

Act 1992 No. 70

AUCTIONEERS AND AGENTS (AMENDMENT) BILL 1992*

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 so as:

- to simplify and modify the classes of licences and certificates of registration under that Act; and
- to abolish the requirement for stock buyers, business agents and, by stages, auctioneers to be licensed (unless they deal as agents with land or livestock, in which case they will be required to hold a real estate agent's or stock and station agent's licence) and the requirement for real estate dealers to be registered; and
- to extend the terms of licences under that Act from 1 year to 3 years and make numerous other miscellaneous amendments to that Act.

In particular, the proposed Act:

- (a) abolishes the following classes of licence:
 - general auctioneer's licence
 - primary products auctioneer's licence
 - chattel auctioneer's licence
 - business agent's licence
 - stock buyer's licence
- (b) creates the following new class of licence:
 - on-site residential property manager's licence (this licence will authorise the holder to act for owners of holiday units by letting them, and by collecting rents and deposits)

* Amended in committee—see table at end of volume.

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- (c) abolishes the following classes of certificates of registration:
- real estate salesman
 - trainee auctioneer
 - business salesman
 - stock and station salesman
 - trainee stock buying agent
- (d) provides for a single class of registration for people who want to qualify for a licence under the Act.

The proposed Act allows those changes to be phased in at different times.

The effect of amendments in Schedules 1 and 2 to the proposed Act (explained in detail in Schedule 4 to the proposed Act, which sets out savings and transitional provisions) may be summarised as follows:

Existing authority	Effect of Schedule 1	Effect of Schedule 2
Primary products auctioneer's licence	} Abolished	-
Chattel auctioneer's licence		
Business agent's licence		
Stock buyer's licence		
General auctioneer's licence		
-	Becomes auctioneer's licence	Becomes stock and station agent's licence or real estate agent's licence (or both) if holder is appropriately qualified
-	-	Creates on-site residential property manager's licence
Registration of real estate dealer	Abolished	-
Certificate of registration as real estate salesman	-	Registration of: real estate salesperson
stock and station salesman	-	stock and station salesperson
trainee auctioneer	-	Abolished
business salesman	} Abolished	-
trainee stock buying agent		
-	-	Creates registration of: trainee strata managing agent trainee community managing agent trainee on-site residential property manager

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This Bill differs from the Auctioneers and Agents (Amendment) Bill 1992 previously introduced which would also have abolished stock and station agents' licences and resulted in their replacement with real property agents' licences and livestock agents' licences. That Bill would also have limited controls in the Auctioneers and Agents Act 1941 on the conduct of auctions to auctions conducted by agents.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on days to be proclaimed.

Clause 3 gives effect to the Schedules of amendments to the Principal Act.

Schedule 1 contains amendments that are intended for early commencement.

Schedule 2 contains amendments intended to be commenced at a later time.

Schedule 3 contains miscellaneous amendments that, generally, may be commenced at any time.

Schedule 4 contains amendments in the nature of savings and transitional provisions consequent on other proposed amendments.

SCHEDULE 1—AMENDMENTS ABOLISHING CERTAIN CLASSES OF LICENCES AND REGISTRATION

Abolition of certain licences and registration and consequential provisions

Schedule 1 contains amendments:

- that abolish licences required by the Act to be held by:
 - primary products auctioneers
 - chattel auctioneers
 - business agents
 - stock buyers; and
- that repeal provisions of the Act requiring the registration of real estate dealers.

Consequential amendments are also made to provisions that refer to those licences and the activities they currently authorise or that relate to real estate dealers.

Schedule 1 also contains amendments omitting from the Act references to business salesmen and trainee stock buying agents (as a consequence of abolishing business agents' and stock buyers' licences).

A general auctioneer's licence will continue in force simply as an auctioneer's licence until the commencement of amendments in Schedules 2 and 4. Those amendments will result in former general auctioneers' licences being treated as real estate agents' or stock and station agents' licences (or both) instead, but only if the holder has appropriate qualifications.

(Schedule 1 (1) (b)–(d), (2) (a) and (c)–(g), (3)–(6), (7) (a), (8) (b)–(d), (9), (10), (12)–(15), (20)–(43) and (46)–(49))

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Regulation of auctions limited to auctions of land and livestock

Schedule 1 also amends the meanings of “auction” and “auctioneer” in the Act so that they will refer only to the sale by auction of land (which term includes a lease of land or shares that entitle their holder to the occupation of premises under a company title scheme) or of livestock. The offences in the Principal Act relating to the conduct of auctions are confined to auctions of land or of livestock.

These provisions foreshadow that, under the new licensing scheme which will follow the complete abolition of auctioneers’ licences by amendments in Schedule 2, a licence under the Act will be required to authorise an auction only if it is conducted in the course of the business of a real estate agent or a stock and station agent.

(Schedule 1 (1) (a), (2) (b), (11), (16)–(19), (44), (45) and (50))

Form of licence

The practice of issuing a single licence form containing particulars of all of the classes of licences held by a person under the Act is recognised.

(Schedule 1 (7) (b))

Fee for licences

The Act is amended so that only a single licence fee will be payable regardless of the number of licences of different classes taken out under the Act by the same person.

(Schedule 1 (8) (a))

SCHEDULE 2—AMENDMENTS CREATING NEW CLASSES OF LICENCES AND REGISTRATION

Titles of Act changed

Amendments in Schedule 2 substitute the long and short titles of the Act to reflect the change of emphasis of the legislation from the regulation of auctioneers and agents of various kinds to the regulation of agents dealing with real property, livestock and property management.

(Schedule 2 (1) and (2))

New class of licences and redefinition of regulated activities

Other amendments in Schedule 2 create the on-site residential property managing agent’s class of licences and redefine the terms “real estate agent” and “stock and station agent”.

The activities that those licences will authorise are specified, certain references to auction sales (which will be treated as only one of many different methods of dealing with land by real estate agents or with land or livestock by stock and station agents) are omitted and consequential amendments are made to substitute or modify current provisions.

(Schedule 2 (3) (a)–(d), (4)–(10), (12)–(14), (25), (26), (28) and (29))

Changes to the registration scheme

Amendments in Schedule 2 will abolish the different classes of certificates of registration currently required to be held by employees before they obtain a licence under the Act.

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The classes of unlicensed employees who perform specified activities for or on behalf of a licensee, or a corporation employing a licensee, are specified. The classes correspond with the classes of licensees as follows:

- real estate salesperson
- stock and station salesperson
- trainee managing agent (being a trainee strata managing agent, a trainee community managing agent or a trainee on-site residential property manager)

The amendments will require such employees to be registered with the Real Estate Services Council. Consequential amendments are made to the current provisions.

The opportunity is taken to make the registration scheme parallel the licensing scheme under the Act. For example:

- a minimum age requirement (of 16 years) is imposed for holders of certificates of registration; and
- applicants for such certificates will be required to have an educational qualification approved by the Minister, and
- a Magistrate may make an order disqualifying a person from holding a certificate of registration.

An applicant for a licence (other than an on-site residential property manager's licence) will be required to have held a certificate of registration for at least 2 years.

(Schedule 2 (3) (a) and (d), (11), (12), (15)–(24) and (27))

SCHEDULE 3—MISCELLANEOUS AMENDMENTS

Reviewing officer

Schedule 3 (1) and (3) omit references in the Act to the superintendent of licences because that office has been abolished and replaces them with references to the reviewing officer (the Commissioner of Police or the Commissioner's nominee).

Restricted licences

Schedule 3 (2) repeals the power to restrict the operation of a licence under the Act to a particular region and prevents a licence that is restricted to a particular purpose from being renewed more than once.

Term of licences

Schedule 3 (2) also extends the term of a licence from 1 year to 3 years and **Schedule 3 (4)** makes amendments consequential on that amendment.

Restoration of licences

Schedule 3 (5) and (6) provide for an application for restoration of a licence to be dealt with by the General Manager and not (as at present) by the Council.

Payments to Consolidated Fund

Schedule 3 (7) provides for the annual payment to the Consolidated Fund of part of the fees paid for licences and registration under the Act.

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Disqualification from holding a licence or registration

Schedule 3 (8) and (11) provide that, in disposing of proceedings taken for the cancellation of a person's licence or registration, the person may be disqualified from obtaining a new licence or new registration regardless of whether the previous licence or registration has expired or been surrendered.

Unclaimed money in trust accounts

Schedule 3 (9) provides for unclaimed money in licensees' or former licensees' trust accounts to be paid to the Consolidated Fund (instead of to the Council) and for the Treasurer to meet any claims made by persons entitled to any of that money.

Sharing commission

Schedule 3 (10) allows a licensee to share a commission etc. with a person licensed under a corresponding Act of another State or Territory.

Contributions to the RESC Compensation Fund

Schedule 3 (12) increases (from \$20 to \$150) the maximum periodic contribution by licensees to the Real Estate Services Council Compensation Fund ("the fund") that may be prescribed.

Offences against regulations

Schedule 3 (13) extends to 3 years the time for bringing proceedings for an offence against the regulations made under the Principal Act.

Regulations concerning charges

Schedule 3 (14) provides for regulations to be made requiring licensees to publicise their commission, fees or other charges.

SCHEDULE 4—SAVINGS AND TRANSITIONAL AMENDMENTS

Schedule 4 (1) inserts proposed section 93 which gives effect to a new Schedule to be inserted into the Principal Act by Schedule 4 (2), being proposed Schedule 2 (Savings and transitional provisions), of which:

Clause 1 (Definition) defines the proposed Act as the "amending Act".

Clause 2 (Termination of certain licences on commencement of Schedule 1 to the amending Act) provides for the termination of existing licences of the following kinds when the relevant repealing provisions take effect:

- primary products auctioneer's licence
- chattel auctioneer's licence
- business agent's licence
- stock buyer's licence

Clause 3 (Termination of other licences on commencement of Schedule 2 to the amending Act) provides for the termination of the remaining auctioneers' licences (presently known as "general" auctioneers' licences), except as provided by clause 4.

Clause 4 (Variation of former general auctioneers' licences) empowers the General Manager to approve of a former general auctioneer's licence which would otherwise be terminated under clause 3 being treated as a real estate agent's licence or a

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stock and station agent's licence (or both) for the residue of the term for which the current licence was issued or last renewed. The General Manager may impose conditions on any such licence.

Clause 5 (Appeals relating to approvals) provides for appeals to Local Courts against any decision of the General Manager in either regard.

Clause 6 (Termination of certain registration) provides for the termination of registration of the following kinds when the relevant repealing provisions take effect:

- real estate dealer
- business salesman
- trainee stock buying agent

Clause 7 (Saving of certain licences and registration) provides that each licence of the following kinds will, despite amendments made to the provisions of the Act under which it was issued, continue in force for the residue of the term for which the current licence was issued or last renewed:

- real estate agent's licence and stock and station agent's licence (in either case, whether restricted or not)
- strata managing agent's licence.

The clause also preserves the current registration of employees of licensees after the relevant repealing provisions take effect. Those employees will be treated as if registered under the new registration scheme.

Clause 8 (Replacement licences and registration certificates) allows the General Manager to issue replacement licences or certificates of registration for licences and certificates saved by the Schedule.

Clause 9 (Phasing in of 3-year licences) allows a continuing licensee to have 3 years to adjust to the proposed 3-year fee and licensing period. During that time, a continuing licensee can elect to have a licence renewed each year.

Clause 10 (Restricted licences) continues restrictions imposed on certain licences, except restrictions relating to locality. A restricted licence may be renewed once only.

Clause 11 (Unclaimed trust account money) requires the Council to pay unclaimed trust money sent to the Council by licensees and former licensees and accumulated in the fund kept by the Council to the Consolidated Fund.

Clause 12 (Claims against the fund) preserves the liability of the fund in relation to a failure of a former licensee or a former registered real estate dealer even though the licence or registration has ceased to have effect because of the proposed Act.

Clause 13 (Records) preserves the obligation on former licensees and former registered real estate dealers to keep certain records for a period of 3 years after the licences and registration have ceased to have effect because of the proposed Act.

Clause 14 (Subrogation) preserves the Council's rights of subrogation.

Clause 15 (Fees) provides that a refund or partial refund of fees is not payable on the abolition of a class of licence or registration under the proposed Act.
