

REAL ESTATE LEGISLATION AMENDMENT ACT 1995

No. 59 of 1995

AN ACT to amend the —

- *Real Estate and Business Agents Act 1978;*
- *Residential Tenancies Act 1987; and*
- *Settlement Agents Act 1981,*

to make a consequential amendment to the
Sentencing Act 1995 and for related purposes.

[Assented to 20 December 1995.]

The Parliament of Western Australia enacts as follows:

PART 1 — PRELIMINARY

Short title

1. This Act may be cited as the *Real Estate Legislation Amendment Act 1995*.

Commencement

2. The provisions of this Act come into operation on such day as is, or days as are respectively, fixed by proclamation.

**PART 2 — REAL ESTATE AND BUSINESS AGENTS
ACT 1978**

Principal Act

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

[* *Reprinted as at 7 November 1985.*

*For subsequent amendments see 1994 Index to
Legislation of Western Australia, Table 1, p. 180.]*

Section 4 amended

4. Section 4 (1) of the principal Act is amended —

- (a) by deleting the definitions of “Auditor General”, “building society”, “District Court”, “financial year”, “Part”, “prescribed percentage”, “Schedule”, “section”, “subsection”, “Trust” and “Trust Interest Account”;
- (b) by inserting in the appropriate alphabetical positions the following definitions —

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

“bank” means —

- (a) a bank as defined in section 5 of the *Banking Act 1959* of the Commonwealth; or
- (b) a bank constituted by or under a law of the State;

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

“society” means a society or foreign society within the meaning of the Financial Institutions (Western Australia) Code;

”;

and

- (c) by deleting the semicolon after the definition of “triennial certificate” and substituting a full stop.

Section 8A inserted

5. After section 8 of the principal Act the following section is inserted —

“

Functions of the Board

8A. (1) The functions of the Board are —

- (a) to advise the Minister as to the general administration of this Act;
- (b) to make recommendations and submit proposals to the Minister from time to time with respect to regulations to be made under this Act;
- (c) to administer the scheme of licensing and registration established under this Act;
- (d) to conduct and promote education and provide advisory services for persons who are licensed or registered under this Act, or

involved in the administration of this Act,
and for members of the public on —

- (i) matters relating to the operation of this Act;
- (ii) matters relating to the policies of the Board;
- (iii) matters relating to the operations of agents; or
- (iv) any other prescribed matter;

and

- (e) to perform such other functions as are conferred upon the Board under this Act.

(2) The Board may do all things that are necessary or convenient to be done for or in connection with the performance of its functions.

”

Section 11 repealed and a section substituted

6. Section 11 of the principal Act is repealed and the following section is substituted —

“

Remuneration and allowances

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

”

Section 12AA inserted

7. After section 12 of the principal Act the following section is inserted —

“

Consultants, etc.

12AA. The Board may engage, under a contract for services or other arrangement, any consultants and professional, technical or other assistance that it considers necessary to enable it to perform its functions.

”

Division 1A of Part II inserted

8. After Division 1 of Part II of the principal Act the following Division is inserted —

“

Division 1A — Corporate plan**Corporate plan**

12C. (1) The Board shall prepare a corporate plan for each financial year.

(2) A corporate plan for a financial year shall be prepared and submitted to the Minister for approval by 31 July in that year.

(3) A corporate plan shall include —

- (a) a statement of the objectives of the Board;
- (b) a statement of the policies and strategies that the Board intends to adopt in order to achieve the Board's objectives;

- (c) an estimate of the Board's income and expenditure for the relevant financial year;
- (d) the activities and improvements that the Board proposes to carry out; and
- (e) the resources that the Board proposes to allocate to those activities and improvements.

(4) The Board may, with the approval of the Minister, revise a corporate plan at any time.

Board to comply with corporate plan

12D. The Board shall ensure that, to the extent that it is practicable to do so, the performance of its functions and the exercise of its powers are consistent with, and designed to give effect to, the current corporate plan.

”.

Section 60 amended

9. Section 60 (2) (a) of the principal Act is amended —

- (a) by deleting “and” after subparagraph (i); and
- (b) by inserting after subparagraph (ii) the following —

“

and

- (iii) contains such other information, if any, as is prescribed;

”.

Section 61 amended and saving

10. (1) Section 61 of the principal Act is amended —

- (a) by repealing subsections (1), (2) and (3) and substituting the following subsections —

“

(1) The Board may, with the approval of the Minister, by notice published in the *Government Gazette* fix the maximum amount of remuneration, whether by way of commission or otherwise, that a licensee is to receive for a service rendered by the licensee in the course of and incidental to the licensee's business as an agent.

(2) The Board may, with the approval of the Minister, by further notice published in the *Government Gazette*, amend or revoke a notice under subsection (1).

(3) An amount fixed under subsection (1) takes effect on the date on which the notice fixing the amount is published in the *Government Gazette* or on such subsequent date as is specified in the notice.

(3a) The Board may fix an amount under subsection (1) by reference to —

- (a) the type of transaction negotiated and its value; or
- (b) the type of service rendered and the value of the property in respect of which the service was rendered.

(3b) If an amount is fixed under subsection (1) in respect of a service rendered by a licensee, the licensee is not entitled to receive for that service, in the licensee's capacity as an agent, any commission, reward or other valuable consideration which exceeds that amount in value.

”;

and

(b) by repealing subsection (7).

(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.

Section 61A inserted

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

“

Letting and management fees not payable by tenant

61A. (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 67 amended

12. Section 67 of the principal Act is amended —

- (a) by deleting the definition of “bank account” and substituting the following definition —

“

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

”.

- (b) in the definition of “banker” by deleting “or a building society” and substituting the following —

“ , society or other body ”; and

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

“

“authorized financial institution”

means —

- (a) a bank;
- (b) a society; or
- (c) any other body,

that is prescribed or that belongs to a class of bodies that is prescribed;

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

”.

Section 68 amended

- 13.** (1) Section 68 (1) of the principal Act is amended —

- (a) by deleting “at least one trust account” and substituting the following —

“ one or more trust accounts ”;

- (b) by deleting “, with a bank in the State, or with a building society in the State investments in which are authorized trustee investments,” and substituting the following —

“

in the prescribed manner, with an authorized financial institution

”,

and

(c) by inserting after “that account” the following —

“ or those accounts ”.

(2) Section 68 (3) of the principal Act is amended by deleting “the” in the first place where it occurs and substituting the following —

“ a ”.

(3) Section 68 (4) of the principal Act is amended by deleting “his” and substituting the following —

“ a ”.

Sections 68A, 68B and 68C inserted

14. After section 68 of the principal Act the following sections are inserted —

“

Person may request separate trust account

68A. (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).

Payment of interest on trust accounts

68B. (1) Every authorized financial institution with which a trust account is maintained shall pay to the credit of the Account interest on the balance of the trust account at the prescribed rate at such times as are prescribed.

(2) Subsection (1) does not apply to a separate account.

(3) Where a court convicts an authorized financial institution of an offence under subsection (1) and interest required to be paid under that subsection remains outstanding, the court may, in addition to imposing a penalty, order the institution to pay to the credit of the Account an amount equal to the amount

of that interest, and any such order may be enforced as if it were a judgment of the court.

(4) In regulations made under section 145 the prescribed rate referred to in subsection (1) may be prescribed by reference to a market rate indicator specified in the regulations.

Board to be given certain information in relation to trust accounts

68C. (1) When an agent opens or closes a trust account, the agent shall, as soon as is practicable, inform the Board in writing of the opening or closure of the trust account and, in doing so, shall specify —

- (a) the name and number of the trust account;
and
- (b) the name and address of the authorized 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 authorized financial institution with which the trust account is maintained shall, as soon as is practicable, inform the Board in writing of —

- (a) the name and number of the trust account;
and
- (b) the amount by which the trust account is overdrawn.

Section 69 amended

15. Section 69 of the principal Act is amended —

- (a) by repealing subsections (1) and (2) and substituting the following subsections —

“

(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.

”;

- (b) in subsection (3) by deleting “the retained duplicates in the appropriate books” and substituting the following —

“ records kept under subsection (1) (b) ”;

- (c) by repealing subsection (4); and

- (d) in subsection (5) —

- (i) by deleting “Subsections (2) to (4), both inclusive, do” and substituting the following —

“ Subsection (3) does ”; and

- (ii) by deleting "receipt books" and substituting the following —

" records of moneys received "

Section 72 amended

16. Section 72 (1) and (2) of the principal Act are amended by deleting "registered company auditor within the meaning of the *Companies (Western Australia) Code*" and substituting in each case the following —

" person registered as an auditor, or taken to be registered as an auditor, under Part 9.2 of the Corporations Law "

Section 79 amended

17. Section 79 of the principal Act is amended —

- (a) by inserting "and" after paragraph (d); and
(b) by deleting paragraph (da) and "and" after that paragraph.

Section 84 amended

18. Section 84 of the principal Act is amended by deleting "Penalty: \$3 000." at the foot of subsection (1) and substituting the following —

" Penalty: (a) in the case of an offence against section 68B (1), \$10 000;
(b) in any other case, \$3 000. "

Section 100A inserted

19. After section 100 of the principal Act the following section is inserted —

“

**Power of Registrar to obtain information
relating to trust accounts**

100A. (1) The Registrar may require —

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

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

(2) A requirement under subsection (1) —

- (a) shall be given by notice in writing to the person required to give the information;
- (b) shall specify the time at or within which the information is to be given;
- (c) may, by its terms, require that the information be —
 - (i) given in writing;
 - (ii) certified as correct by a person who is registered as an auditor, or taken to be registered as an auditor, under

Part 9.2 of the Corporations Law 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
- (v) given on oath or affirmation or by statutory declaration;

and

- (d) shall state that the person to whom the notice is given is required under this Act to give the information.

(3) A person shall not, without reasonable excuse, refuse or fail to comply with a requirement under subsection (1).

Penalty: \$3 000.

(4) A person shall not give information in response to a requirement under subsection (1) that the person knows is false or misleading in a material particular.

Penalty: \$3 000.

(5) It is a defence in proceedings for an offence against subsection (3) for the person to show that —

- (a) the notice under subsection (2) (a) did not state that the person was required under this Act to give the information; or
- (b) the time specified in the requirement did not give the person sufficient notice to enable compliance with the requirement.

(6) Where a person is required to give information under subsection (1), the person shall not refuse to comply with that requirement on the ground that the information may tend to incriminate the person or render the person liable to any penalty.

(7) Despite subsection (6), information given under this section is not admissible in evidence in any proceedings against the person other than proceedings in respect of an offence against subsection (4).

(8) The power conferred by subsection (1) is in addition to any other powers of the Registrar under this Act.

”.

Section 103 amended

20. Section 103 of the principal Act is amended by inserting after subsection (5) the following subsection —

“

(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 Board under subsections (1) and (3).

”.

Section 107 amended

21. Section 107 (2) of the principal Act is repealed and the following subsection is substituted —

“

(2) The Fidelity Fund is to be kept —

- (a) at the Treasury forming part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*; or

- (b) with the approval of the Treasurer, at a bank.

”.

Section 108 repealed and a section substituted

22. Section 108 of the principal Act is repealed and the following section is substituted —

“

Investment of Fund

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

- (a) public moneys may be invested under section 38 of the *Financial Administration and Audit Act 1985*; or
- (b) trust funds may be invested in accordance with Part III of the *Trustees Act 1962*.

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

”.

Section 109 amended

23. Section 109 of the principal Act is amended by deleting paragraphs (b) and (c) and substituting the following paragraphs —

“

- (b) income derived from the investment, under section 108, of moneys standing to the credit of the Fidelity Fund;
- (c) all moneys transferred to the Fidelity Fund under section 127 (b);

”.

Section 110 amended

24. Section 110 of the principal Act is amended —

- (a) by inserting “and” after paragraph (e); and
- (b) by deleting paragraph (f) and “and” after that paragraph.

Section 120 amended

25. Section 120 (3) (b) of the principal Act is amended by deleting “\$1 000” in the 3 places where it occurs and substituting in each place the following —

“ \$2 500 ”.

Part VIIIA inserted

26. After section 124 of the principal Act the following Part is inserted —

“

**PART VIIIA — EDUCATION AND GENERAL
PURPOSE FUND**

**Education and General Purpose Fund
established**

124A. (1) An account called the “Education and General Purpose Fund” is to be established and kept —

- (a) at the Treasury forming part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*; or

- (b) with the approval of the Treasurer, at a bank.

(2) The General Purpose Fund is to be administered by the Board.

Moneys credited to General Purpose Fund

124B. There are to be credited to the General Purpose Fund —

- (a) all moneys transferred to the General Purpose Fund under section 127 (b);
- (b) income derived from the investment, under section 124D, of moneys standing to the credit of the General Purpose Fund;
- (c) fees, costs and other moneys lawfully received by or payable to the Board;
- (d) fines imposed under section 103 or 105;
- (e) fines imposed for offences under this Act; and
- (f) any moneys, other than moneys referred to in paragraphs (a), (b), (c), (d) and (e), that may lawfully be credited to the General Purpose Fund.

Application of General Purpose Fund

124C. There are to be charged to the General Purpose Fund —

- (a) the costs incurred in the administration of the General Purpose Fund;

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

Investment of General Purpose Fund

124D. (1) Moneys standing to the credit of the General Purpose Fund may, until required for the purposes of section 124C, be invested in the same manner as —

- (a) public moneys may be invested under section 38 of the *Financial Administration and Audit Act 1985*; or
- (b) trust funds may be invested in accordance with Part III of the *Trustees Act 1962*.

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

”.

Part IX repealed and a Part substituted

27. Part IX of the principal Act is repealed and the following Part is substituted —

“

PART IX — BOARD INTEREST ACCOUNT

Board Interest Account established

125. (1) An account called the “Board Interest Account” is to be established and kept —

- (a) at the Treasury forming part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*; or
- (b) with the approval of the Treasurer, at a bank.

(2) The Account is to be administered by the Board.

Moneys credited to Account

126. There are to be credited to the Account —

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

Application of Account

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

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

Investment of Account

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

- (a) public moneys may be invested under section 38 of the *Financial Administration and Audit Act 1985*; or
- (b) trust funds may be invested in accordance with Part III of the *Trustees Act 1962*.

(2) Income derived from any such investment is to be credited to the Account.

”.

Section 131A amended

28. Section 131A of the principal Act is amended —

- (a) in paragraph (g) of the definition of “incidental expenses” by deleting “bank or building society” and substituting the following —

“ lending institution ”;

- (b) by deleting the full stop at the end of the definition of “incidental expenses” and substituting a semicolon; and

- (c) by inserting after the definition of “incidental expenses” the following definition —

“ **“lending institution”** means —

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

”.

Section 131B amended

29. Section 131B (2) of the principal Act is repealed and the following subsection is substituted —

“

(2) The Assistance Fund is to be kept —

- (a) at the Treasury forming part of the Trust Fund constituted under section 9 of the

*Financial Administration and Audit
Act 1985; or*

- (b) with the approval of the Treasurer, at a bank.

”.

Section 131C repealed and a section substituted

30. Section 131C of the principal Act is repealed and the following section is substituted —

“

Investment of Assistance Fund

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

- (a) public moneys may be invested under section 38 of the *Financial Administration and Audit Act 1985; or*
- (b) trust funds may be invested in accordance with Part III of the *Trustees Act 1962*.

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

”.

Section 131D amended

31. Section 131D of the principal Act is amended by deleting paragraphs (a) and (b) and substituting the following paragraphs —

“

- (a) all moneys transferred to the Assistance Fund under section 127 (b);

- (b) income derived from the investment, under section 131C, of moneys standing to the credit of the Assistance Fund;

”.

Section 131E amended

32. Section 131E of the principal Act is amended by deleting paragraph (d) and “and” after that paragraph and substituting the following —

“

- (d) the remuneration and allowances payable to the member referred to in section 131H (2) (a); and

”.

Section 131I amended

33. Section 131I (1) of the principal Act is amended —

- (a) by inserting before paragraph (a) the following paragraph —

“

- (aa) to issue guidelines to the Registrar under section 131M (1a);

”;

and

- (b) in paragraph (a) by deleting “lodged under section 131L (1)” and substituting the following —

“

- referred to the Advisory Committee under section 131M (1) (b)

”.

Section 131KA inserted

34. After section 131K of the principal Act the following section is inserted —

“

Remuneration and allowances of member referred to in section 131H (2) (a)

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

”.

Section 131L amended

35. (1) Section 131L (1) of the principal Act is amended by deleting “60” and substituting the following —

“ 90 ”.

(2) After section 131L (1) of the principal Act the following subsection is inserted —

“

(1a) Despite subsection (1), the Registrar may, in a particular case, allow an application to be lodged after the expiry of the period referred to in that subsection if the Registrar is satisfied that reasonable grounds exist to justify late lodgement of the application.

”.

Section 131M amended

36. (1) Section 131M (1) of the principal Act is amended —

- (a) by deleting “section 131L (1)” and substituting the following —

“ section 131L ”; and

- (b) by deleting “lay that application before the Advisory Committee at its next meeting.” and substituting the following —

“ deal with the application, in accordance with guidelines issued by the Advisory Committee, by —

- (a) considering the application and if, in the opinion of the Registrar the application contains sufficient information to enable the Board properly to assess the merits of the application, forwarding the application to the Board together with the recommendation of the Registrar on the application; or

- (b) referring the application to the Advisory Committee for consideration.

”.

(2) After section 131M (1) of the principal Act the following subsection is inserted —

“

(1a) The Advisory Committee shall issue guidelines to the Registrar setting out the criteria to

be applied by the Registrar in determining whether an application should be dealt with under subsection (1) (a) or (b).

”.

(3) Section 131M (2) of the principal Act is amended by deleting “laid before it under subsection (1)” and substituting the following —

“ referred to it under subsection (1) (b) ”.

(4) Section 131M (3) of the principal Act is amended by deleting “subsection (2)” and substituting the following —

“ subsection (1) or (2) ”.

Section 131O amended

37. Section 131O (2) of the principal Act is amended by deleting “section 131M (2)” and substituting the following —

“ section 131M (1) or (2) ”.

Section 135 amended

38. Section 135 (2) of the principal Act is repealed.

Section 145 amended

39. Section 145 (2) of the principal Act is amended —

(a) by deleting paragraphs (f), (g), (ga) and (h) and substituting the following paragraphs —

“

(f) prescribe a body or class of bodies for the purposes of the definition of “authorized 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;

”;

and

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

“

- (ja) prescribe a body or class of bodies for the purposes of the definition of “lending institution” in section 131A;

”.

Various references to “bank or building society” changed

40. (1) The provisions of the principal Act referred to in the Table to this subsection are amended by deleting “bank or building society” and substituting the following —

“ bank, society or other body ”.

Table

s. 92 (1) (twice)	s. 99 (2) (a)
s. 98 (1) (b)	s. 99 (3) (a)
s. 99 (1) (a)	

(2) The provisions of the principal Act referred to in the Table to this subsection are amended by deleting “bank or building society” and substituting the following —

“ lending institution ”.

Table

s. 131L (1)	s. 131N (3) (3 times)
s. 131N (1)	s. 131N (4) (twice)
s. 131N (2) (twice)	

Amendment of penalties

41. The provisions of the principal Act referred to in column 1 of the Table to this section are amended by deleting the amount referred to in column 2 and substituting the amount referred to in column 3.

Table

Column 1	Column 2	Column 3
s. 19 (7)	\$500	\$5 000
s. 138 (2)	\$500	\$5 000
s. 145 (2) (1)	\$100	\$1 000

Minor amendments relating to financial provisions

42. The provisions of the principal Act referred to in column 1 of the Table to this section are amended by deleting the word or words in column 2 and substituting the word or words in column 3.

Table

Column 1	Column 2	Column 3
s. 70 (7)	Board out	Board from moneys standing to the credit
s. 90 (1)	Board out	Board from moneys standing to the credit
s. 90 (2)	pay it out	pay it from moneys standing to the credit
s. 93 (3) (b) (ii)	deposit such moneys, or such balance in Treasury	credit such moneys or such balance to Treasury, forming part of the Trust Fund constituted under section 9 of the <i>Financial Administration and Audit Act 1985</i> ,
s. 93 (4) (a)	deposited in	credited to
s. 93 (4) (b)	deposited in	credited to
s. 98 (2) (a)	paid into Treasury	credited to Treasury as part of the Trust Fund constituted under section 9 of the <i>Financial Administration and Audit Act 1985</i>

s. 98 (4)	therein	standing to the credit of the account
	remaining in	standing to the credit of
s. 109	placed to the credit of	credited to
s. 109 (a)	paid to or on account of	paid to the credit of
s. 109 (e)	paid into	credited to
s. 110	paid out of	charged to
s. 110 (e)	paid from	charged to
s. 110 (g)	payable out of	chargeable to
s. 113 (3)	paid by the Board into	credited by the Board to
s. 114	while the amount	while the amount standing to the credit
s. 115 (1)	for payment into	to be credited to
s. 117 (3)	paid or be payable out of	charged or be chargeable to
s. 119	payment out of the Fidelity Fund of any money	payment from moneys standing to the credit of the Fidelity Fund
s. 120 (1) (twice)	Fidelity Fund is	moneys standing to the credit of the Fidelity Fund are

s. 122	paid into	credited to
s. 131D	placed to the credit of	credited to
s. 131D (d)	paid into	credited to
s. 131E	paid out of	charged to
s. 131E (e)	paid out of	charged to
s. 131N (1)	placed	standing

Transitional

43. (1) In this section —

“Board Interest Account” means the account established under section 125 of the principal Act as inserted by section 27;

“commencement day” means the day on which section 27 comes into operation;

“General Purpose Fund” means the account established under section 124A of the principal Act as inserted by section 26;

“licensee” has the same meaning as it has in the principal Act;

“prescribed day” means the day on which the last of the moneys standing to the credit of the Trust are paid or credited in accordance with subsection (2) (a), (b) or (c);

“Trust” means the Real Estate and Business Agents Deposit Trust established under section 126 of the

principal Act as in force before the commencement day;

“Trust Interest Account” means the account referred to in section 130 of the principal Act as in force before the commencement day.

(2) Within 6 months from the commencement day the Trust is to be wound up in the following manner —

- (a) moneys deposited by a licensee to the credit of the Trust are to be returned to that licensee or to any other person lawfully entitled to receive those moneys;
- (b) if, for any reason, it is not possible to return moneys as required by paragraph (a), those moneys are to be paid to the Treasurer to be dealt with by the Treasurer as if they were prescribed retained money under the *Unclaimed Money Act 1990*; and
- (c) any moneys standing to the credit of the Trust after paragraphs (a) and (b) have been complied with are to be credited to the General Purpose Fund.

(3) If the moneys standing to the credit of the Trust are insufficient for the purpose of complying with subsection (2) (a) the amount of the insufficiency is to be charged to the General Purpose Fund.

(4) On the commencement day —

- (a) the Trust Interest Account is to be closed;
- (b) moneys standing to the credit of the Trust Interest Account are to be credited to the Board Interest Account; and
- (c) any moneys chargeable to the Trust Interest Account and outstanding on that day become chargeable to the Board Interest Account.

(5) Any moneys that would have been chargeable to the Trust Interest Account if section 27 had not been enacted are chargeable to the Board Interest Account at the time and in the manner in which those moneys would have been chargeable to the Trust Interest Account.

(6) Income derived from investments made under section 129 of the principal Act before the commencement day that would have been payable to the credit of the Trust Interest Account is to be credited to the Board Interest Account.

(7) Despite its repeal by section 38 of this Act, subsection (2) of section 135 of the principal Act is to be taken to continue to apply for the purposes of any report prepared under that section in respect of the Trust.

(8) The accountable authority, within the meaning of the *Financial Administration and Audit Act 1985*, of the Board is to cause to be prepared a final report on the Trust in accordance with the requirements of section 66 of that Act as modified by subsection (9).

(9) The period to which the report referred to in subsection (8) relates is to be limited —

- (a) in the case of the report on the operations of the Trust, to the period from 1 July immediately following the last period reported on under section 135 of the principal Act to the prescribed day;
- (b) in the case of the financial statements, to the period from 1 January or 1 July immediately following the last period reported on under section 135 of the principal Act, whichever is the earlier, to the prescribed day,

and Division 14 of Part II of the *Financial Administration and Audit Act 1985* applies as if each of the periods referred to in paragraphs (a) and (b) were a full financial year.

(10) Financial statements prepared —

- (a) under section 135 of the principal Act in respect of the Trust for a period ending after the commencement day but before the prescribed day; or
- (b) under subsection (8),

are to contain details of moneys paid under subsection (2) (a) or (b).

(11) Despite the repeal of Part IX of the principal Act by section 27, the Trust continues in existence until the prescribed day.

PART 3 — RESIDENTIAL TENANCIES ACT 1987**Principal Act**

44. In this Part the *Residential Tenancies Act 1987** is referred to as the principal Act.

[* *Act No. 128 of 1987.*

*For subsequent amendments see 1994 Index to
Legislation of Western Australia, Table 1, p. 183.]*

Section 24 amended

45. Section 24 of the principal Act is amended —

- (a) by inserting after the section designation “24.” the subsection designation “(1)”; and
- (b) by inserting the following subsection —

“

(2) Where a party to the proceedings has paid a fee under section 18 (1), nothing in subsection (1) is to be taken to prevent a magistrate making an order which requires any other party to the proceedings to pay to the first-mentioned party the amount of that fee.

”

Section 27 amended

46. Section 27 (2) of the principal Act is amended —

- (a) by inserting “and” after paragraph (b); and
- (b) by deleting paragraph (c) and “and” after that paragraph.

Section 29 amended

47. (1) Section 29 (4) of the principal Act is amended —

- (a) by deleting “and” after paragraph (a);
- (b) by deleting the full stop at the end of paragraph (b) and substituting a semicolon; and
- (c) by inserting after paragraph (b) the following paragraphs —

“

- (c) shall keep, or cause to be kept, in the prescribed form a record of the payment referred to in paragraph (b) that includes the following details —

- (i) the date on which the amount was paid;

- (ii) the amount paid; and

- (iii) if the payment was under clause 2 (1) (b) of Schedule 1, the name of the financial institution to which the amount was paid and the name and number of the account into which the amount was paid;

and

- (d) shall give or cause to be given to the person who paid the bond within such period as is prescribed a copy of the record referred to in paragraph (c).

”

(2) After section 29 (4) of the principal Act the following subsections are inserted —

“

(5) A person shall not, without reasonable excuse, refuse or fail to produce a record referred to in subsection (4) (c) when required to do so by an officer of the Department.

Penalty: \$1 000.

(6) A person shall not make an entry in a record referred to in subsection (4) (c) that the person knows is false in a material particular.

Penalty: \$1 000.

”

Section 29A inserted

48. After section 29 of the principal Act the following section is inserted —

“

Power of Commissioner to obtain information relating to security bond accounts

29A. (1) The Commissioner may require the manager or other officer for the time being in charge of an authorized financial institution as defined in Schedule 1 to give to the Commissioner such information as the Commissioner requires in relation to accounts referred to in clause 2 (3) (a) and (b) of that Schedule, including 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 manager or other officer 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 Law 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
 - (v) given on oath or affirmation or by statutory declaration;

and

- (d) shall state that the manager or other officer 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).

”.

Section 60 amended

49. Section 60 (1) of the principal Act is amended by deleting paragraph (g) and substituting the following paragraph —

“

- (g) where the tenant delivers up vacant possession of the premises pursuant to an agreement in writing between the owner and the tenant to terminate the residential tenancy agreement;

”.

Section 62 amended

50. Section 62 of the principal Act is amended —

- (a) in subsection (4) by deleting paragraph (a) and “and” after that paragraph and substituting the following —

“
 (a) the notice is ineffectual unless a notice specifying the breach of the agreement and requiring payment of the rent is given to the tenant not less than 14 days before the notice of termination is given; and
”;

and

- (b) by repealing subsection (5) and substituting the following subsections —

“
 (5) Despite subsection (4) (a), notice of termination upon the ground of a breach of the agreement to pay rent may be given immediately the breach occurs but where notice is so given —

 (a) the owner shall not make an application under section 71 if the rent due under the agreement is paid in full before the day specified in the notice as the day on which the tenant is to deliver up possession of the premises;

 (b) the owner shall not continue proceedings in respect of an application under section 71 if —

 (i) the rent due under the agreement; and

- (ii) the amount of any fee paid by the owner under section 18 (1),

are paid in full to the owner not less than one day before the hearing of application; and

- (c) the hearing of an application under section 71 shall take place not less than 21 days after notice is given.

(5a) Where an application is made, or proceedings in respect of an application are continued, in contravention of subsection (5), any order made under section 71 (2) in respect of the application is of no effect.

”.

Section 71 amended

51. (1) Section 71 (1) of the principal Act is amended by inserting after “the owner may,” the following —

“ subject to section 62 (5) (a), ”.

(2) Section 71 (2) (b) of the principal Act is amended by deleting “the circumstances of the case” and substituting the following —

“ all the circumstances ”.

Section 86 repealed

52. Section 86 of the principal Act is repealed.

Section 90 amended

53. Section 90 (1) of the principal Act is amended by deleting “2 years from the coming into operation of this Act.” and substituting the following —

“

5 years from the coming into operation of Part 3 of the
Real Estate Legislation Amendment Act 1995.

”

Schedule 1 amended and savings

54. (1) Schedule 1 to the principal Act is amended —

(a) in clause 1 —

(i) by deleting the definition of “authorized financial institution” and substituting the following definition —

“

“authorized financial institution”
means —

- (a) a bank;
- (b) a society; or
- (c) any other body,

that is prescribed or that belongs to
a class of bodies that is prescribed;

”

and

(ii) by deleting the definition of “building society” and substituting the following definition —

“

“society” means a society or foreign
society within the meaning of the
Financial Institutions (Western
Australia) Code.

”

(b) in clause 2 (2) —

(i) by deleting “subclause (1)” and substituting the following —

“ subclause (1) (a) ”; and

(ii) by deleting “within 28 days of his receipt thereof.” and substituting the following —

“
as soon as practicable after the agent’s
receipt of the bond.
”;

(c) by inserting after clause 2 (2) the following subclauses —

“
(3) A payment under subclause (1) (b)
shall —

(a) if paid by a real estate agent under the *Real Estate and Business Agents Act 1978*, be paid as soon as practicable after the agent’s receipt of the bond into an account in the name of the agent entitled “tenancy bond trust account”, and that account may only be used for the purpose of holding an amount or amounts paid under subclause (1) (b); and

(b) in any other case, be paid within 14 days of the receipt of the bond into a separate account in the names of the owner and the tenant entitled “tenancy bond account”.

(4) To avoid doubt, an account referred to in subclause (3) (a) is a trust account for the purposes of Part VI of the *Real Estate and Business Agents Act 1978*.

”;

(d) in clause 3 (2) (a) by deleting “6 (c)” and substituting the following —

“ 6 (1) (c) ”;

- (e) by inserting after clause 3 (3) the following subclause —

“

(3a) The income referred to in subclause (2) (b) and the moneys referred to in subclause (2) (c) may, with the approval of the Minister, be applied in payment of grants to bodies, other than public sector bodies within the meaning of the *Public Sector Management Act 1994*, which provide educational or advisory services to tenants.

”;

- (f) in clause 6 —

(i) by inserting after the clause designation “6.” the subclause designation “(1)”;

(ii) by deleting paragraph (a);

(iii) in paragraph (d) by inserting after “payment to the” the following —

“ credit of the ”; and

(iv) by inserting the following subclause —

“

(2) In regulations made under section 88 the prescribed rate referred to in subclause (1) (b) and (c) may be prescribed by reference to a market rate indicator specified in the regulations.

”;

- (g) by repealing clause 7 and substituting the following clause —

“

Disposal of security bond

7. (1) Where a security bond is held in an account referred to in clause 2 (3) (a), the real

estate agent in whose name the account is held shall on receipt of —

- (a) an application in the prescribed form signed by both parties to the residential tenancy agreement to which the bond relates; or
- (b) a copy of an order under clause 8,

pay from the account the amount of the bond, or where subclause (4) applies part of that amount, in accordance with the application or the order.

(2) A real estate agent shall pay an amount under subclause (1) —

- (a) within the period, if any, specified in the relevant application or order; or
- (b) if no such period is specified, as soon as practicable but, in any case, not later than 7 days after receipt of the application or copy of the order.

Penalty: \$1 000.

(3) Where a security bond is held in an account referred to in clause 2 (3) (b), the authorized financial institution which holds the account shall on receipt of —

- (a) an application in the prescribed form signed by both parties to the residential tenancy agreement to which the bond relates; or
- (b) a copy of an order under clause 8,

pay the amount of the bond, or where subclause (4) applies part of that amount, in accordance with the application or the order.

(4) An application under subclause (1) (a) or (3) (a) may relate to part of the amount of a security bond.

(5) The provisions of clause 5 (3), (4) and (5) apply for the purposes of this clause, and with the further provision that regulations

made under section 88 may authorize the payment of an unclaimed bond to the credit of the Rental Accommodation Fund referred to in clause 3.

”;

and

(h) in clause 8 (9) —

(i) by deleting “section” and substituting the following —

“ clause ”; and

(ii) by deleting “7 (2)” and substituting the following —

“ 7 (4) ”.

(2) A financial institution which held a security bond under Schedule 1 to the principal Act immediately before the commencement of this section may continue to hold the bond after that commencement as if this section had not been enacted and for that purpose, subject to subsection (3), regulations in force under section 88 of the principal Act immediately before that commencement continue to apply.

(3) The interest payable by a financial institution after the commencement of this section on the amount of a security bond referred to in subsection (2) is interest at the prescribed rate in force from time to time under clause 6 (1) of Schedule 1 to the principal Act as amended by this section.

Amendment of penalties

55. The provisions of the principal Act referred to in column 1 of the Table to this section are amended by deleting the amount referred to in column 2 and substituting the amount referred to in column 3.

Table

Column 1	Column 2	Column 3
s. 27 (1)	\$400	\$1 000
s. 28 (1)	\$400	\$1 000
s. 28 (2)	\$400	\$1 000
s. 29 (1)	\$400	\$1 000
s. 29 (4)	\$500	\$4 000
s. 33 (1)	\$400	\$1 000
s. 34 (1)	\$400	\$1 000
s. 35	\$400	\$1 000
s. 45 (2)	\$400	\$4 000
s. 45 (3)	\$400	\$4 000
s. 51 (1)	\$100	\$1 000
s. 51 (3)	\$100	\$1 000
s. 51 (4)	\$100	\$1 000
s. 52	\$400	\$1 000
s. 53 (1)	\$100	\$1 000
s. 53 (2)	\$100	\$1 000
s. 53 (3)	\$100	\$1 000
s. 54 (1)	\$400	\$1 000
s. 56 (1)	\$400	\$1 000
s. 56 (2)	\$400	\$1 000
s. 63 (3)	\$1 000	\$2 000
s. 80	\$2 000	\$4 000

Minor amendments relating to financial provisions

56. The provisions of the principal Act referred to in column 1 of the Table to this section are amended by deleting the word or words in column 2 and substituting the word or words in column 3.

Table

Column 1	Column 2	Column 3
s. 7 (3) (e)	paid into	credited to
s. 9 (8)	paid out of	charged to
s. 9 (9)	paid into	credited to
s. 25 (2)	paid out of	charged to
s. 79 (5)	paid from	paid from moneys standing to the credit of
s. 79 (6)	the Rental	moneys standing to the credit of the Rental
s. 79 (11)	paid into	credited to
s. 79 (12)	paid into	credited to
Schedule 1, cl. 3 (2)	paid into	credited to
	paid out of	charged to
Schedule 1, cl. 3 (4) (b)	paid into	credited to

PART 4 — SETTLEMENT AGENTS ACT 1981**Principal Act**

57. In this Part the *Settlement Agents Act 1981** is referred to as the principal Act.

[* Act No. 33 of 1981.

*For subsequent amendments see 1994 Index to
Legislation of Western Australia, Table 1, p. 195.]*

Section 3 amended

58. Section 3 (1) of the principal Act is amended —

- (a) by deleting the definitions of “building society”, “District Court”, “Part”, “section”, “subsection”, “Trust” and “Trust Interest Account”;
- (b) by deleting the definition of “bank” and substituting the following definition —

“

“bank” means —

- (a) a bank as defined in section 5 of the *Banking Act 1959* of the Commonwealth; or
- (b) a bank constituted by or under a law of the State;

”;

and

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

“**“Account”** means the Board Interest Account established under section 103 (1);

“General Purpose Fund” means the Education and General Purpose Fund established under section 102A (1);

“society” means a society or foreign society within the meaning of the Financial Institutions (Western Australia) Code;

”.

Section 4 amended

59. Section 4 (2) of the principal Act is amended by deleting “Part V, and Part VI” and substituting the following —

“ and Part V ”.

Section 8 amended

60. Section 8 of the principal Act is amended —

- (a) in subsection (1) —

- (i) by deleting “and” after paragraph (c); and

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

“

(ca) to conduct and promote education and provide advisory services for persons who are licensed or registered under this Act, or involved in the administration of this Act, and for members of the public on —

(i) matters relating to the operation of this Act;

(ii) matters relating to the policies of the Board;

(iii) matters relating to the operations of settlement agents; or

(iv) any other prescribed matter; and

”;

and

(b) by repealing subsection (3).

Section 11 repealed and a section substituted

61. Section 11 of the principal Act is repealed and the following section is substituted —

“

Remuneration and allowances

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

”.

Sections 12A, 12B and 12C inserted

62. After section 12 of the principal Act the following sections are inserted —

“

Consultants, etc.

12A. The Board may engage, under a contract for services or other arrangement, any consultants and professional, technical or other assistance that it considers necessary to enable it to perform its functions.

Minister may give directions

12B. (1) The Minister may give directions in writing to the Board with respect to the performance of its functions, either generally or in relation to a particular matter, and the Board shall give effect to any such direction.

(2) The text of any direction given under subsection (1) is to be included in the annual report submitted by the accountable authority of the Board under section 66 of the *Financial Administration and Audit Act 1985*.

Minister to have access to information

12C. (1) The Minister is entitled —

- (a) to have information in the possession of the Board; and
- (b) where the information is in or on a document, to have, and make and retain copies of, that document.

(2) For the purposes of subsection (1) the Minister may —

- (a) request the Board to furnish information to the Minister;
- (b) request the Board to give the Minister access to information;
- (c) for the purposes of paragraph (b) make use of the staff of the Board to obtain the information and furnish it to the Minister.

(3) The Board shall comply with a request under subsection (2) and make its staff and facilities available to the Minister for the purposes of paragraph (c) of that subsection.

(4) In this section —

“document” includes any tape, disc or other device or medium on which information is recorded or stored mechanically, photographically, electronically or otherwise;

“information” means information specified, or of a description specified, by the Minister that relates to the functions of the Board.

”

Division 1A of Part II inserted

63. After Division 1 of Part II of the principal Act the following Division is inserted —

“

Division 1A — Corporate plan

Corporate plan

12D. (1) The Board shall prepare a corporate plan for each financial year.

(2) A corporate plan for a financial year shall be prepared and submitted to the Minister for approval by 31 July in that year.

(3) A corporate plan shall include —

- (a) a statement of the objectives of the Board;
- (b) a statement of the policies and strategies that the Board intends to adopt in order to achieve the Board's objectives;
- (c) an estimate of the Board's income and expenditure for the relevant financial year;
- (d) the activities and improvements that the Board proposes to carry out; and
- (e) the resources that the Board proposes to allocate to those activities and improvements.

(4) The Board may, with the approval of the Minister, revise a corporate plan at any time.

Board to comply with corporate plan

12E. The Board shall ensure that, to the extent that it is practicable to do so, the performance of its functions and the exercise of its powers are consistent with, and designed to give effect to, the current corporate plan.

”

Section 43 amended

64. Section 43 (2) of the principal Act is amended by deleting paragraph (a) and substituting the following paragraph —

“

- (a) it is contained in a document which —
 - (i) clearly identifies the real estate transaction or the business transaction, as the case may be; and
 - (ii) contains such other information, if any, as is prescribed;

”.

Section 44 amended

65. (1) Section 44 of the principal Act is amended —

- (a) by repealing subsections (1), (2) and (3) and substituting the following subsections —

“

(1) The Board may, with the approval of the Minister, by notice published in the *Government Gazette* fix the maximum amount of remuneration that a licensee is to receive for a service rendered by the licensee in performing the functions referred to in sections 46 and 47.

(2) The Board may, with the approval of the Minister, by further notice published in the *Government Gazette*, amend or revoke a notice under subsection (1).

(3) An amount fixed under subsection (1) takes effect on the date on

which the notice fixing the amount is published in the *Government Gazette* or on such subsequent date as is specified in the notice.

(3a) 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 a settlement agent, any reward which exceeds that amount in value.

”;

and

- (b) in subsection (9) by deleting “is liable to a penalty not exceeding \$2 000.” and substituting the following —

“

is liable to —

- (a) in the case of an offence against subsection (4), a penalty not exceeding \$5 000; and
- (b) in any other case, a penalty not exceeding \$20 000.

”.

(2) A notice under section 44 (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 44 (1) of the principal Act as inserted by this section.

Section 48 amended

66. Section 48 of the principal Act is amended —

- (a) by deleting the definition of “bank account” and substituting the following definition —

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

- (b) in the definition of “banker” by deleting “or a building society” and substituting the following —

“ , society or other body ”; and

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

“
 “authorized financial institution”
 means —

- (a) a bank;

(b) a society; or

(c) any other body,

that is prescribed or that belongs to a
class of bodies that is prescribed;

“separate account” means a trust
account referred to in section 49A (1);

”.

Section 49 amended

67. (1) Section 49 (1) of the principal Act is amended —

- (a) by deleting “at least one trust account, designated or evidenced as such” and substituting the following —

“
one or more trust accounts, designated or
evidenced as such in the prescribed manner ”;

- (b) by deleting “a bank in the State, or with a building society in the State” and substituting the following —

“ an authorized financial institution ”; and

- (c) by inserting after “that account” the following —

“ or those accounts ”.

(2) Section 49 (3) of the principal Act is amended by deleting “the” in the first place where it occurs and substituting the following —

“ a ”.

(3) Section 49 (4) of the principal Act is amended by deleting “his” and substituting the following —

“ a ”.

Sections 49A, 49B and 49C inserted

68. After section 49 of the principal Act the following sections are inserted —

“
Person may request separate trust account

49A. (1) A person may request that moneys paid by that person to a settlement agent in respect of a

transaction be deposited to the credit of a separate interest bearing trust account maintained in accordance with section 49.

(2) A request shall be in writing.

(3) A settlement agent shall, subject to subsection (4), comply with a request.

(4) Where requirements are prescribed under subsection (6), a settlement agent shall only comply with a request if satisfied that those requirements have been met.

(5) A settlement 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 123 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 settlement 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).

Payment of interest on trust accounts

49B. (1) Every authorized financial institution with which a trust account is maintained shall pay to the credit of the Account interest on the balance of the trust account at the prescribed rate at such times as are prescribed.

(2) Subsection (1) does not apply to a separate account.

(3) Where a court convicts an authorized financial institution of an offence under subsection (1) and interest required to be paid under that subsection remains outstanding, the court may, in addition to imposing a penalty, order the institution to pay to the credit of the Account an amount equal to the amount of that interest, and any such order may be enforced as if it were a judgment of the court.

(4) In regulations made under section 123 the prescribed rate referred to in subsection (1) may be prescribed by reference to a market rate indicator specified in the regulations.

Board to be given certain information in relation to trust accounts

49C. (1) When a settlement agent opens or closes a trust account, the settlement agent shall, as soon as is practicable, inform the Board in writing of the opening or closure of the trust account and, in doing so, shall specify —

- (a) the name and number of the trust account; and
- (b) the name and address of the authorized financial institution with which the trust account is or was maintained.

(2) Subsection (1) does not apply to a separate account.

(3) If a settlement agent's trust account is overdrawn, both the settlement agent and the authorized financial institution with which the trust account is maintained shall, as soon as is practicable, inform the Board in writing of —

- (a) the name and number of the trust account;
and
- (b) the amount by which the trust account is
overdrawn.

”.

Section 50 amended

69. Section 50 of the principal Act is amended —

- (a) by repealing subsections (1) and (2) and substituting the following subsections —

“

(1) When a settlement 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.

”.

- (b) in subsection (3) by deleting “the retained duplicates in the appropriate books” and substituting the following —

“ records kept under subsection (1) (b) ”;

- (c) by repealing subsection (4); and

- (d) in subsection (5) —

- (i) by deleting “Subsections (2) to (4), both inclusive, do” and substituting the following —

“ Subsection (3) does ”; and

- (ii) by deleting “receipt records” and substituting the following —

“ records of moneys received ”.

Section 53 amended

70. Section 53 (1) and (2) of the principal Act are amended by deleting “registered company auditor within the meaning of the *Companies (Western Australia) Code*” and substituting in each case the following —

“
person registered as an auditor, or taken to be
registered as an auditor, under Part 9.2 of the
Corporations Law

”.

Section 60 amended

71. Section 60 of the principal Act is amended —

- (a) by inserting “and” after paragraph (d); and

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

Section 65 amended

72. Section 65 of the principal Act is amended by deleting "Penalty: \$300." at the foot of subsection (1) and substituting the following —

"

Penalty: (a) in the case of an offence against
section 49B (1), \$10 000;

(b) in any other case, \$3 000.

".

Section 81A inserted

73. After section 81 of the principal Act the following section is inserted —

"

**Power of Registrar to obtain information
relating to trust accounts**

81A. (1) The Registrar may require —

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

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

(2) A requirement under subsection (1) —

- (a) shall be given by notice in writing to the person required to give the information;
- (b) shall specify the time at or within which the information is to be given;
- (c) may, by its terms, require that the information be —
 - (i) given in writing;
 - (ii) certified as correct by a person who is registered as an auditor, or taken to be registered as an auditor, under Part 9.2 of the Corporations Law 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
 - (v) given on oath or affirmation or by statutory declaration;

and

- (d) shall state that the person to whom the notice is given is required under this Act to give the information.

(3) A person shall not, without reasonable excuse, refuse or fail to comply with a requirement under subsection (1).

Penalty: \$3 000.

(4) A person shall not give information in response to a requirement under subsection (1) that

the person knows is false or misleading in a material particular.

Penalty: \$3 000.

(5) It is a defence in proceedings for an offence against subsection (3) for the person to show that —

- (a) the notice under subsection (2) (a) did not state that the person was required under this Act to give the information; or
- (b) the time specified in the requirement did not give the person sufficient notice to enable compliance with the requirement.

(6) Where a person is required to give information under subsection (1), the person shall not refuse to comply with that requirement on the ground that the information may tend to incriminate the person or render the person liable to any penalty.

(7) Despite subsection (6), information given under this section is not admissible in evidence in any proceedings against the person other than proceedings in respect of an offence against subsection (4).

(8) The power conferred by subsection (1) is in addition to any other powers of the Registrar under this Act.

”.

Section 84 amended

74. Section 84 of the principal Act is amended by inserting after subsection (3) the following subsection —

“

(4) No penalty provided for elsewhere in this Act in relation to the conduct of a settlement agent is to be taken to limit the powers exercisable by the Board under subsection (1).

”.

Section 87 amended

75. Section 87 (2) of the principal Act is repealed and the following subsection is substituted —

“

(2) The Fidelity Guarantee Fund is to be kept —

- (a) at the Treasury forming part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*; or
- (b) with the approval of the Treasurer, at a bank.

”

Section 88 amended

76. Section 88 of the principal Act is amended by deleting paragraphs (b) and (c) and substituting the following paragraphs —

“

- (b) income derived from the investment, under section 89, of moneys standing to the credit of the Fidelity Guarantee Fund;
- (c) all moneys transferred to the Fidelity Guarantee Fund under section 105 (b);

”

Section 89 repealed and a section substituted

77. Section 89 of the principal Act is repealed and the following section is substituted —

“

Investment of Fidelity Guarantee Fund

89. (1) Moneys standing to the credit of the Fidelity Guarantee Fund may, until required for the

purposes of section 90, be invested in the same manner as —

- (a) public moneys may be invested under section 38 of the *Financial Administration and Audit Act 1985*; or
- (b) trust funds may be invested in accordance with Part III of the *Trustees Act 1962*.

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

”.

Section 90 amended

78. Section 90 of the principal Act is amended —

- (a) by inserting “and” after paragraph (e); and
- (b) by deleting paragraph (f) and “and” after that paragraph.

Section 98 amended

79. Section 98 (3) (b) of the principal Act is amended by deleting “\$1 000” in the 3 places where it occurs and substituting in each place the following —

“ \$2 500 ”.

Part VA inserted

80. After section 102 of the principal Act the following Part is inserted —

“

**PART VA — EDUCATION AND GENERAL
PURPOSE FUND**

**Education and General Purpose Fund
established**

102A. (1) An account called the “Education and General Purpose Fund” is to be established and kept —

- (a) at the Treasury forming part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*; or
- (b) with the approval of the Treasurer, at a bank.

(2) The General Purpose Fund is to be administered by the Board.

Moneys credited to General Purpose Fund

102B. There are to be credited to the General Purpose Fund —

- (a) income derived from the investment, under section 102D, of moneys standing to the credit of the General Purpose Fund;
- (b) all moneys transferred to the General Purpose Fund under section 105 (b);

- (c) fees, costs and other moneys lawfully received by or payable to the Board;
- (d) fines imposed under section 84;
- (e) fines imposed for offences under this Act; and
- (f) any moneys, other than moneys referred to in paragraphs (a), (b), (c), (d) and (e), that may lawfully be credited to the General Purpose Fund.

Application of General Purpose Fund

102C. There are to be charged to the General Purpose Fund —

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

Investment of General Purpose Fund

102D. (1) Moneys standing to the credit of the General Purpose Fund may, until required for the purposes of section 102C, be invested in the same manner as —

- (a) public moneys may be invested under section 38 of the *Financial Administration and Audit Act 1985*; or
- (b) trust funds may be invested in accordance with Part III of the *Trustees Act 1962*.

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

”.

Part VI repealed and a Part substituted

81. Part VI of the principal Act is repealed and the following Part is substituted —

“

PART VI — BOARD INTEREST ACCOUNT

Board Interest Account established

103. (1) An account called the “Board Interest Account” is to be established and kept —

- (a) at the Treasury forming part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*; or
- (b) with the approval of the Treasurer, at a bank.

(2) The Account is to be administered by the Board.

Moneys credited to Account

104. There are to be credited to the Account —

- (a) all moneys paid to the credit of the Account under section 49B;
- (b) income derived from the investment, under section 106, of moneys standing to the credit of the Account; and
- (c) any moneys, other than moneys referred to in paragraphs (a) and (b), that may lawfully be credited to the Account.

Application of Account

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

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

Investment of Account

106. (1) Moneys standing to the credit of the Account may, until required for the purposes of section 105, be invested in the same manner as —

(a) public moneys may be invested under section 38 of the *Financial Administration and Audit Act 1985*; or

(b) trust funds may be invested in accordance with Part III of the *Trustees Act 1962*.

(2) Income derived from any such investment is to be credited to the Account.

”.

Section 112 amended

82. Section 112 (2) of the principal Act is repealed.

Section 123 amended

83. Section 123 (2) of the principal Act is amended by deleting paragraphs (h) and (i) and substituting the following paragraphs —

“

(h) prescribe a body or class of bodies for the purposes of the definition of “authorized financial institution” in section 48;

(i) prescribe a rate of interest and the times at which such interest is to be paid for the purposes of section 49B (1);

(ia) prescribe the information to be contained in a receipt for the purposes of section 50 (1) (a);

- (ib) 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 50 (2);
- (ic) prescribe the times at which and the proportions in which moneys are to be paid or transferred under section 105;

”.

Various references to “bank or building society” changed

84. The provisions of the principal Act referred to in the Table to this section are amended by deleting “bank or building society” and substituting the following —

“ bank, society or other body ”.

Table

s. 73 (1) (twice)	s. 80 (1) (a)
s. 76 (2) (a) (ii)	s. 80 (2) (a)
s. 79 (1) (b)	s. 80 (3) (a)

Amendment of penalties

85. The provisions of the principal Act referred to in column 1 of the Table to this section are amended by deleting the amount referred to in column 2 and substituting the amount referred to in column 3.

Table

Column 1	Column 2	Column 3
s. 17 (1)	\$300	\$3 000
s. 19 (7)	\$500	\$5 000
s. 20 (2)	\$500	\$5 000
s. 26 (1)	\$2 000	\$20 000
s. 37 (1)	\$100	\$1 000

s. 38 (1) and (2)	\$100	\$1 000
s. 40	\$500	\$20 000
s. 41	\$100	\$1 000
s. 43 (8)	\$2 000	\$5 000
s. 45	\$500	\$5 000
s. 77	\$400	\$4 000
s. 80 (5)	\$400	\$4 000
s. 84 (1) (b)	\$1 000	\$10 000
s. 86 (1)	\$500	\$10 000
s. 86 (2)	\$500	\$5 000
s. 120 (2)	\$200	\$2 000
s. 123 (2) (1)	\$100	\$1 000

Minor amendments relating to financial provisions

86. The provisions of the principal Act referred to in column 1 of the Table to this section are amended by deleting the word or words in column 2 and substituting the word or words in column 3.

Table

Column 1	Column 2	Column 3
s. 71 (2)	Board from	Board from moneys standing to the credit of
s. 74 (3) (b) (ii)	deposit	credit
	in a separate account at the Treasury	to a separate account at the Treasury, forming part of the Trust Fund constituted under section 9 of the <i>Financial Administration and Audit Act 1985</i> ,

s. 74 (4) (a)	deposited in	credited to
s. 74 (4) (b)	deposited in	credited to
s. 79 (2) (a)	paid into	credited to
	Treasury	Treasury as part of the Trust Fund constituted under section 9 of the <i>Financial Administration and Audit Act 1985</i>
s. 79 (4)	moneys therein	moneys standing to the credit of the account
	remaining in	standing to the credit of
s. 88	placed to the credit of	credited to
s. 88 (a)	paid to or on account of	paid to the credit of
s. 88 (e)	paid into	credited to
s. 89 (1)	moneys in	moneys standing to the credit of
s. 90	paid out of	charged to
s. 90 (e)	paid from	charged to
s. 90 (g)	payable out of	chargeable to
s. 92 (2)	paid by the Board into	credited by the Board to

s. 94 (1)	the Fund is	moneys standing to the credit of the Fund are
	payment into	payment to the credit of
s. 95 (3)	paid or be payable out of	charged or be chargeable to
s. 97	the Fund	moneys standing to credit of the Fund
s. 98 (1) (twice)	Fund is	moneys standing to the credit of the Fund are
s. 100	paid into	credited to

Transitional

87. (1) In this section —

“Board Interest Account” means the account established under section 103 of the principal Act as inserted by section 81;

“commencement day” means the day on which section 81 comes into operation;

“General Purpose Fund” means the account established under section 102A of the principal Act as inserted by section 80;

“licensee” has the same meaning as it has in the principal Act;

“prescribed day” means the day on which the last of the moneys standing to the credit of the Trust are paid or credited in accordance with subsection (2) (a), (b) or (c);

“Trust” means the Settlement Agents Deposit Trust established under section 104 of the principal Act as in force before the commencement day;

“Trust Interest Account” means the account referred to in section 108 of the principal Act as in force before the commencement day.

(2) Within 6 months from the commencement day the Trust is to be wound up in the following manner —

- (a) moneys deposited by a licensee to the credit of the Trust are to be returned to that licensee or to any other person lawfully entitled to receive those moneys;
- (b) if, for any reason, it is not possible to return moneys as required by paragraph (a), those moneys are to be paid to the Treasurer to be dealt with by the Treasurer as if they were prescribed retained money under the *Unclaimed Money Act 1990*; and
- (c) any moneys standing to the credit of the Trust after paragraphs (a) and (b) have been complied with are to be credited to the General Purpose Fund.

(3) If the moneys standing to the credit of the Trust are insufficient for the purpose of complying with paragraph (a) the amount of the insufficiency is to be charged to the General Purpose Fund.

(4) On the commencement day —

- (a) the Trust Interest Account is to be closed;

- (b) moneys standing to the credit of the Trust Interest Account are to be credited to the Board Interest Account; and
- (c) any moneys chargeable to the Trust Interest Account and outstanding on that day become chargeable to the Board Interest Account.

(5) Any moneys that would have been chargeable to the Trust Interest Account if section 81 had not been enacted are chargeable to the Board Interest Account at the time and in the manner in which those moneys would have been chargeable to the Trust Interest Account.

(6) Income derived from investments made under section 107 of the principal Act before the commencement day that would have been payable to the credit of the Trust Interest Account is to be credited to the Board Interest Account.

(7) Despite its repeal by section 82 of this Act, subsection (2) of section 112 of the principal Act is to be taken to continue to apply for the purposes of any report prepared under that section in respect of the Trust.

(8) The accountable authority, within the meaning of the *Financial Administration and Audit Act 1985*, of the Board is to cause to be prepared a final report on the Trust in accordance with the requirements of section 66 of that Act as modified by subsection (9).

(9) The period to which the report referred to in subsection (8) relates is to be limited —

- (a) in the case of the report on the operations of the Trust, to the period from 1 July immediately following the last period reported on under section 112 of the principal Act to the prescribed day;

- (b) in the case of the financial statements, to the period from 1 January or 1 July immediately following the last period reported on under section 112 of the principal Act, whichever is the earlier, to the prescribed day,

and Division 14 of Part II of the *Financial Administration and Audit Act 1985* applies as if each of the periods referred to in paragraphs (a) and (b) were a full financial year.

(10) Financial statements prepared —

- (a) under section 112 of the principal Act in respect of the Trust for a period ending after the commencement day but before the prescribed day; or
- (b) under subsection (8),

are to contain details of moneys paid under subsection (2) (a) or (b).

(11) Despite the repeal of Part VI of the principal Act by section 81, the Trust continues in existence until the prescribed day.

PART 5 — CONSEQUENTIAL AMENDMENT

***Sentencing Act 1995* amended**

88. Schedule 1 to the *Sentencing Act 1995* is amended by inserting in the appropriate alphabetical positions the following —

“

<i>Real Estate and Business Agents Act 1978</i>	Education and General Purpose Fund.
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<i>Settlement Agents Act 1981</i>	Education and General Purpose Fund.
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”.
