

SECRET COMMISSIONS.

No. 10 of 1905.

[An Act relating to Secret Commissions, Rebates, and Profits.

[Assented to 16th November, 1905.]

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia as follows :—

Short title.

1. This Act may be cited as the *Secret Commissions Act* 1905.

Application.

A 2. This Act applies to trade and commerce with other countries and among the States, and to agencies of and contracts with the Commonwealth or any Department or officer thereof.

Definitions.

3. In this Act—

“Agent” includes any corporation, firm, or person employed by or acting or having been acting or desiring or intending to act for or on behalf of any other corporation, firm, or person, whether as agent, partner, factor, broker, servant, trustee, director, or in any other capacity, and whether he acts in the name of the principal or in any other name, and in the case of a firm includes a member of the firm. It also includes a person serving under the Crown.

“Agency” has a meaning corresponding with that of “agent.”

“Consideration” means valuable consideration of any kind, and particularly includes discounts, commission and rebates, bonuses, deductions and percentages, and also employment or an agreement to give employment in any capacity.

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

“Principal” includes a corporation, firm, or person who employs the agent or for or on behalf of whom the agent acts or has been acting or desires or intends to act.

B
Secret gifts accepted by or offered to agent as inducement or reward.

4.—(1.) Any person who, without the full knowledge and consent of the principal, directly or indirectly—

(a) being an agent of the principal accepts or obtains or agrees or offers to accept or obtain from any person for himself or for any person other than the principal; or

(b) gives or agrees to give or offers to an agent of the principal or to any person at the request of an agent of the principal any gift or consideration as an inducement or reward—

- (I.) for any act done or to be done, or any forbearance observed or to be observed, or any favour or disfavour shown or to be shown, in relation to the principal's affairs or business, or on the principal's behalf; or
- (II.) for obtaining or having obtained or aiding or having aided to obtain for any person an agency or contract for or with the principal

shall be guilty of an indictable offence.

Penalty: In the case of a corporation, One thousand pounds; in the case of any other person, two years' imprisonment or Five hundred pounds, or both.

(2.) A gift or consideration shall be deemed to be given as an inducement or reward if the receipt or any expectation thereof would be in any way likely to influence the agent to do or to leave undone something contrary to his duty.

5. Any person who—

- (a) gives to an agent; or
- (b) being an agent receives or uses,

with intent to deceive the principal, any receipt, account, or document in respect of which the principal is interested, or in relation to a dealing, transaction, or matter in which the principal is interested, the receipt, account, or document being false, erroneous, or defective in any material particular, or likely in any way to mislead the principal, shall be guilty of an indictable offence.

Penalty: In the case of a corporation, One thousand pounds; in the case of any other person, two years' imprisonment or Five hundred pounds, or both.

6. Any agent who, without the full knowledge and consent of the principal, buys from or sells to himself, or any firm of which he is a partner, or any company of which he is a director, manager, officer, or employee, or in which he or any person for him or on his behalf is a shareholder, any goods for or on behalf of his principal, shall be guilty of an indictable offence.

Penalty: In the case of a corporation, One thousand pounds; in the case of any other person, two years' imprisonment or Five hundred pounds, or both.

7.—(1.) Where any gift or consideration has in contravention of this Act been given by any person to an agent, the principal may, in any court of competent federal jurisdiction, recover the amount or the money value thereof either from the agent or from the person who gave the gift or consideration to the agent.

(2.) No conviction or acquittal of the defendant in respect of an offence under this Act shall operate as a bar to proceedings under this section.

False account given to or received or used by agent.

Agent secretly buying from or selling to himself.

Principal may recover amount of secret gift.

Incriminating
answers and
discovery.

8. No person shall in any civil or criminal proceeding be excused from answering any question, put either *vivâ voce* or by interrogatory, or from making any discovery of documents, on the ground that the answer or discovery may criminate or tend to criminate him in respect of an offence against this Act; but his answer shall not be admissible in evidence against him in any criminal proceeding, other than a prosecution for perjury.

Evidence.

9. In any civil or criminal proceeding under this Act evidence shall not be admissible to show that any such gift or consideration as is mentioned in this Act is customary in any trade or calling.

Aiding and
abetting
offences.

10. Whoever aids abets counsels or procures or is in any way directly or indirectly knowingly concerned in or privy to—

- (a) the commission of any offence against this Act; or
- (b) the commission outside Australia of any act, in relation to the affairs or business or on behalf of a principal residing in Australia, which if committed in Australia would be an offence against this Act,

Cf. 50 & 51 Vict.
c. 28 s. 11.

shall be deemed to have committed the offence and be punishable accordingly.

Information
upon oath.

11. Every information (other than an indictment) for any offence under this Act shall be upon oath.
