent any of the functions of a commercial agent;

“ commercial sub-agent’s licence ” means a licence authorizing the holder thereof to act as a commercial sub-agent;

“ fidelity bond ” means a fidelity bond under section 26;

“ inquiry agent ” means a person who, for monetary or other consideration, performs, on behalf of any other person, any of the following functions:—

(a) The obtaining or providing of information with respect to the personal character or actions of any person, or with respect to the business or occupation of any person;

(b) The obtaining evidence for the purpose of legal proceedings;

(c) The searching for missing persons; or

(d) Any other function prescribed for the purposes of this Act as a function of an inquiry agent;

“licence” means a licence under this Act;

“officer”, in relation to a body corporate, means any director, manager, secretary, or other like officer thereof;

“process server” means a person who, for monetary or other consideration, performs the function of serving any writ, summons, or other legal process on behalf of any other person;

“register” means the register of agents required to be kept under section 13;

“registered address”, in relation to the holder of a licence, means the place stated in the licence to be his sole or principal place of business;

“Secretary” means the Secretary of the Attorney-General’s Department or such other officer of the Public Service as the Attorney-General may, with the approval of the Public Service Board, appoint;

“security agent” means a person who, for monetary or other consideration, performs the function of guarding property or keeping property under surveillance;

“security guard” means a person in the employment of, or acting for or by arrangement with, a security agent who, for monetary or other consideration, performs for the security agent the function of guarding property or keeping property under surveillance;

“statutory record” means a record required to be kept under section 30;

“trust account” means a trust account required to be kept under section 28.

PART II

LICENSING OF AGENTS

3—(1) A licence may be granted under this Act authorizing the holder thereof to act as— Licensing of agents.

- (a) a commercial agent;
- (b) a commercial sub-agent;
- (c) an inquiry agent;
- (d) a process server;
- (e) a security agent; or
- (f) a security guard,

and, subject to this Act, the same person may hold licences authorizing him to act as agents of different kinds.

(2) After the expiration of 3 months from the commencement of this Act, no person shall act as, or hold himself out as being, or perform, or hold himself out as willing to perform, any of the functions of an agent of any kind unless he is the holder of a licence authorizing him to act as an agent of that kind.

Penalty: \$500 and a further daily penalty of \$50.

(3) For the purposes of this section, a person acts as, or holds himself out as being, or performs or holds himself out as willing to perform any of the functions of, an agent, whether he does so personally or through the agency or instrumentality of other persons.

(4) A licence shall state the sole or principal place of business of the holder thereof.

Grant and
renewal of
licences.

4—(1) Licences shall be granted and renewed by magistrates in accordance with this Part.

(2) A licence shall not be granted to an individual who has not attained the age of 18 years.

(3) A licence shall not be granted to a person who under section 9 is disqualified from holding that licence.

(4) A licence shall not be granted to an undischarged bankrupt or to a person who has made any composition or arrangement with his creditors, unless the debts to which the composition or arrangement relates have been paid in full or its terms have been fulfilled.

(5) A licence shall not be granted to a body corporate, and the licence held by a body corporate shall not be renewed, unless the magistrate is satisfied that the body has sufficient funds for the payment of its creditors.

(6) A licence shall not be granted to an individual, if, within the previous 5 years, he has been convicted of an offence of dishonesty or, on his conviction for an offence, has been sentenced to a term of imprisonment exceeding 3 months, unless the magistrate, having regard to the nature of the offence and the time that has elapsed since it was committed, is satisfied that it would not be contrary to the public interest for the licence to be granted.

(7) A licence shall not be granted to an individual, and the licence held by an individual shall not be renewed if the magistrate is satisfied that that individual has committed such harassment as to show that he is not a suitable person to hold a licence.

(8) For the purposes of subsection (7), "harassment" means any act or conduct that tends to intimidate, embarrass, ridicule, or shame any person and, without limiting the generality of the foregoing, includes—

- (a) any conduct (including the positioning of a vehicle) from which it might reasonably be inferred by a person visiting or passing any premises that an occupant of the premises is being visited, or under surveillance, by an agent;
- (b) unduly frequent visiting of premises or communication with the occupants of premises; and
- (c) any statement or suggestion made to, or intended to be communicated to, a debtor that, if he fails to pay any debt, action may be taken that would embarrass or shame him, or prejudice him in his employment;

(9) A licence shall not be granted to a ^{body corp} ~~corporate~~ body, and the licence held by a corporate ~~body~~ shall not be renewed, if the magistrate is satisfied that a licence of the same kind would not, by virtue of the foregoing provisions of this section, be granted to a person who, for the time being, is a director, manager, or secretary of that body or has control of the management of its affairs. AND 13/76

(10) Where, by regulations under this Act, qualifications are prescribed with respect to the standard of education, practical skill, or experience of the holder of any kind of licence, a licence of that kind shall not be granted to an individual unless the magistrate is satisfied that he has those qualifications.

(11) A licence of any kind shall not be granted to a body corporate, and such a licence held by a ^{body} ~~corporation~~ shall not be renewed, unless the person having the management of its affairs holds— 13/76

- (a) in the case of a commercial agent's licence, either a commercial agent's licence or a commercial sub-agent's licence; or
- (b) in the case of any other licence, a licence of the like kind.

(12) Without prejudice to the foregoing provisions of this section, a magistrate may refuse to grant a licence to a person, and may refuse to renew a licence held by a person if it appears to him, in all the circumstances of the case, that that person is not a suitable person to hold the licence.

Applications
for grants and
renewals of
licences.

5—(1) An application for the grant or renewal of a licence—

- (a) shall be made in the prescribed manner;
- (b) shall contain the prescribed information; and
- (c) shall be lodged with the clerk of petty sessions for the court nearest to the place to be specified, or specified, in the licence as the sole or principal place of business of the applicant.

(2) The information contained in an application under this section shall be verified by a statutory declaration made by the applicant, or, where the applicant is a body corporate, by an officer thereof.

(3) An applicant for the grant or renewal of a licence shall, within 7 days after making his application, cause notice thereof to be published in a daily newspaper circulating in the place where he proposes to have, or where he has, his sole or principal place of business.

Hearing of
applications
for licences.

6—(1) A clerk with whom an application for the grant or renewal of a licence is lodged shall serve a copy of the application on the Commissioner of Police.

(2) Where a copy of an application is served on the Commissioner of Police pursuant to subsection (1), the Commissioner—

- (a) shall cause investigation to be made whether there is any ground of objection to the grant or renewal of the licence to which the application relates;
- (b) shall, within 14 days after receiving the application, furnish the clerk with a report, in writing, of the result of the investigation; and
- (c) shall, if he has found any ground of objection to the grant or renewal of that licence, include in his report a statement objecting to the grant or renewal thereof and setting out the grounds of the objection.

(3) Any person may object to the grant or renewal of a licence by lodging with the clerk, within 14 days after notice of the application for the grant or renewal thereof has been published in a newspaper in accordance with section 5 (3), a notice in the prescribed form of his objection and of the grounds thereof.

(4) Where a person objects to the grant of a licence, he shall—

- (a) in the case of an objection made by the Commissioner of Police, appear in person or be represented by a police officer; or

(b) in any other case, appear in person, at the determination of the application for the grant of the licence and, on so appearing, may be cross-examined by the applicant.

(5) In determining an application for the grant or renewal of a licence, the magistrate shall consider any objections thereto made in accordance with this section, except that he shall not consider any such objection, unless—

(a) a copy of the notice thereof stating the grounds of the objection has been served on the applicant at least 7 days previously; and

(b) in the case of an objection to the grant of a licence, the person making the objection complies with subsection (4),

and, if he is of opinion that it is proper so to do, he may adjourn the hearing of the application to enable such an objection to be so considered.

(6) Without prejudice to the provisions of subsection (5), a magistrate may from time to time adjourn the hearing of an application under this section.

7—(1) Subject to this Act, a licence has effect for a period of 12 months commencing on the date on which it was granted, or, if it has previously been renewed, the date from which it was last renewed. Duration of licences.

(2) A licence ceases to have effect if the holder thereof becomes bankrupt or makes any composition or arrangement with his creditors.

(3) Where a licence is renewed, the renewal shall be deemed to take effect from the date on which the licence would have expired if it had not been renewed.

(4) Application may be made for the renewal of a licence not earlier than 3 months before the date on which it would expire if it were not renewed.

8 The holder of a licence may surrender the licence by delivering it to the clerk and, upon being so surrendered, the licence ceases to have effect. Surrender of licences.

Revocations
and suspen-
sions of
licences.

9—(1) On complaint being made to him, a magistrate—

- (a) may revoke a licence on the ground that the grant or renewal of the licence was obtained by fraud, misrepresentation, or the suppression of any material fact, or contrary to the provisions of this Act; or
- (b) may revoke a licence on any ground on which he might refuse to grant or renew the licence.

(2) A magistrate may exercise the powers conferred on him by subsection (1) in relation to a licence, notwithstanding that the licence is for the time being suspended under the following provisions of this section.

(3) Subject to subsection (4), on conviction of a person for an offence against this Act or for an offence committed in connection with a business carried on by him or in which he is employed, the court by which that person is convicted may, in addition to, or in lieu of, imposing any other penalty—

- (a) revoke any licence held by him; or
- (b) if the court has reason to believe that there are grounds for action being taken against that person under subsection (1), suspend such a licence for a period not exceeding 28 days.

(4) Where a person is convicted of an offence under section 28 or section 31, the court by which the person is convicted shall, whether or not it imposes any other penalty, revoke the commercial agent's licence held by him.

(5) When a court or magistrate revokes a licence held by a person, it or he shall disqualify that person, for such period as the court or magistrate fixes, from holding any licence or any licence of a specified kind.

(6) An order made under this section shall be deemed to be an order within the meaning of Part XI of the *Justices Act* 1959.

Death of
licensees.

10—(1) Subject to this section, where the holder of a licence dies, his legal personal representatives may notify the clerk of the name of the person who is to exercise the authority conferred by the licence and on being so notified the licence has effect, for the period of 3 months following the death of that person, as if the person whose name is so notified were the holder of the licence.

(2) The name of a person shall not be notified to a clerk under subsection (1) if—

- (a) he has not attained the age of 18 years;
- (b) he is disqualified from holding the licence, or a licence held by him is for the time being suspended;
- (c) he is an undischarged bankrupt or a person who has made any composition or arrangement with his creditors, unless the debts to which the composition or arrangement relates have been paid in full or its terms have been fulfilled;
- (d) during the previous 5 years, he has been convicted of an offence of dishonesty or, on his conviction for an offence, has been sentenced to a term of imprisonment exceeding 3 months; or
- (e) an application by him for the grant or renewal of a licence has, at any time, been refused, or a licence held by him has, at any time, been revoked.

(3) Paragraphs (d) and (e) of subsection (2) do not apply in respect of a person if, since the conviction, refusal, or revocation, he has been granted a licence.

11 The clerk shall, on the written application of the holder of a licence, alter the registered address specified in the licence. Alteration of addresses.

12 If the clerk is satisfied that a licence has been lost or destroyed, he may, on the written application of the holder of the licence and on payment of the prescribed fee, issue a duplicate thereof to the holder of the licence. Duplicates of licences.

13—(1) Where a licence is granted, renewed, suspended, or revoked, or a disqualification is imposed, by a court, the appropriate officer shall forthwith give notice, in writing, thereof to the Secretary. Register of licences.

(2) A clerk shall forthwith give notice in writing to the Secretary of—

- (a) the surrender to him of any licence under section 8;
- (b) any notification given to him under section 10; and
- (c) any alteration made by him under section 11.

(3) The Secretary shall keep a register of the licences granted under this Act, showing any renewals, suspensions, revocations, or surrenders thereof, and the names and the registered addresses of the holders thereof.

(4) Production of a document purporting to be a certified copy of an entry in the register signed by the Secretary is sufficient evidence, unless the contrary is shown, that that entry was duly made in the register.

(5) The Secretary shall, in the month of February in each year, cause to be published in the *Gazette* a list giving the prescribed particulars of the licences in force on the first day of the preceding January.

(6) As early as practicable in each month, the Secretary shall cause to be published in the *Gazette* a list giving the prescribed particulars of notifications made to him under this section particulars of which have not previously been so published.

(7) A person may, at any reasonable time, inspect the register on payment of the prescribed fee.

(8) In carrying out his functions under this section it is sufficient for the Secretary to rely merely on the notifications given to him under subsection (1) or subsection (2).

(9) In this section, "appropriate officer" means, with respect to the Supreme Court, the Registrar thereof, and with respect to a court of petty sessions, the clerk thereof.

PART III

PROVISIONS APPLICABLE TO AGENTS GENERALLY

Agents not
entitled to fees,
&c., unless
licensed.

14—(1) No person is entitled to sue for, or recover, any fee, commission, or other consideration for any service performed by him as an agent, unless at the time of performing that service he was duly licensed.

(2) This section does not apply to any service performed before the expiration of 3 months after the commencement of this Act.

Licence not to
confer addi-
tional authority.

15—(1) A licence does not confer on an agent any power or authority to act in contravention of, or in disregard of, any law or any rights or privileges guaranteed or arising under, or protected by, any law.

(2) An agent who in any way suggests or implies that, by virtue of his licence, he may exercise any power or authority that is in fact not conferred by the licence is guilty of an offence.

16 Any person who carries on business as an agent of any kind otherwise than in the name under which he holds a licence authorizing him to act as such an agent or in a business name registered by him in accordance with the *Business Names Act* 1962 is guilty of an offence. Name in which agent carries on business.

17 An agent who, by a false, misleading, or deceptive statement, representation, or promise, or by a wilful concealment of a material fact, induces, or attempts to induce, any person to enter into an agreement or contract in connection with his business as an agent is guilty of an offence. Misrepresentation.

18 An agent who publishes, or causes to be published, any advertisement relating to his business (other than an advertisement relating solely to the recruiting of staff) that does not clearly state the name under which he holds a licence authorizing him to act as such an agent, and his registered address, is guilty of an offence. Publication of advertisements.

19—(1) An agent (other than a commercial sub-agent or security guard) shall maintain, in a conspicuous position in each place from which he carries on business, a notice clearly showing— Notice to be displayed.

- (a) the name of the agent and, in the case of a body corporate, the name of the agent who manages the business conducted in pursuance of the licence;
- (b) the kind of the licence that the agent holds; and
- (c) such other matters as may be prescribed.

(2) An agent who fails to comply with the provisions of subsection (1) is guilty of an offence.

20—(1) No agent shall employ in any capacity in his business a person— Certain persons not to be employed by agents.

- (a) who is disqualified from holding a licence;
- (b) who has been refused a licence or whose licence has been revoked, unless he has subsequently been granted a licence; or
- (c) whose licence is suspended.

(2) It is a sufficient defence to a prosecution for an offence under subsection (1) if the agent charged proves that he used all due diligence to ensure that the employee referred to in the charge was not a person whom he was prohibited from employing by that subsection.

Prohibition of
delegation of
functions to
unauthorized
persons.

21 An agent who directs, authorizes, or permits any other person to exercise any of the functions of an agent of any kind is guilty of an offence, unless that other person holds a licence authorizing him to act as an agent of that kind.

Lending of
licences.

22 A person holding a licence who allows any other person to use that licence is guilty of an offence.

Production of
licences.

23—(1) An agent shall, on demand, produce his licence for inspection—

- (a) to a police officer or an authorized officer; or
- (b) to a person with whom he has dealings as an agent.

(2) An agent who refuses or fails to comply with a demand under subsection (1) is guilty of an offence.

Penalty: \$200.

Penalties.

24 Except as otherwise provided therein, a person who is guilty of an offence under this Part is liable to a penalty of \$500.

Reopening of
transactions
by agents.

25—(1) Where, in any proceedings taken for the recovery of money under an agreement for services rendered by a person in his capacity as an agent or in any proceedings instituted under subsection (4), it appears to the court that the amount charged (whether directly or indirectly) under the agreement is excessive, the court may reopen the transaction.

(2) On reopening a transaction under this section, the court may, notwithstanding any statement or settlement of accounts—

- (a) reopen any account already taken between the parties and relieve the client of the agent or any guarantor of that client of any liability in excess of such sum as the court considers reasonable in the circumstances;
- (b) may set aside, wholly or in part, or revise or alter, any agreement made or security given in connection with the transaction; and
- (c) give judgment for any party for such amount as the court feels is justly due to that party.

(3) Without prejudice to the generality of the court's powers under subsection (2), the court shall, in exercising those powers, have regard to any services performed or continuing services to be

performed under any agreement or contract between the parties and to any series of services required or undertaken by or under any such agreement or contract.

(4) Proceedings may be instituted under this subsection by the client of an agent for the purpose of obtaining relief under this section, and in any such proceedings a court has and may exercise all or any of the powers conferred by this section.

PART IV

PROVISIONS APPLICABLE SPECIFICALLY TO COMMERCIAL AGENTS

26—(1) A commercial agent's licence shall not be granted or Fidelity bonds. renewed under Part II, unless the person making application for the grant or renewal has lodged with the clerk a fidelity bond that complies with this section.

(2) In order to comply with this section, a fidelity bond shall be a bond to the Minister in the prescribed form from an insurance company or a banker or such other person as the Minister may approve in the sum of \$2 000 or such other sum as may be prescribed and the period of the bond shall be the period during which, if the application is granted, the licence may remain in force without renewal or further renewal.

(3) Where, in respect of the same holder of a commercial agent's licence, a person for the purposes of this section, enters, as obligor, into two or more fidelity bonds the periods of which succeed each other without interval, the obligor is not liable under those bonds to pay any sums that, in the aggregate, exceed \$2 000 or such other sum as may be prescribed.

27—(1) Any person may, on payment of the prescribed fee to the clerk, inspect a fidelity bond lodged with a clerk under section 26. Inspection of, and claims under, fidelity bonds.

(2) If a fidelity bond lodged under section 26 becomes forfeited on breach of condition, the Registrar may, unless the amount thereof is paid on demand, bring an action thereon.

(3) If, in an action on a fidelity bond, judgment is given for the Registrar, it shall be for the full amount of the bond and execution may be had thereon for that amount.

(4) Where judgment is given for the Registrar in an action on a fidelity bond, the proceeds of the bond shall be paid into court

and administered therein on the principle that, subject to payment of the costs and expenses of administration (including those of recovery, if any), all claims of his clients against the commercial agent to whom the bond relates for—

- (a) any loss sustained by reason of any breach of any condition of the bond;
- (b) the return of moneys held or received by the agent to their use; or
- (c) the return of other property held or received by the agent to their use,

shall be paid out of the fund in full, or ratably if it is insufficient, and the residue of the fund, if any, shall be paid to the obligor.

(5) Where the proceeds of the bond have been paid into court under this section, a judge may appoint a time within which all claims in respect thereof may be lodged with the Registrar and after the expiration of that time no such claims not so lodged shall be taken account of for the purposes of subsection (4).

(6) Notwithstanding anything contained elsewhere in this Act or in a fidelity bond, no claim is payable under this section in respect of—

- (a) any theft, embezzlement, misappropriation, wrongful conversion, fraud, or other wrongful act done before the beginning of the period of the first fidelity bond given for the purposes of section 26 by the obligor of the bond in question in respect of the commercial agent to which it relates; or
- (b) any prior or subsequent failure or inability to return, pay over, or account for money or other property in consequence of a wrongful act so done.

(7) If any claim to which subsection (4) relates is payable in whole or in part out of a commercial agent's trust account, the court may, at the suit of the Registrar, make such orders as will cause the moneys in that trust account or so much of them as belong to persons entitled to claim on the fund in court to be paid into that fund.

(8) Moneys paid into court under subsection (7) shall form a single fund with the money paid under the fidelity bond and be available for the purposes of this section free from all equities affecting the relevant trust account.

(9) Before a client claiming under subsection (4) may receive any payment out of the fund in court, he shall, unless the court otherwise orders, assign to the obligor of the fidelity bond—

(a) his debt against the commercial agent; and

(b) any right to recover the amount of that debt from any other person,

or so much of it as will then be paid.

(10) In the administration of a fund in court under this section, the court may order—

(a) an interim dividend to be paid before all claims of clients payable out of the fund under subsection (4) are determined;

(b) an advance payment in a case of personal hardship;

(c) an advance return to the obligor of money clearly not required to pay claims of clients; and

(d) a client claiming under subsection (4) to take at the expense of the fund in court, or, if he consents, the obligor, proceedings against the commercial agent (including proceedings in bankruptcy) or against any other person from whom he may recover the amount of his claim or any part thereof.

(11) A fund in court under this section is not subject to marshalling for the exoneration of any other fund (not being another fund in court under this section) to which a claimant on the first-mentioned fund may resort.

(12) In this section, “Registrar” means the Registrar of the Supreme Court.

28—(1) Where money is received by a commercial agent for or ^{Trust accounts.} on behalf of a client, the agent shall hold that money exclusively for that client and, until paid to the client or disbursed as he directs, shall cause the money to be paid into a trust account in a bank in this State in the name of the commercial agent and retained therein. //

(2) An account for the purposes of subsection (1) shall be established under the designation “trust account” and that designation shall appear in the description of that account in the books and records of the commercial agent to which it relates and on cheques drawn on that account.

(3) A commercial agent shall remove the moneys from his trust account only—

- (a) for the purpose of paying them to, or disbursing them in accordance with the directions of, the person on whose behalf they were received; or
- (b) in accordance with the order of a court of competent jurisdiction.

(4) No client's money in a commercial agent's trust account shall be available for the payment of the debts of the agent or to any other creditor of the agent, or be liable to be attached or taken in execution under the order or process of any court at the instance of any such other creditor.

(5) Nothing in this section shall be construed so as to prevent the removal of moneys by a commercial agent from his trust account to satisfy a lawful claim or lien that the agent has against or on those moneys.

(6) A commercial agent shall keep accounts in such manner as may be prescribed of the moneys that he is required, by this section, to be caused to be paid into a trust account and of the moneys paid out of that account.

(7) A commercial agent who contravenes or fails to comply with the foregoing provisions of this section is guilty of an offence.

Penalty: \$300.

Relief to
bankers.

29—(1) Subject to the provisions of this section, a bank—

- (a) does not incur any liability;
 - (b) is not under any obligation to make any inquiry; and
 - (c) shall not be deemed to have knowledge of any matter,
- in connection with any transaction on a commercial agent's trust account kept with the bank or with any other bank that it would not incur, be obliged to make, or have or be deemed to have in the case of an account kept by a person who is entitled absolutely to all the money paid or credited to it.

(2) Nothing in subsection (1) relieves a bank from any liability or obligation under which it would be apart from this Act.

(3) Notwithstanding anything in subsection (1), a bank at which a commercial agent keeps a trust account under section 28 does not, in respect of any liability of the agent to the bank (other

than a liability in connection with that account) have or acquire any recourse or right, whether by way of set-off, counter-claim, charge, or otherwise, against moneys standing to the credit of that account.

(4) Nothing in subsection (3) deprives a bank of any right existing at the time of the commencement of this Act.

30—(1) Subject to this section, a commercial agent shall keep in a legible manner—

Records required to be kept and places where they are to be kept.

(a) a written record, in the prescribed form and containing the prescribed particulars, of the transactions entered into by him in the course of his business as an agent; and

(b) such other written records in relation to his business as an agent as may be prescribed, including records in respect of the persons employed by him in that business, whether as sub-agents or otherwise.

(2) A commercial agent shall keep—

(a) every record kept by him for the purposes of subsection (1) at his registered address; and

(b) the books of account and other records relating to his trust account at his registered address or at such other place of business as the Minister may approve in writing.

(3) Where a person ceases to be a commercial agent, he shall deliver the records and books of account kept by him for the purposes of subsection (1) or for the purposes of his trust account or delivered to him by virtue of this subsection—

(a) to the Minister; or

(b) to the holder of a commercial agent's licence notified by him to the Minister.

(4) Where any record or book of account is delivered to the holder of a commercial agent's licence under subsection (3), he shall keep it at his registered address or at such other place as he may notify the Minister in writing.

(5) Nothing in this section requires the retention by a person of a record or book of account after the expiration of 6 years from the last making of any entry therein.

(6) A person who—

(a) falsifies or mutilates any record or book of account referred to in this section; or

(b) otherwise contravenes or fails to comply with a provision of this section that is applicable to him,

is guilty of an offence.

Furnishing of
particulars of
trust account,
&c., to
Minister.

31—(1) The Minister may serve a requisition under this section on the holder of a commercial agent's licence or a person who has held such a licence.

(2) Where a requisition is served on any person under this section, he shall, within such period as is specified in the requisition, furnish the Minister with a statement, in writing, setting forth, as required by the requisition—

- (a) the name of the bank at which, and the name in which, any trust account has been opened by him;
- (b) the balance of the moneys standing to the credit of any such account at such date as is specified in the requisition, and particulars of any cheques drawn on the account on or before that date and not presented and duly paid;
- (c) particulars of any money paid by any person to, or received by, him in connection with his business and, if they are not still held by him, the manner and time of their disbursement;
- (d) particulars of any transaction by or with him in connection with any business that is or was carried on by him; and
- (e) the places of business at which the statutory records required to be kept by him are so kept.

(3) Any person who contravenes or fails to comply with subsection (2) is guilty of an offence.

(4) Nothing in paragraph (c) or paragraph (d) of subsection (2) requires a person to furnish particulars of any money paid to, or received by, him, or of any transaction completed, more than 6 years before the service of the requisition.

Inspection of
statutory
records and
other docu-
ments.

32—(1) A police officer or an authorized officer may—

- (a) enter at any reasonable time any place of business of the holder of a commercial agent's licence; and
- (b) require the agent to produce for inspection—
 - (i) any statutory record or any record or book of account required to be kept at that place of business, and any statutory record that, in pursuance of a requisition served under section 31, the agent has stated is kept at that place of business; and
 - (ii) any documents relating to the trust account of the agent, or to any transaction by or with the agent in connection with his business, that may be on the premises or in the possession, custody, or control of the agent.

(2) A commercial agent shall, within 3 days after being so required in writing by the Minister or orally or in writing by a police officer or an authorized officer, produce for inspection at the place of business specified in the requirement, or at such other place as is agreed by the Minister, police officer, or authorized officer, any documents relating to the agent's trust account or to any transaction by or with the agent in connection with any business carried on by him.

(3) Where a requirement may be made under this section of a body corporate, that requirement may be made to any director, manager, or secretary of that body or any person appearing to have the management of the business carried on by that body or carried on by that body at its registered address.

(4) A police officer or an authorized officer may inspect, and take copies of, or extracts from—

(a) a statutory record; and

(b) any documents produced as a result of a requirement made under subsection (1) or subsection (2).

(5) A person who, without reasonable excuse, fails or refuses to comply with a requirement made of him under this section is guilty of an offence.

33—(1) In accordance with the requirements of a notice, in writing, served by the Minister on a banker, the banker shall, within such period as is specified in the notice—

*Inspection of
bank records.*

(a) notify the Minister whether a trust account has been opened or is, or has been, kept at his bank by a commercial agent or a person who has ceased to be a commercial agent;

(b) send or deliver to the Minister a statement, in writing, containing particulars relating to such a trust account; and

(c) produce for inspection by a police officer or an authorized officer any documents or records in the possession of the banker relating to such a trust account.

(2) Subsection (1) (c) shall be deemed not to have been complied with in respect of a notice, unless the documents or records are produced at a branch, or other place of business, of the bank in the State that has been notified by the banker to the person by whom the notice is served.

(3) A banker who refuses or fails to comply with a notice served on him pursuant to subsection (1) is guilty of an offence.

Penalty: \$300.

(4) An authorized officer may inspect, and take copies of, or extracts from, any documents or records produced in pursuance of a notice served under subsection (1).

Repossession
of motor
vehicles to be
reported.

34—(1) A commercial agent who takes possession of a motor vehicle that is subject to a hire-purchase agreement or a bill of sale—

- (a) shall, as soon as practicable after taking possession of the motor vehicle, inform an officer of police on duty at the police station nearest to the place where he took possession of the vehicle; and
- (b) shall, within 24 hours after taking possession of the motor vehicle, deliver or send by post to the officer in charge of the police station nearest to the commercial agent's registered address, written particulars in duplicate of the motor vehicle, including particulars of the registered number of the vehicle.

(2) A commercial agent who fails to comply with the provisions of this section is guilty of an offence.

(3) In this section, "motor vehicle" means a motor vehicle within the meaning of the *Traffic Act 1925*.

Commercial
sub-agents
not to be
employed
unless licensed.

35 A commercial agent who employs as a commercial sub-agent a person who does not hold a commercial sub-agent's licence is guilty of an offence.

Place of
business.

36 A commercial agent who invites the public, or any debtor from whom he is seeking to recover a debt, to deal with him at any place other than his registered address or some other place approved by the Minister is guilty of an offence.

Recovery of
moneys from
debtors.

37—(1) No commercial agent or commercial sub-agent shall ask or demand (whether directly or indirectly) from a debtor any payment in addition to the amount of the debt owed by him.

(2) In this section—

"creditor" means a person on behalf of whom a commercial agent is acting, or has been engaged to act, in recovering or attempting to recover a debt;

"debt" includes any interest, costs or other charges for which a debtor is legally liable to a creditor;

"debtor" means a person from whom a commercial agent has recovered or is attempting to recover a debt on behalf of a creditor.

38 Except as otherwise provided herein, a person who is guilty Penalties. of an offence under this Part is liable to a penalty of \$500.

PART V

MISCELLANEOUS

39—(1) In any legal proceedings, a document purporting to be Evidentiary provisions. a licence granted under this Act shall be deemed to be such a licence, unless the contrary is shown.

(2) An allegation in a complaint that a person was or was not, at any time mentioned in the complaint, the holder of a licence under this Act shall be deemed to be proved, unless the contrary is shown.

(3) A document purporting to be signed by the Secretary and stating that a person named in the document is or is not, or was, or was not at any specified time, the holder of a licence under this Act shall be deemed to be proved, unless the contrary is shown.

40 Except as otherwise provided in this Act, a notice, requisition, Service of notices. or other document required or authorized under this Act to be served on, or given to, a person, may be so served—

(a) if that person is the holder of a licence—

- (i) by delivering it to him personally;
- (ii) by leaving it addressed to him at his registered address with some person apparently over the age of 16 years apparently employed thereat; or
- (iii) by sending it by certified mail addressed to him at his registered address; or

(b) in the case of any other person—

- (i) by delivering it to him personally;
- (ii) by leaving it addressed to him at his usual or last known place of abode or business with some person apparently over the age of 16 years apparently residing or employed thereat; or
- (iii) by sending it by certified mail addressed to him at his usual or last known place of abode or business.

41 All fees paid to a clerk or to the Secretary under this Act Fees to be paid into Consolidated Revenue. shall be paid by him into the Consolidated Revenue.

Exemptions.

42—(1) This Act does not apply to—

- (a) a person while he is acting in good faith in the performance of the functions of an office created by an Act of the Commonwealth or of this State or any other State or Territory of the Commonwealth;
- (b) an officer who holds an office under the Crown in the right of the Commonwealth or of this State or any other State or Territory of the Commonwealth, while he is acting in the exercise of the duties of his office;
- (c) a member of the Defence Force of the Commonwealth while he is acting in the exercise of his functions as such a member;
- (d) a legal practitioner while he is acting in the ordinary course of his profession or to a clerk of a legal practitioner while he is acting in the ordinary course of his employment as such a clerk;
- (e) an accountant while he is acting in the ordinary course of his profession;
- (f) a trustee company, a building society, or a friendly society, or a person carrying on the business of insurance, insurance broking, or banking, while acting in the ordinary course of that business, or an employee of such a company, society, or person while he is acting in the ordinary course of his employment;
- (g) a person employed under a contract of service by a person who is not an agent while he is acting in the ordinary course of that employment; or
- (h) a person who performs only clerical or secretarial functions on behalf of an agent.

(2) For the purposes of subsection (1) (e), “accountant” means a person who is a member of the Institute of Chartered Accountants in Australia or the Australian Society of Accountants.

(3) The carrying on by any person of the business of furnishing information as to the financial rating or standing of any other person does not of itself constitute that person an agent.

Regulations.

43—(1) The Governor may make regulations for the purposes of this Act.

(2) Without affecting the generality of subsection (1), the regulations may—

- (a) exempt any person or class or persons from all or any of the provisions of this Act, wholly or to such an extent as is specified in the regulations and either unconditionally or subject to such conditions as may be prescribed and prescribe the extent of the exemption;
- (b) provide for or with respect to the procedure on applications and other proceedings under this Act;
- (c) prescribe the manner of keeping the register;
- (d) prescribe the terms and conditions of fidelity bonds;
- (e) provide for records to be kept by agents (other than commercial agents) or by any kind of agents (other than commercial agents) and provide for the inspection of those records;
- (f) provide for returns to be made to the Minister by agents;
- (g) provide for an annual audit of the trust accounts of commercial agents, and the manner in which and the persons or class of persons by whom the audit is to be conducted, and provide for a report of the results of the audit to be made to the Minister;
- (h) require that such books, papers, and accounts and other documents relating to an audit referred to in paragraph (g) as are specified in the regulations shall be produced for the inspection of the auditor;
- (i) make such other provision as may be necessary or desirable to ensure that all such trust accounts are properly audited;
- (j) prescribe various maximum rates of commission and charges for services of various kinds defined in the regulations;
- (k) provide for or with respect to the fees payable for the grant and renewal of licences and other things done under or for the purposes of this Act, including providing for the payment of different fees by agents of different kinds; and
- (l) prescribing penalties, not exceeding \$200, for offences against the regulations.