

AUCTIONEERS AND AGENTS (AMENDMENT) BILL 1989

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Auctioneers and Agents Act 1941—

- (a) to enable the Council of Auctioneers and Agents ("the Council") to exercise certain functions at a meeting having a quorum of 3 instead of 9; and
- (b) to provide for the delegation of functions by the Council and by the Department Head; and
- (c) to simplify the procedure for restoration of a licence that is not renewed on time; and
- (d) to modernise the powers of the Council in relation to the investment of the funds under its control.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act is to commence on a day or days to be appointed by proclamation.

Clause 3 gives effect to Schedules 1-3.

Clause 4 is a transitional provision.

SCHEDULE 1—AMENDMENTS RELATING TO THE COUNCIL

Schedule 1 (1) reduces from 9 to 3 the quorum necessary for a meeting of the Council that reviews a claim or statement of account for remuneration or charges made by a licensee.

Schedule 1 (2) inserts proposed section 18A enabling the Council to delegate any of its functions other than the power of delegation and the functions exercisable with a quorum of 3. The proposed section also confers on the Department Head certain powers of delegation under the Public Sector Management Act 1988. Investment powers may not, without the consent of the Treasurer, be delegated to an external manager.

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Schedule 1 (3) extends from 21 days to 28 days the time within which a person who receives a claim, or an itemised account, for remuneration or charges payable to a licensee may apply to the Council for a review of the claim or account.

SCHEDULE 2—AMENDMENTS RELATING TO RESTORATION OF LICENCES

Schedule 2 (1) makes a consequential amendment.

Schedule 2 (2) inserts proposed sections 23A–23C.

Proposed section 23A enables the registrar of the Council to issue a new licence to replace an expired licence unless the Council decides to lodge an objection.

Proposed section 23B requires the registrar to refer to the appropriate Local Court for hearing and determination an application for restoration of a licence to which the Council objects.

Proposed section 23C provides for the effect of a decision by the registrar or a Local Court to grant an application for restoration of an expired licence and for a refund of fees (other than the administration fee and the prescribed late fee) if the Court refuses to grant an application.

Schedule 2 (3) and (4) make consequential amendments.

SCHEDULE 3—AMENDMENTS RELATING TO FUNDS

The Principal Act requires the establishment of the Administration Account (section 25), the Special Account (section 36F), the Statutory Interest Account (section 63B) and the Compensation Fund (section 65).

The administration fee accompanying an application for, or for renewal of, a licence is paid into the Administration Account and from the Account is paid expenditure incurred by the Council in exercising its functions under the Act. Into this Account would also be paid the late fee payable under proposed section 23A.

A proportion of the money held in trust by a licensee is paid into the Special Account and the income from investment of the money in the Special Account is paid into the Statutory Interest Account.

At present, 50 per cent of the money in the Statutory Interest Account is paid into the Compensation Fund and certain expenses are also met from the Account.

The Compensation Fund is used to compensate those who suffer pecuniary loss because of a failure to account by a licensee or a real estate dealer and also to meet connected expenses.

Schedule 3 (1) enables money held in the Administration Account to be invested as provided by proposed Schedule 3 to the Principal Act. It also authorises expenditure approved by the Minister for educational purposes in the same way as is at present authorised in relation to the Statutory Interest Account.

Schedule 3 (2) makes a consequential amendment.

Schedule 3 (3) replaces the present requirement for payment to the Compensation Fund of 50 per cent of the amount in the Statutory Interest Account with a requirement to pay only so much as is required to meet the current commitments under the Compensation Fund. Provision is also made for money held in the Statutory Interest Account to be invested as provided by proposed Schedule 3 to the Principal Act.

Schedule 3 (4) makes a consequential amendment.

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Schedule 3 (5) provides for money held in the Compensation Fund to be invested as provided by proposed Schedule 3 to the Principal Act.

Schedule 3 (6) inserts in the Principal Act proposed Schedule 3 which specifies investment powers conferred on statutory authorities by the operation of section 24 of the Public Authorities (Financial Arrangements) Act 1987 with the addition of investments approved by the Minister for the provision of residential accommodation and the existing power to invest in loans to building societies registered under the Co-operation Act 1923.
