



New South Wales

Real Estate Services Council Bill 2019

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to establish and confer functions on the Real Estate Services Council for New South Wales.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Clause 3 defines certain words and expressions used in the proposed Act.

Part 2 Constitution and management of Real Estate Services Council

Clause 4 constitutes the Real Estate Services Council (the *Council*) as a body corporate.

Clause 5 provides that the Council is, for the purposes of any Act, a NSW Government agency.

Clause 6 provides that the Council is subject to the control and direction of the Minister administering the proposed Act (the *Minister*) in the exercise of its functions, except in relation to the contents of any advice, report or recommendation given to the Minister.

Clause 7 provides for the establishment of a Board of the Council (the *Board*).

The Board is to consist of the following members—

- (a) 1 person appointed by the Minister as the Chairperson of the Board,
- (b) 1 person appointed by the Minister from a panel of 3 persons nominated by the Owners Corporation Network of Australia Ltd,
- (c) 1 person appointed by the Minister from a panel of 3 persons nominated by the Australian Consumers' Association,
- (d) 3 persons appointed by the Minister from a panel of 5 persons nominated by The Real Estate Institute of New South Wales Limited,
- (e) 1 person appointed by the Minister from a panel of 3 persons nominated by the Australian Livestock and Property Agents Association Ltd,
- (f) 1 person appointed by the Minister from a panel of 3 persons nominated by the Head of School, School of Built Environment, Faculty of Design, Architecture and Building, University of Technology Sydney (after consulting with the senior members of that school),
- (g) the Real Estate Services Commissioner.

Clause 8 enables the Board to may establish other committees to assist it in connection with the exercise of any of its functions. The members of a committee need not be members of the Board.

Clause 9 provides for the appointment of a Real Estate Services Commissioner (the *Commissioner*) by the Governor, on the recommendation of the Council (other than an incumbent Commissioner). Any act, matter or thing done in the name of, or on behalf of, the Council by the Commissioner is taken to have been done by the Council.

Clause 10 allows staff to be employed in the Public Service to enable the Council to exercise its functions.

Part 3 Objects and functions of Real Estate Services Council

Clause 11 sets out the objects of the Council, being—

- (a) to promote appropriate standards of conduct and competency for agents, and
- (b) to protect the interests of persons who deal with agents, and
- (c) to facilitate the resolution of disputes between agents and persons who deal with them.

The Council is to exercise its functions with a view to achieving these objects.

Clause 12 sets out the functions of the Council, being—

- (a) to provide advice, reports or recommendations to the Minister relating to the following—
 - (i) the business of agents,
 - (ii) the education, training and continuing professional development of agents,
 - (iii) consumer protection,
 - (iv) any other matter requested by the Minister, and
- (b) to provide public information and guidance programs, and
- (c) other functions conferred or imposed on it by or under the proposed Act or any other Act.

Part 4 Miscellaneous

Clause 13 deals with the recovery of amounts due to the Council.

Clause 14 deals with the service of documents.

Clause 15 protects persons involved in the administration of the proposed Act from personal liability if acting in good faith.

Clause 16 enables the Council and the Commissioner to delegate their functions to specified other persons.

Clause 17 makes it an offence for a person to disclose information obtained in connection with the administration or execution of the proposed Act except in certain circumstances. The maximum penalty is 20 penalty units (currently, \$2,200).

Clause 18 provides that proceedings for an offence under the proposed Act may be dealt with summarily before the Local Court.

Clause 19 enables the Governor to make regulations for the purposes of the proposed Act.

Schedule 1 Savings, transitional and other provisions

Schedule 1 contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

Schedule 2 Constitution and procedure of Board

Schedule 2 sets out the provisions relating to the appointed members of the Board, including their appointment, term of office and vacancy and removal. The Schedule also deals with the procedure of meetings of the Board.

Schedule 3 Provisions relating to Real Estate Services Commissioner

Schedule 3 contains provisions relating to the office of Commissioner, including provisions dealing with the term of office, vacancy and removal from that office. The Schedule also makes provision for an Acting Commissioner.

Schedule 4 Amendment of Acts

Schedule 4 makes amendments to the following Acts—

- (a) the *Property, Stock and Business Agents Act 2002* to give the Council certain functions under that Act currently exercised by the Commissioner for Fair Trading,
- (b) the *Statutory and Other Offices Remuneration Act 1975* regarding the determination of the remuneration of the Commissioner.



New South Wales

Real Estate Services Council Bill 2019

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New South Wales

Real Estate Services Council Bill 2019

No. , 2019

A Bill for

An Act to constitute and confer functions on the Real Estate Services Council; and for related purposes.

The Legislature of New South Wales enacts—	1
Part 1 Preliminary	2
1 Name of Act	3
This Act is the <i>Real Estate Services Council Act 2019</i> .	4
2 Commencement	5
This Act commences on the date of assent to this Act.	6
3 Definitions	7
(1) In this Act—	8
agent has the same meaning as in the <i>Property, Stock and Business Agents Act 2002</i> .	9
Board means the Board of the Council established under this Act.	10
Commissioner means the Real Estate Services Commissioner appointed under this Act.	11
Council means the Real Estate Services Council constituted under this Act.	12
function includes a power, authority or duty, and exercise a function includes perform a duty.	13
Note. The <i>Interpretation Act 1987</i> contains definitions and other provisions that affect the interpretation and application of this Act.	14
(2) Notes included in this Act do not form part of this Act.	15

Part 2	Constitution and management of Real Estate Services Council	1
		2
4	Constitution of Council	3
	There is constituted by this Act a body corporate with the corporate name of the Real Estate Services Council.	4 5
5	Status of Council	6
	The Council is, for the purposes of any Act, a NSW Government agency.	7
6	Ministerial control	8
	The Council is subject to the control and direction of the Minister in the exercise of its functions, except in relation to the contents of any advice, report or recommendation given to the Minister.	9 10 11
7	Board of Council	12
(1)	There is to be a Board of the Council.	13
(2)	The Board is to consist of the following members—	14
(a)	1 person appointed by the Minister as the Chairperson of the Board,	15
(b)	1 person appointed by the Minister from a panel of 3 persons nominated by the Owners Corporation Network of Australia Ltd,	16 17
(c)	1 person appointed by the Minister from a panel of 3 persons nominated by the Australian Consumers' Association,	18 19
(d)	3 persons appointed by the Minister from a panel of 5 persons nominated by The Real Estate Institute of New South Wales Limited,	20 21
(e)	1 person appointed by the Minister from a panel of 3 persons nominated by the Australian Livestock and Property Agents Association Ltd,	22 23
(f)	1 person appointed by the Minister from a panel of 3 persons nominated by the Head of School, School of Built Environment, Faculty of Design, Architecture and Building, University of Technology Sydney (after consulting with the senior members of that school),	24 25 26 27
(g)	the Commissioner.	28
	Note. Schedule 2 sets out the provisions relating to the members and procedure of the Board.	29
8	Other committees of Council	30
(1)	The Board may establish other committees to assist it in connection with the exercise of any of its functions.	31 32
(2)	The members of a committee need not be members of the Board.	33
(3)	The procedure for the calling of meetings of a committee and for the conduct of business at those meetings is to be as determined by the Council or (subject to any determination of the Council) by the committee.	34 35 36
9	Real Estate Services Commissioner	37
(1)	The Governor, on the recommendation of the Council (other than an incumbent Commissioner), may appoint a Real Estate Services Commissioner.	38 39
(2)	The Commissioner is responsible for the day to day management of the affairs of the Council in accordance with the policies and general directions of the Board.	40 41

- (3) Any act, matter or thing done in the name of, or on behalf of, the Council by the Commissioner is taken to have been done by the Council. 1
2
Note. Schedule 3 sets out further provisions relating to the Commissioner. 3

10 Staff 4

Persons may be employed in the Public Service under the *Government Sector Employment Act 2013* to enable the Council to exercise its functions. 5
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Note. Section 59 of the *Government Sector Employment Act 2013* provides that the persons so employed (or whose services the Council makes use of) may be referred to as officers or employees, or members of staff, of the Council. Section 47A of the *Constitution Act 1902* precludes the Council from employing staff. 7
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Part 3	Objects and functions of Real Estate Services Council	1
11	Object of Council	2
(1)	The objects of the Council are as follows—	3
(a)	to promote appropriate standards of conduct and competency for agents,	4
(b)	to protect the interests of persons who deal with agents,	5
(c)	to facilitate the resolution of disputes between agents and persons who deal with them.	6
(2)	The Council is to exercise its functions with a view to achieving these objects.	7
12	Functions of Council	8
	The Council has the following functions—	9
(a)	to provide advice, reports or recommendations to the Minister relating to the following—	10
(i)	the business of agents,	11
(ii)	the education, training and continuing professional development of agents,	12
(iii)	consumer protection,	13
(iv)	any other matter requested by the Minister,	14
(b)	to provide public information and guidance programs,	15
(c)	other functions as are conferred or imposed on it by or under this or any other Act.	16
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Part 4	Miscellaneous	1
13	Recovery of amounts due to Council	2
	Any charge, fee or other money due to the Council may be recovered by the Council as a debt in a court of competent jurisdiction.	3 4
14	Service of documents	5
(1)	A document that is authorised or required by this Act or the regulations to be served on any person may be served by any of the following methods—	6 7
(a)	in the case of an individual—by personal delivery to the person,	8
(b)	by post to the address specified by the person for the service of documents of that kind,	9 10
(c)	in the case of an individual who has not specified such an address—by post to the residential or business address of the person last known to the person serving the document,	11 12 13
(d)	in the case of a corporation—by post to the registered office or any other office of the corporation or by leaving it at any such office with a person apparently over the age of 16 years,	14 15 16
(e)	by email to an email address specified by the person for the service of documents of that kind,	17 18
(f)	by any other method authorised by the regulations for the service of documents of that kind.	19 20
(2)	A document may be served on the Council by any of the following methods—	21
(a)	by post to the address specified by the Council for the service of documents of that kind,	22 23
(b)	by post to an office of the Council or by leaving it at any such office with a person apparently over the age of 16 years,	24 25
(c)	by email to an email address specified by the Council for the service of documents of that kind,	26 27
(d)	by any other method authorised by the regulations for the service of documents of that kind.	28 29
(3)	Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person or the Council by any other method.	30 31 32
(4)	In this section, <i>serve</i> includes give or send.	33
15	Personal liability	34
(1)	A matter or thing done or omitted to be done by the Commissioner or a person acting under the direction of the Council, Board or Commissioner does not, if the matter or thing was done or omitted to be done in good faith for the purpose of exercising a function under this Act, subject the Commissioner or person so acting personally to any action, liability, claim or demand.	35 36 37 38 39
(2)	However, any such liability attaches instead to the Crown.	40
16	Delegation	41
(1)	The Council may delegate the exercise of any function of the Council under this Act (other than this power of delegation) to—	42 43
(a)	any member of staff of the Council, or	44

(b)	any person, or any class of persons, authorised for the purposes of this section by the regulations.	1 2
(2)	The Commissioner may delegate the exercise of any function of the Commissioner under this Act (other than this power of delegation) to—	3 4
(a)	any member of staff of the Council, or	5
(b)	any person, or any class of persons, authorised for the purposes of this section by the regulations.	6 7
17	Disclosure of information	8
	A person must not disclose any information obtained in connection with the administration or execution of this Act (or any other Act conferring or imposing functions on the Council) unless that disclosure is made—	9 10 11
(a)	with the consent of the person from whom the information was obtained, or	12
(b)	in connection with the administration or execution of this Act (or any such other Act), or	13 14
(c)	for the purposes of any legal proceedings arising out of this Act (or any such other Act) or of any report of any such proceedings, or	15 16
(d)	in accordance with a requirement imposed under the <i>Ombudsman Act 1974</i> , or	17
(e)	with other lawful excuse.	18
	Maximum penalty— 20 penalty units.	19
18	Nature of proceedings for offences	20
	Proceedings for an offence under this Act or the regulations may be dealt with summarily before the Local Court.	21 22
19	Regulations	23
	The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.	24 25 26 27

Schedule 1 Savings, transitional and other provisions 1

Part 1 General 2

1 Regulations 3

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act. 4
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- (2) Any such provision— 6
 - (a) may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date, and 7
8
 - (b) has effect despite anything to the contrary in this Schedule. 9
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as— 10
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 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or 13
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 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication. 16
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18
- (4) Without limiting subclauses (1) and (2), regulations made for the purposes of this clause may amend this Schedule to provide for additional or different savings and transitional provisions instead of including the provisions in the regulations. 19
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21

Schedule 2	Constitution and procedure of Board	1
Part 1	General	2
1	Definitions	3
	In this Schedule—	4
	<i>appointed member</i> means a person who is appointed by the Minister as a member of the Board.	5 6
	<i>Chairperson</i> means the Chairperson of the Board.	7
	<i>member</i> means any member of the Board.	8
Part 2	Constitution	9
2	Terms of office of members	10
	Subject to this Schedule and the regulations, an appointed member holds office for such period (not exceeding 3 years) as is specified in the member’s instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.	11 12 13
3	Part-time appointments	14
	Appointed members hold office as part-time members.	15
4	Remuneration	16
	The Minister may from time to time determine an amount of remuneration (including travelling and subsistence allowances) in respect of the office of appointed members.	17 18
5	Deputies	19
(1)	A member may, from time to time, appoint a person to be the deputy of the member, and may revoke any such appointment.	20 21
(2)	In the absence of a member, the member’s deputy may, if available, act in the place of the member.	22 23
(3)	While acting in the place of a member, a person has all the functions of the member and is taken to be a member.	24 25
(4)	For the purposes of this clause, a vacancy in the office of a member is taken to be an absence of the member.	26 27
(5)	This clause does not operate to confer on the deputy of a member who is the Chairperson the member’s functions as Chairperson.	28 29
6	Vacancy in office of member	30
(1)	The office of an appointed member becomes vacant if the member—	31
(a)	dies, or	32
(b)	completes a term of office and is not re-appointed, or	33
(c)	resigns the office by instrument in writing addressed to the Minister, or	34
(d)	is removed from office by the Minister under this clause, or	35
(e)	is absent from 3 consecutive meetings of the Board of which reasonable notice has been given to the member personally or by post, except on leave granted by the Minister or unless the member is excused by the Minister for having been absent from those meetings, or	36 37 38 39

(f)	becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or	1 2 3
(g)	becomes a mentally incapacitated person, or	4
(h)	is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.	5 6 7 8
(2)	The Minister may remove an appointed member from office at any time.	9
7	Filling of vacancy in office of appointed member	10
	If the office of any appointed member becomes vacant, a person is, subject to this Act and the regulations, to be appointed to fill the vacancy.	11 12
8	Chairperson	13
(1)	The Chairperson vacates office as Chairperson if he or she—	14
(a)	is removed from that office by the Minister under this clause, or	15
(b)	resigns that office by instrument in writing addressed to the Minister, or	16
(c)	ceases to be a member of the Board.	17
(2)	The Minister may at any time remove the Chairperson from office as Chairperson.	18
9	Disclosure of pecuniary interests	19
(1)	If—	20
(a)	a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Board, and	21 22
(b)	the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,	23 24
	the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.	25 26
(2)	A disclosure by a member at a meeting of the Board that the member—	27
(a)	is a member, or is in the employment, of a specified company or other body, or	28
(b)	is a partner, or is in the employment, of a specified person, or	29
(c)	has some other specified interest relating to a specified company or other body or to a specified person,	30 31
	is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person that may arise after the date of the disclosure and that is required to be disclosed under subclause (1).	32 33 34
(3)	Particulars of any disclosure made under this clause must be recorded by the Board in a book kept for that purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the Board.	35 36 37
(4)	After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Board otherwise determines—	38 39
(a)	be present during any deliberation of the Board with respect to the matter, or	40
(b)	take part in any decision of the Board with respect to the matter.	41
(5)	For the purposes of the making of a determination by the Board under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not—	42 43 44

(a)	be present during any deliberation of the Board for the purpose of making the determination, or	1
(b)	take part in the making by the Board of the determination.	2
(6)	A contravention of this clause does not invalidate any decision of the Board.	3
(7)	This clause applies to a member of a committee of the Board and the committee in the same way as it applies to a member of the Board and the Board.	4
10	Effect of certain other Acts	5
(1)	The provisions of the <i>Government Sector Employment Act 2013</i> relating to the employment of Public Service employees do not apply to an appointed member.	6
(2)	If by or under any Act provision is made—	7
(a)	requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or	8
(b)	prohibiting the person from engaging in employment outside the duties of that office,	9
	the provision does not operate to disqualify the person from holding that office and also the office of an appointed member or from accepting and retaining any remuneration payable to the person under this Act as a member.	10
11	Personal liability	11
	A matter or thing done or omitted to be done by the Board, a member of the Board or a person acting under the direction of the Board does not, if the matter or thing was done or omitted to be done in good faith for the purpose of executing this or any other Act, subject a member or a person so acting personally to any action, liability, claim or demand.	12
Part 3	Procedure	13
12	General procedure	14
	The procedure for the calling of meetings of the Board and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Board.	15
13	Quorum	16
	The quorum for a meeting of the Board is a majority of its members for the time being.	17
14	Presiding member	18
(1)	The Chairperson (or, in the absence of the Chairperson, a person elected by the members of the Board who are present at a meeting of the Board) is to preside at a meeting of the Board.	19
(2)	The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.	20
15	Voting	21
	A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.	22

16	Transaction of business outside meetings or by telephone etc	1
(1)	The Board may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Board for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Board made at a meeting of the Board.	2 3 4 5
(2)	The Board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone or other electronic means, but only if any member who speaks on a matter before the meeting can be heard by the other members.	6 7 8 9
(3)	For the purposes of—	10
(a)	the approval of a resolution under subclause (1), or	11
(b)	a meeting held in accordance with subclause (2),	12
	the Chairperson and each other member have the same voting rights as they have at an ordinary meeting of the Board.	13 14
(4)	A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Board.	15 16
(5)	Papers may be circulated among the members for the purposes of subclause (1) by electronic means.	17 18
17	First meeting	19
	The Minister may call the first meeting of the Board in such manner as the Minister thinks fit.	20 21

Schedule 3	Provisions relating to Real Estate Services Commissioner	1
		2
1	Appointment of Real Estate Services Commissioner	3
(1)	The Commissioner holds office for the term, not exceeding 5 years, specified in the instrument of appointment, but is eligible for re-appointment.	4 5
(2)	The office of Commissioner is a statutory office and the provisions of the <i>Government Sector Employment Act 2013</i> relating to the employment of Public Service employees do not apply to that office.	6 7 8
(3)	A person is not eligible to be appointed for more than 2 terms of office as Commissioner (whether or not consecutive terms).	9 10
(4)	The office of Commissioner is a full-time office and the holder of the office is required to hold it on that basis, except to the extent permitted by the Minister.	11 12
2	Remuneration and allowances	13
(1)	The amount of remuneration of the Commissioner is to be determined in accordance with the <i>Statutory and Other Offices Remuneration Act 1975</i> .	14 15
(2)	The Minister may from time to time determine the amount of travelling and subsistence allowances in respect of the office of Commissioner.	16 17
3	Vacancy in office	18
(1)	The office of Commissioner becomes vacant if the Commissioner—	19
(a)	dies, or	20
(b)	completes a term of office and is not re-appointed, or	21
(c)	resigns the office by instrument in writing addressed to the Minister, or	22
(d)	is removed from office by the Governor under clause 4, or	23
(e)	becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the Commissioner's creditors or makes an assignment of the Commissioner's remuneration for their benefit, or	24 25 26 27
(f)	becomes a mentally incapacitated person, or	28
(g)	is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or	29 30 31 32
(h)	is imprisoned in respect of a conviction for an offence punishable in New South Wales by imprisonment or for an offence committed elsewhere than in New South Wales that, if committed in New South Wales, would be an offence so punishable.	33 34 35 36
(2)	If the office of Commissioner becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.	37 38
4	Removal from office	39
	The Governor may, on the recommendation of the Council (other than an incumbent Commissioner), remove the Commissioner from office, but only for incompetence, incapacity or misbehaviour.	40 41 42

5	Acting Commissioner	1
(1)	The Minister, on the recommendation of the Council, may appoint a person to act as the Commissioner during the illness or absence of the Commissioner or during a vacancy in the office of Commissioner.	2 3 4
(2)	A person, while acting as Commissioner, has and may exercise the functions of the Commissioner and is taken to be the Commissioner.	5 6
(3)	The Minister may, on the recommendation of the Council, at any time, remove a person from office as acting Commissioner.	7 8
(4)	An acting Commissioner is entitled to be paid the remuneration (including travelling and subsistence allowances) that the Minister may from time to time determine.	9 10
6	Leave	11
(1)	The entitlement of the Commissioner to annual and other leave is to be as stated in the Commissioner's instrument of appointment.	12 13
(2)	The Commissioner may be granted leave by the Board.	14

Schedule 4	Amendment of Acts	1
4.1	Property, Stock and Business Agents Act 2002 No 66	2
[1]	Whole Act (except section 3(1) and Parts 10 and 11)	3
	Omit “Secretary” and “Secretary’s” wherever occurring.	4
	Insert instead “Council” and “Council’s”, respectively.	5
[2]	Section 3 Definitions	6
	Insert in alphabetical order in section 3(1)—	7
	<i>Council</i> means the Real Estate Services Council constituted under the <i>Real Estate Services Council Act 2019</i> .	8
		9
4.2	Statutory and Other Offices Remuneration Act 1975 (1976 No 4)	10
	Schedule 2 Public offices	11
	Insert at the end of Part 1—	12
	Real Estate Services Commissioner	13