

Western Australia

Real Estate and Business Agents Act 1978

As at 26 Oct 2011

Version 06-o0-02

Extract from www.slp.wa.gov.au, see that website for further information

Real Estate and Business Agents Act 1978

CONTENTS

Part I — Preliminary		
1.	Short title	2
2.	Commencement	2
4.	Terms used in this Act	2
Part II — Advisory Committee and review		
22.	Powers of investigation	10
23.	Application for review	10
Division 4 — Advisory committees		
23A.	Advisory committees	11
23B.	Minister may delegate s. 23A powers	13
Division 5 — Conciliation		
23C.	Conciliation of disputes about transactions	13
Part III — Licensing of agents		
24.	Application for licence	15
25.	Objection to grant of licence	15
26.	Real estate and business agents to be licensed	16
27.	Natural person, grant of licence to	16
28.	Firm, grant of licence to	17
29.	Body corporate, grant of licence to	18
30.	Licence, effect of	18
31.	Triennial certificate, grant and renewal of	19
32.	Triennial certificates, late renewal of	20
33.	Triennial certificates, renewal of in certain cases	20

Contents

34.	Conditions on licences and triennial certificates	21
34A.	Unopposed applications	21
34B.	Suspension of licence by State Administrative Tribunal	22
35.	Notification by licensee when commencing or ceasing business	22
36.	Registered office of licensee	22
37.	Branch office of licensee	23
38.	Triennial certificate to show place of business etc.	23
39.	Licence and triennial certificate not transferable	24
40.	Business names, use of by licensees	24
41.	Official details to be displayed in offices, on correspondence etc.	25
Part IV — Registration of sales representatives		
42.	Natural persons only may be registered	26
43.	Application for registration	26
44.	Real estate sales representatives to be registered etc.	26
45.	Business sales representatives to be registered etc.	27
46.	Partners and directors of licensees to be registered in certain cases	28
47.	Natural person, grant of certificate of registration to	28
48.	Certificate of registration, duration and renewal of	29
49.	Certificates of registration, late renewal of	30
50.	Conditions on certificates of registration	31
50A.	Unopposed applications	31
50B.	Suspension of registration by State Administrative Tribunal	32
51.	Notification to be given by registered sales representative	32
52.	Certificate of registration not transferable	33
53.	Certificate of registration, surrender of	33
54.	Sales representatives, employment of	33
55.	Sales representative to be in service of one person	34
Part V — General controls		
56.	Franchising agreements	35

57.	Developer's principal place of business to be registered	35
58.	Developer to give notice of change in principal place of business	36
59.	Developer to keep records of real estate transactions	36
60.	Agent not entitled to commission etc. unless licensed and validly appointed	36
61.	Agents' commissions etc. may be regulated	38
61A.	Letting and management fees not payable by tenant	40
62.	Advertising by agents and developers	41
63.	Agents etc. to supply copies of signed documents	41
64.	Conflicts of interest of agents etc.	42
65.	Agents to ensure payment and apportionment of rates etc.	42
66.	Keys to houses etc. and information about tenancies, payment for illegal	43
 Part VI — Agents' trust accounts		
67.	Terms used in this Part	45
68.	Trust accounts, use of	45
68A.	Client may request agent to create separate trust account	46
68B.	Interest on trust accounts to be paid by financial institutions	47
68C.	Trust accounts, certain information to be given to Commissioner	48
69.	Trust accounts, records of and accounting for	49
70.	Trust accounts, audit of	49
71.	Audit date may be varied	51
72.	Auditors, qualification and approval of	52
73.	Auditors, appointment of	52
74.	Audits of business carried on at more than one place	53
75.	Commissioner may vary decisions made under this Part	53
77.	Audits, agents to obey auditors' requests	53
78.	Audits, bankers to obey auditors' requests	54
79.	Auditors' reports, contents of	54
80.	Audits, agents to certify state of trust accounts	55

Contents

81.	Auditors to report on deficiencies etc. in trust accounts	56
82.	Auditors to keep information confidential	56
83.	Audit information to be available to clients etc.	56
84.	Penalty for breach of Part VI	57
85.	Auditors, remuneration of	57
86.	Agents having no accounts to audit	57
87.	Audits of firms etc. operate as audits of agents who are members etc.	58
88.	Audit of trust account may be ordered	58
90.	Cost of audit done under s. 88	59
91.	Confidentiality of audit done under s. 88	59
92.	Trust accounts etc. may be frozen by State Administrative Tribunal	59
93.	State Administrative Tribunal may suspend agent, restrain use of accounts, and authorise appointment of supervisor	61
94.	Supervisors, appointment and remuneration of	63
95.	Supervisors, duties of	64
96.	Supervisors, obstruction etc. of	64
97.	Discharge or variation of orders under s. 92 or 93	65
98.	Schemes for distribution of trust funds	65
99.	Orders under s. 92, 93, or 98 to be served and complied with	67
100.	Financial institutions to disclose agent's account on request	68
100A.	Commissioner may obtain information about trust accounts	69
 Part VII — Discipline of agents and sales representatives		
101.	Codes of conduct	72
102.	Inquiries into conduct of agents and sales representatives	72
103.	Disciplinary action, grounds for and forms of	73
104.	Automatic cancellation of licence and triennial certificate	76
105.	Conviction of licensee of certain offences, additional sentencing powers	77

106.	Persons carrying on business after licence cancelled etc.	77
------	-----------------------------------------------------------	----

Part VIII — Fidelity Guarantee Account

107.	Real Estate and Business Agents Fidelity Guarantee Account established	79
108.	Fidelity Account, investment of	79
109.	Fidelity Account, income	79
110.	Fidelity Account, expenditure	80
112.	Administration of Fidelity Account	81
113.	Fidelity Account, contributions to by agents etc.	81
114.	Fidelity Account contributions capped	81
115.	Fidelity Account, levies for	82
116.	Fidelity Account, purpose of	83
117.	Fidelity Account, claims against	83
118.	Fidelity Account, defences to claims against	85
119.	Subrogation of rights	85
120.	Insufficiency in Fidelity Account	85
121.	State may insure against claims	86
122.	Insurance payouts to be credited to Fidelity Account	87
123.	Advertising for claims against Fidelity Account	87
124.	Documents etc. may be required to support claims	88

Part VIIIA — Education and General Purpose Account

124A.	Education and General Purpose Account established	89
124B.	General Purpose Account, income	89
124C.	General Purpose Account, expenditure	90
124D.	General Purpose Account, investment of	90

Part IX — Real Estate and Business Agents Interest Account

125.	Real Estate and Business Agents Account established	92
126.	Account, income	92
127.	Account, expenditure	93
128.	Account, investment of	93

Part IXA — Assistance to home buyers

131A.	Terms used in this Part	94
131B.	Home Buyers Assistance Account established	95
131C.	Assistance Account, investment of	95
131D.	Assistance Account, income	95
131E.	Assistance Account, expenditure	96
131G.	Administration of Assistance Account	96
131L.	Applying for assistance	97
131M.	Deciding applications for assistance	98
131N.	Assistance, how grants are paid	99
131O.	Formulating criteria for granting assistance	100

Part X — Miscellaneous

132.	Unlicensed assistants to be supervised etc.	101
133.	Registers to be kept	102
134.	Lists of licensees etc. to be published; proof of licences	102
135.	Annual report	103
136.	Report on effectiveness of Act	104
136A.	Refund of fees	104
137.	Protection from liability	104
138.	Confidentiality of information officially obtained	105
139.	Directors of body corporate, liability of	105
140.	Rights and remedies not affected by Act	105
141.	Rights under Act cannot be waived	106
142.	General penalty	106
143.	Prosecution proceedings	106
144.	Forms	106
145.	Regulations	107

Part XI — Savings and transitional

Division 1 — Savings and transitional (1978)

146.	Modifications of other Parts	109
147.	<i>Interpretation Act 1918</i> not affected	109

Division 2 — Savings and transitional (2010)

148.	Terms used	109
149.	Former Board abolished	110
150.	References to the former Board	110

151.	Immunity continues	110
152.	Notices by the former Board	110
153.	References to a former Registrar	111
154.	Unfinished investigations by the former Board	111
155.	Unfinished proceedings by the former Board	111
156.	Winding-up the former Board	112
157.	Final report by the former Board	113
158.	Board staff	113
159.	Powers in relation to transitional matters	114

**Schedule — Qualifications and saving
and transitional provisions**

Division 1 — Qualifications for grant of licence

1.	Qualifications for grant of licence	116
2.	Sufficient practical experience	117
3.	Licence by reason of qualification under clause 1(c)	117
4.	Licence by reason of qualification under clause 1(d)	117
5.	Death or incapacity of agent	118
6.	Death or withdrawal of partner in a firm or director of a body corporate	119

Division 2 — Saving and transitional provisions

8.	Pastoral companies	119
13.	Auctions in respect of real estate transactions	121
14.	Auctions in respect of business transactions not involving a real estate transaction	121
16.	Continuation of certain office managers	122

Notes

	Compilation table	124
--	-------------------	-----

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. Deleted by No. 29 of 1982 s. 3.]

4. Terms used in this Act

- (1) In this Act unless the context otherwise requires —

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 Commissioner;

Assistance Account means the Home Buyers Assistance Account established under section 131B;

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;

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 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

s. 4

- (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;

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

Commissioner has the meaning given in the *Fair Trading Act 2010* section 6;

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;

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

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 Account means the Real Estate and Business Agents Fidelity Guarantee Account established under section 107;

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 Account means the Education and General Purpose Account established under section 124A;

Interest Account means the Board Interest Account established under section 125(1);

legal practitioner means an Australian legal practitioner within the meaning of that term in the *Legal Profession Act 2008* section 3;

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) deleted]

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

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 —

s. 4

- (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;

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 Commissioner 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;

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,

s. 4

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;
 - (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; or
 - (d) a person, other than a licensee, when performing a prescribed duty as an agent for the owner of premises ordinarily used for holiday accommodation, whether or not for consideration, in respect of the right of a person to occupy those premises for a period of not more than 3 consecutive months.

[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; No. 69 of 2006 s. 27; No. 77 of 2006 s. 17; No. 21 of 2008 s. 696; No. 58 of 2010 s. 81 and 134; No. 47 of 2011 s. 25(2), (3).]

[5. Deleted by No. 58 of 2010 s. 82.]

Part II — Advisory Committee and review

[Heading inserted by No. 58 of 2010 s. 83.]

[Divisions 1, 1A and 2 (s. 6-18) deleted by No. 58 of 2010 s. 84.]

[Heading deleted by No. 58 of 2010 s. 85.]

[19-21. Deleted by No. 58 of 2010 s. 86.]

22. Powers of investigation

The *Fair Trading Act 2010* section 61 and Part 6 of that Act apply to this Act.

[Section 22 inserted by No. 58 of 2010 s. 87.]

23. Application for review

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

(2) In subsection (1) —

person aggrieved means —

- (a) a person whose licence 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 Commissioner'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 Commissioner under Part VI;

- (e) a person claiming against, or seeking the leave of the Commissioner to commence an action in relation to, the Fidelity Account;

[(f) deleted]

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.

[(f) deleted]

[Section 23 inserted by No. 55 of 2004 s. 1005; amended by No. 77 of 2006 s. 17; No. 58 of 2010 s. 88 and 134.]

Division 4 — Advisory committees

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

23A. Advisory committees

- (1) The Minister may, after a request from the Commissioner, establish an advisory committee or committees (a **committee**) to provide advice to the Commissioner for consideration in the performance of the Commissioner's functions and the exercise of the Commissioner'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) deleted]

- (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 department 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 is to be paid from moneys standing to the credit of the General Purpose Account such remuneration and allowances as are determined in the case of the member by the Minister on the recommendation of the Public Sector Commissioner.
- (10) The Minister may terminate the appointment of a member of a committee for inability, inefficiency or misbehaviour.
- (11) If a member of a committee —
 - (a) is, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws; or
 - (b) becomes permanently incapable of performing his or her duties as a member; or

- (c) resigns his or her office by signing a written notice of resignation and giving it to the Minister; or
- (d) absents himself or herself, except on leave duly granted by the Minister, from meetings of that committee for a period exceeding 8 weeks; or
- (e) ceases to hold any qualification required for becoming or being a member,

the office of that member becomes vacant.

[Section 23A inserted by No. 34 of 1998 s. 9; amended by No. 77 of 2006 s. 17; No. 39 of 2010 s. 89; No. 58 of 2010 s. 89 and 134.]

23B. Minister may delegate s. 23A powers

- (1) The Minister may, by instrument in writing, delegate to the Commissioner 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; amended by No. 58 of 2010 s. 134.]

Division 5 — Conciliation

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

23C. Conciliation of disputes about transactions

- (1) The Commissioner, or a person nominated by the Commissioner, 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 a court or tribunal, whether under this Act or any other law; and
 - (b) cannot be used as ground for an investigation or inquiry under this Act.
- (6) Nothing in this section —
- (a) prevents the parties to a transaction from resolving a dispute in relation to the transaction at any time, whether through the conciliation process or not; or
 - (b) requires a conciliator to participate in a conciliation process or the department to provide 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; No. 58 of 2010 s. 90.]

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 Commissioner in respect of such an application and shall contain such information as is required by the Commissioner 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 Commissioner with such further information as the Commissioner determines, verified if the Commissioner so requires by statutory declaration.
- (5) If the Commissioner is considering making an adverse decision in relation to the application, the Commissioner must give the applicant the opportunity to give additional information in relation to that application.

[Section 24 amended by No. 58 of 2010 s. 91 and 134.]

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 Commissioner and shall contain information in support of the grounds on which the objection is made.

s. 26

- (3) The information contained in the objection shall be verified by statutory declaration of the person making the objection.
- (4) If the Commissioner is considering making an adverse decision in relation to the objection, the Commissioner must give the person making the objection the opportunity to give additional information in relation to that objection.

[Section 25 amended by No. 58 of 2010 s. 92 and 134.]

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 Commissioner for a licence and pays to the Commissioner the prescribed fee for the licence shall be granted and may hold a licence if the Commissioner 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.

[Section 27 amended by No. 58 of 2010 s. 134.]

28. Firm, grant of licence to

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

- (a) all of the natural persons, if any, by whom the firm is constituted and all of the directors of, and all of the persons concerned in the management or control of, any body corporate by which the firm is constituted are persons of good character and repute 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.

[Section 28 amended by No. 58 of 2010 s. 134.]

s. 29

29. Body corporate, grant of licence to

Subject to this Act, a body corporate which applies to the Commissioner for a licence and pays to the Commissioner the prescribed fee for the licence shall be granted and may hold a licence if the Commissioner is satisfied that —

- (a) all of the directors of the body corporate, and all of the persons concerned in the management or conduct of the body corporate, are persons of good character and repute and are persons fit to be concerned as directors of, or in the management and control of, an agent's business;
- (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 Commissioner 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.

[Section 29 amended by No. 58 of 2010 s. 134.]

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 Commissioner 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; No. 58 of 2010 s. 134.]

31. Triennial certificate, grant and renewal of

- (1) Subject to this Act, the Commissioner 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 Commissioner 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 Commissioner may refuse to renew a licensee's triennial certificate if —
 - (a) the Commissioner 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, (c) or (d), as is relevant to the licensee, does not apply, or no longer applies, in relation to the licensee; or

s. 32

- (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; No. 58 of 2010 s. 134.]

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 Commissioner that there is reasonable cause for the renewal to 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, the Commissioner shall so determine and the renewal shall take effect accordingly.

[Section 32 amended by No. 58 of 2010 s. 134.]

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 Commissioner 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 Commissioner in respect of such an application and shall contain such information as is required by the Commissioner in respect of such an application.
- (3) The information contained in the application shall be verified by statutory declaration of the applicant or where the applicant is a

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

- (4) In respect of any particular application the applicant shall furnish the Commissioner with such further information as the Commissioner determines, verified if the Commissioner so requires by statutory declaration.
- (5) If the Commissioner is considering making an adverse decision in relation to the application, the Commissioner must give the applicant the opportunity to give additional information in relation to that application.

[Section 33 amended by No. 58 of 2010 s. 93 and 134.]

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 Commissioner may grant a licence or grant or renew a triennial certificate subject to such special conditions as the Commissioner 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; No. 58 of 2010 s. 134.]

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 the Commissioner without notice to the applicant.
- (2) Where the Commissioner performs a function under subsection (1), the Commissioner shall forthwith deliver the licence or triennial certificate or the renewed triennial certificate, as the case may be, to the applicant.

s. 34B

[(3) deleted]

[Section 34A inserted by No. 55 of 2004 s. 1008; amended by No. 58 of 2010 s. 94 and 134.]

34B. Suspension of licence by State Administrative Tribunal

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

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

35. Notification by licensee when commencing or ceasing business

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

[Section 35 amended by No. 58 of 2010 s. 134.]

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 Commissioner and a registration may be transferred from one office to the other by written notice given to the Commissioner.

[Section 36 amended by No. 43 of 1994 s. 11; No. 58 of 2010 s. 134.]

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 Commissioner 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; No. 58 of 2010 s. 134.]

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.

s. 39

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 Commissioner 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
 - (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 Commissioner of the altered name, style, title, or designation.

Penalty: \$1 000.

[Section 40 amended by No. 43 of 1994 s. 11; No. 58 of 2010 s. 134.]

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 Commissioner in respect of such an application and shall contain such information as is required by the Commissioner 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 Commissioner with such further information as the Commissioner determines, verified if the Commissioner so requires by statutory declaration.
- (4) If the Commissioner is considering making an adverse decision in relation to the application, the Commissioner must give the applicant the opportunity to give additional information in relation to that application.

[Section 43 amended by No. 58 of 2010 s. 95 and 134.]

44. Real estate 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 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 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 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

s. 46

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.

- (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 Commissioner for a certificate of registration as a real estate and business sales representative and pays to the Commissioner the prescribed fee for that certificate shall be granted and may hold a certificate of registration if the Commissioner 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.

[Section 47 amended by No. 58 of 2010 s. 134.]

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 Commissioner 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 Commissioner shall not renew a certificate of registration unless the Commissioner 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.

s. 49

- (5) The Commissioner may refuse to renew a sales representative's certificate of registration if —
- (a) the Commissioner 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; No. 58 of 2010 s. 134.]

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 Commissioner 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 Commissioner 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 Commissioner 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 Commissioner in respect of such an application and shall contain such information as is required by the Commissioner 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 Commissioner with such further information as the Commissioner determines, verified if the Commissioner so determines by statutory declaration.
- (7) If the Commissioner is considering making an adverse decision in relation to the application, the Commissioner must give the applicant the opportunity to give additional information in relation to that application.

[Section 49 amended by No. 56 of 1995 s. 43; No. 58 of 2010 s. 96 and 134.]

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 Commissioner may grant a certificate of registration or a renewal thereof subject to such special conditions as the Commissioner 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; No. 58 of 2010 s. 134.]

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 the Commissioner without notice to the applicant.
- (2) Where the Commissioner performs a function under subsection (1), the Commissioner shall forthwith deliver the

s. 50B

certificate of registration or the renewed certificate of registration, as the case may be, to the applicant.

[(3) deleted]

[Section 50A inserted by No. 55 of 2004 s. 1010; amended by No. 58 of 2010 s. 97 and 134.]

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. Notification to be given by registered sales representative

- (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 Commissioner notice in writing of that fact and such further particulars thereof as are prescribed or as are required by the Commissioner.
- (2) A registered sales representative shall give to the Commissioner 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; No. 58 of 2010 s. 134.]

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.

s. 55

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

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 Commissioner 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 Commissioner for a licensee to carry on business pursuant to a franchising agreement may be subject to such conditions as the Commissioner 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; No. 58 of 2010 s. 134.]

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 Commissioner by giving written notice of the situation of that place to the Commissioner.

Penalty: \$1 000.

s. 58

- (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 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; No. 58 of 2010 s. 134.]

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 Commissioner.

Penalty: \$1 000.

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

[Section 58 amended by No. 43 of 1994 s. 11; No. 58 of 2010 s. 134.]

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

s. 61

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

61. Agents' commissions etc. may be regulated

- (1) The Commissioner 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 Commissioner 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 Commissioner 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

s. 61A

- (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; No. 58 of 2010 s. 134.]

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*.
[Section 61A inserted by No. 59 of 1995 s. 11.]

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 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; No. 58 of 2010 s. 98.]

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

s. 64

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 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.

s. 66

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. Terms used in this Part

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

s. 68A

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

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 Interest 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.

s. 68C

- (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 Interest 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; amended by No. 47 of 2011 s. 25(4).]

68C. Trust accounts, certain information to be given to Commissioner

- (1) When an agent opens or closes a trust account, the agent shall, as soon as is practicable, inform the Commissioner 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 Commissioner 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; amended by No. 58 of 2010 s. 134.]

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) deleted]

- (5) Subsection (3) does not apply in the case of an agent if the agent's auditor certifies to the Commissioner 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 Commissioner 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; No. 58 of 2010 s. 134.]

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.

s. 70

- (2) The auditor shall conduct the audit in accordance with accepted auditing practice, including selective testing when the auditor considers it appropriate and in accordance with such other requirements as are determined by the Commissioner.
- (3) The auditor shall within 3 months after the end of each year —
 - (a) deliver to the Commissioner a report of the result of the audit, verified by 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 Commissioner may, in circumstances he or she considers appropriate, extend the time limit for lodging reports.
- (6) The auditor shall deliver an interim report to the Commissioner if at any time he discovers any irregularity in the trust accounts of the agent or discovers any other matter in respect of those accounts which the auditor considers should be reported to the Commissioner and he shall verify the interim report by statutory declaration and deliver a copy of the report so verified to the agent.
- (7) The Commissioner may require the auditor to furnish further information or carry out a further audit at any time, and the auditor shall comply with that requirement, and the cost of so doing shall be paid by the agent if the Commissioner so directs but otherwise shall be paid by the Commissioner from moneys standing to the credit of the Fidelity Account.
- (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 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 Commissioner a report of such termination audit.

[Section 70 amended by No. 29 of 1982 s. 12; No. 59 of 1995 s. 42; No. 77 of 2006 s. 17; No. 58 of 2010 s. 99 and 134.]

71. Audit date may be varied

- (1) Notwithstanding anything else in this Part, an agent may apply in writing to the Commissioner to fix some date other than 31 December, as the date up to which his trust accounts are to be audited, and the Commissioner may, in the Commissioner's discretion, permit the agent to substitute such other date for 31 December.
- (2) The Commissioner 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 Commissioner shall fix the period in respect of which the first audit shall be made, and the permission may be given upon such conditions, with respect to the time within which the first or any subsequent audit shall be made or otherwise, as the Commissioner may think fit.
- (4) So long as the permission remains in force, and subject to any conditions which may be imposed, section 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 Commissioner granted in accordance with this section.

[Section 71 amended by No. 58 of 2010 s. 134.]

s. 72

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 Commissioner 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 Commissioner may act as auditors under this Part.
- (3) An auditor shall disclose to the Commissioner 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 Commissioner may, if the Commissioner 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; No. 58 of 2010 s. 134.]

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 Commissioner approves a subsequent change in the appointment.

[Section 73 amended by No. 58 of 2010 s. 134.]

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 Commissioner may from time to time give such directions as the Commissioner thinks fit for separate audits of the trust accounts in respect of the business carried on at each place, or for the acceptance by the auditor of the certificates of some person or persons approved by the Commissioner with respect to the examination of the trust accounts kept at any branch office of the business.

[Section 74 amended by No. 58 of 2010 s. 134.]

75. Commissioner may vary decisions made under this Part

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

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

[Section 75 amended by No. 58 of 2010 s. 134.]

[76. Deleted 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.

s. 78

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 Commissioner.

[Section 79 amended by No. 74 of 1980 s. 10; No. 59 of 1995 s. 17; No. 58 of 2010 s. 134.]

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.
- (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.

s. 81

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 Commissioner.

[Section 81 amended by No. 58 of 2010 s. 134.]

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 Commissioner may disclose to such person or his solicitor such portion of any report of an auditor, or of any statutory declaration, statement, or other document delivered to the Commissioner under this 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 Commissioner under this Part shall be available under the supervision of the Commissioner for inspection by any other auditor appointed to audit the accounts of the same agent for the next succeeding year.

[Section 83 amended by No. 58 of 2010 s. 100 and 134.]

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.
- (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

s. 87

3 months after the end of that year he makes a statutory declaration to that effect and delivers it to the Commissioner.

[Section 86 amended by No. 58 of 2010 s. 134.]

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. Audit of trust account may be ordered

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

[Section 88 amended by No. 58 of 2010 s. 134.]

[89. *Deleted 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 Commissioner and the auditor and paid as the Commissioner in writing directs, either by the Commissioner from moneys standing to the credit of the Fidelity Account 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 Commissioner may in the first instance pay it from moneys standing to the credit of the Fidelity Account, but thereupon the amount of that cost is a civil debt recoverable summarily in any court of competent jurisdiction by the Commissioner on behalf of the Fidelity Account.

[Section 90 amended by No. 29 of 1982 s. 12; No. 59 of 1995 s. 42; No. 77 of 2006 s. 17; No. 58 of 2010 s. 134.]

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 Commissioner, on an application made by the Commissioner 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

s. 92

- (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; No. 58 of 2010 s. 134.]

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 Commissioner, 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;
 - (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 Commissioner to appoint a supervisor of the business of the agent;
 - (d) authorise the Commissioner 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.

s. 93

- (2) Where the State Administrative Tribunal is satisfied, on the application of the Commissioner, 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 Commissioner to appoint a supervisor of the business of the agent.
- (3) Where the State Administrative Tribunal authorises the Commissioner to appoint a supervisor pursuant to the power conferred by subsection (1) or (2) the State Administrative Tribunal —
- (a) may order that the supervisor be empowered to withdraw moneys from any bank account of the agent or deceased agent; and
 - (b) may order that the Commissioner —
 - (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 agency special purpose account established for the Commissioner under section 16 of the *Financial Management Act 2006*; and
 - (iii) deal with those moneys according to law.
- (4) If an order is made under subsection (3)(b) —
- (a) the Commissioner 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 agency special purpose account under the order, such amount or amounts as are specified in the certificate, without

enquiring as to, or being liable in respect of, the correctness of the certificate or the application of any money paid on the certificate; and

- (b) the State Administrative Tribunal may, on the application of the Commissioner, or any person interested, give such directions as the State Administrative Tribunal thinks fit for the payment by the Commissioner of any part of the moneys credited to the separate agency special purpose account under the order.

[Section 93 amended by No. 59 of 1995 s. 42; No. 55 of 2004 s. 1021; No. 77 of 2006 s. 17; No. 58 of 2010 s. 134.]

94. Supervisors, appointment and remuneration of

- (1) Where an order made under section 93 authorises the Commissioner to appoint a supervisor, the Commissioner during the currency of the order —
 - (a) may, on such terms and conditions as to remuneration and indemnity as the Commissioner thinks fit appoint a person, licensed or unlicensed, as supervisor of the business of the 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 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 Commissioner towards the expenses and remuneration of the supervisor and for reimbursement of advances made under paragraph (b).

s. 95

- (2) An appointment of a supervisor shall be in writing.
[Section 94 amended by No. 58 of 2010 s. 101 and 134.]

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 Commissioner, 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 Treasurer's special purpose account established under section 10 of the *Financial Management Act 2006*;

s. 99

- (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 Treasurer's special purpose account, 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; No. 77 of 2006 s. 17; No. 58 of 2010 s. 134.]

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

- (1) The Commissioner shall, as soon as practicable after any order is, on the application of the Commissioner, 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 Commissioner; 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 Commissioner.

s. 100

- (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); No. 58 of 2010 s. 134.]

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

Where a person duly authorised under the *Fair Trading Act 2010* Part 6 to make an investigation or inquiry for the purposes of that Act, or 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 or she 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 or her, 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 the *Fair Trading Act 2010* of that authorised person, whether or not the person in whose name the account is held consents, permit the authorised person to inspect, and make a copy or extract of, the nominated accounts and any book, document or other record

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

[Section 100 inserted by No. 58 of 2010 s. 102.]

100A. Commissioner may obtain information about trust accounts

- (1) The Commissioner may require —
- (a) an agent to give the Commissioner such information as the Commissioner 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 Commissioner such information as the Commissioner 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

s. 100A

- (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 Commissioner under this Act.

[Section 100A inserted by No. 59 of 1995 s. 19; amended by No. 10 of 2001 s. 220; No. 58 of 2010 s. 134.]

**Part VII — Discipline of agents and sales
representatives**

101. Codes of conduct

The Commissioner 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.

[Section 101 amended by No. 58 of 2010 s. 134.]

102. Inquiries into conduct of agents and sales representatives

- (1) The Commissioner 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) deleted]

- (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; No. 58 of 2010 s. 134.]

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

s. 103

opinion of the State Administrative Tribunal, likely to make from the transaction.

- (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]*

s. 104

- (b) the licence, triennial certificate, or certificate of registration, as the case requires shall be immediately delivered to the Commissioner 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; No. 58 of 2010 s. 134.]

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 Commissioner accordingly.

[Section 104 amended by No. 59 of 2004 s. 141; No. 58 of 2010 s. 134.]

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 Commissioner 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; No. 58 of 2010 s. 134.]

106. Persons carrying on business after licence cancelled etc.

- (1) A person who —
- (a) has had his licence cancelled under this Act;

s. 106

- (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 Commissioner, he becomes or remains a director of any body corporate that is a licensee or a developer, or he is the 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 Commissioner, 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; No. 58 of 2010 s. 134.]

Part VIII — Fidelity Guarantee Account

[Heading amended by No. 77 of 2006 s. 17.]

107. Real Estate and Business Agents Fidelity Guarantee Account established

An account called the Real Estate and Business Agents Fidelity Guarantee Account is to be established —

- (a) as an agency special purpose account under section 16 of the *Financial Management Act 2006*; or
- (b) with the approval of the Treasurer, at a bank as defined in section 3 of that Act.

[Section 107 amended by No. 77 of 2006 s. 17.]

108. Fidelity Account, investment of

- (1) Moneys standing to the credit of the Fidelity Account may, until required for the purposes of section 110, be invested in the same manner as 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 Account.

[Section 108 inserted by No. 59 of 1995 s. 22; amended by No. 77 of 2006 s. 17.]

109. Fidelity Account, income

There shall be credited to the Fidelity Account —

- (a) all sums paid to the credit of the Fidelity Account 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 Account;
- (c) all moneys transferred to the Fidelity Account under section 127(b);

s. 110

- (d) all money recovered by or on behalf of the State for the benefit of the Fidelity Account in the exercise of any right of action conferred by this Act or the *Fair Trading Act 2010*; and
- (e) any other money that may be lawfully credited to the Fidelity Account.

[Section 109 amended by No. 29 of 1982 s. 5 and 12; No. 59 of 1995 s. 23 and 42; No. 77 of 2006 s. 17; No. 58 of 2010 s. 103.]

110. Fidelity Account, expenditure

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

- (a) the amount of all claims, including costs, allowed or established against the Fidelity Account;
- (b) all legal expenses incurred in defending claims made against the Fidelity Account, or otherwise incurred in relation to the Fidelity Account;
- (c) all premiums payable in respect of contracts of insurance entered into by the chief executive officer on behalf of the State under section 121;
- (d) the expenses involved in the administration of the Fidelity Account;
- (e) the cost of any audit that may be charged to the Fidelity Account pursuant to Part VI; and
- [(f) deleted]*
- (g) any other money chargeable to the Fidelity Account in accordance with this Act.

[Section 110 amended by No. 29 of 1982 s. 12; No. 59 of 1995 s. 24 and 42; No. 77 of 2006 s. 17; No. 58 of 2010 s. 104.]

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

112. Administration of Fidelity Account

The Fidelity Account shall be administered by the chief executive officer.

[Section 112 amended by No. 29 of 1982 s. 12; No. 77 of 2006 s. 17 No. 58 of 2010 s. 105.]

113. Fidelity Account, 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 chief executive officer a sum of \$150 or such other sum as the chief executive officer 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 chief executive officer.
- (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 chief executive officer a sum of \$45 or such other sum as the chief executive officer 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 chief executive officer.
- (3) The amounts paid to the chief executive officer under this section shall forthwith be credited by the chief executive officer to the Fidelity Account.

[Section 113 amended by No. 29 of 1982 s. 12; No. 56 of 1995 s. 46; No. 59 of 1995 s. 42; No. 77 of 2006 s. 17; No. 58 of 2010 s. 106.]

114. Fidelity Account contributions capped

No agent or sales representative who has contributed to the Fidelity Account a sum of \$150 or \$45 respectively, and in respect of whom no claim has been made or sustained against

s. 115

the Fidelity Account, is liable to pay any further contribution under section 113 at any time while the amount standing to the credit of the Fidelity Account, including any investments thereof, and after deducting the amount of all unpaid claims and other liabilities outstanding against the Fidelity Account, 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; No. 77 of 2006 s. 17.]

115. Fidelity Account, levies for

- (1) If at any time the Fidelity Account is, in the opinion of the chief executive officer, not sufficient to satisfy the liabilities of the chief executive officer in relation thereto, the chief executive officer may impose on each holder of a current triennial certificate and each holder of a current certificate of registration, to be credited to the Fidelity Account, a levy of such amount as the chief executive officer 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 chief executive officer, and notice thereof shall be sent by the chief executive officer 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; No. 77 of 2006 s. 17; No. 58 of 2010 s. 107.]

116. Fidelity Account, purpose of

- (1) Subject to this Act, the Fidelity Account 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 chief executive officer is to disallow a claim against the Fidelity Account unless —
- (a) notice of the claim is given in writing to the chief executive officer within 3 years after the day on which the claimant became aware of the defalcation; or
 - (b) the chief executive officer —
 - (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); No. 77 of 2006 s. 17; No. 58 of 2010 s. 108.]

117. Fidelity Account, claims against

- (1) The chief executive officer may receive and, subject to section 116(2), settle any claim against the Fidelity Account at any time after the defalcation in respect of which the claim arose has occurred, but no person is entitled, without the leave

s. 117

of the chief executive officer, to commence any action in relation to the Fidelity Account, unless the chief executive officer has 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 Account 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 Account 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 Account as interest on the amount of any judgment obtained or of any claim admitted against the Fidelity Account.
- (4) No right of action lies in relation to the Fidelity Account 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 chief executive officer warning him against the employment or continued employment of that licensee which notice the chief executive officer is hereby empowered to send.
- (5) No right of action lies in relation to the Fidelity Account 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; No. 77 of 2006 s. 17; No. 58 of 2010 s. 109.]

118. Fidelity Account, defences to claims against

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

[Section 118 amended by No. 28 of 1982 s. 12; No. 77 of 2006 s. 17; No. 58 of 2010 s. 110.]

119. Subrogation of rights

On payment from moneys standing to the credit of the Fidelity Account in settlement in whole or in part of any claims under this Act, the State 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; No. 77 of 2006 s. 17; No. 58 of 2010 s. 111.]

120. Insufficiency in Fidelity Account

- (1) The moneys standing to the credit of the Fidelity Account are the only property of the chief executive officer available for the satisfaction of any judgment obtained against the State in relation to the Fidelity Account, or for the payment of any claim allowed by the chief executive officer; but if at any time the moneys standing to the credit of the Fidelity Account 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 Account.
- (2) The chief executive officer may determine the order in which the judgments and claims charged against the Fidelity Account

s. 121

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.

- (3) Without limiting the discretion of the chief executive officer, the chief executive officer shall in applying the Fidelity Account towards the settlement of any of the judgments and claims referred to in subsection (2), have regard to the following rules —
- (a) the chief executive officer 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 Account 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 chief executive officer, as the case may be.

[Section 120 amended by No. 28 of 1982 s. 12; No. 59 of 1995 s. 25 and 42; No. 77 of 2006 s. 17; No. 58 of 2010 s. 112.]

121. State may insure against claims

- (1) Notwithstanding anything to the contrary in this Act, the chief executive officer may, on behalf of the State, enter into any contract of insurance with any person carrying on fidelity insurance business in the State, by which the State 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 chief executive officer 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); No. 58 of 2010 s. 113.]

122. Insurance payouts to be credited to Fidelity Account

A claimant against the Fidelity Account 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 Account 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; No. 77 of 2006 s. 17.]

123. Advertising for claims against Fidelity Account

- (1) The chief executive officer 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 chief executive officer on or before the date so fixed is barred unless the chief executive officer otherwise determines.
- (3) After the date so fixed the chief executive officer is at liberty to distribute in accordance with this Act, the sum from time to time available to be applied in reimbursement under

s. 124

sections 116 and 117, having regard only to judgments and claims allowed against the Fidelity Account.

[Section 123 amended by No. 29 of 1982 s. 12; No. 77 of 2006 s. 17; No. 58 of 2010 s. 114.]

124. Documents etc. may be required to support claims

The chief executive officer may at any time and from time to time require production and delivery to the chief executive officer of securities and documents necessary to support any claim made, or available for that purpose, or for the purpose of exercising the State's rights against any defaulting licensee and may on default of delivery of those securities or documents reject the claim.

[Section 124 amended by No. 58 of 2010 s. 115.]

Part VIII A — Education and General Purpose Account

[Heading inserted by No. 59 of 1995 s. 26; amended by No. 77 of 2006 s. 17.]

124A. Education and General Purpose Account established

- (1) An account called the Education and General Purpose Account is to be established —
 - (a) as an agency special purpose account under section 16 of the *Financial Management Act 2006*; or
 - (b) with the approval of the Treasurer, at a bank as defined in section 3 of that Act.
- (2) The General Purpose Account is to be administered by the Commissioner.

[Section 124A inserted by No. 59 of 1995 s. 26; amended by No. 77 of 2006 s. 17; No. 58 of 2010 s. 134.]

124B. General Purpose Account, income

There are to be credited to the General Purpose Account —

- (a) all moneys transferred to the General Purpose Account under section 127(b);
- (b) income derived from the investment, under section 124D, of moneys standing to the credit of the General Purpose Account;
- (c) fees, costs and other moneys lawfully received by or payable to the Commissioner;
- (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

s. 124C

- (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 Account.

[Section 124B inserted by No. 59 of 1995 s. 26; amended by No. 55 of 2004 s. 1015; No. 77 of 2006 s. 17; No. 58 of 2010 s. 134.]

124C. General Purpose Account, expenditure

There are to be charged to the General Purpose Account —

- (a) the costs incurred in the administration of the General Purpose Account; and
- (b) the remuneration and allowances payable to members of advisory committees established under Part II Division 4 of this Act or under the *Fair Trading Act 2010* Part 5 Division 2 Subdivision 1; and
- (c) the costs associated with the provision of secretarial, clerical or other administrative support to the advisory committees in the performance of their functions under this Act or under the *Fair Trading Act 2010* Part 5 Division 2 Subdivision 1; and
- (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 Commissioner in the performance of the Commissioner's functions under this Act.

[Section 124C inserted by No. 59 of 1995 s. 26; amended by No. 34 of 1998 s. 18; No. 77 of 2006 s. 17; No. 58 of 2010 s. 116.]

124D. General Purpose Account, investment of

- (1) Moneys standing to the credit of the General Purpose Account may, until required for the purposes of section 124C, be

invested in the same manner as 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 Account.

[Section 124D inserted by No. 59 of 1995 s. 26; amended by No. 77 of 2006 s. 17.]

Part IX — Real Estate and Business Agents Interest Account

[Heading inserted by No. 59 of 1995 s. 27; amended by No. 58 of 2010 s. 117.]

125. Real Estate and Business Agents Account established

- (1) An account called the Real Estate and Business Agents Interest Account is to be established —
 - (a) as an agency special purpose account under section 16 of the *Financial Management Act 2006*; or
 - (b) with the approval of the Treasurer, at a bank as defined in section 3 of that Act.
- (2) The Interest Account is to be administered by the chief executive officer.

[Section 125 inserted by No. 59 of 1995 s. 27; amended by No. 77 of 2006 s. 17; No. 58 of 2010 s. 118; No. 47 of 2011 s. 25(4).]

126. Account, income

There are to be credited to the Interest Account —

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

[Section 126 inserted by No. 59 of 1995 s. 27; amended by No. 47 of 2011 s. 25(4).]

127. Account, expenditure

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

- (a) first, in payment of the costs involved in administering the Interest Account; and
- (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 Account;
 - (ii) the General Purpose Account; and
 - (iii) the Assistance Account.

[Section 127 inserted by No. 59 of 1995 s. 27; amended by No. 77 of 2006 s. 17; No. 47 of 2011 s. 25(4).]

128. Account, investment of

- (1) Moneys standing to the credit of the Interest Account may, until required for the purposes of section 127, be invested in the same manner as 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 Interest Account.

[Section 128 inserted by No. 59 of 1995 s. 27; amended by No. 77 of 2006 s. 17; No. 47 of 2011 s. 25(4).]

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

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

Part IXA — Assistance to home buyers

131A. Terms used in this Part

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) duty chargeable under the *Duties Act 2008*;
- (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;

lending institution means —

- (a) a bank; or
- [(b), (c) deleted]*

- (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); No. 17 of 2005 s. 29(2); No. 12 of 2008 s. 52.]

131B. Home Buyers Assistance Account established

An account called the Home Buyers Assistance Account is to be established —

- (a) as an agency special purpose account under section 16 of the *Financial Management Act 2006*; or
- (b) with the approval of the Treasurer, at a bank as defined in section 3 of that Act.

[Section 131B inserted by No. 77 of 2006 s. 17.]

131C. Assistance Account, investment of

- (1) Moneys standing to the credit of the Assistance Account may, until required for the purposes of section 131E, be invested in the same manner as 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 Account.

[Section 131C inserted by No. 59 of 1995 s. 30; amended by No. 77 of 2006 s. 17.]

131D. Assistance Account, income

There shall be credited to the Assistance Account —

- (a) all moneys transferred to the Assistance Account under section 127(b);
- (b) income derived from the investment, under section 131C, of moneys standing to the credit of the Assistance Account;

s. 131E

- (c) all moneys recovered by or on behalf of the chief executive officer for the benefit of the Assistance Account 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 Account.

[Section 131D inserted by No. 29 of 1982 s. 10; amended by No. 59 of 1995 s. 31 and 42; No. 77 of 2006 s. 17; No. 58 of 2010 s. 119.]

131E. Assistance Account, expenditure

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

- (a) the amounts of all grants made by the chief executive officer under section 131M(3);
- (b) all legal expenses incurred in relation to the Assistance Account;
- (c) the expenses involved in the administration of the Assistance Account;
- (d) the remuneration and allowances payable to the member referred to in section 131H(2)(a); and
- (e) any moneys, other than moneys referred to in paragraphs (a), (b), (c) and (d), that may lawfully be charged to the Assistance Account under this Act.

[Section 131E inserted by No. 29 of 1982 s. 10; amended by No. 59 of 1995 s. 32 and 42; No. 77 of 2006 s. 17; No. 58 of 2010 s. 120.]

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

131G. Administration of Assistance Account

The chief executive officer shall administer the Assistance Account.

[Section 131G inserted by No. 29 of 1982 s. 10; amended by No. 77 of 2006 s. 17; No. 58 of 2010 s. 121.]

[131H-131KA. Deleted by No. 58 of 2010 s. 122.]

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 chief executive officer 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 chief executive officer may, in a particular case, allow an application to be lodged after the expiry of the period referred to in that subsection if the chief executive officer 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); No. 58 of 2010 s. 123.]

s. 131M

131M. Deciding applications for assistance

- (1) On receiving an application lodged with him under section 131L, the chief executive officer shall, after satisfying himself that that application is in order, deal with the application, by —
 - (a) considering the application and if, in the opinion of the chief executive officer, the application contains sufficient information to enable the merits of the application to be properly assessed, the chief executive officer may consider the application; or
 - (b) referring the application to an advisory committee established for that purpose under section 23A, or to the Property Industry Advisory Committee, for consideration.

[(1a) deleted]

- (2) The relevant 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 chief executive officer properly to assess the merits of that application, return that application to the chief executive officer.
- (3) On considering an application under subsection (1)(a) or receiving an application and recommendation returned under subsection (2), the chief executive officer 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; No. 58 of 2010 s. 124.]

131N. Assistance, how grants are paid

- (1) The chief executive officer shall, after he or she 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 Account.
- (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 chief executive officer 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 chief executive officer 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 chief executive officer the amount of that excess.
- (4) If a lending institution is required by subsection (3) to repay an amount to the chief executive officer 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

s. 131O

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); No. 77 of 2006 s. 17; No. 58 of 2010 s. 125.]

131O. Formulating criteria for granting assistance

- (1) The Property Industry Advisory Committee may of its own motion or shall at the request of the chief executive officer, after consulting —

[(a) deleted]

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

[(c), (d), (e) deleted]

- (f) such other persons as may be prescribed,

make recommendations to the chief executive officer on the formulation of criteria under subsection (2).

- (2) The chief executive officer 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 received by the chief executive officer under section 131M 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; No. 17 of 2005 s. 29(3); No. 58 of 2010 s. 126.]

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

s. 133

- (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

- (1) The Commissioner 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 Commissioner shall record in the registers any prescribed particulars and shall record details of any change of those particulars notified under this Act.
- (3) The Commissioner 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 Commissioner 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; No. 58 of 2010 s. 134.]

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 Commissioner thinks fit, shall be published in the *Government Gazette* annually.

- (2) The Commissioner may cause supplementary lists to be published.
- (3) A certificate under the hand of the Commissioner that any person is or is not, or was or was not, licensed 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 Commissioner shall, upon receipt of a request in writing by any person, and payment of the prescribed fee, issue a certificate as to any of the contents of the register.

[Section 134 amended by No. 58 of 2010 s. 134.]

135. Annual report

[(1) deleted]

- (2) The department'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 Commissioner; and
 - (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;and
 - (b) the number and nature of matters referred to in paragraph (a) that are outstanding; and
 - (c) any trends or special problems that may have emerged; and
 - (d) forecasts of the workload of the Commissioner in the year after the year to which the report relates; and

s. 137

- (e) any proposals for improving the operation of the Commissioner.

[Section 135 inserted by No. 98 of 1985 s. 3; amended by No. 59 of 1995 s. 38; No. 55 of 2004 s. 1016; No. 77 of 2006 s. 17; No. 58 of 2010 s. 127.]

136. Report on effectiveness of Act

The Commissioner shall, from time to time, submit a report to the Minister as to the opinion of the Commissioner 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 Commissioner, it is desirable to have such further or alternative measures, the Commissioner shall include in the report details of a scheme to implement those measures.

[Section 136 amended by No. 58 of 2010 s. 134.]

136A. Refund of fees

The Commissioner 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 Commissioner by way of contribution or levy to the Fidelity Account.

[Section 136A inserted by No. 74 of 1980 s. 12; amended by No. 29 of 1982 s. 12; No. 77 of 2006 s. 17; No. 58 of 2010 s. 134.]

137. Protection from liability

A person does not incur any liability in tort for anything that the person does, in good faith, in the performance or purported performance of a function under this Act.

[Section 137 inserted by No. 58 of 2010 s. 128.]

138. Confidentiality of information officially obtained

The *Fair Trading Act 2010* section 112 applies to information obtained for the purposes of this Act.

[Section 138 inserted by No. 58 of 2010 s. 129.]

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 Commissioner, 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; No. 58 of 2010 s. 134.]

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.

s. 141

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 Commissioner.
- (2) Notwithstanding the provisions of any other Act, proceedings for an offence against this Act may be brought within the period of 3 years after the commission of the alleged offence or, with the consent of the Minister, at any later time.
- (3) An allegation in a charge of an offence 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; No. 58 of 2010 s. 134.]

144. Forms

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

[Section 144 amended by No. 58 of 2010 s. 134.]

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 Commissioner;
 - [(b) deleted]*
 - (c) provide for the advertising of notices of applications for licences;
 - (d) prescribe, and provide for the recovery of, any fee for the purposes of this Act, but not in connection with the 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);
 - (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 Account and the manner of verifying any claim including a condition that the claim be verified by statutory declaration;

s. 145

- (j) prescribe generally for such other matters as may be considered necessary for the purposes of protecting the Fidelity Account or of giving full effect to the intent of the provisions of this Act relating to the Fidelity Account;
 - (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; No. 77 of 2006 s. 17; No. 58 of 2010 s. 130 and 134.]

Part XI — Savings and transitional

Division 1 — Savings and transitional (1978)

[Heading inserted by No. 58 of 2010 s. 131.]

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.

Division 2 — Savings and transitional (2010)

[Heading inserted by No. 58 of 2010 s. 132.]

148. Terms used

In this Division —

commencement day means the day on which Part 6 of the *Acts Amendment (Fair Trading) Act 2010* comes into operation;

former Registrar means a Registrar appointed under section 12 of the Act prior to the commencement day;

liability means any liability, duty or obligation whether actual, contingent or prospective, liquidated or unliquidated, or whether owed alone or jointly or jointly and severally with any other person;

right means any right, power, privilege or immunity whether actual, contingent or prospective;

the former Board means the Real Estate and Business Agents Supervisory Board established by section 6 of the Act immediately prior to the commencement day.

[Section 148 inserted by No. 58 of 2010 s. 132.]

149. Former Board abolished

Subject to sections 156 and 157, at the beginning of the commencement day, the former Board is abolished and its members go out of office.

[Section 149 inserted by No. 58 of 2010 s. 132.]

150. References to the former Board

If in a written law or other document or instrument there is a reference to the former Board, that reference may, where the context so requires, be read as if it had been amended to be a reference to the Commissioner.

[Section 150 inserted by No. 58 of 2010 s. 132.]

151. Immunity continues

Despite the abolition of the former Board, if the former Board had the benefit of any immunity in respect of an act, matter or thing done or omitted before the commencement day, that immunity continues in that respect for the benefit of the Commissioner.

[Section 151 inserted by No. 58 of 2010 s. 132.]

152. Notices by the former Board

- (1) If the former Board has fixed by notice the maximum amount of remuneration of a licensee under section 61 of the Act immediately prior to commencement day, that notice is to be taken to have been given by the Commissioner and continues in force until amended or revoked by the Commissioner.
- (2) If notice has been given to the former Board under section 116(2) of the Act as it was immediately prior to commencement day, that notice is taken to be given to the Commissioner for the purposes of that subsection.

[Section 152 inserted by No. 58 of 2010 s. 132.]

153. References to a former Registrar

- (1) If in a written law or other document or instrument there is a reference to the former Registrar, that reference may, where the context so requires, be read as if it had been amended to be a reference to the Commissioner.
- (2) If a certificate has been given by a former Registrar under section 134(3) of the Act as it was immediately prior to commencement day, that certificate is to be treated as if it were given by the Commissioner for the purposes of that subsection.
[Section 153 inserted by No. 58 of 2010 s. 132.]

154. Unfinished investigations by the former Board

Investigations being carried out by the former Board under the Act as it was prior to the commencement day that are not complete by the commencement day —

- (a) are taken to have been commenced by the Commissioner for the purposes of the Act; and
- (b) are to continue under the direction and control of the Commissioner.

[Section 154 inserted by No. 58 of 2010 s. 132.]

155. Unfinished proceedings by the former Board

- (1) Proceedings before the former Board that are not complete by the commencement day —
 - (a) are taken to have been commenced by the Commissioner for the purposes of the Act; and
 - (b) are to continue under the direction and control of the Commissioner.
- (2) Proceedings before the State Administrative Tribunal or another court commenced by allegation against a licensed real estate or business agent brought by the former Board that are not complete by the commencement day —

- (a) are taken to have been commenced by an allegation by the Commissioner for the purposes of the Act; and
- (b) are to continue under the direction and control of the Commissioner.

[Section 155 inserted by No. 58 of 2010 s. 132.]

156. Winding-up the former Board

On and after the commencement day —

- (a) the Commissioner is to take control of all registers, documents, books and other records (however compiled, recorded or stored) relating to the former Board and the exercise of its functions, and of any tape, disk or other device or medium relating to such records; and
- (b) all assets of the former Board are to be transferred to the State to be administered in the department, or the residual assets may be realised and the proceeds, together with any moneys in hand, are to be credited to the Consolidated Account; and
- (c) all rights, liabilities and obligations of the former Board that existed immediately before the commencement day devolve on the Commissioner acting on behalf of, and in the name of, the State; and
- (d) all contracts, agreements and undertakings made by and with the former Board and having effect immediately before the commencement day have effect as contracts, agreements and undertakings made with the Commissioner acting on behalf of, and in the name of, the State and may be enforced by or against the State accordingly; and
- (e) any legal or other proceedings or any remedies that might, but for the operation of the *Acts Amendment (Fair Trading) Act 2010* Part 6, have been commenced or continued by or against or have been available to the former Board may be commenced or continued by or against or are available to the Commissioner acting on

behalf of, and in the name of, the State, as the case requires; and

- (f) any fees, charges or other moneys payable to the Board under this Act and outstanding at the commencement day become payable to the chief executive officer at the time, and in the manner, in which those moneys would have been payable to the former Board under this Act.

[Section 156 inserted by No. 58 of 2010 s. 132.]

157. Final report by the former Board

- (1) The provisions of the *Financial Management Act 2006* Part 5 Division 3 apply to the former Board.
- (2) The chief executive officer is to include the final report submitted under subsection (1) in the department's annual report for that financial year.

[Section 157 inserted by No. 58 of 2010 s. 132.]

158. Board staff

- (1) The officers of the former Board and the former Registrar who held office immediately before the commencement day continue to be employed, under and subject to the *Public Sector Management Act 1994* Part 3, as officers of the department.
- (2) A person mentioned in subsection (1) is to be regarded as having been engaged or employed, as is relevant, by the chief executive officer.
- (3) Except as otherwise agreed by a person mentioned in subsection (1), the remuneration, existing or accrued rights, rights under a superannuation scheme or continuity of service of the person are not affected, prejudiced or interrupted by the operation of subsection (1).

[Section 158 inserted by No. 58 of 2010 s. 132.]

159. Powers in relation to transitional matters

- (1) If there is not sufficient provision in this Part for dealing with a transitional matter, the Governor may make regulations prescribing all matters that are required, necessary or convenient to be prescribed in relation to that matter.
- (2) In subsection (1) —
transitional matter means a matter that needs to be dealt with for the purpose of effecting the transition from this Act as enacted immediately before the commencement day to this Act as amended by the *Acts Amendment (Fair Trading) Act 2010*.
- (3) Regulations made under subsection (1) may provide that specific provisions of a written law —
 - (a) do not apply; or
 - (b) apply with specific modifications,to or in relation to any matter.
- (4) Regulations made under subsection (1) must be made within 12 months after the commencement day.
- (5) If regulations made under subsection (1) provide that a specified state of affairs is to be taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than the commencement day, the regulations have effect according to their terms.
- (6) In subsection (5) —
specified means specified or described in the regulations.
- (7) If regulations contain a provision referred to in subsection (5), the provision does not operate so as —
 - (a) to affect, in a manner prejudicial to any person (other than the State), the right of that person existing before the day of publication of those regulations; or

- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the day of publication of those regulations.

[Section 159 inserted by No. 58 of 2010 s. 132.]

Schedule — Qualifications and saving and transitional provisions

[s. 27 and 146]

[Heading inserted by No. 19 of 2010 s. 28(2).]

Division 1 — Qualifications for grant of licence

[Heading inserted by No. 19 of 2010 s. 28(2).]

1. Qualifications for grant of licence

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); No. 19 of 2010 s. 51.]

2. Sufficient practical experience

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.

[Clause 2 amended by No. 19 of 2010 s. 51.]

3. Licence by reason of qualification under clause 1(c)

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.

[Clause 3 amended by No. 19 of 2010 s. 51.]

4. Licence by reason of qualification under clause 1(d)

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

Real Estate and Business Agents Act 1978

Schedule Qualifications and saving and transitional provisions

Division 1 Qualifications for grant of licence

*[Clause 4 amended by No. 28 of 2003 s. 177(2); No. 19 of 2010 s. 51;
No. 58 of 2010 s. 134.]*

5. Death or incapacity of agent

- (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 Commissioner, 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 Commissioner shall not give his or her written permission for the purposes of subclause (1) unless —
- (a) the Commissioner receives an application in writing signed by the person seeking to carry on the business; and
 - (b) the Commissioner 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); No. 19 of 2010 s. 51;
No. 58 of 2010 s. 134.]*

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

- (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 Commissioner written notice to that effect, and the firm or body corporate may, on such terms as the Commissioner 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); No. 19 of 2010 s. 51; No. 58 of 2010 s. 134.]

Division 2 — Saving and transitional provisions

[Heading inserted by No. 19 of 2010 s. 28(3).]

[7. Deleted by No. 58 of 2010 s. 133.]

8. Pastoral companies

- (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

Real Estate and Business Agents Act 1978

Schedule Qualifications and saving and transitional provisions

Division 2 Saving and transitional provisions

(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 Commissioner, 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 Commissioner, 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*⁶ 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); No. 19 of 2010 s. 51; No. 58 of 2010 s. 134.]

[9-12. Deleted by No. 58 of 2010 s. 133.]

13. Auctions in respect of real estate transactions

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.

[Clause 13 amended by No. 19 of 2010 s. 51.]

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

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.

[Clause 14 amended by No. 19 of 2010 s. 51.]

[15. Deleted by No. 58 of 2010 s. 133.]

16. Continuation of certain office managers

- (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 Commissioner 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); No. 19 of 2010 s. 51; No. 58 of 2010 s. 134.]

[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. 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)); Act other than s. 13: 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)
Reprint of the <i>Real Estate and Business Agents Act 1978</i> as at 7 Nov 1985 (includes amendments listed above)			

Real Estate and Business Agents Act 1978

Short title	Number and year	Assent	Commencement
<i>Acts Amendment (Financial Administration and Audit) Act 1985 s. 3</i>	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 s. 46(2)</i>	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 Pt. XV</i>	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 s. 89</i>	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	s. 1 and 2: 9 Sep 1988; Act other than s. 1 and 2: 28 Oct 1988 (see s. 2 and <i>Gazette</i> 28 Oct 1988 p. 4327)
<i>R & I Bank Act 1990 s. 45(1)</i>	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 s. 13</i>	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 s. 3(2)</i>	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 s. 44(1)</i>	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 Pt. 8⁷</i>	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 Pt. 2⁸</i>	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); s. 11: 5 Apr 2007 (see s. 2 and <i>Gazette</i> 30 Mar 2007 p. 1451)

Real Estate and Business Agents Act 1978

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 except those in the <i>Real Estate Legislation Amendment Act 1995</i> s. 11) (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	s. 1 and 2: 6 Jul 1998; Act other than s. 1 and 2: 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</i> s. 99	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</i> Pt. 2 ⁹	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 except those in the <i>Real Estate Legislation Amendment Act 1995</i> s. 11)			
<i>Corporations (Consequential Amendments) Act 2001</i> s. 220 and 222	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</i> s. 50 and 51	12 of 2001	13 Jul 2001	13 Jul 2001 (see s. 2)
<i>Corporations (Consequential Amendments) Act (No. 3) 2003</i> Pt. 12 ¹⁰	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</i> Pt. 51	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</i> s. 88	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</i> s. 59	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</i> s. 101	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)

Short title	Number and year	Assent	Commencement
<i>Courts Legislation Amendment and Repeal Act 2004</i> s. 141	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004</i> Pt. 2 Div. 112 ¹¹	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> s. 80 and 82	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))
Reprint 5: The Real Estate and Business Agents Act 1978 as at 8 Apr 2005 (includes amendments listed above except those in the <i>Real Estate Legislation Amendment Act 1995</i> s. 11, <i>Courts Legislation Amendment and Repeal Act 2004</i> and the <i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i>)			
<i>Housing Societies Repeal Act 2005</i> s. 29	17 of 2005	5 Oct 2005	10 Jul 2010 (see s. 2(3) and <i>Gazette</i> 9 Jul 2010 p. 3239)
<i>Oaths, Affidavits and Statutory Declarations (Consequential Provisions) Act 2005</i> s. 63	24 of 2005	2 Dec 2005	1 Jan 2006 (see s. 2(1) and <i>Gazette</i> 23 Dec 2005 p. 6244)
<i>Machinery of Government (Miscellaneous Amendments) Act 2006</i> Pt. 4 Div. 19	28 of 2006	26 Jun 2006	1 Jul 2006 (see s. 2 and <i>Gazette</i> 27 Jun 2006 p. 2347)
<i>Consumer Protection Legislation Amendment and Repeal Act 2006</i> Pt. 8	69 of 2006	13 Dec 2006	25 Jul 2007 (see s. 2 and <i>Gazette</i> 24 Jul 2007 p. 3657)
<i>Financial Legislation Amendment and Repeal Act 2006</i> s. 17	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and <i>Gazette</i> 19 Jan 2007 p. 137)
Reprint 6: The Real Estate and Business Agents Act 1978 as at 24 Aug 2007 (includes amendments listed above except those in the <i>Housing Societies Repeal Act 2005</i> s. 29)			
<i>Duties Legislation Amendment Act 2008</i> s. 52	12 of 2008	14 Apr 2008	1 Jul 2008 (see s. 2(d))
<i>Legal Profession Act 2008</i> s. 696	21 of 2008	27 May 2008	1 Mar 2009 (see s. 2(b) and <i>Gazette</i> 27 Feb 2009 p. 511)
<i>Acts Amendment (Bankruptcy) Act 2009</i> s. 74	18 of 2009	16 Sep 2009	17 Sep 2009 (see s. 2(b))

Short title	Number and year	Assent	Commencement
<i>Standardisation of Formatting Act 2010</i> s. 28 and 51	19 of 2010	28 Jun 2010	11 Sep 2010 (see s. 2(b) and <i>Gazette</i> 10 Sep 2010 p. 4341)
<i>Public Sector Reform Act 2010</i> s. 89	39 of 2010	1 Oct 2010	1 Dec 2010 (see s. 2(b) and <i>Gazette</i> 5 Nov 2010 p. 5563)
<i>Acts Amendment (Fair Trading) Act 2010</i> Pt. 6	58 of 2010	8 Dec 2010	1 Jul 2011 (see s. 2(c) and <i>Gazette</i> 7 Jun 2011 p. 2057)
<i>Statutes (Repeals and Minor Amendments) Act 2011</i> s. 25	47 of 2011	25 Oct 2011	26 Oct 2011 (see s. 2(b))

- 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 Repealed by the *Planning and Development (Consequential and Transitional Provisions) Act 2005*.
- ⁷ The *Business Licensing Amendment Act 1995* s. 49 is a transitional provision that is of no further effect.
- ⁸ 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.
- ”
- ⁹ 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.

”

¹⁰ 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.

”.

¹¹ 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.