

Western Australia

Finance Brokers Control Amendment Act 2004

As at 18 Nov 2004

No. 53 of 2004

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Finance Brokers Control Amendment Act 2004

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Western Australia

Finance Brokers Control Amendment Act 2004

No. 53 of 2004

An Act to amend the *Finance Brokers Control Act 1975*, to make a consequential amendment to another Act and for related purposes.

[Assented to 18 November 2004]

The Parliament of Western Australia enacts as follows:

1. Short title

This Act may be cited as the *Finance Brokers Control Amendment Act 2004*.

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2. Commencement

This Act comes into operation on a day fixed by proclamation.

3. The Act amended

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

[* *Reprinted as at 3 March 2000.*

For subsequent amendments see Western Australian Legislation Information Tables for 2002, Table 1, p. 132 and Act No. 21 of 2003.]

4. Section 4 amended

Section 4 is amended as follows:

- (a) by deleting the definitions of “Board”, “business certificate”, “chairman”, “finance broker”, “inspector”, “member”, “Registrar” and “Treasury”;
- (b) by inserting in the appropriate alphabetical positions the following definitions —

“

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

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

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

“**finance broker**” means a person who —

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

- (b) in the course of business, manages loans of money arranged or negotiated by the person for or on behalf of other persons,

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

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

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

”;

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

5. Section 5 amended

- (1) Section 5(1) is amended as follows:

- (a) in paragraph (g) by deleting “agent” and inserting instead —
“ intermediary ”;

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- (b) in paragraph (h) by deleting “in respect of whom exceptions under subsection (2) are in force” and inserting instead —
“ exempted from the Act under subsection (2) ”.

- (2) Section 5(2) is repealed and the following subsections are inserted instead —

“

- (2) The Governor may make regulations under this subsection exempting a person or class of persons from the operation of this Act, or specified provisions of this Act.
- (3) Regulations made under subsection (2) may make an exemption subject to specified terms or conditions.

”.

6. Part II heading replaced

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

“

Part II — The Commissioner

”.

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

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

“

6. Commissioner

- (1) The Minister is required, by notice published in the *Gazette*, to designate a person who is an executive officer of the department as the Commissioner for the purposes of this Act.

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

7. General functions of the Commissioner

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

- (a) decide how an application for licensing is to be dealt with;
- (b) decide who may be licensed under this Act;
- (c) make recommendations and submit proposals to the Minister from time to time with respect to regulations to be made under this Act;
- (d) administer the scheme of licensing established under this Act;
- (e) conduct and promote education and provide advisory services for persons who are licensed under this Act, or involved in the administration of this Act, and for members of the public on —
 - (i) matters relating to the operation of this Act;

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- (ii) matters relating to the policies of the Commissioner; or
 - (iii) matters relating to the operations of finance brokers;
- and
- (f) carry out such other functions as are conferred upon the Commissioner under this Act.

8. Commissioner may delegate

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

9. Judicial notice

All courts, judges, and persons acting judicially shall take judicial notice of the official signature of every person who is for the time being the Commissioner or

an investigator and every person who has at any time been the Commissioner, an investigator, Registrar, Deputy Registrar, Assistant Registrar, or inspector of the Board, and of the fact that such person holds or has held such position or office.

”.

8. Section 13 amended

Section 13 is amended as follows:

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

“

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

”;

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

“ Commissioner ”;

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

“

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

”;

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

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“
(ba) determining whether or not any other causes exist that may be considered by the State Administrative Tribunal to render finance brokers unfit to hold their licences; and
”.

9. Section 14 amended

- (1) Section 14(1) is amended by deleting “Board or the Registrar” and inserting instead —
“ Commissioner ”.
- (2) Section 14(2) is amended by deleting “Registrar” and inserting instead —
“ Commissioner ”.

10. Sections 15, 16 and 17 replaced

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

“

15. Investigators

- (1) The chief executive officer may designate as investigators for the purposes of this Act as many persons employed in the department as the chief executive officer considers necessary to assist the Commissioner to perform investigative functions under this Act.
- (2) A reference in section 13 to the Commissioner includes a reference to an investigator.
- (3) The chief executive officer is to provide each investigator with a document, signed by the chief executive officer, certifying that the person is entitled to exercise the powers of an investigator, and that

document is to be produced when demanded by a person in respect of whom the Commissioner or an investigator performs, has performed, or is proposing to perform, any function under this Act, including Division 2A.

- (4) In this section —
“**investigative function**” means any of the Commissioner’s functions under section 13.

16. Additional investigative powers

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

17. Compliance checks at licensee’s business premises

- (1) For the purposes of determining whether or not a licensee is acting in conformity with the conditions, if any, of the licence and is complying with the requirements of this Act or the finance brokers code of conduct, the Commissioner or an investigator may —
- (a) during normal business hours, enter premises where the business of the licensee is being carried on, without obtaining a warrant under Division 2A; and
 - (b) exercise the powers in sections 18, 18D and 18H once entry is made.
- (2) The Commissioner or an investigator may invoke the powers in subsection (1) without an investigation being under way in relation to any particular licensee.
- (3) A person must not prevent or attempt to prevent the Commissioner or an investigator from entering

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business premises in the exercise of his or her powers under subsection (1).

Penalty: \$2 000.

- (4) A person must not obstruct or impede the Commissioner or an investigator in the exercise of his or her powers under subsection (1).

Penalty: \$2 000.

- (5) A person must comply with a requirement to furnish reasonable access to business premises, or to give other reasonable assistance to the Commissioner or an investigator, when exercising his or her powers under subsection (1).

Penalty: \$2 000.

”.

11. Part II Division 2A heading inserted

Before section 18 the following Division heading is inserted —

“

Division 2A — Specific investigatory powers

”.

12. Section 18 replaced

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

“

18. Powers

- (1) An investigator may —
- (a) require any person —
 - (i) to give such information as is required;
 - and

- (ii) to answer any question put to the person,
in relation to any matter the subject of an investigation;
 - (b) require any person to produce any document;
 - (c) enter at all reasonable times and search any premises or motor vehicle named in a warrant obtained in accordance with this Division and exercise the powers set out in that warrant; and
 - (d) make a copy or abstract of any document produced or inspected under this section, or of any entry made in the document.
- (2) A requirement made under subsection (1)(a) —
- (a) may be made orally or by notice in writing served on the person required to give information or answer a question, as the case may be;
 - (b) is to specify the time at or within which the information is to be given or the question is to be answered, as the case may be; and
 - (c) may, by its terms, require that the information or answer required —
 - (i) be given orally or in writing;
 - (ii) be given at or sent or delivered to any place specified in the requirement;
 - (iii) in the case of written information or answers, be sent or delivered by any means specified in the requirement; and
 - (iv) be given on oath or affirmation or by statutory declaration.
- (3) An investigator may administer an oath or affirmation for the purposes of subsection (2)(c)(iv) and for that

purpose has the authority of a commissioner for declarations.

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

18A. Warrant to enter premises

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

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

18B. Issue of warrant

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

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premises or motor vehicle are necessary for the purpose of the investigation.

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

18C. Execution of warrant

- (1) Entry authorised by a warrant under this Division may be made with such assistance and equipment as is considered necessary for the purpose for which entry is required.

- (2) If asked by the occupier or a person in charge of the premises or motor vehicle, the person executing a warrant must produce it for inspection.
- (3) When executing a warrant, the investigator may require any person, having the control or custody of any premises, motor vehicle or thing which the investigator is authorised to enter or inspect, to furnish reasonable access to it and to give other reasonable assistance.
- (4) A warrant ceases to have effect —
 - (a) at the end of the period of one month after its issue;
 - (b) if it is withdrawn by the magistrate or justice of the peace who issued it; or
 - (c) when it is executed,whichever occurs first.

18D. Seizure

- (1) An investigator may seize a document or other thing that is produced or given in response to a requirement under this Division, or that is found as the result of executing a warrant under this Division.
- (2) Despite subsection (1), a document or other thing cannot be seized unless the investigator reasonably suspects it —
 - (a) is being, or has been, used to commit; or
 - (b) may afford evidence of the commission of,a breach of this Act, a prescribed Act or prescribed part of an Act, the finance brokers code of conduct, or a licence condition.

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- (3) As soon as practicable after the document or other thing is seized, the investigator is to give a receipt for it to the person from whom it was seized.
- (4) If, for any reason, it is not practicable to comply with subsection (3), the investigator is to —
 - (a) leave the receipt at the place of seizure; and
 - (b) ensure the receipt is left in a reasonably secure way and in a conspicuous position.
- (5) Where a document or other thing is seized pursuant to subsection (1) —
 - (a) an investigator may retain the document or other thing so long as is reasonably necessary for the purposes of the investigation to which the document or other thing is relevant; and
 - (b) when the retention of the document or other thing by the person ceases to be reasonably necessary for those purposes, the investigator shall cause the document or other thing to be delivered to the person who appears to the investigator to be entitled to possession of the document or other thing.

18E. Incriminating information, questions, or documents

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

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

that person cannot refuse to comply with that requirement on the ground that the information, answer, or document may tend to incriminate the

person or render the person liable to any penalty, but the information or answer given, or document produced, by the person is not admissible as evidence in any proceedings against the person other than proceedings in respect of an offence against section 18F(1)(b).

18F. Failure to comply with investigation

- (1) Where under section 18 a person is required to give any information, answer any question, or produce any document and that person, without reasonable excuse (proof of which lies on the person) —
 - (a) fails to give that information or answer that question at or within the time specified in the requirement;
 - (b) gives any information or answer that is false in any particular; or
 - (c) fails to produce that document at or within the time specified in the requirement,

the person commits an offence.

Penalty: \$2 000.

- (2) It is a defence in any proceeding for an offence under subsection (1)(a) or (c) for the defendant to show —
 - (a) that, in the case of an alleged offence arising out of a requirement made orally under section 18, the investigator did not, when making the requirement, inform the defendant that he or she was required under this Act to give the information or answer the question, as the case may be;
 - (b) that, in the case of an alleged offence arising out of a requirement made by notice in writing under section 18, the notice did not state that he

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

- (c) that the time specified in the requirement did not afford the defendant sufficient notice to enable him or her to comply with the requirement; or
- (d) that, in any case, the investigator did not, before making the requirement, have reasonable grounds to believe that compliance with the requirement would materially assist in the investigation being carried out.

18G. Obstruction of investigator

- (1) A person must not prevent or attempt to prevent an investigator from entering premises in the exercise of his or her powers under section 18.
Penalty: \$2 000.
- (2) A person must not obstruct or impede an investigator in the exercise of his or her powers under section 18.
Penalty: \$2 000.
- (3) A person must comply with a requirement to furnish reasonable access to a place or motor vehicle, or to give other reasonable assistance to an investigator under section 18C(3).
Penalty: \$2 000.

18H. Information

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

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

”.

13. Part II Division 3 heading amended

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

“ **Commissioner** ”.

14. Section 23 amended

- (1) Section 23(1) is amended by deleting “Board” and inserting instead —
“ **Commissioner** ”.
- (2) Section 23(2) is amended in the definition of “person aggrieved” as follows:
 - (a) by deleting paragraph (a) of the definition and the “or” following that paragraph and inserting instead —
“
(a) a person whose licence is affected by a reviewable decision or who, under Part III, applies for or objects to the grant of a licence or applies for or objects to the renewal of a licence; or

”;

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

- (3) Section 23(2) is amended in paragraph (b) of the definition of “reviewable decision” after “Division 2” by inserting —
“ or section 82A(1) ”.

15. Section 24 amended

- (1) Section 24(1) is amended by deleting “a manner and form determined by the Board in respect of such an application and shall contain such information as is required by the Board in respect of such an application.” and inserting instead —
“
the manner prescribed and a form approved by the Commissioner and shall contain such information as is prescribed.
”.
- (2) Section 24(4) is amended by deleting “Board” in the 3 places where it occurs and inserting instead in each place —
“ Commissioner ”.

16. Section 25 amended

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

“ Commissioner ”.

(3) After section 25(3) the following subsections are inserted —

“

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

”.

17. Section 26 amended

Section 26(1) is amended as follows:

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

18. Section 27 amended

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

- (a) by deleting “Board for a licence and pays to the Board” and inserting instead —
“
Commissioner for a licence and pays to the
chief executive officer
”,
- (b) before “is satisfied” by deleting “Board” and inserting instead —
“ Commissioner ”;

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

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

“

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

”.

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

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

“

; and

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

”.

(2) Section 27(2) is repealed.

19. Section 28 amended

Section 28 is amended as follows:

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

“

Commissioner for a licence and pay to the chief executive officer

”;

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

“ Commissioner ”;

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

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

“

- (aa) all of the natural persons, if any, by whom the firm is constituted and all of the directors of, and all of the persons concerned in the management or control of, any body corporate by which the firm is constituted are persons fit to be concerned as directors of, or in the management and control of a finance broker's business;

”;

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

“

; and

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

”.

20. Section 29 amended

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

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

“

Commissioner for a licence and pays to the chief executive officer

”;

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

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- “ Commissioner ”;
- (c) in paragraph (a) by deleting “and are persons fit to be concerned as directors of, or in the management and control of a finance broker’s business”;
- (d) after paragraph (a) by inserting the following paragraph —
- “
- (aa) all of the directors of the body corporate, and all of the persons concerned in the management or conduct of the body corporate, are persons fit to be concerned as directors of, or in the management and control of a finance broker’s business;
- ”;
- (e) after paragraph (b) by deleting “and”;
- (f) at the end of paragraph (c) by deleting the full stop and inserting instead —
- “
- ; and
- (d) that the person in bona fide control of the business, or the officer in bona fide control of the finance broker’s part of the business (as the case requires), has such other qualifications and satisfies such other requirements (if any) as may be prescribed by the regulations.
- ”.
- (2) Section 29(2) is amended as follows:
- (a) by deleting “Board” in the 2 places where it occurs and inserting instead in each place —
- “ Commissioner ”;
- (b) by deleting “it” and inserting instead —
- “ the Commissioner ”.

21. Section 30 amended

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

“

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

”.

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

“

- (2) If different classes of licence are prescribed, different licence periods, each not exceeding 3 years, may be prescribed for each or any class of licence.

- (3) A person may at any time surrender a licence and shall do so —

- (a) if the person ceases to satisfy the requirements for holding the licence; or
- (b) within 7 days, if the person has the licence suspended by the Commissioner under section 82A.

”.

- (3) Section 30(5) is amended as follows:

- (a) by deleting “or a business certificate”;
- (b) by deleting “or certificate”.

22. Section 31 amended

- (1) Section 31(1) is amended as follows:

- (a) by deleting “the Board shall on the grant of a licence grant the licensee a certificate which confers on the licensee” and inserting instead —

“ a licensee has ”;

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- (b) by deleting “period prescribed.” and inserting instead —
“ relevant period described in section 30. ”.
- (2) Section 31(2) is amended as follows:
 - (a) by deleting “business certificate” and inserting instead —
“ licence ”;
 - (b) by deleting “period prescribed.” and inserting instead —
“ relevant period described in section 30. ”.

23. Section 32 amended

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

- (4) Section 32(4) is amended by deleting “Board” in the 3 places where it occurs and inserting instead in each place —
“ Commissioner ”.

24. Section 33 replaced

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

“

33. Refusal to renew

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

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

”.

25. Section 34 amended

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

“

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

”.

- (2) Section 34(3) is amended as follows:
- (a) by deleting “special”;
 - (b) by deleting “or business certificate”.

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- (3) After section 34(3) the following subsection is inserted —

“

- (4) A condition to which a licence is subject may be varied or revoked by the Commissioner, upon the application of the licensee, or on the Commissioner's own motion.

”.

26. Section 34A repealed

Section 34A is repealed.

27. Section 35 amended

- (1) Section 35(1) is amended as follows:

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

“ Commissioner ”;

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

“ licence ”;

- (c) by deleting “the *Insurance Act 1932*” and inserting instead —

“ the *Insurance Act 1973* ”.

- (2) Section 35(2) is amended by deleting “business certificate” in the 3 places where it occurs and inserting instead in each place —

“ licence ”.

- (3) Section 35(3) is amended as follows:

- (a) by deleting “business certificate” in the 2 places where it occurs and inserting instead in each place —

“ licence ”;

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

“ Commissioner ”.

(4) Section 35(4) is amended as follows:

- (a) by deleting “business certificate” in the 2 places where it occurs and inserting instead in each place —
“ licence ”;
- (b) by deleting “licensee” and inserting instead —
“ person who held the licence ”.

(5) Section 35(5) is amended as follows:

- (a) by deleting “Board” in the 3 places where it occurs and inserting instead in each place —
“ Commissioner ”;
- (b) by deleting “its or”;
- (c) by deleting “it,”.

28. Section 35A inserted

After section 35 the following section is inserted —

“

35A. Prescribed person exempt from bond requirements

- (1) Despite section 35, the regulations may exempt from the requirement to lodge a bond or guarantee —
 - (a) any person or class of persons;
 - (b) persons carrying on any business or any specified class of business; or
 - (c) any other class of person, act or thing.
- (2) An exemption may be expressed to apply —
 - (a) generally; or
 - (b) only in respect of a specified area or areas in the State.
- (3) The regulations may provide —

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- (a) for circumstances in which, and conditions subject to which, an exemption is to apply; and
- (b) that an exemption is to have no effect at any time when any condition to which it is subject is not being observed.

”.

29. Section 36 amended

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

30. Section 37 amended

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

31. Section 38 amended

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

- (2) Section 38(2) is amended by deleting the penalty provision at the foot of that subsection.

32. Section 39 repealed

Section 39 is repealed.

33. Section 40 amended

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

34. Section 40A inserted

After section 40 the following section is inserted —

“

40A. Prohibition against doing business with unlicensed finance brokers

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

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

Penalty: \$50 000.

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

Penalty: \$50 000.

”.

35. Section 41 amended

- (1) Section 41(1) is amended as follows:

- (a) by deleting “Board” and inserting instead —
“ Commissioner ”;
- (b) in paragraph (a) by deleting “which shall be endorsed on his business certificate”.

- (2) Section 41(2) is amended as follows:

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

36. Section 43 amended

- (1) Section 43(1)(a) is amended by deleting “and he holds a current business certificate in respect of his licence”.

- (2) Section 43(2) is amended at the foot of that subsection by deleting the penalty and inserting the following penalty instead —

“ Penalty: \$5 000. ”.

37. Section 44 amended

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

“

After taking advice from the Commissioner, the Minister may,

”.

- (2) Section 44(4) is amended after “shall be held in” by deleting “the”.

- (3) Section 44(1) is amended after “negotiated” by inserting —

“ , managed ”.

- (4) Section 44(5) is amended after “negotiating” by inserting —

“ , managing ”.

- (5) Section 44(6) is amended at the foot of that subsection by deleting the penalty and inserting the following penalty instead —

“ Penalty: \$5 000. ”.

38. Section 45 amended

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

“

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

”.

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- (2) Section 45(3) is amended after “licensee” by inserting —
“
other than an advertisement for credit to which the
Consumer Credit (Western Australia) Code applies,
”.
- (3) After section 45(4) the following subsection is inserted —
“
(5) In this section —
“**Consumer Credit (Western Australia) Code**” has
the meaning given to it in the *Consumer Credit
(Western Australia) Act 1996*.
”.

39. Section 49 amended

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

“ Commissioner ”.

40. Section 50 amended

- (1) Section 50(2) is amended by deleting “Board” and inserting
instead —
“ Commissioner ”.
- (2) Section 50(3)(a) is amended by deleting “Board” and inserting
instead —
“ Commissioner ”.
- (3) Section 50(5) is amended as follows:
(a) by deleting “Board” and inserting instead —
“ Commissioner ”;
(b) by deleting “it” and inserting instead —
“ the Commissioner ”.

- (4) Section 50(6) is amended by deleting “Board” in the 2 places where it occurs and inserting instead in both places —
“ Commissioner ”.
- (5) Section 50(7) is amended as follows:
 - (a) by deleting “Board” in the first 2 places where it occurs and inserting instead in both places —
“ Commissioner ”;
 - (b) by deleting “Board” in the last place where it occurs and inserting instead —
“ chief executive officer ”.
- (6) Section 50(8) is amended by deleting “Board” and inserting instead —
“ Commissioner ”.
- (7) Section 50(9) is amended by deleting “Board” and inserting instead —
“ Commissioner ”.

41. Section 51 amended

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

“ Commissioner ”.

- (4) Section 51(5) is amended by deleting “Board” and inserting instead —

“ Commissioner ”.

42. Section 52 amended

- (1) Section 52(2) is amended by deleting “Board” in the 2 places where it occurs and inserting instead in both places —

“ Commissioner ”.

- (2) Section 52(4) is amended as follows:

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

“ Commissioner ”;

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

“ the Commissioner ”.

43. Section 53 amended

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

“ Commissioner ”.

44. Section 54 amended

Section 54 is amended as follows:

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

“ Commissioner ”;

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

“ the Commissioner ”.

45. Section 55 amended

Section 55 is amended as follows:

- (a) by deleting “Board” and inserting instead —
“ Commissioner ”;
- (b) by deleting “its” and inserting instead —
“ the Commissioner’s ”;
- (c) in paragraph (b) by deleting “it” and inserting instead —
“ the Commissioner ”.

46. Section 59 amended

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

“ Commissioner ”.

47. Section 61 amended

Section 61 is amended as follows:

- (a) after “discovers that” by inserting —
“ one or more of ”;
- (b) after “trust moneys” by inserting —
“
(whether generally or in an individual trust
ledger account)
”;
- (c) by deleting “Board” and inserting instead —
“ Commissioner ”.

48. Section 63 amended

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

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

49. Section 64 amended

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

50. Section 66 amended

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

51. Section 68 amended

Section 68 is amended as follows:

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

52. Section 69 amended

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

53. Section 70 amended

Section 70 is amended as follows:

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

54. Section 71 amended

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

“ Commissioner ”.

55. Section 72 amended

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

“ Commissioner ”.

56. Section 73 amended

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

“ Commissioner ”.

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

“ Commissioner ”.

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

- (a) after “authorizes the” by deleting “Board” and inserting instead —
“ Commissioner ”;

- (b) after paragraph (a) by deleting “and” and inserting instead —
 - “
 - (aa) may give such orders and directions that the State Administrative Tribunal considers necessary or appropriate to allow the supervisor to preserve the property or rights of any person on whose behalf a finance broker or deceased finance broker has received monies; and
 - ”;
 - (c) in paragraph (b) by deleting “Board” in the 2 places where it occurs and inserting instead in each place —
 - “ chief executive officer ”;
 - (d) in paragraph (b)(ii) by deleting “at the Treasury”.
- (4) Section 73(4) is amended as follows:
- (a) in paragraph (a) by deleting “Board” and inserting instead —
 - “ chief executive officer ”;
 - (b) in paragraph (b) by deleting “Board” in the first place where it occurs and inserting instead —
 - “ Commissioner ”;
 - (c) by deleting “Board” in the last place where it occurs and inserting instead —
 - “ chief executive officer ”.

57. Section 74 amended

- (1) Section 74(1) is amended as follows:
- (a) by deleting “Board” in the first 3 places where it occurs and inserting instead in each place —
 - “ Commissioner ”;

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

“ chief executive officer ”.

(2) Section 74(2) is amended by deleting “Chairman or by 2 members of the Board” and inserting instead —

“ Commissioner ”.

58. Section 75 amended

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

“

(3) The supervisor may apply to the State Administrative Tribunal for further orders or directions under section 73(3)(aa) as may be relevant or necessary to preserve the property or rights of any person on whose behalf a finance broker or deceased finance broker has received monies.

”.

59. Section 76 amended

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

“ Penalty: \$4 000. ”.

60. Section 78 amended

(1) Section 78(1) is amended by deleting “Board” and inserting instead —

“ Commissioner ”.

(2) Section 78(2)(a) is amended by deleting “to be kept at the Treasury”.

61. Section 79 amended

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

62. Section 80 amended

Section 80 is amended as follows:

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

63. Section 81 amended

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

“ Governor may make regulations prescribing ”.

64. Section 82 amended

Section 82 is amended as follows:

- (a) by deleting “Board” and inserting instead —
“ Commissioner ”;
- (b) by deleting “section 83(2).” and inserting instead —
“
section 83(2), to be taken against —
 - (a) a person who is a licensed finance broker; or
 - (b) a person who was a licensed finance broker when the conduct the subject of an inquiry allegedly occurred but who is no longer a licensed finance broker.
”.

65. Section 82A inserted

After section 82 the following section is inserted —

“

82A. Suspension pending possible disciplinary action

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

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

- (2) A notice under subsection (1) is to set out a brief summary of the basis for the suspension and, for the purposes of administrative review, that summary is to be regarded as a written statement of the reasons for the decision.
- (3) Suspension under subsection (1) has effect whether or not the licensee has been afforded an opportunity to make representations, and from the time of service of the notice.
- (4) Within 21 days of serving a notice under subsection (1), the Commissioner must either revoke the suspension, or make an allegation in relation to the licensee under section 82.
- (5) Upon receiving an allegation under section 82, the State Administrative Tribunal may, in addition to any other order it may make, affirm or revoke a suspension under subsection (1), or vary the term of the suspension by extending the period to which it applies.
- (6) Where the Commissioner or the State Administrative Tribunal revokes a licence suspension under subsections (4) or (5), the Commissioner is to ensure that the licence is returned to the licensee.

”.

66. Section 83 amended

- (1) Section 83(1) is amended as follows:
 - (a) in paragraph (b) by deleting “\$1 000” and inserting instead —
“ \$10 000 ”;
 - (b) in paragraph (c) by deleting “and any business certificate in respect thereof”;
 - (c) in paragraph (c) by deleting “or business certificate, or both”.

- (2) Section 83(2) is amended as follows:
- (a) in paragraph (a) by deleting “or business certificate”;
 - (b) in paragraph (b) by deleting “been guilty of” and inserting instead —
“ engaged in ”;
 - (c) by deleting subparagraph (c)(i) and inserting the following subparagraph instead —
“ (i) a condition of his licence; ”.
- (3) After section 83(2) the following subsection is inserted —
- “
- (3) In this section —
- “**finance broker**” includes a person who was a
licensed finance broker when the conduct giving
rise to the allegation occurred but who is no longer
a licensed finance broker.
- ”.

67. Section 84 replaced

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

“

84. Register

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

”.

68. Section 85 amended

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

“

- (1) A list of the names and descriptions of all persons holding licences on a date specified therein, together with such of the particulars appearing in the register as the Commissioner thinks fit, shall be published annually in a manner approved by the Commissioner.

”.

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

“ Commissioner ”.

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

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

“ Commissioner ”;

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

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

“ Commissioner ”.

69. Section 86 repealed

Section 86 is repealed.

70. Section 87 amended

Section 87 is amended as follows:

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

“ person ”;

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

71. Section 88 replaced

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

“

88. Secrecy

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

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- (b) for the purpose of giving information concerning the affairs of a licensee or a former licensee to a body established under a written law in relation to the performance by that body of a function under or in connection with that written law;
 - (c) for the purposes of legal proceedings arising out of the administration of this Act or another written law;
 - (d) for the purpose of investigation of any suspected offence or the conduct of proceedings against any person for any offence; or
 - (e) by the Commissioner for the purpose of making the public aware of —
 - (i) investigations or inquiries being conducted into the conduct of a licensee, a former licensee or a purported licensee, and the results of those inquiries; and
 - (ii) disciplinary action being contemplated or undertaken in relation to a licensee, a former licensee or a purported licensee, and the outcome of that action.
- (4) In subsection (1) —
- “former Board”** means the Finance Brokers Supervisory Board constituted under section 6 of this Act immediately before the commencement of the *Finance Brokers Control Amendment Act 2004*.

”.

72. Section 92 amended

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

“ \$2 000 ”.

73. Sections 92A and 92B inserted

After section 92 the following sections are inserted —

“

92A. Infringement notices

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

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

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

92B. Public warnings

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

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

”.

74. Section 93 amended

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

75. Section 94 amended

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

“ Commissioner ”.

76. Section 95 amended

Section 95(2) is amended as follows:

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

“

- (a) prescribe the form that a licence is to take, and the details to be included on that licence;
- (b) prescribe particular classes of licence that may be granted or renewed under this Act;
- (ba) prescribe particular qualifications or requirements that may be imposed as criteria for the grant or renewal of a particular class of licence;

”;

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

“

- (f) prescribe —

- (i) offences for which an infringement notice may be given under section 92A; and

- (ii) for each prescribed offence —

(I) a modified penalty; or

(II) a different modified penalty according to the circumstances of the offence,

but not in any case exceeding the amount allowed by section 92A(5);

”;

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

“ \$1 000 ”.

77. Part VI repealed

Part VI is repealed.

78. Savings and transitional

Schedule 1 has effect to make savings and transitional provisions.

79. Consequential amendment

The Act specified in Schedule 2 is amended as set out in that Schedule.

Schedule 1 — Transitional and savings

[s. 78]

1. Meanings of terms used in this Schedule

In this Schedule, unless the contrary intention appears —

“**Board**” means the Finance Brokers Supervisory Board as constituted under the Finance Brokers Act;

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

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

2. Interpretation Act to apply

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

3. Board dissolved

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

4. Winding up of affairs of the Board

- (1) On and after the commencement day —
 - (a) the Commissioner is to take control of all registers, documents, books and other records (however compiled, recorded or stored) relating to the Board and the exercise of its functions, and of any tape, disc or other device or medium relating to such records;
 - (b) all rights, liabilities and obligations of the Board that existed immediately before the commencement day devolve on the Commissioner acting on behalf of, and in the name of, the State;
 - (c) all contracts, agreements and undertakings made by and with the Board and having effect immediately before the commencement day have effect as contracts, agreements and undertakings made with the Commissioner acting on behalf

of, and in the name of, the State and may be enforced by or against the State accordingly;

- (d) any legal or other proceedings or any remedies that might, but for the operation of the *Finance Brokers Control Amendment Act 2004*, have been commenced or continued by or against or have been available to the Board may be commenced or continued by or against or are available to the Commissioner acting on behalf of, and in the name of, the State, as the case requires; and
 - (e) any fees, charges or other moneys payable to the Board under the Finance Brokers Act and outstanding at the commencement day become payable to the chief executive officer at the time, and in the manner, in which those moneys would have been payable to the Board under that Act.
- (2) A reference to the Board in a document in existence immediately before the commencement day is to be construed, on and after the commencement day, as a reference to the Commissioner, unless in the context it would be inappropriate to do so.

5. Registrar's certificate

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

6. Final report

- (1) As soon as practicable after the commencement day, the Chairman of the Board immediately before the commencement day shall prepare a report on the Board's activities under the Finance Brokers Act for the period beginning on the day after the period for which the last report was submitted under section 86 of the Finance Brokers Act and ending on the commencement day and submitting that report to the Minister.

- (2) Section 86(2) of the Finance Brokers Act applies to a report prepared and submitted under subclause (1) as if the section had not been repealed.

7. Bond in respect of business certificate

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

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

- (1) A person who immediately before the commencement day was licensed under the Finance Brokers Act and held a business certificate under that Act is, on that day, to be taken to be licensed under the *Finance Brokers Control Act 1975* for the period that the business certificate would have been valid under the Finance Brokers Act, and for the licence to be subject to any conditions imposed on that business certificate.
- (2) A person who immediately before the commencement day was excepted from the meaning of "finance broker" under section 5(2) of the Finance Brokers Act is, on that day, to be taken to be exempted in a similar manner for a period of up to 12 months beginning on the commencement day.
- (3) A person who is taken to be exempted under subclause (2) is no longer to be taken to be exempted if the person becomes licensed under the *Finance Brokers Control Act 1975*.
- (4) The Commissioner is to enter the name of a person to whom subclause (1) or (2) applies in the register kept under section 84 of the *Finance Brokers Control Act 1975*.

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

- (1) A licence issued under the Finance Brokers Act within 3 years of the commencement day and that does not have a business certificate

associated with it is, on that day, to be taken to be a licence of the appropriate category under the *Finance Brokers Control Act 1975* for a period equal to 3 years from the day of its issue.

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

10. Licence condition revoked on commencement day

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

11. Applications for certificates and licenses

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

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

but in respect of which a decision has not been made by the Board before the commencement day, is to be taken to have made an application for a licence under the *Finance Brokers Control Act 1975*.

12. Further transitional provision may be made

- (1) The regulations may make provision for any transitional matter for which there is no sufficient provision in this Schedule.
- (2) If in the opinion of the Minister an anomaly arises in the carrying out of any provision of this Schedule, the regulations may —
 - (a) modify that provision to remove the anomaly; and

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- (b) make such provision as is necessary or expedient to carry out the intention of that provision.
- (3) Regulations may be made for the purposes of this clause to have effect from the commencement of this Act.
- (4) To the extent that a provision of any such regulation has effect on a day that is earlier than the day of its publication in the *Gazette*, the provision does not operate so as —
 - (a) to affect, in a manner prejudicial to any person (other than the State), the rights of that person existing before the day of publication; or
 - (b) to impose liabilities on any person (other than the State) in respect of anything done or omitted to be done before the day of publication.
- (5) In subclause (1) —
“**transitional matter**” means a matter or thing necessary or convenient to provide for the change from the Finance Brokers Act, to the *Finance Brokers Control Act 1975* as in force after the commencement day.

Schedule 2 — Consequential amendment

[s. 79]

1. *Constitution Acts Amendment Act 1899* amended

- (1) The amendment in this section is to the *Constitution Acts Amendment Act 1899**.

[* *Reprint 12 as at 3 October 2003.*]

- (2) Schedule V Part 3 is amended by deleting the item “The Finance Brokers Supervisory Board constituted under the *Finance Brokers Control Act 1975*.”.
