

Western Australia

Real Estate and Business Agents Act 1978

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Real Estate and Business Agents Act 1978

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Western Australia

Real Estate and Business Agents Act 1978

An Act to make provision with respect to the regulation and supervision of certain persons acting in respect of real estate transactions or certain business transactions, to repeal the *Land Agents Act 1921*², and for related purposes.

Part I — Preliminary

1. Short title

This Act may be cited as the *Real Estate and Business Agents Act 1978*¹.

2. Commencement

- (1) Subject to subsection (2), the provisions of this Act shall come into operation on such day or days as is or are, respectively, fixed by proclamation¹.
- (2) Section 5 shall come into operation on the appointed day³.

[3. *Repealed by No. 29 of 1982 s. 3.*]

4. Interpretation

- (1) In this Act unless the context otherwise requires —
 - “**Account**” means the Board Interest Account established under section 125(1);
 - “**Advisory Committee**” means the Home Buyers Assistance Advisory Committee established by section 131H(1);
 - “**agent**” means a person who is a real estate agent or a business agent, or both a real estate agent and a business agent;
 - “**agents code of conduct**” means the agents code of conduct prescribed and published under section 101;
 - “**appointed day**” means the day fixed by the Minister pursuant to subsection (2)³;
 - “**approved**” means approved by the Board;
 - “**Assistance Fund**” means the Home Buyers Assistance Fund established by section 131B(1);
 - “**auditor**” means a person appointed under this Act to audit the trust accounts of an agent;

“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 Real Estate and Business Agents Supervisory Board;

“business” means the business of an agent but does not have that meaning in paragraph (a) of the interpretation “business transaction” and does not mean the business of a developer;

“business”, in paragraph (a) of the interpretation “business transaction” means any commercial undertaking or enterprise in respect of any profession, trade, employment, vocation, or calling;

“business agent” means a person whose business either alone or as part of or in connection with any other business, is to act as agent for consideration in money or money’s worth, as commission, reward, or remuneration, in respect of a business transaction as defined by this section, but does not include a person whose business is to so act by reason that —

- (a) he is appointed by a court as a receiver or receiver and manager of the business of another; or
- (b) he is an official receiver or trustee within the meaning of the *Bankruptcy Act 1966* of the Commonwealth or any Act in amendment or substitution of that Act;

“business sales representative” means a person who on behalf of an agent negotiates a business transaction irrespective of whether or not the agent is the owner of the business involved, and includes —

- (a) a person who does so as a member of a firm that is a licensee and the holder of a current triennial

s. 4

certificate unless he is also a licensee and the holder of a current triennial certificate;

- (b) a person who does so as a director of a body corporate that is a licensee and the holder of a current triennial certificate, unless he is also a licensee and the holder of a current triennial certificate;

“business transaction” —

- (a) means a sale, exchange or other disposal and a purchase, exchange or other acquisition of a business and any share or interest in a business or the goodwill thereof; and
- (b) includes any sale, exchange, or other disposal and any purchase, exchange, and other acquisition of goods, chattels or other property relating to a business transaction of the kind specified in paragraph (a); and
- (c) also includes an option to enter into a business transaction; but
- (d) does not include the sale, exchange, or other disposal or a purchase, exchange, or other acquisition of a share in the capital of a body corporate carrying on a business or an option in respect thereof;

“certificate of registration” means a certificate of registration as a sales representative under this Act;

“Chairman” means the Chairman of the Board;

“code of conduct for sales representatives” means the code of conduct for sales representatives prescribed and published under section 101;

“defalcation by a licensee” includes criminal or fraudulent conduct —

- (a) of a licensee;
- (b) of any one or more of the servants or agents of the licensee;

(c) of a person who is a partner in the business of the licensee; or

(d) where the licensee is a firm and a body corporate is a partner in the firm or where the licensee is a body corporate, of any one or more of the directors, officers, servants, or agents of the body corporate,

in the course of the business of the licensee and from which arises pecuniary loss or loss of property to any other person;

“developer” means a person whose business either alone or as part of or in connection with any other business, is to act on his own behalf in respect of the sale, exchange, or other disposal of real estate;

“Fidelity Fund” means the Real Estate and Business Agents Fidelity Guarantee Fund referred to in section 107(1);

“franchising agreement” means an agreement whereby a party to the agreement grants to another party to the agreement the right or privilege to carry on business in a manner, over a period, and in a place specified in the agreement;

“General Purpose Fund” means the Education and General Purpose Fund established under section 124A(1);

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

“legal practitioner” means a certificated practitioner within the meaning of the *Legal Practice Act 2003*;

“licence” means the licence of an agent under this Act;

“licensed” means licensed as an agent under this Act;

“licensee” means a person licensed under this Act;

“member”—

(a) except in Part IXA, means a member of the Board; and

(b) in Part IXA, means a member of the Advisory Committee;

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“real estate” means land within or outside the State and includes land of any tenure and buildings or parts of buildings within or outside the State;

“real estate agent” means a person whose business either alone or as part of or in connection with any other business, is to act as agent for consideration in money or money’s worth, as commission, reward or remuneration, in respect of a real estate transaction as defined by this section but does not include a person whose business is to so act by reason that —

- (a) he is appointed by a court as a receiver or receiver and manager of the business of another person; or
- (b) he is an official receiver or trustee within the meaning of the *Bankruptcy Act 1966* of the Commonwealth or any Act in amendment or substitution of that Act;

“real estate sales representative” means a person who on behalf of an agent or a developer negotiates a real estate transaction irrespective in the case of an agent of whether or not the agent is the owner of the real estate involved, and includes —

- (a) a person who does so as a member of a firm that is a licensee and the holder of a current triennial certificate, unless he is also a licensee and the holder of a current triennial certificate; and
- (b) a person who does so as a director of a body corporate that is a licensee and the holder of a current triennial certificate unless he is also a licensee and the holder of a current triennial certificate;

“real estate transaction” —

- (a) means a sale, exchange, or other disposal and a purchase, exchange, or other acquisition of real estate and any exclusive right whether deriving from the ownership of a share or interest in a body corporate or partnership, or otherwise, to the use or occupation

of real estate including the leasing, and letting, and the acquisition under lease or letting of tenancy or occupation of real estate; and

- (b) includes any sale, exchange, or other disposal and any purchase, exchange, or other acquisition of goods, chattels or other property relating to a real estate transaction of a kind specified in paragraph (a); and
- (ba) includes the collection of rents or other payments for use or occupation; and
- (c) also includes an option to enter into a real estate transaction;

“registered” and **“registered sales representative”** means registered as a sales representative under this Act;

“Registrar” means the Registrar of the Board;

“registration” means registration as a sales representative under this Act;

“renewal” means a renewal of a triennial certificate or of a certificate of registration, as the case requires;

“repealed Act” means the Act repealed by section 5⁴;

“sales representative” means a person who is a real estate sales representative or a business sales representative, or both a real estate sales representative and a business sales representative;

“strata company” means a strata company constituted or deemed to be constituted under the *Strata Titles Act 1985*;

“supervisor” means a person appointed by the Board as supervisor of the business of an agent;

“transaction” means a real estate transaction or a business transaction, or both a real estate transaction and a business transaction;

“Treasurer” means the Treasurer of the State;

“Treasury” means the State Treasury;

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“triennial certificate” means a certificate granted under this Act to a licensee to carry on business as an agent.

- (2) The Minister shall by notice published in the *Government Gazette* fix a day to be the appointed day³ for the purposes of the provisions of this Act that refer to the appointed day.
- (3) The collection by an agent for or on behalf of another person of moneys in respect of —
- (a) the consideration;
 - (b) any terms payments;
 - (c) any rent or other payment for use or occupation; or
 - (d) any payments under a mortgage or other security,

relating to a transaction is deemed to be a service rendered by the agent in his capacity as an agent, and those moneys are deemed to be moneys received by the agent, in the course of his business, for and on behalf of the other person in respect of the transaction, irrespective of whether or not the agent negotiated the transaction or participated in the negotiation thereof.

- (3a) For the purposes of this Act, moneys collected by an agent for or on behalf of a strata company are deemed to be moneys collected by the agent in respect of a real estate transaction.
- (4) Nothing contained elsewhere in this Act applies to or in relation to —
- (a) a body corporate authorised by the law of any State, or of a Territory, of the Commonwealth to apply for and obtain a grant of probate of a will when exercising its power to do so or when exercising any other power conferred on it by such a law;
 - (b) 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; or

- (c) a regulated principal (within the meaning of section 1430 of the *Corporations 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.

[Section 4 amended by No. 74. of 1980 s. 3; No. 10 of 1982 s. 28; No. 29 of 1982 s. 4; No. 40 of 1985 s. 8; No. 98 of 1985 s. 3; No. 59 of 1995 s. 4; No. 26 of 1999 s. 99(2); No. 10 of 2001 s. 222; No. 21 of 2003 s. 20; No. 65 of 2003 s. 59(2); No. 74 of 2003 s. 101.]

- [5. *Omitted under the Reprints Act 1984 s. 7(4)(f).]*

Part II — Real Estate and Business Agents Supervisory Board

Division 1 — General

6. Board established

- (1) For the purposes of this Act there shall be a board to be known as the “Real Estate and Business Agents 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. Board, membership of

- (1) Subject to this section, the Board shall consist of 5 members appointed by the Governor of whom —
 - (a) one, being a person who is not a licensed agent, shall be appointed to be a member and Chairman of the Board;
 - (b) one, being a person who is not a licensed agent, shall be a person who is experienced in commercial practice;
 - (c) one, being a person who is not a licensed agent, shall be a person who is a legal practitioner;

- (d) one shall be a person who is a licensed agent nominated for appointment by The Real Estate Institute of Western Australia; and
 - (e) one shall be a person who is a licensed agent and elected for appointment by licensed agents (hereinafter called an elective member).
- (2) Prior to the first occasion on which an appointment is to be made to the office of a member referred to in subsection (1)(d), and on each occasion thereafter when such office becomes vacant, the Minister shall, in writing, request The Real Estate Institute of Western Australia to nominate to him in writing the name of a licensed agent who is willing to act as a member of the Board.
- (3) Where a request has been made pursuant to subsection (2) the Minister may, if nomination is not made pursuant to that subsection within 21 days of the request being made, nominate for appointment to the office such licensed agent as the Minister thinks fit.
- [(4) Omitted under Reprints Act 1984 s. 7(4)(e).]*
- (5) The Minister shall appoint a returning officer for each election of an elective member.
- (6) The election of an elective member shall be held and conducted in such manner and at such times as may be prescribed.
- (7) 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.
- (8) The Governor may appoint as deputy of a member a person who has the like prescribed qualifications 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.

- (9) 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. Members, term of office

- (1) Subject to this Act, each elective member shall hold office for a period of 4 years and is eligible for re-election and reappointment, and each member who is not an elective member shall hold office for such period not exceeding 4 years as is specified in the instrument of his appointment and 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 meetings of the Board for a period exceeding 8 weeks; 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.

[Section 8 amended by No. 74 of 1980 s. 4.]

8A. Board's functions

- (1) The functions of the Board are —
- (a) to advise the Minister as to the general administration of this Act;
 - (b) to make recommendations and submit proposals to the Minister from time to time with respect to regulations to be made under this Act;
 - (c) to administer the scheme of licensing and registration established under this Act;
 - (d) to conduct and promote education and provide advisory services for persons who are licensed or registered 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 Board;
 - (iii) matters relating to the operations of agents; or
 - (iv) any other prescribed matter;and
 - (e) to perform such other functions as are conferred upon the Board under this Act.
- (2) The Board may do all things that are necessary or convenient to be done for or in connection with the performance of its functions.

[Section 8A inserted by No. 59 of 1995 s. 5.]

9. Board meetings

- (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. Board's acts valid despite vacancy etc.

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. Members, remuneration and allowances

A member of the Board is to be paid from moneys standing to the credit of the General Purpose Fund such remuneration and allowances as are determined in the case of that member by the Minister on the recommendation of the Minister for Public Sector Management.

[Section 11 inserted by No. 59 of 1995 s. 6.]

12. 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.
- (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(2).]

12AA. Board may engage consultants etc.

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

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

[Section 12AA inserted by No. 34 of 1998 s. 4.]

12A. Minister may direct Board

- (1) The Minister may give directions in writing to the Board with respect to the exercise of its powers and functions, either generally or in relation to a particular matter, and the Board shall give effect to any such direction.
- (2) The text of any direction given under subsection (1) is to be included in the annual report submitted by the accountable authority of the Board under section 66 of the *Financial Administration and Audit Act 1985*.

[Section 12A inserted by No. 43 of 1994 s. 4.]

12B. Minister entitled to information held by Board

- (1) The Minister is entitled —
 - (a) to have information in the possession of the Board; and
 - (b) where the information is in or on a document, to have, and make and retain copies of, that document.
- (2) For the purposes of subsection (1) the Minister may —
 - (a) request the Board to furnish information to the Minister;
 - (b) request the Board to give the Minister access to information;

- (c) for the purposes of paragraph (b) make use of the staff of the Board to obtain the information and furnish it to the Minister.
- (3) The Board shall comply with a request under subsection (2) and make its staff and facilities available to the Minister for the purposes of paragraph (c) of that subsection.
- (4) In this section —
- “**document**” includes any tape, disc or other device or medium on which information is recorded or stored mechanically, photographically, electronically or otherwise;
- “**information**” means information specified, or of a description specified, by the Minister that relates to the functions of the Board.

[Section 12B inserted by No. 43 of 1994 s. 4.]

Division 1A — Corporate plan

[Heading inserted by No. 59 of 1995 s. 8.]

12C. Corporate plan to be prepared for each financial year

- (1) The Board shall prepare a corporate plan for each financial year.
- (2) A corporate plan for a financial year shall be prepared and submitted to the Minister for approval by 31 July in that year.
- (3) A corporate plan shall include —
- (a) a statement of the objectives of the Board;
 - (b) a statement of the policies and strategies that the Board intends to adopt in order to achieve the Board’s objectives;
 - (c) an estimate of the Board’s income and expenditure for the relevant financial year;
 - (d) the activities and improvements that the Board proposes to carry out; and

- (e) the resources that the Board proposes to allocate to those activities and improvements.
- (4) The Board may, with the approval of the Minister, revise a corporate plan at any time.

[Section 12C inserted by No. 59 of 1995 s. 8.]

12D. Board to comply with corporate plan

The Board shall ensure that, to the extent that it is practicable to do so, the performance of its functions and the exercise of its powers are consistent with, and designed to give effect to, the current corporate plan.

[Section 12D inserted by No. 59 of 1995 s. 8.]

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

and with the code of conduct for sales representatives and is or has been complying with the requirements of this Act;

- (e) determining whether any other cause exists that might be considered by the Board to render a sales representative unfit to hold a certificate of registration;
- (f) determining whether or not a developer is complying with the requirements of this Act; and
- (g) detecting offences against this Act.

[Section 13 amended by No. 34 of 1998 s. 5.]

14. Investigation by the police

- (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.
- (3) A member of the Police Force making an investigation or inquiry or report relating to any matter that is the subject of investigation or inquiry pursuant to section 13 shall, in addition to any power, authority, and immunity of such a member apart from this Act, have like powers, authorities, and immunities as an inspector of the Board appointed under this Act has in respect of a like matter, and the provisions of this Act relating thereto and relating to persons affected thereby shall be read and construed accordingly with such modifications as are necessary and in particular with the modification that for the purposes of section 15(6)(b) it shall be sufficient if the member of the Police Force identifies himself as such to the person, if any, affording him entry.

15. Investigative powers of Registrar and inspectors

- (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; and
 - (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; and
 - (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;
 - (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; 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 for which purpose the Registrar or an inspector may administer an oath or affirmation and may witness a statutory declaration.
- (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; 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.
- (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.

[Section 15 amended by No. 24 of 2005 s. 63.]

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; or
- (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 investigation

- (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;

- (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: \$3 000.

- (2) It is a defence in any proceeding for an offence under subsection (1)(a) or (c) for the accused to show —
 - (a) that, in the case of an alleged offence arising out of a requirement made orally under section 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.

[Section 17 amended by No. 43 of 1994 s. 11; No. 84 of 2004 s. 82.]

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 — Proceedings of, and review of decision of, the Board

[Heading amended by No. 55 of 2004 s. 1003.]

19. Proceedings, notice of, right to appear at, representation at, etc.

- (1) The Board shall give to any person who is a party to proceedings instituted before the Board reasonable notice of the time and place at which it intends to conduct those proceedings, and shall afford any such person a reasonable opportunity to call or give evidence, to examine or cross-examine witnesses, and to make submissions to the Board unless —
 - (a) in the case of an application for the grant of a licence, or the grant or renewal of a triennial certificate, there is no objection and the Board proposes to grant the licence or grant or renew the certificate without any special conditions being imposed or changed; or
 - (b) in the case of an application for the grant or renewal of a certificate of registration, the Board proposes to grant or renew the certificate without any special conditions being imposed or changed.
- (2) If a person to whom notice has been given pursuant to subsection (1) does not attend at the time and place fixed by the notice, the Board may conduct the proceedings in his absence.
- (3) The Board may appoint a person with such qualifications as it thinks fit to appear in proceedings before the Board to assist the Board.
- (4) An inspector may appear in any proceedings before the Board.
- (5) An inspector or any party to proceedings before the Board shall be entitled to appear personally or by counsel.

- (6) Any party to proceedings before the Board, may, by leave of the Board, be represented before the Board by a person other than a legal practitioner.
- (7) A person, other than a legal practitioner, shall not demand or receive any fee or reward for representing a party to proceedings before the Board.
Penalty: \$5 000.
- (8) Where the Board is satisfied that for the purpose of protecting the business or interest of any person it is desirable that the proceedings or any part thereof be conducted *in camera*, the Board may make an order to that effect and may include in the order conditions relating to that purpose, and, if such an order is made, the proceedings shall be conducted in accordance with it.

[(9)-(9b) repealed]

- (10) A person appointed by the Board to assist the Board in proceedings before the Board or a person authorised by or under this Act to appear in proceedings before the Board for the purpose of representing another person has the same protection and immunity as a barrister has in appearing for a party in proceedings in the Supreme Court and, where the person so appointed or authorised is a barrister or solicitor, he is subject to the same liabilities as he would be in appearing before that Court.

[Section 19 amended by No. 59 of 1995 s. 41; No. 34 of 1998 s. 6; No. 55 of 2004 s. 1004(1).]

20. Board's powers to obtain evidence

- (1) In the exercise of its powers and functions under this Act, the Board may —
 - (a) by summons signed on behalf of the Board by the Registrar, require the attendance before the Board of any person;

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- (b) by summons signed on behalf of the Board by the Registrar, require the production of any books, papers, or documents;
 - (c) inspect any books, papers, or documents produced before it, and retain them for such reasonable period as it thinks fit, and make copies of any of them, or of any of their contents;
 - (d) require any person to make oath or affirmation that he will truly answer all questions put to him by the Board relating to any matter being inquired into by the Board (which oath or affirmation may be administered by a member of the Board or any officer of the Board); and
 - (e) require any person appearing before the Board (whether he has been summoned to appear or not) to answer any relevant questions put to him by the Board, or by any other person appearing before the Board.
- (2) Subject to subsection (3), if any person —
- (a) who has been served with a summons to attend before the Board fails without reasonable excuse (proof of which shall lie upon him) to attend in obedience to the summons;
 - (b) who has been served with a summons to produce any books, papers, or documents, fails without reasonable excuse (proof of which shall lie upon him) to comply with the summons;
 - (c) misbehaves himself before the Board, wilfully insults the Board, or interrupts the proceedings of the Board; or
 - (d) refuses to be sworn or to affirm, or to answer any relevant question, when required to do so by the Board,
- he is guilty of an offence and liable to a penalty not exceeding \$5 000.
- (3) A person shall not be obliged to answer a question put to him under this section if the answer to that question would tend to

incriminate him, or to produce any books, papers or documents if their contents would tend to incriminate him.

- (4) In the course of any proceedings, the Board may —
- (a) receive in evidence any transcript of evidence in proceedings before a court and draw any conclusions of fact therefrom that it considers proper; or
 - (b) adopt, as in its discretion it considers proper, any findings, decision, or judgment of a court that may be relevant to the proceedings.
- (5) In any proceedings the Board shall act according to equity, good conscience, and the substantial merits of the case without regard to technicalities and legal forms and it shall not be bound by the rules of evidence, but may inform itself on any matter in such manner as it thinks fit.

[Section 20 amended by No. 43 of 1994 s. 11; No. 55 of 2004 s. 1004(2).]

21. Orders for costs

- (1) The Board may, upon the determination of any proceedings, make such orders for costs as the Board considers just and reasonable.

[(2), (3) repealed]

[Section 21 amended by No. 34 of 1998 s. 7; No. 55 of 2004 s. 1004(3).]

[22. Repealed by No. 55 of 2004 s. 1004(4).]

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 triennial 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 triennial certificate;
- (b) a person whose certificate of registration is affected by a reviewable decision or who, under Part IV, applies for the grant or renewal of a certificate of registration;
- (c) a licensee who has, or seeks, the Board’s approval under section 56 to carry on business pursuant to a franchising agreement or another party to the agreement;
- (d) a person affected by a decision of the Board under Part VI;
- (e) a person claiming against, or seeking the leave of the Board to commence an action in relation to, the Fidelity Fund; or
- (f) a person affected by an order of the Board for costs under section 21;

“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 other than a determination of the form in which an application is to be made;
- (c) a decision under section 56;
- (d) a decision under Part VI;
- (e) a decision under section 116 or 117; or
- (f) an order for costs under section 21.

[Section 23 inserted by No. 55 of 2004 s. 1005.]

Division 4 — Advisory committees

[Heading inserted by No. 34 of 1998 s. 9.]

23A. Advisory committees to assist the Board

- (1) The Minister may, after a request from the Board, establish an advisory committee or committees (a “**committee**”) to provide advice to the Board for consideration in the performance of the Board’s functions and the exercise of the Board’s powers.
- (2) A committee is to consist of not more than 7 persons or another number of persons that is prescribed for the purposes of this subsection who have such knowledge, experience or qualifications as the Minister considers appropriate to the matters on which the committee is to advise.
- (3) One or more members of the Board may, but need not, be appointed to a committee.
- (4) The Minister may make such arrangements as the Minister considers appropriate for the receipt of nominations for the purposes of an appointment under subsection (2).
- (5) The Minister is to appoint one of the members of a committee to be the chairperson of the committee.
- (6) The Minister may give directions in writing to a committee as to its procedure but otherwise a committee may determine its own procedure.
- (7) The Board is to provide a committee with such support services as it may reasonably require.
- (8) A member of a committee —
 - (a) is to hold office for such term not exceeding 2 years as is specified in the instrument appointing the member;
 - (b) is, on the expiration of the member’s term of office, eligible for reappointment; and

- (c) may hold office on more than one committee contemporaneously.
- (9) A member of a committee, other than a member who is also a member of the Board, is to be paid from moneys standing to the credit of the General Purpose Fund such remuneration and allowances as are determined in the case of the member by the Minister on the recommendation of the Minister for Public Sector Management.
- (10) The Minister may terminate the appointment of a member of a committee for inability, inefficiency or misbehaviour.
- (11) Section 8(4) applies to a member of a committee as if a reference in section 8(4) —
 - (a) to a member of the Board included a member of a committee; and
 - (b) to the Board included the committee.

[Section 23A inserted by No. 34 of 1998 s. 9.]

23B. Minister may delegate s. 23A powers

- (1) The Minister may, by instrument in writing, delegate to the Board or any other person, either generally or as otherwise provided in the instrument, any of the Minister's powers under section 23A but the Minister cannot delegate this power of delegation.
- (2) Anything done by a delegate under a delegation under this section has the same force and effect as if it had been done by the Minister.

[Section 23B inserted by No. 34 of 1998 s. 9.]

Division 5 — Conciliation

[Heading inserted by No. 34 of 1998 s. 9.]

23C. Conciliation of disputes about transactions

- (1) An officer of the Board (other than the Registrar, the Deputy Registrar, an Assistant Registrar or an inspector) or a person engaged under section 12AA(b) may act as a conciliator for the purposes of this section.
- (2) A conciliator's function is to assist the parties to a transaction to resolve a dispute about the transaction by —
 - (a) arranging for the parties to hold informal discussions about the dispute;
 - (b) helping in the conduct of those discussions; and
 - (c) if possible, assisting the parties to reach agreement.
- (3) A conciliation process is not to start or continue once proceedings before the State Administrative Tribunal in relation to the transaction have been instituted.
- (4) No party to a transaction may be represented by another person during the conciliation process unless the conciliator, on the ground that the process will not work effectively without that representation, otherwise determines.
- (5) Evidence of anything said or admitted during the conciliation process —
 - (a) is not admissible in proceedings before the Board or a court or tribunal, whether under this Act or any other law; and
 - (b) cannot be used as ground for an investigation or inquiry under this Act.
- (6) Nothing in this section —
 - (a) prevents the parties to a transaction from resolving a dispute in relation to the transaction at any time, whether through the conciliation process or not; or

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(b) requires a conciliator to participate in a conciliation process or the Board to provide its officers or other persons for that purpose.

(7) In this section —

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

[Section 23C inserted by No. 34 of 1998 s. 9; amended by No. 55 of 2004 s. 1020.]

Part III — Licensing of agents

24. Application for licence

- (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.
- (5) An applicant is a party to proceedings before the Board on his application.

25. Objection to grant of licence

- (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.

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- (4) A person who makes an objection to the grant of a licence is, while he maintains the objection, a party to the proceedings on the application for the grant.

26. Real estate and business agents to be licensed

On and after the appointed day³ a person shall not carry on business, or by any means hold himself or itself out, as a real estate agent, or a business agent, or both a real estate agent and a business agent, unless he or it is licensed as such under this Act and holds a current triennial certificate in respect of the licence.

Penalty: \$20 000.

[Section 26 amended by No. 43 of 1994 s. 11.]

27. Natural person, grant of licence to

- (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 of or over the age of 18 years;
 - (b) he is a person of good character and repute and a fit and proper person to hold a licence;
 - (c) he has sufficient material and financial resources available to him to enable him to comply with the requirements of this Act; and
 - (d) he understands fully the duties and obligations imposed by this Act on agents.
- (2) In subsection (1)(b) “**fit and proper**” includes being qualified in accordance with the Schedule but subject to the savings and exceptions provided therein and elsewhere in this Act.

28. Firm, grant of licence to

Subject to this Act, 2 or more persons constituting a firm who apply to the Board for a licence and pay 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, an agent's business;
- (b) the persons by whom or by which the firm is constituted have sufficient material and financial resources available to them to enable them to comply with the requirements of this Act;
- (c) where the firm is constituted by not more than 3 persons at least one of them is licensed or where the firm is constituted by more than 3 persons at least 2 of them are licensed; and
- (d) the person in *bona fide* control of the business operated under the licence is licensed.

29. Body corporate, grant of licence to

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, an agent's business;

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- (b) that it has sufficient material and financial resources available to it to comply with the requirements of this Act;
- (c) unless for good cause shown by the applicant the Board otherwise determines, 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
- (d) the person in *bona fide* control of the business operated under the licence is licensed.

30. Licence, effect of

- (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 an agent unless he holds a current triennial certificate in respect of the licence.
- (2a) A licensee ceases to be licensed if the licensee —
 - (a) does not hold a current triennial 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.
- (3) A person may at any time surrender a licence and any triennial certificate in respect thereof, held by him and shall do so if he ceases to have the qualifications for holding the licence.
- (4) Despite the surrender by a person of a licence or triennial 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. 74 of 1980 s. 5; No. 56 of 1995 s. 40; No. 55 of 2004 s. 1006.]

31. Triennial certificate, grant and renewal of

- (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 an agent for the period of 3 years commencing on the date on which it is granted.
- (2) Subject to this Act, a triennial certificate may be renewed for subsequent periods of 3 years each by payment of the prescribed fee and delivery to the Board of an application signed —
 - (a) by the licensee, if the licensee is a person other than a body corporate; or
 - (b) by the person in *bona fide* control of the business of the licensee, if the licensee is a firm or a body corporate.
- (3) The Board may refuse to renew a licensee's triennial certificate if —
 - (a) the Board is satisfied that section 27(1)(b), (c) or (d), section 28(a), (b), (c) or (d) or section 29(a), (b), (c) or (d), as is relevant to the licensee, does not apply, or no longer applies, in relation to the licensee; or
 - (b) the licensee has not met prescribed educational requirements.

[Section 31 amended by No. 34 of 1998 s. 10; No. 55 of 2004 s. 1007.]

32. Triennial certificates, late renewal of

- (1) Where a triennial certificate is renewed within the period of one month immediately succeeding the day on which the triennial certificate expired, the renewal shall be deemed to take effect for the period of 3 years on and from the day next succeeding the day on which the triennial certificate expired.
- (2) Where a triennial certificate is renewed more than one month but not more than 12 months after the day on which the triennial certificate expired and the licensee satisfies the Board that there is reasonable cause for the renewal to be deemed to take effect

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for the period of 3 years on and from the day next succeeding the day on which the triennial certificate expired, the Board shall so determine and the renewal shall take effect accordingly.

33. Triennial certificates, renewal of in certain cases

- (1) Where a triennial certificate expires and is not renewed within the period of 12 months thereafter an application for a renewal shall be made at least one month prior to the date on which it is intended the renewal shall take effect unless the applicant satisfies the Board that there is reasonable cause for the application being made out of time.
- (2) The application 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.
- (5) An applicant is a party to proceedings before the Board on his application.

34. Conditions on licences and triennial certificates

- (1) A licensee shall comply with the provisions of this Act and the agents code of conduct.
- (2) The Board may grant a licence or grant or renew a triennial certificate subject to such special conditions as it thinks fit.
- (3) A licensee shall comply with any special condition to which under subsection (2) his licence or triennial certificate is subject.

[Section 34 amended by No. 56 of 1995 s. 41; No. 34 of 1998 s. 11.]

34A. Unopposed applications

- (1) Subject to this Part, a licence may be granted and a triennial 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 triennial certificate or the renewed triennial 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. 1008.]

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

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powers conferred on it by Part VII or by the *State Administrative Tribunal Act 2004*.

[Section 34B inserted by No. 55 of 2004 s. 1008.]

35. Commencing or ceasing business, Registrar to be notified

A licensee shall, within 14 days after commencing or ceasing to carry on business as an agent, give to the Registrar notice in writing of that fact.

36. Registered office of licensee

- (1) A licensee shall, on and after the day on which he commences to carry on business as an agent, and for so long as he carries on that business, have a registered office in the State.

Penalty: \$1 000.

- (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 of the office to the Registrar and a registration may be transferred from one office to the other by written notice given to the Registrar.

[Section 36 amended by No. 43 of 1994 s. 11.]

37. Branch office of licensee

- (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: \$1 000.

- (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 who is the holder of a current triennial certificate.

Penalty: \$1 000.

- (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 an agent on his own account.

[Section 37 amended by No. 43 of 1994 s. 11.]

38. Triennial certificate to show place of business etc.

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

39. Licence and triennial certificate not transferable

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

Penalty: \$20 000.

[Section 39 amended by No. 43 of 1994 s. 11.]

40. Business names, use of by licensees

- (1) The use of a business name by a licensee is not subject to the approval of the Board but —
 - (a) subject to subsection (2), a licensee may carry on business as an agent under only one business name which shall be endorsed on his triennial certificate; and

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- (b) all licensees carrying on the business of an agent under a business name shall have their surnames and initials on all correspondence from them in that business.
- (2) A licensee who was, immediately before the appointed day³ carrying on business as a real estate agent under a business name and as a business agent under another business name may continue to do so but so that he uses only one business name for the business of a real estate agent and only one business name for the business of a business agent, in which case both business names shall be endorsed on his triennial certificate.
- (3) A licensee who alters the name, style, title, or designation under which he carries on business as an agent 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: \$1 000.

[Section 40 amended by No. 43 of 1994 s. 11.]

41. Official details to be displayed in offices, on correspondence, etc.

- (1) 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 by persons entering therein —
 - (a) a notice of his name, and of the fact that he is a licensed real estate and business agent, together with the name, style, title, or designation under which he carries on business as a real estate agent or a business agent, or both, if that business is, or those businesses are, 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.

- (2) On all correspondence, and on the outside of all documents prepared, in the course of business of a licensee at his registered office and every branch office —
- (a) the licensee shall be identified as a real estate agent or business agent, or both, and the registered office of his business shall be shown; and
 - (b) in the case of a branch office, the manager shall also be identified as a real estate agent or business agent, or both, and the address of the branch office shall also be shown.

Part IV — Registration of sales representatives

42. Natural persons only may be registered

A certificate of registration as a real estate and business sales representative shall not be granted otherwise than to an individual natural person.

43. Application for registration

- (1) An application for a certificate of registration 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) The information contained in the application shall be verified by statutory declaration of the applicant.
- (3) 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.
- (4) An applicant is a party to proceedings before the Board on his application.

44. Real estate sales representatives to be registered etc.

- (1) On and after the appointed day ³, a person not being a licensee who is the holder of a current triennial certificate shall not act as, or carry out any of the functions of, a real estate sales representative unless he is the holder of a current certificate of registration and he acts, or carries out those functions, for and on behalf of a licensee who is the holder of a current triennial certificate, or for and on behalf of a developer.
Penalty: \$3 000.
- (2) On and after the appointed day ³, a person not being a licensee who is the holder of a current triennial certificate shall not unless he is the holder of a current certificate of registration

hold himself out by any means as a real estate sales representative or as being in the employment of, or as acting for or on behalf of a licensee who is the holder of a current triennial certificate as a real estate sales representative, or as being in the employment of, or acting for or on behalf of a developer as a real estate sales representative.

Penalty: \$3 000.

- (3) On and after the appointed day³, a real estate sales representative who is the holder of a current certificate of registration shall not hold himself out by any means as being in the employment of, or as acting for or on behalf of a licensee who is the holder of a current triennial certificate, or as being in the employment of, or as acting for or on behalf of a developer, unless that licensee or developer, as the case may be, is his employer, principal or partner.

Penalty: \$3 000.

[Section 44 amended by No. 43 of 1994 s. 11.]

45. Business sales representatives to be registered etc.

- (1) On and after the appointed day³, a person not being a licensee who is the holder of a current triennial certificate shall not act as, or carry out any of the functions of, a business sales representative unless he is the holder of a current certificate of registration and he acts, or carries out those functions for and on behalf of a licensee who is the holder of a current triennial certificate.

Penalty: \$3 000.

- (2) On and after the appointed day³, a person not being a licensee who is the holder of a current triennial certificate shall not unless he is the holder of a current certificate of registration hold himself out by any means as a business sales representative or as being in the employment of, or as acting for or on behalf of a licensee who is the holder of a current triennial certificate.

Penalty: \$3 000.

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- (3) On and after the appointed day³, a business sales representative who is the holder of a current certificate of registration shall not hold himself out by any means as being in the employment of, or acting for or on behalf of, a licensee who is the holder of a current triennial certificate unless that licensee is his employer, principal, or partner.

Penalty: \$3 000.

[Section 45 amended by No. 43 of 1994 s. 11.]

46. Partners and directors of licensees to be registered in certain cases

On and after the appointed day³ a person resident in the State, and not being a licensee who is the holder of a current triennial certificate —

- (a) shall not as a member of a firm that is a licensee and holds a current triennial certificate; or
- (b) shall not as a director of a body corporate that is a licensee and holds a current triennial certificate,

carry out the functions of a sales representative unless he is the holder of a current certificate of registration.

Penalty: \$2 000.

[Section 46 amended by No. 43 of 1994 s. 11.]

47. Natural person, grant of certificate of registration to

- (1) Subject to this Act, an individual natural person who applies to the Board for a certificate of registration as a real estate and business sales representative and pays to the Board the prescribed fee for that certificate shall be granted and may hold a certificate of registration if the Board is satisfied that —

- (a) he is of or over the age of 18 years;
- (b) he is a person of good character and repute and a fit and proper person to hold a certificate of registration;

- (c) he understands fully the duties and obligations imposed by this Act on persons involved in negotiating real estate transactions and business transactions.
- (2) In subsection (1)(b) “**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.

48. Certificate of registration, duration and renewal of

- (1) Subject to this Act, a certificate of registration remains in force for the prescribed period.
- (2) Subject to this Act a certificate of registration may be renewed for subsequent prescribed periods.
- (3) An application to the Board for renewal of a certificate shall be —
 - (a) accompanied by the prescribed fee and, in the case of an expired certificate, any additional amount prescribed by way of penalty for a late application; and
 - (b) signed by the sales representative.
- (4) The Board shall not renew a certificate of registration unless it is satisfied that the sales representative was employed by a licensee at the time of making the application or will be employed by a licensee upon the renewal of the certificate.
- (5) The Board may refuse to renew a sales representative’s certificate of registration if —
 - (a) the Board is satisfied that section 47(1)(b) or (c) does not apply, or no longer applies, in relation to the sales representative; or
 - (b) the sales representative has not met prescribed educational requirements.

[Section 48 amended by No. 56 of 1995 s. 42; No. 34 of 1998 s. 12; No. 55 of 2004 s. 1009.]

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49. Certificates of registration, late renewal of

- (1) If a certificate of registration is renewed after, but within 28 days of, the day on which it expired, the renewal shall be taken for all purposes to have taken effect on the day immediately succeeding the day on which it expired.
- (2) Where a certificate of registration is renewed more than 28 days but not more than 12 months after the day on which the certificate of registration expired and the sales representative satisfies the Board that there is reasonable cause for the renewal to be deemed to take effect for the prescribed period on and from the day next succeeding the day on which the certificate of registration expired, the Board shall so determine and the renewal shall take effect accordingly.
- (3) Where a certificate of registration expires and is not renewed within the period of 12 months thereafter, an application for a renewal shall be made at least 28 days prior to the date on which it is intended the renewal shall take effect unless the applicant satisfies the Board that there is reasonable cause for the application being made out of time.
- (4) An application for renewal referred to in subsection (3) 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.
- (5) The information contained in an application for renewal referred to in subsection (3) shall be verified by statutory declaration of the applicant.
- (6) In respect of any particular application referred to in subsection (3) the applicant shall furnish the Board with such further information as the Board determines, verified if the Board so determines by statutory declaration.

- (7) An applicant for a renewal referred to in subsection (3) is a party to proceedings on his application.

[Section 49 amended by No. 56 of 1995 s. 43.]

50. Conditions on certificates of registration

- (1) A registered sales representative shall comply with the provisions of this Act and the code of conduct for sales representatives.
- (2) The Board may grant a certificate of registration or a renewal thereof subject to such special conditions as it thinks fit.
- (3) A registered sales representative shall comply with any special condition to which his certificate of registration is subject.

[Section 50 amended by No. 56 of 1995 s. 44; No. 34 of 1998 s. 13.]

50A. Unopposed applications

- (1) Subject to this Part, a certificate of registration may be granted or renewed, (as long as 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 certificate of registration or the renewed certificate of registration, as the case may be, to the applicant.
- (3) Section 47 applies to the Registrar in the performance of a function under subsection (1) as if a reference in that provision to the Board being satisfied as to a matter were a reference to the Registrar being satisfied as to the matter.

[Section 50A inserted by No. 55 of 2004 s. 1010.]

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50B. Suspension of registration by State Administrative Tribunal

- (1) Where the State Administrative Tribunal makes an order against a sales representative and payment is not made in accordance with the order or the order is otherwise not complied with or is breached, the State Administrative Tribunal may suspend the registration 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 VII or by the *State Administrative Tribunal Act 2004*.

[Section 50B inserted by No. 55 of 2004 s. 1010.]

51. Commencing or ceasing as sales representative, Registrar to be notified

- (1) A registered sales representative shall, within 14 days after commencing or ceasing in the employment of, or to act for or on behalf of, a licensee or a developer, as the case may be, as a sales representative, give to the Registrar notice in writing of that fact and such further particulars thereof as are prescribed or as are required by the Board.
- (2) A registered sales representative shall give to the Registrar notice in writing of any change in the address of the registered sales representative as soon as practicable after that change takes place.

[Section 51 amended by No. 56 of 1995 s. 45.]

52. Certificate of registration not transferable

- (1) A certificate of registration is not transferable.
- (2) A registered sales representative shall not in any way permit or hold himself out as being willing to permit, another person to

use the certificate of registration of the registered sales representative.

Penalty: \$3 000.

[Section 52 amended by No. 43 of 1994 s. 11.]

53. Certificate of registration, surrender of

- (1) A person may at any time surrender a certificate of registration held by him and shall do so if he ceases to have the qualifications for holding the certificate of registration.
- (2) Despite the surrender by a person of a certificate of registration, 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 certificate had not been surrendered.

[Section 53 amended by No. 55 of 2004 s. 1011.]

54. Sales representatives, employment of

- (1) An agent shall not employ as a sales representative, or permit to carry out in the business of the agent any of the functions of a sales representative, any other person, not being a licensee who is the holder of a current triennial certificate, unless that other person is a registered sales representative.
- (2) A developer shall not employ as a real estate sales representative, or permit to carry out in the business of the developer, any of the functions of a real estate sales representative, any other person, not being a licensee who is the holder of a current triennial certificate, unless that other person is a registered sales representative.

Penalty: \$3 000.

[Section 54 amended by No. 43 of 1994 s. 11.]

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55. Sales representative to be in service of one person

- (1) A registered sales representative shall not accept or undertake employment, or be or remain in the service of, or by any means hold himself out as being in the service of, or act as sales representative for or on behalf of, any person who is an agent or a developer at any time when he is employed by, or in the service of, any other person who is an agent or a developer.

Penalty: \$3 000.

- (2) A person who is an agent or a developer shall not employ, or have in his service as a sales representative, any person who is, to the knowledge of that person who is an agent or a developer, at that time employed by, or in the service of, any other person who is an agent or a developer.

Penalty: \$3 000.

- (3) An agent or a developer shall not whether directly or indirectly give any commission, reward or other valuable consideration to any other person, not being a licensee who holds a current triennial certificate, for acting as, or performing any of the functions of, a sales representative unless the other person is a registered sales representative in the service of the agent or developer, as the case may be, as a sales representative.

Penalty: \$3 000.

- (4) Nothing contained elsewhere in this section applies to or in relation to a director of a body corporate that is a developer when acting as, or carrying out the functions of, a real estate sales representative for the body corporate in its business as a developer.

[Section 55 amended by No. 43 of 1994 s. 11.]

Part V — General controls

56. Franchising agreements

- (1) A licensee shall not carry on business pursuant to a franchising agreement unless he has the approval of the Board to do so, and where he does so without such approval each party to the agreement commits an offence.

Penalty: \$10 000.

- (2) Approval of the Board for a licensee to carry on business pursuant to a franchising agreement may be subject to such conditions as the Board sees fit to impose, and where those conditions are not complied with each party to the agreement commits an offence.

Penalty: \$10 000.

- (3) Where a licensee carries on business pursuant to a franchising agreement —

- (a) each party to the agreement is liable to penalties imposed for failure to comply with the provisions of Part VI; and
- (b) all the parties to the agreement are jointly and severally liable for any defalcation of the licensee.

[Section 56 amended by No. 43 of 1994 s. 11.]

57. Developer's principal place of business to be registered

- (1) A developer shall, on and after the day on which he commences to carry on business as a developer, and for so long as he carries on that business, have his principal place of business in the State registered with the Board by giving written notice of the situation of that place to the Registrar.

Penalty: \$1 000.

- (2) Any summons, notice, order, or other document to be served on a developer, may be served by leaving it at his principal place of

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business or by sending it by registered post addressed to the developer at that place.

[Section 57 amended by No. 43 of 1994 s. 11.]

58. Developer to give notice of change in principal place of business

- (1) Where there is any change in the situation of the principal place of business of a developer, he shall immediately give written notice of the new situation to the Registrar.

Penalty: \$1 000.

- (2) Where written notice is given pursuant to subsection (1) the Registrar shall change the registration of the principal place of business of the developer accordingly.

[Section 58 amended by No. 43 of 1994 s. 11.]

59. Developer to keep records of real estate transactions

A developer shall keep a record of all real estate transactions in which he has been involved and that record shall be kept in such manner, shall include such details, and shall be preserved for such period as is approved.

60. Agent not entitled to commission etc. unless licensed and validly appointed

- (1) An agent 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 triennial certificate in respect of his licence when he renders the services; and
 - (b) he has a valid appointment to act in that capacity which is in writing signed by the person for whom the services are or are to be rendered or by some other person lawfully authorised to sign on behalf of the person for whom the services are or are to be rendered.

- (2) An appointment to act as an agent is not valid unless —
- (a) it is contained in a document which —
 - (i) clearly sets out the services that are or are to be rendered;
 - (ii) where specific property is to be the subject of those services, clearly identifies the property;
 - (ia) clearly sets out the method by which the amount of any commission, reward or other valuable consideration to be received for those services is to be calculated; and
 - (iii) contains such other information, if any, as is prescribed;
 - (b) the document is not an offer or acceptance or a contract, or a document purporting to be an offer or acceptance or a contract, binding or purporting to bind a party thereto to a transaction; and
 - (c) the person obtaining the signature to the document gives a true copy thereof to the signatory immediately after the signing thereof (the onus of proof of which is upon the person obtaining the signature).
- (3) A person shall not demand or receive any commission, reward, or other valuable consideration in contravention of subsection (1) or (2), or both.
- Penalty: \$5 000.
- (4) Any commission, reward, or other valuable consideration received in contravention of subsection (1) or (2), or both, may be recovered as a civil debt recoverable summarily in any court of competent jurisdiction.

[Section 60 amended by No. 43 of 1994 s. 11; No. 59 of 1995 s. 9; No. 34 of 1998 s. 14.]

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61. Agents' commissions etc. may be regulated

- (1) The Board may, with the approval of the Minister, by notice published in the *Government Gazette* fix the maximum amount of remuneration, whether by way of commission or otherwise, that a licensee is to receive for a service rendered by the licensee in the course of and incidental to the licensee's business as an agent.
- (2) The Board may, with the approval of the Minister, by further notice published in the *Government Gazette*, amend or revoke a notice under subsection (1).
- (3) An amount fixed under subsection (1) takes effect on the date on which the notice fixing the amount is published in the *Government Gazette* or on such subsequent date as is specified in the notice.
- (3a) The Board may fix an amount under subsection (1) by reference to —
 - (a) the type of transaction negotiated and its value; or
 - (b) the type of service rendered and the value of the property in respect of which the service was rendered.
- (3b) If an amount is fixed under subsection (1) in respect of a service rendered by a licensee, the licensee is not entitled to receive for that service, in the licensee's capacity as an agent, any commission, reward or other valuable consideration which exceeds that amount in value.
- (3c) If an amount is not fixed under subsection (1) in respect of a service rendered by a licensee, the licensee is not entitled to demand, receive or hold for that service, in the licensee's capacity as an agent, any commission, reward or other valuable consideration which is unjust in the circumstances.
- (4) The remuneration of an agent for services rendered by him in his capacity as agent in respect of a transaction he has negotiated is payable only on settlement of the transaction

unless there is a failure to settle the transaction and that failure is due to the fault of the agent's principal.

(4a) In subsection (4) —

“settlement”, in relation to a transaction —

- (a) where the transaction is to be completed by the payment of the purchase price by way of a single payment (over and above the deposit), means the payment of the purchase price;
- (b) where the purchaser is obliged to make 2 or more payments to the vendor (over and above any deposit paid within 28 days of the execution of the contract) before the purchaser is entitled to a conveyance or transfer of the subject matter of the contract, means the time at which the purchaser is entitled to possession, occupation or control of the subject matter or the time at which the purchaser has paid at least 10% of the purchase price, whichever is the later, or at any other time as may be prescribed by the regulations; or
- (c) where the transaction is of a kind specified in regulations, has the meaning prescribed by the regulations in relation to that kind of transaction;

“transaction” means —

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

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(c) a business transaction of a kind referred to in paragraph (a) or (b) of the definition of “business transaction”,

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

(5) A licensee shall not demand, receive, or hold any commission, reward, or other valuable consideration in contravention of this section.

Penalty: \$5 000.

(6) Any commission, reward, or other valuable consideration received or held in contravention of this section may be recovered as a civil debt recoverable summarily in any court of competent jurisdiction.

[Section 61 amended by No. 128 of 1987 s. 89; No. 43 of 1994 s. 11; No. 59 of 1995 s. 10; No. 34 of 1998 s. 15.]

62. Advertising by agents and developers

- (1) Any advertisement in respect of the business of an agent or a developer shall not be published without his authority.
- (2) A duly authorised advertisement in respect of the business of an agent or developer shall contain such details as are sufficient to identify the agent or developer, as the case may be.
- (3) A person who enters into a contract as a consequence of an advertisement which contravened subsection (2) is not thereby entitled to avoid the contract.
- (4) In a proceeding under this Act for a contravention of subsection (1) or (2) it is a defence if the accused establishes that he is a person whose business is to publish or arrange for the publication of advertisements and that he received the advertisement in the ordinary course of business and did not know and had no reason to suspect that its publication would amount to such a contravention.

[Section 62 amended by No. 84 of 2004 s. 82.]

63. Agents etc. to supply copies of signed documents

Where a person signs any offer, acceptance, or contract, or any document purporting to be an offer, acceptance, or contract relating to any transaction that has been negotiated, or that is the subject of negotiation, wholly or in part by an agent, a developer, or a sales representative, in the course of his business or employment as such, the agent, developer, or sales representative, as the case may be, shall forthwith supply the person who has signed the offer, acceptance, contract, or document, with a true copy thereof (the onus of proof of which is upon the person obtaining the signature).

64. Conflicts of interest of agents etc.

- (1) An agent shall not have, directly or indirectly, any interest, otherwise than in his capacity as an agent, in any transaction in which he acts or purports to act as agent, unless his principal has given prior written consent thereto.
Penalty: \$5 000.
- (2) A sales representative or other person in the employment of an agent shall not have, directly or indirectly, any interest, other than an interest that exists by virtue only of his employment, in any transaction in which the agent acts or purports to act unless the agent's principal has given prior written consent thereto.
Penalty: \$5 000.
- (3) A court before which any person is convicted of an offence under this section may order that person to pay over to the agent's principal any profit that that person has made, or is, in the opinion of the court, likely to make from the transaction.
- (4) An agent shall not, whether directly or indirectly, demand, receive, or hold any reward or other valuable consideration for or in relation to any transaction in respect of which the agent or

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an employee of the agent has an interest in contravention of this section.

- (5) Any reward or other valuable consideration received or held in contravention of this section may be recovered as a civil debt recoverable summarily in any court of competent jurisdiction.

[Section 64 amended by No. 43 of 1994 s. 11; No. 50 of 2003 s. 88(2).]

65. Agents to ensure payment and apportionment of rates etc.

- (1) Subject to subsections (2) and (3), where a real estate transaction has been negotiated by an agent it is the agent's duty to the purchaser to ascertain that all rates, taxes, and outgoings then payable, which are by statute a charge on the real estate, and which, as between the vendor and the purchaser, are payable by the vendor are paid by him, and that all such rates, taxes, and outgoings then accruing are duly apportioned between the vendor and purchaser.
- (2) Subject to subsection (3), where a real estate transaction has been negotiated in part by one agent and in part by another, they are jointly and severally liable for the proper performance of the duty mentioned in subsection (1).
- (3) An agent may, at his own expense, engage another person to perform, on behalf of the agent the duty mentioned in subsection (1), or if the agent's principal instructs him to engage another person to perform that duty or assist in its performance the agent may do so at the expense of his principal, but in either case the agent and the other person are jointly and severally liable for the proper performance of that duty and, where the case requires, are jointly and severally so liable with the other agent.

66. Keys to houses etc. and information about tenancies, payment for illegal

- (1) Any person who pays, gives, or receives, or offers, promises, or agrees to pay, give, or receive, a sum of money or other consideration —
- (a) for obtaining or making available a key of a house or other building or part of a house or other building; or
 - (b) for information relating —
 - (i) to tenancy, occupation, or use, however described; or
 - (ii) to the possibility or likelihood of tenancy, occupation, or use, however described,of the whole or part of a house or other building,

commits an offence.

Penalty: \$5 000.

- (2) Subsection (1) does not apply in relation to —
- (a) a person, other than a licensee or a sales representative, whose business is or includes the selling or cutting of keys at a reasonable charge; or
 - (b) any commission, reward, or remuneration to which a licensee is entitled for effecting or arranging a real estate transaction of leasing or letting, or acquiring under lease or letting, tenancy, occupation, or use of the whole or part of a house or other building.

[Section 66 amended by No. 74 of 1980 s. 6; No. 43 of 1994 s. 11.]

Part VI — Agents' trust accounts

67. Interpretation

In this Part, unless the context otherwise requires —

“authorised financial institution” means a bank or other body that is prescribed or belongs to a class of bodies that is prescribed;

“bank account” means an account kept with a bank or other similar body;

“banker” means the manager, or other officer, for the time being in charge of the office of a bank or other body in which any account of an agent is kept;

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

“separate account” means a trust account referred to in section 68A(1);

“trust accounts” means accounts relating to moneys received or held by an agent for or on behalf of any other person in respect of transactions;

“year” means a period of 12 months ending on 31 December, subject however to the provisions of section 71.

[Section 67 amended by No. 59 of 1995 s. 12; No. 26 of 1999 s. 99(3).]

68. Trust accounts, use of

- (1) Every agent who holds a current triennial certificate shall maintain one or more trust accounts, designated or evidenced as such, in the prescribed manner, with an authorised financial institution and shall, as soon as practicable, pay to the credit of that account or those accounts all moneys received by him for or on behalf of any other person in respect of transactions.
- (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

agent, 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) An agent may pay out of a trust account such of the proper charges relating to transactions as are payable by the persons on whose behalf the moneys are received but may do so only when those charges lawfully fall due.
- (4) Moneys received by an agent for or on behalf of another person in respect of a transaction shall not be withdrawn from a trust account except for the purposes of the transaction, or as otherwise authorised by this Act, or as otherwise authorised by the person or persons lawfully entitled to the moneys.
- (5) An agent shall pay moneys withdrawn from a trust account to the person or persons lawfully entitled or authorised to receive them.
- (6) An agent 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.

[Section 68 amended by No. 59 of 1995 s. 13.]

68A. Client may request agent to create separate trust account

- (1) A person may request that moneys paid by that person to an agent in respect of a transaction be deposited to the credit of a

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separate interest bearing trust account maintained in accordance with section 68.

- (2) A request shall be in writing.
- (3) An agent shall, subject to subsection (4), comply with a request.
- (4) Where requirements are prescribed under subsection (6), an agent shall only comply with a request if satisfied that those requirements have been met.
- (5) An agent shall ensure that all interest credited to a separate account is paid to the person who requested the deposit of moneys in that account.
- (6) Regulations made under section 145 may prescribe requirements to be met before a request can be complied with and, without limiting this subsection, those requirements may relate to —
 - (a) the amount of moneys paid to the agent;
 - (b) the type of transaction in respect of which the moneys are paid; or
 - (c) the length of time for which the moneys are to be deposited.

- (7) In this section —

“request” means a request under subsection (1).

[Section 68A inserted by No. 59 of 1995 s. 14.]

68B. Interest on trust accounts to be paid by financial institutions

- (1) Every authorised financial institution with which a trust account is maintained shall pay to the credit of the Account interest on the balance of the trust account at the prescribed rate at such times as are prescribed.
- (2) Subsection (1) does not apply to a separate account.

- (3) Where a court convicts an authorised financial institution of an offence under subsection (1) and interest required to be paid under that subsection remains outstanding, the court may, in addition to imposing a penalty, order the institution to pay to the credit of the Account an amount equal to the amount of that interest, and any such order may be enforced as if it were a judgment of the court.
- (4) In regulations made under section 145 the prescribed rate referred to in subsection (1) may be prescribed by reference to a market rate indicator specified in the regulations.

[Section 68B inserted by No. 59 of 1995 s. 14.]

68C. Trust accounts, certain information about to be given to Board

- (1) When an agent opens or closes a trust account, the agent shall, as soon as is practicable, inform the Board in writing of the opening or closure of the trust account and, in doing so, shall specify —
 - (a) the name and number of the trust account; and
 - (b) the name and address of the authorised financial institution with which the trust account is or was maintained.
- (2) Subsection (1) does not apply to a separate account.
- (3) If an agent's trust account is overdrawn, both the agent and the authorised financial institution with which the trust account is maintained shall, as soon as is practicable, inform the Board in writing of —
 - (a) the name and number of the trust account; and
 - (b) the amount by which the trust account is overdrawn.

[Section 68C inserted by No. 59 of 1995 s. 14.]

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69. Trust accounts, records of and accounting for

- (1) When an agent receives money for or on behalf of any other person, the agent shall —
 - (a) unless the money is received by electronic transfer, immediately give to the person paying the money a receipt containing such information as is prescribed; and
 - (b) keep a record of the money received.
- (2) A record under subsection (1)(b) shall be kept in the prescribed manner and contain such information as is prescribed.
- (3) The agent shall produce records kept under subsection (1)(b) to the auditor at every audit, and at such other times as the auditor may reasonably require.

[(4) repealed]

- (5) Subsection (3) does not apply in the case of an agent if the agent's auditor certifies to the Board that he is satisfied with the system employed by the agent and that the records of moneys received 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 agent of recording the receipt of moneys.
- (6) On receipt of any moneys by an agent in respect of a transaction, he shall render to the person on whose behalf the money is received an account in writing of all such moneys and of the application thereof.

[Section 69 amended by No. 74 of 1980 s. 7; No. 59 of 1995 s. 15.]

70. Trust accounts, audit of

- (1) Every agent who holds a current triennial certificate during the whole or any part of a 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 Part.

- (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 a statutory declaration of the auditor, in an approved form; and
 - (b) deliver a copy of the report so verified to the agent.
- (4) The agent shall retain the copy of the report and produce it on demand pursuant to section 80(3).
- (5) The Registrar may, in circumstances he considers appropriate, extend the time limit for lodging reports but when he does so he shall advise the Board accordingly and the Board may confirm or cancel the extension.
- (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 agent 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 agent.
- (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 agent if the Board so directs but otherwise shall be paid by the Board from moneys standing to the credit of the Fidelity Fund.
- (8) Apart from the annual audit and any interim audit provided for in this section, where, for any reason, the triennial certificate of an agent ceases to have effect under this Act, there shall, within the period of 3 months thereafter, be a termination audit of the agent's trust account, and the termination audit shall be arranged and conducted in accordance with such provisions of

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this Part in respect of the annual audit as are capable of being applied to the termination audit, and the auditor shall within 2 months after the end of that 3 months period deliver to the Board a report of such termination audit.

[Section 70 amended by No. 29 of 1982 s. 12; No. 59 of 1995 s. 42.]

71. Audit date may be varied by Board

- (1) Notwithstanding anything else in this Part, an agent 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 agent to substitute such other date for 31 December.
- (2) The Board may, upon giving not less than one year's notice to the agent 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 70 shall, in relation to the agent 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.

72. Auditors, qualification and approval of

- (1) Subject to subsection (2), no person is qualified to act as an auditor under this Part unless he is a person registered as an

auditor, or taken to be registered as an auditor, under Part 9.2 of the *Corporations Act 2001* of the Commonwealth.

- (2) In districts in respect of which the Board is satisfied that no person registered as an auditor, or taken to be registered as an auditor, under Part 9.2 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 Part.
- (3) An auditor shall disclose to the Board any de facto relationship or any close relationship by blood or marriage he has with an agent whose trust accounts he has been appointed to audit or any business dealings he has with or through such agent 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 72 amended by No. 10 of 1982 s. 28; No. 59 of 1995 s. 16; No. 10 of 2001 s. 220; No. 28 of 2003 s. 175.]

73. Auditors, appointment of

- (1) Subject to the provisions of this Part the auditor by whom the audit of, and reports on, an agent's trust accounts are to be made shall be appointed and employed for that purpose by that agent.
- (2) An agent 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.

74. Audits of business carried on at more than one place

In the event of an agent 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

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approved by the Board with respect to the examination of the trust accounts kept at any branch office of the business.

75. Board may change decisions made under this Part

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 Part; or
- (b) vary or revoke any other approval, direction, permission, or authority granted or given by it under this Part.

[76. Repealed by No. 55 of 2004 s. 1012.]

77. Audits, agents to obey auditors' requests

- (1) For the purposes of an audit or report under this Part every agent 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 agent 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.

78. Audits, bankers to obey auditors' requests

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

79. Auditors' reports, contents of

Every auditor of an agent's trust accounts shall include in his report furnished pursuant to section 70 a statement as to the following matters —

- (a) whether the trust accounts of such agent have in the opinion of the auditor been kept regularly and properly written up;
- (b) whether the trust accounts of such agent have been ready for examination at the periods appointed by the auditor;
- (c) whether such agent has complied with the auditor's requirements;
- (d) whether in the opinion of the auditor such agent's trust accounts are, and have been during the period of the audit, 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.

[Section 79 amended by No. 74 of 1980 s. 10; No. 59 of 1995 s. 17.]

80. Audits, agents to certify state of trust accounts

- (1) Every agent who holds a current triennial certificate 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 agent for or on behalf of any other person; and
 - (b) negotiable or bearer securities or deposit receipts in the name of the agent which represent moneys drawn from the agent's trust accounts and which are held by the agent on that day.

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- (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 agent.
- (3) The statement so delivered shall be retained by the agent and be produced on demand to the auditor making the next succeeding audit of the agent'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 an agent'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 agent 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 agent, 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 agent's business.

81. Auditors to report on deficiencies etc. in trust accounts

If an auditor in the course of auditing an agent'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 agent, 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 Act he shall fully set out the facts so discovered by him in the report to be delivered to the Board.

82. Auditors to keep information confidential

- (1) Except where this Part 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 Part.
- (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 Part; 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 agent to whom the information relates.

83. Audit information to be available to clients etc.

- (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 an agent, 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 Part as affects or may affect such person.
- (2) A report of an auditor under this Part or a statutory declaration, statement, or other document delivered to the Board under this Part shall be available in the hands of the Board for inspection by any other auditor appointed to audit the accounts of the same agent for the next succeeding year.

84. Penalty for breach of Part VI

- (1) A person who contravenes or does not observe any of the foregoing provisions of this Part commits an offence.
Penalty:
 - (a) in the case of an offence against section 68B(1), \$10 000;
 - (b) in any other case, \$3 000.

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- (2) If an offence against those provisions is committed by a body corporate, the body corporate itself and every director, manager, secretary or other officer of the body corporate who commits, authorises or permits the act or omission constituting the offence, commits the offence.

[Section 84 amended by No. 43 of 1994 s. 11; No. 59 of 1995 s. 18.]

85. Auditors, remuneration of

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

86. Agents having no accounts to audit

An agent who holds a current triennial certificate but 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 Part 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.

87. Audits of firms etc. operate as audits of agents who are members etc.

- (1) Where trust accounts are kept by a firm of agents an audit of those accounts under this Part 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 agent who is a member of such firm and in relation to the agent who is in *bona fide* control of the agent's business of the firm.
- (2) Where trust accounts are kept by a body corporate an audit of those accounts under this Part and the certificates and report of the auditor thereof operate as regards those trust accounts as an audit certificate and report in relation to an agent who is a director of that body corporate and in relation to the agent who

is in *bona fide* control of the agent's business of the body corporate.

- (3) Where trust accounts are kept by an agent who or which has a branch office an audit of those accounts, including the accounts of the branch office, under this Part and the certificates and report of the auditor thereof operate as regards those trust accounts as an audit certificate and report in relation to an agent who is the manager of the branch office.

88. Board may order audit of trust account

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

[89. *Repealed by No. 74 of 1980 s. 9.*]

90. Cost of audit done under s. 88

- (1) The cost of an audit carried out pursuant to section 88 shall be as agreed between the Board and the auditor and paid as the Board in writing directs, either by the Board from moneys standing to the credit of the Fidelity Fund or by the agent whose trust accounts have been the subject of the audit.
- (2) Where the cost of an audit referred to in subsection (1) is payable by the agent, the Board may in the first instance pay it from moneys standing to the credit of the Fidelity Fund, but thereupon the amount of that cost is a civil debt recoverable summarily in any court of competent jurisdiction by the Board on behalf of the Fidelity Fund.

[Section 90 amended by No. 29 of 1982 s. 12; No. 59 of 1995 s. 42.]

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91. Confidentiality of audit done under s. 88

The provisions of section 82 apply to an auditor nominated by the Board under section 88 with such modifications as circumstances require.

[Section 91 amended by No. 74 of 2003 s. 101.]

92. Trust accounts etc. may be frozen by State Administrative Tribunal

- (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 agent; or
 - (b) there has been undue or unreasonable refusal, neglect, or delay on the part of any agent in paying moneys,
 - (i) which are, or may be, or have been payable out of the trust account of the agent; or
 - (ii) which were required to be paid into the trust account by the agent under the provisions of this Part,
- 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 or other body in which the trust account or any other account in the name of the agent 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 or other body in the name of the agent.

- (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 agent, and is an order to show cause only.
- (4) Unless the agent 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 99 shall be made absolute.
- (5) In this section and in such provisions of other following sections of this Part 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 an agent for or on behalf of any other person are or were required to be paid under this Part; and
 - (b) **“agent”** includes a person who has carried on business as an agent at any time within a period of 12 months prior to the date of the making of the application under subsection (1).

[Section 92 amended by No. 59 of 1995 s. 40(1); No. 26 of 1999 s. 99(4); No. 55 of 2004 s. 1021.]

93. State Administrative Tribunal may suspend agent, restrain use of accounts, and authorise appointment of supervisor

- (1) Where the State Administrative Tribunal, on the application of the Board, notice whereof shall be given to the agent, is satisfied that there are reasonable grounds for believing that an agent 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 agent from carrying on his business for such period as may be specified in the order;

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- (b) restrain the agent and his bankers and their respective servants and agents from dealing in all or any of the bank accounts of the agent, 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 agent;
 - (d) authorise the Board to suspend the agent 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 agent has died, the State Administrative Tribunal may —
- (a) restrain the personal representative, and the former servants, agents, and bankers, of the deceased agent, and the servants and agents of those former bankers from dealing in all or any of the bank accounts of the deceased agent, 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 agent.
- (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 agent or deceased agent; and
 - (b) may order that the Board —
 - (i) take possession of the moneys constituting the trust account of the agent or deceased agent or, where the case requires, the balance of such moneys;

- (ii) credit such moneys or such balance to 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 93 amended by No. 59 of 1995 s. 42; No. 55 of 2004 s. 1021.]

94. Supervisors, appointment and remuneration of

- (1) Where an order made under section 93 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 agent or deceased agent 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

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thinks fit, for the purpose of carrying on the business of the agent or deceased agent; and

- (c) may determine what, if any, proportion of remuneration or other proper charges recovered on account of the agent or deceased agent, shall be paid to the agent or the personal representative of the deceased agent and what proportion shall be paid to the Board towards the expenses and remuneration of the supervisor and for reimbursement 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.

95. Supervisors, duties of

- (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 agent, 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) by notice in writing require the agent to whom the appointment relates, or any of his clerks, servants, or agents, or in the case of a deceased agent, his personal representative or any of the former clerks, servants, or agents of the deceased agent 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
 - (b) enter upon any premises of the agent to whom the appointment relates, or, in the case of a deceased agent, 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.

96. Supervisors, obstruction etc. of

A person who, being required to do anything by a supervisor pursuant to the powers conferred on the supervisor by this Act, without lawful excuse of which the proof lies on him, refuses or fails to do the thing required or who hinders or obstructs the supervisor in the exercise of his powers or hinders or obstructs the supervisor, or any person employed by him, in the performance of his duties commits an offence.

Penalty: \$4 000.

[Section 96 amended by No. 43 of 1994 s. 11.]

97. Discharge or variation of orders under s. 92 or 93

An agent or the personal representative of a deceased agent, whose account is the subject of an order made under the provisions of section 92 or 93 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 97 amended by No. 55 of 2004 s. 1021.]

98. Schemes for distribution of trust funds

- (1) The State Administrative Tribunal may, on the application of the Board, the Treasurer, or the agent, or the personal representative of a deceased agent, referred to in an order made under the provisions of section 92, 93, or 97 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

or other body 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 as 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 transaction or prospective transaction, sustained loss through any act or omission of the agent, or deceased agent or his personal representative, in respect of whose accounts the order was made; and
 - (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 98 amended by No. 59 of 1995 s. 40(1) and 42; No. 26 of 1999 s. 99(5); No. 55 of 2004 s. 1021.]

99. Orders under s. 92, 93, or 98 to be served and complied with

- (1) The Board shall, as soon as practicable after any order is, on the application of the Board, made under the provisions of section 92, 93, or 98 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 or other body in which any account referred to in the order is kept;
 - (b) on the agent or the personal representative of a deceased agent in whose name the account is kept; and
 - (c) where it is an order under section 98(1)(b) on the Treasurer.

- (2) An agent, or the personal representative of a deceased agent, shall, as soon as practicable after any order is, on his application, made under the provisions of section 97 or 98 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 or other body in which any account referred to in the order is kept;
 - (b) on the Board; and
 - (c) where it is an order under section 98(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 98 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 or other body in which any account referred to in the order is kept;
 - (b) on the agent, or the personal representative of a deceased agent, in whose name the account is kept; and
 - (c) on the Board.

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- (4) Every person on whom an order is served shall comply with the order and shall permit others affected thereby to do so.
- (5) A person, in addition to any other penalty or liability he may incur in failing to comply with the order or failing to permit others affected thereby to do so, who omits to do that which he is required under the order to do, or does that which he is prohibited under the order from doing, commits an offence against this Act.
Penalty: \$4 000.
- (6) This section is sufficient authority and indemnity for complying with an order so made and served.

[Section 99 amended by No. 43 of 1994 s. 11; No. 59 of 1995 s. 40(1); No. 26 of 1999 s. 99(6)-(8).]

100. Financial institutions to disclose agent's accounts on request

Where the Registrar, an inspector, a supervisor or a member of the Police Force duly authorised to make an investigation or inquiry for the purposes of this Act has reasonable cause to believe that an agent has deposited any money with a bank or other financial institution, whether in an account in the name of the agent or in some other account, he may by notice in writing addressed to the manager or other officer for the time being in charge of the bank or other institution concerned and nominating the accounts to be examined, require that those accounts be disclosed to him, and the manager or other officer for the time being in charge of the bank or other institution named in the requisition shall without requiring any warrant other than the production of the credentials under this Act of the Registrar, inspector, supervisor, or member of the Police Force, whether or not the person in whose name the account is held consents, permit the Registrar, inspector, supervisor, or member of the Police Force to inspect, and make a copy or extract of, the nominated accounts and any book, document, or other record

that relates thereto and is in the possession or control of that bank or other institution.

[Section 100 amended by No. 26 of 1999 s. 99(9).]

100A. Registrar may obtain information about trust accounts

- (1) The Registrar may require —
- (a) an agent to give the Registrar such information as the Registrar requires in relation to trust accounts maintained or formerly maintained by that agent; or
 - (b) the manager or other officer for the time being in charge of an authorised financial institution to give the Registrar such information as the Registrar requires in relation to trust accounts maintained or formerly maintained with that institution,

including, without limiting this subsection, information as to the balances of and amounts of interest paid on such accounts.

- (2) A requirement under subsection (1) —
- (a) shall be given by notice in writing to the person required to give the information;
 - (b) shall specify the time at or within which the information is to be given;
 - (c) may, by its terms, require that the information be —
 - (i) given in writing;
 - (ii) certified as correct by a person who is registered as an auditor, or taken to be registered as an auditor, under Part 9.2 of the *Corporations Act 2001* of the Commonwealth and is specified in the requirement;
 - (iii) given at or sent or delivered to any place specified in the requirement;
 - (iv) sent or delivered by any means specified in the requirement; and

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- (v) given on oath or affirmation or by statutory declaration;
 - and
 - (d) shall state that the person to whom the notice is given is required under this Act to give the information.
- (3) A person shall not, without reasonable excuse, refuse or fail to comply with a requirement under subsection (1).
Penalty: \$3 000.
- (4) A person shall not give information in response to a requirement under subsection (1) that the person knows is false or misleading in a material particular.
Penalty: \$3 000.
- (5) It is a defence in proceedings for an offence against subsection (3) for the person to show that —
- (a) the notice under subsection (2)(a) did not state that the person was required under this Act to give the information; or
 - (b) the time specified in the requirement did not give the person sufficient notice to enable compliance with the requirement.
- (6) Where a person is required to give information under subsection (1), the person shall not refuse to comply with that requirement on the ground that the information may tend to incriminate the person or render the person liable to any penalty.
- (7) Despite subsection (6), information given under this section is not admissible in evidence in any proceedings against the person other than proceedings in respect of an offence against subsection (4).
- (8) The power conferred by subsection (1) is in addition to any other powers of the Registrar under this Act.

*[Section 100A inserted by No. 59 of 1995 s. 19; amended by
No. 10 of 2001 s. 220.]*

Part VII — Discipline of agents and sales representatives

101. Codes of conduct, Board may prescribe

The Board may from time to time prescribe, and publish in the manner prescribed by the regulations —

- (a) a code of conduct for agents; and
- (b) a code of conduct for sales representatives.

102. Inquiries into conduct of agents and sales representatives

(1) The Board may allege to the State Administrative Tribunal that —

- (a) there is proper cause for disciplinary action, as mentioned in section 103(2), against an agent; or
- (b) there is proper cause for disciplinary action, as mentioned in section 103(4), against a sales representative.

[(2)-(5) repealed]

(6) Notwithstanding the expiry of the certificate of registration of a sales representative, an allegation under subsection (1) in respect of a sales representative may be made to the State Administrative Tribunal not later than 12 months after the day on which his certificate of registration expired and, upon consideration of the allegation, the State Administrative Tribunal may exercise the powers conferred by section 103, other than the powers of suspension or cancellation of registration.

[Section 102 amended by No. 74 of 1980 s. 10; No. 34 of 1998 s. 16; No. 55 of 2004 s. 1013 and 1020.]

103. Disciplinary action, grounds for and forms of

(1) If, in a proceeding commenced by an allegation under section 102(1) against an agent, 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 agent;
- (b) impose a fine not exceeding \$10 000 on him;
- (c) suspend or cancel his licence and any triennial 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, from holding a licence or triennial certificate, or both;
- (d) where the State Administrative Tribunal is satisfied that the agent is acting or has acted in breach of section 60(3), 61(5) or 64(4) (the “**subsection**”) —
 - (i) order the agent to pay to a person specified by the State Administrative Tribunal the whole or part of any commission, reward or other valuable consideration received or held in contravention of a provision referred to in the subsection;
 - (ii) order that a demand by the agent in contravention of a provision referred to in the subsection for the whole or part of any commission, reward or other valuable consideration not be made, or if made, be withdrawn or varied in accordance with the order;
- (e) where the State Administrative Tribunal is satisfied that the agent is acting or has acted in breach of section 64(1), order the agent to pay to the agent’s principal any profit that the agent has made, or is, in the opinion of the State Administrative Tribunal, likely to make from the transaction.

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- (2) There shall be proper cause for disciplinary action against an agent if —
- (a) the agent improperly obtained a licence or triennial certificate;
 - (b) the agent, or any person acting with the authority or upon the instructions of the agent has in the course of any dealings with a party, or a prospective party, to a transaction, 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 party, or prospective party to the transaction;
 - (c) the agent is acting or has acted in breach of —
 - (i) a special condition of his licence or triennial certificate;
 - (ii) the requirements of this Act; or
 - (iii) the agents code of conduct;or
 - (d) any other cause exists that, in the opinion of the State Administrative Tribunal, renders the agent unfit to hold a licence.
- (3) If, in a proceeding commenced by an allegation under section 102(1) against a sales representative, 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 sales representative;
 - (b) impose a fine not exceeding \$3 000 on him;
 - (c) suspend or cancel his registration 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, from being registered;

- (d) where the State Administrative Tribunal is satisfied that the sales representative is acting or has acted in breach of section 64(2), order the sales representative to pay to the agent's principal any profit that the sales representative has made, or is, in the opinion of the State Administrative Tribunal, likely to make from the transaction.
- (4) There shall be proper cause for disciplinary action against a sales representative if —
 - (a) the sales representative improperly obtained registration;
 - (b) the sales representative, or any person acting with the authority or on the instructions of the sales representative has, in the course of any dealings with a party, or a prospective party, to a transaction, been guilty of conduct that constitutes a breach of any law other than this Act and prejudices or may prejudice any rights or interest of the party, or prospective party, to the transaction;
 - (c) the sales representative is acting or has acted in breach of —
 - (i) a special condition of his registration;
 - (ii) the requirements of this Act; or
 - (iii) the code of conduct for sales representatives;or
 - (d) any other cause exists that, in the opinion of the State Administrative Tribunal, renders the sales representative unfit to hold a certificate of registration.
- (5) Where the State Administrative Tribunal suspends or cancels a licence or a triennial certificate, or both, or suspends or cancels the registration of a sales representative —
 - [(a) deleted]*
 - (b) the licence, triennial certificate, or certificate of registration, as the case requires shall be immediately

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delivered to the Registrar by the agent or sales representative, as the case requires.

- (6) No penalty provided for elsewhere in this Act in relation to the conduct of an agent or a sales representative is to be taken to limit the powers exercisable by the State Administrative Tribunal under subsections (1) and (3).

[Section 103 amended by No. 43 of 1994 s. 11; No. 59 of 1995 s. 20; No. 34 of 1998 s. 17; No. 55 of 2004 s. 1014 and 1020.]

104. Automatic cancellation of licence and triennial certificate

If a licensee is convicted of an offence involving —

- (a) defalcation by the licensee;
- (b) the fraudulent rendering of an account, knowing it to be false in any material particular, in respect of money or other property entrusted to him by or on behalf of another person in the course of the licensee's business; or
- (c) a breach of any one or more of the provisions of Part VI relating to the proper payment in and out of the trust account of the licensee of money entrusted to him by or on behalf of another person in the course of the licensee's business,

his licence and any triennial certificate in respect thereof is thereby cancelled, and the registrar of the court convicting him shall forthwith notify the Registrar of the Board accordingly.

[Section 104 amended by No. 59 of 2004 s. 141.]

105. Conviction of licensee of certain offences, additional sentencing powers

- (1) Where a licensee who has been convicted of any other offence against this Act is within 12 months thereafter convicted of a second or any subsequent offence of any kind against this Act, or where a licensee is convicted, whether summarily or on

indictment of an offence involving moral turpitude, or dishonouring him in the public estimation, the Court convicting him may, if it thinks fit, in addition to any other penalty, do any one or more of the following things —

- (a) reprimand or caution the licensee;
- (b) impose a fine not exceeding \$10 000 on him;
- (c) suspend or cancel his licence or any triennial certificate in respect thereof and, in addition, disqualify him either temporarily or permanently, or until the fulfilment of any conditions which may be imposed by the Court or until further order of the Court, from holding a licence or triennial certificate or both,

and when the Court does so, the registrar of the court shall forthwith notify the Registrar of the Board accordingly.

- (2) The disciplinary powers conferred on a Court by subsection (1) are concurrent with the disciplinary powers conferred on the State Administrative Tribunal by this Part, but those respective powers shall not both be exercised in respect of particulars of an offence or offences of the licensee that are substantially the same.

[Section 105 amended by No. 43 of 1994 s. 11; No. 55 of 2004 s. 1020; No. 59 of 2004 s. 141.]

106. Persons carrying on business after licence cancelled etc.

- (1) A person who —
 - (a) has had his licence cancelled under this Act;
 - (b) has had his certificate of registration cancelled under this Act on at least 2 occasions; or
 - (c) has been convicted of an offence against this Act on at least 2 occasions,

commits an offence against this Act, if, without the written permission of the Board, he becomes or remains a director of any body corporate that is a licensee or a developer, or he is the

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employer, employee, or partner of a licensee or a developer, as such.

Penalty: \$10 000.

- (2) If a licensee or a developer in his business as such knowingly has, without the written permission of the Board, as an employee or a partner, or being a body corporate has as a director, a person who —
- (a) has had his licence cancelled under this Act;
 - (b) has had his certificate of registration cancelled under this Act on at least 2 occasions; or
 - (c) has been convicted of an offence against this Act on at least 2 occasions,

the licensee or developer, as the case may be, commits an offence against this Act.

Penalty: \$5 000.

- (3) For the purposes of this section, a person is deemed to be an employee of another person if he receives remuneration from the other person by way of commission or a share of profits.

[Section 106 amended by No. 43 of 1994 s. 11.]

Part VIII — Fidelity Guarantee Fund

107. Real Estate and Business Agents Fidelity Guarantee Fund established

- (1) On the date of the coming into operation of this section the Land Agents Fidelity Guarantee Fund established by the repealed Act⁴ is continued by the name Real Estate and Business Agents Fidelity Guarantee Fund under this Act, as if it were established under this Act, and all right, title and interest in any asset of the Land Agents Fidelity Guarantee Fund under the repealed Act⁴ existing immediately before that date is transferred to the Board.
- (2) The Fidelity Fund is to be kept —
 - (a) at the Treasury forming part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*; or
 - (b) with the approval of the Treasurer, at a bank.

[Section 107 amended by No. 29 of 1982 s. 12; No. 59 of 1995 s. 21.]

108. Fidelity Fund, investment of

- (1) Moneys standing to the credit of the Fidelity Fund may, until required for the purposes of section 110, be invested in the same manner as —
 - (a) public moneys may be invested under section 38 of the *Financial Administration and Audit Act 1985*; or
 - (b) trust funds may be invested in accordance with Part III of the *Trustees Act 1962*.
- (2) Income derived from any such investment is to be credited to the Fidelity Fund.

[Section 108 inserted by No. 59 of 1995 s. 22.]

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109. Fidelity Fund, income

There shall be credited to the Fidelity Fund —

- (a) all sums paid to the credit of the Fidelity Fund by agents and sales representatives by way of contribution or levy, in accordance with this Act;
- (b) income derived from the investment, under section 108, of moneys standing to the credit of the Fidelity Fund;
- (c) all moneys transferred to the Fidelity Fund under section 127(b);
- (d) all money recovered by or on behalf of the Board for the benefit of the Fidelity Fund in the exercise of any right of action conferred by this Act; and
- (e) any other money that may be lawfully credited to the Fidelity Fund.

[Section 109 amended by No. 29 of 1982 s. 5 and 12; No. 59 of 1995 s. 23 and 42.]

110. Fidelity Fund, expenditure

There shall from time to time be charged to the Fidelity Fund, as required —

- (a) the amount of all claims, including costs, allowed or established against the Fidelity Fund;
- (b) all legal expenses incurred in defending claims made against the Fidelity Fund, or otherwise incurred in relation to the Fidelity Fund;
- (c) all premiums payable in respect of contracts of insurance entered into by the Board under section 121;
- (d) the expenses involved in the administration of the Fidelity Fund;
- (e) the cost of any audit that may be charged to the Fidelity Fund pursuant to Part VI; and

[(f) deleted]

- (g) any other money chargeable to the Fidelity Fund in accordance with this Act.

[Section 110 amended by No. 29 of 1982 s. 12; No. 59 of 1995 s. 24 and 42.]

[111. Repealed by No. 98 of 1985 s. 3.]

112. Fidelity Fund to be administered by Board

The Fidelity Fund shall be administered by the Board.

[Section 112 amended by No. 29 of 1982 s. 12.]

113. Fidelity Fund, contributions to by agents etc.

- (1) Each agent, on making application in any year for a licence or the renewal of a triennial certificate shall, in addition to all other fees payable in respect thereof, pay to the Board a sum of \$150 or such other sum as the Board approves, but limited to an increase in any one year of 6.7%, and no such licence or renewal of a triennial certificate shall be issued until the appropriate payment has been made to the Board.
- (2) Each sales representative, on making application for a certificate of registration or a renewal thereof, shall in addition to all other fees payable in respect thereof, pay to the Board a sum of \$45 or such other sum as the Board approves, but limited to an increase in any one year of 20%, and no such certificate of registration or renewal thereof shall be issued until the appropriate payment has been made to the Board.
- (3) The amounts paid to the Board under this section shall forthwith be credited by the Board to the Fidelity Fund.

[Section 113 amended by No. 29 of 1982 s. 12; No. 56 of 1995 s. 46; No. 59 of 1995 s. 42.]

114. Fidelity Fund contributions capped

No agent or sales representative who has contributed to the Fidelity Fund a sum of \$150 or \$45 respectively, and in respect

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of whom no claim has been made or sustained against the Fidelity Fund, is liable to pay any further contribution under section 113 at any time while the amount standing to the credit of the Fidelity Fund, including any investments thereof, and after deducting the amount of all unpaid claims and other liabilities outstanding against the Fidelity Fund, exceeds \$1 000 000, or such other amount as is prescribed.

[Section 114 amended by No. 74 of 1980 s. 11; No. 29 of 1982 s. 12; No. 59 of 1995 s. 42.]

115. Fidelity Fund, levies for

- (1) If at any time the Fidelity Fund is, in the opinion of the Board, not sufficient to satisfy the liabilities of the Board in relation thereto, the Board may by resolution impose on each holder of a current triennial certificate and each holder of a current certificate of registration, to be credited to the Fidelity Fund, a levy of such amount as it thinks fit not exceeding the relevant amount referred to in subsection (2).
- (2) The amount of the levy shall not exceed —
 - (a) in the case of a holder of a current triennial certificate, the sum of \$20 in any one year;
 - (b) in the case of a holder of a current certificate of registration, the sum of \$10 in any one year.
- (3) The amount of the levy shall become payable on a date and in a manner to be fixed by the Board, and notice thereof shall be sent by the Board to each holder of a current triennial certificate and each holder of a current certificate of registration.

- (4) A person who fails to comply with any notice sent to him under subsection (3) is guilty of an offence against this Act.

[Section 115 amended by No. 29 of 1982 s. 7; No. 77 of 1984 s. 3; No. 59 of 1995 s. 42.]

116. Fidelity Fund, purpose of

- (1) Subject to this Act, the Fidelity Fund shall be held and applied for the purpose of reimbursing persons who may suffer pecuniary loss or loss of property by reason of any defalcation by a licensee during any period when he was the holder of a current triennial certificate, but reimbursing only to the extent of the defalcation of the licensee.
- (2) The Board is to disallow a claim against the Fidelity Fund unless —
- (a) notice of the claim is given in writing to the Board within 3 years after the day on which the claimant became aware of the defalcation; or
 - (b) the Board —
 - (i) has been given notice in writing of the claim within 6 years after the day on which the claimant became aware of the defalcation; and
 - (ii) considers that it is just and reasonable in the circumstances to deal with the claim even though notice was not given within the time referred to in paragraph (a).

[Section 116 amended by No. 29 of 1982 s. 12; No. 3 of 2000 s. 4(1).]

117. Fidelity Fund, claims against

- (1) The Board may receive and, subject to section 116(2), settle any claim against the Fidelity Fund at any time after the defalcation in respect of which the claim arose has occurred, but no person is entitled, without the leave of the Board, to commence any action in relation to the Fidelity Fund, unless the Board has

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disallowed his claim and unless and until the claimant has exhausted all relevant rights of action and other legal remedies available against the defaulting licensee or any other person in respect of the loss suffered by the claimant.

- (2) A person is not entitled to recover from the Fidelity Fund an amount greater than the balance of the loss suffered by him after deducting from the total amount of his loss, the amount or value of all money or other benefits received or receivable by him from any source other than the Fidelity Fund in reduction of his loss, including any benefits received by reason of services rendered or payments made by the defaulting licensee.
- (3) No amount shall be charged or be chargeable to the Fidelity Fund as interest on the amount of any judgment obtained or of any claim admitted against the Fidelity Fund.
- (4) No right of action lies in relation to the Fidelity Fund in respect of any loss suffered by any person by reason of any defalcation by a licensee at any time after the claimant has received a notice in writing from the Board warning him against the employment or continued employment of that licensee which notice the Board is hereby empowered to send.
- (5) No right of action lies in relation to the Fidelity Fund in respect of any loss suffered by the spouse or de facto partner of a licensee by reason of any defalcation by that licensee, or in respect of any loss suffered by any licensee by reason of any defalcation in the course of the licensee's business by any one or more of the persons in the class of persons specified in the interpretation "defalcation by a licensee" in section 4.

[Section 117 amended by No. 29 of 1982 s. 12; No. 59 of 1995 s. 42; No. 3 of 2000 s. 5; No. 28 of 2003 s. 176.]

118. Fidelity Fund, defences to claims against

In any action brought against the Board in relation to the Fidelity Fund, all defences that would have been available to the defaulting licensee are available to the Board.

[Section 118 amended by No. 28 of 1982 s. 12.]

119. Board subrogated to successful claimant

On payment from moneys standing to the credit of the Fidelity Fund in settlement in whole or in part of any claims under this Act, the Board shall be subrogated, to the extent of that payment, to all rights and remedies of the claimant against the licensee in relation to whom the claim arose or in the event of the death or insolvency or other disability of the licensee, against his personal representatives or other persons having authority to administer his estate, and to all other rights and remedies of the claimant in respect of the defalcation to which the claim relates.

[Section 119 amended by No. 59 of 1995 s. 42.]

120. Insufficiency in Fidelity Fund

- (1) The moneys standing to the credit of the Fidelity Fund are the only property of the Board available for the satisfaction of any judgment obtained against the Board in relation to the Fidelity Fund, or for the payment of any claim allowed by the Board; but if at any time the moneys standing to the credit of the Fidelity Fund are not sufficient to provide for the satisfaction of all such judgments and claims they shall, to the extent to which they are not so satisfied, be charged against the future accumulations of the Fidelity Fund.
- (2) The Board may determine the order in which the judgments and claims charged against the Fidelity Fund as provided in subsection (1) shall be satisfied, and may, if the amount accumulated is not sufficient to wholly satisfy all those judgments and claims, satisfy any of those judgments or claims in whole or in part.

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- (3) Without limiting the discretion of the Board, the Board shall in applying the Fidelity Fund towards the settlement of any of the judgments and claims referred to in subsection (2), have regard to the following rules —
- (a) it shall take into consideration the relative degrees of hardship suffered or likely to be suffered by the several claimants in the events of their claims against the Fidelity Fund not being satisfied in whole or in part;
 - (b) claims for amounts not exceeding \$2 500 shall, except in special circumstances, be satisfied in full before claims for amounts exceeding \$2 500 are satisfied to a greater extent than \$2 500;
 - (c) where all other considerations are equal, claimants shall have the priority as between themselves, according to the dates of the judgments or the dates when the claims were admitted by the Board, as the case may be.

[Section 120 amended by No. 28 of 1982 s. 12; No. 59 of 1995 s. 25 and 42.]

121. Board may insure against claims

- (1) Notwithstanding anything to the contrary in this Act, the Board may enter into any contract of insurance with any person carrying on fidelity insurance business in the State, by which the Board will be indemnified to the extent and in the manner provided by the contract against liability to pay claims under this Act.
- (2) Any such contract may be entered into in relation to licensees generally who are holders of current triennial certificates or sales representatives generally who are the holders of current certificates of registration or in relation to any licensee who is the holder of a current triennial certificate or any sales representative who is the holder of a current certificate of registration.

- (3) The Board may publish the fact that a policy has been effected under this section and of the details of the policy.

[Section 121 amended by No. 51 of 1986 s. 46(2).]

122. Insurance payouts to be credited to Fidelity Fund

A claimant against the Fidelity Fund has no right of action against any person with whom a contract of insurance is made under section 121 in respect of that contract, and has no right to claim any money paid by the insurer in accordance with any such contract; but all such money shall be credited to the Fidelity Fund and shall be applied in or towards the settlement of relevant claims.

[Section 122 amended by No. 29 of 1982 s. 12; No. 59 of 1995 s. 42.]

123. Advertising for claims against Fidelity Fund

- (1) The Board may cause to be published a notice in a newspaper circulating in the district in which the defaulting licensee is or was carrying on business as an agent, and the notice shall fix a date not being earlier than 3 months after the publication of the notice, within which claims shall be made.
- (2) Any claim not made in writing to the Board on or before the date so fixed is barred unless the Board otherwise determines.
- (3) After the date so fixed the Board is at liberty to distribute in accordance with this Act, the sum from time to time available to be applied in reimbursement under sections 116 and 117, having regard only to judgments and claims allowed against the Fidelity Fund.

[Section 123 amended by No. 29 of 1982 s. 12.]

124. Board may require documents etc. in support of claims

The Board may at any time and from time to time require production and delivery to it of securities and documents

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necessary to support any claim made, or available for that purpose, or for the purpose of exercising its rights against any defaulting licensee and may on default of delivery of those securities or documents reject the claim.

Part VIIIA — Education and General Purpose Fund

[Heading inserted by No. 59 of 1995 s. 26.]

124A. Education and General Purpose Fund established

- (1) An account called the “Education and General Purpose Fund” is to be established and kept —
 - (a) at the Treasury forming part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*; or
 - (b) with the approval of the Treasurer, at a bank.
- (2) The General Purpose Fund is to be administered by the Board.

[Section 124A inserted by No. 59 of 1995 s. 26.]

124B. General Purpose Fund, income

There are to be credited to the General Purpose Fund —

- (a) all moneys transferred to the General Purpose Fund under section 127(b);
- (b) income derived from the investment, under section 124D, of moneys standing to the credit of the General Purpose Fund;
- (c) fees, costs and other moneys lawfully received by or payable to the Board;
- (d) fines imposed under section 105;
- (e) fines, other than those imposed by the State Administrative Tribunal, that are imposed for offences under this Act; and
- (f) any moneys, other than moneys referred to in paragraphs (a), (b), (c), (d) and (e), that may lawfully be credited to the General Purpose Fund.

[Section 124B inserted by No. 59 of 1995 s. 26; amended by No. 55 of 2004 s. 1015.]

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124C. General Purpose Fund, expenditure

There are to be charged to the General Purpose Fund —

- (a) the costs incurred in the administration of the General Purpose Fund;
- (b) the remuneration and allowances payable to members of the Board and members of advisory committees established under Division 4 of Part II;
- (c) the costs associated with the provision of secretarial, clerical or other administrative support to the Board in the performance of its functions under this Act;
- (d) the costs incurred in, or in connection with, the administration and enforcement of this Act except such costs, if any, as are excluded by the regulations; and
- (e) all other expenditure lawfully incurred by the Board in the performance of its functions under this Act.

[Section 124C inserted by No. 59 of 1995 s. 26; amended by No. 34 of 1998 s. 18.]

124D. General Purpose Fund, investment of

- (1) Moneys standing to the credit of the General Purpose Fund may, until required for the purposes of section 124C, be invested in the same manner as —
 - (a) public moneys may be invested under section 38 of the *Financial Administration and Audit Act 1985*; or
 - (b) trust funds may be invested in accordance with Part III of the *Trustees Act 1962*.
- (2) Income derived from any such investment is to be credited to the General Purpose Fund.

[Section 124D inserted by No. 59 of 1995 s. 26.]

Part IX — Board Interest Account

[Heading inserted by No. 59 of 1995 s. 27.]

125. Board Interest Account established

- (1) An account called the “Board Interest Account” is to be established and kept —
 - (a) at the Treasury forming part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*; or
 - (b) with the approval of the Treasurer, at a bank.
- (2) The Account is to be administered by the Board.

[Section 125 inserted by No. 59 of 1995 s. 27.]

126. Board Interest Account, income

There are to be credited to the Account —

- (a) all moneys paid to the credit of the Account under section 68B;
- (b) income derived from the investment, under section 128, of moneys standing to the credit of the Account; and
- (c) any moneys, other than moneys referred to in paragraphs (a) and (b), that may lawfully be credited to the Account.

[Section 126 inserted by No. 59 of 1995 s. 27.]

127. Board Interest Account, expenditure

Moneys standing to the credit of the Account are to be applied at such times as are prescribed —

- (a) first, in payment of the costs involved in administering the Account; and

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- (b) as to the balance remaining after payment under paragraph (a), by transfer in equal shares or such other proportions as are prescribed to the credit of —
 - (i) the Fidelity Fund;
 - (ii) the General Purpose Fund; and
 - (iii) the Assistance Fund.

[Section 127 inserted by No. 59 of 1995 s. 27.]

128. Board Interest Account, investment of

- (1) Moneys standing to the credit of the Account may, until required for the purposes of section 127, be invested in the same manner as —
 - (a) public moneys may be invested under section 38 of the *Financial Administration and Audit Act 1985*; or
 - (b) trust funds may be invested in accordance with Part III of the *Trustees Act 1962*.
- (2) Income derived from any such investment is to be credited to the Account.

[Section 128 inserted by No. 59 of 1995 s. 27.]

[129, 130. Repealed by No. 59 of 1995 s. 27.]

[131. Repealed by No. 98 of 1985 s. 3.]

Part IXA — Assistance to home buyers

131A. Interpretation

In this Part, unless the contrary intention appears —

“applicant” means person on whose behalf an application has been lodged under section 131L(1);

“assisted person” means applicant to whom a grant has been made under section 131M(3);

“dwelling” includes —

- (a) lot within the meaning of the *Strata Titles Act 1985*; and
- (b) except in the case of a dwelling which is a lot referred to in paragraph (a), land on which the dwelling concerned is erected or is being erected, as the case requires;

“incidental expenses”, in relation to a purchase, or purchase and completion, referred to in section 131L(1), includes —

- (a) stamp duty;
- (b) registration fees;
- (c) the remuneration of a real estate settlement agent within the meaning of the *Settlement Agents Act 1981*;
- (d) the costs of a legal practitioner;
- (e) valuation fees;
- (f) inspection fees;
- (g) any fees payable to the lending institution lodging an application under section 131L(1) on behalf of the applicant concerned to assist him in that purchase or purchase and completion; and
- (h) any mortgage guarantee fee or mortgage insurance premium;

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“lending institution” means —

- (a) a bank;
- [(b) deleted]*
- (c) a society registered under the *Housing Societies Act 1976*; or
- (d) a body that is prescribed, or that belongs to a class of bodies that is prescribed.

[Section 131A inserted by No. 29 of 1982 s. 10; amended by No. 59 of 1995 s. 28; No. 26 of 1999 s. 99(10); No. 12 of 2001 s. 51; No. 65 of 2003 s. 59(3).]

131B. Home Buyers Assistance Fund established

- (1) There is hereby established a fund to be called the Home Buyers Assistance Fund.
- (2) The Assistance Fund is to be kept —
 - (a) at the Treasury forming part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*; or
 - (b) with the approval of the Treasurer, at a bank.

[Section 131B inserted by No. 29 of 1982 s. 10; amended by No. 59 of 1995 s. 29.]

131C. Assistance Fund, investment of

- (1) Moneys standing to the credit of the Assistance Fund may, until required for the purposes of section 131E, be invested in the same manner as —
 - (a) public moneys may be invested under section 38 of the *Financial Administration and Audit Act 1985*; or
 - (b) trust funds may be invested in accordance with Part III of the *Trustees Act 1962*.

- (2) Income derived from any such investment is to be credited to the Assistance Fund.

[Section 131C inserted by No. 59 of 1995 s. 30.]

131D. Assistance Fund, income

There shall be credited to the Assistance Fund —

- (a) all moneys transferred to the Assistance Fund under section 127(b);
- (b) income derived from the investment, under section 131C, of moneys standing to the credit of the Assistance Fund;
- (c) all moneys recovered by or on behalf of the Board for the benefit of the Assistance Fund in the exercise of any right of action conferred by this Act; and
- (d) any moneys, other than moneys referred to in paragraphs (a), (b) and (c), that may lawfully be credited to the Assistance Fund.

[Section 131D inserted by No. 29 of 1982 s. 10; amended by No. 59 of 1995 s. 31 and 42.]

131E. Assistance Fund, expenditure

There shall from time to time be charged to the Assistance Fund, as required —

- (a) the amounts of all grants made by the Board under section 131M(3);
- (b) all legal expenses incurred in relation to the Assistance Fund;
- (c) the expenses involved in the administration of the Assistance Fund;
- (d) the remuneration and allowances payable to the member referred to in section 131H(2)(a); and

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- (e) any moneys, other than moneys referred to in paragraphs (a), (b), (c) and (d), that may lawfully be charged to the Assistance Fund under this Act.

[Section 131E inserted by No. 29 of 1982 s. 10; amended by No. 59 of 1995 s. 32 and 42.]

[131F. Repealed by No. 98 of 1985 s. 3.]

131G. Assistance Fund to be administered by Board

The Board shall administer the Assistance Fund.

[Section 131G inserted by No. 29 of 1982 s. 10.]

131H. Home Buyers Assistance Advisory Committee established

- (1) There is hereby established a committee to be known as the Home Buyers Assistance Advisory Committee.
- (2) The Advisory Committee shall consist of 3 members of whom —
 - (a) one shall be a person with experience in commercial finance appointed by the Minister;
 - (b) one shall be the Chairman *ex officio*; and
 - (c) one shall be an officer of The State Housing Commission appointed by the Minister on the nomination of The State Housing Commission.
- (3) The Minister may appoint a person to be the deputy of the member who is —
 - (a) the member referred to in subsection (2)(a);
 - (b) the Chairman on the recommendation of the Chairman; and
 - (c) an officer of The State Housing Commission on the recommendation of The State Housing Commission.
- (4) A person appointed under subsection (3) to be the deputy of a member is, when the member of whom he is the deputy is

absent from a meeting of the Advisory Committee, entitled to attend that meeting and, when so attending, is deemed to be a member and has all the powers, functions and duties of a member.

[Section 131H inserted by No. 29 of 1982 s. 10; amended by No. 43 of 1994 s. 5.]

131I. Advisory Committee, functions of

- (1) The functions of the Advisory Committee are —
 - (aa) to issue guidelines to the Registrar under section 131M(1a);
 - (a) to consider applications referred to the Advisory Committee under section 131M(1)(b) and to make recommendations to the Board thereon;
 - (b) to make recommendations to the Board on the formulation of criteria under section 131O(2); and
 - (c) to consider any proposals, matters or questions concerned with this Part that may be referred to the Advisory Committee by the Board and to advise the Board thereon.
- (2) The Advisory Committee shall determine its own procedure.

[Section 131I inserted by No. 29 of 1982 s. 10; amended by No. 59 of 1995 s. 33.]

131J. Advisory Committee, Chairman etc.

- (1) The members shall elect one of their number to be the Chairman of the Advisory Committee and another of their number to be the Deputy Chairman of the Advisory Committee.
- (2) The Deputy Chairman of the Advisory Committee shall, when the Chairman of the Advisory Committee is absent from a meeting of the Advisory Committee, act as chairman of the Advisory Committee.

[Section 131J inserted by No. 29 of 1982 s. 10.]

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131K. Advisory Committee members, term of office

- (1) Subject to this section, a member or deputy of a member referred to in section 131H(2)(a) or (c) shall hold office for such period not exceeding 3 years as is specified in the instrument of his appointment and is, on the expiry of that period eligible for reappointment.
- (2) If a member or deputy of a member referred to in section 131H(2)(a) or (c) —
 - (a) resigns his office by writing signed by him and delivered to the Minister; or
 - (b) ceases to be an officer of The State Housing Commission,

the office of that member or deputy becomes vacant.

[Section 131K inserted by No. 29 of 1982 s. 10; amended by No. 43 of 1994 s. 6.]

131KA. Remuneration and allowances of s. 113H(2)(a) member

The member referred to in section 131H(2)(a) is to be paid from moneys standing to the credit of the Assistance Fund such remuneration and allowances as are determined in the case of that member by the Minister on the recommendation of the Minister for Public Sector Management.

[Section 131KA inserted by No. 59 of 1995 s. 34.]

131L. Applying for assistance

- (1) A lending institution which has made a loan to a person in order to assist the person to purchase through the agency of a licensed real estate agent carrying on business in the State —
 - (a) the first dwelling to be owned by the person in the State; or
 - (b) a partially erected dwelling, being the first dwelling to be owned by the person in the State, and to complete that dwelling,

may, not later than 90 days after the date of the contract to purchase the dwelling, on behalf of the person lodge with the Registrar an application in the prescribed form for the granting to the person of the whole or any part of the amount of the incidental expenses incurred or to be incurred by the person in connection with a purchase or purchase and completion referred to in this subsection.

- (1a) Despite subsection (1), the Registrar may, in a particular case, allow an application to be lodged after the expiry of the period referred to in that subsection if the Registrar is satisfied that reasonable grounds exist to justify late lodgement of the application.
- (2) A reference in this section to a dwelling in relation to the making of a loan is a reference to a dwelling that is, or is intended to be, used by the person to whom the loan is made as a home for that person, whether alone or with another person or other persons.

[Section 131L inserted by No. 29 of 1982 s. 10; amended by No. 43 of 1994 s. 7; No. 59 of 1995 s. 35 and 40(2).]

131M. Applications for assistance, Board to decide

- (1) On receiving an application lodged with him under section 131L, the Registrar shall, after satisfying himself that that application is in order, deal with the application, in accordance with guidelines issued by the Advisory Committee, by —
 - (a) considering the application and if, in the opinion of the Registrar the application contains sufficient information to enable the Board properly to assess the merits of the application, forwarding the application to the Board together with the recommendation of the Registrar on the application; or
 - (b) referring the application to the Advisory Committee for consideration.

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- (1a) The Advisory Committee shall issue guidelines to the Registrar setting out the criteria to be applied by the Registrar in determining whether an application should be dealt with under subsection (1)(a) or (b).
- (2) The Advisory Committee shall consider each application referred to it under subsection (1)(b) and, if in its opinion that application contains information sufficient to enable the Board properly to assess the merits of that application, forward that application to the Board together with the recommendation of the Advisory Committee thereon.
- (3) On receiving an application and recommendation forwarded to it under subsection (1) or (2), the Board may, in accordance with the criteria formulated under section 131O(2) which were current at the date of the lodging of the application under section 131L(1) —
 - (a) make a grant to the applicant of the whole or any part of the amount of the incidental expenses sought by that application up to a maximum amount of \$1 000 or such other maximum amount as is prescribed; or
 - (b) refuse that application.

[Section 131M inserted by No. 29 of 1982 s. 10; amended by No. 43 of 1994 s. 8; No. 59 of 1995 s. 36.]

131N. Assistance, how grants are paid

- (1) The Board shall, after it has made a grant under section 131M(3), pay the amount of the grant to the lending institution which lodged the relevant application out of moneys standing to the credit of the Assistance Fund.
- (2) On receiving an amount paid to it under subsection (1), a lending institution shall hold that amount until the assisted person concerned is required to pay the incidental expenses to which that amount relates, whereupon the lending institution shall on behalf of that assisted person pay or distribute, as the

case requires, that amount to or among the person or persons to whom those incidental expenses are payable.

- (3) Whenever the amount of a grant has been paid to a lending institution under subsection (1) and the assisted person to whom the grant has been made by the Board under section 131M(3) ceases for any reason to be required to pay —
- (a) the whole of the incidental expenses to which the grant relates, the lending institution shall repay to the Board the whole of the grant; or
 - (b) any part of the incidental expenses to which the grant relates, the lending institution shall, if that part exceeds the amount, if any, by which the whole of those incidental expenses is greater than the amount of the grant, repay to the Board the amount of that excess.
- (4) If a lending institution is required by subsection (3) to repay an amount to the Board and the whole or part of that amount has been paid or distributed under subsection (2), the lending institution may by action in a court of competent jurisdiction recover that whole or part from the person or persons to or among whom that whole or part has been paid or distributed.

[Section 131N inserted by No. 29 of 1982 s. 10; amended by No. 59 of 1995 s. 40(2).]

131O. Criteria for granting assistance, Board to formulate

- (1) The Advisory Committee may of its own motion or shall at the request of the Board, after consulting —

[(a) deleted]

- (b) the person holding or acting in the office of the Chairman of the Commonwealth Banking Corporation Board constituted under the *Commonwealth Banks Act 1959* of the Parliament of the Commonwealth;

[(c) and (d) deleted]

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- (e) the person holding or acting in the office of the Director of the body known as the Federation of Housing Societies; and
- (f) such other persons as may be prescribed,

make recommendations to the Board on the formulation of criteria under subsection (2).

- (2) The Board shall from time to time, with the approval of the Minister and after considering any recommendations made to it under subsection (1), formulate the criteria in accordance with which applications forwarded to the Board under section 131M(1) or (2) are to be decided.

[Section 131O inserted by No. 29 of 1982 s. 10; amended by No. 6 of 1994 s. 13; No. 43 of 1994 s. 9; No. 14 of 1995 s. 44; No. 59 of 1995 s. 37; No. 12 of 2001 s. 50.]

Part X — Miscellaneous

132. Unlicensed assistants to be supervised etc.

The work of unlicensed persons engaged in assisting in the conduct of the business of a licensee shall be constantly supervised and controlled by a licensee, and for that purpose —

- (a) where the licensee of the business involved is not a firm or a body corporate —
 - (i) the licensee shall give substantial time and attention to the business and shall ensure that the managers of all branch offices of the business respectively give substantial time and attention to the business of the respective branch offices; and
 - (ii) the manager of a branch office of the business shall give substantial time and attention to the business at that office;

and

- (b) where the licensee of the business involved is a firm or a body corporate —
 - (i) the partners of the firm or the directors of the body corporate, as the case requires, shall ensure that the person in *bona fide* control of the business gives substantial time and attention to the business;
 - (ii) the person in *bona fide* control of the business shall give substantial time and attention to the business;
 - (iii) the partners of the firm or the directors of the body corporate, as the case requires, and the person in *bona fide* control of the business shall ensure that the managers of all branch offices of the business respectively give substantial time and attention to the business of the respective branch offices; and

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- (iv) the manager of a branch office of the business shall give substantial time and attention to the business at that office.

133. Registers to be kept by Registrar

- (1) The Registrar shall keep the following registers —
 - (a) a register of licensees;
 - (b) a register of holders of current triennial certificates; and
 - (c) a register of holders of current certificates of registration.
- (2) The Registrar shall record in the registers any prescribed particulars and shall record details of any change of those particulars notified under this Act.
- (3) The Registrar shall cause to be removed from the relevant register or registers the name of every licensee or holder of a current triennial certificate or holder of a current certificate of registration who dies or ceases for any reason to be licensed or to hold a current triennial certificate or a current certificate of registration.
- (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 133 amended by No. 56 of 1995 s. 47.]

134. Lists of licensees etc. to be published; proof of licences

- (1) A list of the names and descriptions of all persons holding licences and a current triennial certificate and of all persons holding a current certificate of registration 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 current triennial certificate or the holder of a current certificate of registration on the date of, or a date referred to, in the certificate, or as to any other matter contained in a register, shall, in the absence of proof to the contrary, be taken as proof of the matter so certified.
- (4) The 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.

135. *Financial Administration and Audit Act 1985 applies to Board*

- (1) The provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Board and its operations.
- (2) 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;
 - (ii) matters that have been brought before the State Administrative Tribunal under this Act; and
 - (iii) matters that have been dealt with through the conciliation process 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.

[Section 135 inserted by No. 98 of 1985 s. 3; amended by No. 59 of 1995 s. 38; No. 55 of 2004 s. 1016.]

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136. Effectiveness of Act, Board to report on

The Board shall, from time to time, submit a report to the Minister as to the opinion of the Board on —

- (a) the effectiveness or otherwise of current provisions for the purpose of providing protection to the public against any defalcations by a licensee; and
- (b) the desirability or otherwise of having further or alternative measures for that purpose,

and where, in the opinion of the Board, it is desirable to have such further or alternative measures, the Board shall include in the report details of a scheme to implement those measures.

136A. Refund of fees

The Board may in special circumstances refund the whole or part of any fee paid for a licence or triennial certificate or any sum paid to the Board by way of contribution or levy to the Fidelity Fund.

[Section 136A inserted by No. 74 of 1980 s. 12; amended by No. 29 of 1982 s. 12.]

137. Legal 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.

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

- (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: \$5 000.

[Section 138 amended by No. 59 of 1995 s. 41; No. 34 of 1998 s. 19.]

139. Directors of body corporate, liability of

- (1) Where a licensee is a firm and a body corporate is a partner in the firm or where the licensee is a body corporate, all persons who are directors of the body corporate at the time of any defalcation by the licensee are jointly and severally liable in respect of that defalcation.
- (2) Where a licensee is a firm and a body corporate is a partner in the firm or where the licensee is a body corporate, all persons who are directors of the body corporate at the time of an order or direction made by a court, the Board, or the State Administrative Tribunal against the licensee are jointly and severally liable in respect of the order or direction.
- (3) Sections 34B(1), 103(1)(c) and 105(1)(c) apply in respect of a director referred to in subsection (2) as if the references in those sections to a licensee or an agent included the director.
- (4) A reference in subsection (1), (2) or (3) to a director includes a reference to a person in accordance with whose directions or instructions the directors of the relevant body corporate are accustomed to act.

[Section 139 amended by No. 34 of 1998 s. 20; No. 55 of 2004 s. 1017 and 1020.]

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140. Rights and remedies not affected by Act

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.

141. Rights under Act cannot be waived

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

142. General penalty

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

[Section 142 amended by No. 43 of 1994 s. 11.]

143. Prosecution 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 against this Act that a person named therein was or was not licensed or the holder of a current triennial certificate at the time specified therein shall, in the absence of proof to the contrary, be taken as proved.

[Section 143 amended by No. 59 of 2004 s. 141; No. 84 of 2004 s. 80.]

144. Forms may be determined by Board

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.

145. 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), the regulations may —
 - (a) prescribe the procedure of the Board;
 - (b) provide for the enforcement of orders of the Board for costs under section 21;
 - (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 initiation of a proceeding before the State Administrative Tribunal;
 - (e) prescribe the particulars to be recorded in the registers required to be kept under this Act;
 - (f) prescribe a body or class of bodies for the purposes of the definition of “authorised financial institution” in section 67;
 - (g) prescribe a rate of interest and the times at which such interest is to be paid for the purposes of section 68B(1);
 - (h) prescribe the information to be contained in a receipt for the purposes of section 69(1)(a);

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- (ha) prescribe the manner in which a record is to be kept, and the information to be contained in a record, for the purposes of section 69(2);
 - (hb) prescribe the times at which and the proportions in which moneys are to be paid or transferred under section 127;
 - (i) prescribe the manner of making claims against the Fidelity Fund and the manner of verifying any claim including a condition that the claim be verified by statutory declaration;
 - (j) prescribe generally for such other matters as may be considered necessary for the purposes of protecting the Fidelity Fund or of giving full effect to the intent of the provisions of this Act relating to the Fidelity Fund;
 - (ja) prescribe a body or class of bodies for the purposes of the definition of “lending institution” in section 131A;
 - (k) prescribe a maximum amount for the purposes of section 131M(3)(a);
 - (ka) prescribe persons for the purposes of section 131O(1)(f);
 - (l) prescribe penalties not exceeding \$1 000 for any breach of the regulations.
- (3) Subsections (1) and (2) of section 45 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 145 amended by No. 29 of 1982 s. 11; No. 77 of 1984 s. 5; No. 65 of 1987 s. 42; No. 18 of 1988 s. 5; No. 43 of 1994 s. 10; No. 56 of 1995 s. 48; No. 59 of 1995 s. 39 and 41; No. 55 of 2004 s. 1018.]

Part XI — Savings and transitional

146. Modifications of other Parts

The provisions of the other Parts of this Act shall be read and construed with such modifications as are necessary by reason of the saving and transitional provisions of the Schedule.

147. *Interpretation Act 1918* not affected

The saving and transitional provisions of the Schedule do not affect the operation of the *Interpretation Act 1918*⁵.

Schedule

Qualifications for grant of licence (s. 27)

1. A person —
 - (a) who has passed, subject to approved exemptions, the prescribed examinations relating to the carrying on and conduct of the business of an agent and the duties and liabilities of an agent and has had sufficient practical experience in negotiating transactions to enable him to carry on the business of an agent satisfactorily;
 - (b) who has within a period of 5 years immediately preceding his application —
 - (i) held for a period of at least 2 years a licence, or similar authority, under an approved corresponding enactment of any State or Territory of the Commonwealth to act as an agent or the approved equivalent thereof; and
 - (ii) in that State or Territory for a period of at least 2 years acted as and carried out the functions of an agent,
whether on his own behalf or on behalf of a firm or a body corporate, not being a licence, or similar authority, granted to him as being a person of the kind referred to in paragraphs (c) and (d);
 - (c) who is an executor, administrator, or trustee of a deceased licensee and his application is for the purpose of performing functions, exercising powers, or carrying out duties as such; or
 - (d) who is a spouse or child of a deceased or incapacitated licensee, or a de facto partner of such a licensee (and has been for not less than 2 years immediately before the death or incapacity of the licensee), and is seeking a licence to conduct the business of that licensee until other arrangements can be made for the lawful conduct thereof but not for any period exceeding 3 years,

is, subject to this Act, qualified for the grant of a licence.

[Clause 1 amended by No. 74 of 1980 s. 13(a); No. 28 of 2003 s. 177(1).]

2. For the purposes of clause 1(a), but without limiting the generality of the provision in that paragraph in respect of practical experience, a person has had sufficient practical experience in negotiating transactions if he has, during a period of 2 years immediately preceding his application for a licence —
 - (a) lawfully and satisfactorily performed the functions of a sales representative on behalf of a person who lawfully carried out the functions of an agent, during that period or on behalf of a firm which did so; or
 - (b) lawfully and satisfactorily performed the functions of a business agent on his own behalf or on behalf of a firm, or a body corporate, which lawfully carried on the business of a business agent during that period.

Licence by reason of qualification under clause 1(c)

3. Such a licence shall not be effective any longer than is necessary for the licensee to perform his functions, exercise his powers, and carry out his duties as executor, administrator, or trustee of the deceased licensee.

Licence by reason of qualification under clause 1(d)

4. Such a licence is to be granted at the discretion of the Board and shall be effective only for such period not exceeding 3 years as is determined by the Board and no further such licence shall be granted to the same person in respect of the same circumstances.

[Clause 4 amended by No. 28 of 2003 s. 177(2).]

Death or incapacity of agent

5. (1) A person who is not —
 - (a) an executor, administrator, trustee or child of a deceased licensee, or who was not the spouse or de facto partner, within the meaning of clause 1(d), of a deceased licensee immediately before the death of the licensee; or

- (b) in respect of an incapacitated licensee, the spouse or de facto partner of the licensee, within the meaning of clause 1(d), of the licensee,
- may, with the written permission of the Registrar, conduct the business of that licensee for such period not exceeding 3 months as is specified in the written permission notwithstanding that he is not otherwise qualified to hold a licence.
- (2) The Registrar shall not give his written permission for the purposes of subclause (1) unless —
- (a) the Registrar receives an application in writing signed by the person seeking to carry on the business; and
- (b) the Registrar is satisfied that the person is of good character and repute and fit to be concerned temporarily in the management and control of the deceased licensee's business and that it is in the interests of that business that the person should be so concerned.
- (3) While a person carries on the business of a deceased or incapacitated licensee pursuant to this clause he is deemed to be a licensee and the holder of a current triennial certificate and the business is deemed to have carried on without interruption by reason of the death or incapacity.

[Clause 5 amended by No. 28 of 2003 s. 177(3).]

Death or withdrawal of partner in a firm or director of a body corporate

[Heading amended by No. 74 of 1980 s. 13(b).]

6. (1) Where a firm or body corporate is licensed and the holder of a current triennial certificate but subsequently by reason of a death or withdrawal it ceases to be qualified in terms of section 28(c) and (d) or section 29(c) and (d), the firm or body corporate shall immediately give to the Registrar written notice to that effect, and the firm or body corporate may, on such terms as the Board may notify to the firm or body corporate, carry on business for a period of 3 months after the death or withdrawal or until other arrangements are made to comply with the Act, whichever is the sooner.

- (2) Where a firm or body corporate carries on business pursuant to this clause the business is deemed to have been carried on by a licensee and the holder of a current triennial certificate without interruption by reason of the death or withdrawal.

[Clause 6 amended by No. 74 of 1980 s. 13(c).]

Savings

Continuation of licences in force under the repealed Act ⁴

7. (1) Licences in force under the repealed Act ⁴ immediately preceding the appointed day ³ shall continue in force as if granted under this Act and as if the licensees were qualified under this Act, and the Board shall, on receipt of an application signed by the licensee, and without payment of any fee by him, grant a triennial certificate in respect of the licence and approve the appointment of an auditor for the business of that licensee, and the triennial certificate shall, subject to this Act, expire on the day the licence under the repealed Act ⁴ would have expired if that Act had remained in force.
- (2) In respect of a firm or a body corporate on behalf of which a licence was in force under the repealed Act ⁴ immediately preceding the appointed day ³, subclause (1) shall be applied so that both the person who held the licence and the firm or body corporate —
- (a) are licensed under this Act as if they were qualified under it; and
 - (b) on application pursuant to that subclause, shall be granted a triennial certificate which shall expire as provided in that subclause,
- and so that the appointment of an auditor for the business of the firm or body corporate shall be approved.
- (3) Contributions made to the Land Agents Fidelity Guarantee Fund under the repealed Act ⁴ in respect of licences that have been continued under this clause shall be credited to the licensee, and in the case of a firm or body corporate, to both the person who held the licence under the repealed Act ⁴ and to the firm or the body corporate, as if the contributions were

made to the Real Estate and Business Agents Fidelity Guarantee Fund under this Act.

Pastoral companies

8. (1) This clause applies to and in relation to each pastoral company in respect of which an exemption granted under section 11 of the *Banking Act 1959* of the Parliament of the Commonwealth, or that Act as amended from time to time, is in force, and in respect of which the Secretary of the Land Agents Supervisory Committee under the repealed Act⁴ certifies that the company was an approved applicant within the meaning of that Act and by reason thereof was a licensee under that Act immediately preceding the appointed day³ and consequently its licence has been continued under clause 7.
- (2) A pastoral company to and in relation to which this clause applies may carry on business as an agent under and subject to this Act but without complying with the requirements of —
- (a) section 29(c) and (d); and
 - (b) section 37(2) and section 41,
- if, and only if, it complies with the requirements of subclause (3).
- (3) A pastoral company to which this clause applies shall establish and maintain a Real Estate and Business Agent's Section specified as such and —
- (a) on and after 1 April 1982 that Real Estate and Business Agent's Section shall have a manager who is a licensee and the holder of a current triennial certificate;
 - (b) on and after 1 April 1983, the company shall have as the manager of —
 - (i) each branch office of the company within the metropolitan region at which transactions are negotiated or controlled; and
 - (ii) each branch office of the company outside the metropolitan region which, in the opinion of the Board, is engaged substantially in the negotiation and control of transactions other

than those involving rural and agricultural properties,

a person who is a licensee and the holder of a current triennial certificate, but in the case referred to in subparagraph (ii) it shall be deemed to be sufficient compliance with this paragraph if the person in control of the real estate and business agency component of the branch is licensed and is the holder of a current triennial certificate;

- (c) in respect of each office of the company at which transactions are negotiated or controlled, on and after the appointed day³ until the provisions of paragraphs (a) and (b) have been complied with, the manager shall be a person who is the holder of a current certificate of registration; and
- (d) the manager referred to in paragraph (b) shall not be a licensee nominated as manager by any other licensee, shall not be a manager of any other office, and shall not carry on business as an agent on his own account, but if the manager of the Real Estate and Business Agents Section of the company is, in the opinion of the Board, normally in substantial attendance at any one office, another licensee is not required in respect of that office.

- (4) In subclause (3)(b) “**metropolitan region**” means that part of the State that comprised the metropolitan region within the meaning of the *Town Planning and Development Act 1928* as amended and in force on the date on which this clause came into operation.

[Clause 8 amended by No. 74 of 1980 s. 13(d).]

[9, 10. Omitted under the Reprints Act 1984 s. 7(4)(e).]

Persons of a kind referred to in section 4(3)(v) of the repealed Act⁴ and whose licences have been continued under clause 7

- 11. Such a licence shall not be effective any longer than is necessary for the licensee to perform his functions, exercise his powers, and carry

out his duties as executor, administrator, or trustee of the deceased licensee.

Persons of a kind referred to in section 4(3)(vi) of the repealed Act⁴ and whose licences have been continued under clause 7

12. Such a licence shall be effective only for the period it would have continued to be effective if the repealed Act⁴ had remained in force.

Auctions in respect of real estate transactions

13. On and after the appointed date, such an auction shall only be conducted by a person —
- (a) who may lawfully conduct such an auction under the *Auction Sales Act 1973*; and
 - (b) who —
 - (i) is, under this Act, a licensee with a current triennial certificate and conducts the auction in the course of his business as such a licensee; or
 - (ii) is a person who conducts the auction on behalf of, in the course of the business of, and under the supervision and control of such a licensee.

Auctions in respect of business transactions not involving a real estate transaction

14. On and after the appointed day³, such an auction shall only be conducted by a person —
- (a) who may, under the *Auction Sales Act 1973*, lawfully conduct such an auction; and
 - (b) who —
 - (i) is, under this Act, a licensee with a current triennial certificate and conducts the auction in the course of his business as such a licensee; or
 - (ii) is a person who conducts the auction on behalf of, in the course of the business of, and under the supervision and control of such a licensee.

Continuation of certificates of registration in force under the repealed Act⁴

15. (1) Any certificate of registration of a land salesman in force under the repealed Act⁴ immediately preceding the appointed day³ shall continue in force as if granted as a certificate of registration of a sales representative and as if the person registered under the repealed Act⁴ was qualified to be registered under this Act and shall, subject to this Act, expire on the day it would have expired under the repealed Act⁴ if that Act had remained in force.
- (2) Contributions made to the Land Agents Fidelity Guarantee Fund under the repealed Act⁴ in respect of certificates of registration that have been continued under this clause shall be credited to the sales representative as if the contributions were made to the Real Estate and Business Agents Fidelity Guarantee Fund under this Act.

Continuation of certain office managers

16. (1) Notwithstanding section 37(2), a person, who immediately before the appointed day³ —
- (a) was registered as a land salesman under the repealed Act⁴ and had been so registered for a period of not less than 3 years; and
 - (b) was the manager of a branch office of the business of an agent and had been the manager of such a branch office for a period of not less than one year,
- may be nominated by a licensee as manager of a registered branch of the licensee's business and may continue to act as such a manager if the Board so approves and the person continues to be registered as a sales representative.
- (2) For the purposes of subclause (1) the other provisions of this Act shall be read and construed with such modifications as are necessary and, without limiting the generality thereof, shall be read and construed with the following particular modifications —
- (a) a person acting as the manager of a registered branch office pursuant to subclause (1) shall identify himself as the manager and a real estate or business sales

- representative, or both and not as a real estate or business agent, or both; and
- (b) the other provisions of this Act that apply to and in relation to sales representatives apply to and in relation to a person acting as the manager of a registered branch office pursuant to subclause (1), and not such other provisions that apply to and in relation to a manager who is a licensee except to the extent that they are necessary to so apply in respect of the duties and obligations of the manager of such a branch.

[Clause 16 amended by No. 74 of 1980 s. 13(g).]

[Heading deleted by No. 55 of 2004 s. 1019.]

[17-24. deleted by No. 55 of 2004 s. 1019.]

Notes

¹ This is a compilation of the *Real Estate and Business Agents Act 1978* 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>Real Estate and Business Agents Act 1978</i>	72 of 1978	20 Oct 1978	Act other than s. 5, 54, 55, 57-100, 102-131 and 135: 1 Sep 1979 (see s. 2(1) and <i>Gazette</i> 31 Aug 1979 p. 2601); s. 5: 1 Dec 1979 (see s. 2(2) and <i>Gazette</i> 31 Aug 1979 p. 2615); s. 54, 55, 57-100, 102-131 and 135: 1 Dec 1979 (see s. 2(1) and <i>Gazette</i> 31 Aug 1979 p. 2601)
<i>Real Estate and Business Agents Act Amendment Act 1979</i>	74 of 1979	27 Nov 1979	27 Nov 1979
<i>Real Estate and Business Agents Amendment Act 1980</i>	74 of 1980	5 Dec 1980	s. 13: 1 Dec 1980 (see s. 2(2)); balance: 2 Jan 1981 (see s. 2(1))
Reprint of the <i>Real Estate and Business Agents Act 1978</i> approved 23 Feb 1982 (includes amendments listed above)			
<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)
<i>Real Estate and Business Agents Amendment Act 1982</i>	29 of 1982	27 May 1982	25 Jun 1982 (see s. 2 and <i>Gazette</i> 25 Jun 1982 p. 2091)
<i>Real Estate and Business Agents Amendment Act 1984</i>	77 of 1984	26 Nov 1984	26 Nov 1984 (see s. 2)
<i>Acts Amendment (Strata Titles) Act 1985 Pt. III</i>	40 of 1985	13 May 1985	30 Jun 1985 (see s. 2 and <i>Gazette</i> 21 Jun 1985 p. 2188)

Real Estate and Business Agents Act 1978

Short title	Number and year	Assent	Commencement
Reprint of the <i>Real Estate and Business Agents Act 1978</i> as at 7 Nov 1985 (includes amendments listed above)			
<i>Acts Amendment (Financial Administration and Audit) Act 1985</i> s. 3	98 of 1985	4 Dec 1985	1 Jul 1986 (see s. 2 and <i>Gazette</i> 30 Jun 1986 p. 2255)
<i>State Government Insurance Commission Act 1986</i> s. 46(2)	51 of 1986	5 Aug 1986	1 Jan 1987 (see s. 2 and <i>Gazette</i> 19 Dec 1986 p. 4859)
<i>Acts Amendment (Legal Practitioners, Costs and Taxation) Act 1987</i> Pt. XV	65 of 1987	1 Dec 1987	12 Feb 1988 (see s. 2(2) and <i>Gazette</i> 12 Feb 1988 p. 397)
<i>Residential Tenancies Act 1987</i> s. 89	128 of 1987	21 Jan 1988	1 Oct 1989 (see s. 2 and <i>Gazette</i> 18 Aug 1989 p. 2748)
<i>Real Estate and Business Agents Amendment Act 1988</i>	18 of 1988	9 Sep 1988	28 Oct 1988 (see s. 2 and <i>Gazette</i> 28 Oct 1988 p. 4327)
<i>R & I Bank Act 1990</i> s. 45(1)	73 of 1990	20 Dec 1990	1 Jan 1991 (see s. 2(2) and <i>Gazette</i> 28 Dec 1990 p. 6369)
<i>R & I Bank Amendment Act 1994</i> s. 13	6 of 1994	11 Apr 1994	26 Apr 1994 (see s. 2(2) and <i>Gazette</i> 26 Apr 1994 p. 1743)
<i>Acts Amendment (Public Sector Management) Act 1994</i> s. 3(2)	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)
<i>Real Estate and Business Agents Amendment Act 1994</i>	43 of 1994	31 Aug 1994	Act other than s. 7 and 8(b)(i): 31 Aug 1994 (see s. 2(1)); s. 7 and 8(b)(i): 6 Oct 1994 (see s. 2(2) and <i>Gazette</i> 30 Sep 1994 p. 4947)
<i>Bank of Western Australia Act 1995</i> s. 44(1)	14 of 1995	4 Jul 1995	1 Dec 1995 (see s. 2(3) and 9(1) and <i>Gazette</i> 29 Nov 1995 p. 5529)
<i>Business Licensing Amendment Act 1995</i> Pt. 8 ⁶	56 of 1995	20 Dec 1995	1 Jul 1996 (see s. 2(2) and <i>Gazette</i> 1 Jul 1996 p. 3179)
<i>Real Estate Legislation Amendment Act 1995</i> Pt. 2 ⁷	59 of 1995	20 Dec 1995	Pt. 2, other than s. 11: 1 Jul 1996 (see s. 2 and <i>Gazette</i> 25 Jun 1996 p. 2902 and 6 Sep 1996 p. 4405) ^{1a}

Short title	Number and year	Assent	Commencement
Reprint of the Real Estate and Business Agents Act 1978 as at 6 Sep 1996 (includes amendments listed above) (correction in <i>Gazette</i> 11 Oct 1996 p. 5396)			
<i>Real Estate and Business Agents Amendment Act 1998</i>	34 of 1998	6 Jul 1998	1 Nov 1998 (see s. 2 and <i>Gazette</i> 16 Oct 1998 p. 5729)
<i>Acts Amendment and Repeal (Financial Sector Reform) Act 1999 s. 99</i>	26 of 1999	29 Jun 1999	1 Jul 1999 (see s. 2(1) and <i>Gazette</i> 30 Jun 1999 p. 2905)
<i>Real Estate Legislation (Fidelity Guarantee Funds) Amendment Act 2000 Pt. 2⁸</i>	3 of 2000	12 Apr 2000	12 Apr 2000 (see s. 2)
Reprint of the Real Estate and Business Agents Act 1978 as at 9 Mar 2001 (includes amendments listed above)			
<i>Corporations (Consequential Amendments) Act 2001 s. 220 and 222</i>	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and <i>Gazette</i> 29 Jun 2001 p. 3257 and <i>Cwlth Gazette</i> 13 Jul 2001 No. S285)
<i>Building Societies Amendment Act 2001 s. 50 and 51</i>	12 of 2001	13 Jul 2001	13 Jul 2001 (see s. 2)
<i>Corporations (Consequential Amendments) Act (No. 3) 2003 Pt. 12⁹</i>	21 of 2003	23 Apr 2003	11 Mar 2002 (see s. 2 and <i>Cwlth Gazette</i> 24 Oct 2001 No. GN42)
<i>Acts Amendment (Equality of Status) Act 2003 Pt. 51</i>	28 of 2003	22 May 2003	1 Jul 2003 (see s. 2 and <i>Gazette</i> 30 Jun 2003 p. 2579)
<i>Sentencing Legislation Amendment and Repeal Act 2003 s. 88</i>	50 of 2003	9 Jul 2003	15 May 2004 (see s. 2 and <i>Gazette</i> 14 May 2004 p. 1445)
<i>Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 s. 59</i>	65 of 2003	4 Dec 2003	1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5722)
<i>Statutes (Repeals and Minor Amendments) Act 2003 s. 101</i>	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)
<i>Courts Legislation Amendment and Repeal Act 2004 s. 141</i>	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)

Real Estate and Business Agents Act 1978

Short title	Number and year	Assent	Commencement
<i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004 Pt. 2 Div. 112</i> ¹⁰	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
Reprint 5: The Real Estate and Business Agents Act 1978 as at 8 Apr 2005 (includes amendments listed above except those in the <i>Courts Legislation Amendment and Repeal Act 2004</i>)			
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004 s. 80 and 82</i>	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))
<i>Oaths, Affidavits and Statutory Declarations (Consequential Provisions) Act 2005 s. 63</i>	24 of 2005	2 Dec 2005	1 Jan 2006 (see s. 2 and <i>Gazette</i> 23 Dec 2005 p. 6244)

^{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>Real Estate Legislation Amendment Act 1995 s. 11</i> ¹¹	59 of 1995	20 Dec 1995	To be proclaimed (see s. 2)
<i>Housing Societies Repeal Act 2005 s. 29</i> ¹²	17 of 2005	5 Oct 2005	To be proclaimed (see s. 2(3) and (4))

² The provision in this Act repealing the *Land Agents Act 1921* has been omitted under the *Reprints Act 1984 s. 7(4)(f)*.

³ The “appointed day” was 1 December 1979. See *Gazette* 31 August 1979 p. 2615.

⁴ The *Land Agents Act 1921*.

⁵ Repealed by the *Interpretation Act 1984*.

⁶ The *Business Licensing Amendment Act 1995* s. 49 is a transitional provision that is of no further effect.

⁷ The *Real Estate Legislation Amendment Act 1995* s. 10(2) reads as follows:

“

- (2) A notice under section 61(1) of the principal Act in force immediately before the commencement of this section continues to have effect on that commencement, and may be amended or revoked, as if the notice were a notice under section 61(1) of the principal Act as inserted by this section.

”

⁸ The *Real Estate Legislation (Fidelity Guarantee Funds) Amendment Act 2000* s. 4(2) and (3) read as follows:

“

- (2) A person may give notice of a claim under section 116(2) as amended by this section even if the time within which that notice was to be given under that section before that amendment had expired.
- (3) Where a person may give notice of a claim under section 116(2) as amended by this section, notice of the claim given by the person previously in writing to the Board (whether or not dealt with by the Board) is to be taken to be notice of the claim for the purposes of that section.

”

⁹ 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.

”.

¹⁰ 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.

¹¹ On the date as at which this reprint was prepared, the *Real Estate Legislation Amendment Act 1995* s. 11 had not come into operation. It reads as follows:

“

11. Section 61A inserted

After section 61 of the principal Act the following section is inserted —

“

61A. Letting and management fees not payable by tenant

- (1) An agent shall not demand or receive from a tenant a commission, reward or other valuable consideration for a service rendered by the agent in connection with —
- (a) the letting or management of residential premises; or
 - (b) the renewal, extension or continuation of a tenancy where, upon the expiry of the term of the tenancy, a further right of occupancy of the same premises is granted to the same tenant.

Penalty: \$5 000.

- (2) A commission, reward or other valuable consideration received in contravention of subsection (1) is recoverable by the tenant as a debt due in a court of competent jurisdiction.
- (3) In this section —
- “**residential premises**”, “**tenancy**” and “**tenant**” have the same meanings as in section 3 of the *Residential Tenancies Act 1987*.

”

¹² On the date as at which this compilation was prepared, the *Housing Societies Repeal Act 2005* s. 29 had not come into operation. It reads as follows:

“

29. Real Estate and Business Agents Act 1978 amended

- (1) The amendments in this section are to the *Real Estate and Business Agents Act 1978*.

- (2) Section 131A is amended in the definition of “lending institution” as follows:
- (a) after paragraph (a) by inserting —
“ or ”;
 - (b) by deleting paragraph (c) and “or” after it.
- (3) Section 131O(1) is amended as follows:
- (a) after paragraph (b) by inserting —
“ and ”;
 - (b) by deleting paragraph (e) and “and” after it.

”.