

Western Australia

Finance Brokers Control Act 1975

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Finance Brokers Control Act 1975

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Western Australia

Finance Brokers Control Act 1975

**An Act to make provision with respect to the licensing, regulation,
and supervision of finance brokers, and for related purposes.**

Part I — Preliminary

1. Short title

This Act may be cited as the *Finance Brokers Control Act 1975*¹.

2. Commencement

The provisions of this Act shall come into operation on such day or days as is or are, respectively, fixed by proclamation¹.

[3. Deleted by No. 10 of 1998 s. 76.]

4. Interpretation

In this Act unless the context otherwise requires —

appointed day means the day fixed by the Minister pursuant to section 26(2)²;

approved means approved by the Commissioner;

auditor means a person appointed under this Act to audit the trust accounts of a finance broker;

bank means —

- (a) an ADI (authorised deposit-taking institution) as defined in section 5 of the *Banking Act 1959* of the Commonwealth; or
- (b) a bank constituted by a law of a State, a Territory or the Commonwealth;

business means the business of a finance broker;

Commissioner means the person for the time being designated as the Commissioner under section 6;

condition, in relation to a licence or exemption, includes restriction or limitation;

department means the department of the Public Service principally assisting the Minister in the administration of this Act;

finance broker means a person who —

- (a) as an intermediary, in the course of business negotiates or arranges loans of money for or on behalf of other persons; or
- (b) in the course of business, manages loans of money arranged or negotiated by the person for or on behalf of other persons,

but does not include the exceptions specified in section 5(1);

finance brokers code of conduct means the code prescribed under section 81;

investigator means a person designated under section 15 as an investigator and a member of the Police Force undertaking an investigation or inquiry or report under section 14;

licence means the licence of a finance broker under this Act;

licensed means licensed as a finance broker under this Act;

licensee means a person licensed under this Act;

motor vehicle has the meaning given in section 5(1) of the *Road Traffic Act 1974*;

renewal means renewal of a licence;

supervisor means a person appointed by the Commissioner as supervisor of the business of a finance broker;

Treasurer means the Treasurer of the State.

[Section 4 amended by No. 56 of 1995 s. 17; No. 26 of 1999 s. 79(2); No. 53 of 2004 s. 4; No. 55 of 2004 s. 341.]

5. Exceptions to “finance broker”

- (1) Exceptions to the meaning of ***finance broker*** in and for the purposes of this Act are as follows —
 - (a) a bank;
 - (aa) a corporation that is a friendly society within the meaning of section 16C of the *Life Insurance Act 1995* of the Commonwealth;

s. 5

- (ab) an insurance company authorised under any law of the Commonwealth or State to carry on insurance business;
- (b) a pastoral company in respect of which the Minister is satisfied that, by reason of an order in force under section 11 of the *Banking Act 1959* of the Parliament of the Commonwealth, or that Act as amended from time to time, the clients of the company are adequately safeguarded in respect of the proper application of trust funds received by the company from them or on their behalf;
- (c) a society registered under the *Housing Societies Act 1976*;
- (d) a financial services licensee (within the meaning of the *Corporations Act 2001* of the Commonwealth), when dealing in securities (within the meaning of section 92 of that Act) that he or she is authorised to deal in by that licence;
- (da) a regulated principal (within the meaning of section 1430 of the *Corporations Act 2001* of the Commonwealth), who held a dealers licence under the *Corporations Act 2001* of the Commonwealth immediately before the commencement of Schedule 1 to the *Financial Services Reform Act 2001* of the Commonwealth, when dealing in securities that he or she is authorised to deal in by Part 10.2 Division 1 Subdivision D of that Act;
- (e) a body corporate authorised by the law of any State, or of a Territory, of the Commonwealth to take in its own name, a grant of probate or of letters of administration of the estate of a deceased person;
- (f) Australian legal practitioners (within the meaning of that term in the *Legal Profession Act 2008* section 3) when acting incidentally to the practice of their profession as such;

- (g) a person who, in association with a *bona fide* business of supplying goods or services carried on by him, acts as an intermediary to negotiate or arrange loans for persons who deal with him in the ordinary course of that business and who authorise in writing the application of the loans in payment for the goods or services; and
 - (h) persons and classes of persons exempted from the Act under subsection (2).
- (2) The Governor may make regulations under this subsection exempting a person or class of persons from the operation of this Act, or specified provisions of this Act.
- (3) Regulations made under subsection (2) may make an exemption subject to specified terms or conditions.

[Section 5 amended by No. 10 of 1982 s. 28; No. 26 of 1999 s. 79(3); No. 12 of 2001 s. 51; No. 21 of 2003 s. 13; No. 65 of 2003 s. 35(2); No. 53 of 2004 s. 5; No. 21 of 2008 s. 664.]

Part II — The Commissioner

[Heading inserted by No. 53 of 2004 s. 6.]

Division 1 — General

6. Commissioner

- (1) The Minister is required, by notice published in the *Gazette*, to designate a person who is an executive officer of the department as the Commissioner for the purposes of this Act.
- (2) The Commissioner may be referred to by a title specified by the Minister by notice published in the *Gazette*.
- (3) In this section —
executive officer has the meaning given by section 3(1) of the *Public Sector Management Act 1994*.
- (4) The Commissioner —
 - (a) is the licensing and supervisory authority for the purposes of this Act; and
 - (b) has the powers, duties, and functions, conferred, imposed, or prescribed by or under this Act.

[Section 6 inserted by No. 53 of 2004 s. 7.]

7. General functions of the Commissioner

As a part of the Commissioner's functions under this Act, the Commissioner may —

- (a) decide how an application for licensing is to be dealt with;
- (b) decide who may be licensed under this Act;
- (c) make recommendations and submit proposals to the Minister from time to time with respect to regulations to be made under this Act;
- (d) administer the scheme of licensing established under this Act;

- (e) conduct and promote education and provide advisory services for persons who are licensed under this Act, or involved in the administration of this Act, and for members of the public on —
 - (i) matters relating to the operation of this Act;
 - (ii) matters relating to the policies of the Commissioner; or
 - (iii) matters relating to the operations of finance brokers;

and

- (f) carry out such other functions as are conferred upon the Commissioner under this Act.

[Section 7 inserted by No. 53 of 2004 s. 7.]

8. Commissioner may delegate

- (1) The Commissioner may delegate to a person any power or duty of the Commissioner under another provision of this Act, other than an investigative function under section 13.
- (2) The delegation must be in writing signed by the Commissioner.
- (3) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (4) A person exercising or performing a power or duty that has been delegated to the person under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (5) A function performed by a delegate of the Commissioner is taken to be performed by the Commissioner.
- (6) Nothing in this section limits the ability of the Commissioner to perform a function through an officer or agent.

[Section 8 inserted by No. 53 of 2004 s. 7.]

9. Judicial notice

All courts, judges, and persons acting judicially shall take judicial notice of the official signature of every person who is for the time being the Commissioner or an investigator and every person who has at any time been the Commissioner, an investigator, Registrar, Deputy Registrar, Assistant Registrar, or inspector of the Board, and of the fact that such person holds or has held such position or office.

[Section 9 inserted by No. 53 of 2004 s. 7.]

[10-12. Deleted by No. 53 of 2004 s. 7.]

Division 2 — Powers of investigation and inquiry

13. Investigation and inquiry by Commissioner

The Commissioner may, of his own motion, make any investigation or inquiry that the Commissioner considers necessary or expedient for the purpose of —

- (a) determining any application or any other matter before the Commissioner;
- (b) determining whether or not finance brokers are acting in conformity with the conditions, if any, of their licences and are complying with the requirements of this Act or the finance brokers code of conduct; and
- (ba) determining whether or not any other causes exist that may be considered by the State Administrative Tribunal to render finance brokers unfit to hold their licences; and
- (c) detecting offences against this Act.

[Section 13 amended by No. 56 of 1995 s. 23(1); No. 53 of 2004 s. 8.]

14. Police investigations

- (1) The Commissioner of Police shall, at the request of the Commissioner, cause his officers to make an investigation or

inquiry and report relating to any matter that is the subject of investigation or inquiry pursuant to section 13.

- (2) The report shall be forwarded to the Commissioner.

[Section 14 amended by No. 53 of 2004 s. 9.]

15. Investigators

- (1) The chief executive officer may designate as investigators for the purposes of this Act as many persons employed in the department as the chief executive officer considers necessary to assist the Commissioner to perform investigative functions under this Act.
- (2) A reference in section 13 to the Commissioner includes a reference to an investigator.
- (3) The chief executive officer is to provide each investigator with a document, signed by the chief executive officer, certifying that the person is entitled to exercise the powers of an investigator, and that document is to be produced when demanded by a person in respect of whom the Commissioner or an investigator performs, has performed, or is proposing to perform, any function under this Act, including Division 2A.
- (4) In this section —
investigative function means any of the Commissioner's functions under section 13.

[Section 15 inserted by No. 53 of 2004 s. 10.]

16. Additional investigative powers

The Commissioner is, and each investigator is, authorised to exercise the powers of an investigator under Division 2A for the purposes of the performance of any function under section 13.

[Section 16 inserted by No. 53 of 2004 s. 10.]

17. Compliance checks at licensee's business premises

- (1) For the purposes of determining whether or not a licensee is acting in conformity with the conditions, if any, of the licence and is complying with the requirements of this Act or the finance brokers code of conduct, the Commissioner or an investigator may —
 - (a) during normal business hours, enter premises where the business of the licensee is being carried on, without obtaining a warrant under Division 2A; and
 - (b) exercise the powers in sections 18, 18D and 18H once entry is made.
- (2) The Commissioner or an investigator may invoke the powers in subsection (1) without an investigation being under way in relation to any particular licensee.
- (3) A person must not prevent or attempt to prevent the Commissioner or an investigator from entering business premises in the exercise of his or her powers under subsection (1).
Penalty: \$2 000.
- (4) A person must not obstruct or impede the Commissioner or an investigator in the exercise of his or her powers under subsection (1).
Penalty: \$2 000.
- (5) A person must comply with a requirement to furnish reasonable access to business premises, or to give other reasonable assistance to the Commissioner or an investigator, when exercising his or her powers under subsection (1).
Penalty: \$2 000.

[Section 17 inserted by No. 53 of 2004 s. 10.]

Division 2A — Specific investigatory powers

[Heading inserted by No. 53 of 2004 s. 11.]

18. Powers

- (1) An investigator may —
 - (a) require any person —
 - (i) to give such information as is required; and
 - (ii) to answer any question put to the person, in relation to any matter the subject of an investigation;
 - (b) require any person to produce any document;
 - (c) enter at all reasonable times and search any premises or motor vehicle named in a warrant obtained in accordance with this Division and exercise the powers set out in that warrant; and
 - (d) make a copy or abstract of any document produced or inspected under this section, or of any entry made in the document.

- (2) A requirement made under subsection (1)(a) —
 - (a) may be made orally or by notice in writing served on the person required to give information or answer a question, as the case may be;
 - (b) is to specify the time at or within which the information is to be given or the question is to be answered, as the case may be; and
 - (c) may, by its terms, require that the information or answer required —
 - (i) be given orally or in writing;
 - (ii) be given at or sent or delivered to any place specified in the requirement;
 - (iii) in the case of written information or answers, be sent or delivered by any means specified in the requirement; and

- (iv) be given on oath or affirmation or by statutory declaration.
- (3) An investigator may administer an oath or affirmation for the purposes of subsection (2)(c)(iv) and for that purpose has the authority of a commissioner for declarations.
- (4) A requirement made under subsection (1)(b) —
 - (a) is to be made by notice in writing served on the person required to produce a document;
 - (b) is to specify the time at or within which the document is to be produced; and
 - (c) may, by its terms, require that the document be produced —
 - (i) at any place specified in the requirement; and
 - (ii) by any means specified in the requirement.
- (5) Where under subsection (2)(a) an investigator orally requires a person to give any information or answer any question, the investigator is to inform that person that he or she is required, under this Act, to give the information or answer the question, as the case may be.
- (6) Where under subsection (2)(a) or (b) a person is required by notice in writing to give any information, answer any question, or produce any document, the notice is to state that he or she is required under this Act to give the information, answer the question, or produce the document, as the case may be.

[Section 18 inserted by No. 53 of 2004 s. 12.]

18A. Warrant to enter premises

- (1) If an investigator has determined in a particular case that there are reasonable grounds for believing that entry to premises or a motor vehicle is necessary for the purpose of an investigation, the investigator may apply to a magistrate or justice of the peace for a warrant to be issued in respect of those premises or that motor vehicle.

- (2) An application for a warrant must —
- (a) be in writing;
 - (b) be accompanied by a notice in writing from the investigator stating that he or she has determined in the particular case that there are reasonable grounds for believing that entry to premises or motor vehicle is necessary for the purpose of the investigation;
 - (c) set out the grounds for seeking the warrant; and
 - (d) describe the premises or motor vehicle that are to be entered.
- (3) A magistrate or justice of the peace to whom an application is made under this section must refuse it if —
- (a) the application does not comply with the requirements of this Act; or
 - (b) when required to do so by the magistrate or the justice of the peace, the investigator does not give to the magistrate or justice of the peace more information about the application.
- (4) The information in an application or given to a magistrate or justice of the peace under this section must be verified before the magistrate or justice of the peace on oath or affirmation or by affidavit, and the magistrate or justice of the peace may for that purpose administer an oath or affirmation or take an affidavit.

[Section 18A inserted by No. 53 of 2004 s. 12.]

18B. Issue of warrant

- (1) A magistrate or justice of the peace to whom an application is made under section 18A may issue a warrant, if satisfied that the investigator has reasonable grounds for believing that entry and inspection of the premises or motor vehicle are necessary for the purpose of the investigation.

- (2) A warrant under subsection (1) authorises the investigator —
 - (a) to enter and inspect the premises or motor vehicle named in the warrant;
 - (b) to require a person on the premises to answer questions or produce documents or other things in the person's possession concerning the investigation; and
 - (c) to inspect documents and other things, and take copies of or extracts from documents, produced in compliance with a requirement made under paragraph (b).
- (3) There must be stated in a warrant —
 - (a) the purpose for which the warrant is issued;
 - (b) the name of the person to whom the warrant is issued; and
 - (c) a description of the premises or motor vehicle that may be entered.
- (4) A magistrate or justice of the peace who issues a warrant must cause a record to be made of particulars of the grounds that the magistrate or justice of the peace has relied on to justify the issue of the warrant.

[Section 18B inserted by No. 53 of 2004 s. 12.]

18C. Execution of warrant

- (1) Entry authorised by a warrant under this Division may be made with such assistance and equipment as is considered necessary for the purpose for which entry is required.
- (2) If asked by the occupier or a person in charge of the premises or motor vehicle, the person executing a warrant must produce it for inspection.
- (3) When executing a warrant, the investigator may require any person, having the control or custody of any premises, motor vehicle or thing which the investigator is authorised to enter or

inspect, to furnish reasonable access to it and to give other reasonable assistance.

- (4) A warrant ceases to have effect —
- (a) at the end of the period of one month after its issue;
 - (b) if it is withdrawn by the magistrate or justice of the peace who issued it; or
 - (c) when it is executed,

whichever occurs first.

[Section 18C inserted by No. 53 of 2004 s. 12.]

18D. Seizure

- (1) An investigator may seize a document or other thing that is produced or given in response to a requirement under this Division, or that is found as the result of executing a warrant under this Division.
- (2) Despite subsection (1), a document or other thing cannot be seized unless the investigator reasonably suspects it —
 - (a) is being, or has been, used to commit; or
 - (b) may afford evidence of the commission of,a breach of this Act, a prescribed Act or prescribed part of an Act, the finance brokers code of conduct, or a licence condition.
- (3) As soon as practicable after the document or other thing is seized, the investigator is to give a receipt for it to the person from whom it was seized.
- (4) If, for any reason, it is not practicable to comply with subsection (3), the investigator is to —
 - (a) leave the receipt at the place of seizure; and
 - (b) ensure the receipt is left in a reasonably secure way and in a conspicuous position.

- (5) Where a document or other thing is seized pursuant to subsection (1) —
- (a) an investigator may retain the document or other thing so long as is reasonably necessary for the purposes of the investigation to which the document or other thing is relevant; and
 - (b) when the retention of the document or other thing by the person ceases to be reasonably necessary for those purposes, the investigator shall cause the document or other thing to be delivered to the person who appears to the investigator to be entitled to possession of the document or other thing.

[Section 18D inserted by No. 53 of 2004 s. 12.]

18E. Incriminating information, questions, or documents

Without prejudice to the provisions of section 11 of the *Evidence Act 1906*, where under section 18 a person is required to —

- (a) give any information;
- (b) answer any question; or
- (c) produce any document,

that person cannot refuse to comply with that requirement on the ground that the information, answer, or document may tend to incriminate the person or render the person liable to any penalty, but the information or answer given, or document produced, by the person is not admissible as evidence in any proceedings against the person other than proceedings in respect of an offence against section 18F(1)(b).

[Section 18E inserted by No. 53 of 2004 s. 12.]

18F. Failure to comply with investigation

- (1) Where under section 18 a person is required to give any information, answer any question, or produce any document and

that person, without reasonable excuse (proof of which lies on the person) —

- (a) fails to give that information or answer that question at or within the time specified in the requirement;
- (b) gives any information or answer that is false in any particular; or
- (c) fails to produce that document at or within the time specified in the requirement,

the person commits an offence.

Penalty: \$2 000.

(2) It is a defence in any proceeding for an offence under subsection (1)(a) or (c) for the accused to show —

- (a) that, in the case of an alleged offence arising out of a requirement made orally under section 18, the investigator did not, when making the requirement, inform the accused that he or she was required under this Act to give the information or answer the question, as the case may be;
- (b) that, in the case of an alleged offence arising out of a requirement made by notice in writing under section 18, the notice did not state that he or she was required under this Act to give the information, answer the question, or produce the document, as the case may be;
- (c) that the time specified in the requirement did not afford the accused sufficient notice to enable him or her to comply with the requirement; or
- (d) that, in any case, the investigator did not, before making the requirement, have reasonable grounds to believe that compliance with the requirement would materially assist in the investigation being carried out.

[Section 18F inserted by No. 53 of 2004 s. 12; amended by No. 84 of 2004 s. 82.]

18G. Obstruction of investigator

- (1) A person must not prevent or attempt to prevent an investigator from entering premises in the exercise of his or her powers under section 18.

Penalty: \$2 000.

- (2) A person must not obstruct or impede an investigator in the exercise of his or her powers under section 18.

Penalty: \$2 000.

- (3) A person must comply with a requirement to furnish reasonable access to a place or motor vehicle, or to give other reasonable assistance to an investigator under section 18C(3).

Penalty: \$2 000.

[Section 18G inserted by No. 53 of 2004 s. 12.]

18H. Information

- (1) Information obtained under this Division by an investigator may (for the purposes of section 88) be recorded, used, or disclosed on the basis that it has been acquired by the investigator for the purposes of this Act.

- (2) A document copied by an investigator under section 18(1)(d), or when executing a warrant, may be certified by that investigator as being a true and accurate copy of a document and, in the absence of proof to the contrary, any copy so certified is to be accepted by any court or tribunal as evidence of, and as having equal validity as, the original.

- (3) In this section —

information means information concerning the affairs of a person.

[Section 18H inserted by No. 53 of 2004 s. 12.]

Division 3 — Review of decisions of the Commissioner

[Heading inserted by No. 55 of 2004 s. 342; amended by No. 53 of 2004 s. 13.]

[19-22. Deleted by No. 55 of 2004 s. 343.]

23. Application for review

(1) Any person aggrieved by a reviewable decision of the Commissioner may apply to the State Administrative Tribunal for a review of the decision.

(2) In subsection (1) —

person aggrieved means —

- (a) a person whose licence is affected by a reviewable decision or who, under Part III, applies for or objects to the grant of a licence or applies for or objects to the renewal of a licence; or
- (b) a person affected by a decision of the Commissioner under Part IV Division 2;

reviewable decision means —

- (a) a decision under Part III other than a determination of the form in which an application or objection is to be made;
- (b) a decision under Part IV Division 2 or section 82A(1).

[Section 23 inserted by No. 55 of 2004 s. 344; amended by No. 53 of 2004 s. 14.]

Part III — Licensing

24. Application

- (1) An application for a licence shall be made in writing and in the manner prescribed and a form approved by the Commissioner and shall contain such information as is prescribed.
- (2) Notice of the application shall be advertised in accordance with the regulations.
- (3) The information contained in the application shall be verified by statutory declaration of the applicant or where the applicant is a firm or a body corporate by the person who is to be in *bona fide* control of the business operated under the licence.
- (4) In respect of any particular application the applicant shall furnish the Commissioner with such further information as the Commissioner determines, verified if the Commissioner so requires by statutory declaration.

[Section 24 amended by No. 53 of 2004 s. 15; No. 55 of 2004 s. 345.]

25. Objections

- (1) An objection to the grant or renewal of a licence may be made by any person on the grounds that the applicant does not satisfy all the requirements under this Act for the grant or renewal of a licence.
- (2) Any objection made shall be in writing and in a form and manner determined by the Commissioner and shall contain information in support of the grounds on which the objection is made.
- (3) The information contained in the objection shall be verified by statutory declaration of the person making the objection.

- (4) The Commissioner is to have regard to the rules of natural justice in so far as they are relevant to the determination of an objection.
- (5) If an objection is found by the Commissioner to be frivolous or vexatious, the chief executive officer may recover, from the objector, any additional costs incurred as a debt in a court of competent jurisdiction.

[Section 25 amended by No. 53 of 2004 s. 16; No. 55 of 2004 s. 346.]

26. Finance brokers to be licensed

- (1) On and after the appointed day a person shall not carry on business, or by any means hold himself or itself out, as a finance broker unless he or it is licensed as such under this Act.
Penalty: \$50 000.
- (2) In subsection (1) ***appointed day*** means such day as is fixed by the Minister by notice published in the *Government Gazette* to be the appointed day² for the purposes of that subsection.

[Section 26 amended by No. 56 of 1995 s. 23(1); No. 53 of 2004 s. 17.]

27. Grant of licence to a natural person

- (1) Subject to this Act, a person, not being a body corporate who applies to the Commissioner for a licence and pays to the chief executive officer the prescribed fee for the licence shall be granted and may hold a licence if the Commissioner is satisfied that —
 - (a) he is resident in the State;
 - (b) he is of or over the age of 18 years;
 - (c) he is a person of good character and repute;
 - (ca) he is a fit and proper person to hold a licence;

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- (d) he has sufficient material and financial resources available to him to enable him to comply with the requirements of this Act;
- (e) he understands fully the duties and obligations imposed by this Act on finance brokers; and
- (f) he has such other qualifications and satisfies such other requirements (if any) as may be prescribed by the regulations.

[(2) deleted]

[Section 27 amended by No. 53 of 2004 s. 18.]

28. Grant of licence to a firm

Subject to this Act, 2 or more persons constituting a firm who apply to the Commissioner for a licence and pay to the chief executive officer the prescribed fee for the licence shall be granted and may hold a licence if the Commissioner is satisfied that —

- (a) all of the natural persons, if any, by whom the firm is constituted and all of the directors of, and all of the persons concerned in the management or control of, any body corporate by which the firm is constituted are persons of good character and repute;
- (aa) all of the natural persons, if any, by whom the firm is constituted and all of the directors of, and all of the persons concerned in the management or control of, any body corporate by which the firm is constituted are persons fit to be concerned as directors of, or in the management and control of a finance broker's business;
- (b) the persons by whom or by which the firm is constituted have sufficient material and financial resources available to them to enable them to comply with the requirements of this Act;
- (c) where the firm is constituted by not more than 3 persons at least one of them is licensed or where the firm is

constituted by more than 3 persons at least 2 of them are licensed, and in either case the person in *bona fide* control of the business operated under the licence is licensed; and

- (d) the person in bona fide control of the business has such other qualifications and satisfies such other requirements (if any) as may be prescribed by the regulations.

[Section 28 amended by No. 53 of 2004 s. 19.]

29. Grant of licence to body corporate

- (1) Subject to this Act, a body corporate which applies to the Commissioner for a licence and pays to the chief executive officer the prescribed fee for the licence shall be granted and may hold a licence if the Commissioner is satisfied that —
 - (a) all of the directors of the body corporate, and all of the persons concerned in the management or conduct of the body corporate, are persons of good character and repute;
 - (aa) all of the directors of the body corporate, and all of the persons concerned in the management or conduct of the body corporate, are persons fit to be concerned as directors of, or in the management and control of a finance broker's business;
 - (b) that it has sufficient material and financial resources available to it to comply with the requirements of this Act;
 - (c) where there are not more than 3 directors of the body corporate at least one of them is licensed or where there are more than 3 directors of the body corporate at least 2 of them are licensed, and in either case the person in *bona fide* control of the business operated under the licence is licensed, or, where a declaration has been made pursuant to subsection (2) and is in force in respect of the body corporate, the officer in *bona fide* control of

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the finance broker's part of the business of the body corporate is licensed; and

- (d) that the person in bona fide control of the business, or the officer in bona fide control of the finance broker's part of the business (as the case requires), has such other qualifications and satisfies such other requirements (if any) as may be prescribed by the regulations.
- (2) Where the Commissioner is satisfied that finance broker's business is a minor part of the business of any body corporate the Commissioner may recommend to the Minister that a declaration be made to that effect and the Minister may by notice published in the *Government Gazette* make a declaration accordingly and the Minister may upon the recommendation of the Commissioner by notice so published revoke any such declaration.

[Section 29 amended by No. 53 of 2004 s. 20.]

30. Effect of licence

- (1) Subject to this Act, a licence continues for not longer than 3 years, or such other licence period as may be prescribed.
- (2) If different classes of licence are prescribed, different licence periods, each not exceeding 3 years, may be prescribed for each or any class of licence.
- (3) A person may at any time surrender a licence and shall do so —
 - (a) if the person ceases to satisfy the requirements for holding the licence; or
 - (b) within 7 days, if the person has the licence suspended by the Commissioner under section 82A.

[(4) deleted]

- (5) Despite the surrender by a person of a licence, this Act applies, for the purpose of enabling the person to be investigated or otherwise dealt with for a matter arising before the surrender, as if the licence had not been surrendered.

[Section 30 amended by No. 56 of 1995 s. 18 and 23; No. 53 of 2004 s. 21; No. 55 of 2004 s. 347.]

31. Duration of licence

- (1) Subject to this Act, a licensee has the right to carry on business as a finance broker for the relevant period described in section 30.
- (2) Subject to this Act, a licence may, on application and payment of the prescribed fee, be renewed from time to time for the relevant period described in section 30.

[Section 31 amended by No. 56 of 1995 s. 19; No. 53 of 2004 s. 22.]

32. Applications for renewals

- (1) If —
 - (a) an application for renewal is made after, but within 28 days of, the day on which the licence expired; and
 - (b) the prescribed fee and any amount prescribed by way of penalty for a late application are paid,

the licence may be renewed for the relevant period described in section 30.

- (1a) A renewal under subsection (1) shall be taken for all purposes to have taken effect on the day immediately succeeding the day on which the previous licence expired.
- (2) An application for renewal shall be made in writing and in the manner prescribed and a form approved by the Commissioner in respect of such an application and shall contain such information as is required by the Commissioner in respect of such an application.
- (3) The information contained in the application shall be verified by statutory declaration of the applicant or where the applicant is a

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firm or body corporate by the person who is to be in *bona fide* control of the business operated under the licence.

- (4) In respect of any particular application the applicant shall furnish the Commissioner with such further information as the Commissioner determines, verified if the Commissioner so requires by statutory declaration.

[Section 32 amended by No. 56 of 1995 s. 20; No. 53 of 2004 s. 23; No. 55 of 2004 s. 348.]

33. Refusal to renew

The Commissioner may refuse to renew a person's licence if —

- (a) the applicant is no longer able to satisfy the requirements for an initial grant of a licence of that class; or
- (b) the applicant has not met further prescribed educational requirements (if any).

[Section 33 inserted by No. 53 of 2004 s. 24.]

34. Conditions on licences

- (1) A licensee shall comply with the provisions of this Act and the finance brokers code of conduct.
- (2) The Commissioner may grant or renew a licence subject to such conditions as the Commissioner thinks fit and, without limiting the generality of the foregoing any of those conditions may relate to the holding of a policy of indemnity insurance in a specified amount.
- (3) A licensee shall comply with any condition to which under subsection (2) his licence is subject.
- (4) A condition to which a licence is subject may be varied or revoked by the Commissioner, upon the application of the licensee, or on the Commissioner's own motion.

[Section 34 amended by No. 56 of 1995 s. 23; No. 53 of 2004 s. 25; No. 55 of 2004 s. 350.]

[34A. Deleted by No. 53 of 2004 s. 26.]

34B. Suspension of licence by State Administrative Tribunal

- (1) Where the State Administrative Tribunal makes an order against a licensee and payment is not made in accordance with the order or the order is otherwise not complied with or is breached, the State Administrative Tribunal may suspend the licence until the payment is made, or for such period or upon such event occurring as the State Administrative Tribunal thinks fit.
- (2) The power conferred on the State Administrative Tribunal by subsection (1) is in addition to, and does not derogate from, the powers conferred on it by Part IV Division 3 or by the *State Administrative Tribunal Act 2004*.

[Section 34B inserted by No. 55 of 2004 s. 351.]

35. Bond in respect of licence

- (1) The Commissioner shall not grant or renew a licence unless the applicant lodges or has lodged with the Commissioner a bond or guarantee to Her Majesty and her successors in an approved form and in an amount approved in respect of the applicant, entered into by an insurance company carrying on business under, and in accordance with the *Insurance Act 1973* of the Parliament of the Commonwealth, or by a bank carrying on business under, and in accordance with the *Banking Act 1959* of the Parliament of the Commonwealth, or any other Act in amendment or substitution of those Acts respectively, or by other approved surety or sureties, or by other approved guarantor or guarantors.
- (2) A bond or guarantee lodged pursuant to this section shall be conditioned on the licensee duly and according to law paying, applying, and accounting for moneys coming to his hands and punctually complying with all duties and obligations imposed

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on him by law in relation to those moneys; and the bond or guarantee shall provide that it enures during the term of the licence for which it is originally given and may also provide that it enures during the term of any licence to the same person granted in renewal of the licence.

- (3) Where a bond or guarantee enures in respect of the renewal or further renewal of a licence, the insurance company, surety, or sureties, or the bank, guarantor, or guarantors may by notice in writing given to the Commissioner determine its, his, or their liability under the bond or guarantee in respect of any act or default that may be done or made after the current licence expires and the Commissioner shall not renew the licence until another approved bond or guarantee has been lodged by the applicant.
- (4) Where, at any time during the currency of a licence, the bond or guarantee lodged in respect of it ceases to be of full force and effect, the person who held the licence is deemed not to be the holder of a licence until another approved bond or guarantee is lodged by him.
- (5) The State Administrative Tribunal may, on the application of the Commissioner and on being satisfied that any condition of the bond or guarantee has been broken, assign the moneys recoverable on the bond or guarantee to the Commissioner or to any other person and the Commissioner or any other person to whom such an assignment has been made or the executors or administrators of the estate of that other person is, upon the assignment, entitled to sue upon the bond or guarantee in their own name or names, as if the bond or guarantee had, in the first instance, been given to him, or them and is entitled to receive, as trustees for all persons interested, the full amount recoverable in respect of the breach of a condition of the bond or guarantee.

[Section 35 amended by No. 56 of 1995 s. 23; No. 53 of 2004 s. 27; No. 55 of 2004 s. 352 and 358.]

35A. Prescribed person exempt from bond requirements

- (1) Despite section 35, the regulations may exempt from the requirement to lodge a bond or guarantee —
 - (a) any person or class of persons;
 - (b) persons carrying on any business or any specified class of business; or
 - (c) any other class of person, act or thing.
- (2) An exemption may be expressed to apply —
 - (a) generally; or
 - (b) only in respect of a specified area or areas in the State.
- (3) The regulations may provide —
 - (a) for circumstances in which, and conditions subject to which, an exemption is to apply; and
 - (b) that an exemption is to have no effect at any time when any condition to which it is subject is not being observed.

[Section 35A inserted by No. 53 of 2004 s. 28.]

36. Notice to Commissioner

- (1) A licensee shall, within 14 days after commencing or ceasing to carry on business as a finance broker give to the Commissioner notice in writing of that fact.
- (2) A licensee shall, within 14 days of ceasing to have a registered office give to the Commissioner written notice of that fact and of the residential address of the licensee.
- (3) A licensee who does not have a registered office shall, within 14 days of changing a residential address notified under subsection (2), give to the Commissioner written notice of the changed address.

[Section 36 amended by No. 56 of 1995 s. 21; No. 53 of 2004 s. 29.]

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37. Registered office

- (1) A licensee shall, on and after the day on which he commences to carry on business as a finance broker, and for so long as he carries on that business, have a registered office in the State.
- (2) Any summons, notice, order, or other document to be served on a licensee, may be served by leaving it at his registered office or by sending it by registered post addressed to the licensee at that office.
- (3) An office may be registered by giving written notice of the situation to the Commissioner and a registration may be transferred from one office to the other by written notice given to the Commissioner.

[Section 37 amended by No. 53 of 2004 s. 30.]

38. Branch office

- (1) A licensee shall register any branch office of his business by giving written notice of the situation of the office to the Commissioner on or before the day on which he commences to carry on business at that branch office.
- (2) A licensee shall nominate, and have at all times in his service at a registered branch office, as manager of that office, another licensee.
- (3) The manager shall not be a licensee nominated as manager by any other licensee or in respect of any other office, and shall not carry on business as a finance broker on his own account.

[Section 38 amended by No. 53 of 2004 s. 31.]

[39. Deleted by No. 53 of 2004 s. 32.]

40. Licence not transferable

- (1) A person shall not hold more than one licence and shall not carry on more than one business as a finance broker thereunder.

Penalty: \$50 000.

- (2) A licence is not transferable.
- (3) A licensee shall not in any way permit, or hold himself out as being willing to permit, another person to use the licence of the licensee.

Penalty: \$50 000.

[Section 40 amended by No. 56 of 1995 s. 23; No. 53 of 2004 s. 33.]

40A. Prohibition against doing business with unlicensed finance brokers

- (1) In this section —
unlicensed finance broker means a person or firm that is required by section 26(1) to, but does not, hold a licence for the type of finance broking concerned.

- (2) A licensee must not enter into an agreement for any finance broking to be carried out by a person or firm that is an unlicensed finance broker.

Penalty: \$50 000.

- (3) A licensee must not do any act which assists, or is intended to assist, a person or firm that is an unlicensed finance broker to carry on a business that consists of or includes the carrying out of any finance broking that requires a licence.

Penalty: \$50 000.

[Section 40A inserted by No. 53 of 2004 s. 34.]

41. Use of business name

- (1) The use of a business name by a licensee is not subject to the approval of the Commissioner but —
 - (a) a licensee may carry on business as a finance broker under only one business name;

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- (b) all licensees carrying on the business of a finance broker under a business name shall have their surnames and initials at the head of all correspondence from them in that business.

- (2) A licensee who alters the name, style, title, or designation under which he carries on business as a finance broker shall within 14 days after the day on which he first uses that altered name, style, title, or designation in connection with that business give notice in writing to the Commissioner of the altered name, style, title, or designation.

Penalty: \$1 000.

[Section 41 amended by No. 56 of 1995 s. 23(1); No. 53 of 2004 s. 35.]

42. Notice to be exhibited

A licensee shall exhibit, and keep exhibited, in a prominent place at his registered office, and at every branch office of his business, so as to be easily read from outside that office —

- (a) a notice of his name, and of the fact that he is a licensed finance broker, together with the name, style, title, or designation under which he carries on business as a finance broker, if that business is not carried on in his own name; and

- (b) in the case of a branch office, a notice of the name of the manager and the address of the registered office of the licensee.

Part IV — Controls

Division 1 — General

43. Disability of unlicensed person

- (1) A finance broker is not entitled to receive any commission, reward, or other valuable consideration in respect of his services in that capacity unless —
 - (a) he is licensed in that capacity when he renders the services;
 - (b) his appointment to act in that capacity is in writing signed before the receipt of the commission, reward, or other valuable consideration (whether before or after the services are rendered) by the person to be charged therewith or some person lawfully authorised to sign the appointment on his behalf.
- (2) A person shall not demand or receive any commission, reward, or other valuable consideration in contravention of subsection (1).
Penalty: \$5 000.
- (3) Any commission, reward, or other valuable consideration received in contravention of subsection (1) may be recovered as a civil debt recoverable summarily in any court of competent jurisdiction.

[Section 43 amended by No. 56 of 1995 s. 23(1); No. 53 of 2004 s. 36.]

44. Remuneration of finance brokers

- (1) After taking advice from the Commissioner, the Minister may, by notice published in the *Government Gazette*, fix the maximum amounts of remuneration, by way of commission or otherwise, for services rendered by licensees and may do so by reference to the type of loan negotiated, managed or arranged,

and the value thereof, and the type of security, if any, offered or where no security is offered by reference to that fact.

- (2) The respective maximum amounts fixed under subsection (1) shall have effect on and after the date on which the notice fixing them is published in the *Government Gazette* or on and after such subsequent date as is specified in that notice.
- (3) In the absence of an agreement to the contrary between a licensee and the person by whom or on whose behalf he was appointed to negotiate or arrange a loan, the licensee's remuneration is payable only on the loan being obtained unless a failure to obtain the loan is due to the fault of the person by whom or on whose behalf the licensee was so appointed.
- (4) A licensee may require a person by whom or on whose behalf he was appointed to negotiate or arrange a loan to pay to him the estimated cost of obtaining a valuation of any security offered and any amount so paid shall be held in trust by the licensee to pay the costs of the valuation so obtained and to repay the balance of any such amount to the person who paid the money to him.
- (5) A licensee is not entitled to receive for negotiating, managing or arranging a loan any commission, reward, or other valuable consideration that exceeds in value the amount fixed under subsection (1) in respect thereof.
- (6) A licensee shall not demand, receive or hold any commission, reward, or other valuable consideration in contravention of this section.
Penalty: \$5 000.
- (7) Any commission, reward, or other valuable consideration received or held in contravention of this section may be recovered as a civil debt recoverable summarily in any court of competent jurisdiction.

[Section 44 amended by No. 53 of 2004 s. 37.]

45. Advertisements by licensees

- (1) An advertisement in respect of the business of a licensee shall not be published without his authority.
- (2) A duly authorised advertisement in respect of the business of a licensee shall contain (as a minimum) the licence number of the licensee, and such other details (if any) as are prescribed.
- (3) A duly authorised advertisement in respect of the business of a licensee other than an advertisement for credit to which the Consumer Credit (Western Australia) Code applies, shall not mention an interest rate in respect of loans which may be negotiated or arranged unless it is mentioned in respect of specific amounts and it includes the percentage rate of interest in relation thereto calculated in accordance with the formula provided in the Schedule.
- (4) A borrower who enters into a contract with a lender as a consequence of an advertisement which contravened subsection (3) is not thereby entitled to avoid the contract.

- (5) In this section —

Consumer Credit (Western Australia) Code has the meaning given to it in the *Consumer Credit (Western Australia) Act 1996*.

[Section 45 amended by No. 53 of 2004 s. 38.]

46. Copy of loan documents

Where a person signs any contract, or any document purporting to be a contract, relating to any loan that has been negotiated or arranged wholly or in part by a licensee, the licensee shall forthwith supply the person who signed the contract or document with a true copy thereof and obtain from such person an acknowledgment in writing of the receipt of such copy.

Division 2 — Trust accounts

47. Interpretation

In this Division, unless the context otherwise requires —

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 finance broker is kept;

business day means a day other than Saturday, Sunday, or a public holiday;

trust accounts means accounts relating to moneys received or held by a finance broker for or on behalf of any other person in respect of loans negotiated or arranged by the finance broker;

year means a period of 12 months ending on 31 December, subject however to the provisions of section 51.

48. Trust accounts

- (1) Every finance broker shall maintain at least one trust account, designated or evidenced as such, with a bank in the State and shall, as soon as practicable, pay to the credit of that account all moneys received by him for or on behalf of any other person in respect of loans negotiated or arranged by the finance broker or in respect of interest on such loans collected by him.
- (2) Moneys so paid into any such trust account shall not be available for the payment of the debt of any other creditor of the finance broker, or be liable to be attached or taken in execution under the order or process of any court at the instance of any such creditors.
- (3) Loan moneys received by a finance broker in the course of negotiating or arranging a loan and moneys received by a finance broker in respect of interest on loans, shall not be withdrawn from his trust account except for the purpose of completing the loan or paying in accordance with subsection (4) the moneys in respect of interest on loans, or as otherwise

authorised by this Act, or as otherwise authorised by the prior written consent of all parties to the loan.

- (4) A finance broker shall pay moneys withdrawn from a trust account to the person or persons lawfully entitled or authorised to receive them.
- (5) A finance broker shall —
 - (a) 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;
 - (b) 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;
 - (c) keep the accounts in such manner that they can be conveniently and properly audited; and
 - (d) correctly balance the accounts at the end of each month.

49. Receipts and accounting to principal

- (1) When a finance broker 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 section 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.
- (2) Receipts issued under subsection (1) shall be taken from bound books containing not less than 100 receipts and arranged so that a carbon duplicate of each receipt issued shall be retained in the book.
- (3) The finance broker 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.

- (4) 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.
- (5) Subsections (1) to (4) do not apply in the case of a finance broker if the finance broker's auditor certifies to the Commissioner that he is satisfied with the system employed by the finance broker and that the receipt books are so kept and entered up as to enable the accounts to be properly and conveniently audited, and the Commissioner approves of the system employed by the finance broker of recording the receipt of moneys.
- (6) On receipt of any moneys by a finance broker in respect of a loan, or in respect of interest on a loan, he shall render to the person on whose behalf the money is received an account in writing of all such moneys and of the application thereof.

[Section 49 amended by No. 53 of 2004 s. 39.]

50. Duty of finance broker to have trust accounts audited

- (1) Every person who carries on business as a finance broker during the whole or any part of that year shall cause his trust accounts for that year, or part of a year, as the case may be, to be audited by an auditor duly qualified or approved under this division.
- (2) The auditor shall conduct the audit in accordance with accepted auditing practice, including selective testing when the auditor considers it appropriate and in accordance with such other requirements as are determined by the Commissioner.
- (3) The auditor shall within 3 months after the end of each year —
 - (a) deliver to the Commissioner a report of the result of the audit, verified by statutory declaration of the auditor, in an approved form; and
 - (b) deliver a copy of the report so verified to the finance broker.

- (4) The finance broker shall retain the copy of the report and produce it on demand pursuant to section 60(3).
- (5) The Commissioner may, in circumstances the Commissioner considers appropriate, extend the time limit for lodging reports.
- (6) The auditor shall deliver an interim report to the Commissioner if at any time he discovers any irregularity in the trust accounts of the finance broker or discovers any other matter in respect of those accounts which the auditor considers should be reported to the Commissioner and he shall verify the interim report by statutory declaration and deliver a copy of the report so verified to the finance broker.
- (7) The Commissioner may require the auditor to furnish further information or carry out a further audit at any time, and the auditor shall comply with that requirement, and the cost of so doing shall be paid by the finance broker if the Commissioner so directs but otherwise shall be paid by the chief executive officer.
- (8) Apart from the annual audit and any interim audit provided for in this section, there shall be a quarterly audit in respect of the trust accounts of a finance broker for the first 3 months during which he carries on business as such after the appointed day, and such quarterly audit shall be conducted in accordance with such provisions of this division in respect of the annual audit as are capable of being applied to the quarterly audit, and the auditor shall within 2 months after the end of the first 3 months deliver to the Commissioner a report of the result of such quarterly audit.
- (9) The Commissioner may, if the Commissioner thinks fit, waive in respect of a finance broker's trust accounts the requirement of a quarterly audit mentioned in subsection (8).

[Section 50 amended by No. 53 of 2004 s. 40; No. 46 of 2009 s. 17.]

51. Variation of date of audit

- (1) Notwithstanding anything in this Division a finance broker may apply in writing to the Commissioner to fix some date other than 31 December, as the date up to which his trust accounts are to be audited, and the Commissioner may, in the Commissioner's discretion, permit the finance broker to substitute such other date for 31 December.
- (2) The Commissioner may, upon giving not less than one years' notice to the finance broker affected, revoke any permission granted under this section.
- (3) When permission is granted under this section the Commissioner 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 Commissioner may think fit.
- (4) So long as the permission remains in force, and subject to any conditions which may be imposed, section 50 shall, in relation to the finance broker concerned, be read as if such other date was substituted for 31 December.
- (5) When any date has been substituted for 31 December under this section, the date so substituted shall not be further changed except by permission of the Commissioner granted in accordance with this section.

[Section 51 amended by No. 53 of 2004 s. 41.]

52. Qualification and approval of auditors

- (1) Subject to subsection (2), no person is qualified to act as an auditor under this Division unless he is a registered company auditor within the meaning of the *Corporations Act 2001* of the Commonwealth.

- (2) In districts in respect of which the Commissioner is satisfied that no registered company auditor within the meaning of the *Corporations Act 2001* of the Commonwealth is available, such other persons with such other qualifications as are approved by the Commissioner may act as auditors under this Division.
- (3) No person shall audit the accounts of a finance broker if he is an employee or partner of that finance broker, or if he is an employee or partner of any other finance broker actually carrying on business as such, or he is himself carrying on business as such.
- (4) An auditor shall disclose to the Commissioner any close relationship by blood or marriage he has with a finance broker whose trust accounts he has been appointed to audit or any business dealings he has with or through such finance broker at any time during his appointment as auditor, and the Commissioner may, if the Commissioner thinks fit, disqualify that auditor from acting in that particular case.

[Section 52 amended by No. 10 of 1982 s. 28; No. 10 of 2001 s. 221; No. 53 of 2004 s. 42.]

53. Appointment of auditor

- (1) Subject to the provisions of this Division the auditor by whom the audit of, and reports on, a finance broker's trust accounts are to be made shall be appointed and employed for that purpose by that finance broker.
- (2) A finance broker shall appoint his auditor at the time of applying for his licence.
- (3) Subject to this Act, an auditor's appointment under this section is continuous unless the Commissioner approves a subsequent change in the appointment.

[Section 53 amended by No. 53 of 2004 s. 43.]

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

In the event of a finance broker carrying on business at more than one place the Commissioner may from time to time give such directions as the Commissioner 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 Commissioner with respect to the examination of the trust accounts kept at any branch office of the business.

[Section 54 amended by No. 53 of 2004 s. 44.]

55. Alteration of rights under this Division

The Commissioner may, if in the Commissioner's opinion just cause exists for doing so —

- (a) cancel or suspend the right of any person to act as auditor under this Division;
- (b) vary or revoke any other approval, direction, permission, or authority granted or given by the Commissioner under this Division.

[Section 55 amended by No. 53 of 2004 s. 45.]

[56. Deleted by No. 55 of 2004 s. 353.]

57. Duties of finance brokers with respect to audit

- (1) For the purposes of an audit or report under this Division every finance broker 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 finance broker for or on behalf of any other person and shall furnish the auditor with all such information and particulars as he reasonably requires.

- (2) 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.

58. Duty of banker with respect to audit

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

59. Contents of auditor's report

Every auditor of a finance broker's trust accounts shall include in his report furnished pursuant to section 50 a statement as to the following matters —

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

[Section 59 amended by No. 53 of 2004 s. 46.]

60. Statement of moneys, etc., held by finance broker for or on behalf of other persons

- (1) Every finance broker 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 —
 - (a) moneys held, on the last day of the period to which the audit relates, by the finance broker for or on behalf of any other person; and
 - (b) negotiable or bearer securities or deposit receipts in the name of the finance broker which represent moneys drawn from the finance broker's trust accounts and which are held by the finance broker on that day.
- (2) 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 finance broker.
- (3) The statement so delivered shall be retained by the finance broker and be produced on demand to the auditor making the next succeeding audit of the finance broker's trust accounts together with a copy of the report of the last preceding audit of those accounts verified by statutory declaration of the then auditor.
- (4) Where a finance broker's accounts are being audited for the first time or, where for any other reason, no statement containing the particulars set out in subsection (1) and relating to the previous period of audit is available for the purpose of audit, the finance broker 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.
- (5) Every statement made under this section shall be verified by the statutory declaration of the finance broker, or, in the case of a firm, by the statutory declaration of one of the partners, or, in the case of a body corporate, by the person in *bona fide* control of the finance broker's business.

61. Auditor's report where finance broker has not complied with Act, etc.

If an auditor in the course of auditing a finance broker's trust accounts discovers that one or more of 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 finance broker, or discovers loss or deficiency of trust moneys (whether generally or in an individual trust ledger account), or failure to pay or account for any such moneys, or to comply with the provisions of this Division, he shall fully set out the facts so discovered by him in the report to be delivered to the Commissioner.

[Section 61 amended by No. 53 of 2004 s. 47.]

62. Non-disclosure by auditors

- (1) Except where this Division 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 Division.
- (2) An auditor is not guilty of a breach of subsection (1) by disclosing information —
 - (a) by means of, or in a report made pursuant to this Division; or
 - (b) 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 finance broker to whom the information relates.

63. Right of persons beneficially interested to obtain information

- (1) 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 finance broker, the Commissioner 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 Commissioner under this Division as affects or may affect such person.

- (2) A report of an auditor under this Division or a statutory declaration, statement, or other document delivered to the Commissioner under this Division shall be available in the hands of the Commissioner for inspection by any other auditor appointed to audit the accounts of the same finance broker for the next succeeding year.

[Section 63 amended by No. 53 of 2004 s. 48.]

64. Penalty for breach

- (1) A person who contravenes or does not observe any of the foregoing provisions of this Division commits an offence.
Penalty: \$10 000.
- (2) If an offence against those provisions is committed by a body corporate, the body corporate itself and every director, manager, secretary or other officer of the body corporate who commits, authorises or permits the act or omission constituting the offence, commits the offence.

[Section 64 amended by No. 53 of 2004 s. 49.]

65. Remuneration of auditor

Subject to the other provisions of this Division, the reasonable fees and expenses of an auditor for an audit under this Division shall be payable by the finance broker.

66. Finance brokers having no accounts to audit

A finance broker 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 Division if within the period of 3 months after the end of that

year he makes a statutory declaration to that effect and delivers it to the Commissioner.

[Section 66 amended by No. 53 of 2004 s. 50.]

67. Accounts of firm or body corporate or finance broker with branch office

- (1) Where trust accounts are kept by a firm of finance brokers an audit of those accounts under this Division 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 finance broker who is a member of such firm.
- (2) Where trust accounts are kept by a body corporate an audit of those accounts under this Division and the certificates and report of the auditor thereof operate as regards those trust accounts as an audit certificate and report in relation to a finance broker who is a director of that body corporate and in relation to the finance broker who is in *bona fide* control of the finance broker's business of the body corporate.
- (3) Where trust accounts are kept by a finance broker who or which has a branch office an audit of those accounts under this Division and the certificates and report of the auditor thereof operate as regards those trust accounts as an audit certificate and report in relation to a finance broker who is the manager of the branch office.

68. Power of Commissioner to order audit of trust account

Without prejudice to the operation of the foregoing provisions of this Division, where the Commissioner is of the opinion that it is in the public interest to do so, the Commissioner may, at any time, cause the trust accounts of a finance broker to be audited by an auditor nominated in writing by the Commissioner for that purpose.

[Section 68 amended by No. 53 of 2004 s. 51.]

69. Finance broker to produce books, etc. to auditor

Every finance broker shall, at all reasonable times at each place of business at which he carries on business as a finance broker, keep open for inspection —

- (a) by the auditor nominated by the Commissioner; 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.

[Section 69 amended by No. 53 of 2004 s. 52.]

70. Cost of audit

The cost of an audit carried out pursuant to section 68 shall be as agreed between the Commissioner and the auditor and paid as the Commissioner in writing directs, either by the chief executive officer or by the finance broker whose trust accounts have been the subject of the audit.

[Section 70 amended by No. 53 of 2004 s. 53.]

71. Application of s. 62

The provisions of section 62 apply to an auditor nominated by the Commissioner under section 68 or any person authorised by him under section 69 with such modifications as circumstances require.

[Section 71 amended by No. 53 of 2004 s. 54.]

72. Power of restraining dealing with trust accounts or other accounts

- (1) Where the Commissioner, on an application made by it to the State Administrative Tribunal, shows by evidence on affidavit to the satisfaction of the State Administrative Tribunal that —
- (a) there are reasonable grounds for believing that there is a deficiency in the trust account of any finance broker; or
 - (b) there has been undue or unreasonable refusal, neglect or delay on the part of any finance broker in paying moneys,
 - (i) which are, or may be, or have been payable out of the trust account of the finance broker; or
 - (ii) which were required to be paid into the trust account by the finance broker under the provisions of this Division,
- to a person who is entitled thereto or is authorised to receive the moneys,

the State Administrative Tribunal may, if it 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 finance broker 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 finance broker.

- (2) An order made under the provisions of this section may contain such terms and conditions as the State Administrative Tribunal 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 State Administrative Tribunal determines.
- (3) The order shall be made in the first instance *ex parte*, without any notice to the finance broker and is an order to show cause only.

- (4) Unless the finance broker referred to in the order shows to the State Administrative Tribunal within the time specified in the order sufficient cause to the contrary, the order, after proof of service as required by section 79, shall be made absolute.
- (5) In this section and in such provisions of other following sections of this Division as relate to this section or an order made under it —
- (a) **trust account** includes a bank account, whether a general or a separate account, into which account, moneys received or held by a finance broker for or on behalf of any other person are or were required to be paid under this Division; and
- (b) **finance broker** includes a person who has carried on business as a finance broker at any time within a period of 12 months prior to the date of the making of the application under subsection (1).

[Section 72 amended by No. 53 of 2004 s. 55; No. 55 of 2004 s. 358.]

73. Appointment of supervisor

- (1) Where the State Administrative Tribunal, on the application of the Commissioner, notice whereof shall be given to the finance broker, is satisfied that there are reasonable grounds for believing that a finance broker is, for any reason incapable of properly conducting his business, or is not conducting it in accordance with this Act, the State Administrative Tribunal may —
- (a) suspend the finance broker from carrying on his business for such period as may be specified in the order;
- (b) restrain the finance broker and his bankers and their respective servants and agents from dealing in all or any of the bank accounts of the finance broker, subject to such terms and conditions as the State Administrative Tribunal thinks fit;

- (c) authorise the Commissioner to appoint a supervisor of the business of the finance broker;
 - (d) authorise the Commissioner to suspend the finance broker from carrying on his business until further notice; and
 - (e) make such other and further orders as the State Administrative Tribunal thinks fit.
- (2) Where the State Administrative Tribunal is satisfied, on the application of the Commissioner, that a sole finance broker has died, the State Administrative Tribunal may —
- (a) restrain the personal representative, and the former servants, agents, and bankers, of the deceased finance broker, and the servants and agents of those former bankers from dealing in all or any of the bank accounts of the deceased finance broker, subject to such terms and conditions as the State Administrative Tribunal thinks fit; and
 - (b) authorise the Commissioner to appoint a supervisor of the business of the finance broker.
- (3) Where the State Administrative Tribunal authorises the Commissioner to appoint a supervisor pursuant to the power conferred by subsection (1) or (2) the State Administrative Tribunal —
- (a) may order that the supervisor be empowered to withdraw moneys from any bank account of the finance broker or deceased finance broker;
 - (aa) may give such orders and directions that the State Administrative Tribunal considers necessary or appropriate to allow the supervisor to preserve the property or rights of any person on whose behalf a finance broker or deceased finance broker has received moneys; and
 - (b) may order that the chief executive officer —

- (i) take possession of the moneys constituting the trust account of the finance broker or deceased finance broker or, where the case requires, the balance of such moneys;
 - (ii) deposit such moneys, or such balance, to the credit of a separate agency special purpose account established under section 16 of the *Financial Management Act 2006*, in the name of the chief executive officer; and
 - (iii) deal with those moneys according to law.
- (4) If an order is made under subsection (3)(b) —
 - (a) the chief executive officer may, on the certificate of the supervisor, pay to him or as he directs in the certificate, out of the moneys credited to the separate account under the order, such amount or amounts as are specified in the certificate, without enquiring as to, or being liable in respect of, the correctness of the certificate or the application of any money paid on the certificate; and
 - (b) the State Administrative Tribunal may, on the application of the Commissioner, or any person interested give such directions as the State Administrative Tribunal thinks fit for the payment by the chief executive officer of any part of the moneys credited to the separate account under the order.

[Section 73 amended by No. 49 of 1996 s. 64; No. 53 of 2004 s. 56; No. 55 of 2004 s. 358; No. 77 of 2006 s. 17.]

74. Effect of orders under s. 73

- (1) Where an order made under section 73 authorises the Commissioner to appoint a supervisor, the Commissioner during the currency of the order —
 - (a) may, on such terms and conditions as to remuneration and indemnity as the Commissioner thinks fit appoint a person, licensed or unlicensed, as supervisor of the

business of the finance broker or deceased finance broker referred to in the order;

- (b) may authorise the supervisor to obtain an advance from the Treasurer, which the Treasurer is hereby authorised to make on such terms and conditions as the Treasurer thinks fit, for the purpose of carrying on the business of the finance broker or deceased finance broker; and
 - (c) may determine what, if any, proportion of remuneration or other proper charges recovered on account of the finance broker or deceased finance broker, shall be paid to the finance broker or the personal representative of the deceased finance broker and what proportion shall be paid to the chief executive officer towards the expenses and remuneration of the supervisor and for re-imburement of advances made under paragraph (b).
- (2) An appointment of a supervisor shall be in writing and be signed by the Commissioner.

[Section 74 amended by No. 53 of 2004 s. 57.]

75. Duties of supervisor

- (1) The supervisor shall carry on the business for the purpose of concluding or disposing of matters commenced but not concluded on behalf of clients of the business and, where necessary, for the purpose of disposing of, or dealing with, documents relevant to those matters, and, in the case of the business of a deceased finance broker, shall carry on the business until it can otherwise be dealt with according to law.
- (2) The supervisor may, on production of his instrument of appointment —
 - (a) require —
 - (i) the finance broker to whom the appointment relates, or any of his clerks, servants, or agents, or in the case of a deceased finance broker, his personal representative or any of the former

clerks, servants, or agents of the deceased finance broker to produce to the supervisor any books, files, papers, or documents relating to the practice that, in the opinion of the supervisor, may be reasonably necessary for the purposes of carrying on the business; and

- (ii) the manager or principal officer of a bank in which the finance broker or deceased finance broker to whom the appointment relates has or had deposited money, notwithstanding any rule or law to the contrary, to disclose every account of that finance broker or deceased finance broker that, in the opinion of the supervisor, may be relevant to the carrying on of the business and to permit the making of a copy or extract of any such account;
 - (b) enter upon any premises of the finance broker to whom the appointment relates, or, in the case of a deceased finance broker, his former premises, and take possession of all books, files, papers, documents, and other things relating to the business, and that, in the opinion of the supervisor, may be relevant to or necessary for the carrying on of the business.
- (3) The supervisor may apply to the State Administrative Tribunal for further orders or directions under section 73(3)(aa) as may be relevant or necessary to preserve the property or rights of any person on whose behalf a finance broker or deceased finance broker has received moneys.

[Section 75 amended by No. 53 of 2004 s. 58.]

76. Offence

A person who, being required to do anything by a supervisor pursuant to the powers conferred on the supervisor by this Act, without lawful excuse of which the proof lies on him, refuses or fails to do the thing required or who hinders or obstructs the

supervisor in the exercise of his powers or hinders or obstructs the supervisor, or any person employed by him, in the performance of his duties commits an offence.

Penalty: \$4 000.

[Section 76 amended by No. 53 of 2004 s. 59.]

77. Power of finance broker to apply for discharge or variation of order

A finance broker, or the personal representative of a deceased finance broker, whose account is the subject of an order made under the provisions of section 72 or 73 may apply to the State Administrative Tribunal to discharge or vary the order and to award such costs upon the application as it thinks fit and the State Administrative Tribunal is hereby empowered to discharge or vary the order and to make such further order as it thinks fit.

[Section 77 amended by No. 55 of 2004 s. 358.]

78. Power of State Administrative Tribunal to make further orders and give directions

- (1) The State Administrative Tribunal may, on the application of the Commissioner, the Treasurer, or the finance broker, or the personal representative of a deceased finance broker, referred to in an order made under the provisions of section 72, 73, or 77 make further orders —
 - (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 State Administrative Tribunal thinks fit.
- (2) The Treasurer, on receiving moneys paid pursuant to an order made under subsection (1)(b) —
 - (a) shall cause the moneys to be credited to a separate Treasurer's special purpose account established under section 10 of the *Financial Management Act 2006*;

- (b) may prepare a scheme for distributing the moneys as compensation to each person who claims compensation at any time within 6 months after the Treasurer receives the money, and proves to the satisfaction of the Treasurer that the person has, in respect of any loan or interest thereon, sustained loss through any act or omission of the finance broker, or deceased finance broker or his personal representative, in respect of whose accounts the order was made;
 - (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) Where the Treasurer prepares a scheme for distribution he shall apply to the State Administrative Tribunal for approval of the scheme and for directions in respect thereof.
- (4) The State Administrative Tribunal may give such directions in respect of the separate account at the Treasury, the moneys standing to the credit of the account, 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 standing to the credit of the account, if any, as it thinks fit.

[Section 78 amended by No. 49 of 1996 s. 64; No. 53 of 2004 s. 60; No. 55 of 2004 s. 358; No. 77 of 2006 s. 17.]

79. Service of orders and penalty for non-compliance therewith

- (1) The Commissioner shall, as soon as practicable after any order is, on the application of the Commissioner, made under the provisions of section 72, 73, or 78 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;

- (b) on the finance broker or the personal representative of a deceased finance broker in whose name the account is kept; and
 - (c) where it is an order under section 78(1)(b), on the Treasurer.
- (2) A finance broker, or the personal representative of a deceased finance broker, shall, as soon as practicable after any order is, on his application, made under the provisions of section 77 or 78, 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;
 - (b) on the Commissioner; and
 - (c) where it is an order under section 78(1)(b), on the Treasurer.
- (3) The Treasurer shall, as soon as practicable after any order is, on his application, made under the provisions of section 78, 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;
 - (b) on the finance broker, or the personal representative of a deceased finance broker, in whose name the account is kept; and
 - (c) on the Commissioner.
- (4) Every person on whom an order is served shall comply with the order and shall permit others affected thereby to do so.
- (5) A person, in addition to any other penalty or liability he may incur in failing to comply with the order or failing to permit others affected thereby to do so, 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: \$4 000.

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

[Section 79 amended by No. 53 of 2004 s. 61.]

80. Duty of bank manager to disclose existence of banking accounts of finance broker

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 72 or 73, he shall —

- (a) disclose in writing to the Commissioner each and every account kept at the bank in the name of the finance broker, or in the name of the deceased finance broker or his personal representative, referred to in the order, including any account which he reasonably suspects is held or kept at the bank for the benefit of the finance broker or the estate of the deceased finance broker; and
- (b) permit the Commissioner or any person authorised in writing by the Commissioner 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.

[Section 80 amended by No. 53 of 2004 s. 62.]

Division 3 — Discipline

81. Finance brokers code

The Governor may make regulations prescribing a code of conduct for finance brokers.

[Section 81 amended by No. 53 of 2004 s. 63.]

82. Disciplinary proceedings against finance brokers

The Commissioner may allege to the State Administrative Tribunal that there is proper cause for disciplinary action, as mentioned in section 83(2), to be taken against —

- (a) a person who is a licensed finance broker; or
- (b) a person who was a licensed finance broker when the conduct the subject of an inquiry allegedly occurred but who is no longer a licensed finance broker.

[Section 82 inserted by No. 55 of 2004 s. 354; amended by No. 53 of 2004 s. 64.]

82A. Suspension pending possible disciplinary action

- (1) If the Commissioner has reasonable grounds for believing that —
 - (a) a licensee has engaged in conduct that constitutes grounds for suspension or cancellation of that licence under this Act;
 - (b) it is likely that the licensee will continue to engage in that conduct; and
 - (c) there is a risk that a person or persons may suffer significant loss or damage as a result of that conduct, if immediate action is not taken,

the Commissioner may, by notice served on the licensee, suspend the licence for a period of not more than 60 days.

- (2) A notice under subsection (1) is to set out a brief summary of the basis for the suspension and, for the purposes of administrative review, that summary is to be regarded as a written statement of the reasons for the decision.
- (3) Suspension under subsection (1) has effect whether or not the licensee has been afforded an opportunity to make representations, and from the time of service of the notice.

- (4) Within 21 days of serving a notice under subsection (1), the Commissioner must either revoke the suspension, or make an allegation in relation to the licensee under section 82.
- (5) Upon receiving an allegation under section 82, the State Administrative Tribunal may, in addition to any other order it may make, affirm or revoke a suspension under subsection (1), or vary the term of the suspension by extending the period to which it applies.
- (6) Where the Commissioner or the State Administrative Tribunal revokes a licence suspension under subsections (4) or (5), the Commissioner is to ensure that the licence is returned to the licensee.

[Section 82A inserted by No. 53 of 2004 s. 65.]

83. Powers on inquiry

- (1) If, in a proceeding commenced by an allegation under section 82 against a finance broker, the State Administrative Tribunal is satisfied that proper cause exists for disciplinary action, the State Administrative Tribunal may do any one or more of the following things —
 - (a) reprimand or caution the finance broker;
 - (b) impose a fine not exceeding \$10 000 on him; and
 - (c) suspend or cancel his licence and, in addition, disqualify him either temporarily or permanently, or until the fulfilment of any condition which may be imposed by the State Administrative Tribunal, or until the further order of the State Administrative Tribunal, from holding a licence.
- (2) There shall be proper cause for disciplinary action if —
 - (a) the finance broker improperly obtained a licence;
 - (b) the finance broker, or any person acting with the authority or upon the instructions of the finance broker, has, in the course of any dealings with a borrower or a

lender or a prospective borrower or lender, engaged in conduct that constitutes a breach of any law other than this Act and that prejudices or may prejudice any rights or interests of the borrower or lender or prospective borrower or lender;

- (c) the finance broker is acting or has acted in breach of —
 - (i) a condition of his licence;
 - (ii) the requirements of this Act; or
 - (iii) the finance brokers code of conduct;

or

- (d) any other cause exists that, in the opinion of the State Administrative Tribunal, renders the finance broker unfit to hold a licence.

- (3) In this section —

finance broker includes a person who was a licensed finance broker when the conduct giving rise to the allegation occurred but who is no longer a licensed finance broker.

[Section 83 amended by No. 56 of 1995 s. 23; No. 53 of 2004 s. 66; No. 55 of 2004 s. 355.]

Part V — Miscellaneous

84. Register

- (1) The Commissioner shall keep a register of licensees.
- (2) The Commissioner shall cause to be recorded in the register any prescribed particulars.
- (3) The Commissioner shall cause to be removed from the register the name of every licensee who dies, or ceases for any reason to be licensed.
- (4) The Commissioner shall, upon receipt of the prescribed fee from a person desiring to inspect the register, make it available for the inspection of that person.

[Section 84 inserted by No. 53 of 2004 s. 67.]

85. Lists and certificates

- (1) A list of the names and descriptions of all persons holding licences on a date specified therein, together with such of the particulars appearing in the register as the Commissioner thinks fit, shall be published annually in a manner approved by the Commissioner.
- (2) The Commissioner may cause supplementary lists to be published.
- (3) A certificate under the hand of the Commissioner that any person is or is not, or was or was not, licensed on the date of or a date referred to, in the certificate, or as to any other matter contained in a register, shall, in the absence of proof to the contrary, be taken as proof of the matter so certified.
- (4) The Commissioner shall, upon receipt of a request in writing by any person, and payment of the prescribed fee, issue a certificate as to any of the contents of the register.

[Section 85 amended by No. 56 of 1995 s. 23(2); No. 53 of 2004 s. 68.]

[86. Deleted by No. 53 of 2004 s. 69.]

87. Immunity of officers

No liability shall attach to a person for any act or omission by him in good faith and in the exercise or purported exercise of his powers or functions, or in the discharge or purported discharge of his duties under this Act.

[Section 87 amended by No. 53 of 2004 s. 70.]

88. Secrecy

- (1) This section applies to —
 - (a) any person who has been, a member or the deputy of a member, or the Registrar, or any other officer, whether permanent or temporary, of the former Board; and
 - (b) a person who has, or has had, a function under this Act.
- (2) A person to whom this section applies shall not either directly or indirectly, except in the performance of a duty under or in connection with this Act, make a record of, or divulge or communicate to any person, any information concerning the affairs of any other person acquired by him by reason of his office, position or employment under or for the purposes of this Act.
Penalty: \$5 000.
- (3) Nothing in subsection (2) prohibits the recording, divulging or communicating of any information referred to in that subsection —
 - (a) for the purpose of performing a function under or in connection with this Act;
 - (b) for the purpose of giving information concerning the affairs of a licensee or a former licensee to a body established under a written law in relation to the performance by that body of a function under or in connection with that written law;

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- (c) for the purposes of legal proceedings arising out of the administration of this Act or another written law;
 - (d) for the purpose of investigation of any suspected offence or the conduct of proceedings against any person for any offence; or
 - (e) by the Commissioner for the purpose of making the public aware of —
 - (i) investigations or inquiries being conducted into the conduct of a licensee, a former licensee or a purported licensee, and the results of those inquiries; and
 - (ii) disciplinary action being contemplated or undertaken in relation to a licensee, a former licensee or a purported licensee, and the outcome of that action.
- (4) In subsection (1) —

former Board means the Finance Brokers Supervisory Board constituted under section 6 of this Act immediately before the commencement of the *Finance Brokers Control Amendment Act 2004*¹.

[Section 88 inserted by No. 53 of 2004 s. 71.]

89. Liability of directors of body corporate

Where a finance broker is a body corporate all its directors are jointly and severally liable to the clients of the body corporate for its acts and defaults in respect of the proper application of trust funds received by the body corporate from or on behalf of its clients.

90. Other rights or remedies

Except as is expressly provided in this Act, nothing in this Act shall have the effect of limiting, restricting, or otherwise affecting any right or remedy a person would have had if this Act had not been enacted.

91. No waiver of rights

A person is not competent to waive any rights conferred on him by this Act.

92. General penalty

- (1) A person who contravenes or fails to comply with any provision of this Act commits an offence against this Act.
- (2) A person who commits an offence against this Act for which no other penalty is expressly provided in this Act is liable to a penalty of \$2 000.

[Section 92 amended by No. 53 of 2004 s. 72.]

92A. Infringement notices

- (1) In subsection (2), (3), (6), or (7) —
authorised person means a person appointed under subsection (13) by the chief executive officer to be an authorised person for the purposes of the subsection in which the term is used.
- (2) An authorised person who has reason to believe that a person has committed a prescribed offence under this Act may, within 21 days after the alleged offence is believed to have been committed, give an infringement notice to the alleged offender.
- (3) An infringement notice is to be in the prescribed form and is to —
 - (a) contain a description of the alleged offence;
 - (b) advise that if the alleged offender does not wish to be prosecuted for the alleged offence in a court, the amount of money specified in the notice as being the modified penalty for the offence may be paid to an authorised person within a period of 28 days after the giving of the notice; and

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- (c) inform the alleged offender as to who are authorised persons for the purposes of receiving payment of modified penalties.
- (4) In an infringement notice the amount specified as being the modified penalty for the offence referred to in the notice is to be the amount that was the prescribed modified penalty at the time the alleged offence is believed to have been committed.
- (5) The modified penalty that may be prescribed for an offence is not to exceed 20% of the maximum penalty that could be imposed for that offence by a court.
- (6) An authorised person may, in a particular case, extend the period of 28 days within which the modified penalty may be paid and the extension may be allowed whether or not the period of 28 days has elapsed.
- (7) An authorised person may, whether or not the modified penalty has been paid, withdraw an infringement notice by sending to the alleged offender a notice in the prescribed form stating that the infringement notice has been withdrawn.
- (8) Where an infringement notice is withdrawn after the modified penalty has been paid, the amount is to be refunded.
- (9) Subsection (10) applies if the modified penalty specified in an infringement notice has been paid within 28 days or such further time as is allowed and the notice has not been withdrawn.
- (10) If this subsection applies it prevents the bringing of proceedings and the imposition of penalties to the same extent that they would be prevented if the alleged offender had been convicted by a court of, and punished for, the alleged offence.
- (11) Payment of a modified penalty is not to be regarded as an admission for the purposes of any proceedings, whether civil or criminal.

- (12) Unless subsection (8) requires it to be refunded, an amount paid as a modified penalty is to be dealt with as if it were a penalty imposed by a court as a penalty for an offence.
- (13) The chief executive officer may, in writing, appoint persons or classes of persons to be authorised persons for the purposes of subsection (2), (3), (6), or (7) or for the purposes of 2 or more of those subsections, but a person who is authorised to give infringement notices under subsection (2) is not eligible to be an authorised person for the purposes of any of the other subsections.
- (14) The chief executive officer is to issue to each person who is authorised to give infringement notices under this section a certificate of that person's authorisation, and the authorised person is to produce the certificate whenever required to do so by a person to whom an infringement notice has been or is about to be given.

[Section 92A inserted by No. 53 of 2004 s. 73; amended by No. 84 of 2004 s. 80.]

92B. Public warnings

- (1) The Commissioner may publish in any manner statements and other information identifying, and giving warnings about, any or all of the following —
- (a) services performed in an unsatisfactory manner and licensees who performed those services in that unsatisfactory manner;
 - (b) unfair business practices adopted or performed and licensees who engage in those practices;
 - (c) matters that may adversely affect the interests of persons in connection with the acquisition by them of services from licensees or goods using the services of licensees.
- (2) The Commissioner cannot publish a statement or warning under this section unless the Commissioner is of the opinion that it is in the public interest to do so.

s. 93

- (3) No liability is incurred by a person for publishing —
- (a) a notice under this section; or
 - (b) a fair report or summary of a notice.

[Section 92B inserted by No. 53 of 2004 s. 73.]

93. Proceedings

- (1) Proceedings for an offence against this Act may be taken by the Commissioner.
- (2) Notwithstanding the provisions of any other Act, proceedings for an offence against this Act may be brought within the period of 3 years after the commission of the alleged offence or, with the consent of the Minister, at any later time.
- (3) An allegation in a charge of an offence under this Act that a person named therein was or was not licensed at the time specified therein shall, in the absence of proof to the contrary, be taken as proved.

[Section 93 amended by No. 56 of 1995 s. 23(2); No. 53 of 2004 s. 74; No. 59 of 2004 s. 141; No. 84 of 2004 s. 78.]

94. Forms

In addition to the forms for purposes expressly mentioned elsewhere in this Act, the Commissioner may determine the forms to be used for other purposes under this Act and the information to be contained therein and may require that such information be verified by statutory declaration.

[Section 94 amended by No. 53 of 2004 s. 75.]

95. Regulations

- (1) The Governor may make such regulations as are contemplated by this Act or as he considers necessary or expedient for the purposes of this Act.

- (2) Without limiting the generality of subsection (1), those regulations may —
- (a) prescribe the form that a licence is to take, and the details to be included on that licence;
 - (b) prescribe particular classes of licence that may be granted or renewed under this Act;
 - (ba) prescribe particular qualifications or requirements that may be imposed as criteria for the grant or renewal of a particular class of licence;
 - (c) provide for the advertising of notices of applications for licences;
 - (d) prescribe, and provide for the recovery of, any fee for the purposes of this Act, but not in connection with the commencement of a proceeding before the State Administrative Tribunal;
 - (e) prescribe the particulars to be recorded in the registers required to be kept under this Act;
 - (f) prescribe —
 - (i) offences for which an infringement notice may be given under section 92A; and
 - (ii) for each prescribed offence —
 - (I) a modified penalty; or
 - (II) a different modified penalty according to the circumstances of the offence,but not in any case exceeding the amount allowed by section 92A(5);
 - (g) prescribe penalties not exceeding \$1 000 for any breach of the regulations.
- (3) Section 45(1) and (2) of the *Interpretation Act 1984* apply in respect of fees prescribed under this Act despite sections 3(3) and 45(3) of that Act.

s. 95

[Section 95 amended by No. 65 of 1987 s. 37; No. 56 of 1995 s. 22; No. 53 of 2004 s. 76; No. 55 of 2004 s. 357.]

[Part VI (s. 96-98) deleted by No. 53 of 2004 s. 77.]

Schedule

[Section 45]

Formula for calculating percentage rate of interest

- (1) The rate at which the interest accrues upon the principal is that nominal annual percentage rate (correct to within 0.5%) which, when applied to the unpaid balances of the principal calculated according to the actuarial method, will yield a sum equal to the total amount of the interest.
- (2)(a) In lieu of applying the actuarial method above, where repayment of the principal and interest is to be made by equal regular periodic payments, the first of which is to fall due at the end of the first period then the nominal annual percentage rate referred to in paragraph (1) may be calculated in accordance with the following formulae: —

- (i) to calculate the flat rate of interest per cent:

$$F = \frac{100 \ c \ x \ i}{n \ x \ P}$$

- (ii) to convert the flat rate of interest per cent into the nominal annual percentage rate:

$$R = \frac{2 \ nF \ (300 \ c + nF)}{2 \ n^2 F + 300 \ c \ (n + 1)}$$

where (in each case)

- “F” = the flat rate of interest per cent
“c” = the number of payments per annum
“i” = the total amount of the interest
“n” = the number of payments
“P” = the amount financed
“R” = the nominal annual percentage rate.

- (b) For the purpose of applying the above formulae, all payments shall be deemed to be equal if the variance between any one payment only and all other payments does not exceed 5%.

- (3) The disclosure of a percentage rate which is greater than the percentage rate required to be disclosed by either of the above methods shall be a sufficient disclosure.

Notes

- ¹ This is a compilation of the *Finance Brokers Control Act 1975* and includes the amendments made by the other written laws referred to in the following table ^{1a}. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Finance Brokers Control Act 1975</i>	88 of 1975	20 Nov 1975	1 Nov 1976 (see s. 2 and <i>Gazette</i> 29 Oct 1976 p. 4103)
<i>Companies (Consequential Amendments) Act 1982</i> s. 28	10 of 1982	14 May 1982	1 Jul 1982 (see s. 2(1) and <i>Gazette</i> 25 Jun 1982 p. 2079)
Reprint of the <i>Finance Brokers Control Act 1975</i> as at 2 Apr 1986 (includes amendments listed above)			
<i>Acts Amendment (Legal Practitioners, Costs and Taxation) Act 1987</i> Pt. X	65 of 1987	1 Dec 1987	12 Feb 1988 (see s. 2(2) and <i>Gazette</i> 12 Feb 1988 p. 397)
<i>Acts Amendment (Public Sector Management) Act 1994</i> s. 3(1)	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)
<i>Business Licensing Amendment Act 1995</i> Pt. 5 ³	56 of 1995	20 Dec 1995	1 May 1996 (see s. 2(2) and <i>Gazette</i> 30 Apr 1996 p. 1853)
<i>Financial Legislation Amendment Act 1996</i> s. 64	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))
<i>Statutes (Repeals and Minor Amendments) Act (No. 2) 1998</i> s. 76	10 of 1998	30 Apr 1998	30 Apr 1998 (see s. 2(1))
<i>Acts Amendment and Repeal (Financial Sector Reform) Act 1999</i> s. 79	26 of 1999	29 Jun 1999	1 Jul 1999 (see s. 2(1) and <i>Gazette</i> 30 Jun 1999 p. 2905)
Reprint of the <i>Finance Brokers Control Act 1975</i> as at 3 Mar 2000 (includes amendments listed above) (correction in <i>Gazette</i> 11 Mar 2003 p. 751)			
<i>Corporations (Consequential Amendments) Act 2001</i> s. 221	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and <i>Gazette</i> 29 Jun 2001 p. 3257 and <i>Cwlth Gazette</i> 13 Jul 2001 No. S285)

Finance Brokers Control Act 1975

Short title	Number and year	Assent	Commencement
<i>Building Societies Amendment Act 2001</i> s. 51	12 of 2001	13 Jul 2001	13 Jul 2001 (see s. 2)
<i>Corporations (Consequential Amendments) Act (No. 3) 2003</i> Pt. 5 ⁴	21 of 2003	23 Apr 2003	11 Mar 2002 (see s. 2 and <i>Cwlth Gazette</i> 24 Oct 2001 No. GN42)
<i>Acts Amendment and Repeal (Courts and Legal Practice) Act 2003</i> s. 35	65 of 2003	4 Dec 2003	1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5722)
<i>Finance Brokers Control Amendment Act 2004</i> ^{5,6}	53 of 2004	18 Nov 2004	31 Oct 2005 (see s. 2 and <i>Gazette</i> 28 Oct 2005 p. 4839)
<i>Courts Legislation Amendment and Repeal Act 2004</i> s. 141	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004</i> Pt. 2 Div. 46 ⁷	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> s. 78, 80 and 82	84 of 2004	16 Dec 2004	s. 78: 2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53)); s. 80 and 82: 31 Oct 2005 (see s. 2 and <i>Gazette</i> 28 Oct 2005 p. 4839)
Reprint 3: The Finance Brokers Control Act 1975 as at 5 Aug 2005 (includes amendments listed above except those in the <i>Finance Brokers Control Amendment Act 2004</i> and the <i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> s. 80 and 82)			
<i>Oaths, Affidavits and Statutory Declarations (Consequential Provisions) Act 2005</i> s. 63 ⁸	24 of 2005	2 Dec 2005	1 Jan 2006 (see s. 2 and <i>Gazette</i> 23 Dec 2005 p. 6244)
Reprint 4: The Finance Brokers Control Act 1975 as at 13 Oct 2006 (includes amendments listed above)			
<i>Financial Legislation Amendment and Repeal Act 2006</i> s. 17	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2 and <i>Gazette</i> 19 Jan 2007 p. 137)

Short title	Number and year	Assent	Commencement
<i>Legal Profession Act 2008</i> s. 664	21 of 2008	27 May 2008	1 Mar 2009 (see s. 2(b) and <i>Gazette</i> 27 Feb 2009 p. 511)
<i>Statutes (Repeals and Minor Amendments) Act 2009</i> s. 17	46 of 2009	3 Dec 2009	4 Dec 2009 (see s. 2(b))

^{1a} On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in compiling the reprint. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Housing Societies Repeal Act 2005</i> s. 27 ⁹	17 of 2005	5 Oct 2005	To be proclaimed (see s. 2(3) and (4))

² The appointed day is 1 August 1977; see *Gazette* 17 June 1977 p. 1834.

³ The *Business Licensing Amendment Act 1995* s. 24 is a transitional provision that is of no further effect.

⁴ The *Corporations (Consequential Amendments) Act (No. 3) 2003* s. 2-4 read as follows:

“

2. Commencement

- (1) If this Act receives the Royal Assent before the day on which Schedule 1 to the Financial Services Reform Act comes into operation, this Act comes into operation at the same time as that Schedule comes into operation.
- (2) If this Act receives the Royal Assent on or after the day on which Schedule 1 to the Financial Services Reform Act comes into operation, this Act is deemed to have come into operation at the same time as that Schedule comes into operation.

3. Interpretation

In this Part —

Financial Services Reform Act means the *Financial Services Reform Act 2001* of the Commonwealth;

FSR commencement time means the time when Schedule 1 to the Financial Services Reform Act comes into operation;
statutory rule means a regulation, rule or by-law.

4. Validation

- (1) This section applies if this Act comes into operation under section 2(2).
- (2) Anything done or omitted to have been done after the FSR commencement time and before this Act receives the Royal Assent that could have been done if this Act had received the Royal Assent before the FSR commencement time is taken to be as valid and lawful, and to always have been as valid and lawful, as it would have been if this Act had received the Royal Assent before the FSR commencement time.
- (3) Anything done or omitted to have been done by a person after the FSR commencement time and before this Act received the Royal Assent that would have been valid and lawful if the Financial Services Reform Act had not commenced, is taken to be valid and lawful.
- (4) Anything done or omitted to have been done after the FSR commencement time and before this Act receives the Royal Assent —
 - (a) that could only have been validly and lawfully done or omitted because this Act received the Royal Assent after the FSR commencement time; and
 - (b) that could not have been validly and lawfully done or omitted if this Act had received the Royal Assent before the FSR commencement time,

is taken not to be valid, and to never have been valid.

”.

⁵ The *Finance Brokers Control Amendment Act 2004* Sch. 1 reads as follows:

“

Schedule 1 — Transitional and savings

[s. 78]

1. Meanings of terms used in this Schedule

In this Schedule, unless the contrary intention appears —
Board means the Finance Brokers Supervisory Board as constituted under the Finance Brokers Act;

commencement day means the day fixed under section 2 as the day on which this Act comes into operation;

Finance Brokers Act means the *Finance Brokers Control Act 1975* as in force immediately before the commencement day.

2. Interpretation Act to apply

This Schedule does not limit the operation of the *Interpretation Act 1984*.

3. Board dissolved

- (1) Subject to clause 6, the Board is dissolved.
- (2) Subject to clause 6, the members of the Board cease to hold office.

4. Winding up of affairs of the Board

- (1) On and after the commencement day —
 - (a) the Commissioner is to take control of all registers, documents, books and other records (however compiled, recorded or stored) relating to the Board and the exercise of its functions, and of any tape, disc or other device or medium relating to such records;
 - (b) all rights, liabilities and obligations of the Board that existed immediately before the commencement day devolve on the Commissioner acting on behalf of, and in the name of, the State;
 - (c) all contracts, agreements and undertakings made by and with the Board and having effect immediately before the commencement day have effect as contracts, agreements and undertakings made with the Commissioner acting on behalf of, and in the name of, the State and may be enforced by or against the State accordingly;
 - (d) any legal or other proceedings or any remedies that might, but for the operation of the *Finance Brokers Control Amendment Act 2004*, have been commenced or continued by or against or have been available to the Board may be commenced or continued by or against or are available to the Commissioner acting on behalf of, and in the name of, the State, as the case requires; and
 - (e) any fees, charges or other moneys payable to the Board under the Finance Brokers Act and outstanding at the commencement day become payable to the chief executive officer at the time, and in the manner, in which those moneys would have been payable to the Board under that Act.

- (2) A reference to the Board in a document in existence immediately before the commencement day is to be construed, on and after the commencement day, as a reference to the Commissioner, unless in the context it would be inappropriate to do so.

5. Registrar's certificate

A certificate issued before the commencement day under the hand of the Registrar that any person is or is not, or was or was not, licensed or the holder of a business certificate on the date of or a date referred to, in the certificate, or as to any other matter contained in a register, shall, in the absence of proof to the contrary, be taken as proof of the matter so certified.

6. Final report

- (1) As soon as practicable after the commencement day, the Chairman of the Board immediately before the commencement day shall prepare a report on the Board's activities under the Finance Brokers Act for the period beginning on the day after the period for which the last report was submitted under section 86 of the Finance Brokers Act and ending on the commencement day and submitting that report to the Minister.
- (2) Section 86(2) of the Finance Brokers Act applies to a report prepared and submitted under subclause (1) as if the section had not been repealed.

7. Bond in respect of business certificate

On and after the commencement day, a bond or guarantee entered into under section 35 of the Finance Brokers Act continues to have effect as if the bond or guarantee was entered into in relation to the licensee's licence held (by virtue of clause 8) under the *Finance Brokers Control Act 1975* after the commencement day.

8. Persons licensed or to whom an exception applied under the Finance Brokers Act before the commencement day

- (1) A person who immediately before the commencement day was licensed under the Finance Brokers Act and held a business certificate under that Act is, on that day, to be taken to be licensed under the *Finance Brokers Control Act 1975* for the period that the business certificate would have been valid under the Finance Brokers Act, and for the licence to be subject to any conditions imposed on that business certificate.
- (2) A person who immediately before the commencement day was excepted from the meaning of "finance broker" under section 5(2) of the Finance Brokers Act is, on that day, to be taken to be

exempted in a similar manner for a period of up to 12 months beginning on the commencement day.

- (3) A person who is taken to be exempted under subclause (2) is no longer to be taken to be exempted if the person becomes licensed under the *Finance Brokers Control Act 1975*.
- (4) The Commissioner is to enter the name of a person to whom subclause (1) or (2) applies in the register kept under section 84 of the *Finance Brokers Control Act 1975*.

9. Persons licensed, but without a business certificate, under the Finance Brokers Act before the commencement day

- (1) A licence issued under the Finance Brokers Act within 3 years of the commencement day and that does not have a business certificate associated with it is, on that day, to be taken to be a licence of the appropriate category under the *Finance Brokers Control Act 1975* for a period equal to 3 years from the day of its issue.
- (2) A licence issued under the Finance Brokers Act that is valid immediately before the commencement day as a result of payment of a holding fee under section 30(4)(b) of the Finance Brokers Act is, on that day, to be taken to be a licence of the appropriate category under the *Finance Brokers Control Act 1975* for the period that the holding fee would have been effective under the Finance Brokers Act.
- (3) A licence under subclause (1) or (2) is subject to the condition that the licensee is not to carry on business in his or her own right.

10. Licence condition revoked on commencement day

If a licence issued under the Finance Brokers Act has a condition to the effect that a licence does not confer the right for a licensee to carry on business as a finance broker unless he or she also holds a business certificate in respect of that licence, that condition is revoked on the commencement day.

11. Applications for certificates and licenses

A person who has, before the commencement day, made an application for —

- (a) a licence under section 24 of the Finance Brokers Act; or
- (b) a business certificate or the renewal of a business certificate under section 31 of the Finance Brokers Act,

but in respect of which a decision has not been made by the Board before the commencement day, is to be taken to have made an

application for a licence under the *Finance Brokers Control Act 1975*.

12. Further transitional provision may be made

- (1) The regulations may make provision for any transitional matter for which there is no sufficient provision in this Schedule.
- (2) If in the opinion of the Minister an anomaly arises in the carrying out of any provision of this Schedule, the regulations may —
 - (a) modify that provision to remove the anomaly; and
 - (b) make such provision as is necessary or expedient to carry out the intention of that provision.
- (3) Regulations may be made for the purposes of this clause to have effect from the commencement of this Act.
- (4) To the extent that a provision of any such regulation has effect on a day that is earlier than the day of its publication in the *Gazette*, the provision does not operate so as —
 - (a) to affect, in a manner prejudicial to any person (other than the State), the rights of that person existing before the day of publication; or
 - (b) to impose liabilities on any person (other than the State) in respect of anything done or omitted to be done before the day of publication.

- (5) In subclause (1) —

transitional matter means a matter or thing necessary or convenient to provide for the change from the Finance Brokers Act, to the *Finance Brokers Control Act 1975* as in force after the commencement day.

”.

⁶ The amendment in the *Finance Brokers Amendment Act 2004* s. 74(2) is not included because the subsection it sought to amend had been replaced by the *Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004* s. 78 before it purported to come into operation.

⁷ The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.

⁸ The amendment in the *Oaths, Affidavits and Statutory Declarations (Consequential Provisions) Act 2005* s. 63 to amend s. 15(2)(c)(iv) is not included because the subsection it sought to amend had been replaced by the *Finance Brokers Control Amendment Act 2004* s. 10.

⁹ On the date as at which this compilation was prepared, the *Housing Societies Repeal Act 2005* s. 27 had not come into operation. It reads as follows:

“

27. Finance Brokers Control Act 1975 amended

- (1) The amendment in this section is to the *Finance Brokers Control Act 1975*.
- (2) Section 5(1)(c) is deleted.

”