

**Reprint  
as at 7 November 2015**

## **Secret Commissions Act 1910**

Public Act    1910 No 40  
Date of assent    3 December 1910

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**Note**

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this eprint. See the notes at the end of this eprint for further details.

**This Act is administered by the Ministry of Justice.**

## An Act for the prohibition of secret commissions

### 1 Short Title and commencement

This Act may be cited as the Secret Commissions Act 1910, and shall come into operation on 1 January 1911.

### 2 Interpretation

In this Act, unless a contrary intention appears,—

**agent** includes any person who is or has been, or desires or intends to be, employed by or acting for any other person, whether as agent, servant, broker, auctioneer, architect, solicitor, director, or in any other capacity whatever, either alone or jointly with any other person

**child of any agent** includes a child of a spouse or a civil union partner or a de facto partner of an agent and in section 5(2) **child** has a corresponding meaning

**principal** includes any person by whom an agent is or has been, or intends or desires to be, employed, or for whom an agent acts or has acted, or intends or desires to act

**consideration** means valuable consideration of any kind; and particularly includes discounts, commissions, rebates, bonuses, deductions, percentages, employment, payment of money (whether by way of loan, gift, or otherwise howsoever), and forbearance to demand any money or valuable thing.

Section 2 **child of any agent**: inserted, on 7 November 2015, by section 4 of the Secret Commissions Amendment Act 2015 (2015 No 109).

### 3 Gifts to agent without consent of principal an offence

(1) Every person is guilty of an offence who corruptly gives, or agrees or offers to give, to any agent any gift or other consideration as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any act in relation to the principal's affairs or business (whether such act is within the scope of the agent's authority or the course of his employment as agent or not), or for showing or having shown favour or disfavour to any person in relation to the principal's affairs or business.

(2) Any gift or other consideration given or offered or agreed to be given to any parent, husband, wife, civil union partner, de facto partner, or child of any agent, or to his partner, clerk, or servant, or (at the agent's request or suggestion) to any other person, shall be deemed for the purposes of this section to have been given or offered or agreed to be given to the agent.

Section 3(2): amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

#### **4 Acceptance of such gifts by agent an offence**

- (1) Every agent is guilty of an offence who corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, or solicits from any person, for himself or for any other person, any gift or other consideration as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any act in relation to the principal's affairs or business (whether such act is within the scope of the agent's authority or the course of his employment as agent or not), or for showing or having shown favour or disfavour to any person in relation to the principal's affairs or business.
- (2) Every agent who diverts, obstructs, or interferes with the proper course of the affairs or business of his principal, or fails to use due diligence in the prosecution of such affairs or business, with intent to obtain for himself or for any other person any gift or other consideration from any person interested in such affairs or business, shall be deemed to have corruptly solicited a consideration within the meaning of this section.

#### **5 Duty of agent to disclose pecuniary interest in contract**

- (1) Every agent is guilty of an offence who makes a contract on behalf of his principal and fails to disclose to his principal, at the time of making the contract or as soon as possible thereafter, the existence of any pecuniary interest which the agent has in the making of the contract, unless to the knowledge of the agent the existence of such pecuniary interest is already known to his principal.
- (2) For the purposes of this section any pecuniary interest which a parent, husband, wife, civil union partner, de facto partner, child, or partner of the agent has in the making of the contract shall be deemed to be the pecuniary interest of the agent, unless he proves that he had no knowledge of that interest at the time when he made the contract.
- (3) For the purposes of this section an agent shall not be deemed to have any pecuniary interest in the making of a contract by reason merely of the fact that he or any person mentioned in the last preceding subsection is a shareholder in an incorporated company having more than 20 members.

Section 5(2): amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

#### **6 Giving false receipt, invoice, etc, to agent an offence**

Every person is guilty of an offence who, with intent to deceive the principal, gives to any agent, or signs or otherwise authenticates for the use of any agent, any receipt, invoice, account, or other document of any nature whatsoever in relation to the affairs or business of the agent or his principal which contains any statement which is false, defective, or misleading in any material particular, or which 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, in relation to the matters referred to in that document.

#### **7 Delivery of false receipt, etc, to principal an offence**

Every agent is guilty of an offence who delivers or presents to his principal any receipt, invoice, account, or other document of any nature whatsoever in relation to the business or affairs of his principal which to the knowledge of the agent is false or defective in any material particular, or is in any way likely to mislead the principal, or which to the knowledge of the agent omits to state 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, in relation to the matters referred to in that document, or which to the knowledge of the agent omits to disclose the fact of any gift or other consideration having been received by or promised to the agent in respect of those matters, unless in any such case the fact which is not disclosed is, to the knowledge of the agent, already known to the principal at the time when the said document is so delivered or presented to him.

#### **8 Receiving secret reward for procuring contracts an offence**

- (1) Every person is guilty of an offence who advises any person to enter into a contract with a third person and receives or agrees to receive from that third person, without the knowledge and consent of the person so advised, any gift or consideration as an inducement or reward for the giving of that advice or the procuring of that contract, unless the person giving that advice himself acts as the agent of the third person in entering into the contract, or is to the knowledge of the person so advised the agent of that third person.
- (2) For the purposes of this section a person shall be deemed to advise another person to enter into a contract if he makes to that other person any statement or suggestion with intent to induce him to enter into the contract.

#### **9 Aiding and abetting offences**

Every person is guilty of an offence who aids, abets, counsels, or procures, or is in any way directly or indirectly knowingly concerned in or privy to the commission of any offence against this Act, or the commission outside New Zealand of any act in relation to the affairs or business of a principal residing or carrying on business in New Zealand which if committed in New Zealand would be an offence against this Act.

#### **10 Offences by persons acting on behalf of agents**

Every person is guilty of an offence who, with or without authority, does on behalf of any other person who is an agent any act which if done by that agent himself would be an offence against this Act.

**11 Except as provided in this section, customary nature of gift to be no defence**

- (1) Nothing in this Act contained shall be deemed to prohibit or render illegal any recognised practice or usage of any trade or calling existing at the time of the passing of this Act if the Court before which the matter of such practice or usage is in question shall be satisfied that such practice or usage is honest and reasonable; and, in so determining, the said Court may have regard to the circumstance that the commissions, rebates, or allowances paid or made by the third party to the agent under such practice or usage were prior to this Act lawfully receivable by the agent without any breach of his duty towards his principal; or the circumstance that the said commissions, rebates, or allowances so paid or made would not in any case be paid or allowed by such third party to the principal; or the circumstance that the same were paid or allowed in respect of services lawfully rendered by the agent to such third party without injury or loss to the principal and without any breach by the agent of his duty towards his principal.
- (2) Except as provided by this section, evidence shall not be admissible in any proceeding for an offence against this Act to show that any such gift or consideration as is mentioned in this Act is customary in any trade or calling, nor shall the customary nature of any such gift or consideration be any defence in such proceedings.

**12 Consent of Attorney-General necessary for prosecution**

- (1) No prosecution for an offence against this Act may be commenced without the leave of the Attorney-General.
- (2) The leave of the Attorney-General may be granted without notice to the defendant and it is not necessary in the charge to state that leave has been granted, or to state the terms of that leave.
- (3) Objections to a charge for want of leave, or for want of conformity to the terms of leave, must be made before a District Court Judge before the trial, and if the District Court Judge is satisfied that leave has not been granted, or that the terms thereof have not been conformed to, the District Court Judge must either—
  - (a) permit the prosecutor to withdraw the charge; or
  - (b) dismiss the charge.

Section 12: replaced, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

**13 Penalty on conviction**

A person who commits an offence against this Act is liable to imprisonment for a term not exceeding 7 years.

Section 13: replaced, on 7 November 2015, by section 5 of the Secret Commissions Amendment Act 2015 (2015 No 109).

**14 Proceedings to be before District Court Judge only**

*[Repealed]*

Section 14: repealed, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

**15 Incriminating answers and discovery**

No person shall in any civil or criminal proceedings be excused from answering any question put either viva 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 proceedings for an offence against this Act.

**16 Persons deemed to be agents within the meaning of this Act**

- (1) For the purposes of this Act—
  - (a) every officer of a corporation and every member of a governing body of a corporation shall be deemed to be an agent of the corporation:
  - (b) every officer or member of any local authority, Board, Council, committee, or other body of persons, whether incorporated or unincorporated, charged by statute with any public functions shall be deemed to be an agent of that local authority, Board, Council, committee, or other body:
  - (c) every person in the service of the Crown, or acting for or on behalf of the Crown, or holding any office in the public service, shall be deemed to be an agent of the Crown:
  - (d) every partner in a firm shall be deemed to be an agent of the firm:
  - (e) an executor, administrator, or trustee shall be deemed to be an agent of the beneficiaries under the will, intestacy, or trust:
  - (f) the committee of the estate of a person of unsound mind shall be deemed to be the agent of that person:
  - (g) an arbitrator, umpire, or valuer shall be deemed to be an agent of every party to the arbitration or valuation:
  - (h) a liquidator of a company shall be deemed to be an agent of the company.
- (2) If by virtue of the provisions of this Act any agent is deemed to be the agent of 2 or more principals in respect of the same matter, this Act shall apply to each of those principals in the same manner as if he was the sole principal.
- (3) Nothing in this section shall be so construed as to restrict in any manner the meaning of the terms **agent** or **principal** as used in this Act.

## **Eprint notes**

### **1    *General***

This is an eprint of the Secret Commissions Act 1910 that incorporates all the amendments to that Act as at the date of the last amendment to it.

### **2    *About this eprint***

This eprint is not an official version of the legislation under section 18 of the Legislation Act 2012.

### **3    *Amendments incorporated in this eprint***

Secret Commissions Amendment Act 2015 (2015 No 109)

Criminal Procedure Act 2011 (2011 No 81): section 413