



Western Australia

Finance Brokers Control Act 1975

Reprint 3: The Act as at 5 August 2005

Guide for using this reprint

What the reprint includes



Endnotes, Compilation table, and Table of provisions that have not come into operation

1. Details about the original Act and legislation that has amended its text are shown in the Compilation table in endnote 1, at the back of the reprint. The table also shows any previous reprint.
2. Validation, transitional, savings, or other provisions identified in the Compilation table may be important. The table may refer to another endnote setting out the text of these provisions in full.
3. A table of provisions that have not come into operation, to be found in endnote 1a if it is needed, lists any provisions of the Act being reprinted that have not come into operation and any amendments that have not come into operation. The full text is set out in another endnote that is referred to in the table.

Notes amongst text (italicised and within square brackets)

1. If the reprint includes a section that was inserted, or has been amended, since the Act being reprinted was passed, editorial notes at the foot of the section give some history of how the section came to be as it is. If the section replaced an earlier section, no history of the earlier section is given (the full history of the Act is in the Compilation table).

Notes of this kind may also be at the foot of Schedules or headings.

2. The other kind of editorial note shows something has been —
 - removed (because it was repealed or deleted from the law); or
 - omitted under the *Reprints Act 1984* s. 7(4) (because, although still technically part of the text, it no longer has any effect).

The text of anything removed or omitted can be found in an earlier reprint (if there is one) or one of the written laws identified in the Compilation table.

Reprint numbering and date

1. The reprint number (in the footer of each page of the document) shows how many times the Act has been reprinted. For example, numbering a reprint as “Reprint 3” would mean that the reprint was the 3rd reprint since the Act was passed. Reprint numbering was implemented as from 1 January 2003.
2. The information in the reprint is current on the date shown as the date as at which the Act is reprinted. That date is not the date when the reprint was published by the State Law Publisher and it is probably not the date when the most recent amendment had effect.

Western Australia

Finance Brokers Control Act 1975

CONTENTS

Part I — Preliminary		
1.	Short title	2
2.	Commencement	2
4.	Interpretation	2
5.	Exceptions to “finance broker”	3
Part II — Finance Brokers Supervisory Board		
Division 1 — General		
6.	The Board	6
7.	Composition of Board	6
8.	Term of office	7
9.	Meetings of the Board	8
10.	Validity of acts of Board	9
11.	Remuneration of members	9
12.	The Registrar and other officers	9
Division 2 — Powers of investigation and inquiry		
13.	Investigation and inquiry by Registrar and inspectors	10
14.	Police investigations	11
15.	Power of Registrar and inspector to investigate, inquire and obtain information	11
16.	Incriminating information, questions, or documents	13

Contents

17.	Failure to comply with requirement	14
18.	Obstruction of Registrar or inspector	15
	Division 3 — Review of decisions of the Board	
23.	Application for review	15
	Part III — Licensing	
24.	Application	16
25.	Objections	16
26.	Finance brokers to be licensed	17
27.	Grant of licence to a natural person	17
28.	Grant of licence to a firm	17
29.	Grant of licence to body corporate	18
30.	Effect of licence	19
31.	Business certificate	20
32.	Applications for renewals	20
33.	Objection by Registrar to renewal	21
34.	Conditions on licences, and business certificates	21
34A.	Unopposed applications	22
34B.	Suspension of licence by State Administrative Tribunal	22
35.	Bond in respect of business certificate	23
36.	Notice to Registrar	24
37.	Registered office	25
38.	Branch office	25
39.	Endorsements on business certificates	25
40.	Licence and business certificate not transferable	26
41.	Use of business name	26
42.	Notice to be exhibited	27
	Part IV — Controls	
	Division 1 — General	
43.	Disability of unlicensed person	28
44.	Remuneration of finance brokers	28
45.	Advertisements by licensees	30
46.	Copy of loan documents	30
	Division 2 — Trust accounts	
47.	Interpretation	30
48.	Trust accounts	31
49.	Receipts and accounting to principal	32
50.	Duty of finance broker to have trust accounts audited	33

51.	Variation of date of audit	34
52.	Qualification and approval of auditors	35
53.	Appointment of auditor	35
54.	Power to give directions for audit of business carried on at more than one place	36
55.	Alteration of rights under this Division	36
57.	Duties of finance brokers with respect to audit	36
58.	Duty of banker with respect to audit	37
59.	Contents of auditor's report	37
60.	Statement of moneys, etc., held by finance broker for or on behalf of other persons	37
61.	Auditor's report where finance broker has not complied with Act, etc.	38
62.	Non-disclosure by auditors	39
63.	Right of persons beneficially interested to obtain information	39
64.	Penalty for breach	40
65.	Remuneration of auditor	40
66.	Finance brokers having no accounts to audit	40
67.	Accounts of firm or body corporate or finance broker with branch office	40
68.	Power of Board to order audit of trust account	41
69.	Finance broker to produce books, etc. to auditor	41
70.	Cost of audit	41
71.	Application of s. 62	42
72.	Power of restraining dealing with trust accounts or other accounts	42
73.	Appointment of supervisor	43
74.	Effect of orders under s. 73	45
75.	Duties of supervisor	46
76.	Offence	47
77.	Power of finance broker to apply for discharge or variation of order	47
78.	Power of State Administrative Tribunal to make further orders and give directions	48
79.	Service of orders and penalty for non-compliance therewith	49
80.	Duty of bank manager to disclose existence of banking accounts of finance broker	50

Contents

	Division 3 — Discipline	
81.	Finance brokers code	51
82.	Disciplinary proceedings against finance brokers	51
83.	Powers on inquiry	51
	Part V — Miscellaneous	
84.	Registers	53
85.	Lists and certificates	53
86.	Annual report	54
87.	Immunity of Board and officers	54
88.	Secrecy	55
89.	Liability of directors of body corporate	55
90.	Other rights or remedies	55
91.	No waiver of rights	55
92.	General penalty	55
93.	Proceedings	56
94.	Forms	56
95.	Regulations	56
	Part VI — Transitional	
	Schedule — Formula for calculating percentage rate of interest	59
	Notes	
	Compilation table	61
	Provisions that have not come into operation	62
	Defined Terms	



Western Australia

**Reprinted under the
Reprints Act 1984 as
at 5 August 2005**

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. *Repealed 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 Board;

“**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;

“**Board**” means the Finance Brokers Supervisory Board;

“**business**” means the business of a finance broker;

“**business certificate**” means a certificate granted under section 31;

“**Chairman**” means the Chairman of the Board;

“**finance broker**” means a person who, as an agent, in the course of business negotiates or arranges loans of money

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 approved under section 81;

“**inspector**” means an inspector of the Board appointed under this Act;

“**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;

“**member**” means a member of the Board;

“**Registrar**” means the Registrar of the Board;

“**renewal**” means renewal of a business certificate;

“**supervisor**” means a person appointed by the Board as supervisor of the business of a finance broker;

“**Treasurer**” means the Treasurer of the State; and

“**Treasury**” means the State Treasury.

[Section 4 amended by No. 56 of 1995 s. 17; No. 26 of 1999 s. 79(2); 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;
- (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) certificated practitioners (within the meaning of the *Legal Practice Act 2003*) 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 agent 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 in respect of whom exceptions under subsection (2) are in force.

- (2) The Minister may, by notice published in the *Government Gazette*, except any person or class of persons from the meaning of “**finance broker**” in and for the purposes of this Act, on such terms and conditions as the Minister thinks fit, if the Minister is satisfied that apart from this Act, adequate safeguards exist against loss to others by any defalcation of that person or class, but if subsequently the Minister is satisfied that such safeguards no longer exist he may, by like notice, cancel the exception, and in any case a breach of any condition by a person the subject of an exception cancels it in respect of him.

[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).]

Part II — Finance Brokers Supervisory Board

Division 1 — General

6. The Board

- (1) For the purposes of this Act there shall be a board to be known as the “Finance Brokers Supervisory Board”.
- (2) The Board —
 - (a) shall be a body corporate with perpetual succession and a common seal;
 - (b) shall be the licensing and supervisory authority for the purposes of this Act; and
 - (c) shall have the powers, duties, and functions, conferred, imposed, or prescribed by or under this Act.
- (3) Where in any judicial proceedings, whether under this Act or not, a document is produced bearing a seal purporting to be the common seal of the Board the Court or tribunal before which those proceedings are brought shall in the absence of proof to the contrary presume that —
 - (a) the seal is the common seal of the Board; and
 - (b) the common seal was duly affixed.

7. Composition of Board

- (1) Subject to this section, the Board shall consist of 5 members appointed by the Governor of whom —
 - (a) one shall be appointed to be a member and Chairman of the Board;
 - (b) one shall be a person who is experienced in commercial practice;
 - (c) one shall be a legal practitioner (as defined in the *Legal Practice Act 2003*); and
 - (d) 2 shall be persons who are licensed finance brokers and elected for appointment by licensed finance brokers.

- (2) Notwithstanding subsection (1)(d), the Board as first constituted shall not include any member of the kind referred to in that paragraph, but shall include 2 persons who are finance brokers nominated for appointment by the Minister.
- (3) The Minister shall appoint a returning officer for each election of an elective member.
- (4) The election of an elective member shall be held and conducted in such manner and at such times as may be prescribed.
- (5) The expenses incurred in connection with the election of an elective member shall be paid out of the moneys appropriated by Parliament for the purposes of this Act.
- (6) The Governor may appoint as deputy of a member a person who has the like prescribed qualifications, if any, as those of the member and, where the case requires, who has been nominated or elected in the manner in which the member was nominated or elected.
- (7) A person so appointed is, in the event of the absence from a meeting of the Board of the member of whom he is the deputy, entitled to attend that meeting and, when so attending, has all the powers, functions, and duties of a member.
- (8) For the purpose of establishing, so far as possible, rotational annual retirement of members the respective terms of office of the members of the Board as first constituted shall be such terms not exceeding 4 years as the Governor determines.

[Section 7 amended by No. 65 of 2003 s. 35(3).]

8. Term of office

- (1) Subject to this Act, each member shall hold office for a period of 4 years from the date of his appointment and where he is an elective member is eligible for re-election and reappointment and, where he is not an elective member, is eligible for reappointment.

- (2) The Minister may grant leave of absence to a member on such terms and conditions as the Minister determines.
- (3) The Governor may terminate the appointment of a member for inability, inefficiency, or misbehaviour.
- (4) If a member of the Board —
 - (a) is an undischarged bankrupt or a person whose property is subject to an order or arrangement under the laws relating to bankruptcy;
 - (b) becomes permanently incapable of performing his duties as a member;
 - (c) resigns his office by writing under his hand addressed to the Minister;
 - (d) absents himself, except on leave duly granted by the Minister from 3 consecutive meetings of the Board; or
 - (e) ceases to hold any qualification required for his becoming or being a member,

the office of that member becomes vacant.

- (5) Where the office of a member has become vacant otherwise than by effluxion of time, the Governor may appoint to the vacant office for the unexpired part of the term of the office which so became vacant a person who has the like prescribed qualifications, if any, as those of the member whose office has become vacant, and where the case requires, who has been nominated or elected in the manner in which the member was nominated or elected.

9. Meetings of the Board

- (1) The Board shall hold meetings at such times and places as are necessary to enable it to discharge its functions and duties under this Act and the Minister may at any time require the Chairman to convene a meeting of the Board.
- (2) The Chairman shall preside at all meetings of the Board at which he is present and his deputy shall preside at all meetings

at which he, but not the Chairman, is present, but where neither the Chairman nor his deputy is present at a meeting of the Board, the members present shall appoint one of their number present to act as Chairman at the meeting.

- (3) At a meeting of the Board, 3 members constitute a quorum.
- (4) Any question arising at a meeting of the Board shall be decided by a majority of the votes of the members present and voting.
- (5) At a meeting of the Board at which the Chairman or his deputy presides, the Chairman or his deputy shall have a deliberative vote, and in the event of an equality of votes being cast on any question, that question shall remain unresolved until a subsequent meeting.
- (6) The Board shall cause accurate minutes to be kept of its proceedings at its meetings.
- (7) To the extent that it is not prescribed the Board shall determine its own procedure.

10. Validity of acts of Board

No act, proceeding, or determination of the Board shall be invalid on the ground only of any vacancy in the office of any member of the Board or of any defect in the appointment of any member of the Board or in the appointment of any deputy of a member of the Board.

11. Remuneration of members

The members of the Board shall be paid such fees and allowances as may from time to time be fixed by the Governor.

12. The Registrar and other officers

- (1) There shall be a Registrar of the Board and there may be such Deputy Registrar, Assistant Registrars, inspectors and other officers of the Board as are necessary for its proper functioning.

Finance Brokers Control Act 1975

Part II Finance Brokers Supervisory Board

Division 2 Powers of investigation and inquiry

s. 13

- (2) The officers of the Board shall be appointed and shall hold office subject to and in accordance with Part 3 of the *Public Sector Management Act 1994*.
- (3) The officers of the Board may hold office as such in conjunction with any other office in the Public Service of the State.
- (4) Anything by this Act appointed or authorised or required to be done or signed by the Registrar may be done or signed by any Deputy or Assistant Registrar and shall be as valid and effectual as if done or signed by the Registrar.
- (5) All courts, judges, and persons acting judicially shall take judicial notice of the official signature of every person who is for the time being and every person who has at any time been Registrar, Deputy Registrar, Assistant Registrar, or inspector of the Board and of the fact that such person holds or has held such office.

[Section 12 amended by No. 32 of 1994 s. 3(1).]

Division 2 — Powers of investigation and inquiry

13. Investigation and inquiry by Registrar and inspectors

The Registrar may, of his own motion, and shall at the direction of the Board, and an inspector shall, at the direction of the Board or Registrar, make any investigation or inquiry that the Registrar or the Board considers necessary or expedient for the purpose of —

- (a) determining any application or any other matter before the Board;
- (b) determining whether or not finance brokers are acting in conformity with the special conditions, if any, of their licenses and business certificates and are complying with the requirements of this Act; and
- (c) detecting offences against this Act.

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

14. Police investigations

- (1) The Commissioner of Police shall, at the request of the Board or the Registrar, 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 Registrar.

15. Power of Registrar and inspector to investigate, inquire and obtain information

- (1) For the purposes of carrying out any investigation or inquiry in the course of carrying out his duties under this Act, the Registrar or an inspector may —
 - (a) require any person —
 - (i) to give him such information as he requires;
 - (ii) to answer any question put to him,in relation to any matter the subject of such investigation or inquiry;
 - (b) require any person to produce any document relating to any such investigation or inquiry;
 - (c) enter at all reasonable times and search any premises and inspect any documents that he finds thereon;
 - (d) make a copy or abstract of any document produced to, or inspected by, him in pursuance of this section, or of any entry made therein and in the absence of proof to the contrary any such copy certified as correct by the Registrar or an inspector shall be received in all courts as evidence of, and of equal validity as, the original.
- (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;

Finance Brokers Control Act 1975

Part II Finance Brokers Supervisory Board

Division 2 Powers of investigation and inquiry

s. 15

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

required under this Act to give the information, answer the question, or produce the document, as the case may be.

- (6) Before entering any premises pursuant to this section the Registrar or an inspector —
- (a) shall obtain a warrant to do so from a magistrate or Justice of the Peace which warrant the magistrate or Justice of the Peace is authorised to issue upon being satisfied that the entry is sought in good faith for the purpose of carrying out any investigation or inquiry under this Act; and
 - (b) shall display to the person, if any, affording him entry —
 - (i) in the case of the Registrar, a document signed by the Minister and certifying that he is the Registrar; and
 - (ii) in the case of an inspector, a document signed by the Registrar and certifying that he is an inspector.

16. Incriminating information, questions, or documents

Without prejudice to the provisions of section 11 of the *Evidence Act 1906*, where under section 15 a person is required to —

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

he shall not refuse to comply with that requirement on the ground that the information, answer, or document may tend to incriminate him or render him liable to any penalty, but the information or answer given, or document produced, by him shall not be admissible in evidence in any proceedings against him other than proceedings in respect of an offence against section 17(1)(b).

17. Failure to comply with requirement

- (1) Where under section 15 a person is required by the Registrar or an inspector to give any information, answer any question, or produce any document and that person, without reasonable excuse (proof of which shall lie on him) —
- (a) fails to give that information or answer that question at or within the time specified in the requirement; or
 - (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: \$300.

- (2) It is a defence in any proceeding for an offence under subsection (1)(a) or (c) for the defendant to show —
- (a) that, in the case of an alleged offence arising out of a requirement made orally under section 15, the Registrar or the inspector did not, when making the requirement, inform him that he 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 15, the notice did not state that he 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 him sufficient notice to enable him to comply with the requirement; or
 - (d) that, in any case, the Registrar or the inspector did not, before making the requirement, have reasonable grounds to believe that compliance with the requirement, would

materially assist in the investigation or inquiry being carried out.

18. Obstruction of Registrar or inspector

A person shall not prevent or attempt to prevent the Registrar or an inspector from entering premises or otherwise obstruct or impede the Registrar or an inspector in the exercise of his powers under section 15.

Division 3 — Review of decisions of the Board

[Heading inserted by No. 55 of 2004 s. 342.]

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

23. Application for review

(1) Any person aggrieved by a reviewable decision of the Board 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 or business certificate is affected by a reviewable decision or who, under Part III, applies for or objects to the grant of a licence or applies for the renewal of a business certificate; or
- (b) a person affected by a decision of the Board 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.

[Section 23 inserted by No. 55 of 2004 s. 344.]

Part III — Licensing

24. Application

- (1) An application for a licence shall be made in writing and in a manner and form determined by the Board in respect of such an application and shall contain such information as is required by the Board in respect of such an application.
- (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 Board with such further information as the Board determines, verified if the Board so requires by statutory declaration.

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

25. Objections

- (1) An objection to the grant of a licence may be made by any person on the grounds that the applicant does not have all or any of the qualifications required under this Act for the grant of a licence.
- (2) Any objection made shall be in writing and in a form and manner determined by the Board 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.

[Section 25 amended by 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 and holds a current business certificate in respect of the licence.

Penalty: \$500.

- (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).]

27. Grant of licence to a natural person

- (1) Subject to this Act, a person, not being a body corporate who applies to the Board for a licence and pays to the Board the prescribed fee for the licence shall be granted and may hold a licence if the Board 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 and a fit and proper person to hold a licence;
 - (d) he has sufficient material and financial resources available to him to enable him to comply with the requirements of this Act; and
 - (e) he understands fully the duties and obligations imposed by this Act on finance brokers.
- (2) In subsection (1)(c) “**fit and proper**” includes having such qualification by way of experience or otherwise as is prescribed, or, if no qualification is prescribed, includes having such qualification by way of experience or otherwise as is approved.

28. Grant of licence to a firm

Subject to this Act, 2 or more persons constituting a firm who apply to the Board for a licence and pays to the Board the

prescribed fee for the licence shall be granted and may hold a licence if the Board 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 and 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; and
- (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.

29. Grant of licence to body corporate

- (1) Subject to this Act, a body corporate which applies to the Board for a licence and pays to the Board the prescribed fee for the licence shall be granted and may hold a licence if the Board 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 and 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; and

- (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 the finance broker's part of the business of the body corporate is licensed.
- (2) Where the Board is satisfied that finance broker's business is a minor part of the business of any body corporate it 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 Board by notice so published revoke any such declaration.

30. Effect of licence

- (1) Subject to this Act, a licence is continuous.
- (2) A licence does not confer on a licensee the right to carry on business as a finance broker unless he holds a business certificate in respect of the licence.
- (3) A person may at any time surrender a licence, and any business certificate in respect thereof held by him and shall do so if he ceases to have the qualifications for holding the licence.
- (4) A licensee ceases to be licensed if the licensee —
- (a) does not hold a current business certificate in respect of the licence; and
 - (b) does not pay to the Board in accordance with the regulations the fee prescribed for the purposes of this subsection.

s. 31

- (5) Despite the surrender by a person of a licence or a business certificate, 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 or certificate had not been surrendered.

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

31. Business certificate

- (1) Subject to this Act, the Board shall on the grant of a licence grant the licensee a certificate which confers on the licensee the right to carry on business as a finance broker for the period prescribed.
- (2) Subject to this Act, a business certificate may, on application and payment of the prescribed fee, be renewed from time to time for the period prescribed.

[Section 31 amended by No. 56 of 1995 s. 19.]

32. Applications for renewals

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

the business certificate may be renewed for the period prescribed.

- (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 business certificate expired.
- (2) An application for renewal shall be made in writing and in a manner and form determined by the Board in respect of such an

application and shall contain such information as is required by the Board 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 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 Board with such further information as the Board determines, verified if the Board so requires by statutory declaration.

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

33. Objection by Registrar to renewal

- (1) An objection to the grant of a renewal may be made by the Registrar on the grounds that the applicant has not complied with the provisions of this Act and the finance brokers code of conduct.

[(2) repealed]

[Section 33 amended by No. 55 of 2004 s. 349.]

34. Conditions on licences, and business certificates

- (1) A licensee shall comply with the provisions of this Act and the finance brokers code of conduct.
- (2) The Board may grant a licence or grant or renew a business certificate subject to such special conditions as it 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.

s. 34A

- (3) A licensee shall comply with any special condition to which under subsection (2) his licence or business certificate is subject.

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

34A. Unopposed applications

- (1) Subject to this Part, a licence may be granted and a business certificate 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.

- (2) Where the Board or Registrar performs a function under subsection (1), the Registrar shall forthwith deliver the licence or business certificate or the renewed business certificate, as the case may be, to the applicant.
- (3) Sections 27, 28, and 29 apply to the Registrar in the performance of a function under subsection (1) 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 34A inserted by No. 55 of 2004 s. 351.]

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 business certificate

- (1) The Board shall not grant or renew a business certificate unless the applicant lodges or has lodged with the Board 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 1932*³ 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 on him by law in relation to those moneys; and the bond or guarantee shall provide that it enures during the term of the business certificate for which it is originally given and may also provide that it enures during the term of any business certificate to the same person granted in renewal of the business certificate.
- (3) Where a bond or guarantee enures in respect of the renewal or further renewal of a business certificate, the insurance company, surety, or sureties, or the bank, guarantor, or guarantors may by notice in writing given to the Board 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 business certificate expires and the Board shall not renew the licence

s. 36

until another approved bond or guarantee has been lodged by the applicant.

- (4) Where, at any time during the currency of a business certificate, the bond or guarantee lodged in respect of it ceases to be of full force and effect, the licensee is deemed not to be the holder of a business certificate until another approved bond or guarantee is lodged by him.
- (5) The State Administrative Tribunal may, on the application of the Board 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 Board or to any other person and the Board 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 its or their own name or names, as if the bond or guarantee had, in the first instance, been given to it, 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. 55 of 2004 s. 352 and 358.]

36. Notice to Registrar

- (1) A licensee shall, within 14 days after commencing or ceasing to carry on business as a finance broker give to the Registrar notice in writing of that fact.
- (2) A licensee shall, within 14 days of ceasing to have a registered office give to the Registrar 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 Registrar written notice of the changed address.

[Section 36 amended by No. 56 of 1995 s. 21.]

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.
Penalty: \$100.
- (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 Registrar and a registration may be transferred from one office to the other by written notice given to the Registrar.

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 Registrar on or before the day on which he commences to carry on business at that branch office.
Penalty: \$100.
- (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.
Penalty: \$100.
- (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.

39. Endorsements on business certificates

- (1) Each place of business of a licensee and the name of the other licensee who is manager of that place and any changes thereto shall be endorsed on the business certificate of the first-mentioned licensee.

s. 40

- (2) The place of business of a branch office shall be endorsed on the business certificate of the licensee who is manager of that office.

[Section 39 amended by No. 56 of 1995 s. 23(1).]

40. Licence and business certificate not transferable

- (1) A person shall not hold more than one licence or more than one business certificate and shall not carry on more than one business as a finance broker thereunder.
- (2) A licence or a business certificate 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 or a business certificate of the licensee.

Penalty: \$500.

[Section 40 amended by No. 56 of 1995 s. 23.]

41. Use of business name

- (1) The use of a business name by a licensee is not subject to the approval of the Board but —
- (a) a licensee may carry on business as a finance broker under only one business name which shall be endorsed on his business certificate;
 - (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 Registrar of the altered name, style, title, or designation.

Penalty: \$100.

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

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 and he holds a current business certificate in respect of his licence 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: \$500.
- (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).]

44. Remuneration of finance brokers

- (1) The Board shall from time to time, 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 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 the 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 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: \$500.
- (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.

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 such details as are sufficient to identify the licensee.
- (3) A duly authorised advertisement in respect of the business of a licensee 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.

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 Board 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 Board 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.

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 Board.
- (3) The auditor shall within 3 months after the end of each year —
- (a) deliver to the Board 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 Board may, in circumstances it considers appropriate, extend the time limit for lodging reports.
- (6) The auditor shall deliver an interim report to the Board 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 Board 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 Board 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 Board so directs but otherwise shall be paid by the Board.

- (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 Board a report of the result of such quarterly audit.
- (9) The Board may, if it thinks fit, waive in respect of a finance broker's trust accounts the requirement of a quarterly audit mentioned in subsection (8).

51. Variation of date of audit

- (1) Notwithstanding anything in this Division a finance broker may apply in writing to the Board to fix some date other than 31 December, as the date up to which his trust accounts are to be audited, and the Board may, in its discretion, permit the finance broker to substitute such other date for 31 December.
- (2) The Board 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 Board 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 Board 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 Board granted in accordance with this section.

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 Board 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 Board 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 Board 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 Board may, if it 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.]

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 Board approves a subsequent change in the appointment.

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 Board may from time to time give such directions as it 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 Board with respect to the examination of the trust accounts kept at any branch office of the business.

55. Alteration of rights under this Division

The Board may, if in its 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 it under this Division.

[56. *Repealed 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 Board.

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 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, 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 Board.

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 Board 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 Board 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 Board under this Division shall be available in the hands of the Board for inspection by any other auditor appointed to audit the accounts of the same finance broker for the next succeeding year.

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: \$300.
- (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.

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 Board.

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 Board to order audit of trust account

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

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 Board; 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.

70. Cost of audit

The cost of an audit carried out pursuant to section 68 shall be as agreed between the Board and the auditor and paid as the

Board in writing directs, either by the Board or by the finance broker whose trust accounts have been the subject of the audit.

71. Application of s. 62

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

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

- (1) Where the Board, 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. 55 of 2004 s. 358.]

73. Appointment of supervisor

- (1) Where the State Administrative Tribunal, on the application of the Board, 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 Board to appoint a supervisor of the business of the finance broker;
 - (d) authorise the Board 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 Board, 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 Board to appoint a supervisor of the business of the finance broker.
- (3) Where the State Administrative Tribunal authorises the Board 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; and
 - (b) may order that the Board —
 - (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 account at the Treasury, forming part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*, in the name of the Board; and
 - (iii) deal with those moneys according to law.
- (4) If an order is made under subsection (3)(b) —
- (a) the Board 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 Board, or any person interested give such directions as the State Administrative Tribunal thinks fit for the payment by the Board 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. 55 of 2004 s. 358.]

74. Effect of orders under s. 73

- (1) Where an order made under section 73 authorises the Board to appoint a supervisor, the Board during the currency of the order —
- (a) may, on such terms and conditions as to remuneration and indemnity as the Board 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 Board towards the expenses and remuneration of the supervisor and for re-imbusement of advances made under paragraph (b).
- (2) An appointment of a supervisor shall be in writing and be signed by the Chairman or by 2 members of the Board.

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.

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: \$400.

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 Board, 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 account to be kept at the Treasury, forming part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*;
 - (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. 55 of 2004 s. 358.]

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

- (1) The Board shall, as soon as practicable after any order is, on the application of the Board, 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 Board; 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 Board.
- (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: \$400.
- (6) This section is sufficient authority and indemnity for complying with an order so made and served.

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 Board 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 Board or any person authorised in writing by it 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.

Division 3 — Discipline

81. Finance brokers code

The Board may approve a code of conduct for finance brokers.

82. Disciplinary proceedings against finance brokers

The Board may allege to the State Administrative Tribunal that there is proper cause for disciplinary action, as mentioned in section 83(2).

[Section 82 inserted by No. 55 of 2004 s. 354.]

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 \$1 000 on him; and
 - (c) suspend or cancel his licence and any business certificate in respect thereof 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 or business certificate, or both.

- (2) There shall be proper cause for disciplinary action if —
- (a) the finance broker improperly obtained a licence or business certificate;
 - (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, been guilty of 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 special condition of his licence or business certificate;
 - (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.

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

Part V — Miscellaneous

84. Registers

- (1) The Registrar shall keep the following registers —
 - (a) a register of licensees; and
 - (b) a register of holders of business certificates.
- (2) The Registrar shall record in the registers any prescribed particulars.
- (3) The Registrar shall cause to be removed from the registers the name of every licensee or holder of a business certificate who dies or ceases for any reason to be licensed or to hold a business certificate.
- (4) The Registrar shall, upon receipt of the prescribed fee from a person desiring to inspect the registers, make them available for the inspection of that person.

[Section 84 amended by No. 56 of 1995 s. 23.]

85. Lists and certificates

- (1) A list of the names and descriptions of all persons holding licences and a business certificate on a date specified therein together with such of the particulars appearing in the registers as the Registrar thinks fit, shall be published in the *Government Gazette* annually.
- (2) The Registrar may cause supplementary lists to be published.
- (3) A certificate 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.

s. 86

- (4) The Registrar 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).]

86. Annual report

- (1) The Chairman shall, on behalf of the Board, as soon as practicable after 1 July in each year, submit to the Minister a report on the activities under this Act of the Board for the year ending on 30 June last preceding.
- (1a) The Board's annual report is to include details of —
- (a) the number, nature, and outcome, of —
 - (i) investigations and inquiries undertaken by, or at the direction of, the Board or the Registrar; and
 - (ii) matters that have been brought before the State Administrative Tribunal under this Act;
 - (b) the number and nature of matters referred to in paragraph (a) that are outstanding;
 - (c) any trends or special problems that may have emerged;
 - (d) forecasts of the workload of the Board in the year after the year to which the report relates; and
 - (e) any proposals for improving the operation of the Board.
- (2) The Minister shall cause the report to be laid on the Table of each House of Parliament within 14 days of its receipt, or if at that time Parliament is not in session, then within 14 days of the commencement of the next session of Parliament.

[Section 86 amended by No. 55 of 2004 s. 356.]

87. Immunity of Board and officers

No liability shall attach to a member or the deputy of a member, or the Registrar, an inspector, or any other officer, of the Board for any act or omission by him, or by the Board, in good faith and in the exercise or purported exercise of his or its powers or

functions, or in the discharge or purported discharge of his or its duties under this Act.

88. Secrecy

- (1) This section applies to any person who is, or has been, a member or the deputy of a member, or the Registrar, an inspector, or any other officer, whether permanent or temporary, of the Board.
- (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 or employment under or for the purposes of this Act.

Penalty: \$500.

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.

s. 93

- (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 \$200.

93. Proceedings

- (1) Proceedings for an offence against this Act may be taken by the Registrar or an inspector.
- (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. 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 Board 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.

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 procedure of the Board;
 - [(b) deleted]*

- (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) deleted]*
 - (g) prescribe penalties not exceeding \$100 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.

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

Part VI — Transitional

[96-98. Omitted under the Reprints Act 1984 s. 7(4)(g).]

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 reprint is a compilation as at 5 August 2005 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) (Correction in <i>Gazette</i> 11 Mar 2003 p. 751)			
<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 ⁴	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 Cwlth <i>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 ⁵	21 of 2003	23 Apr 2003	11 Mar 2002 (see s. 2 and Cwllth <i>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>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 ⁶	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	84 of 2004	16 Dec 2004	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))

Reprint 3: The Finance Brokers Control Act 1975 as at 5 Aug 2005 (includes amendments listed above)

^{1a} On the date as at which this reprint 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>Finance Brokers Control Amendment Act 2004</i> s. 3-78 and Sch. 1 ⁷	53 of 2004	18 Nov 2004	To be proclaimed (see s. 2)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> s. 80 and 82 ⁸	84 of 2004	16 Dec 2004	To be proclaimed (see s. 2)

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

³ Now see the Commonwealth *Insurance Act 1973*.

⁴ The *Business Licensing Amendment Act 1995* s. 24 reads as follows:

“

24. Transitional

Despite sections 31(2) and 32(1) of the principal Act as amended by this Act, a business certificate renewed under the principal Act in the 12 month period immediately following the commencement of this Part is, subject to the principal Act, to have effect for a period of one year, 2 years or 3 years as is determined by the Registrar.

”

⁵ 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.

”

⁶ 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.

⁷ On the date as at which this reprint was prepared, the *Finance Brokers Control Amendment Act 2004* s. 3-78 and Sch. 1 had not come into operation. They read as follows:

“

3. The Act amended

The amendments in this Act are to the *Finance Brokers Control Act 1975*.

4. Section 4 amended

Section 4 is amended as follows:

- (a) by deleting the definitions of “Board”, “business certificate”, “chairman”, “finance broker”, “inspector”, “member”, “Registrar” and “Treasury”;

- (b) by inserting in the appropriate alphabetical positions the following definitions —

“

“**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);

“**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;

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

”;

- (c) in the definition of “approved” by deleting “Board” and inserting instead —
“ Commissioner ”;
- (d) in the definition of “finance brokers code of conduct” by deleting “approved” and inserting instead —
“ prescribed ”;
- (e) in the definition of “renewal” by deleting “business certificate” and inserting instead —
“ licence ”;
- (f) in the definition of “supervisor” by deleting “Board” and inserting instead —
“ Commissioner ”;
- (g) at the end of the definition of “Treasurer” by deleting “; and” and inserting a full stop instead.

5. Section 5 amended

- (1) Section 5(1) is amended as follows:
- (a) in paragraph (g) by deleting “agent” and inserting instead —
“ intermediary ”;
 - (b) in paragraph (h) by deleting “in respect of whom exceptions under subsection (2) are in force” and inserting instead —
“ exempted from the Act under subsection (2) ”.
- (2) Section 5(2) is repealed and the following subsections are inserted instead —

“

- (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.

”.

6. Part II heading replaced

The heading to Part II is deleted and the following Part heading is inserted instead —

“

Part II — The Commissioner

”.

7. Sections 6, 7, 8, 9, 10, 11 and 12 replaced

Sections 6, 7, 8, 9, 10, 11 and 12 are repealed and the following sections are inserted instead —

“

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.

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.

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.

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.

”.

8. Section 13 amended

Section 13 is amended as follows:

- (a) by deleting “Registrar may, of his or her own motion, and shall at the direction of the Board, and an inspector shall, at the direction of the Board or Registrar, make any investigation or inquiry that the Registrar or the Board” and inserting instead —

“

Commissioner may, of his own motion, make any investigation or inquiry that the Commissioner

”;

- (b) in paragraph (a) by deleting “Board” and inserting instead —

“ Commissioner ”;

- (c) in paragraph (b) by deleting “special conditions, if any, of their licenses and business certificates and are complying with the requirements of this Act;” and the “and” following that paragraph and inserting instead —

“

conditions, if any, of their licenses and are complying with the requirements of this Act or the finance brokers code of conduct;

”.

(d) after paragraph (b) by inserting the following —

“

(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

”.

9. Section 14 amended

(1) Section 14(1) is amended by deleting “Board or the Registrar” and inserting instead —

“ Commissioner ”.

(2) Section 14(2) is amended by deleting “Registrar” and inserting instead —

“ Commissioner ”.

10. Sections 15, 16 and 17 replaced

Sections 15, 16 and 17 are repealed and the following sections are inserted instead —

“

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.

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.

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.

”

11. Part II Division 2A heading inserted

Before section 18 the following Division heading is inserted —

“

Division 2A — Specific investigatory powers

”

12. Section 18 replaced

Section 18 is repealed and the following sections are inserted instead —

“

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.

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.

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.

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.

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.

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).

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 defendant 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 defendant 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 defendant 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.

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.

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.

”.

13. Part II Division 3 heading amended

The heading to Part II Division 3 is amended by deleting “Board” and inserting instead —

“ **Commissioner** ”.

14. Section 23 amended

- (1) Section 23(1) is amended by deleting “Board” and inserting instead —

“ Commissioner ”.

- (2) Section 23(2) is amended in the definition of “person aggrieved” as follows:

- (a) by deleting paragraph (a) of the definition and the “or” following that paragraph and inserting instead —

“

- (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) in paragraph (b) of the definition by deleting “Board” and inserting instead —

“ Commissioner ”.

- (3) Section 23(2) is amended in paragraph (b) of the definition of “reviewable decision” after “Division 2” by inserting —

“ or section 82A(1) ”.

15. Section 24 amended

- (1) Section 24(1) is amended by deleting “a manner and form determined by the Board in respect of such an application and shall contain such information as is required by the Board in respect of such an application.” and inserting instead —

“

the manner prescribed and a form approved by the Commissioner and shall contain such information as is prescribed.

”.

- (2) Section 24(4) is amended by deleting “Board” in the 3 places where it occurs and inserting instead in each place —

“ Commissioner ”.

16. Section 25 amended

- (1) Section 25(1) is amended as follows:
- (a) after “grant” in the 2 places where it occurs, by inserting —
“ or renewal ”;
 - (b) by deleting “have all or any of the qualifications required” and inserting instead —
“ satisfy all the requirements ”.
- (2) Section 25(2) is amended by deleting “Board” and inserting instead —
“ Commissioner ”.
- (3) After section 25(3) the following subsections are inserted —
“
- (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.
- ”.

17. Section 26 amended

Section 26(1) is amended as follows:

- (a) by deleting “and holds a current business certificate in respect of the licence”;
- (b) by deleting the penalty at the foot of that subsection and inserting the following penalty instead —
“ Penalty: \$50 000. ”.

18. Section 27 amended

(1) Section 27(1) is amended as follows:

- (a) by deleting “Board for a licence and pays to the Board” and inserting instead —
“

Commissioner for a licence and pays to the chief executive officer

- (b) before “is satisfied” by deleting “Board” and inserting instead —
“ Commissioner ”;

(c) in paragraph (c) by deleting “and a fit and proper person to hold a licence”;

(d) after paragraph (c) by inserting the following paragraph —

“

(ca) he is a fit and proper person to hold a licence;

”.

(e) after paragraph (d) by deleting “and”;

(f) at the end of paragraph (e) by deleting the full stop and inserting instead —

“

; and

(f) he has such other qualifications and satisfies such other requirements (if any) as may be prescribed by the regulations.

”.

(2) Section 27(2) is repealed.

19. Section 28 amended

Section 28 is amended as follows:

(a) by deleting “Board for a licence and pays to the Board” and inserting instead —

“

Commissioner for a licence and pay to the chief executive officer

”.

(b) before “is satisfied” by deleting “Board” and inserting instead —

“ Commissioner ”;

(c) in paragraph (a) by deleting “and are persons fit to be concerned as directors of, or in the management and control of a finance broker’s business”;

(d) after paragraph (a) by inserting the following paragraph —

“

(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;

”;

- (e) after paragraph (b) by deleting “and”;
- (f) at the end of paragraph (c) by deleting the full stop and inserting instead —

“

; 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.

”.

20. Section 29 amended

- (1) Section 29(1) is amended as follows:

- (a) by deleting “Board for a licence and pays to the Board” and inserting instead —

“

Commissioner for a licence and pays to the chief executive officer

”;

- (b) before “is satisfied” by deleting “Board” and inserting instead —

“ Commissioner ”;

- (c) in paragraph (a) by deleting “and are persons fit to be concerned as directors of, or in the management and control of a finance broker's business”;
- (d) after paragraph (a) by inserting the following paragraph —

“

- (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;

”;

- (e) after paragraph (b) by deleting “and”;

- (f) at the end of paragraph (c) by deleting the full stop and inserting instead —

“

; 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) Section 29(2) is amended as follows:
 - (a) by deleting “Board” in the 2 places where it occurs and inserting instead in each place —
“ Commissioner ”;
 - (b) by deleting “it” and inserting instead —
“ the Commissioner ”.

21. Section 30 amended

- (1) Section 30(1) is amended by deleting “is continuous.” and inserting instead —

“

continues for not longer than 3 years, or such other licence period as may be prescribed.

”.

- (2) Section 30(2), (3) and (4) are repealed and the following subsections are inserted instead —

“

- (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.

”.

- (3) Section 30(5) is amended as follows:
 - (a) by deleting “or a business certificate”;
 - (b) by deleting “or certificate”.

22. Section 31 amended

- (1) Section 31(1) is amended as follows:
 - (a) by deleting “the Board shall on the grant of a licence grant the licensee a certificate which confers on the licensee” and inserting instead —
“ a licensee has ”;
 - (b) by deleting “period prescribed.” and inserting instead —
“ relevant period described in section 30. ”.
- (2) Section 31(2) is amended as follows:
 - (a) by deleting “business certificate” and inserting instead —
“ licence ”;
 - (b) by deleting “period prescribed.” and inserting instead —
“ relevant period described in section 30. ”.

23. Section 32 amended

- (1) Section 32(1) is amended as follows:
 - (a) by deleting “business certificate” in the 2 places where it occurs and inserting instead in each place —
“ licence ”;
 - (b) by deleting “period prescribed.” and inserting instead —
“ relevant period described in section 30. ”.
- (2) Section 32(1a) is amended by deleting “business certificate” and inserting instead —
“ licence ”.
- (3) Section 32(2) is amended as follows:
 - (a) by deleting “a manner and form determined by the Board” and inserting instead —
“
the manner prescribed and a form approved by the
Commissioner
”;
 - (b) by deleting “Board” in the last place where it occurs and inserting instead —
“ Commissioner ”.
- (4) Section 32(4) is amended by deleting “Board” in the 3 places where it occurs and inserting instead in each place —
“ Commissioner ”.

24. Section 33 replaced

Section 33 is repealed and the following section is inserted instead —

“

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).

”.

25. Section 34 amended

- (1) Section 34(2) is amended by deleting “Board may grant a licence or grant or renew a business certificate subject to such special conditions as it” and inserting instead —

“

Commissioner may grant or renew a licence subject to such conditions as the Commissioner

”.

- (2) Section 34(3) is amended as follows:
 - (a) by deleting “special”;
 - (b) by deleting “or business certificate”.
 - (3) After section 34(3) the following subsection is inserted —
- “
- (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.

”.

26. Section 34A repealed

Section 34A is repealed.

27. Section 35 amended

- (1) Section 35(1) is amended as follows:
 - (a) by deleting “Board” in the 2 places where it occurs and inserting instead in each place —
“ Commissioner ”;

- (b) by deleting “business certificate” and inserting instead —
“ licence ”;
 - (c) by deleting “the *Insurance Act 1932*” and inserting
instead —
“ the *Insurance Act 1973* ”.
- (2) Section 35(2) is amended by deleting “business certificate” in the
3 places where it occurs and inserting instead in each place —
“ licence ”.
- (3) Section 35(3) is amended as follows:
- (a) by deleting “business certificate” in the 2 places where it
occurs and inserting instead in each place —
“ licence ”;
 - (b) by deleting “Board” in the 2 places where it occurs and
inserting instead in each place —
“ Commissioner ”.
- (4) Section 35(4) is amended as follows:
- (a) by deleting “business certificate” in the 2 places where it
occurs and inserting instead in each place —
“ licence ”;
 - (b) by deleting “licensee” and inserting instead —
“ person who held the licence ”.
- (5) Section 35(5) is amended as follows:
- (a) by deleting “Board” in the 3 places where it occurs and
inserting instead in each place —
“ Commissioner ”;
 - (b) by deleting “its or”;
 - (c) by deleting “it”.

28. Section 35A inserted

After section 35 the following section is inserted —

“

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.

”.

29. Section 36 amended

- (1) Section 36(1) is amended by deleting “Registrar” and inserting instead —
“ Commissioner ”.
- (2) Section 36(2) is amended by deleting “Registrar” and inserting instead —
“ Commissioner ”.
- (3) Section 36(3) is amended by deleting “Registrar” and inserting instead —
“ Commissioner ”.

30. Section 37 amended

- (1) Section 37(1) is amended by deleting the penalty provision at the foot of that subsection.
- (2) Section 37(3) is amended by deleting “Registrar” in the 2 places where it occurs and inserting instead in both places —
“ Commissioner ”.

31. Section 38 amended

- (1) Section 38(1) is amended as follows:
 - (a) by deleting “Registrar” and inserting instead —
“ Commissioner ”;
 - (b) by deleting the penalty provision at the foot of that subsection.
- (2) Section 38(2) is amended by deleting the penalty provision at the foot of that subsection.

32. Section 39 repealed

Section 39 is repealed.

33. Section 40 amended

- (1) Section 40(1) is amended as follows:
 - (a) by deleting “or more than one business certificate”;
 - (b) by inserting at the foot of that subsection the following penalty —
“ Penalty: \$50 000. ”.
- (2) Section 40(2) is amended by deleting “or a business certificate”.
- (3) Section 40(3) is amended as follows:
 - (a) by deleting “or a business certificate”;
 - (b) by deleting the penalty at the foot of the subsection and inserting the following penalty instead —
“ Penalty: \$50 000. ”.

34. Section 40A inserted

After section 40 the following section is inserted —

“

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.

”.

35. Section 41 amended

- (1) Section 41(1) is amended as follows:
 - (a) by deleting “Board” and inserting instead —
“ Commissioner ”;
 - (b) in paragraph (a) by deleting “which shall be endorsed on his business certificate”.

- (2) Section 41(2) is amended as follows:
 - (a) by deleting “Registrar” and inserting instead —
“ Commissioner ”;
 - (b) at the foot of that subsection by deleting the penalty and inserting the following penalty instead —
“ Penalty: \$1 000. ”.

36. Section 43 amended

- (1) Section 43(1)(a) is amended by deleting “and he holds a current business certificate in respect of his licence”.
- (2) Section 43(2) is amended at the foot of that subsection by deleting the penalty and inserting the following penalty instead —
“ Penalty: \$5 000. ”.

37. Section 44 amended

- (1) Section 44(1) is amended by deleting “The Board shall from time to time,” and inserting instead —

“

After taking advice from the Commissioner, the Minister may,

”.

- (2) Section 44(4) is amended after “shall be held in” by deleting “the”.
- (3) Section 44(1) is amended after “negotiated” by inserting —
“ , managed ”.
- (4) Section 44(5) is amended after “negotiating” by inserting —
“ , managing ”.
- (5) Section 44(6) is amended at the foot of that subsection by deleting the penalty and inserting the following penalty instead —
“ Penalty: \$5 000. ”.

38. Section 45 amended

- (1) Section 45(2) is amended by deleting “such details as are sufficient to identify the licensee.” and inserting instead —

“

(as a minimum) the licence number of the licensee, and such other details (if any) as are prescribed.

”.

- (2) Section 45(3) is amended after “licensee” by inserting —

“

other than an advertisement for credit to which the Consumer Credit (Western Australia) Code applies,

”.

- (3) After section 45(4) the following subsection is inserted —

“

- (5) In this section —

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

”.

39. Section 49 amended

Section 49(5) is amended by deleting “Board” in the 2 places where it occurs and inserting instead in both places —

“ Commissioner ”.

40. Section 50 amended

- (1) Section 50(2) is amended by deleting “Board” and inserting instead —

“ Commissioner ”.

- (2) Section 50(3)(a) is amended by deleting “Board” and inserting instead —

“ Commissioner ”.

- (3) Section 50(5) is amended as follows:

- (a) by deleting “Board” and inserting instead —

“ Commissioner ”;

- (b) by deleting “it” and inserting instead —

“ the Commissioner ”.

- (4) Section 50(6) is amended by deleting “Board” in the 2 places where it occurs and inserting instead in both places —

“ Commissioner ”.

- (5) Section 50(7) is amended as follows:

- (a) by deleting “Board” in the first 2 places where it occurs and inserting instead in both places —

“ Commissioner ”;

- (b) by deleting “Board” in the last place where it occurs and inserting instead —
“ chief executive officer ”.
- (6) Section 50(8) is amended by deleting “Board” and inserting instead —
“ Commissioner ”.
- (7) Section 50(9) is amended by deleting “Board” and inserting instead —
“ Commissioner ”.

41. Section 51 amended

- (1) Section 51(1) is amended as follows:
 - (a) by deleting “Board” in the 2 places where it occurs and inserting instead in both places —
“ Commissioner ”;
 - (b) by deleting “its” and inserting instead —
“ the Commissioner’s ”.
- (2) Section 51(2) is amended by deleting “Board” and inserting instead —
“ Commissioner ”.
- (3) Section 51(3) is amended by deleting “Board” in the 2 places where it occurs and inserting instead in both places —
“ Commissioner ”.
- (4) Section 51(5) is amended by deleting “Board” and inserting instead —
“ Commissioner ”.

42. Section 52 amended

- (1) Section 52(2) is amended by deleting “Board” in the 2 places where it occurs and inserting instead in both places —
“ Commissioner ”.
- (2) Section 52(4) is amended as follows:
 - (a) by deleting “Board” in the 2 places where it occurs and inserting instead in both places —
“ Commissioner ”;
 - (b) by deleting “it” and inserting instead —
“ the Commissioner ”.

43. Section 53 amended

Section 53(3) is amended by deleting “Board” and inserting instead —

“ Commissioner ”.

44. Section 54 amended

Section 54 is amended as follows:

(a) by deleting “Board” in the 2 places where it occurs and inserting instead in both places —

“ Commissioner ”;

(b) by deleting “it” and inserting instead —

“ the Commissioner ”.

45. Section 55 amended

Section 55 is amended as follows:

(a) by deleting “Board” and inserting instead —

“ Commissioner ”;

(b) by deleting “its” and inserting instead —

“ the Commissioner’s ”;

(c) in paragraph (b) by deleting “it” and inserting instead —

“ the Commissioner ”.

46. Section 59 amended

Section 59(e) is amended by deleting “Board” and inserting instead —

“ Commissioner ”.

47. Section 61 amended

Section 61 is amended as follows:

(a) after “discovers that” by inserting —

“ one or more of ”;

(b) after “trust moneys” by inserting —

“

(whether generally or in an individual trust ledger account)

”;

(c) by deleting “Board” and inserting instead —

“ Commissioner ”.

48. Section 63 amended

- (1) Section 63(1) is amended by deleting “Board” in the 2 places where it occurs and inserting instead in both places —
“ Commissioner ”.
- (2) Section 63(2) is amended by deleting “Board” in the 2 places where it occurs and inserting instead in both places —
“ Commissioner ”.

49. Section 64 amended

Section 64(1) is amended at the foot of that subsection by deleting the penalty and inserting the following penalty instead —
“ Penalty: \$10 000. ”.

50. Section 66 amended

Section 66 is amended by deleting “Board” and inserting instead —
“ Commissioner ”.

51. Section 68 amended

Section 68 is amended as follows:

- (a) by deleting “Board” in the 2 places where it occurs and inserting instead in both places —
“ Commissioner ”;
- (b) by deleting “it may” and inserting instead —
“ the Commissioner may ”.

52. Section 69 amended

Section 69(a) is amended by deleting “Board” and inserting instead —
“ Commissioner ”.

53. Section 70 amended

Section 70 is amended as follows:

- (a) by deleting “Board” in the first 2 places where it occurs and inserting instead in both places —
“ Commissioner ”;
- (b) by deleting “Board” in the last place where it occurs and inserting instead —
“ chief executive officer ”.

54. Section 71 amended

Section 71 is amended by deleting “Board” and inserting instead —

“ Commissioner ”.

55. Section 72 amended

Section 72(1) is amended by deleting “Board” and inserting instead —

“ Commissioner ”.

56. Section 73 amended

(1) Section 73(1) is amended by deleting “Board” in the 3 places where it occurs and inserting instead in each place —

“ Commissioner ”.

(2) Section 73(2) is amended by deleting “Board” in the 2 places where it occurs and inserting instead in each place —

“ Commissioner ”.

(3) Section 73(3) is amended as follows:

(a) after “authorises the” by deleting “Board” and inserting instead —

“ Commissioner ”;

(b) after paragraph (a) by deleting “and” and inserting instead —

“

(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 monies; and

”;

(c) in paragraph (b) by deleting “Board” in the 2 places where it occurs and inserting instead in each place —

“ chief executive officer ”;

(d) in paragraph (b)(ii) by deleting “at the Treasury”.

(4) Section 73(4) is amended as follows:

(a) in paragraph (a) by deleting “Board” and inserting instead —

“ chief executive officer ”;

- (b) in paragraph (b) by deleting “Board” in the first place where it occurs and inserting instead —
“ Commissioner ”;
- (c) by deleting “Board” in the last place where it occurs and inserting instead —
“ chief executive officer ”.

57. Section 74 amended

- (1) Section 74(1) is amended as follows:
 - (a) by deleting “Board” in the first 3 places where it occurs and inserting instead in each place —
“ Commissioner ”;
 - (b) in paragraph (c) by deleting “Board” and inserting instead —
“ chief executive officer ”.
- (2) Section 74(2) is amended by deleting “Chairman or by 2 members of the Board” and inserting instead —
“ Commissioner ”.

58. Section 75 amended

After section 75(2) the following subsection is inserted —

“

- (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 monies.

”.

59. Section 76 amended

Section 76 is amended at the foot of that section by deleting the penalty and inserting the following penalty instead —

“ Penalty: \$4 000. ”.

60. Section 78 amended

- (1) Section 78(1) is amended by deleting “Board” and inserting instead —
“ Commissioner ”.
- (2) Section 78(2)(a) is amended by deleting “to be kept at the Treasury”.

61. Section 79 amended

- (1) Section 79(1) is amended by deleting “Board” in the 2 places where it occurs and inserting instead in each place —
“ Commissioner ”.
- (2) Section 79(2)(b) is amended by deleting “Board” and inserting instead —
“ Commissioner ”.
- (3) Section 79(3)(c) is amended by deleting “Board” and inserting instead —
“ Commissioner ”.
- (4) Section 79(5) is amended at the foot of that section by deleting the penalty and inserting the following penalty instead —
“ Penalty: \$4 000. ”.

62. Section 80 amended

Section 80 is amended as follows:

- (a) by deleting “Board” in the 2 places where it occurs and inserting instead in both places —
“ Commissioner ”;
- (b) in paragraph (b) by deleting “it” and inserting instead —
“ the Commissioner ”.

63. Section 81 amended

Section 81 is amended by deleting “Board may approve” and inserting instead —

“ Governor may make regulations prescribing ”.

64. Section 82 amended

Section 82 is amended as follows:

- (a) by deleting “Board” and inserting instead —
“ Commissioner ”;
- (b) by deleting “section 83(2).” and inserting instead —

“

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.

”.

65. Section 82A inserted

After section 82 the following section is inserted —

“

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.

”.

66. Section 83 amended

- (1) Section 83(1) is amended as follows:
 - (a) in paragraph (b) by deleting “\$1 000” and inserting instead —
“ \$10 000 ”;

- (b) in paragraph (c) by deleting “and any business certificate in respect thereof”;
 - (c) in paragraph (c) by deleting “or business certificate, or both”.
- (2) Section 83(2) is amended as follows:
- (a) in paragraph (a) by deleting “or business certificate”;
 - (b) in paragraph (b) by deleting “been guilty of” and inserting instead —
“ engaged in ”;
 - (c) by deleting subparagraph (c)(i) and inserting the following subparagraph instead —
“ (i) a condition of his licence; ”.

(3) After section 83(2) the following subsection is inserted —

“

- (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.

”.

67. Section 84 replaced

Section 84 is repealed and the following section is inserted instead —

“

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.

”.

68. Section 85 amended

- (1) Section 85(1) is repealed and the following subsection is inserted instead —

“

- (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) Section 85(2) is amended by deleting “Registrar” and inserting instead —

“ Commissioner ”.

- (3) Section 85(3) is amended as follows:

- (a) by deleting “Registrar” and inserting instead —

“ Commissioner ”;

- (b) by deleting “or the holder of a business certificate”.

- (4) Section 85(4) is amended by deleting “Registrar” and inserting instead —

“ Commissioner ”.

69. Section 86 repealed

Section 86 is repealed.

70. Section 87 amended

Section 87 is amended as follows:

- (a) by deleting “member or the deputy of a member, or the Registrar, an inspector, or any other officer, of the Board” and inserting instead —

“ person ”;

- (b) by deleting “, or by the Board,”;

- (c) by deleting “or its” in the 2 places where it occurs.

71. Section 88 replaced

Section 88 is repealed and the following section is inserted instead —

“

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;
 - (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*.

”.

72. Section 92 amended

Section 92(2) is amended by deleting “\$200” and inserting instead —

“ \$2 000 ”.

73. Sections 92A and 92B inserted

After section 92 the following sections are inserted —

“

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 have a complaint of the alleged offence heard and determined by 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
 - (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.

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.
- (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.

”.

74. Section 93 amended

- (1) Section 93(1) is amended by deleting “Registrar or an inspector” and inserting instead —
“ Commissioner ”.
- (2) Section 93(3) is amended by deleting “or the holder of a business certificate”.

75. Section 94 amended

Section 94 is amended by deleting “Board” and inserting instead —

“ Commissioner ”.

76. Section 95 amended

Section 95(2) is amended as follows:

- (a) by deleting paragraph (a) and inserting the following paragraphs instead —

“

- (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;

”;

- (b) after paragraph (e) by inserting the following paragraph —

“

- (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);

”;

- (c) in paragraph (g) by deleting “\$100” and inserting instead —
“ \$1 000 ”.

77. Part VI repealed

Part VI is repealed.

78. Savings and transitional

Schedule 1 has effect to make savings and transitional provisions.

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 exempted 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.

”

⁸ On the date as at which this reprint was prepared, the *Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004* s. 80, which gives effect to Sch. 2, and s. 82 had not come into operation. They read as follows:

“

80. Various Acts amended (Sch 2)

Each Act listed in Schedule 2 is amended as set out in that Schedule immediately below the short title of the Act.

82. References to “defendant” changed to “accused”

Each provision listed in Table 2, 3 or 4 to this section is amended by deleting any expression listed in Table 1 column 1 in each place it occurs (whether in ordinary type, italics, bold or capitals) and in each place inserting instead (in corresponding type) the expression opposite the deleted expression in Table 1 column 2.

Table 1

Delete	Insert instead
A defendant	An accused
a defendant	an accused
a defendant’s	an accused’s
defendant	accused
defendants	accused
Defendants’	Accused’s
Defendants	Accused
the defendant	the accused
the defendant’s	the accused’s

Table 2 — Various provisions

<i>Finance Brokers Control Act 1975</i>	s. 18F(2)
---	-----------

”

Schedule 2 cl. 57 reads as follows:

“

Schedule 2 — Amendments to change terminology

[s. 80]

57. *Finance Brokers Control Act 1975*

s. 92A(3)(b)	Delete “have a complaint of the alleged offence heard and determined by” and insert instead — “ be prosecuted for the alleged offence in ”.
--------------	--

”.

Defined Terms

Defined Terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined Term	Provision(s)
appointed day	4, 26(2)
approved.....	4
auditor	4
bank.....	4
banker.....	47
Board.....	4
business	4
business certificate	4
business day	47
Chairman.....	4
finance broker	4, 5(1), 5(2), 72(5)(b)
finance brokers code of conduct	4
fit and proper.....	27(2)
inspector	4
licence	4
licensed	4
licensee.....	4
member	4
person aggrieved	23(2)
Registrar	4
renewal	4
reviewable decision.....	23(2)
supervisor.....	4
Treasurer	4
Treasury	4
trust account	72(5)(a)
trust accounts	47
year.....	47