

WESTERN AUSTRALIA.

LAND AGENTS.

12° Geo. V., No. XLIII.

No. 9 of 1922.

As amended by Acts No. 40 of 1931 (a); No. 54 of 1948 (b); No. 13 of 1952 (c); and No. 46 of 1953 (d); and reprinted pursuant to the Amendments Incorporation Act, 1938.

AN ACT to provide for the Licensing and Supervision of Land Agents.

No. 9 of 1922,
amended by
No. 46 of
1953, s. 8.

[Assented to 31st January, 1922.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows :—

1. This Act may be cited as the *Land Agents Act, 1921-1953*.

Short title.
No. 9 of 1922,
s. 1;
No. 46 of
1953, s. 1 (3).

2. In this Act—

Interpreta-
tion.
No. 9 of 1922,
s. 2, amended
by No. 13 of
1952, s. 2;
No. 46 of
1953, s. 3.
N.Z., 1912,
No. 42, s. 2.

“Committee” means The Land Agents Supervisory Committee of Western Australia constituted under this Act.

Added by
No. 46 of
1953, s. 3.

(a) Assented to 3rd December, 1931. (b) Assented to 21st January, 1949; came into operation on 1st January, 1949, vide No. 54 of 1948, s. 6 (1). (c) Assented to 7th November, 1952. (d) Assented to 29th December, 1953; came into operation on 1st January, 1954, vide No. 46 of 1953, s. 2.

Amended by
No. 13 of
1952, s. 2 (b).

“Land agent” means a person whose business, either alone or as part of or in connection with any other business, is to act as agent for a consideration in money or money’s worth, as commission, reward, or remuneration, in respect of a land transaction; but does not include public accountants acting in the discharge of their duties as trustees, liquidators, or receivers.

Added by
No. 13 of
1952, s. 2 (c).

“land transaction” means—

a sale, exchange or other disposal, and a purchase, exchange or other acquisition—except by auction, of land and estates and interests in land including—

the leasing or letting, and the acquisition under lease or letting—

of tenancy or occupation of the whole or part or parts of houses and other buildings.

“License” means a license granted under this Act.

“Licensee” means the holder of a license, and includes a firm or company on whose behalf a license is held.

Land agents
to be
licensed.
No. 9 of
1922, s. 3.
Cf. N.Z., 1912,
No. 42, s. 3.

3. (1) From and after the first day of April, nineteen hundred and twenty-two, no person shall carry on the business of a land agent unless he is the holder of a license.

(2) Where a firm carries on the business of land agents it shall be sufficient if one member of the firm is the holder of a license on behalf of the firm.

(3) Where a registered company carries on the business of land agents it shall be sufficient if some person appointed in writing by the company is the holder of a license on behalf of the company.

Application
for license.
No. 9 of 1922,
s. 4,
amended by
No. 40 of
1931, s. 2;
No. 54 of
1948, s. 6;
No. 13 of
1952, s. 3;
No. 46 of
1953, s. 4.
Cf. N.Z., 1912,
No. 42, s. 4.

4. (1) Every person who desires to obtain a license shall in accordance with the regulations, lodge with the clerk of a Court of Petty Sessions in the district wherein he resides an application in the form in the First Schedule hereto.

(2) Such application shall state the principal place of business of the applicant, and shall be accompanied by testimonials as to the character of the applicant, signed by not less than three reputable persons.

(2a) The clerk of the Court of Petty Sessions shall in accordance with the regulations serve or cause to be served copies of the application and testimonials and, in the cases of applications for licenses in the first instance and applications for transfers of licenses, the applicant shall in accordance with the regulations, publish notice of the application, but publication of applications for renewals of licenses is not required ;

Subsec.
(2a) added
by No. 13 of
1952, s. 3 (b).

(3) (a) If the Court is satisfied that the applicant is a fit and proper person to be the holder of a license under this Act, it shall, on payment of a fee of seven pounds ten shillings, or such other amount as may be prescribed by regulation under this Act, and on the deposit of a fidelity bond in the sum of two thousand pounds, in the form in the second schedule hereto, from an insurance company which has deposited a sum of money with the Treasurer in accordance with the provisions of the Insurance Companies Act, 1918*, or some other approved surety or sureties, issue to the applicant a license in the form in the third schedule hereto :

Subsec. (3)
repealed
and new
subsec. (3)
substituted
by No. 40
of 1931, s. 2,
amended by
No. 54 of
1948, s. 6 (3);
No. 46 of
1953, s. 4.

Provided that the Treasurer may remit a proportionate part of such fee for a license issued after the thirty-first day of March in any year.

(b) The sum of two thousand pounds named in a fidelity bond under this section shall not be deemed to be a penalty, but shall be recoverable in full as a debt due by the obligor company or surety to His Majesty, unless the company or surety proves performance of every condition upon which the bond is defeasible.

(c) Every sum so recovered shall be paid into the consolidated revenue and the balance thereof, after the deduction of costs and other expenses, may with the approval of the Treasurer and without further appropriation than this Act, be held for a period of six calendar months and be applied—

(i) in compensating, at the expiration of such period, any person who makes application

during such period and proves to the satisfaction of the Treasurer that such person has sustained loss by reason of any breach of any condition of the bond ;

- (ii) in refunding to the company or surety at the expiration of such period any balance left after payment of such compensation.

(d) If at any time during the currency of a license of a land agent the bond filed by him under this Act ceases to be of full force and effect, such land agent shall, until a bond of full force and effect is filed by him, be deemed to be unlicensed ;

(e) A fidelity bond given under this Act may, if so provided therein, enure not only during the term of the license in which it is originally given, but during the term of any license to the same person issued in renewal of a license under this Act ;

(f) If a fidelity bond is so given as to enure in respect of the renewal or further renewal of a license, it shall be lawful for the surety or sureties by notice in writing addressed to the clerk of court of petty sessions at any time to determine his or their liability under the bond in respect of any act or default that may be done or made after the thirty-first day of December next following the date of such notice, and in any such case the court shall not issue a license in renewal until another approved bond has been lodged by the applicant.

Subsec. (4)
added by No.
13 of 1952,
s. 3 (d).

(4) Before granting an application for a license or a transfer of a license, the Court shall require sufficient evidence to satisfy itself that the proposed licensee or transferee has attained the age of twenty-one years and that his character, financial position and suitability are such that he is, in the opinion of the Court, having regard to the interests of the public, a fit person to hold a license.

Cf. N.Z.
1921-1922,
No. 56, s.
11 (1).

Subsec.
(5) added by
No. 13 of
1952, s. 3 (d).

(5) Objection to the granting of an application may be made at such time and in such manner as are prescribed by the regulations.

License.
No. 9 of 1922,
s. 5.

5. (1) Such license shall take effect from a date to be therein stated, and shall expire on the thirty-first day of December next following, and shall authorise

the licensee to act as a land agent in Western Australia during the currency of the license, unless the same is cancelled as hereinafter provided.

N.Z., 1912,
No. 42, s. 5.

(2) The issue of every license shall, within ten days after the issue thereof, be notified by the Clerk of the Court to the Under Treasurer.

(3) A register of licenses issued under this Act shall be kept in the office of the Under Treasurer, and a copy thereof shall be published in the *Gazette* each year.

(4) The *Gazette* containing any such copy shall be *prima facie* evidence in all judicial proceedings of the contents of the register.

(5) The absence of a person's name from any such copy shall, until the contrary is shown, be evidence that he is not registered.

Provided that in the case of any person whose name does not appear in such copy a certified copy, under the hand of the Under Treasurer, of the entry of the name of that person in the register shall be evidence of the contents of the register with respect to that entry.

5A. Applications for renewals and transfers of licenses may be made and shall be dealt with in accordance with the regulations.

Renewals
and transfer
of licenses.
Subsec. 5A
added by
No. 13 of
1952, s. 4.

6. (1) A license may be transferred in accordance with the regulations to any person approved by a Court of Petty Sessions, and on payment of a fee of ten shillings or such other fee as is prescribed by the regulations that person shall be deemed to be the holder of the license and may act as a land agent during the currency thereof.

Licensee may
transfer
license.
No. 9 of 1922,
s. 6, amended
by No. 13 of
1952, s. 5.

N.Z., 1912,
No. 42, s. 6.

(2) Before giving its approval in any case the Court of Petty Sessions shall be satisfied that the requirements of section four (except as regards the payment of the license fee) hereof and the regulations have been complied with by the proposed transferee in the same manner as in the case of an application for a license.

7. (1) The place of business mentioned in the application for a license, or such other place of business as the holder of a license from time to time, by notice

Registered
office of the
licensees.
No. 9 of 1922,
s. 7.

N.Z., 1912,
No. 42, s. 7.

in writing to the Clerk of the Court of Petty Sessions, appoints, shall be the registered office of the licensee ; and all writs, summonses, notices, or other documents required to be served or given to the licensee shall be deemed to be duly served or given if left at the said registered office.

(2) Notice of the change of the address of the registered office shall be given by the Clerk of the Court of Petty Sessions to the Under Treasurer, and such change shall be entered in the register of licensees.

Application
of trust-
moneys.

No. 9 of 1922,
s. 8, amended
by No. 13 of
1952, s. 6.

N.Z., 1912,
No. 42, s. 8.

8. (1) All moneys received by a land agent in respect of any land transaction, or in respect of rents or interest on mortgages collected by him, shall be applied as follows :—

(a) In payment of such of the expenses, commission, and other charges of or incidental to the land transaction or collection, as are payable by the persons on whose behalf the moneys are received.

(b) In payment of the balance to the person legally entitled or authorised to receive the same ; and until payment such balance shall be paid into a bank to a general or separate trust account.

(2) For every breach of this section :
Penalty : Fifty pounds.

(3) Moneys so paid into any such trust account shall not be available for payment of the debt of any other creditor of the land 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 creditor.

Account of
moneys
received,
and their
application.

No. 9 of 1922,
s. 9, amended
by No. 13 of
1952, s. 7.

N.Z., 1912,
No. 42, s. 9.

9. (1) On the receipt of any moneys in respect of a land transaction, or in respect of rents or interest on mortgages by a land agent he shall render to the person on whose behalf the land transaction is effected or the rents or interest is collected an account in writing of all such moneys and of the application thereof.

(2) For every breach of this section :
Penalty : Fifty pounds.

10. (1) If any land agent is convicted of fraudulently converting to his own use any moneys received by him in respect of any land transaction or rents or interest on mortgages or any part thereof, or of fraudulently rendering an account of any such moneys knowing the same to be false in any material particular, or of a breach of section eight hereof, his license shall be *ipso facto* cancelled ; and if any land agent who has been convicted of any other offence against this Act is within twelve months thereafter convicted of a second or any subsequent offence of any kind against this Act or if a land agent is convicted, whether summarily or on indictment of an offence involving moral turpitude, or dishonouring him in the public estimation, the Court may, if it thinks fit, in addition to any other penalty, cancel his license.

When license may be cancelled.
No. 9 of 1922, s. 10, amended by No. 13 of 1952, s. 8.
N.Z., 1912, No. 42, ss. 10, 11.
Cf. N.Z., 1921-22, No. 56, s. 27.

(2) The Court before whom a person is convicted of an offence may of its own motion cancel his license in a case where the conviction is a ground for cancellation of his license.

Subsec. (2) added by No. 13 of 1952, s. 8.

(3) Application for the cancellation of a license may be made in accordance with the regulations, which may prescribe the grounds of cancellation and by whom applications for cancellation may be made, to the Court of Petty Sessions nearest the principal place of business of the licensee, which Court is vested by this subsection with jurisdiction to hear the application and to cancel the license.

Subsec. (3) added by No. 13 of 1952, s. 8.

(4) So soon as he reasonably can do so after the cancellation of a license, whether by a Court of its own motion or on application, the Registrar of the Court or the Clerk of Petty Sessions, as the case may be, shall serve written notice of the cancellation and the grounds of the cancellation on the Under Treasurer.

Subsec. (4) added by No. 13 of 1952, s. 8.

(5) The Under Treasurer shall cause to be removed from the register mentioned in section five of this Act, the name of every land agent—

Subsec. (5) added by No. 13 of 1952, s. 8.

- (a) whose license has been cancelled or transferred ;
- (b) who dies ; or
- (c) who has not renewed his license.

11. Nothing in this Act shall affect any civil remedy that any person may have against a land agent in respect of any matter.

Civil remedies not affected.
No. 9 of 1922, s. 11.

Disability of
unlicensed
agent.

No. 9 of 1922,
s. 12,
amended by
No. 13 of
1952, s. 9.
N.Z., 1912,
No. 42, s. 13.

12. A person shall not be entitled to sue for or recover any commission, reward, or remuneration for or in respect of a land transaction, made or effected by him in the course of business as a land agent after the thirty-first day of March, nineteen hundred and twenty-two, unless—

- (a) he is the holder of a license under this Act ;
and
- (b) his engagement or appointment to act as agent in respect of such land transaction is in writing signed by or on behalf of the person to be charged with such commission, reward, or remuneration.

Charging and
paying for
keys and for
information
relating to
tenancies
prohibited.

Section 12A
added by No.
46 of 1953,
s. 5.

Cf. No. 50 of
1947, s. 6.

12A. (1) It is an offence for a person, whether a principal or agent or otherwise, and if an agent whether he is or is not licensed under this Act, to pay or give or receive, or to offer or promise or agree to pay or give or receive, a sum of money or other consideration—

- (a) for obtaining or making available a key of a house or other building or part of a house or other building ; or
- (b) for information relating
 - (i) to tenancy occupation or use, however described ; or
 - (ii) to the possibility or likelihood of tenancy occupation or use, however described ;

of the whole or part of a house or other building.

(2) Subsection (1) of this section does not

- (a) apply to a person whose business is or includes the selling or cutting of keys at a reasonable charge ; or
- (b) affect the right of a person who is not precluded by section twelve of this Act from doing so, to sue for and recover commission, reward or remuneration for effecting a land transaction of leasing or letting, or acquiring under lease or letting, tenancy or occupation of the whole or part of a house or other building.

Penalty : Fifty pounds.

13. Every person not being the holder of a license who, after the thirty-first day of March, nineteen hundred and twenty-two, carries on business as a land agent, or holds himself out as a land agent, shall be guilty of an offence.

Carrying on business without a license.
No. 9 of 1922, s. 13.
N.Z., 1912, No. 42, s. 14.

Penalty : Fifty pounds.

14. In all proceedings against any person for having carried on business as a land agent or for having held himself out as a land agent without a license such person shall, unless he produces his license or brings other satisfactory proof of his having been licensed at the time when the offence was alleged to have been committed, be deemed to have been unlicensed.

Onus of proof that person is licensed.
No. 9 of 1922, s. 14, amended by No. 13 of 1952, s. 10.
N.Z., 1912, No. 42, s. 15.

14A. (1) The Governor shall constitute a body by the name of The Land Agents Supervisory Committee of Western Australia by appointing

The Committee.
Section 14A added by No. 13 of 1952, s. 11; repealed and new s. 14A added by No. 46 of 1953, s. 6.

a member who shall be the Chairman of the Committee ;

a qualified accountant and auditor who is a practising member of the Institute of Chartered Accountants in Australia or the Australian Society of Accountants, to be a member of the Committee ; and

a licensee (who shall be nominated by the Real Estate Institute of Western Australia), to be a member of, and representative on, the Committee of licensees.

(2) The Governor may appoint deputies for the members of the Committee, to act in their places on the Committee, when they are not available to do so, the deputy for the Chairman to be a Stipendiary, Police, or Resident Magistrate, the deputy for the qualified accountant and auditor, as defined in subsection (1), to be a qualified accountant and auditor, and the deputy for the licensee to be a licensee.

(3) The decision of the Committee is that of the majority of the members of the Committee, or in case there is not agreement constituting a majority decision, that of the Chairman, or if his deputy is acting in his place, that of the Deputy Chairman.

(4) The members of the Committee and their deputies

(a) are entitled to such remuneration, expenses, and leave of absence as the Governor thinks fit; and

(b) may hold office as such for such time as the Governor thinks fit.

(5) The Governor may, on such terms and conditions as he thinks fit, appoint a person to be the Secretary of the Committee and such other persons as he considers necessary to assist the Committee in carrying out its functions under this Act.

(6) The remuneration of the members and the expenses of the Committee are payable out of such moneys as Parliament votes for the purpose.

(7) The Committee shall hold its first meeting at such time and place as the Minister directs and shall hold its subsequent meetings at such times and places as the Committee decides.

(8) The Committee shall keep proper records of its proceedings.

Committee has power to inquire.
Section 14B added by No. 46 of 1953, s. 6.
Cf. Land Agents Act, 1925-1950, of S.A., ss. 29a-29f added by No. 49 of 1950, s. 7.
Cf. Gazette, 20th February, 1953, regulations 4, 5 and 8.

14B. (1) Where the Committee is informed or has reason to suspect that there are or may be grounds for objecting to the granting of a license or the renewal of a license or for applying for cancellation of a license, the Committee shall obtain such statements of the facts as are available and necessary to enable it to decide whether those grounds do or do not exist.

(2) In order to obtain satisfactory statements of those facts the Committee may, if it deems it necessary to do so, hold an enquiry at which it may take evidence on oath or affirmation; and for the purpose of the enquiry

(a) may by summons signed by the Chairman or Deputy Chairman or Secretary of the Committee, require a person to attend before the Committee;

(b) may by summons so signed require a person to produce to the Committee any books, papers or other documents;

- (c) require a person to take an oath or affirmation that he will truly answer questions put to him by the Committee relevant to a matter being inquired into by the Committee, which oath or affirmation may be administered by a member or the Secretary of the Committee ;
- (d) require a person appearing before the Committee, whether on summons or otherwise, to answer relevant questions put to him by a member of the Committee or by a person appearing before the Committee.

(3) If a person—

- (a) who has been served with a summons to appear before the Committee does not attend in obedience to the summons ;
- (b) who has been served with summons to produce books or documents before the Committee does not comply with the summons ;
- (c) when required by the Committee to take an oath or affirmation mentioned in subsection (2) of this section refuses to do so ;
- (d) refuses to answer a relevant question put to him by a member of the Committee or by a person appearing before the Committee ;
or

(e) misbehaves himself before the Committee, he commits an offence.

Penalty : One hundred pounds.

(4) A person is not obliged to answer a question put to him at an enquiry conducted by the Committee if the answer to that question would tend to incriminate him.

(5) Where the Committee decides to hold an enquiry concerning a person, the Committee

- (a) shall give the person not less than seven days' notice of the time and place at which it intends to hold the enquiry ;
- (b) shall afford the person reasonable opportunity of cross-examining witnesses, calling evidence and making submissions to the Committee ; and

(c) may adjourn the enquiry from time to time and place to place.

(6) If after having been given that notice the person concerned does not attend at the time and place, or does not attend at an adjournment of the enquiry, the Committee may proceed with the enquiry in his absence.

(7) The procedure at an enquiry held under this section is such as is determined by the Committee.

Enquiries by members of the Police Force.

Section 14C added by No. 46 of 1953, s. 6.
Cf. S.A. Act, s. 29f.

14C. At the request of the Committee the Commissioner of Police shall cause a member or members of the Police Force to make enquiries and reports relevant to any matter being, or about to be, inquired into by the Committee, and shall cause the reports to be sent to the Committee.

Duty of Committee to object to applications and apply for cancellations.

Section 14D added by No. 46 of 1953, s. 6.

Cf. S.A. Act, s. 29d.

Appointment of Committee's representative in proceedings.

Section 14E added by No. 46 of 1953, s. 6.

14D. Where the Committee decides that there is just cause to do so, the Committee shall object to an application for a license, or the renewal of a license, or shall apply for the cancellation of a license or make and prosecute a complaint of an offence under this Act.

14E. The Committee may appoint an officer of the Committee to represent it generally or in a particular case at the hearing by a Court of Petty Sessions of an objection, application, or complaint, made by the Committee under section fourteen D of this Act, or may engage a legal practitioner so to represent it.

Presumption of proof of certain matters.

Section 14F added by No. 46 of 1953, s. 6.

14F. Courts and other persons acting judicially, shall in absence of proof to the contrary, presume—

- (a) that the Committee has been regularly constituted ;
- (b) that the decisions of the Committee have been regularly made ;
- (c) that proceedings brought by the Committee have been brought pursuant to the decision of the Committee ; and
- (d) that a document which purports to have been signed on a specified day by the Chairman, Deputy Chairman, or Secretary of the Committee, has been regularly issued and signed by authority of the Committee on that day.

14G. (1) In this section, unless the context otherwise requires—

Interpretation.
Section 14G,
added by No.
46 of 1953,
s. 6.

“banker” means the manager, or other officer, for the time being in charge of the office of a bank in which any account of a land agent is kept ;

“trust accounts” means accounts relating to moneys received or held by a land agent for or on behalf of any other person ;

“year” means a period of twelve months ending on the thirty-first day of December, subject however to the provisions of subsection (5) of this section.

(2) (a) A land agent shall—

Duty to keep trust accounts.

(i) keep full and accurate accounts of all money received or held by him on account of any other person and of all payments made by him of that money ;

(ii) before the end of the next business day after the day on which the money is received or paid enter in the accounts particulars of the amount so received or paid and the person from whom it was so received or to whom it was so paid ;

(iii) keep the accounts in such manner that they can be conveniently and properly audited ;

(iv) correctly balance the accounts at the end of each month.

(b) In this subsection, “business day” means a day other than Saturday, Sunday, or a public holiday.

(3) (a) When a land agent receives money for or on behalf of any other person he shall forthwith give to the person paying the money a receipt for it complying with this subsection and specifying briefly the subject matter or purpose in respect of which the money was received, and shall retain legible carbon duplicates of the receipt.

Receipts for money to be given and carbon duplicates kept.

(b) Receipts issued under this subsection shall be taken from bound books containing not less than one hundred receipts and arranged so that a carbon duplicate of each receipt issued shall be retained in the book.

(c) The land agent shall produce the retained duplicates in the appropriate books to the auditor at every audit, and at such other times as the auditor may reasonably require.

(d) The receipts and the duplicates thereof shall be so numbered and or lettered or both that every receipt can be identified and so that the receipt and duplicate have the same number or letter.

(e) This subsection does not apply in the case of a land agent if the auditor for the time being employed by the land agent certifies to the Minister that he is satisfied with the system employed by the land agent and that the receipt books are so kept and entered up as to enable the accounts to be properly and conveniently audited, and the Minister approves of the system employed by the land agent of recording the receipt of moneys.

Duty of
land agent
to have trust
accounts
audited.

(4) (a) Within three months after the end of each year, every person who carries on business as a land agent during the whole or any part of that year—

(i) shall cause his trust accounts for that year, or part of a year, as the case may be, to be audited by an accountant duly qualified and approved under this section ; and

(ii) shall forthwith after the completion of the audit obtain from the auditor a report of the result of the audit verified by the statutory declaration of the auditor in the form prescribed by the regulations ; and

(iii) shall forthwith send or deliver the report, together with the declaration, to the Minister.

(b) The first audit under this section shall be conducted within three months after the thirty-first day of December, one thousand nine hundred and fifty-three, and shall be in respect of the period of six months commencing on the first day of July, one thousand nine hundred and fifty-three, which period of six months is deemed to be a year within the meaning of this section.

(c) Forthwith after completing an audit the auditor shall deliver his report and a signed copy of it to the land agent concerned.

(d) The land agent shall retain the signed copy of the report and produce it on demand pursuant to paragraph (b) of subsection (14) of this section.

(5) (a) Notwithstanding anything in this section, a land agent may apply in writing to the Minister to fix some date other than the thirty-first day of December, as the date up to which his trust accounts are to be audited, and the Minister may, in his discretion, permit the land agent to substitute such other date for the thirty-first day of December. Variation of date of audit.

(b) The Minister may, upon giving not less than one year's notice to the land agent affected, revoke any permission granted under this subsection.

(c) When permission is granted under this subsection the Minister shall fix the period in respect of which the first audit shall be made, and the permission may be given upon such conditions, with respect to the time within which the first or any subsequent audit shall be made or otherwise, as the Minister may think fit.

(d) So long as the permission remains in force, and subject to any conditions which may be imposed, this section shall, in relation to the land agent concerned, be read as if such other date was substituted for the thirty-first day of December.

(e) When any date has been substituted for the thirty-first day of December under this subsection, the date so substituted shall not be further changed except by permission of the Minister granted in accordance with this sub-section.

(6) (a) No accountant shall be qualified to act as an auditor under this section unless he is approved by the Minister— Qualification and approval of auditors.

(b) Any accountant who—

(i) is a member of one or both of the societies or bodies following, that is to say—

The Institute of Chartered Accountants in Australia ;

The Australian Society of Accountants ;
and/or

(ii) is registered under section four hundred and two of the Companies Act, 1943-1953, as qualified to act as an auditor ; and

(iii) is of good character,
shall be approved by the Minister, but the Minister may refuse to approve—

an accountant who has not been continuously engaged, for at least three years, in practice as a public accountant in the State, either as a principal or as an employee in the office of a public accountant, or firm of public accountants; an accountant if it appears to the Minister that he is liable to forfeit, or to be deprived of his membership of any of the societies or bodies aforesaid, or that there is any other sufficient reason for refusing the approval.

(c) When the principal office or place of business of a land agent is situated more than twenty miles from the General Post Office at Perth, the Minister may, if he thinks fit, give his approval to the audit of the accounts of that land agent by any person who is in the opinion of the Minister, competent to make the audit, and so long as that approval remains unrevoked, the person so approved shall be deemed to be an accountant approved by the Minister for the purpose of the audit of that land agent's accounts, but not further or otherwise.

(d) No person shall audit the accounts of a land agent if he is a clerk, servant, or partner of that land agent, or if he is a clerk or servant of any other land agent actually in practice, or if he is himself a land agent carrying on business as such.

Selection of
auditors.

(7) Subject to the provisions of this section the auditor by whom the audit of, and reports on, a land agent's trust accounts are to be made shall be selected and employed for that purpose by that land agent.

Power to give
directions
for audit of
business
carried on at
more than
one place.

(8) In the event of a land agent carrying on business at more than one place the Minister may from time to time give such directions as he thinks fit for separate audits of the trust accounts in respect of the business carried on at each place, or for the acceptance by the auditor of the certificates of some person or persons approved by the Minister with respect to the examination of the trust accounts kept at any branch of the business.

(9) The Minister may, if in his opinion just cause exists for doing so—

Revocation of approvals, directions and authorities.

- (a) revoke any approval granted by him to any person to act as auditor under this section ;
- (b) vary or revoke any other approval, direction, permission, or authority granted or given by him under this section.

(10) (a) In the exercise of the discretions conferred by this section the Minister may inform his mind as thinks fit.

Determinations of Minister to be subject to review by Judge.

(b) A person aggrieved by any decision or determination of the Minister under this section may apply to the Minister in writing to refer that decision or determination to a Judge of the Supreme Court for review.

(c) Upon the application, the Minister shall submit the facts to a Judge for his opinion or direction thereon, and shall abide by the decision of the Judge, which shall be final.

(11) (a) For the purposes of an audit or report under this section every land agent shall, as and when the auditor requires, produce to the auditor his books and all papers, accounts, documents, and securities in his possession, custody or power in any way relating to any moneys received by the land agent for or on behalf of any other person and shall furnish the auditor with all such information and particulars as he reasonably requires.

Duties of land agents with respect to audit.

(b) The auditor may examine such books, papers, accounts, documents, and securities at any time, either during or after, the end of the period in respect of which the audit is made.

(12) Every banker of a land agent shall, on request of any auditor engaged in the audit of that land agent's trust accounts under this section, produce to that auditor all such books, papers, accounts, documents and securities as may be reasonably necessary for the purposes of the audit.

Duty of banker with respect to audit.

(13) Every auditor of a land agent's trust accounts shall include in his report furnished pursuant to subsection (4) of this section a statement as to the following matters—

Contents of auditor's report.

- (a) whether the trust accounts of such land agent have in the opinion of the auditor been kept regularly and properly written up ;
- (b) whether the trust accounts of such land agent have been ready for examination at the periods appointed by the auditor ;
- (c) whether such land agent has complied with the auditor's requirements ;
- (d) whether such land agent's trust accounts are in order or otherwise ;
- (e) any matter or thing in relation to such trust accounts which should in the opinion of the auditor be communicated to the Minister.

Statement
of moneys,
etc., held by
land agent
for or on
behalf of
other
persons.

(14) (a) Every land agent shall prepare and certify under his hand and produce to the auditor who audits his trust accounts a statement setting forth in detail particulars of—

- (i) moneys held, on the last day of the period to which the audit relates, by the land agent for or on behalf of any other person ; and
- (ii) negotiable or bearer securities or deposit receipts in the name of the land agent which represent moneys drawn from the land agent's trust accounts and which are held by the land agent on that day.

(b) The auditor shall examine the statement and endorse on it a certificate as to whether or not it is correct, and deliver it to the land agent.

(c) The statement so delivered shall be retained by the land agent and be produced on demand to the auditor making the next succeeding audit of the land agent's trust accounts together with a signed copy of the report of the last preceding audit of those accounts.

(d) Where a land agent's accounts are being audited for the first time or where for any other reason no statement containing the particulars set out in paragraph (a) of this subsection and relating to the previous period of audit, is available for the purpose of audit, the land agent shall in lieu thereof make out and produce to the auditor before the making of his

report, a statement containing the like particulars as to moneys and negotiable securities held on the first day of the period to which the audit relates.

(e) Every statement made under this subsection shall be verified by the statutory declaration of the land agent, or, in the case of a firm of land agents, by the statutory declaration of one of the partners, or in the case of a company, by the persons holding a land agent's license on behalf of the company pursuant to subsection (3) of section three of this Act.

(15) If an auditor in the course of auditing a land agent's trust accounts discovers that the accounts are not kept in such a manner as to enable them to be properly audited, or discovers any matter which appears to him to involve dishonesty or a breach of the law on the part of the land agent, or discovers loss or deficiency of trust moneys, or failure to pay or account for any such moneys, or to comply with the provisions of this section, he shall fully set out the facts so discovered by him in the report to be delivered to the Minister, and shall furnish signed copies of the report to the land agent concerned.

Auditor's report where land agent has not complied with rules. etc.

(16) (a) Except where this section provides otherwise an auditor shall not divulge to any person, or in any proceeding, any information which he has obtained in the course of conducting any audit under this section.

Non-disclosure by auditors.

(b) An auditor is not guilty of a breach of this subsection by disclosing information—

- (i) by means of, or in a report made pursuant to this section ; or
- (ii) in or for the purpose of any legal proceedings arising out of any such report or instituted in connection with the trust accounts of the land agent to whom the information relates.

(17) (a) On request by any person interested in any moneys or securities held or which ought to be held or which have been received by a land agent, the Minister may disclose to such person or his solicitor, such portion of any report of an auditor, or of any statutory declaration, statement, or other document delivered to the Minister under this section as affects or may affect such person.

Right of persons beneficially interested to obtain information.

(b) A report of an auditor under this section or a statutory declaration, statement or other document delivered to the Minister under this section shall be available in the hands of the Minister for inspection by the auditor appointed to audit the accounts of the same land agent for the next succeeding year.

Breach of
this section.

(18) (a) A person who contravenes or does not observe any requirement of this section commits an offence.

Penalty : Fifty pounds.

(b) If an offence against this section is committed by a company, the company itself and every director, manager, secretary or other officer of the company who commits, authorises or permits the act or omission constituting the offence, commits the offence.

Remunera-
tion of
auditor.

(19) The fees payable by a land agent to an auditor for an audit under this section shall be such as are agreed on between the land agent and the auditor.

Land agents
having no
accounts to
audit.

(20) A land agent who, in the course of his business, has in any year neither received nor held any money for or on behalf of any other person shall be deemed to have complied with this section if within the period of three months after the end of that year he makes a statutory declaration to that effect and delivers the same to the Minister.

Accounts
of firm.

(21) Where trust accounts are kept by a firm of land agents an audit of those accounts under this section and the certificates and report of the auditor thereof operate as regards those trust accounts as an audit certificate and report in relation to each land agent who is a member of such firm.

Apportion-
ment of
rates, taxes,
and out-
goings.
No. 9 of 1922,
s. 15,
amended by
No. 13 of
1952, s. 12.

15. Whenever on the sale or exchange of land or any estate or interest therein, a land agent receives payment of the purchase money on behalf of the vendor, it shall be such agent's duty to the purchaser to ascertain that all rates, taxes, and outgoings then payable, which are by statute a charge on the land, and which, as between the vendor and the purchaser, are payable by the vendor are paid by him, and that all such rates, taxes, and outgoings then accruing are duly apportioned between the vendor and purchaser.

16. (1) The Governor may make regulations for any purpose necessary for giving effect to the provisions of this Act.

Regulations.
No. 9 of 1922,
s. 16,
amended by
No. 13 of
1932, s. 13.
N.Z., 1912,
No. 42, s. 17.

(2) The provisions of the following subsection do not derogate from the generality of the authority conferred by subsection (1) of this section.

(3) The regulations—

- (a) may prescribe forms of applications, objections, notices and other documents for use in pursuance of this Act ;
- (b) may prescribe fees payable in respect of applications for and transfers of licenses and in respect of lodging, issuing and serving documents and processes in pursuance of this Act ;
- (c) may prescribe the persons or classes of persons who may make applications and objections pursuant to this Act and the grounds of the applications and objections and the times within which they may be made ;
- (d) may prescribe the procedure relating to applications and objections seriatim or by reference to the provisions of the Justices Act, 1902*, or any other Act ; and
- (e) may provide for the rectification of defects and extension of time in respect of anything done or required to be done by or in pursuance of this Act.

Land Agents.

Sec. 4 (1).
No. 13 of
1952, s. 14,
amended by
No. 46 of
1953, s. 1 (3).

FIRST SCHEDULE.

Land Agents Act, 1921-1953.

LICENSE IN THE FIRST INSTANCE*
RENEWAL OF A LICENSE*

To the Court of Petty Sessions at.....

I (name in full).....,
of (address).....
occupation....., having attained
the age of twenty-one years, HEREBY APPLY on my behalf (on
behalf.....a firm of which I am
a member)* (on behalf of the Company registered by the name of
.....Limited)* for a license
(renewal of a license)* to carry on the business of a land agent under
the Land Agents Act, 1921-1953. The principal place of business
will be at.....I am
the holder of a current license to carry on such business.*

*(Strike out if not applicable.)

DATED the day of 19 ..

Signature of Applicant.

Appointment of Hearing.

I hereby appoint the.....day of.....
19.....at.....o'clock in the.....noon as the time for
the hearing of the foregoing application at the Court of Petty Sessions
at.....

DATED the day of 19 ..

Clerk of Petty Sessions.

Objection to the granting of the application may be served on the
applicant and the Clerk of Petty Sessions at any time prior to seven
days before the date appointed for the hearing.

Land Agents.

23

SECOND SCHEDULE.

Land Agents Act, 1921-1953.

BOND.

Sec. 4 (3).
No. 40 of
1931, s. 3,
amended by
No. 46 of
1953, ss. 1
(3) and 7.

KNOW all persons by these presents that.....
hereby binds itself (or.....
of.....
and.....of.....
.....hereby bind themselves jointly and
severally) to Her Majesty the Queen for the payment to Her Majesty of
the sum of two thousand pounds.

Sealed with the seal of the said this
day of One thousand nine hundred and

WHEREAS a land agent's license for the year ending the 31st day of
December, one thousand nine hundred and, is about to be
issued to (or to
on behalf of the firm or company registered as
.....) : Now the above written bond or obli-
gation is conditioned to be void in case the said intended licensee shall
duly and punctually carry out all duties and perform all obligations
binding on him as a land agent under the provisions of the Land
Agents Act, 1921-1953, during the currency of the said license, and
during the currency of every license granted to him in renewal of such
license.

Signed, sealed, and delivered }
by the abovenamed }
in the presence of }