

REAL ESTATE SERVICES COUNCIL ACT 1990 No. 14

NEW SOUTH WALES



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REAL ESTATE SERVICES COUNCIL ACT 1990 No. 14

NEW SOUTH WALES



Act No. 14,1990

An Act to constitute the Real Estate Services Council; to define its functions; to amend certain Acts consequentially; and for other purposes. [Assented to 7 June 1990]

The Legislature of New South Wales enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the Real Estate Services Council Act 1990.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Definitions

3. (1) In this Act:

"**associate member**" means an associate member of the Council;

"**Chairperson**" means the member nominated by the Minister as Chairperson of the Council;

"**Council**" means the Real Estate Services Council constituted by this Act;

"**General Manager**" means the General Manager of the Council;

"**member**" means a member of the Council, other than an associate member;

"**part-time member**" means a member other than the General Manager.

(2) In this Act:

(a) a reference to a function includes a reference to a power, authority and duty; and

(b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

PART 2—THE REAL ESTATE SERVICES COUNCIL

Constitution of Council

4. (1) There is constituted by this Act a corporation with the corporate name of the Real Estate Services Council.

(2) The Council is, for the purposes of any Act, a statutory body representing the Crown.

Ministerial control

5. The Council is, in the exercise of its functions, subject to the control and direction of the Minister.

Membership of Council

6. (1) Except for the purpose of exercising a corporate function of the General Manager referred to in section 10, the Council is to consist of 10 members, being:

- (a) the General Manager; and
- (b) 9 part-time members appointed by the Governor.

(2) For the purpose of exercising a corporate function of the General Manager referred to in section 10, the Council is to consist of the General Manager.

(3) Of the part-time members:

- (a) 1 is to be a person nominated by the Minister as Chairperson of the Council;
- (b) 1 is to be an officer of the Department of Housing nominated by the Minister;
- (c) 1 is to be selected by the Minister from a panel of persons nominated by the Australian Consumers Association;
- (d) 2 are to be selected by the Minister from a panel of persons nominated by the Real Estate Institute of New South Wales;
- (e) 2 are to be selected by the Minister from a panel of persons nominated by the Stock and Station Agents Association of New South Wales;
- (f) 1 is to be selected by the Minister from a panel of persons nominated by the Real Estate Association of New South Wales;
- (g) 1 is to be selected by the Minister from a panel of persons nominated by the Australian Institute of Valuers and Land Administrators (Incorporated) - New South Wales Division.

(4) Schedule 1 has effect with respect to the members and procedure of the Council.

Associate members

7. (1) A prescribed organisation may, as directed by the Council, submit to the Council:

- (a) the names of persons with expertise in a particular field with which the administration of this Act, the Auctioneers and Agents Act 1941 or the Valuers Registration Act 1975 is concerned; and
 - (b) such other particulars relating to the persons and their qualifications in that field as the Council requires.
- (2) The Minister may, whether or not from among persons whose names are so submitted, by order appoint persons whose services may be used by the Council.
- (3) A person appointed under this section is an associate member of the Council.
- (4) An associate member may, as determined by the Council, attend and take part in meetings of the Council or a committee established by the Council, but:
- (a) may not vote or preside at a meeting of the Council; and
 - (b) may not be counted towards a quorum at a meeting of the Council.
- (5) The Minister may remove an associate member from office at any time.

Functions and objects of Council

8. (1) The Council has such functions as are conferred or imposed on it by or under:
- (a) this Act; and
 - (b) the Auctioneers and Agents Act 1941 and the Valuers Registration Act 1975; and
 - (c) any other legislation.
- (2) The primary functions of the Council are:
- (a) to recommend to the Minister policies concerning services relating to real estate; and
 - (b) to assess whether and to what extent, if any, there is a need to regulate persons supplying services relating to real estate and to make recommendations to the Minister about the form that any such regulation might take; and
 - (c) when requested to do so by the Minister, to report to the Minister on the progress of that assessment and the nature of those recommendations.

- (3) In exercising its functions, the objects of the Council are:
- (a) to promote appropriate standards of conduct and competency for persons supplying services relating to real estate; and
 - (b) to protect the interests of those who deal with persons supplying those services; and
 - (c) to facilitate the resolution of disputes between persons supplying those services and other persons.

(4) In this section, "**services relating to real estate**" means services to provide which a person is required to be licensed or registered under the Auctioneers and Agents Act 1941 or the Valuers Registration Act 1975.

General Manager

9. To enable the Council to exercise its functions, a General Manager of the Council is to be appointed under Part 2 of the Public Sector Management Act 1988.

Corporate functions of General Manager

10. (1) The functions of the Council relating to the following matters are exercisable only by the General Manager:

- (a) the administration of the licensing and registration schemes established by the Auctioneers and Agents Act 1941 and the Valuers Registration Act 1975;
- (b) the investigation of complaints against persons licensed or registered under those Acts, the referral of matters to Local Courts under the former of those Acts and the conduct of prosecutions for offences against both of those Acts and the regulations made under them;
- (c) public information and guidance programs;
- (d) such other matters as may for the time being be prescribed by the regulations as corporate functions of the General Manager;
- (e) the delegation of any of those functions.

(2) Anything done in the exercise of any of those functions in the name of, or on behalf of, the Council by the General Manager (whether or not under seal) is to be taken to have been done by the Council.

(3) The disciplinary functions of the Council (being the functions conferred on the Council by sections 20 and 21 of, and Schedule 1 to, the Valuers Registration Act 1975) are not exercisable by the General Manager.

(4) The functions conferred on the Council by Division 1 of Part 6 of the Auctioneers and Agents Act 1941, relating to the Real Estate Services Council Compensation Fund, and by sections 83S and 83T of that Act, relating to the payment of receivers, are not exercisable by the General Manager except to the extent, if any, that they are delegated to the General Manager.

(5) This section does not limit the power of the Council to delegate any other function of the Council (excluding any disciplinary function) to the General Manager.

Staff of Council

11. (1) Such staff as may be necessary to enable the Council to exercise its functions may be employed under Part 2 of the Public Sector Management Act 1988.

(2) The Council may arrange for the use of the services of any staff or facilities of a government department, an administrative office or a public or local authority.

(3) The Council may

(a) for any purpose approved by the Minister; and

(b) on such terms and conditions as may be approved by the Public Employment Industrial Relations Authority,

employ such casual staff as it requires to exercise its functions.

(4) Part 2 of the Public Sector Management Act 1988 does not apply to or in respect of the employment of casual staff under subsection (3).

(5) The Council may engage such consultants as the Council requires to exercise its functions.

(6) For the purposes of this Act, a person who is employed under subsection (1) or (3) or whose services are made use of under subsection (2) is an officer of the Council.

Delegation of functions

12. (1) The Council may delegate to an authorised person any of its functions, other than this power of delegation.

(2) The General Manager may delegate to an authorised person the exercise of any of the functions of the General Manager, other than this power of delegation.

(3) A delegate may sub-delegate to an authorised person any function delegated by the Council or the General Manager if the delegate is authorised in writing to do so by the Council or the General Manager.

(4) The Council may delegate any of its disciplinary functions, but only to an associate member or a committee consisting of at least 3 members of whom at least one is an associate member, which member or committee cannot sub-delegate any such function.

(5) In this section, “**authorised person**” means:

- (a) a member, associate member or committee of the Council; or
- (b) an officer of the Council; or
- (c) a person of a class prescribed by the regulations.

PART 3—FINANCIAL PROVISIONS

Investment

13. (1) The Council may invest funds of or under the control of the Council:

- (a) in the manner authorised by the Public Authorities (Financial Arrangements) Act 1987; or
- (b) if that Act does not confer power on the Council to invest the funds concerned:
 - (i) in any manner authorised for the time being for the investment of trust funds; and
 - (ii) in any other manner approved by the Minister with the concurrence of the Treasurer.

(2) Despite the Public Authorities (Financial Arrangements) Act 1987, the Council may also invest funds of or under the control of the Council:

- (a) in schemes that relate to the provision of residential accommodation and are approved by the Minister; and
- (b) with the consent of the Minister and subject to such terms and conditions as may be prescribed - loans to building societies registered under the Co-operation Act 1923.

(3) The Treasurer may determine:

- (a) whether those funds are to be invested in any such scheme or loan; and
- (b) if they are to be so invested, the amount of those funds to be invested in the scheme or loan concerned.

(4) Nothing in this section affects the operation of section 36E of the Auctioneers and Agents Act 1941 (relating to the investment and disposition of certain money held in trust by the Council).

Financial year

14. (1) The financial year of the Council is the year commencing on 1 April.

(2) A different financial year may be determined by the Treasurer under section 4 (1A) of the Public Finance and Audit Act 1983.

PART 4—MISCELLANEOUS

Personal liability of members etc.

15. A matter or thing done by the Council, the General Manager, an associate member, another member or any person acting under the direction of the Council does not, if the matter or thing was done in good faith for the purposes of executing this or any other Act, subject the General Manager, associate member, other member or person so acting personally to any action, liability, claim or demand.

Seal of Council

16. (1) The seal of the Council is to be kept by the General Manager.

(2) The seal may be affixed to a document only:

- (a) in the presence of the General Manager (or an officer of the Council authorised in that behalf by the General Manager) with an attestation by the signature of the General Manager or that officer of the fact of the affixing of the seal; or
- (b) in the presence of at least any 2 members and with an attestation by the signatures of those members of the fact of the affixing of the seal.

Service of documents on Council

17. (1) A document may be served on the Council by leaving it at, or by sending it by post to:

- (a) the office of the Council; or
- (b) if it has more than one office - any one of its offices.

(2) 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 the Council in any other manner.

Recovery of charges etc. by Council

18. Any charge, fee or money due to the Council, or to the Crown in respect of the activities of the Council, may be recovered by the Council as a debt in a court of competent jurisdiction.

Authentication of certain documents

19. Every summons, process, demand, order, notice, statement, direction or other document requiring authentication by the Council may be sufficiently authenticated without the seal of the Council if signed by:

- (a) the General Manager, or
- (b) an officer of the Council authorised to do so by the General Manager in writing.

Proof of certain matters not required

20. In any legal proceedings, proof is not required (until evidence is given to the contrary) of:

- (a) the constitution of the Council; or
- (b) any resolution of the Council; or
- (c) the appointment of, or the holding of office by, any member or associate member, or
- (d) the presence or nature of a quorum at any meeting of the Council; or
- (e) the signature of the General Manager.

Disclosure of information

21. (1) A person must not disclose any relevant 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:

- (a) with the consent of the person from whom the information was obtained; or
- (b) in connection with the administration or execution of this Act or any such other Act; or
- (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
- (d) in accordance with a requirement imposed under the Ombudsman Act 1974; or
- (e) with other lawful excuse.

Maximum penalty: 20 penalty units or imprisonment for 6 months, or both.

(2) In this section, "**relevant information**" means:

- (a) trade secrets; or
- (b) other information that is of commercial value; or
- (c) information concerning the business or financial affairs of the person from whom the information is obtained.

Proceedings for offences

22. Proceedings for an offence against this Act or the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

Regulations

23. (1) 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.

(2) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.

Savings and transitional provisions

24. Schedule 2 has effect.

Amendment of Auctioneers and Agents Act 1941 No. 28

25. The Auctioneers and Agents Act 1941 is amended as set out in Schedule 3.

Amendment of Valuers Registration Act 1975 No. 92

26. The Valuers Registration Act 1975 is amended as set out in Schedule 4.

**SCHEDULE 1—PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF THE COUNCIL**

(Sec. 6 (4))

Nominations for membership

1. (1) If nominations of persons to constitute a panel for the purposes of section 6 are not made within the time notified by the Minister to the body entitled to make the nominations:

- (a) the Minister may appoint any person or persons to be a member instead of a person or persons from that panel; and
- (b) the person or persons so appointed is or are to be taken to have been duly appointed.

(2) The Minister may decline to make an appointment from a panel until such number of persons have been nominated to constitute the panel as the Minister notifies to the body concerned.

(3) If a body named in section 6 (3) (c), (d), (e), (f) or (g) ceases to exist, the Minister may accept nominations from such other body as the Minister considers appropriate.

Acting members and acting Chairperson

2. (1) The Minister may, from time to time, appoint a person to act in the place of a part-time member during the illness or absence of the member, and may revoke any such appointment.

(2) A person so appointed, while acting in the place of a part-time member, has all the functions of the member and is to be taken to be the member.

SCHEDULE 1—PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF THE COUNCIL—*continued*

(3) A person so appointed, while acting in the place of the Chairperson, has the functions of the Chairperson.

(4) A person, while acting in the place of a part-time member, is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

(5) For the purposes of this clause, a vacancy in the office of a part-time member is to be taken to be an absence of the member.

Terms of office of part-time members

3. Subject to this Schedule, a part-time 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.

Remuneration

4. A part-time member, and an associate member, are entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of them.

Vacancy in office of part-time member

5. (1) The office of a part-time member becomes vacant if the member:

- (a) dies; or
- (b) completes a term of office and is not re-appointed; or
- (c) resigns the office by instrument in writing addressed to the Minister; or
- (d) is removed from office by the Governor under this clause or under Part 8 of the Public Sector Management Act 1988; or
- (e) is absent from 4 consecutive meetings of the Council of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Council or unless, before the expiration of 4 weeks after the last

SCHEDULE 1—PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF THE COUNCIL—*continued*

of those meetings, the member is excused by the Council for having been absent from those meetings; or

- (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
- (g) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983; or
- (h) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable.

(2) The Governor may remove a part-time member from office at any time.

Disclosure of pecuniary interests

6. (1) If:

- (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 Council; and
- (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,

the member must, as soon as possible after the relevant acts have come to the member's knowledge, disclose the nature of the interest at a meeting 'of the Council.

(2) A disclosure by a member at a meeting of the Council that the member.

- (a) is a member, or is in the employment, of a specified company or other body; or

SCHEDULE 1—PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF THE COUNCIL—*continued*

(b) is a partner, or is in the employment, of a specified person; or
(c) has some other specified interest relating to a specified company or other body or to a specified person,
is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

(3) Particulars of any disclosure made under this clause must be recorded by the Council in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the Council.

(4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Council otherwise determines:

- (a) be present during any deliberation of the Council with respect to the matter; or
- (b) take part in any decision of the Council with respect to the matter.

(5) For the purposes of the making of a determination by the Council under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:

- (a) be present during any deliberation of the Council for the purpose of making the determination; or
- (b) take part in the making by the Council of the determination.

(6) A contravention of this clause does not invalidate any decision of the Council.

(7) Nothing in this clause applies to or in respect of an interest of a member in a matter or thing which arises merely because the member has general interests represented by the organisation by which the member was nominated.

SCHEDULE 1—PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF THE COUNCIL—continued

(8) In this clause, "**member**" includes an associate member.

Filling of vacancy in office of part-time member

7. If the office of any part-time member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

Effect of certain other Acts

8. (1) Part 2 of the Public Sector Management Act 1988 does not apply to or in respect of the appointment of a part-time member.

(2) If by or under any Act provision is made:

(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

(b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a part-time member or from accepting and retaining any remuneration payable under this Act to the person as such a member.

(3) The office of a part-time member is not, for the purposes of any Act, an office or place of profit under the Crown.

General procedure

9. The procedure for the calling of meetings of the Council and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Council.

Quorum

10. The quorum for a meeting of the Council is:

(a) except as provided by paragraph (b) - 6 members;

(b) for the purpose of exercising or performing its functions under section 42A of the Auctioneers and Agents Act 1941 - 3 members, of whom one must be the General Manager, the member referred to in section 6 (3) (b) or the member referred to in section 6 (3) (c).

SCHEDULE 1—PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF THE COUNCIL— *continued*

Presiding member

11. (1) The Chairperson or, in the absence of the Chairperson, another member elected to chair the meeting by the members present and entitled to vote is to preside at a meeting of the Council.

(2) The member presiding at any meeting of the Council has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

Voting

12. A decision supported by a majority of the votes cast at a meeting of the Council at which a quorum is present is the decision of the Council.

Transaction of business outside meetings or by telephone etc

13. (1) The Council may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Council for the time being, and a resolution in writing approved in writing by a majority of those members is to be taken to be a decision of the Council.

(2) The Council may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.

(3) For the purposes of:

(a) the approval of a resolution under subclause (1); or

(b) a meeting held in accordance with subclause (2),

the Chairperson and each member have the same voting rights they have at an ordinary meeting of the Council.

(4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Council.

SCHEDULE 1—PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF THE COUNCIL—*continued*

(5) Papers may be circulated among members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

Committees of Council

14. (1) The Council may establish committees to assist it in connection with the exercise of any of its functions and may determine the quorum for any such committee.

(2) It does not matter that any or all of the members of a committee are not members of the Council.

(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 this Act and any determination of the Council) by the committee.

First meeting

15. The Minister may call the first meeting of the Council in such manner as the Minister thinks fit.

Minutes

16. The Council must cause full and accurate minutes to be kept of the proceedings of each meeting of the Council.

SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS

(Sec. 24)

Definitions

1. In this Schedule:

"**abolished Board**" means the Real Estate Valuers Registration Board as constituted under the Valuers Registration Act 1975 immediately before the appointed day,

"**abolished Council**" means the Council of Auctioneers and Agents as constituted under the Auctioneers and Agents Act 1941 immediately before the appointed day,

SCHEDULE 2—SAVINGS AND TRANSITIONAL
PROVISIONS—*continued*

"**affected person**" means a person who, immediately before the appointed day, held a prescribed office;

"**appointed day**" means the day on which section 4 commences;

"**prescribed office**" means the office of a member or Chairman of the abolished Council or of the abolished Board or of registrar under the Auctioneers and Agents Act 1941 or secretary to the abolished Board.

Continuation of legal entity

2. The Council is a continuation of, and the same legal entity as, the abolished Council and the abolished Board.

Office held by affected person

3. (1) An affected person ceases to hold his or her prescribed office on the appointed day and is eligible, if otherwise qualified, to be appointed to an office under this Act.

(2) An affected person is not entitled to be paid any remuneration or compensation by reason of ceasing to hold a prescribed office.

References to abolished Council and abolished Board

4 (1) This clause applies to the following instruments:

- (a) another Act enacted before the appointed day;
- (b) an instrument made before that day under an Act; and
- (c) any other kind of instrument executed before that day.

(2) In an instrument to which this clause applies, a reference to the Council of Auctioneers and Agents or the Real Estate Valuers Registration Board is to be read as a reference to the Real Estate Services Council.

General saving

5. (1) If anything done or commenced by, or in relation to:

- (a) the abolished Council; or
- (b) the abolished Board; or
- (c) the registrar under the Auctioneers and Agents Act 1941; or
- (d) the secretary to the abolished Board,

SCHEDULE 2—SAVINGS AND TRANSITIONAL
PROVISIONS—*continued*

could have been done or commenced by, or in relation to, the Council, the Chairperson or the General Manager if the relevant Acts had been in force when it was done or commenced, it has effect on and after the appointed day as if it had been done or commenced by, or in relation to, the Council, the Chairperson or the General Manager.

(2) In this clause:

"**relevant Acts**" means:

- (a) this Act;
- (b) the Auctioneers and Agents Act 1941, as amended by this Act; and
- (c) the Valuers Registration Act 1975, as amended by this Act.

Regulations

6. (1) The regulations may contain other provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the appointed day or a later day.

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

**SCHEDULE 3—AMENDMENT OF AUCTIONEERS AND
AGENTS ACT 1941**

(Sec. 25)

(1) Long title:

Omit "to make provision for the constitution of a council of the auctioneers, stock and station agents, stock buying agents, real estate agents, business agents and strata managing agents", insert instead "to confer and impose functions on the Real Estate Services Council".

SCHEDULE 3—AMENDMENT OF AUCTIONEERS AND AGENTS ACT 1941—*continued*

(2) Section 2 (**Division into Parts**):

Omit the section.

(3) Section 3 (**Definitions**):

(a) From section 3 (1), omit the definitions of "Chairman", "Member" and "Registrar".

(b) From section 3 (1), omit the definition of "Council" insert instead:

"**Council**" means the Real Estate Services Council constituted by the Real Estate Services Council Act 1990.

(c) From section 3 (1), omit the definition of "Fund", insert instead:

"**Fund**" means the Real Estate Services Council Compensation Fund referred to in section 65.

(d) In section 3 (1), before the definition of "Individual", insert:

"**General Manager**" means the person for the time being holding or acting in the office of the General Manager of the Council.

(4) Part 2 (**The Council of Auctioneers and Agents**):

Omit the Part.

(5) Parts 3-7 (except provisions amended by items (9), (10), (20) and (31)):

Omit "registrar" wherever occurring, insert instead "Council".

(6) Parts 3-7 (except sections 55 (3) and 86A (2)):

Omit "council" wherever occurring, insert instead "Council".

SCHEDULE 3—AMENDMENT OF AUCTIONEERS AND AGENTS ACT 1941—*continued*

(7) Sections 22 (3) (a), 38B (2A):

Omit "form prescribed" wherever occurring, insert instead "form approved by the Minister".

(8) Section 22 (**Licences**):

From section 22 (4) and (7), omit "him" wherever occurring, insert instead "the Council".

(9) Section 23 (**Procedure**):

(a) Omit section 23 (1), insert instead:

(1) An application for a licence or for renewal of a licence is to be made in a form approved by the Minister.

(b) Omit section 23 (2) (a), insert instead:

(a) contain such particulars as are required to complete the approved form;

(c) From section 23 (9) (e), omit "or the registrar".

(10) Sections 23A, 23B (section 23B (6) excepted), 26,57 (7) (e), 83, 89:

Omit "registrar" wherever occurring, insert instead "General Manager".

(11) Sections 23A (1), 38A (1), 51A (1), 76:

Omit "prescribed form" wherever occurring, insert instead "form approved by the Minister".

(12) Section 23C (**Effect of decision on application for restoration of licence**):

After section 23C (1), insert

(1A) Anything done (other than the commission of an offence under section 20) between:

(a) the expiration of a licence; and

SCHEDULE 3—AMENDMENT OF AUCTIONEERS AND AGENTS ACT 1941—*continued*

- (b) its restoration at any time after the commencement of this section,
by the person whose licence had expired is to be taken to have been done while the person was the holder of the licence.
- (13) Section 25 (**Fees payable for licence**):
 - (a) Omit section 25 (4) and (5), insert instead:
 - (4) The Council must establish in a bank in New South Wales a Real Estate Services Council Administration Account and must deposit in the account:
 - (a) the amount in the Auctioneers and Agents Administration Account established under this section as in force immediately before the commencement of section 4 of the Real Estate Services Council Act 1990; and
 - (b) fees payable under this Act or the Valuers Registration Act 1975; and
 - (c) any income derived from the investment by the Council of any money held to the credit of the account and not immediately required to be paid out of the account.
 - (5) The following amounts are to be paid from the Account so established:
 - (a) to the Treasurer for payment into the Consolidated Fund - such amounts as the Treasurer from time to time certifies to be chargeable against the Council in respect of persons appointed or employed for the purposes of this Act, the Valuers Registration Act 1975 or the Real Estate Services Council Act 1990; and
 - (b) such other amounts as are required to meet expenditure in connection with the administration of this Act and both of those Acts.
 - (b) Omit section 25 (6) (a).

SCHEDULE 3—AMENDMENT OF AUCTIONEERS AND AGENTS ACT 1941 — *continued*

- (14) Sections 36A (1), 36B (b), 38D (2B), 39AA (1), 52A (1):
Omit “in or to the effect of the form prescribed”, insert instead “in the form approved by the Minister”.
- (15) Section 36F:
Omit the section, insert instead:
Real Estate Services Council Special Account
36F. The Council must establish in a bank in New South Wales a Real Estate Services Council Special Account and must deposit in the account:
(a) the amount in the Council of Auctioneers and Agents Special Account established under this section as in force immediately before the commencement of section 4 of the Real Estate Services Council Act 1990; and
(b) all moneys received, dealt with and repaid pursuant to sections 36D and 36E.
- (16) Sections 38B, 40 (1), 50B (2), 50L, 55 (3) and 62:
Omit “of or above the rank of sergeant” wherever occurring.
- (17) Section 38B (**Inspection of records**):
Omit section 38B (4).
- (18) Section 39AA (**Procedure for approvals under sec. 39**):
From section 39AA (3), omit “council's”, insert instead “Council's”.
- (19) Section 42A (**Review of commissions, fees etc.**):
From section 42A (4A), omit “prescribed form and manner”, insert instead “form approved by the Minister and in the prescribed manner”.

SCHEDULE 3—AMENDMENT OF AUCTIONEERS AND AGENTS ACT 1941—*continued*

- (20) Section 55 (**Record to be kept**):
- (a) From section 55 (3), omit "registrar or other officer of the council authorised in writing by the council either generally or in a particular case", insert instead "Council".
 - (b) From section 55 (3), omit "such registrar, officer", insert instead "the Council".
- (21) Section 57 (**Procedure**):
- (a) Omit section 57 (1), insert instead:
 - (1) An application for registration or for renewal of registration as a real estate salesman, trainee auctioneer, business salesman, stock and station salesman or trainee stock buying agent is to be made in a form approved by the Minister.
 - (b) From section 57 (2) (a), omit "prescribed", insert instead "required to complete the approved form".
 - (c) From section 57 (4A) (a), omit "he", insert instead "the Council".
 - (d) From section 57 (10), omit "Auctioneers and Agents Administration Account referred to in subsection (4) of section 25", insert instead "Real Estate Services Council Administration Account".
- (22) Omit the heading to Part 4A, insert instead:
- PART 4A—REAL ESTATE SERVICES COUNCIL
STATUTORY INTEREST ACCOUNT**
- (23) Section 63B (**Statutory Interest Account**):
- From section 63B (1), omit "Auctioneers and Agents Statutory Interest Account", insert instead "Real Estate Services Council Statutory Interest Account".

SCHEDULE 3—AMENDMENT OF AUCTIONEERS AND AGENTS ACT 1941—*continued*

(24) Section 63C (**Money in the Statutory Interest Account**):

At the end of section 63C (b), insert:

; and

- (c) the amount in the Auctioneers and Agents Statutory Interest Account immediately before the commencement of this paragraph.

(25) Section 63D (**Application of money in the Statutory Interest Account**):

- (a) From section 63D (1)(d), omit "Auctioneers and Agents", insert instead "Real Estate Services Council".
(b) From section 63D (2), omit "in accordance with Schedule 3".

(26) Omit the heading to Part 6, insert instead:

**PART 6—REAL ESTATE SERVICES COUNCIL
COMPENSATION FUND**

(27) Section 65 (**The fund**):

From section 65 (1), omit "Auctioneers and Agents", insert instead "Real Estate Services Council".

(28) Section 66 (**Separate bank account**):

Omit "Auctioneers and Agents", insert instead "Real Estate Services Council".

(29) Section 67 (**Composition of the fund**):

- (a) From section 67 (b1), omit "Auctioneers and Agents", insert instead "Real Estate Services Council".
(b) At the end of section 67 (c), insert:
; and
(d) the amount in the Auctioneers and Agents Compensation Fund immediately before the commencement of this paragraph.

SCHEDULE 3—AMENDMENT OF AUCTIONEERS AND AGENTS ACT 1941—*continued*

- (30) Section 73 (**Investment of the fund**):
Omit "in accordance with Schedule 3".
- (31) Section 83 (**Examination of account**):
- (a) From section 83 (1) and (2), omit "chairman" wherever occurring, insert instead "Council".
 - (b) From section 83 (2), omit "registrar and the".
- (32) Section 86A (**Members or officers of Council not to disclose information**):
- (a) From section 86A (2), omit "The Registrar may with the approval of the council", insert instead "The Council may".
 - (b) From section 86A (2), omit "council" where secondly occurring, insert instead "Council".
- (33) Section 92 (**Regulations**):
- (a) Omit section 92 (2) (a), (c), (d) and (e).
 - (b) From section 92 (2) (f), omit "form and".
 - (c) Omit section 92 (2C).
 - (d) Omit section 92 (3), insert instead:
 - (3) A regulation may create an offence punishable by a penalty not exceeding 40 penalty units in the case of a corporation or 20 penalty units in any other case.
- (34) Schedules 2, 3:
Omit the Schedules.

SCHEDULE 4—AMENDMENT OF VALUERS REGISTRATION ACT 1975

(Sec. 26)

- (1) Long title:

Omit "to constitute a Real Estate Valuers Registration Board", insert instead "to confer and impose functions on the Real Estate Services Council".

SCHEDULE 4—AMENDMENT OF VALUERS REGISTRATION
ACT 1975—*continued*

- (2) Section 4 (**Definitions**):
- (a) From section 4 (1), omit the definitions of "appointed member", "board", "member" and "secretary".
 - (b) In section 4 (1), before the definition of "licensed premises", insert:
 - "**Council**" means the Real Estate Services Council constituted by the Real Estate Services Council Act 1990;
 - "**General Manager**" means the person for the time being holding or acting in the office of General Manager of the Council;
 - (c) From the definition of "register", in section 4 (1), omit "kept by the board", insert instead "kept by the Council".
- (3) Part 2 (**Real Estate Valuers Registration Board**):
- Omit the Part.
- (4) Sections 12–23 (section 21 excepted), 25, 28, 30:
- Omit "board" wherever occurring, insert instead "Council".
- (5) Sections 12, 18, 20, 26, 27, 28:
- Omit "secretary" wherever occurring, insert instead "General Manager".
- (6) Section 13 (**Applications for registration—generally**):
- Omit section 13 (2) (a), insert instead:
- (a) in a form approved by the Minister; and
- (7) Section 15C (**Application for registration as valuer of licensed premises**):
- Omit section 15C (1) (b) (i) and (2).

SCHEDULE 4—AMENDMENT OF VALUERS REGISTRATION
ACT 1975—*continued*

- (8) Section 21:
Omit the section, insert instead:
Inquiry by Council for the purposes of section 20
21. Schedule 1 applies with respect to an inquiry by the Council.
- (9) Section 29 (**Cost of administration of Act**):
Omit the section.
- (10) Section 30 (**Regulations**):
(a) Omit section 30 (2) (a) and (b).
(b) Omit section 30 (5), insert instead:
(5) A regulation may create an offence punishable by a penalty not exceeding 10 penalty units.
- (11) Schedule 1:
At the end of the Act, insert:

SCHEDULE 1—INQUIRIES BY THE COUNCIL

(Sec. 21)

Definition

1. In this Schedule, a reference to the Council as the person conducting an inquiry includes, subject to the terms of the delegation, a reference to a member or committee of the Council if the member or committee is delegated that function.

Postponement or adjournment

2. An inquiry may be postponed or adjourned by the Council.

SCHEDULE 4—AMENDMENT OF VALUERS REGISTRATION
ACT 1975—*continued*

Conduct of inquiry

3. (1) An inquiry is to be conducted by the Council as in open court.

(2) If the Council delegates to a committee the conduct of an inquiry

- (a) it is required to appoint one of the members of the committee to preside at each meeting of the committee held for the purpose of the inquiry; and
- (b) at such a meeting, the person so appointed has a deliberative vote and, if there is an equality of votes, a second or casting vote.

Representation

4 At a hearing, the registered real estate valuer may appear in person or by a barrister, solicitor or agent.

Discretions

5. Subject to this Act, the Council:

- (a) may conduct the inquiry in such manner as the Council sees fit and is not bound by the rules or practice as to evidence and may be informed of any matter in such manner as the Council thinks fit, but must conform to the rules of natural justice; and
- (b) may call and receive evidence as to any matter relevant to the inquiry; and
- (c) may (subject to section 13 of the Oaths Act 1900) require any evidence at the inquiry to be given on oath and may administer an oath to any person by whom evidence is required to be given.

Re-opening inquiry

6. (1) If, at any time before it makes an order under section 20 (1), the Council requires further evidence on any relevant matter, the Council may re-open the inquiry for

SCHEDULE 4—AMENDMENT OF VALUERS REGISTRATION
ACT 1975—*continued*

the purpose of obtaining that further evidence before making an order.

(2) An inquiry that is so re-opened is to be taken to have been adjourned and is to proceed accordingly.

Absence of registered real estate valuer

7 . (1) An inquiry may be conducted in the absence of the registered real estate valuer if the Council is satisfied that the valuer was served with reasonable notice of the time and place for the inquiry.

(2) Service of any such notice may be proved by the oath of the person who served it or by affidavit.

Notices to attend or produce documents

8. (1) The Council may of its own motion, or on the application of the registered real estate valuer, issue a notice in a form approved by the Minister requiring the person to whom the notice is addressed:

- (a) to attend as a witness at the inquiry; or
- (b) so to attend and to produce at the inquiry any books, documents or things in his or her possession or under his or her control relating to any matter relevant to the inquiry and specified in the notice.

(2) A person who is served with such a notice and to whom, at the time of service, is tendered an amount that is sufficient to cover his or her travelling and other out-of-pocket expenses:

- (a) in attending the inquiry specified in the notice; and
- (b) for producing anything required by the notice to be produced,

must not, without reasonable cause, fail to comply with the notice.

Maximum penalty 1 0 penalty units.

(3) A person on whom a notice is served is entitled to receive:

SCHEDULE 4—AMENDMENT OF VALUERS REGISTRATION
ACT 1975—*continued*

- (a) if the notice was issued by the Council on its own motion, from the Council; or
- (b) if the notice was issued by the Council on the application of the registered real estate valuer, from the valuer,

his or her reasonable costs, including any loss of earnings, incurred in obeying the notice, calculated in accordance with the scales relating to subpoenas issued out of the District Court.

(4) On application by the Council, the Supreme Court may

- (a) order a person who has failed to comply with such a notice to comply with it within a period specified by the Court; and
- (b) if, after that period has expired, the Court is satisfied that the person does not have a reasonable excuse for failing to comply with the notice, punish the person in the same way as it would if the person had been guilty of contempt of the Court.

(5) Such an order may be made by the Supreme Court whether or not an information has been laid alleging the person concerned has committed an offence under subclause (2).

Costs of inquiry

9. (1) If, following an inquiry, the Council decides to take no further action, it may pay to the registered real estate valuer such amount as it thinks fit towards the reasonable costs and expenses incurred by the valuer in connection with the inquiry.

(2) There is no appeal against a decision of the Council with respect to the payment of costs or expenses to a registered real estate valuer.

(3) If, following an inquiry, the Council makes any order under section 20 (1), it may, by the order, require the

SCHEDULE 4—AMENDMENT OF VALUERS REGISTRATION
ACT 1975—*continued*

registered real estate valuer to pay to the Council, towards the costs and expenses incurred in connection with conducting the inquiry, such amount as is specified in the order.

(4) Any amount ordered to be paid to the Council may be recovered as a debt due to the Council in a court of competent jurisdiction.

*[Minister's second reading speech made in -
Legislative Assembly on 10 May 1990
Legislative Council on 22 May 1990]*