

WESTERN AUSTRALIA

**REAL ESTATE AND BUSINESS
AGENTS AMENDMENT ACT 1998**

No. 34 of 1998

AN ACT to amend the *Real Estate and Business Agents Act 1978*.

[Assented to 6 July 1998.]

The Parliament of Western Australia enacts as follows:

Short title

1. This Act may be cited as the *Real Estate and Business Agents Amendment Act 1998*.

Commencement

2. The provisions of this Act come into operation on such day as is fixed by proclamation.

Principal Act

3. In this Act the *Real Estate and Business Agents Act 1978** is referred to as the principal Act.

[* Reprinted as at 6 September 1996.]

Section 12AA repealed and a section substituted

4. Section 12AA of the principal Act is repealed and the following section is substituted —

“

Consultants etc.

12AA. The Board may engage, under a contract for services or other arrangement —

- (a) any consultant and professional, technical or other assistance that it considers necessary to enable it to perform its functions; and
- (b) any person to act as a conciliator for the purposes of section 23C.

”.

Section 13 amended

5. Section 13 (b), (c) and (d) of the principal Act are deleted and the following paragraphs are substituted —

“

- (b) determining whether or not an agent is or has been acting in conformity with the special conditions, if any, of the agent’s licence and triennial certificate and with the agents code of conduct and is or has been complying with the requirements of this Act;

- (c) determining whether any other cause exists that might be considered by the Board to render an agent unfit to hold a licence;
- (d) determining whether or not a sales representative is or has been acting in conformity with the special conditions, if any, of the representative's registration and with the code of conduct for sales representatives and is or has been complying with the requirements of this Act;
- (e) determining whether any other cause exists that might be considered by the Board to render a sales representative unfit to hold a certificate of registration;
- (f) determining whether or not a developer is complying with the requirements of this Act; and
- (g) detecting offences against this Act.

”.

Section 19 amended

6. (1) Section 19 (1) of the principal Act is amended by deleting paragraphs (a) and (b) and substituting the following paragraphs —

“

- (a) in the case of an application for the grant of a licence, or the grant or renewal of a triennial certificate, there is no objection and the Board proposes to grant the licence or grant or renew the certificate without any special conditions being imposed or changed;
- (b) in the case of an application for the grant or renewal of a certificate of registration, the Board proposes to grant or renew the certificate without any special conditions being imposed or changed; or

”.

(2) Section 19 (9) of the principal Act is repealed and the following subsections are substituted —

“

(9) Subject to Parts III and IV, a licence may be granted and a triennial certificate or a certificate of registration may be granted or renewed, (as long as there is no objection in respect of a licence and special conditions are not imposed or changed) by —

(a) the Board, in a meeting at any time and place;
or

(b) the Registrar, at any time or place,

without notice to the applicant, and the performance of a function by the Registrar under this subsection is to be treated as performance by the Board.

(9a) Where the Board or Registrar performs a function under subsection (9), the Registrar shall forthwith deliver the licence, triennial certificate or certificate of registration or the renewed triennial certificate or certificate of registration, as the case may be, to the applicant.

(9b) Sections 27, 28, 29 and 47 apply to the Registrar in the performance of a function under subsection (9) as if a reference in any of those provisions to the Board being satisfied as to a matter were a reference to the Registrar being satisfied as to the matter.

”.

Section 21 amended

7. Section 21 (2) of the principal Act is repealed and the following subsection is substituted —

“

(2) Where the Board makes an order against a licensee or a sales representative, and payment is not made in

accordance with the order or the order is otherwise not complied with or is breached, the Board may suspend the licence, or registration, as the case requires, until the payment is made, or for such period or upon such event occurring as the Board thinks fit.

”.

Section 23 amended

8. After section 23 (3) of the principal Act the following subsection is inserted —

“

(4) If a body corporate was a party to proceedings before the Board then any of the body corporate’s directors who is aggrieved by a decision or order of the Board because of the application of section 139 (2), (3) or (4) is entitled to appeal under this section.

”.

Divisions 4 and 5 inserted in Part II

9. Part II of the principal Act is amended by inserting after Division 3 the following Divisions —

“

Division 4 — Advisory committees

Advisory committees to assist the Board

23A. (1) The Minister may, after a request from the Board, establish an advisory committee or committees (a “**committee**”) to provide advice to the Board for consideration in the performance of the Board’s functions and the exercise of the Board’s powers.

(2) A committee is to consist of not more than 7 persons or another number of persons that is prescribed for the purposes of this subsection who have such knowledge, experience or qualifications as the Minister considers appropriate to the matters on which the committee is to advise.

(3) One or more members of the Board may, but need not, be appointed to a committee.

(4) The Minister may make such arrangements as the Minister considers appropriate for the receipt of nominations for the purposes of an appointment under subsection (2).

(5) The Minister is to appoint one of the members of a committee to be the chairperson of the committee.

(6) The Minister may give directions in writing to a committee as to its procedure but otherwise a committee may determine its own procedure.

(7) The Board is to provide a committee with such support services as it may reasonably require.

(8) A member of a committee —

- (a) is to hold office for such term not exceeding 2 years as is specified in the instrument appointing the member;
- (b) is, on the expiration of the member's term of office, eligible for re-appointment; and
- (c) may hold office on more than one committee contemporaneously.

(9) A member of a committee, other than a member who is also a member of the Board, is to be paid from moneys standing to the credit of the General Purpose Fund

such remuneration and allowances as are determined in the case of the member by the Minister on the recommendation of the Minister for Public Sector Management.

(10) The Minister may terminate the appointment of a member of a committee for inability, inefficiency or misbehaviour.

(11) Section 8 (4) applies to a member of a committee as if a reference in section 8 (4) —

- (a) to a member of the Board included a member of a committee; and
- (b) to the Board included the committee.

Delegation of Minister's power to appoint

23B. (1) The Minister may, by instrument in writing, delegate to the Board or any other person, either generally or as otherwise provided in the instrument, any of the Minister's powers under section 23A but the Minister cannot delegate this power of delegation.

(2) Anything done by a delegate under a delegation under this section has the same force and effect as if it had been done by the Minister.

Division 5 — Conciliation

Conciliation of disputes about transactions

23C. (1) An officer of the Board (other than the Registrar, the Deputy Registrar, an Assistant Registrar or an inspector) or a person engaged under section 12AA (b) may act as a conciliator for the purposes of this section.

(2) A conciliator's function is to assist the parties to a transaction to resolve a dispute about the transaction by —

- (a) arranging for the parties to hold informal discussions about the dispute;
- (b) helping in the conduct of those discussions; and
- (c) if possible, assisting the parties to reach agreement.

(3) A conciliation process is not to start or continue once proceedings before the Board in relation to the transaction have been instituted.

(4) No party to a transaction may be represented by another person during the conciliation process unless the conciliator, on the ground that the process will not work effectively without that representation, otherwise determines.

(5) Evidence of anything said or admitted during the conciliation process —

- (a) is not admissible in proceedings before the Board or a court or tribunal, whether under this Act or any other law; and
- (b) cannot be used as ground for an investigation or inquiry under this Act.

(6) Nothing in this section —

- (a) prevents the parties to a transaction from resolving a dispute in relation to the transaction at any time, whether through the conciliation process or not; or
- (b) requires a conciliator to participate in a conciliation process or the Board to provide its officers or other persons for that purpose.

(7) In this section —

“**party**”, in relation to a transaction, includes a person financially affected by the transaction even though the transaction was not entered into by that person.

”.

Section 31 amended

10. After section 31 (2) of the principal Act the following subsections are inserted —

“ (3) The Board may refuse to renew a licensee’s triennial certificate if —

- (a) the Board is satisfied that section 27 (1) (b), (c) or (d), section 28 (a), (b), (c) or (d) or section 29 (a), (b), (c) or (d), as is relevant to the licensee, does not apply, or no longer applies, in relation to the licensee; or
- (b) the licensee has not met prescribed educational requirements.

(4) Where the Board refuses to renew a triennial certificate the effect of the refusal shall not be deferred by reason of any proposed or pending appeal to the District Court under this Act unless the District Court otherwise orders, which it may do subject to such conditions as it may impose to protect the public.

”.

Section 34 amended

11. Section 34 (3a) and (4) of the principal Act are repealed.

Section 48 amended

12. After section 48 (4) of the principal Act the following subsections are inserted —

“ (5) The Board may refuse to renew a sales representative’s certificate of registration if —

- (a) the Board is satisfied that section 47 (1) (b) or (c) does not apply, or no longer applies, in relation to the sales representative; or
- (b) the sales representative has not met prescribed educational requirements.

(6) Where the Board refuses to renew a certificate of registration the effect of the refusal shall not be deferred by reason of any proposed or pending appeal to the District Court under this Act unless the District Court otherwise orders, which it may do subject to such conditions as it may impose to protect the public.

”.

Section 50 amended

13. (1) Section 50 (1) of the principal Act is amended by inserting after “Act” the following —

“ and the code of conduct for sales representatives ”.

(2) Section 50 (3a) and (4) of the principal Act are repealed.

Section 60 amended

14. Section 60 (2) (a) of the principal Act is amended after subparagraph (ii) —

- (a) by deleting “and”; and

(b) by inserting the following subparagraph —

“
(iia) clearly sets out the method by which the amount of any commission, reward or other valuable consideration to be received for those services is to be calculated; and
”.

Section 61 amended

15. (1) After section 61 (3b) of the principal Act the following subsection is inserted —

“
(3c) If an amount is not fixed under subsection (1) in respect of a service rendered by a licensee, the licensee is not entitled to demand, receive or hold for that service, in the licensee’s capacity as an agent, any commission, reward or other valuable consideration which is unjust in the circumstances.
”.

(2) After section 61 (4) of the principal Act the following subsection is inserted —

“
(4a) In subsection (4) —
“**settlement**”, in relation to a transaction —
(a) where the transaction is to be completed by the payment of the purchase price by way of a single payment (over and above the deposit), means the payment of the purchase price;
(b) where the purchaser is obliged to make 2 or more payments to the vendor (over and

above any deposit paid within 28 days of the execution of the contract) before the purchaser is entitled to a conveyance or transfer of the subject matter of the contract, means the time at which the purchaser is entitled to possession, occupation or control of the subject matter or the time at which the purchaser has paid at least 10% of the purchase price, whichever is the later, or at any other time as may be prescribed by the regulations; or

- (c) where the transaction is of a kind specified in regulations, has the meaning prescribed by the regulations in relation to that kind of transaction;

“transaction” means —

- (a) a sale, exchange, or other disposal and a purchase, exchange, or other acquisition of real estate and any exclusive right whether deriving from the ownership of a share or interest in a body corporate or partnership;
- (b) a sale, exchange, or other disposal and a purchase, exchange, or other acquisition of goods, chattels or other property relating to a real estate transaction of a kind specified in paragraph (a); or
- (c) a business transaction of a kind referred to in paragraph (a) or (b) of the definition of “business transaction”,

or both such a real estate transaction and a business transaction.

”.

Section 102 amended

16. Section 102 (1) (a) and (b) of the principal Act are deleted and the following paragraphs are substituted —

“

- (a) hold an inquiry into the conduct of any agent for the purpose of determining whether or not there is proper cause for disciplinary action, as mentioned in section 103 (2), against the agent; and
- (b) hold an inquiry into the conduct of any sales representative for the purpose of determining whether or not there is proper cause for disciplinary action, as mentioned in section 103 (4), against the sales representative.

”.

Section 103 amended

17. (1) Section 103 (1) of the principal Act is amended after paragraph (c) —

- (a) by deleting the full stop and substituting a semicolon; and
- (b) by inserting the following paragraphs —

“

- (d) where the Board is satisfied that the agent is acting or has acted in breach of section 60 (3), 61 (5) or 64 (4) (the “**subsection**”) —
 - (i) order the agent to pay to a person specified by the Board the whole or part of any commission, reward or other valuable consideration received or held in contravention of a provision referred to in the subsection;

(ii) order that a demand by the agent in contravention of a provision referred to in the subsection for the whole or part of any commission, reward or other valuable consideration not be made, or if made, be withdrawn or varied in accordance with the order;

(e) where the Board is satisfied that the agent is acting or has acted in breach of section 64 (1), order the agent to pay to the agent's principal any profit that the agent has made, or is, in the opinion of the Board, likely to make from the transaction.

”.

(2) Section 103 (3) of the principal Act is amended after paragraph (c) —

(a) by deleting the full stop and substituting a semicolon;
and

(b) by inserting the following paragraph —

“

(d) where the Board is satisfied that the sales representative is acting or has acted in breach of section 64 (2), order the sales representative to pay to the agent's principal any profit that the sales representative has made, or is, in the opinion of the Board, likely to make from the transaction.

”.

Section 124C amended

18. Section 124C (b) of the principal Act is amended by inserting after “Board” the following —

“
and members of advisory committees established under
Division 4 of Part II
”.

Section 138 amended

19. Section 138 (1) of the principal Act is amended by inserting after “Board” the following —

“ or a person engaged under section 12AA (b) ”.

Section 139 amended

20. Section 139 of the principal Act is amended —

- (a) by inserting after the section designation “**139.**” the subsection designation “(1)”; and
- (b) by inserting the following subsections —

“
(2) Where a licensee is a firm and a body corporate is a partner in the firm or where the licensee is a body corporate, all persons who are directors of the body corporate at the time of an order or direction made by a court or the Board against the licensee are jointly and severally liable in respect of the order or direction.

(3) Sections 21 (2), 103 (1) (c) and 105 (1) (c) apply in respect of a director referred to in subsection (2) as if the references in those

sections to a licensee or an agent included the director.

(4) A reference in subsection (1), (2) or (3) to a director includes a reference to a person in accordance with whose directions or instructions the directors of the relevant body corporate are accustomed to act.

”.