



ANNO PRIMO

# GEORGII V REGIS.

A.D. 1910.

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## No. 1006.

An Act relating to Secret Commissions and Rebates.

[Assented to, November 23rd, 1910.]

**B**E it Enacted by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. This Act may be cited as "The Secret Commissions Act, 1910," and shall come into operation on a day to be fixed by Proclamation.

Short title and commencement.

2. In the construction of this Act the following provisions shall apply, unless inconsistent with the context or other provisions of this Act:—

Interpretation.

Tas. Act 21, 1906, s. 20.

Vict. Act 1974, 1905, s. 18, adapted.

"Agent" includes any corporation or other person acting or having been acting or desirous or intending to act for or on behalf of any corporation or other person, whether in the capacity of agent, attorney, partner, co-owner, clerk, servant, employé, banker, broker, auctioneer, architect, clerk of works, engineer, barrister, solicitor, proctor, surveyor, buyer, salesman, foreman, trustee (as hereinafter defined), liquidator, receiver, director, or manager, or in any of such capacities, or as any other officer or as a member of any committee or governing body of any corporation, club, partnership, or association, or in any other capacity, either alone or jointly with any other person, and whether in his own name or in the name of his principal, or otherwise; and a person serving under the Crown is an agent within the meaning of this Act:

"Contract" includes contract of sale or of employment and any other contract whatever: "Full

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“ Full knowledge ” means knowledge of all material facts and circumstances :

“ Principal ” includes a corporation, club, partnership, firm, or other person or persons for or on behalf of whom the agent acts, has acted, or is desirous or intending to act :

“ Trustee ” includes trustee, executor, administrator, liquidator, trustee in insolvency or bankruptcy or under any composition or scheme of arrangement with creditors or any assignment for the benefit of creditors, receiver, director, guardian, committee or guardian of any lunatic or person of unsound mind or of his estate, and person entitled to obtain probate of the will or letters of administration to the estate of a deceased person :

“ Valuable consideration ” includes any—

Money, loan, office, place, employment ;

Agreement to give employment, benefit, or advantage whatsoever ;

Commission or rebate, deduction or percentage, bonus or discount ;

Forbearance to demand any money or money's worth or valuable thing or to exercise any right or enforce any claim ;

Property right or claim of money's value ;

Subject matter of any such property right or claim ;

and the acceptance of any of the said matters or things shall be deemed the receipt of a valuable consideration :

The words “ valuable consideration,” when used in connection with the offer thereof, include any offer of any agreement or promise to give, and every holding out of any expectation of, valuable consideration :

The words “ valuable consideration,” when used in connection with the receipt thereof, include any acceptance of any agreement, promise, or offer to give, and of any holding out of any expectation of, valuable consideration :

The words “ solicit any valuable consideration,” and “ valuable consideration solicited,” and words to the like extent shall be construed with the following direction, namely:—That every agent who diverts, obstructs, or interferes with the proper course of business or manufacture, or impedes or obstructs or fails to use due diligence in the prosecution of any negotiation or business, with the intent to obtain the gift of any valuable consideration from any person interested in the said negotiation or business, or with intent to obtain or retain for his own use any moneys or property for which  
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in the ordinary course of his duty he ought to account to any such person, shall be deemed to have solicited a valuable consideration from a person having business relations with the principal of such agent:

The words "person having business relations with the principal" include every corporation, club, partnership, firm, or other person or persons, whether as principal or agent, carrying on or having carried on or desirous or intending to carry on any negotiation or business with, or engaged or having been engaged or desirous or intending to be engaged in the performance of any contract with, or in the execution of any work or business for, or in the supply of any goods or chattels to, any principal, and also include any agent of such corporation or other person:

The words "in relation to his principal's affairs or business" imply the additional words "whether within the scope of his authority or course of his employment as agent or not"; and

The words "advice given" and words to the like effect include every report, certificate, statement, and suggestion, whether written or not, intended to influence the person to whom the same is made or given, and every influence exercised by one person over another.

Provided that when in this section it is stated that any word or expression includes as in this section stated, such statement is not to be taken to curtail the meaning of such word or expression.

Any act or thing prohibited by this Act is prohibited whether done directly or indirectly by the person mentioned or by or through any other person.

**3.** (1) Any valuable consideration given or offered to any parent, husband, wife, or child of any agent, or to his partner, clerk, or employé, or at the agent's request to any person, by any person having business relations with the principal of such agent, shall be deemed to have been given or offered to the agent.

Secret gifts to parent, wife, child, partner, etc., of agent deemed gifts to agent.

Tas. Act, s. 4. (1)  
Vict. Act s. 3 (1)

(2) Any valuable consideration received or solicited by any parent, husband, wife, or child of any agent, or by his partner, clerk, or employé, from any person having business relations with the principal of such agent shall be deemed to have been received or solicited by the agent, unless it is proved that the valuable consideration was so received or solicited without the consent, knowledge, or privity of the agent.

Secret gifts received by parent, wife, child, partner, &c., of agent deemed received by agent.

Tas. Act, s. 4 (2)  
Vict. Act, s. 3 (2)

**4.** If any agent corruptly receives or solicits from any person, for himself or for any other person, any valuable consideration—

Receipt or solicitation of secret commission by an agent a misdemeanor.

(a) As an inducement or reward for, or otherwise on account of, doing or forbearing to do or having done or forbore to do any act in relation to his principal's affairs or business which he ought in the ordinary course of his duty to do or have done or forbear or have foreborne from doing; or

Tas. Act, s. 2.  
Vict. Act, s. 2.

(b) The

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- (b) The receipt or any expectation of which would in any way tend to influence him to show or to forbear to show favor or disfavor to any person in relation to his principal's affairs or business :

he shall be guilty of a misdemeanor.

Gift or offer of secret commission to an agent a misdemeanor.

Tas. Act, s. 3.  
Vict. Act, s. 2.

**5.** If any person corruptly gives or offers to any agent any valuable consideration—

- (a) As an inducement or reward for, or otherwise on account of, doing or forbearing to do or having done or forborne to do any act in relation to his principal's affairs or business ; or
- (b) The receipt or any expectation of which would in any way tend to influence him to show or to forbear to show favor or disfavor to any person in relation to his principal's affairs or business :

he shall be guilty of a misdemeanor.

Giving to agent false or misleading receipt or account a misdemeanor.

Tas. Act, s. 5.  
Vict. Act, s. 4.

**6.** If, with intent to deceive or defraud the principal, any person gives to any agent, or any agent receives or uses or gives to the principal, any receipt, invoice, account, or document in respect of which, or in relation to a dealing transaction or matter in which, the principal is interested, and which—

- (a) Contains any statement which is false or erroneous or defective in any important particular, or is in any way likely to mislead the principal ; or
- (b) Omits to state explicitly and fully the fact of any commission, percentage, bonus, discount, rebate, repayment, gratuity, or deduction having been made, given, or allowed or agreed to be made, given, or allowed :

such person or agent shall be guilty of a misdemeanor.

Gift or receipt of secret commission in return for advice given.

Tas. Act, s. 6.  
Vict. Act, s. 5 (1)

**7.** Whenever any advice is given by one person to another, and such advice is in any way likely or intended to induce or influence the person advised—

- (a) To enter into a contract with any third person ; or
- (b) To appoint or join with another in appointing, or to vote for or to aid in obtaining the election or appointment, or to authorise or join with another in authorising the appointment, of any third person as trustee :

and any valuable consideration is given by such third person to the person giving the advice without the assent of the person advised, the gift or receipt of the valuable consideration shall be a misdemeanor, but this section shall not apply when the person giving the advice was, to the knowledge of the person advised, the agent of such third person, or when the valuable consideration was not given in respect of such advice.

**8.** Whenever

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**8.** Whenever any person offers to another person any valuable consideration in respect of any advice given or to be given by such other person to a third person, or whenever any person solicits from another person any valuable consideration in respect of any advice given or to be given by the person soliciting to a third person, such advice, in either case, being with a view to induce or influence the person advised or to be advised—

Offer or solicitation of secret commission in return for advice given.

Tas. Act, s. 7  
Vic. Act, s. 5 (2)

- (a) To enter into a contract with the person offering or solicited, as the case may be; or
- (b) To appoint or join with another in appointing, or to vote for or to aid in obtaining the election or appointment, or to authorise or join with another in authorising the appointment, of the person offering or solicited, as the case may be, as trustee:

and such offer or solicitation is made with the intent that the gift or receipt of such valuable consideration is not to be made known to the person advised or to be advised, then in every such case the offer or solicitation shall be a misdemeanor: Provided that this section shall not apply when the person who gave or is to give the advice is the agent of the person offering or solicited, and is not the agent of the person advised or to be advised.

**9.** If any person offers or gives any valuable consideration to a trustee, or if any trustee receives or solicits any valuable consideration for himself or for any other person, without the assent of the persons beneficially entitled to the estate or of a Judge of the Supreme Court, as an inducement or reward for appointing or having appointed or for joining or having joined with another in appointing, or for authorising or having authorised or for joining or having joined with another in authorising the appointment of, any person as trustee in his stead or in the stead of him and any other person, he shall be guilty of a misdemeanor.

Secret commission to trustee in return for substituted appointment.

Tas. Act, s. 8.  
Vic. Act, s. 6.

**10.** Any person who, being within South Australia, aids, abets, counsels, procures, or attempts or takes part in or is in any way directly or indirectly knowingly concerned in or privy to the—

Aiding and abetting offences within or outside South Australia.

Tas. Act, s. 9.  
Vic. Act, s. 7.

- (a) Doing of any act or thing in contravention of this Act:
- (b) Doing of any act or thing outside South Australia, or partly within and partly outside South Australia, which if done within South Australia would be in contravention of this Act:

shall be guilty of a misdemeanor.

**11.** Any director, manager, or officer of a company, or any person acting for another, who knowingly takes part in or is in any way directly or indirectly concerned in or privy to doing, or who attempts to do, any act or thing without authority which, if authorised, would be in contravention of any of the provisions of this Act, shall be guilty of a misdemeanor.

Liability of directors, &c., acting without authority.

Tas. Act, s. 10.  
Vic. Act, s. 8.

**12.** Any

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Penalty on conviction.

Tas. Act, s. 11.  
Vict. Act, s. 9.

**12.** Any person, on conviction of a misdemeanor under any of the provisions of this Act, shall—

- (a) Be liable, if a corporation, to a penalty not exceeding Two Hundred and Fifty Pounds, and, if any other person, to a penalty not exceeding One Hundred Pounds; and
- (b) In addition, be liable to be ordered to pay to such person, and in such manner as the Court directs, the amount or value, according to the estimation of the Court, of any valuable consideration received or given by him or any part thereof; and such order shall be enforceable in the same manner as a judgment of the Court.

Court may order withdrawal of trifling or technical cases.

Tas. Act, s. 12.  
Vic. Act, s. 10.

**13.** Upon the trial of a person for any offence under this Act, if it appears to the Court that the offence charged is in the particular case of a trifling or merely technical nature, or that in the particular circumstances it is inexpedient to proceed to a conviction, the Court may in its discretion, and for reasons stated on the application of the accused, withdraw the case from the jury, and this shall have the same force and effect as if the jury had returned a verdict of not guilty, except that the Court may, if it thinks fit, make the order mentioned in the next preceding section.

Protection of witness giving answers crinating himself.

Tas. Act, s. 13.  
Vict. Act, s. 11.

**14.** A person who is called as a witness in any proceedings shall not be excused from answering any question relating to any offence under this Act in respect of the particular charge on which he is being examined on the ground that the answer thereto may criminate or tend to criminate him—

Provided that—

- (a) A witness who, in the judgment of the Court, answers truly all questions which he is required by the Court to answer, shall be entitled to receive a certificate from the Court stating that such witness has so answered; and
- (b) An answer by a person to a question put by or before the Court in any proceedings under this Act shall not, except in the case of any criminal proceedings for perjury in respect of such evidence, be in any proceeding, civil or criminal, admissible in evidence against him.

Stay of proceedings against such witness.

Tas. Act, s. 14.  
Vict. Act, s. 12.

**15.** When a person has received a certificate as aforesaid, and any criminal proceeding is at any time instituted against him in respect of the offence which was in question in the proceedings in which the said person was called as a witness, the Court or Justices having cognizance of the case shall, on proof of the certificate and of the identity of the offence in question in the two cases, stay the proceeding.

Custom of itself no defence.

Tas. Act, s. 15.  
Vict. Act, s. 13.

**16.** In any prosecution under this Act it shall not amount to a defence to show that any such valuable consideration as is mentioned in this Act is customary in any trade or calling.

**17.** For

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**17.** For the purposes of this Act, where it is proved that any valuable consideration has been received or solicited by an agent from or given or offered to an agent by any person having business relations with the principal, without the assent of the principal, the burden of proving that such valuable consideration was not received, solicited, given, or offered in contravention of any of the provisions of this Act shall be on the accused.

Burden of proof to be on accused that gift not secret commission.

Tas. Act, s. 16.  
Vict. Act, s. 14.

**18.** No prosecution for an offence under this Act shall be commenced after the expiration of two years next after the commission of the offence, or of six months next after the first discovery thereof by the principal or the person advised, as the case may be, whichever expiration first happens.

Limit of time of prosecution.

Tas. Act, s. 17.  
Vict. Act, s. 15.

**19.** No prosecution for an offence under this Act shall be commenced without the consent of the Attorney-General.

Consent of Attorney-General to prosecution.

Tas. Act, s. 18.  
Vict. Act, s. 16.

**20.** Every information for an offence under this Act shall be upon oath or affirmation.

Prosecution for offences.

Tas. Act, s. 19.  
Vict. Act, s. 17.

In the name and on behalf of His Majesty, I hereby assent to this Bill.

DAY H. BOSANQUET, Governor.