

LAND AGENTS.

12^o Geo. V., No. XLIII.

No. 9 of 1922.

(Affected by Act No. 113 of 1965.)

[As amended by Acts:

No. 40 of 1931, assented to 3rd December, 1931;
No. 54 of 1948,¹ assented to 21st January, 1949;
No. 13 of 1952, assented to 7th November, 1952;
No. 46 of 1953,² assented to 29th December, 1953;
No. 29 of 1959, assented to 15th October, 1959;
No. 94 of 1964,³ assented to 14th December, 1964;
No. 86 of 1966, assented to 12th December, 1966;
No. 40 of 1969,⁴ assented to 21st May, 1969;
No. 55 of 1972, assented to 13th October, 1972;

and reprinted pursuant to the Amendments Incorporation Act, 1938.]

AN ACT to provide for the Licensing and Supervision of Land Agents and to make provision for the regulation of Land Salesmen and for incidental and other purposes.

No. 9 of 1922,
amended by
No. 46 of
1953, s. 8;
No. 94 of
1964, s. 3.

[Assented to 31st January, 1922.]

BE it enacted—

1. This Act may be cited as the *Land Agents Act*, 1921–1972.

Short title,
amended by
No. 55 of
1972, s. 1.

¹ Came into operation on 1st January, 1949, vide No. 54 of 1948, s. 6 (1).

² Came into operation on 1st January, 1954, vide No. 46 of 1953, s. 2.

³ Came into operation on 29th January, 1965, G.G. 29/1/65 p. 358.

⁴ Sections 1, 2, 4(a), 4(b), 4(c), 6, 7, and 10 came into operation on 1st July, 1969, see G.G. 27/6/69, p. 1874; the remaining sections came into operation on 1st December, 1969, see G.G. 10/10/69, p. 3023.

Interpreta-
tion. .
Amended by
No. 13 of
1952, s. 2;
No. 46 of
1953, s. 3;
No. 94 of
1964, s. 4;
No. 86 of
1966, s. 2.
No. 40 of
1969, s. 3.
N.Z., 1912,
No. 42 S.2

2. In this Act—

“approved applicant” means an applicant for a license who is approved by the Minister pursuant to subsection (2b) of section four of this Act.

“certificate of registration” means a valid and current certificate of registration issued pursuant to section fifteen B of this Act and includes a renewal thereof.

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

“company” or “registered company” means any body corporate incorporated or registered under the Companies Act, 1961, or any other Act or under any corresponding previous enactment.

“Fidelity Guarantee Fund” or “Fund” means the Land Agents Fidelity Guarantee Fund established under this Act.

“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.

“land salesman” means a person who, for or on behalf of a land agent, whether the land agent is or is not the owner of the land concerned or the estate or interest in land concerned, induces or attempts to induce, or negotiates with a view to inducing, a person to enter into a land transaction, or who holds himself out or represents himself as willing to so induce, or negotiate, and includes—

- (a) a person who is a member of a firm that is a licensee, except the member who is the holder of the license on behalf of that firm; and

- (b) a person who is a director of a company that is a licensee, except a director who is the holder of the license on behalf of that company.

“land transaction” means—

a sale, exchange or other disposal, and a purchase, exchange or other acquisition—

except by auction, of land and estates and interest in land including—

Cf. No. 30
of 1918, s. 4,
“Estate” and
“Land.”

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.

“stealing” has the same meaning as it has in section three hundred and seventy-one of The Criminal Code.

“the Secretary” means the person appointed to the office of Secretary of the Committee, and includes the person for the time being duly acting as Secretary of the Committee.

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.

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

(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.
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;
No. 94 of
1964, s. 5 (a);
No. 113 of
1965, s. 8;
No. 86 of
1966, s. 3;
No. 40 of
1969, s. 4;
No. 55 of
1972, s. 2.
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 or carries on his business 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.

(2b) (a) Where an application for a license, or for the transfer to him of a license is made—

(i) on behalf of a company by a director or an employee thereof, appointed in writing by the company to hold the license on its behalf, and the company is—

(I) authorised by an Act to apply for and obtain probate of the will of a testator; or

(II) a pastoral company in respect of which an exemption granted under section eleven of the Banking Act 1959 of the Parliament of the Commonwealth, or that Act as amended from time to time, is in force; or

(ii) whether on behalf of a company, firm or otherwise, and the Minister has in writing requested a report from the Committee as to the circumstances of the case and the manner in which it might be dealt with,

the Clerk of the Court of Petty Sessions with whom the application is lodged shall cause copies of the application to be delivered to the Minister and to the Committee.

(b) The Minister may, after considering an application received from the Clerk of a Court of Petty Sessions, pursuant to this subsection and any report made thereon to him by the Committee, certify in writing to the Clerk that the applicant is an approved applicant for the purposes of this subsection, or may advise the Clerk that he refuses to so certify in relation to that applicant.

(c) Where an approved applicant is applying on behalf of a company referred to in sub-paragraph (i) of paragraph (a) of subsection (2b) of this section the provisions of subsections (4) and (4a) of this section do not apply in relation to the application and the provisions of subsection (5) of this section do not apply in relation to an application in the first instance for, or to an application for the transfer of, a license.

(d) Where an application has been made by or on behalf of any person, other than a company referred to in sub-paragraph (i) of paragraph (a) of subsection (2b) of this section, and a certificate has been issued pursuant to paragraph (b) of this section, then—

the approval is not effective for any period in excess of three years, and no further certificate may be issued in respect of any other application by or on behalf of that person arising out of the same circumstances which shall have any validity after the expiration of three years from the date of the initial certification.

(3) (a) Subject to subsection (4) of this section, if the Court is satisfied that the applicant—

(i) has passed the prescribed examinations relating to the carrying on and conduct of the business of a land agent and the duties and liabilities of a land agent;

(ii) has within the period of five years immediately preceding his application—

(I) held for a period of at least two years a license, or similar authority under a corresponding enactment of any other State or Territory of the Commonwealth to act as a land agent; and

- (II) has in that other State or Territory for a period of at least two years acted as and carried out the functions of a land agent,

whether on his own behalf or on behalf of a firm or a company, not being a license granted to him as being a person of the kind referred to in sub-paragraphs (v) or (vi) of this paragraph;

- (iii) has during the two years immediately preceding his application, if the application is made at any time before or within a period of two years from and including the date of the coming into operation of the Land Agents Act Amendment Act, 1969, acted as and carried out the functions of a land agent and been a member of a firm that is a licensee or a director of a company that is a licensee;
- (iv) has, where his application is made at any time within one year of the date of the coming into operation of the Land Agents Act Amendment Act, 1964, within the period of four years immediately before that date, been engaged in full time employment as a land salesman for not less than three years or for periods amounting in the aggregate to not less than three years;
- (v) is an executor, administrator or trustee of a deceased licensee and that his application is for the purpose of performing functions, exercising powers or carrying out duties as such; or

- (vi) is an approved applicant,

the Court shall, on payment of a fee of fifteen dollars, or such other amount as may be prescribed, issue to the applicant a license in the form prescribed.

[Paragraphs (b) to (f) inclusive, repealed by No. 40 of 1969, s. 4.]

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

- (4) (a) Before granting an application for a license or transfer thereof, the Court shall require the production of sufficient evidence to satisfy it that the

character, fitness and financial position of the applicant are such that he is, in the opinion of the Court, having regard to the interests of the public, a proper person to carry on business as a land agent.

(b) Where application for a license or transfer thereof is made by a person carrying on or proposing to carry on business as a land agent in partnership with any other person, the Court shall require the production of evidence as to the character, fitness and financial position of each of the partners.

(c) Where application for a license or transfer thereof is made on behalf of a company, the Court shall, unless in the circumstances it otherwise decides, require the production of evidence as to the financial position of the company, and as to the character and fitness of the directors and general manager, and of such other responsible officers of the company, as the Court thinks fit.

(4a) (a) Upon the hearing of an application for a license, the applicant or, where the application is for a license on behalf of a company, a director or the secretary thereof or the officer in actual control of its business of a land agent and any other officer, director or member thereof whom the Court may require to attend personally before the Court shall, if so required to attend, so attend and shall answer such questions with respect to the application as the Court may put or allow to be put to him.

(b) In order to assist the Court in forming the opinion referred to in subsection (4) of this section, the Court may, in respect of an application for a license or a transfer thereof, invite the Committee, if it so desires, to appear on the hearing of the application and to be heard by an officer of the Committee or by its counsel.

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

(6) Where a license is granted at any time after the thirty-first day of March in any year, the Treasurer may remit to the licensee such proportion of the fee for the license as the number of months, that have

elapsed from the last preceding thirty-first day of December to the date of the issue of the license, bears to twelve months.

License.
Amended by
No. 94 of
1964, s. 6.
N.Z., 1912,
No. 42, 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.

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

(3) A register of licenses issued under this Act shall be kept in the office of the Secretary, 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 Secretary, 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.

Renewals
and transfer
of licenses.
Added by
No. 13 of
1952, s. 4.

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

Licensee may
transfer
license.
Amended
by No. 13 of
1952, s. 5;
No. 113 of
1965, s. 8.
N.Z., 1912,
No. 42, s. 6.

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 one dollar 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.

(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 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.

Registered office of the licensee.
Amended by No. 94 of 1964, s. 7.

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

(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 Secretary, and such change shall be entered in the register of licensees.

7A. (1) A license authorises the licensee to carry on only one business of a land agent.

Licensee to conduct one land agents business only.

(2) A licensee may carry on the business of a land agent at more than one place.

Added by No. 40 of 1969, s. 5.

(3) Where a licensee carries on the business of a land agent at two or more places that business shall be carried on at each place under the same name.

(4) Where a licensee carries on his business of a land agent at two or more places his principal place of business shall be deemed to be, for the purposes of this Act, the place of business as provided in subsection (1) of section seven of this Act, and each other place of business of the licensee shall be deemed to be a branch office.

(5) A licensee who—

(a) on the date of the commencement of this section carries on the business of a land agent at any branch office; or

- (b) on or after that date commences to carry on such business at any branch office,

shall within twenty-one days after that date or after he so commences, as the case requires, by notice in writing advise the Committee of the address of the branch office and the name and address of the person who is in control of the business at the branch office.

(6) No person other than a licensee or a person who is the holder of a certificate of registration and who has been registered under this Act as a land salesman for at least two years shall be in control of the business of a land agent at an office or place of business of a land agent.

(7) A licensee who permits any person other than a person specified in subsection (6) of this section to be in control of the licensee's business of land agent at any place at which that business is carried on, is guilty of an offence against this Act.

(8) Nothing in this section—

- (a) prohibits an employee of any company referred to in subsection (2b) of section four of this Act that is a licensee, from being in control of the company's business of a land agent carried on at a branch office of the company; or
- (b) makes it an offence for the company to permit the employee to be so in control.

Application
of trust
moneys.
Amended by
No. 13 of
1952, s. 6;
No. 113 of
1965, s. 8.
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: One hundred dollars.

(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.

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.

Account of moneys received, and their application. Amended by No. 13 of 1952, s. 7; No. 113 of 1965, s. 8. N.Z., 1912, No. 42, s. 9.

(2) For every breach of this section: Penalty: One hundred dollars.

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. Amended by No. 13 of 1952, s. 8; No. 94 of 1964, s. 8; No. 40 of 1969, s. 6. 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.

(2a) Where a court is empowered under this Act, in its discretion, to cancel a license or where the Committee applies to a court pursuant to section fourteen D of this Act, for cancellation of a license, the court may, instead of cancelling the license or imposing any other penalty, impose on the licensee named therein a fine not exceeding five hundred dollars.

(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.

(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 Secretary.

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

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

Civil
remedies
not affected.
Amended by
No. 94 of
1964, s. 9.

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

Disability of
unlicensed
agent.
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.

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—

Charging and paying for keys and for information relating to tenancies prohibited.
Added by No. 46 of 1953, s. 5.
Amended by No. 113 of 1965, s. 8.
Cf. No. 50 of 1947, s. 6.

- (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: One hundred dollars.

Carrying on
business
without a
license.
Amended by
No. 113 of
1965, s. 8.
N.Z., 1912,
No. 42, s. 14.

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.

Penalty: One hundred dollars.

Advertisements by a
licensee or
land
salesman.
Added by
No. 40 of
1969, s. 7.

13A. (1) Every advertisement in writing published, permitted or authorised to be published by a licensee or a person registered under this Act as a land salesman relating to or in connection with his business of a land agent or the business in which he is employed as a land salesman—

- (a) shall in the case of a licensee, contain the name of the licensee, and the address of the principal place where the licensee conducts his business of land agent or the address of the branch office where the licensee's business of land agent to which the advertisement relates or is connected, is carried on, or the name under which he conducts his business of land agent and the address of the principal place thereof or the address of the branch office where the licensee's business of land agent to which the advertisement relates or is connected, is carried on; and
- (b) shall, in the case of a person registered under this Act as a land salesman, contain the name and address of the licensee by whom the land salesman is employed or that name and the address of the branch office where the licensee's business of land agent to which the advertisement relates or is connected, is carried on.

(2) A licensee or person registered under this Act as a land salesman who publishes, permits or authorises the printing or publication of any such advertisement that does not comply with this section, is guilty of an offence.

Penalty: Two hundred dollars.

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.
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.
Added by No. 13 of 1952, s. 11.
Repealed and re-enacted by No. 46 of 1953, s. 6.
Amended by No. 40 of 1969, s. 8.

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.

(1a) The Committee as constituted immediately prior to the date of the coming into operation of the Land Agents Act Amendment Act, 1969, and as constituted at any time thereafter, by force of this subsection—

- (a) is a body corporate with perpetual succession and shall have a common seal;
- (b) is capable in its corporate name, of acquiring, holding and disposing of real and personal property and of suing and being sued;
- (c) is capable of doing and suffering all such other acts and things as bodies corporate may lawfully do and suffer.

(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 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.

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.

Committee has power to inquire. Added by No. 46 of 1953, s. 6. Amended by No. 113 of 1965, s. 8. 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.

(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 a 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: Two hundred dollars.

(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.
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.

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.

Duty of Committee to object to applications and apply for cancellations.
Added by No. 46 of 1953, s. 6.
Cf. S.A. Act, s. 29d.

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.

Appointment of Committee's representative in proceedings.
Added by No. 46 of 1953, s. 6.

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

Presumption of proof of certain matters.
Added by No. 46 of 1953, s. 6.

- (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.
Added by No. 46 of 1953, s. 6.
Amended by No. 113 of 1963, s. 8;
No. 40 of 1969, s. 9.

“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.

Duty to keep
trust-
accounts.

(2) (a) A land agent shall—

- (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.

Receipts for
money to be
given and
carbon
duplicates
kept.

(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.

(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.

(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—

Duty of land agent to have trust accounts audited.

- (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 years' 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 subsection.

Qualification
and approval
of auditors.

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

(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, 1943–1953,¹ as qualified to act as an auditor; and

(iii) is of good character,

¹ See Companies Act, 1961, s. 9.

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.

(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.

Selection of auditors.

(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.

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

Revocation
of approvals,
directions
and
authorities.

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

- (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.

Determina-
tions of
Minister to
be subject
to review by
Judge.

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

(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.

Duties of
land agents
with respect
to audit.

(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.

(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.

Duty of
banker with
respect to
audit.

(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.

(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.

(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—

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

- (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.

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

(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.

Non-
disclosure
by auditors.

(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.

(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.

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

Breach of this section.

Penalty: One hundred dollars.

(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.

(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.

Remuneration of auditor.

(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.

Land agents having no accounts to audit.

(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.

Accounts of firm.

Power of
Committee
to order
audit of
trust
account.

(22) Without prejudice to the operation of the foregoing provisions of this section, where the Committee is of opinion that it is in the public interest to do so, it may, at any time, cause the trust accounts of a licensee to be audited by an auditor nominated in writing by the Committee for that purpose.

Licensee to
produce
books, etc.,
to auditor.

(23) Every licensee shall, at all reasonable times at each place of business at which he carries on business as a land agent, keep open for inspection—

- (a) by the auditor nominated by the Committee;
or
- (b) by any other person authorised in writing in that behalf by that auditor,

all of his trust accounts that relate to the business carried on by him at that place of business and all other books, accounts and records relating to that business that are required by the auditor for the purpose of carrying out an effective audit of the trust accounts of the licensee.

(24) The cost of an audit carried out pursuant to subsection (22) of this section, shall be as agreed by the Committee and paid as the Minister in writing directs, either from the Fidelity Guarantee Fund or by the licensee whose trust accounts have been the subject of the audit.

(25) The provisions of subsection (16) of this section apply to an auditor nominated by the Committee under subsection (22) of this section or any person authorised by him under subsection (23) of this section, with such modifications as circumstances require.

Power of
restraining
dealing with
trust
accounts
or other
accounts.
Added by
No. 29 of
1959, s. 2.

14H. (1) Where the Committee, on an application made by it to a Judge, shows by evidence on affidavit to the satisfaction of the Judge that—

- (a) there are reasonable grounds for believing that there is a deficiency in the trust account of any land agent or licensee; or
- (b) there has been undue or unreasonable refusal, neglect or delay on the part of any land agent or licensee in paying moneys

which are, or may be, or have been payable out of the trust account of the land agent or licensee, or

which were required to be paid into the trust account by the land agent or licensee under the provisions of section eight of this Act,

to a person who is entitled thereto or is authorised to receive the moneys

the Judge may, if he thinks fit, make an order that the manager or other officer for the time being in charge of the bank in which the trust account or any other account in the name of the land agent or licensee is kept, be restrained, until the order is made absolute or discharged, from paying out, transferring or otherwise dealing with any moneys standing to the credit of the trust account or any other account kept at the bank in the name of the land agent or licensee.

(2) An order made under the provisions of this section may contain such terms and conditions as the Judge in the circumstances thinks fit and the order may relate to all or any one or more of the trust or other accounts, as the Judge determines.

(3) The order shall be made in the first instance *ex parte*, without any notice to the land agent or licensee and is an order to show cause only.

(4) Unless the land agent or licensee referred to in the order shows to a Judge within the time specified in the order sufficient cause to the contrary, the order, after proof of service as required by section fourteen I of this Act, shall be made absolute.

(5) In this section and sections fourteen I to fourteen L both inclusive the expression,

(a) "trust account" includes a bank account, whether a general or a separate account, into which account, moneys received or held by a land agent or licensee for or on behalf of any other person are or were required to be paid under section eight of this Act; and

- (b) "land agent" includes a person who has held a license at any time within a period of twelve months prior to the date of the making of the application under subsection (1) of this section.

Service of
orders.
Penalty for
non-
compliance
therewith,
Added by
No. 29 of
1959, s. 2.
Amended by
No. 113 of
1965, s. 8.

14I. (1) The Committee shall, as soon as practicable after any order is made under the provisions of section fourteen H or fourteen L of this Act, serve or cause to be served a copy of the order

- (a) on the manager or other officer for the time being in charge of the office of the bank in which any account referred to in the order is kept; and
- (b) on the land agent or licensee in whose name the account is kept.

(2) The manager or other officer on whom the order is served shall comply with the order.

(3) A person, in addition to any other penalty or liability he may incur in failing to comply with the order, who omits to do that which he is required under the order to do, or does that which he is prohibited under the order from doing, commits an offence against this Act.

Penalty: Four hundred dollars.

(4) This section is sufficient authority and indemnity for complying with an order so made and served.

Power of
land agent
or licensee,
to apply for
discharge or
variation of
order,
Added by
No. 29 of
1959, s. 2.

14J. A land agent or licensee whose account is the subject of an order made under the provisions of section fourteen H or fourteen L of this Act may apply to a Judge to discharge or vary the order and to award such costs upon the application as he thinks fit and the Judge is hereby empowered to discharge or vary the order and to make such further order as he thinks fit.

14K. Where the manager or other officer for the time being in charge of the office of a bank is served with a copy of an order made under the provisions of section fourteen H of this Act, he shall—

Duty of bank manager to disclose existence of banking accounts of land agent or licensee.
Added by No. 29 of 1959, s. 2.

- (a) disclose in writing to the Committee each and every account kept at the bank in the name of the land agent or licensee referred to in the order, including any account which he reasonably suspects is held or kept at the bank for the benefit of the land agent or licensee; and
- (b) permit the Committee or any person authorised in writing by it to inspect and make and take away with him a copy of or an extract from the account or of or from any book, account, document or writing relating to the account.

14L. (1) A Judge may, on the application of the Committee, the Treasurer or the land agent or licensee referred to in an order made under the provisions of section fourteen H or fourteen J of this Act, make further orders—

Power of Judge to make further orders and give directions.
Added by No. 28 of 1959, s. 2.

- (a) discharging or varying any order so made; and
- (b) directing that any moneys in any account affected by an order so made shall be paid to the Treasurer by the bank on such terms and conditions as the Judge thinks fit.

(2) The Treasurer, on receiving moneys paid pursuant to an order made under paragraph (b) of subsection (1) of this section—

- (a) shall cause the moneys to be paid into a separate account to be kept at the Treasury;
- (b) may prepare a scheme for distributing the moneys as compensation to each person who claims compensation at any time within six months after the Treasurer receives the moneys, and proves to the satisfaction of the Treasurer that the person has, in respect of any land transaction, sustained loss through any act or omission of the person who deposited the moneys in the account;

Special account at Treasury.

Power of Treasurer to prepare scheme of distribution.

- (c) may, if the moneys are not sufficient to pay all proved claims, apportion the moneys among claimants in proportion to their proved claims and show in the scheme for distribution how the moneys are so apportioned.

(3) (a) Where the Treasurer prepares a scheme for distribution he shall apply to a Judge for approval of the scheme and for directions in respect thereof.

(b) The Judge may give such directions in respect of the separate account at the Treasury, the moneys therein, the persons to whom and in what amounts the whole or any portion of the moneys standing to the credit of the account shall be paid by the Treasurer, and as to the payment of the balance of the moneys then remaining in the account, if any, as he thinks fit.

Apportionment of rates, taxes, and outgoings. 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.

Land salesmen. Added by No. 94 of 1964, s. 10. Amended by No. 113 of 1965, s. 8. No. 40 of 1969, s. 10.

15A. (1) A person not being a licensee, shall not act as, or carry out any of the functions of, a land salesman, unless he is the holder of a certificate of registration and he so acts, or carries out those functions for and on behalf of a licensee.

Penalty: One hundred dollars.

(2) A person not being a licensee, shall not, unless he is the holder of a certificate of registration, represent, expressly or impliedly, that he is a land salesman, or that, he is in the employment of, or is acting for or on behalf of, a licensee as a land salesman.

Penalty: One hundred dollars.

(3) A land salesman who is the holder of a certificate of registration shall not represent expressly or impliedly, that he is in the employment of, or is acting for and on behalf of, a licensee as a land salesman, unless that licensee is his employer, principal or partner.

Penalty: One hundred dollars.

(3a) Subject to subsections (4) and (5) of this section, a person resident in the State who—

- (a) is a member of a firm that is a licensee, not being a member who is the holder of a license on behalf of that firm; or
- (b) is a director of a company that is a licensee, not being a director who is the holder of the license on behalf of that company,

shall, while he continues to be such a member or such director, be the holder of a certificate of registration, whether or not he acts as or carries out any of the functions of, a land salesman.

(4) This section does not apply to any land salesman who is a director or employee of—

- (a) a pastoral company in respect of which an exemption granted under section eleven of the Banking Act 1959, of the Parliament of the Commonwealth, or that Act as amended from time to time, is in force, if the director or employee is acting for and on behalf of the pastoral company; and
- (b) a company whose business relating to that of a land agent, is in the opinion of the Committee, a minor part of the business generally carried on by the company and is declared by the Committee by notice published in the *Gazette*, to be such a company for the purposes of this section.

(5) A person to whom subsection (3a) of this section applies, is not required to be the holder of a certificate of registration under that subsection until after the expiration of a period of thirty days from—

- (a) the date of the commencement of that subsection; or

(b) the date he becomes such a person,
whichever date is the later.

Registration
of land
salesmen.
Added by
No. 94 of
1964, s. 11.
Amended by
No. 40 of
1969, s. 11.

15B. (1) Application for registration or renewal of registration as a land salesman shall be made to the Committee and shall be made in the form prescribed accompanied by the fee prescribed.

(2) Subject to subsection (3) of this section, the Committee on the receipt of an application for registration or renewal thereof, shall—

- (a) in the case of registration, cause the name of the applicant to be registered by entering his name together with the particulars prescribed in the register kept pursuant to section fifteen F of this Act; and
- (b) in the case of a renewal of registration, cause the registration to be renewed by entering in the register particulars showing that the registration has been renewed,

and issue to the applicant a certificate of registration or renewal thereof in the form prescribed.

(3) [*Repealed by No. 40 of 1969, S. 11.*]

(4) [*Repealed by No. 40 of 1969, S. 11.*]

(5) [*Repealed by No. 40 of 1969, S. 11.*]

Duration of
certificate of
registration
and renewal
thereof.
Added by
No. 94 of
1964, s. 12.

15C. (1) Subject to this Act, a certificate of registration remains in force for a period of twelve months from the date specified therein as the day on which the certificate was issued.

(2) A certificate of registration may be renewed at any time within a period of thirty days before it is due to expire, and on each renewal thereof shall, subject to this Act, be in force for a further period of twelve months.

15D. (1) A certificate of registration may not be granted otherwise than to a single individual.

Certificate of registration personal and not transferable.

(2) A certificate of registration is not transferable.

Added by No. 94 of 1964, s. 13.

15E. The Committee may if it thinks fit, take such steps as it thinks necessary for the purpose of satisfying itself as to the identity of the person making an application under the Act for registration as a land salesman.

Power of Committee to investigate applicant. Added by No. 94 of 1964, s. 14.

15F. (1) The Committee shall cause a register to be kept containing the name and address of each person registered under this Act, as a land salesman and such other particulars as the Committee may direct.

Register of land salesmen. Added by No. 94 of 1964, s. 15. Amended by No. 40 of 1969, s. 12.

(2) The Secretary shall enter in the register the cancellation of each certificate of registration and particulars of all convictions of a salesman registered under this Act, for offences against this Act.

(3) Any member of the public may search the register without fee during the usual office hours of the Secretary.

(4) A person who is registered under this Act as a land salesman shall not at the same time be employed as a land salesman by more than one licensee or act as a land salesman for or on behalf of any person other than the licensee who is his employer, principal or partner.

(5) Where a person who is registered under this Act as a land salesman ceases to be employed as such by a licensee, the licensee shall within fourteen days thereafter notify the Committee in writing of the fact.

15G. (1) A land salesman who is the holder of a certificate of registration may be summoned in writing by the Committee to appear before it to show cause why his certificate of registration should not be cancelled on the ground that—

Power of Committee with respect to cancellation of certificate of registration.

(a) he improperly obtained his certificate of registration;

Added by No. 94 of 1964, s. 16. Amended by No. 113 of 1965, s. 8.

"This Act"
includes
regulations.
See s. 4
No. 30 of
1918.

- (b) he has been convicted of an offence against this Act, or any offence involving dishonesty or fraud, whether the conviction took place before or after the commencement of this section;
- (c) he has been guilty, whether before or after the commencement of this section, of any dishonest or fraudulent conduct;
- (d) he is not a person of good fame and character; or
- (e) he has been guilty of such conduct as a land salesman as renders him not a fit and proper person to be the holder of a certificate of registration.

(2) Where the Committee is satisfied that any of the grounds referred to in subsection (1) of this section is proved the Committee—

- (a) may order that the certificate of registration be delivered to the Secretary and cancelled and that the land salesman be disqualified, either permanently or for such period as the Committee specifies in the order from being registered under this Act as a land salesman; or
- (b) may impose on the land salesman a fine not exceeding twenty dollars.

(3) Sections fourteen B, fourteen C and fourteen E, of this Act with such modifications as circumstances require, apply in relation to any proceedings under this section or section fifteen H of this Act.

(4) Where a fine is imposed pursuant to paragraph (b) of subsection (2) of this section, it may be recovered by the Committee in a court of competent jurisdiction as a debt due to the Crown.

Offence.

(5) A person who fails to deliver up his certificate of registration to the Secretary in accordance with the terms of an order made in that behalf by the Committee, commits an offence against this Act.

15H. (1) Where the Committee makes an order cancelling a certificate of registration, the person to whom the certificate was granted may, within twenty-eight days after the date the order is made, appeal to a Court of Petty Sessions in Perth against the making of the order.

Appeal
against
Cancellation.
Added by
No. 94 of
1964, s. 17.

(2) An appeal under this section shall be in the nature of a rehearing and the Court of Petty Sessions may, on the hearing of the appeal, confirm, vary or cancel the order appealed against or make such order, including an order as to costs, as it thinks fit.

(3) The decision of the Court of Petty Sessions hearing the appeal is final and conclusive.

15I. (1) A person who—

- (a) has had his license cancelled under section ten of this Act;
- (b) has had his certificate of registration cancelled under this Act on two occasions; or
- (c) has been convicted of an offence against this Act on two occasions,

Offence
Added by
No. 94 of
1964, s. 18.
Amended by
No. 113, of
1965, s. 8.

commits an offence against this Act, if without the written permission of the Committee, he becomes or remains a director of any company, that is a licensee, or is the employer, employee or partner of a licensee, as such.

Penalty: One hundred dollars.

(2) For the purposes of this section, a person who is remunerated by a licensee by way of commission or by a share of profits, shall be deemed an employee of the licensee.

15J. In any proceedings for an offence against this Act by a land salesman, a certificate purporting to be signed by the Chairman of the Committee and stating that any person described in the certificate was or was not at the date specified in the certificate, the holder of a certificate of registration, is evidence of the matter stated in the certificate.

Evidentiary
provisions.
Added by
No. 94 of
1964, s. 19.

Penalty for offences generally.
Added by No. 94 of 1964, s. 20.
Amended by No. 113 of 1965, s. 8.

15K. (1) A person who—

- (a) does that which by or under this Act he is forbidden to do;
- (b) does not do that which by or under this Act he is required to do; or
- (c) otherwise contravenes or fails to comply with any provision of this Act,

is guilty of an offence against this Act.

(2) A person who is guilty of an offence against this Act is liable on conviction to a penalty or punishment not exceeding the penalty or punishment expressly provided as the penalty or punishment for the offence, or if a penalty or punishment is not so provided, to a penalty, not exceeding one hundred dollars.

Limitation of time for complaint.
Added by No. 94 of 1964, s. 21.
See Act No. 11 of 1962, s. 51.

15L. Notwithstanding anything in any other Act, the time limited for making complaint of an offence against section eight, nine or fourteen G of this Act, is two years from the time when the matter of the complaint arose, and in respect of any offence against any other section of this Act, is one year from that time.

Land Agents Fidelity Guarantee Fund.
Added by No. 40 of 1969, s. 14.

16. (1) There is hereby established a fund to be called the Land Agents Fidelity Guarantee Fund.

(2) The Fund shall be the property of the Committee and shall be held in trust to be applied for the purposes specified in this Act.

Separate Bank account for the Fund.
Added by No. 40 of 1969, s. 15.

17. All money belonging to the Fidelity Guarantee Fund shall pending the investment or application thereof, be paid into a bank in the State to the credit of an account to be called the Land Agents Fidelity Guarantee Fund Account.

Money payable into the Fund.
Added by No. 40 of 1969, s. 16.

18. The Fund shall consist of—

- (a) all sums paid to or on account of the Fund by land agents and land salesmen by way of contribution or levy, in accordance with this Act;

- (b) the interest from time to time accruing from the investment of the Fund, as provided in this Act;
- (c) all money recovered by or on behalf of the Committee in the exercise of any right of action conferred by this Act;
- (d) any other money that may be lawfully paid into the Fund.

19. There shall from time to time be paid out of the Fund, as required—

- (a) the amount of all claims, including costs, allowed or established against the Fund;
- (b) all legal expenses incurred in defending claims made against the Fund, or otherwise incurred in relation to the Fund;
- (c) all premiums payable in respect of contracts of insurance entered into by the Committee under section thirty-one of this Act;
- (d) the cost of any audit pursuant to subsection (24) of section fourteen G of this Act or section twenty of this Act;
- (e) the expenses involved in the administration of the Fund;
- (f) all expenses incurred by the Committee in or in relation to appearances before courts of petty sessions with respect to applications for licenses or transfers thereof or cancellations of licenses under this Act; and
- (g) any other money payable out of the Fund in accordance with this Act.

Expenditure
from the
Fund.
Added by
No. 40 of
1969, s. 17.

20. The accounts of the Fund shall be audited annually by the Auditor General, and in respect thereof the Auditor General has all the powers conferred on him by the Audit Act, 1904.

Audit.
Added by
No. 40 of
1969, s. 18.

Administra-
tion of
Fund.
Added by
No. 40 of
1969, s. 19.

21. The Fund shall be administered by the Committee.

Contribu-
tions to
Fund.
Added by
No. 40 of
1969, s. 20.

22. (1) Except as provided in section twenty-three of this Act—

- (a) each land agent, on making application in any year for a license or renewal thereof, shall, in addition to all other fees payable in respect thereof, pay to the Committee a sum of twenty dollars;
- (b) each land salesman, on making application for a certificate of registration or a renewal thereof, shall in addition to all other fees payable in respect thereof, pay to the Committee a sum of eleven dollars,

and no such license or renewal thereof or no such certificate of registration or renewal thereof shall be issued until the appropriate payment has been made to the Committee.

(2) Where a person to whom—

- (a) paragraph (a) of subsection (1) of this section applies has paid to the Committee pursuant to that paragraph, a sum of sixty dollars; or
- (b) paragraph (b) of subsection (1) of this section applies has paid to the Committee pursuant to that paragraph a sum of thirty-three dollars,

and no claim has been made, or no claim that has been made has been sustained against the Fund in respect of such person, such person shall, after paying the sum of sixty dollars or thirty-three dollars, as the case may be, pay annually a contribution of four dollars or two dollars respectively, at the time provided in subsection (1) of this section.

(3) The amounts paid to the Committee under this section shall forthwith be paid by the Committee into the Fund.

23. No land agent or land salesman who has contributed to the Fund a sum of sixty dollars or thirty-three dollars respectively, is liable to pay any contribution under subsection (2) of section twenty-two of this Act, at any time while the amount of the Fund, including any investments thereof, and after deducting the amount of all unpaid claims and other liabilities outstanding against the Fund, exceeds one hundred and fifty thousand dollars.

Accumulated Fund not to exceed \$150,000. Added by No. 40 of 1969, s. 21.

24. (1) If at any time the Fund is in the opinion of the Committee not sufficient to satisfy the liabilities of the Committee in relation thereto, the Committee may by resolution, impose on each licensee and each holder of a certificate of registration for payment into the Fund, a levy of such amount as it thinks fit not exceeding the relevant amount specified in subsection (2) of this section.

Levies. Added by No. 40 of 1969, s. 22.

(2) The amount of the levy shall not exceed—

- (a) in the case of a licensee, the sum of ten dollars in any one year;
- (b) in the case of a holder of a certificate of registration, the sum of five dollars in any one year.

(3) The amount of the levy shall become payable on a date and in a manner to be fixed by the Committee, and notice thereof shall be sent by the Committee to each licensee and each holder of a certificate of registration.

(4) A person who fails to comply with any notice sent to him under subsection (3) of this section is guilty of an offence against this Act.

25. Any money in the Fund that is not immediately required for the purposes thereof may be invested in any manner in which trustees are for the time being authorised to invest trust funds.

Investment of Fund. Added by No. 40 of 1969, s. 23.

Application
of Fund.
Added by
No. 40 of
1969, s. 24.

26. (1) Subject to this Act, the Fund shall be held and applied for the purpose of reimbursing persons who may suffer pecuniary loss by reason of any stealing by a licensee or by a partner of a licensee or a servant or agent of a licensee, or where the licensee is a company, by a director or officer or servant or agent of the company, of any money or other property capable of being stolen, entrusted to the licensee, or to the servant, agent, director or officer of the licensee, in the course of the licensee's business of a land agent.

(2) A person shall not have a claim against the Fund in respect of any stealing committed before the date of the coming into operation of the Land Agents Act Amendment Act, 1969, and in respect of any stealing committed after that date, a person shall not have a claim against the Fund, unless notice of the claim is given in writing to the Committee within one year after the claimant has become aware of the stealing.

Claims
against
Fund.
Added by
No. 40 of
1969, s. 23.

27. (1) The Committee may receive and settle any claim against the Fund at any time after the stealing in respect of which the claim arose, has occurred but no person is entitled, without the leave of the Committee, to commence any action in relation to the Fund, unless the Committee has disallowed his claim and unless and until the claimant has exhausted all relevant rights of action and other legal remedies available against the defaulting land agent or any other person in respect of the loss suffered by the claimant.

(2) A person is not entitled to recover from the Fund an amount greater than the balance of the loss suffered by him after deducting from the total amount of his loss, the amount or value of all money or other benefits received or receivable by him from any source other than the Fund in reduction of his loss, including any benefits received by reason of services rendered or payments made by the defaulting land agent.

(3) Any amount shall not be paid or be payable out of the Fund as interest on the amount of any judgment obtained or of any claim admitted against the Fund.

(4) A right of action does not lie in relation to the Fund in respect of any loss suffered by any person by reason of any stealing by a land agent at any time after the claimant has received a notice in writing from the Committee warning him against the employment or continued employment of that land agent.

(5) A right of action does not lie in relation to the Fund in respect of any loss suffered by the spouse of a land agent by reason of any stealing by that land agent, or in respect of any loss suffered by any land agent by reason of any stealing by any partner of that land agent, or by reason of any stealing by a servant of the land agent or a servant of any firm of land agents in which the land agent is a partner or, where the land agent is a company by a director, an officer or a servant of the company.

(6) An action for damages does not lie against the Committee or any member or the Secretary thereof for any notice given in good faith and without malice for the purpose of subsection (4) of this section.

28. In any action brought against the Committee in relation to the Fund, all defences that would have been available to the defaulting land agent are available to the Committee.

Defences to claims against Fund.
Added by No. 40 of 1969, s. 26.

29. On payment out of the Fund of any money in settlement in whole or in part of any claims under this Act, the Committee shall be subrogated, to the extent of that payment, to all rights and remedies of the claimant against the land agent in relation to whom the claim arose or in the event of the death or insolvency or other disability of the land agent, against his personal representatives or other persons having authority to administer his estate, and to all other rights and remedies of the claimant in respect of the stealing to which the claim relates.

Subrogation of rights.
Added by No. 40 of 1969, s. 27.

Insufficiency
in Fund.
Added by
No. 40 of
1969, s. 28.

30. (1) The Fund is the only property of the Committee available for the satisfaction of any judgment obtained against the Committee in relation to the Fund, or for the payment of any claim allowed by the Committee; but if at any time the Fund is not sufficient to provide for the satisfaction of all such judgments and claims they shall, to the extent to which they are not so satisfied, be charged against the future accumulations of the Fund.

(2) The Committee may determine the order in which the judgments and claims charged against the Fund as provided in subsection (1) of this section shall be satisfied, and may, if the amount accumulated is not sufficient to wholly satisfy all those judgments and claims, satisfy any of those judgments or claims in whole or in part.

(3) Without limiting the discretion of the Committee, the Committee shall in applying the Fund towards the settlement of any of the judgments and claims referred to in subsection (2) of this section, have regard to the following rules—

- (a) it shall take into consideration the relative degrees of hardship suffered or likely to be suffered by the several claimants in the event of their claims against the Fund not being satisfied in whole or in part;
- (b) claims for amounts not exceeding one thousand dollars shall, except in special circumstances, be satisfied in full before claims for amounts exceeding one thousand dollars are satisfied to a greater extent than one thousand dollars;
- (c) where all other considerations are equal, claimants shall have priority as between themselves, according to the dates of the judgments or the dates when the claims were admitted by the Committee, as the case may be.

Power of
Committee
to enter into
contracts of
insurance.
Added by
No. 40 of
1969, s. 29.

31. (1) Notwithstanding anything to the contrary in this Act, the Committee may enter into any contract of insurance with any person carrying on fidelity

insurance business in the State, by which the Committee will be indemnified to the extent and in the manner provided by the contract against liability to pay claims under this Act.

(2) Any such contract may be entered into in relation to licensees generally or the holders of certificates of registration generally or in relation to any licensee or holder of a certificate of registration named therein.

(3) An action does not lie against the Committee, or against any member or the Secretary thereof for injury alleged to have been suffered by any land agent by reason of the publication in accordance with fact of a statement that a contract of insurance entered into under this section does or does not apply to that land agent.

32. A claimant against the Fund has no right of action against any person with whom a contract of insurance is made under section thirty-one of this Act, in respect of that contract, and has no right to claim any money paid by the insurer in accordance with any such contract; but all such money shall be paid into the Fund and shall be applied in or towards the settlement of relevant claims.

Application of insurance money. Added by No. 40 of 1969, s. 30.

33. (1) The Committee may cause to be published a notice in a newspaper circulating in the district in which the defaulting land agent is or was carrying on business as a land agent, and the notice shall fix a date not being earlier than three months after the publication of the notice, within which claims shall be made.

Advertisement relating to defaulting land agent and claims. Added by No. 40 of 1969, s. 31.

(2) Any claim not made in writing to the Committee on or before the date so fixed is barred unless the Committee otherwise determines.

(3) After the date so fixed the Committee is at liberty to distribute in accordance with this Act, the sum from time to time available to be applied in reimbursement under section twenty-seven of this Act, having regard only to judgments and claims allowed against the Fund.

(4) An action for damages does not lie against the Committee or any member or the Secretary thereof or the owner, employee of the owner or publisher of any newspaper for any notice published in good faith and without malice for the purposes of this section.

Power of
Committee
to demand
securities,
etc.
Added by
No. 40 of
1969, s. 32.

34. The Committee may at any time and from time to time require production and delivery to it of securities and documents necessary to support any claim made, or available for that purpose, or for the purpose of exercising its rights against any defaulting land agent and may on default of delivery of those securities or documents reject the claim.

Regulations.
Formerly
s. 16.
Amended by
No. 13 of
1952, s. 13;
No. 94 of
1964, s. 22;
No. 113 of
1965, s. 8.
Amended
and
renumbered
by No. 40 of
1969, s. 13.
N.Z., 1912,
No. 42, s. 17.

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

(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;

- „(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;
- (ea) may prescribe forms of notices to be given to the Committee in relation to claims against the Fidelity Guarantee Fund and the manner of making claims against the Fund and the manner of verifying any claim including a condition that the claim be verified by statutory declaration;
- (eb) may prescribe generally for such other matters as may be considered necessary for the purpose of protecting the Fidelity Guarantee Fund or of giving full effect to the intent of the provisions of this Act relating to the Fund; and
- (f) may prescribe penalties not exceeding one hundred dollars for any breach of the regulations.

FIRST SCHEDULE.

Land Agents Act, 1921-1972

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

APPLICATION 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

Land Agents.

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, 1921-1972. 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.

SECOND SCHEDULE.

[Repealed by No. 40 of 1969, s. 33.]