

Property, Stock and Business Agents Act 1941 No 28

[1941-28]



New South Wales

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Notes—

- **Previously named**
Auctioneers and Agents Act 1941
Auctioneers, Stock and Station and Real Estate Agents Act 1941
- **See also**
[Statute Law \(Miscellaneous Provisions\) Bill 2001](#)

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New South Wales

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Property, Stock and Business Agents Act 1941 No 28



New South Wales

An Act to regulate real estate, stock and station, business and managing agents, and for other purposes.

Part 1 Preliminary

1 Name of Act

This Act may be cited as the *Property, Stock and Business Agents Act 1941*.

2 (Repealed)

3 Definitions

(1) In this Act, unless the context otherwise indicates or requires:

Auctioneer means any person:

- (a) who, in the course of trade or business and at an auction sale (or a proposed auction sale), acts as an auctioneer or sells for reward (whether monetary or otherwise) any land or any livestock, or
- (b) who sells or offers for sale, or who attempts to sell, any land or any livestock by way of auction.

Auction sale, sale by auction, sell by way of auction, and expressions of a similar character mean the selling of any land or livestock whatsoever by outcry, by what is known as Dutch auction, by knocking-down of hammer, candle, lot, parcel, instrument, machine, or by any other mode whereby the highest, the lowest, or any bidder is the purchaser; or whereby the first person who claims the property submitted for sale at a certain price named by the person acting as auctioneer is the purchaser; or whereby there is a competition for the purchase of any land or livestock whatsoever in any way commonly known and understood to be by way of auction, and shall be deemed to include the selling by outcry or in any other manner before mentioned in any public place or in any room, or mart, or place to which the public are admitted or have access, whether or not the sale has been advertised to take place.

Business agent means any person (whether or not such person carries on any other business) who for reward (whether monetary or otherwise) exercises or carries on business as an agent for performing any of the following functions, namely:

- (a) selling, buying or exchanging or otherwise dealing with or disposing of, or
- (b) negotiating for the sale, purchase or exchange or any other dealing with or disposition of, or
- (c) compiling for publication or compiling and publishing a document that contains a list relating solely or substantially to the acquisition or disposal by any person of, businesses or professional practices or any share or interest in or concerning or the goodwill of or any stocks connected with businesses or professional practices.

Business day means a day other than a Saturday, Sunday, public holiday or bank holiday in New South Wales.

Community managing agent means a person who is engaged or appointed, for monetary or other reward, to exercise functions of an association constituted for a scheme under the [Community Land Development Act 1989](#) but who is not:

- (a) the proprietor of a lot within the scheme, or
- (b) the secretary or treasurer of the association, or
- (c) a person authorised by the management statement for the scheme to exercise the functions of the secretary or treasurer of the association, or
- (d) a person who maintains or repairs any property that the association is required to maintain and keep in repair.

Compensation Fund or fund means the Property Services Compensation Fund referred to in section 64A.

Department means the Department of Fair Trading.

Director-General means the Director-General of the Department.

Employee includes any person employed whether on salary, wages, bonus, commission, fees, allowance or other remuneration and includes a director or member of the governing body of a corporation.

Individual means a natural person and does not include a corporation.

Land includes:

- (a) a lot within the meaning of the [Strata Schemes \(Freehold Development\) Act 1973](#) or the [Community Land Development Act 1989](#) and a leasehold interest in a lot

within the meaning of the *Strata Schemes (Leasehold Development) Act 1986*, and

- (b) shares which, under a company title scheme, entitle their holder to the possession of premises.

Land used for agricultural or pastoral purposes means any parcel of land which is used or apparently intended to be used for gain or profit for grazing of live stock, dairying, poultry farming, viticulture, orcharding, beekeeping, horticulture, the growing of crops of any kind, vegetable growing or any other purpose declared by the Governor by proclamation published in the Gazette to be an agricultural or pastoral purpose.

Licence means a licence issued under this Act.

Licensee means the holder of any licence issued under this Act.

Live stock means horses, cattle, asses, mules, sheep, swine, camels or goats.

Moneys includes an instrument for the payment of money in any case where the instrument may be paid into a bank, building society or credit union.

Moneys received for or on behalf of any person includes moneys held for or on behalf of any person, whether originally received for or on the person's behalf or not.

On-site residential property manager means a person (whether or not the person carries on any other business) who, for reward (whether monetary or otherwise) carries on business as an agent for:

- (a) giving possession of self-contained residential premises for the purpose of holiday accommodation (on each occasion for a period of less than 2 months) whether under a lease, licence or other contract or arrangement, or
- (b) collecting bonds, deposits, rents, fees or other charges in connection with any such lease, licence or other contract or arrangement.

Prescribed means prescribed by this Act or the regulations.

Principal place of business means in relation to a corporation which carries on business at more than one place the place of business specified in the application made by such corporation for a licence on its own behalf to be its principal place of business.

Proclaimed area means:

- (a) the area that consists of the Metropolitan Police District, the Liverpool Police District, the Parramatta Police District and the Ryde Police District and any other area that is added to that firstmentioned area by a proclamation made under subsection (4), or

- (b) any area, not being an area that is so added, that is declared by a proclamation made under subsection (4) to be a proclaimed area.

Real estate agent means a person (whether or not the person carries on any other business) who, for reward (whether monetary or otherwise), carries on business as an agent for:

- (a) inducing or attempting to induce or negotiating with a view to inducing any person:
- to buy, sell, exchange, lease, assign or otherwise dispose of any land, or
 - to make an offer to buy, sell, exchange, lease, assign or otherwise dispose of any land, or
 - to accept an offer to buy, sell, exchange, lease, assign or otherwise dispose of any land, or
 - to enter into a contract for the buying, selling, exchanging, leasing, assigning or other disposal of land, or
- (b) buying, selling, exchanging, leasing, assigning or otherwise disposing of any land, whether or not an auction is involved, or
- (c) collecting rents payable in respect of any lease of land, or
- (d) compiling for publication or compiling and publishing any document that contains a list relating solely or substantially to the acquisition or disposal by any person of land,

but does not include a person who carries on business as such an agent in respect of any parcel of land used for agricultural or pastoral purposes with an area of more than 2.5 hectares.

Regulations means regulations made under this Act.

Reviewing officer means the Commissioner of Police or such other police officer as may for the time being be nominated by the Commissioner for the purposes of this definition.

Statutory Interest Account means the Property Services Statutory Interest Account referred to in section 63B.

Stock and station agent means a person (whether or not the person carries on any other business) who, for reward (whether monetary or otherwise), carries on business as an agent for:

- (a) doing (where the land concerned consists of land used for agricultural or pastoral purposes) any one or more of the things referred to in paragraph (a)-(d) of the

definition of **Real estate agent**, or

- (b) inducing or attempting to induce or negotiating with a view to inducing any person:
- to buy, sell or otherwise dispose of any livestock, or
 - to make an offer to buy, sell or otherwise dispose of any livestock, or
 - to accept an offer to buy, sell or otherwise dispose of any livestock, or
 - to enter into a contract for the purchase, sale or other disposal of livestock, or
- (c) selling, buying or exchanging any livestock, whether or not an auction is involved, or
- (d) providing agistment for livestock or collecting of fees for such agistment.

Strata managing agent means a person (whether or not such person carries on any other business) who, for reward (whether monetary or otherwise), exercises or performs any function of an owners corporation within the meaning of the [Strata Schemes Management Act 1996](#), not being:

- (a) a person who:
- (i) is the proprietor of a lot to which the strata scheme for which the owners corporation is constituted relates,
 - (ia) is the lessee of a lot to which the leasehold strata scheme for which the owners corporation is constituted relates,
 - (ii) is the secretary or treasurer of the executive committee of the owners corporation, and
 - (iii) exercises or performs only functions of the owners corporation required, by the by-laws in force in respect of the strata scheme or leasehold strata scheme for which the owners corporation is constituted, to be exercised or performed by the secretary or treasurer of that council or of the owners corporation, or
- (b) a person who maintains or repairs any property for the maintenance or repair of which the owners corporation is responsible.

Trainee managing agent means a trainee strata managing agent, trainee community managing agent or trainee on-site residential property manager, within the meaning of Part 4.

Tribunal means the Fair Trading Tribunal established by the [Fair Trading Tribunal Act 1998](#).

- (2) A reference in the definition of **Real estate agent** in subsection (1) to the leasing of land includes a reference to the introduction, or arranging for the introduction, of a prospective lessee or licensee of premises to another licensed agent or to the owner, or the agent of the owner, of premises.
- (3) Where a person carries on business:
- (a) as a business agent and also carries on business as an agent for the collection of instalments of principal or interest payable under bills of sale given in respect of businesses or professional practices or under contracts for the sale on terms of businesses or professional practices, a reference in this Act to any such person acting as, or carrying on the business of, a business agent includes a reference to that person carrying on business as an agent for the collection of those instalments,
 - (b) as a real estate agent and also carries on:
 - (i) business as an agent for the collection of instalments of principal or interest payable under mortgages of land or under contracts for the sale on terms of land,
 - (ia) business as an agent for the collection of amounts payable in relation to any premises to a company by a person who is the holder of shares in the company and who, by reason of the person's holding those shares, is entitled to possession of those premises, or
 - (ii) the business of arranging for the erection of buildings for or on behalf of other persons,a reference in this Act to any such person acting as, or carrying on the business of, a real estate agent includes a reference to that person carrying on business as an agent for the collection of those instalments or amounts or to that person carrying on the business of so arranging for the erection of buildings, or
 - (c) as a stock and station agent and also carries on business as an agent for the collection of instalments of principal or interest payable under mortgages of land used for agricultural or pastoral purposes or under contracts for the sale on terms of any such land, a reference in this Act to any such person acting as, or carrying on the business of a stock and station agent includes a reference to that person carrying on business as an agent for the collection of those instalments.
- (3A) (Repealed)
- (4) The Governor may, by proclamation published in the Gazette:
- (a) add any area to the proclaimed area referred to in paragraph (a) of the definition of **Proclaimed area** in subsection (1), or

- (b) declare any area to be a proclaimed area for the purposes of this Act.
- (5) The Governor may in like manner vary or revoke any such proclamation.
- (6) The Governor may, in relation to a proclaimed area, from time to time, by proclamation published in the Gazette, specify the Local Courts that shall have jurisdiction under the provisions of Division 1 of Part 3, section 39AA and Division 3 of Part 4, within that proclaimed area.
- (7) The Governor may, in like manner, vary or revoke any such proclamation.
- (8) Where:
 - (a) the situation of the registered office or proposed registered office of a licensee or applicant for, or for the restoration of, a licence, or
 - (b) the registered address of a real estate salesperson, stock and station salesperson, business salesperson or trainee managing agent or the proposed registered address intended for registration,is:
 - (c) within a proclaimed area, the Local Court specified in a proclamation under subsection (6) in relation to that proclaimed area or, where more than one Local Court has been so specified, the Local Court so specified that is nearest to the registered office or address or the proposed registered office or address, as the case may be, shall have the jurisdiction conferred on a Local Court under the provisions of Division 1 of Part 3, section 39AA and Division 3 of Part 4, and
 - (d) outside a proclaimed area, the Local Court nearest to the registered office or address or the proposed registered office or address, as the case may be, shall have that jurisdiction.

4 Act not to apply to certain persons or bodies

- (1) This Act shall not be construed as requiring:
 - (a) any Minister of the Crown whether a Minister of the State of New South Wales or of the Commonwealth of Australia, or
 - (b) any Government Department of the said State or Commonwealth (including any statutory corporation representing the Crown), or
 - (c) a council within the meaning of the *Local Government Act 1993*, or
 - (d) any public statutory authority prescribed by the regulations, or
 - (e) any officer or employee of the Crown or of any such Minister, department, corporation, council or authority in the exercise of his or her functions as such

officer or employee,

to hold a licence under this Act.

(2) Nothing in this Act shall be construed:

(a) as requiring:

- (i) the Public Trustee or any executor, administrator, trustee, liquidator, official receiver, master in equity or in lunacy, trustee in bankruptcy of a bankrupt's estate, trustee under a composition or scheme of arrangement or under a deed of arrangement or under a deed of assignment, committee of the estate of an insane person, or manager of the property of an incapable person, for the purpose of performing his or her functions, exercising his or her powers or carrying out his or her duties as such, or
- (ii) any person for the purposes of any sale made of Crown lands or other Crown property or for the purposes of any sale of any property made by virtue of any writ or process issued out of any Court or made in obedience to any process issued by any Court or judge or justice for the recovery of any fine, penalty or award, or under any rule, order or decree of any competent Court or made pursuant to the [Impounding Act 1993](#),

to hold a licence under this Act, or

- (b) as prohibiting any person for the time being entitled to practise as a solicitor from performing any function, exercising any power or carrying out any duty which if this Act had not been passed the person might lawfully have performed, exercised or carried out as such solicitor, or
- (c) as rendering any such person liable to any proceedings or to any penalty for performing any such function or exercising any such power or carrying out any such duty.

(2A) An exemption under subsection (2) (a) that allows a person to carry on a business lawfully without a licence expires 3 months after the management of the business vests in the person.

(3) Nothing in this Act shall be construed as relieving any person from the obligation to take out a licence from any Department of the Government or under any Act (other than this Act) for the performance of any function the exercise of any power or the carrying out of any duty for which a licence would have been required if this Act had not been passed or to pay the fees payable in respect of any such licence.

(4) This Act does not apply to a sale by auction made for the purposes of or in the course of a fundraising appeal within the meaning of the [Charitable Fundraising Act 1991](#) if the appeal is made, and the proceeds of the sale are applied, in accordance with that

Act.

- (5) Nothing in this Act requires a business agent or a business salesperson to hold a business agent's licence or a certificate of registration under this Act if:
- (a) the person holds a dealers licence under the *Corporations Act 2001* of the Commonwealth, or
 - (b) the person holds a proper authority, within the meaning of the *Corporations Act 2001* of the Commonwealth, from the holder of such a dealers licence.

5 Repeal of certain Acts

- (1), (2) (Repealed)
- (3) As from the first anniversary of the date of the commencement of this Act, the Acts mentioned in Schedule 1 are hereby repealed.
- (4) (Repealed)

Part 2

6-19A (Repealed)

Part 3 Real estate agents, stock and station agents, business agents, strata managing agents, community managing agents and on-site residential property managers

Division 1 Licences

20 Agents to be licensed

- (1) A natural person must not act as or carry on the business of (or advertise, notify or state that the person acts as or carries on or is willing to act as or to carry on the business of):
- (a) a real estate agent, unless the person is the holder of a real estate agent's licence, or
 - (b) a stock and station agent, unless the person is the holder of a stock and station agent's licence, or
 - (c) a business agent, unless the person is the holder of a business agent's licence, or
 - (d) a strata managing agent, unless the person is the holder of a strata managing agent's licence, or
 - (e) a community managing agent, unless the person is the holder of a strata managing agent's licence, or

- (f) an on-site residential property manager, unless the person is the holder of an on-site residential property manager's licence.
- (2) Subsection (1) applies whether or not the person does the prohibited thing as a member of a partnership.
- (2A) A natural person, other than the holder of a real estate agent's licence, must not act as or carry on the business of (or advertise, notify or state that the person acts as or carries on or is willing to act as or to carry on the business of) an on-site residential property manager unless:
 - (a) the person's principal place of residence is situated at the premises for the letting of which the manager is an agent, and
 - (b) the person owns, or has a prescribed interest in, that principal place of residence.
- (2AA), (2B) (Repealed)
- (3) A corporation shall not act as or carry on or advertise, notify or state that it acts as or carries on or is willing to act as or carry on the business of a real estate agent, a stock and station agent, a business agent, a strata managing agent, a community managing agent or an on-site residential property manager, as the case may be, unless the corporation has taken out a corporation licence and employs as the person in charge of its sole or principal place of business a person who holds a licence or licences of such one or more of the classes referred to in section 22 as may be appropriate.
- (3A) A real estate agent, stock and station agent, business agent, strata managing agent, community managing agent or on-site residential property manager need not hold more than one licence to perform lawfully any of the functions of the agent that are also functions of any other of those agents.
- (4) A person guilty of an offence arising under this section is, in addition to a penalty specified in section 87 (2), liable to a penalty not exceeding 1 penalty unit for each day on which the offence occurs.

21 Each separate place of business to be in charge of licensee

- (1)
 - (a) No person shall, by virtue of one stock and station agent's licence, keep more than one place for the conduct of business as a stock and station agent.
 - (b) Where a person (other than a corporation) conducts business as a stock and station agent at more than one place of business the person shall employ at each such place, other than the place at which the person is personally in charge, a person holding a stock and station agent's licence who shall be in charge at that place.

- (c) Where a corporation conducts its business as a stock and station agent at more than one place of business it shall employ as the person in charge of each such place of business a person who is the holder of a stock and station agent's licence.

(1A)-(1C) (Repealed)

(2)

- (a) No person shall, by virtue of one real estate agent's licence, keep more than one place for the conduct of business as a real estate agent.
- (b) Where a person (other than a corporation) conducts business as a real estate agent at more than one place of business the person shall employ at each such place, other than the place at which the person is personally in charge, a person holding a real estate agent's licence who shall be in charge at that place.
- (c) Where a corporation conducts its business as a real estate agent at more than one place of business it shall employ as the person in charge of each such place of business a person who is the holder of a real estate agent's licence.

(2A)

- (a) No person shall, by virtue of one business agent's licence, keep more than one place for the conduct of business as a business agent.
- (b) Where a person (other than a corporation) conducts business as a business agent at more than one place of business the person shall employ at each such place, other than the place at which the person is personally in charge, a person holding a business agent's licence who shall be in charge at that place.
- (c) Where a corporation conducts its business as a business agent at more than one place of business it shall employ as the person in charge of each such place of business a person who is the holder of a business agent's licence.

(2B) No person shall, by virtue of one strata managing agent's licence, keep more than one place for the conduct of business as a strata managing agent or as a community managing agent.

(2C) Where a person (other than a corporation) conducts business as a strata managing agent or as a community managing agent at more than one place of business the person shall employ at each such place, other than the place at which the person is personally in charge, a person holding a strata managing agent's licence who shall be in charge at that place.

(2D) Where a corporation conducts its business as a strata managing agent or as a community managing agent at more than one place of business it shall employ as the person in charge of each such place of business a person who is the holder of a strata

managing agent's licence.

- (3) No person shall in pursuance of this section be in charge at more than one place of business.
- (4) No person employed as the person in charge of a place of business shall perform duties or services at that place on behalf of 2 or more licensees (whether corporations or individuals) not being individuals who are in partnership with one another.

22 Licences

- (1) A licence under this Act (other than a licence taken out by a corporation) shall be one of the following classes, namely:
 - (a) a real estate agent's licence,
 - (b) a stock and station agent's licence,
 - (c) a business agent's licence,
 - (d) a strata managing agent's licence,
 - (e) an on-site residential property manager's licence.

(1A) A licence may be expressed to be restricted in its operation to a specified purpose.

(1AA) A licence which is restricted in its operation to a specified purpose may be renewed subject to that restriction once only.

(1B) A person who takes out a licence referred to in subsection (1A):

- (a) shall be deemed, in the case of a licence of a class specified in subsection (1) taken out by a person other than a corporation, not to be the holder of a licence of that class, or
- (b) shall be deemed, in the case of a licence taken out by a corporation, not to be the holder of a licence,

except in relation to things done or omitted for the purpose to which the operation of the licence is expressed to be restricted.

(2) (Repealed)

(3)

- (a) A licence shall be in the form approved by the Director-General.
- (b) A licence taken out by a person (other than a corporation) shall set forth the name and place of abode of the person taking out the same and the address of the place of business in respect of which it is taken out.

(c)

(i) A licence taken out by a corporation shall set forth the name of the corporation and the address of its sole or principal place of business.

(ii) (Repealed)

(4)

(a) Subject to this Act a licence shall be in force for a period of 3 years from the date of its issue:

Provided that a licence of any class which is issued to a person who is already the holder of a licence of any other class shall be in force for a period expiring on the day upon which the licence of such other class expires.

(b) A licence may be renewed and on each renewal shall, subject to this Act, be in force for a further period of 3 years.

(c) The holder of a licence who desires to surrender the licence may by instrument in writing so notify the Director-General and may deliver the licence to the Director-General.

The Director-General shall, upon receipt of the notification and licence, endorse on the licence the word "surrendered" and record in the register kept by the Director-General under subsection (2) of section 30 the fact that the licence has been surrendered.

(5) A single licence may be issued to a person on which are recorded particulars of the class of each licence held by the person.

(6) The Director-General is to issue a replacement licence on which are recorded particulars of the class of each licence (if any) that the person continues to hold if any licence of a class the particulars of which are so recorded is surrendered or cancelled.

(7) The Director-General may, upon application made to the Director-General, issue a duplicate licence in the place of a licence that has been lost, destroyed or damaged.

22A Phasing in of 3-year licences

(1) Despite section 22, an applicant for a licence may elect to have a licence issued for a term of 1 year only.

(2) Despite section 22, an applicant for the renewal of a licence may elect to renew the licence for a term of 1 year only.

(3) This Act and the regulations apply to each issue of a licence or renewal of a licence pursuant to such an election as if:

- (a) the terms set out in section 22 (4) (a) and (b) and 23 (6) (a) (v) and (6A) were 1 year, and
- (b) the fees and any other amounts payable in respect of each such licence or renewal were one-third of the amounts payable in respect of issuing or renewing the licence for a term of 3 years.

(4) This section ceases to have effect on 1 March 2004.

23 Procedure

- (1) An application for a licence or for renewal of a licence is to be made in a form approved by the Director-General.
- (2) Such application shall:
 - (a) contain such particulars as are required to complete the approved form,
 - (b) specify the class of licence desired by the applicant,
 - (c) be lodged with the Director-General, and
 - (d) be accompanied by:
 - (i) the prescribed application fee, and
 - (ii) (Repealed)
 - (iii) the prescribed contribution.
- (2A) An applicant for the issue or renewal of two or more licences, or an applicant for the issue of a licence who is already a licensee, is not liable to pay more than one prescribed application fee and contribution for licences issued to the person that expire at the same time.
- (3) Upon receipt of an application (not being a prescribed application or a special application) for the grant of a licence (not being a renewal of a licence), the Director-General shall forward particulars of the application to the reviewing officer.
- (4) The Director-General may, in the case of an application for a licence or for the renewal of a licence, inquire into, and the reviewing officer, upon receipt of the particulars, shall, in the case of an application (not being a prescribed application or a special application) for a licence (not being a renewal of a licence), inquire into and report to the Director-General upon:
 - (a) where the applicant is an individual—the fame and character of the applicant,
 - (b) where the applicant is a corporation—the fame and character of the directors and the secretary of the corporation and whether the corporation is a fit and proper

person to hold a licence.

(c) (Repealed)

(5) (Repealed)

(6)

(a) Where an application for the renewal of a licence is made before the day on which the licence would, but for this subsection, expire (which day is, in this subsection, referred to as **the date of expiry**) and:

(i) the renewal of the licence is not issued before the date of expiry, and

(ii) the application is not refused or withdrawn before the date of expiry,

the licence shall be deemed to continue in force after the date of expiry until:

(iii) a renewal of licence is issued,

(iv) the application is refused or withdrawn, or

(v) the expiration of 3 years after the date of expiry,

whichever first occurs.

(b) Where a renewal of licence is, after the date of expiry, issued in respect of the licence referred to in paragraph (a), the renewal shall take effect as from the date of expiry of the licence.

(6A) Upon the refusal or withdrawal of an application:

(a) for a licence, not being a renewal of a licence, there shall be refunded to the applicant, or to any other person who appears to the Director-General to be entitled thereto, the prescribed fees (other than the prescribed fee referred to in subsection (3) of section 25) and the prescribed contribution paid by the applicant, or

(b) for the renewal of a licence deemed by subsection (6) to continue in force after the day on which the licence would, but for that subsection, have expired, there shall be refunded to the applicant or to any other person who appears to the Director-General to be entitled thereto:

(i) the prescribed fees paid by the applicant (other than the prescribed fee referred to in subsection (3) of section 25) reduced by such amount as bears to those prescribed fees, and

(ii) the prescribed contribution reduced by such amount as bears to the prescribed contribution,

the same proportion as the period in months (disregarding any fraction of a month) for which the licence was so deemed to continue in force bears to 36 months but nothing in this subsection requires a refund to be made in any case where the applicant applied for licences of two or more classes, or for the renewal of licences of two or more classes, and one or more licences, or the renewal of one or more licences, are granted.

(7)

(a) A member of the police force, with the approval in writing of the reviewing officer, may object to the grant of an application (not being a prescribed application or a special application) for a licence (not being a renewal of a licence), or the Director-General may object to the grant of an application for a licence or for the renewal of a licence and, where he or she does so, a statement setting out the nature of the objection proposed to be made shall be lodged by the Director-General or by that member of the police force, as the case may be, with the clerk of the Local Court having jurisdiction under subsection (8) of section 3.

(b) A copy of a statement so lodged by a member of the police force shall be included in any report furnished pursuant to subsection (4).

(8) Where no objection to the grant of the application for the licence has been made pursuant to subsection (7), the Director-General shall issue the licence.

(9) Where a member of the police force or the Director-General objects pursuant to subsection (7) to the grant of the application:

(a) the clerk of the court shall notify the applicant that the grant of the application will be objected to, and shall set out shortly in the notice the nature of the objection proposed to be made,

(b) the application shall be heard and determined by the court, which for that purpose shall be constituted by a Magistrate sitting alone or two or more justices,

(c) such hearing shall not take place until after the expiration of seven days after the lodging of the application,

(d) the hearing of the application shall be in open court and the consideration of the application shall be deemed to be a judicial proceeding,

(e) where the Director-General has objected to the grant of the application, the Director-General may appear at the hearing personally or by any police officer or officer of the Department or by barrister or solicitor.

(f) (Repealed)

Upon determination of the application the clerk of the court shall notify the decision of

the court to the Director-General.

If the court grants the application, the Director-General shall upon receipt of the notification, issue the licence.

- (9A) In subsection (9B), **licence** means licence or renewed licence, as the case may be.
- (9B) A licence shall not be granted to a corporation:
- (a) where the corporation is the holder of a licence at the commencement of section 5 of the *Auctioneers and Agents (Amendment) Act 1975* or where the corporation, not being the holder of a licence, makes application for a licence before that commencement—after a day that is three years after that commencement, or
 - (b) where the corporation makes application for a licence after that commencement, unless at least half the number of directors of the corporation are licensed in respect of the class or classes of business that the corporation carries on or proposes to carry on.
- (9C) The Minister may for any reason which appears to the Minister sufficient exempt a corporation from the operation of subsection (9B).
- (10) A licence or a renewal of a licence shall not be granted:
- (a) (Repealed)
 - (b) to an applicant who is disqualified from holding a licence or who is not of good fame and character nor otherwise a fit and proper person to hold a licence, or
 - (c) to a corporation where the court is satisfied:
 - (i) that any director or the secretary of the corporation is not of good fame and character or otherwise a fit and proper person, if the director or the secretary were to apply for a licence, to hold the licence, or
 - (ii) that the corporation is not a fit and proper person to hold a licence.
- (10A) Subject to subsection (10AB), a licence (not being a renewal of a licence) shall not be granted to an applicant, not being a corporation, unless the applicant:
- (a) has passed the examination conducted by the Technical and Further Education Commission that is approved for the time being by the Minister for applicants for the licence of the class to which the applicant belongs or such other examination as may be so approved, and
 - (b) has been the holder of a certificate of registration under Part 4 for not less than 2 years, unless the licence applied for is an on-site residential property manager's licence, and

(c) has produced to the Director-General evidence that the applicant has had experience that satisfies the Director-General that the applicant is capable of performing the duties generally performed by the holder of such a licence.

This subsection does not apply where the application is a special application.

Paragraphs (a) and (b) do not apply to an applicant for a business agent's licence who is a Certified Practising Accountant member of the Australian Society of Certified Practising Accountants, New South Wales Division, or who is a member of the Institute of Chartered Accountants in Australia, New South Wales Branch, and holds a Certificate of Public Practice issued by that Institute.

(10AB) The Director-General may exempt any applicant for a licence from the requirements of paragraph (a) or (b) or of both paragraphs (a) and (b) of subsection (10A).

(10AC) Where pursuant to subsection (7) an application for the grant of a licence (not being a renewal of a licence) is to be heard and determined by a Local Court, references in subsections (10A) and (10AB) to the Director-General shall be read and construed as references to the court.

(10B) (Repealed)

(10C) A licence (not being a renewal of a licence) shall not after the commencement of this subsection be granted to an applicant (not being a corporation) who, at the date of the application has not attained the age of twenty-one years.

(10D) A licence or renewal of a licence shall not be granted in pursuance of an application if the application, or the statement referred to in the definition of **special application** in subsection (13) accompanying a special application, contains any matter that is false or misleading in a material particular.

(11), (12) (Repealed)

(13) In this section:

interstate licence has the meaning ascribed thereto by subsection (1) of section 26.

prescribed application means an application for a licence (not being a renewal of a licence) that is made by a person who is the holder of a licence.

special application means an application for a licence (not being a renewal of a licence) that is accompanied by a statement containing the prescribed particulars and containing a declaration to the effect that, at all times during the period of five years immediately preceding the making of the application:

(a) where the application is made by an individual—the individual was the holder of an interstate licence that is, under section 26, deemed to be equivalent to a

licence of the same class as that applied for, or

- (b) where the application is made by a corporation—the corporation was the holder of an interstate licence that is, under section 26, deemed to be equivalent to a licence of the same class as that applied for.

23A Restoration of licence by Director-General

- (1) If a licence is not renewed because renewal was not applied for before the licence expired, application for its restoration may be lodged with the Director-General in the form approved by the Director-General accompanied by:
 - (a) the application fee and contribution that would have been payable if application had been duly made for renewal of the licence, and
 - (b) the prescribed late fee.
- (1A) If the application for restoration of a licence is made less than 7 days after the expiration of the licence, the Director-General may waive the payment of the prescribed late fee.
- (2) An application for restoration of a licence may not be made more than 6 months after expiration of the licence.
- (3) The Director-General must restore a licence in response to an application duly made under this section unless the Director-General:
 - (a) decides to object to the granting of the application, and
 - (b) within 28 days after the application was lodged, refers the application to a Local Court for hearing and determination.

23B Objection to application for restoration of licence

- (1) If the Director-General decides to object to the granting of an application for restoration of a licence, the Director-General must refer the application and the objection for hearing and determination by the Local Court having jurisdiction under section 3 (8).
- (2) An objection by the Director-General must state the grounds on which it is made and they may be any grounds on which:
 - (a) this Act would have precluded renewal of the licence, or
 - (b) objection could have been made to the issue of the licence.
- (3) The clerk of the Local Court shall notify the applicant:
 - (a) of the grounds of the objection, and

- (b) of the reference of the application for hearing and determination by the Local Court, specifying the Court.
- (4) The application and objection shall be heard by the Local Court in open court as a judicial proceeding and the Director-General may appear at the hearing by:
 - (a) a member of the Police Force, or
 - (b) an officer of the Department, or
 - (c) a barrister or solicitor.
- (5) The Local Court:
 - (a) shall dismiss the application if it would have been required to dismiss an application for renewal of the licence, or
 - (b) if it is not required to act under paragraph (a), may grant or dismiss the application.
- (6) If the Local Court grants the application, the Director-General shall issue a new licence to the applicant.

23C Effect of decision on application for restoration of licence

- (1) Except in relation to proceedings under section 20 (relating to unlicensed persons), a licence issued under section 23A or 23B:
 - (a) shall be taken to have had effect from the expiration of the expired licence, and
 - (b) unless sooner surrendered or cancelled, remains in force for the balance of the period for which, but for its expiration, the expired licence could have been renewed.
- (1A) Anything done (other than the commission of an offence under section 20) between:
 - (a) the expiration of a licence, and
 - (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.
- (1B) Anything done (other than the commission of an offence under section 20) between:
 - (a) the expiration of a licence, and
 - (b) the dismissal of an application duly made for the restoration of the licence,by the person whose licence had expired is taken to have been done while the person was the holder of the licence.

- (1C) For the purposes of subsection (1B), if the Local Court dismisses an application for the restoration of a licence and an appeal is duly lodged against the Court's decision, the application is dismissed when the appeal is dismissed or withdrawn.
- (2) If an application for restoration of a licence is refused or withdrawn, the application fee and contribution charge accompanying the application shall be refunded to the applicant.

24, 25 (Repealed)

26 Interstate licences

- (1) In this section:

interstate licence means a licence issued under the law of another State, or of a Territory, of the Commonwealth.

State licence means a licence issued under this Act.

- (2) The Director-General may, from time to time, by order published in the Gazette, declare a class of interstate licences specified or described in the order to be, for the purposes of this section, equivalent to a class of State licences so specified or described.
- (3) For the purposes of the definition of ***special application*** in subsection (13) of section 23, an interstate licence shall be deemed to be equivalent to a State licence if the interstate licence is of a class of interstate licences declared, under subsection (2), to be, for the purposes of this section, equivalent to the class of State licences to which the State licence belongs.
- (4) Where during the period of five years immediately preceding the making of an application referred to in the definition of ***special application*** in subsection (13) of section 23, a person was, for any part of that period, the holder of a State licence of the same or substantially the same class as that applied for, that person shall, for the purposes of that definition, be deemed to have been, for that part of that period, the holder of an interstate licence that is equivalent to the licence applied for.

27, 28 (Repealed)

29 Cancellation of licence

- (1) Upon complaint being made to him or her by a member of the police force, with the approval of the reviewing officer, or by the Director-General any justice of the peace may summon a licensee to appear before a Local Court constituted by a Magistrate sitting alone to show cause why the licence held by him or her or, in the case of a corporation, held by it, should not be cancelled and why such licensee should not be disqualified either permanently or temporarily from holding a licence on the ground:

- (a) that the licence was improperly obtained contrary to the provisions of this Act, or
- (b) that the licensee is not a fit and proper person to continue any longer to hold a licence, or
- (bi) that any director or the secretary of the corporation is not a fit and proper person to be a director or the secretary, as the case may be, of a corporation holding a licence, or
- (c) that the licensee has been guilty of such conduct as renders him or her unfit to continue any longer to hold a licence or that the affairs of the corporation have been so conducted as to render it unfit to continue any longer to hold a licence, or
- (d) that any director or the secretary of the corporation has been guilty of such conduct as renders him or her unfit to be a director or the secretary, as the case may be, of a corporation holding a licence.

Where the summons alleges a ground referred to in paragraph (bi) or (d), a copy of the summons shall be served personally or by post on the director or the secretary referred to in the statement of that ground in the summons.

- (2) If upon the day and at the time and place appointed by the summons issued in accordance with the provisions of subsection (1) the person named in the summons does not appear then upon proof of the due service of the summons upon the person a reasonable time before the time appointed for the person's appearance, the Local Court may proceed to hear and determine the matter of such complaint in the absence of the person.

Service of the summons may be proved by the oath of the person who served it or by affidavit or otherwise.

- (3) Upon being satisfied of the truth of any of the grounds aforesaid the court may order that the licence (if any) of the person be delivered up to the Director-General forthwith and cancelled and that the person and, where the court orders the cancellation of the licence of a corporation on a ground referred to in paragraph (bi) or (d) of subsection (1), that any director or the secretary of the corporation be disqualified either permanently or for such period as the court specifies from holding a licence under this Act, and upon the making of such order such licence (if any) shall thereafter be deemed and taken to be cancelled.
- (3A) On the cancellation of a licence or the disqualification of any person under this section by a Local Court, the Clerk of the Local Court must notify the decision of the Court to the Director-General.
- (4) (Repealed)

29A Disqualification of former licensees etc

- (1) In this section, **former licensee** means a person who, within a period of twelve months before a complaint in respect of that person is made under subsection (2):
 - (a) has been the holder of a licence (including a business subagent's licence issued under this Act as in force at any time before the commencement of section 10 of the *Auctioneers and Agents (Amendment) Act 1967*) and has ceased to hold that licence, or
 - (b) (Repealed)
 - (c) has been a director or the secretary of a corporation that, within that period, has held a licence.
- (2) Upon complaint being made to him or her by a member of the police force, with the approval of the reviewing officer, or by the Director-General any justice may summon a former licensee to appear before a Local Court constituted by a Magistrate sitting alone to show cause why that former licensee should not be disqualified either permanently or temporarily from holding a licence on the ground:
 - (a) in the case of a former licensee referred to in the definition of **former licensee** in subsection (1) who is an individual:
 - (i) that the former licensee is not a fit and proper person to hold a licence, or
 - (ii) that the former licensee has been guilty of conduct that renders him or her unfit to hold a licence, or
 - (b) in the case of a former licensee referred to in paragraph (a) of the definition of **former licensee** in subsection (1) that is a corporation:
 - (i) that it is not a fit and proper person to hold a licence, or
 - (ii) that its affairs have been so conducted as to render it unfit to hold a licence.
- (3) If, upon the day and at the time and place appointed by the summons issued under this section, the former licensee does not appear, the Local Court may, upon proof of the due service of the summons upon the former licensee a reasonable time before the time appointed for the former licensee's appearance, proceed to hear and determine the matter of the complaint in the absence of the former licensee.
- (4) The court may, upon being satisfied as to the truth of any of the grounds specified in the summons, order that the former licensee be disqualified, either permanently or for such period as the court specifies in the order, from holding a licence under this Act.
- (5) Upon the disqualification of any person under this section, the clerk of the court by which the disqualification is imposed shall notify the decision of the court to the

Director-General.

30 Register to be kept by Director-General

- (1) (Repealed)
- (2) The Director-General shall keep a register of all licences and of all renewals, restorations and cancellations of licences, and refusals of applications, and disqualifications, which register shall be available for perusal by any member of the public upon payment of the prescribed fee.

30A Commencement of certain determinations and orders

Notwithstanding anything in this Act, where, after the commencement of the *Auctioneers and Agents (Amendment) Act 1972*, the court makes:

- (a) a determination refusing:
 - (i) an application for the renewal of a licence under section 23, or
 - (ii) an application made under section 23A, or
- (b) an order under section 29,

the determination or order shall have no force or effect until the expiration of twenty-one days after the making thereof and, where within that period of twenty-one days an appeal to a District Court is commenced under section 31 in relation to the determination or order, until the Court confirms the determination or order or dismisses the appeal.

31 Appeal

- (1) Where the court:
 - (a) refuses any application made under section 23 or 23A or makes an order under section 29 or 29A, or
 - (b) grants an application under section 23 or 23A to the granting of which a member of the police force or the Director-General has objected, or
 - (c) dismisses a complaint made under section 29 or 29A,

the person making the application, or the licensee, as the case may be, where paragraph (a) applies, or the member of the police force or the Director-General where paragraph (b) applies, or the complainant where paragraph (c) applies, may appeal in accordance with the rules of court of the District Court to the District Court exercising jurisdiction in the district within which the court refusing such application, making such order, granting such application, or dismissing such complaint is situated.

- (2) Every such appeal shall be in the nature of a rehearing.

- (3) Notice of appeal shall be given to such persons as may be prescribed by rules of court of the District Court, or as the District Court may direct.
- (4)
- (a) An appeal shall lie to the Supreme Court against any ruling, order, direction or decision of the District Court in point of law or upon the admission or rejection of any evidence.
- (b) For the purposes of any such appeal the parties to the appeal to the District Court shall be deemed to include any of the following persons:
- (i) the person making the application or the licensee or the director or secretary of a corporation referred to in the statement of the ground on which the disqualification was imposed, as the case may be,
- (ii) the member of the police force who objected to the grant of the application—in any case where the appeal is in proceedings arising out of an application to the granting of which such member of the police force had objected,
- (iii) the member of the police force who made the complaint—in any case where the appeal is in proceedings arising out of a complaint made by him or her under section 29 or 29A,
- (iv) the Director-General—in any case where the appeal is in proceedings arising out of an application to the granting of which the Director-General had objected, or out of a complaint made by the Director-General under section 29 or 29A.
- (4A) An appeal under this section in any case to which subsection (1) (a) applies shall not be commenced after the expiration of twenty-one days after the date of the determination refusing the application or the date of the order under section 29 or 29A, as the case may be.
- (5) Any appeal under this section in any case to which subsection (1) (b) or (c) applies shall not be made unless the Minister approves.

Division 2 Licensees generally

32 Effect of disqualification on membership etc of corporation

A person disqualified under this Act shall not, while the person's disqualification continues, be capable of becoming or continuing a director or manager or the secretary of any corporation or a partner in any partnership carrying on business in New South Wales as a real estate agent, a stock and station agent, a business agent, a strata managing agent, a community managing agent or an on-site residential property manager.

33 Failure to deliver up licence

Where the court has made an order that a licence be delivered up to the Director-General the holder of such licence shall, if the holder refuses, neglects or fails to comply with such order, be guilty of an offence against this Act.

34 Registered office and address

- (1) Every licensee shall have a registered office within New South Wales.
- (2) (Repealed)
- (3) The address specified in the application as the address at which the applicant proposes to carry on business or in the case of a corporation carrying on business at more than one place the address specified in the application as its principal place of business shall, upon the grant, renewal or restoration of the licence, be deemed for the purposes of this Act to be the registered office of the licensee.
- (3A), (3B) (Repealed)
- (4) Notice of any change in the situation of the registered office or the registered address shall be lodged by the licensee with the Director-General within the prescribed time, and the Director-General shall enter such change in the register.
- (4A) Within the prescribed period after a person commences employment as, or ceases to be employed as, the person in charge of a place of business of a corporation the corporation shall lodge with the Director-General:
 - (a) a notice specifying the name and address of, and the classes of licence held by, the person so commencing to be employed, or
 - (b) a notice specifying the day upon which that person ceases to be so employed, as the case may require.
- (5) If any licensee carries on business without complying with the requirements of this section the licensee shall be liable to a penalty not exceeding 1 penalty unit for every day during which the licensee so carries on business.

35 Publication of name of licensee

- (1) Every licensee shall paint or affix and keep painted or affixed the licensee's name and description as a licensee on the outside of the licensee's registered office, and, where the business is carried on at any place other than such registered office, on the outside of each place in which the licensee's business as a licensee is carried on, in a conspicuous position, in letters easily legible and conforming to the type and size of type prescribed.
- (2) A licensee, being a corporation, shall, in addition to complying with the provisions of

subsection (1), paint or affix and keep painted or affixed:

- (a) the name of the person in charge of the corporation's registered office on the outside of that registered office, and
- (b) where the business of the corporation is carried on at any place other than that registered office, the name of the person in charge at that place on the outside of that place,

in a conspicuous position and in letters easily legible and conforming to the type and size of type prescribed.

(3) Any person shall be guilty of an offence against this Act who:

- (a) commits any contravention of or fails to comply with any of the provisions of subsection (1) or (2), or
- (b) keeps up or exhibits or allows to remain unobliterated on or near to the person's office, house or place of business or exhibits anywhere any sign, writing, painting or other mark implying that such office, house or place of business is that of a person licensed:
 - as a real estate agent, unless the person is the holder of a real estate agent's licence, or
 - as a stock and station agent, unless the person is the holder of a stock and station agent's licence, or
 - as a business agent, unless the person is the holder of a business agent's licence, or
 - as a strata managing agent or a community managing agent, unless the person is the holder of a strata managing agent's licence, or
 - as an on-site residential property manager, unless the person is the holder of an on-site residential property manager's licence or a real estate agent's licence.

36 Money to be paid to trust account

- (1) All moneys received for or on behalf of any person by any licensee shall be held by the licensee or, where the licensee is employed by a corporation, by the corporation, exclusively for such person, to be paid to such person, or to be disbursed as the person directs, and until so paid or disbursed the moneys shall be paid into a bank, building society or credit union operating in New South Wales to a trust account, whether general or separate, and retained therein.

In any case where the licence is held by a corporation the trust account shall be in the name of the corporation and in any other case the trust account shall be in the name

of the licensee or of the firm of licensees of which the licensee is a member. The words "Trust Account" shall appear in the name of the trust account and in the description of the trust account in the books and records of the licensee and also on all cheques drawn on the trust account.

- (1A) When opening a trust account at a bank, building society or credit union for the purpose of complying with subsection (1), the licensee concerned must ensure that the bank, building society or credit union is notified in writing that the account is a trust account required by this Act.
- (1B) If money is held in a trust account in accordance with subsection (1) at the commencement of this subsection, the licensee concerned must, within 1 month after that commencement, ensure that the bank at which the account is kept is notified in writing that the account is a trust account required by this Act.
- (2) The moneys shall not be available for the payment of the debts of the licensee to any other creditor of the licensee, or be liable to be attached or taken in execution under the order or process of any court at the instance of any such other creditor.
- (3) Nothing in this section shall be construed to take away or affect any just claim or lien which any licensee may have against or upon any of the moneys.
- (3A) A licensee must, within 14 days after closing a trust account, notify the Director-General in writing of the closure.
- (3B) If at any time a trust account becomes overdrawn, the licensee concerned must, within 5 days after becoming aware of the overdrawn, notify the Director-General in writing of:
 - (a) the name and number of the account, and
 - (b) the amount by which the account is overdrawn, and
 - (c) the reason for the account becoming overdrawn.
- (4) Any licensee who neglects or fails to comply with any of the provisions of this section shall be guilty of an offence against this Act.
- (4A) Where any licensee neglects or fails to comply with any of the provisions of this section by reason of the licensee's neglect or failure to pay any moneys into a bank, building society or credit union operating in New South Wales to a trust account or to retain any such moneys therein, the offence shall continue until the said moneys are paid to the person for or on whose behalf they were received, or disbursed in such manner as may be directed by such person.
- (5) (Repealed)
- (6) A reference in this section to a licensee includes a reference to a person who has

been, but has, after the commencement of this subsection, ceased to be, a licensee and to the personal representative of a licensee who has, after that commencement, died and in the application of this section to:

- (a) a person who has been, but has so ceased to be, a licensee, a reference to moneys received for or on behalf of any person by any licensee shall be read as a reference to moneys received by that person for or on behalf of any other person in connection with his or her business as a licensee, and
- (b) the personal representative of a licensee who has died, a reference to moneys received for or on behalf of any person by any licensee shall be read as a reference to moneys received by that licensee or personal representative for or on behalf of any person in connection with the business carried on by that licensee.

36AA Determination of trust account rate

- (1) For the purposes of sections 36AB and 36AC, the Minister is required to determine from time to time, after consultation with the Treasurer, a trust account rate for each bank, building society or credit union. The rate, which may be a fixed or variable one, is to be determined by reference to an interest rate that applies in the short term money market.
- (2) As soon as practicable after determining a trust account rate for a bank, building society or credit union, the Minister must:
 - (a) inform the bank, building society or credit union of the rate by notice in writing, and
 - (b) publish a notice of the rate in the Gazette.

36AB Prescribed percentage of trust account rate

- (1) For the purposes of section 36AC, the prescribed percentage, in relation to money held in trust accounts kept with a bank, building society or credit union under section 36 (whether opened before or after the commencement of this section), is:
 - (a) during the period of 2 years beginning on the date of that commencement—25 per cent of the trust account rate relevant to the institution, and
 - (b) during any subsequent period—25 per cent of that rate or such greater percentage of that rate as may be determined under subsection (2) and notified in the Gazette.
- (2) For the purposes of subsection (1) (b), the Minister may, from time to time, determine a percentage greater than 25 after consultation with the Treasurer.

36AC Interest earned on trust accounts to be paid to Statutory Interest Account

- (1) On the first business day after the end of each named month beginning after the

commencement of this section, every bank, building society or credit union must:

- (a) calculate interest on the daily balances of all money held during the month in trust accounts kept with the bank, building society or credit union under section 36 (being trust accounts notified to the bank, building society or credit union under that section as trust accounts required by this Act) by applying to those balances the prescribed percentage of the trust account rate applicable to the bank, building society or credit union, and
 - (b) pay the amount of that interest to the Director-General for crediting to the Statutory Interest Account.
- (2) A bank, building society or credit union must not deduct transaction or other charges, other than statutory charges (such as bank account debits tax), from the balances referred to in subsection (1) or from an amount of interest calculated under that subsection.
- (3) The Director-General may, by proceedings brought in a court of competent jurisdiction, recover as a debt an amount due and payable to the Director-General under this section.

36AD Bank, building society or credit union to provide Director-General with certain information

- (1) Within 14 days after the end of each named month beginning after the commencement of this section, every bank, building society or credit union must, by notice in writing, inform the Director-General of the following matters:
- (a) the number of trust accounts opened with the bank, building society or credit union during the month under section 36 (being trust accounts notified to the bank, building society or credit union under that section as trust accounts required by this Act), the names of the licensees who opened those accounts, the names and numbers of those accounts and the addresses of the branches of that bank, building society or credit union at which those accounts are kept,
 - (b) the total amount of interest that the bank, building society or credit union paid for the month under section 36AC (1) (b).
- (2) As soon as practicable (and in any case within 5 business days) after a bank, building society or credit union becomes aware that a trust account kept with it under section 36 is overdrawn (being a trust account notified to the bank, building society or credit union under that section as a trust account required by this Act), the bank, building society or credit union must, by notice in writing, inform the Director-General of:
- (a) the name and business address of the licensee concerned, and
 - (b) the name and number of the account, and

(c) the amount by which the account is overdrawn.

(2A) In addition, the regulations may:

- (a) require banks, building societies and credit unions to provide the Director-General with such information relating to all or any trust accounts as is specified or described in the regulations, and
- (b) authorise the Director-General to require a bank, building society or credit union to provide the Director-General with such information relating to trust accounts identified by the Director-General as is specified or described by the Director-General, and
- (c) make provision for or with respect to any associated matter, including the manner in which, and the time within which, any such information is to be provided to the Director-General.

(3) This section has effect irrespective of any other law or any rule of practice to the contrary.

36AE Sections 36AC and 36AD not to apply to certain accounts

Sections 36AC and 36AD do not apply:

- (a) to a separate trust account kept on the instructions of a client of a licensee or a firm of licensees for the exclusive benefit of the client, or
- (b) to a trust account of a class of trust accounts prescribed by the regulations for the purposes of this section.

36AF Offences by banks, building societies and credit unions

- (1) A bank, building society or credit union that fails to comply with a provision of section 36AC or 36AD is guilty of an offence against this Act.
- (2) Without affecting section 92, subsection (1) of this section does not apply to a requirement of or under regulations made under section 36AD (2A).

36A Unclaimed trust moneys held by a licensee

- (1) Subject to subsection (2), where a licensee, in the month of January in any year, holds any moneys in a trust account kept by the licensee in any year and those moneys were received by the licensee more than two years before that month, the licensee shall in that month furnish to the Director-General a statement in the form approved by the Director-General showing particulars of:
 - (a) those moneys,
 - (b) every person for whom or on whose behalf the moneys are so held, and

- (c) the last known address of each of those persons.
- (2) Subsection (1) does not apply to moneys that are of a class specified or described in the regulations.
- (3) The regulations may make provision for or with respect to prescribing a written record to be kept in relation to moneys referred to in subsection (2) by a licensee who holds any such moneys.
- (4) Without affecting the generality of section 38, a written record referred to in subsection (3) shall be deemed to be a written record required to be made in accordance with that section.

36B Unclaimed trust moneys held by a former licensee

Where a person has been, but has ceased to be, a licensee or the personal representative of a licensee who has died holds any moneys in a trust account kept by the personal representative in accordance with section 36, the person or personal representative shall:

- (a) within three months after the date on which he or she ceased to be a licensee or became the personal representative of the licensee who died, furnish to the Director-General a statement in the form approved by the Director-General showing particulars of:
 - (i) the moneys held in the trust account as at the date on which he or she furnishes the statement,
 - (ii) every person for whom or on whose behalf the moneys are so held, and
 - (iii) the last known address of each of those persons, and
- (b) within fourteen days after the expiration of a period of twelve months after the date on which the statement referred to in paragraph (a) was furnished, furnish to the Director-General a statement in the form approved by the Director-General showing particulars of:
 - (i) the moneys held in the trust account as at the date on which he or she furnishes the statement,
 - (ii) every person for whom or on whose behalf the moneys are so held,
 - (iii) the last known address of each of those persons, and
 - (iv) any payments made from the trust account since the statement referred to in paragraph (a) was made.

36C Disposal of unclaimed money in trust accounts

- (1) The Director-General shall, upon receipt of the statement referred to in section 36A, or

in paragraph (b) of section 36B:

- (a) send by post to each person for whom or on whose behalf any moneys referred to in the statement are held a notice in writing addressed to the person at the person's address shown in the statement stating the particulars of the moneys held for or on behalf of that person, and
- (b) cause to be published in the Gazette a notification stating the particulars of the moneys held for or on behalf of each such person,

and stating that, if those moneys are not paid out of the trust account in which they are held within a period of three months after the date of the notification referred to in paragraph (b), the person holding the moneys will be required to pay them to the Director-General.

(2) The Director-General may, at any time after the expiration of a period of three months after the publication in the Gazette of a notification referred to in paragraph (b) of subsection (1), by a notice in writing served personally or by post on the person by whom the moneys referred to in the notification are held, require that person:

- (a) to pay to the Director-General any moneys referred to in the notification that have not been previously paid by that person out of the trust account in which they are held, and
- (b) to furnish to the Director-General, within such period as may be specified in the notice, a statement showing particulars of any payments made out of the moneys referred to in the notification since the statement referred to in subsection (1) was made.

(2A) The Director-General must pay any money received by the Director-General under subsection (2) into the Compensation Fund.

(2B) Within 2 months after the end of each year, the Director-General must pay into the Consolidated Fund all money received by the Director-General and paid into the Compensation Fund during that year. When the Director-General makes that payment, the Director-General must give the Treasurer a statement containing the following particulars:

- (a) the name and last known address of each person for whom or on whose behalf the money received by the Director-General was held,
- (b) the amount held in respect of each such person,
- (c) the date of gazettal of the notice under subsection (1) (b) in respect of that money,
- (d) the name and address of each licensee who furnished a statement to the Director-General under section 36A or 36B in respect of that money.

- (3) The Treasurer must, on application made to the Treasurer by any person entitled to any money paid into the Consolidated Fund under this section, pay the money to the person.
- (4) If an application for the payment of money to which a person is entitled is made while the money is held in the Compensation Fund, the Director-General must pay the money to the person from the Compensation Fund.
- (5) Any person who neglects or fails to comply with the requirements of any notice served on the person under subsection (2) shall be guilty of an offence against this Act.

36D-36F (Repealed)

37 Banks, building societies and credit unions to be relieved from liability in certain cases

- (1) A bank, building society or credit union:
 - (a) does not incur liability, and is not obliged to make inquiries, in relation to any transaction concerning an account of a licensee kept with the bank, building society or credit union or with some other financial institution, and
 - (b) is, in relation to any such transaction, taken not to have any knowledge of a right of any person to money credited to such an account,

unless it would incur such a liability, be obliged to make such inquiries or be taken to have that knowledge in relation to an account kept with it in respect of a person absolutely entitled to the money held in that account. This subsection is subject to section 36AD.

- (2) Subsection (1) does not relieve a bank, building society or credit union from any liability or obligation that it would have apart from this Act.
- (3) A bank, building society or credit union at which a licensee keeps an account for clients' money does not, as regards any liability that the licensee has to the bank, building society or credit union (not being a liability relating to that account), have a right to any of the money held in that account, whether by way of set-off, counterclaim, charge or otherwise.

38 Record to be kept

- (1) Every licensee shall in a legible manner make a written record containing full particulars of all transactions by or with him or her as licensee and such other written records relating to his or her business as licensee as may be prescribed and shall keep such written records at his or her registered office.
- (2) Every such written record shall, for a period of three years after the date on which it was made, be preserved:

- (a) where such licensee continues to hold a licence under this Act or where upon ceasing to hold a licence under this Act or ceasing to have as his or her registered office the place where such written record was kept, such licensee does not authorise some other person to have the possession, custody or control of such written record—by the licensee, or
 - (b) where any person obtains the possession, custody or control of such written record either by transfer of the business of such licensee or otherwise—by such person.
- (3) Every entry in any such written record kept at the registered office of a licensee shall be deemed, unless the contrary is proved, to have been made by or with the authority of the licensee.
- (4) Any person who contravenes any of the provisions of this section shall be guilty of an offence against this Act.

38A Furnishing of particulars of trust account or transactions

- (1) Every licensee shall within seven days after service of a requisition in that behalf in the form approved by the Director-General furnish to the Director-General in the manner prescribed a statement in writing setting forth full particulars as to:
- (a) the name of the trust account on which such licensee operates in accordance with the provisions of section 36, the name of the bank, building society or credit union on which such account is current, the balance of the moneys standing to the credit of such account as at a date specified in such requisition, and particulars of all cheques drawn on such account as at such date and not presented and duly paid,
 - (b) any moneys paid by any person to such licensee or received by such licensee for or on behalf of any person in connection with his or her business as a licensee, and if not still held by such licensee the manner and time of disbursement thereof, or
 - (c) any transaction by or with such licensee as a licensee.
- (2) No licensee shall be required to furnish to the Director-General any particulars with regard to any of the matters mentioned in subsection (1) which relate to any transaction by or with such licensee more than three years before the service of such requisition.
- (3) A licensee shall within fourteen days of demand in writing in the manner prescribed made by a person directly concerned in any transaction by or with such licensee in connection with his or her business as a licensee, render in the manner prescribed to the person making such demand an itemised account of such transaction.
- (4) No person shall under subsection (3) be entitled to demand an itemised account of

any transaction which took place more than six months before the making of such demand.

- (5) Any licensee who neglects or fails without reasonable cause, proof whereof shall lie on such licensee, to furnish a statement in writing in accordance with subsection (1) or an itemised account as required by subsection (3) or knowingly furnishes false or incorrect information in any such statement or account shall be guilty of an offence against this Act.
- (6) A person guilty of an offence against this Act arising under subsection (3) shall be liable to a penalty not exceeding 1 penalty unit for each day on which the offence occurs.
- (7) Without affecting the application of the foregoing provisions of this section to licensees, the provisions:
 - (a) of this section, other than paragraph (b) or (c) of subsection (1), apply to any person who is required by virtue of subsection (6) of section 36 to keep a trust account, and so apply while the person is required to keep that account, and
 - (b) of this section, other than paragraph (a) of subsection (1), apply to any person who is required by subsection (2) of section 38 to preserve any written record referred to in that subsection and so apply while the person is required to preserve that written record.

38B Inspection of records

- (1) All books of account or other written records relating to the trust account on which any licensee operates in accordance with the provisions of section 36, or kept as prescribed, and the written records required to be made and kept in accordance with the provisions of section 38, shall at all reasonable times be open to inspection by the Director-General, a member of the police force or an officer of the Department duly authorised in writing in that behalf by the Director-General either generally or in any particular case.
- (1A) Any account on which a strata managing agent operates for or on behalf of an owners corporation, or on which a community managing agent operates on behalf of an association constituted under the [Community Land Development Act 1989](#), shall, for the purposes of this section, be deemed to be a trust account.
- (2) The Director-General, any such member of the police force or an officer of the Department duly authorised in writing in that behalf and in the case of such authorised officer upon production of his or her written authority, may require any licensee or in the absence of such licensee any servant or agent of such licensee for the time being having the apparent control or charge of the office or place of business of such licensee or, where a licensee has died, the personal representative of the

licensee:

(a) to produce for inspection:

- (i) all books, papers, accounts or other documents relating to the trust account of such licensee, or
- (ii) all written records made and kept by the licensee in accordance with the provisions of section 38, or
- (iii) all contracts, agreements or other documents relating to any transaction by or with such licensee in connection with his or her business as a licensee, in the possession, custody or control of such licensee,

(b) to furnish all authorities and orders to financial institutions as may be reasonably required of him or her.

(2AA) Where the Director-General has reasonable grounds for believing that a licensee has received or disbursed moneys in his or her capacity as a licensee that have not been dealt with in accordance with section 36, the Director-General may duly authorise in writing a member of the police force or an officer of the Department to inspect any records of the licensee that relate to any account (not being a trust account) kept by the licensee in connection with his or her business as a licensee.

(2AB) A person authorised under subsection (2AA) may require any licensee or, where a licensee has died, the personal representative of the licensee:

- (a) to produce for inspection such of the records referred to in subsection (2AA) as are in his or her possession or under his or her control as the person so authorised requires, and
- (b) to furnish all authorities and orders to financial institutions as may be reasonably required of him or her.

(2A) A person authorised under subsection (1) or (2AA) to make an inspection may serve on a bank, building society or credit union with which a licensee has deposited any money in any account (whether the licensee's own account or a general or separate trust account) an instrument, in the form approved by the Director-General and under the hand of the Director-General or a member of the police force:

(a) certifying that:

- (i) the licensee cannot be located,
- (ii) the licensee has left the State,
- (iii) the licensee or any servant or agent of the licensee or the personal representative of the licensee has neglected or refused to furnish any authority or order on the bank, building society or credit union in accordance

with subsection (2) or (2AB), or

- (iv) the licensee has ceased to be a licensee, and
- (b) requiring the bank, building society or credit union to produce to the person for inspection the written records of the bank, building society or credit union relating to the account.
- (3) An officer authorised as aforesaid may make notes, copies or extracts of or from any such books, papers, accounts, written records, contracts, agreements or other documents referred to in subsections (2) and (2AB).
- (4) (Repealed)
- (5) This section applies to and in respect of a written record preserved in accordance with section 38 (2) by a person who has ceased to hold a licence under this Act or by a person (other than the licensee who made that written record) who has the possession, custody or control of that written record as required by section 38 (2) in the same way as it applies to a record kept by a licensee.
- (6) Any person who:
 - (a) wilfully delays or obstructs an officer authorised as aforesaid in the exercise of his or her powers, authorities, duties and functions under this section, or
 - (b) on demand refuses or fails to produce any books, papers, accounts, written records, contracts, agreements or other documents required for inspection under this section in his or her possession, custody, or control, or
 - (c) on demand refuses or fails to furnish any authorities and orders as may reasonably be required of the person under this section,shall be guilty of an offence against this Act.
- (7) Where an offence against subsection (2) or (2AB) is proved against a person the court may, in addition to any penalty imposed under section 87 (2), order that person to produce the records in respect of which the offence occurred to the Director-General or a member of the police force within such time as the court specifies in the order.
- (8) A person who fails to produce in accordance with an order of a court made under subsection (7) any record specified in that order is guilty of an offence and liable upon conviction to a penalty not exceeding 1 penalty unit in respect of each day on which the offence continues.
- (9) An investigator appointed under section 18 of the *Fair Trading Act 1987* is taken to be an officer authorised under subsections (1), (2) and (2AA).

38C Power to obtain books or records

- (1) An authorised officer may give a licensee a written notice requiring the licensee to produce any books or records specified in the notice at the time and place specified in the notice.
- (2) A licensee who:
 - (a) refuses or fails to comply with a notice under this section, to the extent that the licensee is capable of complying with it, or
 - (b) in purported compliance with such a notice, knowingly produces a book or record that is false or misleading in a material particular,is guilty of an offence against this Act.
- (3) An authorised officer may inspect a book or record produced in response to a notice under this section and may make copies of, or take extracts from, the book or record.
- (4) An authorised officer may retain possession of a book or record produced in response to a notice under this section for as long as is necessary for the purposes of this Act.
- (5) A licensee:
 - (a) is not guilty of a contravention of section 38 (1), and
 - (b) is not in breach of an obligation under section 38B (1),if the relevant books or records were not available for inspection, or were not at the registered office of the licensee, because they were being, or had been, produced in accordance with a notice under this section.
- (6) This section applies to and in respect of a written record preserved in accordance with section 38 (2) by a person who has ceased to hold a licence under this Act or by a person (other than the licensee who made the written record) who has the possession, custody or control of that written record as required by section 38 (2), in the same way as it applies to a record kept by a licensee.
- (7) In this section:

authorised officer means:

 - (a) the Director-General, or
 - (b) an investigator appointed under section 18 of the [Fair Trading Act 1987](#).

38D Audit of licensees' books and other records

- (1) In this section:

person to whom this section applies means:

- (a) a licensee,
- (b) a person who has been, but after the commencement of this section ceases to be, a licensee, and
- (c) the personal representative of a licensee who has died after that commencement.

prescribed day means the thirtieth day of June or, in respect of any particular person to whom this section applies, such other day as the Director-General may, on the application of that person, fix by order in writing addressed to that person.

- (2) Within three months after the prescribed day in every year applicable to the person, a person to whom this section applies shall:
 - (a) cause the books, papers, accounts and other documents relating to any moneys held during the year ended on that day in a trust account kept by the person in accordance with section 36 to be audited by a person qualified under section 38E to act as an auditor, and
 - (b) after the receipt from the auditor of a report of the result of the audit, lodge it with the Director-General.
- (2A) Where a person to whom this section applies receives the report referred to in subsection (2) earlier than fourteen days before the expiration of three months after the prescribed day in any year applicable to the person, the person shall lodge it under that subsection not later than fourteen days after so receiving it.
- (2B) The report referred to in subsection (2) shall be in the form approved by the Director-General.
- (3) Subsection (2) ceases to apply to a person to whom this section applies and who is referred to in paragraph (b) or (c) of the definition of that expression in subsection (1):
 - (a) where, at the date on which the person ceased to be a licensee or became the personal representative of a licensee, the person did not hold any moneys in any trust account kept by the person in accordance with section 36—upon the expiration of a period of three months after the prescribed day applicable to the person that next follows the day on which the person ceased to be a licensee or became the personal representative, as the case may be, or
 - (b) where, at the date on which the person ceased to be a licensee or became the personal representative of a licensee, the person held moneys in any trust account kept by the person in accordance with section 36—upon the expiration of a period of three months after the prescribed day applicable to the person that next follows the day on which the person has disbursed the last of the moneys in any such trust account.

- (4) A person to whom this section applies shall obtain from the auditor making an audit for the purposes of this section a copy of the report of the result of the audit signed by the auditor and preserve it for a period of three years after the date on which the report was made.
- (5) A licensee shall not be required under this section to cause any books, papers, accounts or other documents to be audited in respect of any period in respect of which those books, papers, accounts and other documents have already been audited for the purposes of this section.
- (6) A licensee who in the course of any year ending on the prescribed day neither received nor held any money for or on behalf of any other person must, within the period of three months after that day, make and lodge with the Director-General a statutory declaration to that effect.
- (7) Where, in relation to the books, papers, accounts and other documents kept by a partnership of licensees, the provisions of this section are complied with by any one of the licensees, those provisions shall be deemed to have been complied with by all of the licensees.
- (8) An order made for the purposes of the definition of **prescribed day** in subsection (1) may be made with such limitations as to time or circumstances, and subject to such conditions, as the Director-General may determine.

38E Qualifications and duties of auditors

- (1) A person shall be qualified to act as an auditor for the purposes of section 38D:
 - (a) if he or she is a registered company auditor within the meaning of the [Corporations Act 2001](#) of the Commonwealth, or
 - (b) if he or she is a person, nominated by the person whose books, papers, accounts and other documents are to be audited, who has by order in writing been approved by the Director-General,but shall not be so qualified:
 - (c) if the person is or has at any time within two years before the last day of the period in respect of which the audit is to be made, been an employee or partner of the person whose books, papers, accounts and other documents are to be audited, or
 - (d) if he or she is a licensee, or a shareholder in a corporation that is a licensee and has not more than twenty shareholders.
- (2) If an auditor in the course of making an audit of any books, papers, accounts and documents for the purposes of section 38D discovers that any breach of this Act or the regulations has been committed, that there is any discrepancy relating to the trust

account to which those books, papers, accounts and other documents relate or that the books, papers, accounts and other documents are not kept in such a manner as to enable them to be properly audited, the auditor shall fully set out the facts so discovered by the auditor in the report made by the auditor for the purposes of that section and shall forward a copy of the report to the Director-General.

- (3) An auditor, or an assistant of an auditor, appointed to make an audit for the purposes of section 38D shall not communicate any matter which may come to the auditor's knowledge in the course of the audit to any person except in the course of the auditor's duties as an auditor or assistant of an auditor, in accordance with this section or in the like circumstance and to the like extent as an officer of the Department is permitted under subsection (1) of section 86A to publish information.
- (4) A report for the purposes of section 38D or under this section relating to books, papers, accounts and other documents of any person or a statutory declaration lodged with the Director-General under that section shall be available in the hands of the Director-General for inspection by the auditor appointed to carry out for the purposes of that section any subsequent audit of the books, papers, accounts and other documents of that person.

39 Certain persons not to be employed by licensees

- (1) A licensee shall not, except with the approval of the Director-General, knowingly employ in any way whatever in connection with the licensee's business any person:
 - (a) who is for the time being disqualified under this Act from holding a licence or whose licence under this Act has been cancelled, unless a licence has subsequently been granted to the person, or
 - (b) whose application for a licence under this Act has been refused (otherwise than pursuant to subsection (10A) or (10C) of section 23), unless such an application has been subsequently granted, or
 - (c) who is for the time being disqualified under this Act from holding a certificate of registration under Part 4, or whose certificate of registration under Part 4 has been cancelled, unless a certificate has been subsequently granted to the person, or
 - (d) whose application for a certificate of registration under Part 4 has been refused, unless such an application has been subsequently granted.
- (1A) A licensee whose application for approval under section 39AA is granted shall comply with such conditions as are imposed pursuant to that section in relation to the approval.
- (2) Subject to this section no such person shall participate or be in any way concerned in the business of a licensee.

- (3) A licensee must not employ (in or in connection with the licensee's business as a real estate agent, a stock and station agent, a business agent, a strata managing agent or an on-site residential property manager) a person to do anything as a result of doing which the person would be a real estate salesperson, a stock and station salesperson, a business salesperson or a trainee managing agent unless the person is the holder of a certificate of registration under Part 4.
- (4) Any licensee or any person aforesaid who commits any contravention of or fails to comply with any of the provisions of this section shall be guilty of an offence against this Act.

39AA Procedure for approvals under sec 39

- (1) An application for the approval of the Director-General referred to in subsection (1) of section 39, or for the removal or variation of any conditions imposed under this section in relation to the approval, shall be made by the licensee concerned in the form approved by the Director-General and shall be lodged with the Director-General.
- (2) The Director-General may require an applicant under this section to supply the Director-General with any further information the Director-General considers necessary in relation to the application.
- (3) The Director-General may:
 - (a) in the case of an application for the approval referred to in subsection (1) of section 39—grant the application conditionally or unconditionally or refuse the application, or
 - (b) in the case of an application for the removal or variation of any conditions imposed under this section—grant or refuse the application and in either case, if the Director-General thinks fit, impose other conditions,

and the Director-General shall in writing notify the applicant as soon as practicable of the Director-General's decision.

- (4) An applicant under this section aggrieved by a decision of the Director-General under this section may, in the manner prescribed and within twenty-one days of being notified by the Director-General of the decision, appeal to the Local Court having jurisdiction under subsection (8) of section 3.
- (5) An appeal under this section shall not be determined except by a Local Court constituted by a Magistrate sitting alone.
- (6) An appeal under this section shall not be entertained unless at least ten days' notice, in writing, of the appeal has been given to the Director-General, setting out the grounds of the appeal.

- (7) The court may, on an appeal under this section, confirm the decision appealed against or give such directions in the matter as seem proper or otherwise determine the matter.
- (8) The decision of the court on an appeal under this section shall be final and shall be deemed to be the decision of the Director-General.
- (9) Upon determination of an appeal under this section, the clerk of the court shall notify the decision of the court to the Director-General.
- (10) An approval given, and any conditions imposed, by a Local Court under section 39 and in force immediately before the commencement of the *Auctioneers and Agents (Amendment) Act 1972* shall be deemed to be an approval given, and conditions imposed, by the Director-General under this section.

39A Licensee not to share commission etc with certain persons

- (1) A licensee shall not knowingly enter into any arrangement or act in conjunction with any person, not being an employee in the licensee's business as a licensee, who is not licensed under this Act or a corresponding Act whereby such person is entitled to a share of the commission, fee, gain or reward payable to such licensee in respect of any transaction by or with him or her as a licensee or generally.
- (2) In subsection (1), **corresponding Act** means an Act of another State or a Territory which is declared by the regulations to be a corresponding Act.

39B Subagency agreements etc to be in writing

- (1) An agreement between licensees (not being licensees who are in partnership with one another or in the relationship of employer and employee with one another) to share any commission, fee, gain or reward paid or payable to a licensee in respect of any services performed by him or her as a licensee is unenforceable unless the agreement is in writing, is signed by the licensees and contains such terms (if any) as may be prescribed.
- (2) Subsection (1) does not apply to a prescribed agreement, transaction, circumstance or person or an agreement, transaction, circumstance or person of a prescribed class or description.
- (3) Any provision in, or applying to, an agreement referred to in subsection (1) and purporting to exclude or restrict the operation of the terms (if any) required to be contained in that agreement has no force or effect.
- (4) A licensee who enters into an agreement that is, by virtue of subsection (1), unenforceable is guilty of an offence against this Act.

40 Production of licence

- (1) Every licensee shall on demand, at the premises upon which the licensee carries on business, produce his or her licence to any member of the police force, to any officer of the Department authorised under subsection (1) of section 38B, or to any person with whom such licensee is transacting or attempting to transact any business as a real estate agent, a stock and station agent, a business agent, a strata managing agent, a community managing agent or an on-site residential property manager.
- (2) (Repealed)

41 Licensee not to lend licence

Any licensee who lets out, hires or lends any licence held by the licensee to any other person or permits any other person to use his or her licence shall be guilty of an offence against this Act, and on conviction for such offence, and in addition to any penalty therefor, any licence held by the licensee shall thereupon become absolutely void and shall be delivered up to the court and cancelled.

42 Provisions as to commission etc

- (1) Subject to this Act, no person shall be entitled to bring any proceeding in any court to recover any commission, fee, gain or reward for any service performed by the person:
 - (a) as a real estate agent, unless the person was the holder of a real estate agent's licence, or employed such a holder, at the time of performing the service, or
 - (b) as a stock and station agent, unless the person was the holder of a stock and station agent's licence, or employed such a holder, at the time of performing the service, or
 - (c) as a business agent, unless the person was the holder of a business agent's licence, or employed such a holder, at the time of performing the service, or
 - (d) as a strata managing agent or as a community managing agent, unless the person was the holder of a strata managing agent's licence, or employed such a holder, at the time of performing the service, or
 - (e) as an on-site residential property manager, unless the person was the holder of an on-site residential property manager's licence or a real estate agent's licence, or employed such a holder, at the time of performing the service,and, in the case of a corporation, unless it was the holder of a corporation licence at the time of performing such service.
- (2) (Repealed)

42AA Agency agreements to be in writing

- (1) A licensee shall not be entitled to:
 - (a) any remuneration by way of commission, fee, gain or reward for services performed by the licensee in his or her capacity as licensee, or
 - (b) any sum or reimbursement for expenses or charges incurred in connection with services performed by the licensee in his or her capacity as licensee,from the person for whom or on whose behalf those services were performed unless:
 - (c) the agreement pursuant to which those services were performed is in writing and signed by or on behalf of:
 - (i) the licensee, and
 - (ii) that person,
 - (d) the agreement contains such terms (if any) as may be prescribed, and
 - (e) a copy of the agreement was served by the licensee on that person within 48 hours of the agreement being signed by or on behalf of that person.
- (2) Subsection (1) does not apply to a prescribed agreement, transaction, circumstance or person or an agreement, transaction, circumstance or person of a prescribed class or description.
- (3) Any provision in, or applying to, an agreement referred to in subsection (1) and purporting to exclude or restrict the operation of the terms (if any) required to be contained in that agreement has no force or effect.
- (4) Where a licensee has recovered or retained from a person any remuneration or sum to which the licensee is not entitled by virtue of subsection (1), the person who would be entitled to the remuneration or sum so recovered or retained by the licensee had that remuneration or sum not been so recovered or retained may bring proceedings in any court of competent jurisdiction for the recovery of that remuneration or sum, or both, as a debt.
- (5) A licensee who recovers or retains any remuneration or sum to which the licensee is not entitled by virtue of subsection (1) is guilty of an offence against this Act.

42A Review of commissions, fees etc

- (1) No action or other proceedings shall be commenced by any licensee for the recovery of:
 - (a) any remuneration by way of commission, fee, gain or reward for services performed by such licensee in his or her capacity as such, or

(b) any sum as reimbursement for expenses or charges incurred in connection with services performed by such licensee in his or her capacity as such,

until the expiration of 28 days after a statement of claim in writing setting out the amount claimed and containing details of the services performed by such licensee in respect of which such commission, fee, gain, reward, expenses or charges are claimed has been served personally or by post on the person to be charged with the same.

(2) (Repealed)

(3) Where any sum of money has been paid to or is or has been retained by a licensee out of any moneys received by or paid to such licensee in respect of any transaction by or with him or her as a licensee such moneys being so paid or so retained as remuneration by way of commission, fee, gain or reward for services performed in connection with such transaction or as reimbursement for expenses or charges incurred in connection with such transaction, the person paying such moneys or the person who would be entitled to the moneys so retained by such licensee had such moneys not been so retained, may, if an itemised account of such transaction has not been received by such person, require such licensee to furnish the person with an itemised account of such transaction under and in accordance with section 38A.

(4) Without limiting the *Consumer Claims Act 1998*, the person served with the statement of claim in accordance with subsection (1) or the person receiving or obtaining an itemised account as provided in subsection (3) may, in accordance with section 6 of that Act, apply to the Tribunal for the determination of a consumer claim within the meaning of that Act in relation to:

(a) the entitlement of the licensee to the whole or any part of the amount specified in the statement of claim or the itemised account, or

(b) whether the whole or any part of the amount is reasonable,

or both.

For the purpose of the application of the *Consumer Claims Act 1998* to that person, a reference in that Act to a "consumer" is taken to include a reference to that person.

(5) Without limiting the *Consumer Claims Act 1998*, the Tribunal has jurisdiction to hear and determine any such consumer claim despite:

(a) the terms or conditions of any agreement or contract entered into between the licensee and the applicant, and

(b) the amount being more or less than the maximum amount (if any) of remuneration to which a licensee is entitled under this Act.

(6) The regulations may make provision for or with respect to requiring the inclusion, in the manner prescribed by the regulations, in statements of claim or itemised accounts

referred to in this section, of a notice, in a form approved by the Director-General, containing advice concerning remedies available under the *Consumer Claims Act 1998*.

(7)-(13) (Repealed)

43 Publication of name and place of business in advertisements

(1) Any licensee who publishes (whether in a newspaper or otherwise) any advertisement relating to or in connection with his business without specifying therein the following particulars:

- (a) where such licensee is an individual carrying on business in the licensee's own name and is not a member of a partnership, the licensee's name and the address of the licensee's place of business,
- (ai) where such licensee is an individual carrying on business under a business name registered or deemed to be registered under any Act for the time being in force relating to the registration of business names, then either the licensee's name or such business name and the address of the licensee's place of business,
- (b) where such licensee carries on business as a member of a partnership, then either the licensee's name or the name of the partnership of which the licensee is a member, or the name under which the partnership is registered or deemed to be registered under any Act for the time being in force relating to the registration of business names, and the address of the licensee's or its place of business,
- (c) where such licensee is a corporation and the corporation is carrying on business in its own name, the name of the corporation and the address of its place of business, or
- (d) where such licensee is a corporation and the corporation is carrying on business under a business name registered or deemed to be registered under any Act for the time being in force relating to the registration of business names, then either its own name or such business name, and the address of its place of business,

shall be guilty of an offence against this Act.

Where a licensee carries on business at more than one place of business any such advertisement may specify the address of any one of such places.

(2) Where a licensee has an interest in any real or personal property as a principal, the licensee is guilty of an offence against this Act if, in a newspaper or otherwise, the licensee published an advertisement relating to or in connection with the property without disclosing that interest in the advertisement.

43A Business names

- (1) A licensee shall not, either alone or together with other persons, carry on business as a licensee under a name or advertise or hold out that the licensee carries on business as a licensee under a name unless:
 - (a) the name consists of the name of the licensee and the name of each other person, if any, with whom the licensee is carrying on, or advertising or holding out that the licensee is carrying on, business as a licensee, or
 - (b) the Director-General has approved of the licensee carrying on, or advertising or holding out that the licensee carries on, that business as a licensee under that name.
- (2) For the purposes of subsection (1), the name of a licensee consists of:
 - (a) in the case of an individual—the licensee’s full name, or the licensee’s surname together with:
 - (i) the licensee’s other name or names,
 - (ii) the initial or initials of the licensee’s other name or names,
 - (iii) a combination of one or more of the licensee’s other name or names and the initial or initials of the licensee’s remaining other name or names, or
 - (iv) the other name or names by which the licensee is commonly known or the initial or initials by which the licensee is commonly known or any combination of one or more of those names or initials, or
 - (b) in the case of a corporation—the corporate name of the corporation.
- (3) The Director-General may refuse to approve of a licensee carrying on, or advertising or holding out that the licensee carries on, business as a licensee under a name where:
 - (a) the name is the same as, or is a name nearly resembling, the name under which a person whose licence has been cancelled under or in pursuance of this Act was carrying on business immediately before the person’s licence was cancelled,
 - (b) the name implies or is capable of being construed as implying that the licensee is the successor in the business, or in any way interested or concerned in continuing the business as a licensee, of a person whose licence has been cancelled under or in pursuance of this Act, or
 - (c) the name is, in the opinion of the Director-General and in the circumstances of any particular case, undesirable as being contrary to the public interest.
- (4) For the purposes of subsection (1), the Director-General shall be deemed to have

approved of a licensee carrying on, or advertising or holding out that the licensee carries on, business as a licensee under a name where, immediately before the date of commencement of this section, the licensee carried on, or advertised or held out that the licensee carried on, business as a licensee under that name.

- (5) Nothing in subsection (4) applies to or in respect of a licensee who, immediately before the date of commencement of this section, carried on, or advertised or held out that the licensee carried on, business as a licensee under a name of a kind referred to in subsection (3) (a) or (b) where the Director-General had not, before that date, consented in writing to the licensee carrying on business as a licensee under that name.
- (6) Nothing in this section affects the *Business Names Act 1962*.

Division 3 Auctioneers

44 (Repealed)

45 Collusive practices at auction sales

- (1) A person shall not, in relation to the sale by auction of any land or livestock, induce or attempt to induce any other person:
- (a) to abstain from bidding generally,
 - (b) to abstain from bidding for any particular lot,
 - (c) to bid to a certain limited extent only, or
 - (d) to do any other act or thing which in any way might prevent or tend to prevent free and open competition,
- by means of a promise, express or implied, that the person will if the person is the successful bidder for the land or livestock:
- (e) give that other person the right to elect to take over as purchaser through the auctioneer all or any of the land or livestock at the auction price, or
 - (f) agree to decide by tossing or the drawing of lots or any other method who is to become the owner of all or any of the land or livestock.
- (2) A person shall not, at a sale by auction of any land or livestock:
- (a) abstain or agree to abstain from bidding generally,
 - (b) abstain or agree to abstain from bidding for any particular lot,
 - (c) bid or agree to bid to a certain limited extent only, or
 - (d) do or agree to do any other act or thing which in any way might prevent or tend to

prevent free and open competition,

as the result of a promise, expressed or implied, given to the person:

- (e) that the person shall have the right to elect to take over as purchaser through the auctioneer all or any of the land or livestock at the auction price, or
- (f) that the ownership of all or any of the land or livestock shall be determined by tossing or the drawing of lots or any other method.

Maximum penalty for a first offence: In the case of a corporation, 10 penalty units or, in the case of an individual, 5 penalty units.

Maximum penalty for a second or subsequent offence: In the case of a corporation, 40 penalty units or, in the case of an individual, 20 penalty units.

46 Entry by auctioneer or employee in record or book kept by auctioneer as purchaser of land or livestock sold by auction of any name other than the name of the actual successful bidder

- (1) An auctioneer or an employee of an auctioneer shall not knowingly enter in any record or book kept or required to be kept by the auctioneer as the purchaser of any land or livestock sold by auction any name other than the name of the actual successful bidder for such land or livestock.

Maximum penalty for a first offence: In the case of a corporation, 10 penalty units or, in the case of an individual, 5 penalty units.

Maximum penalty for a second or subsequent offence: In the case of a corporation, 40 penalty units or, in the case of an individual, 20 penalty units.

- (2) Any auctioneer who employs any person, being a person who enters, in any record or book required to be kept by the auctioneer, as the purchaser of any land or livestock sold by auction any name other than the name of the actual successful bidder for the land or livestock, contravenes this subsection unless the auctioneer proves to the satisfaction of the court that the auctioneer did not know that a name other than the name of the actual successful bidder was so entered.

Maximum penalty for a first offence: In the case of a corporation, 10 penalty units or, in the case of an individual, 5 penalty units.

Maximum penalty for a second or subsequent offence: In the case of a corporation, 40 penalty units or, in the case of an individual, 20 penalty units.

- (3) Notwithstanding anything in subsection (1) or subsection (2), where the actual successful bidder at a sale by auction of any land or livestock as soon as practicable after the auctioneer conducting such sale has indicated such actual successful bidder but not in any case later than the day of the sale informs such auctioneer:

- (a) that the bidder bid for such land or livestock on behalf of another person, and
- (b) of the name of such other person,

the said auctioneer or employee shall not be guilty of an offence against the provisions of subsection (1) or subsection (2) by reason of the fact that the auctioneer or employee enters in the record or book aforesaid as purchaser of such land or livestock the name of such other person.

47 Notice of material parts of secs 45 and 85C to be given at auction sale

An auctioneer shall not sell by auction any land or livestock unless notice is given, in the prescribed manner and in the prescribed terms (if any), of the material parts of sections 45 and 85C.

Maximum penalty: 4 penalty units.

48 Misrepresentation as to quality etc

Any auctioneer who knowingly misrepresents, or causes or permits to be misrepresented, the value, composition, structure, character or quality, or the origin of manufacture, of any land or livestock put up for sale at an auction sale conducted by the auctioneer, shall be guilty of an offence against this Act.

49 Bidding by seller or auctioneer or persons on their behalf

(1A) This section applies to sales by auction only in so far as they relate to land or livestock.

(1) A sale by auction may be notified in the conditions of sale to be subject to the right by the seller or by any person on behalf of the seller or auctioneer to make a bid or a specified number of bids.

(2) It shall not be lawful:

(a) for the seller or any person on behalf of the seller or auctioneer:

(i) to bid at a sale by auction unless the right to bid has been notified in the conditions of sale in accordance with subsection (1),

(ii) to make more than one bid or more than the number of bids, as the case may be, notified in the conditions of sale as aforesaid,

(b) for the auctioneer knowingly to take from the seller or any person on behalf of the seller or auctioneer:

(i) any bid unless the right to bid has been notified in the conditions of sale in accordance with subsection (1),

(ii) more than one bid or more than the number of bids, as the case may be,

notified in the conditions of sale as aforesaid.

- (3) Whosoever contravenes the provisions of this section shall be guilty of an offence against this Act.

50 Livestock auctions: “comeback” prohibited

- (1) An auctioneer shall not, at an auction for the sale of live stock, sell by auction any lot for a price lower than any price bid in relation to the sale of that lot.
- (2) For the purposes of subsection (1), a price is bid if:
- (a) called by a prospective purchaser, or
 - (b) attributed to a prospective purchaser by the auctioneer as being the amount of a bid,
- and not withdrawn by the prospective purchaser prior to the sale of that lot.

Division 4 Business agents

50A (Repealed)

50B Records to be kept by business agent

- (1) Every business agent shall keep in a legible manner a written record containing full particulars of every business or share or interest in or concerning or the goodwill of or any stocks connected with a business which has been entrusted to the agent for the exercise or performance in relation thereto of any of the functions of a business agent as defined by this Act.
- (2) Such written record shall be open to inspection at all reasonable times by the Director-General, a member of the police force, or an officer of the Department duly authorised in writing in that behalf and in the case of such authorised officer upon production of the officer’s written authority, and every business agent upon being required so to do shall produce such written record for inspection by the Director-General, such member of the police force or such authorised officer.
- (3) Any person who:
- (a) wilfully delays or obstructs the Director-General, such member of the police force or such authorised officer in the exercise of his or her powers, authorities, duties and functions under subsection (2), or
 - (b) being a business agent or business subagent refuses or fails, upon being required to produce any such written record kept by the agent or subagent under this section, to do so,
- shall be guilty of an offence against this Act.

- (4) An investigator appointed under section 18 of the *Fair Trading Act 1987* is taken to be an officer authorised under subsection (2).

50C (Repealed)

50D Agents for sale of businesses to be authorised in writing

Notwithstanding anything in any Act, no action or other proceedings shall be brought upon any contract or sale of any of the businesses referred to in the definition of **Business agent** in section 3 or any share or interest in or concerning any of such businesses, if the agreement or the memorandum or note thereof on which such action is or proceedings are brought is signed by any person other than the party to be charged therewith, unless such person so signing be thereunto lawfully authorised in writing signed by the party to be so charged.

50E-50H (Repealed)

Division 5 Stock and station agents

50I (Repealed)

Division 6

50J (Repealed)

Division 7 Strata managing agents and community managing agents

50K Definitions

In this Division:

association means a community association, precinct association or neighbourhood association constituted under section 25 of the *Community Land Development Act 1989*.

owners corporation means an owners corporation constituted under the *Strata Schemes Management Act 1996*.

50L Production of certain instruments

A strata managing agent or community managing agent who fails to keep, or to produce to the Director-General, a member of the police force, an investigator appointed under section 18 of the *Fair Trading Act 1987* or an officer of the Department duly authorised in writing in that behalf by the Director-General either generally or in any particular case upon demand by that person:

- (a) a copy of the instrument of appointment as strata managing agent or community managing agent, or
- (b) a copy of any instrument delegating to the agent any powers, authorities, duties or

functions of an owners corporation or an association,
is guilty of an offence against this Act.

Part 4 Real estate salespersons, stock and station salespersons, business salespersons and trainee managing agents

Division 1 Interpretation

51 Definitions

In this Part:

business salesperson means a person (other than the holder of a business agent's licence) who:

- (a) for or on behalf of a business agent, induces or attempts to induce or negotiates with a view to inducing any person to sell, buy, exchange or otherwise deal with or dispose of:
- any business or professional practice, or
 - any share or interest in or concerning the goodwill of, or any stocks connected with, any business or professional practice, or
- (b) for or on behalf of a business agent and otherwise than at a place at which that business agent carries on business, collects instalments of principal or interest payable:
- under a bill of sale given in respect of a business or professional practice, or
 - under a contract for the sale on terms of a business or professional practice.

real estate salesperson means a person (other than the holder of a real estate agent's licence) who, as an employee of a real estate agent or a corporation that employs a real estate agent (**the employer**):

- (a) induces or attempts to induce or negotiates with a view to inducing any person:
- to buy, sell, exchange, lease, assign or otherwise dispose of any land, or
 - to make an offer to buy, sell, exchange, lease, assign or otherwise dispose of any land, or
 - to accept an offer to buy, sell, exchange, lease, assign or otherwise dispose of any land, or
 - to enter into a contract for the buying, selling, exchanging, leasing, assigning or other disposal of land, or

(b) elsewhere than at a place of business of the employer:

- collects rent payable in respect of any lease of land, or
- collects instalments of principal or interest payable under a mortgage of land or under a contract for the sale on terms of land, or
- collects amounts payable to a company by a person whose shares in the company entitle their holder to the possession of premises, or

(c) for or on behalf of the employer, introduces or arranges for the introduction of prospective buyers, sellers, lessees or licensees of premises to a real estate agent or stock and station agent or to the owner, or to an agent of the owner, of the premises, or

(d) for or on behalf of the employer, arranges for the erection of buildings for any other person,

except where the land concerned is used for agricultural or pastoral purposes and has an area of more than 2.5 hectares.

registered means registered under this Part.

stock and station salesperson means a person (other than the holder of a stock and station agent's licence) who, as an employee of a stock and station agent or a corporation that employs a stock and station agent (**the employer**):

(a) does (where the land concerned consists of land used for agricultural or pastoral purposes) any one or more of the things referred to in paragraph (a)-(d) of the definition of **real estate salesperson**, or

(b) induces or attempts to induce or negotiates with a view to inducing any person:

- to buy, sell or otherwise dispose of any livestock, or
- to make an offer to buy, sell or otherwise dispose of any livestock, or
- to accept an offer to buy, sell or otherwise dispose of any livestock, or
- to enter into a contract for the purchase, sale or other disposal of livestock, or

(c) arranges for the provision of agistment for livestock, or

(d) elsewhere than at a place of business of the employer, collects fees for the agistment of livestock.

trainee community managing agent means a person (other than a community managing agent holding a strata managing agent's licence) who, as an employee of a community managing agent or a corporation that employs a community managing agent,

exercises or performs any of the functions of a community managing agent.

trainee on-site residential property manager means a person (other than the holder of an on-site residential property manager's licence or the holder of a real estate agent's licence) who, as an employee of an on-site residential property manager or a corporation that employs an on-site residential property manager, exercises or performs any of the functions of an on-site residential property manager.

trainee strata managing agent means a person (other than the holder of a strata managing agent's licence) who, as an employee of a strata managing agent or a corporation that employs a strata managing agent, exercises or performs any of the functions of a strata managing agent.

Division 2

51A-55 (Repealed)

Division 3 Real estate salespersons, stock and station salespersons, business salespersons and trainee managing agents

56 Persons required to be registered

- (1) A person must not, unless the holder of a certificate of registration issued to the person:
 - (a) be or remain as a real estate salesperson, stock and station salesperson, business salesperson or trainee managing agent in the employment of a person licensed (or required to be licensed) under this Act, or
 - (b) represent, whether expressly or impliedly, that the person is a real estate salesperson, stock and station salesperson, business salesperson or trainee managing agent in the employment of a person licensed (or required to be licensed) under this Act, or
 - (c) act as or exercise or perform any of the functions of a real estate salesperson, stock and station salesperson, business salesperson or trainee managing agent.
- (1A) A person who is the holder of a certificate of registration must not act as or exercise or perform any of the functions of a real estate salesperson, stock and station salesperson, business salesperson or trainee managing agent unless the person does so as an employee of the holder of a licence under this Act.
- (1B) A real estate salesperson, stock and station salesperson, business salesperson or trainee managing agent must not exercise or perform any of the functions of a real estate salesperson, stock and station salesperson, business salesperson or trainee managing agent unless he or she does so under the supervision of a person:
 - (a) who is the licensee in charge of the place of business at which the employee is

employed, and

(b) who is the holder of a licence that allows the licensee to exercise or perform that function without contravening this Act.

(1C) Nothing in this section requires an employed licensee to hold both a certificate of registration and a licence to allow the licensee lawfully to do anything that, in the absence of this section, the licensee could lawfully do as the holder of the licence.

(2) Any person who commits any contravention of or fails to comply with any of the provisions of this section shall be guilty of an offence against this Act.

56A (Repealed)

57 Procedure

(1) An application for registration or renewal of registration under this Act is to be made in a form approved by the Director-General.

(2) The application shall:

(a) contain such particulars as may be required to complete the approved form, and

(b) state the name of the licensee in charge of the place of business at which the applicant intends to be employed and the classes of the licences held by that licensee, and

(c) be lodged with the Director-General, and

(d) be accompanied by the fees referred to in subsection (6).

(3) Upon receipt of an application for registration (not being a prescribed application or an application for renewal of registration), the Director-General shall forward particulars of the application to the reviewing officer.

(4) The Director-General may, in the case of an application for registration or renewal of registration, inquire into, and the reviewing officer, upon receipt of such particulars, shall, in the case of an application for registration (not being a prescribed application or an application for renewal of registration), inquire into and report upon, the fame and character of the applicant.

(4A) Where an application is made by any person for registration or renewal of registration, the Director-General shall:

(a) if the Director-General is satisfied that the applicant is not precluded by reason of any other provision of this Act (other than subsection (5) (b)) from being granted registration or renewal of registration, and

(b) where the application is for the renewal of registration, if the renewal of

registration is not granted on or before the date of expiry of the registration,

- (c) in the case of an applicant who is precluded from being granted registration by reason only of subsection (5) (b)—if the Director-General is satisfied that the applicant will have obtained the qualification referred to in that subsection within 6 months of the application,

issue to the applicant a provisional certificate of registration.

(4B) A provisional certificate of registration issued under subsection (4A):

- (a) shall take effect, where the application was for registration—on and from the date on which the certificate was issued, and
- (b) shall take effect or be deemed to have taken effect, where the application was for renewal of registration—on and from the date of expiry of the certificate of registration in respect of which the application for renewal was made.

(4C) Subject to subsection (4CA), where a provisional certificate of registration is issued under subsection (4A), the holder of the certificate shall, for all purposes of this Act, be deemed to be and, where the provisional certificate was issued on an application for renewal of registration and was issued after the expiry of the certificate of registration in respect of which the application for renewal was made, to have been, as from the date of expiry of the certificate, the holder of the certificate of registration specified in the application until such time as a certificate of registration or renewal of a certificate of registration is issued to him or her pursuant to this section or until the application is refused or withdrawn or until the expiration of three months after the date on which the provisional certificate took effect, whichever first occurs.

(4CA)

(a) Subject to paragraph (d), where:

- (i) a provisional certificate of registration (in this subsection referred to as **the firstmentioned certificate**) has been issued under subsection (4A), or under this subsection, to an applicant for registration or renewal of registration,
- (ii) a certificate of registration or renewal of registration has not been granted in pursuance of the application, and
- (iii) the application has not been refused or withdrawn,

the Director-General may issue to the applicant a further provisional certificate of registration (in this subsection referred to as **the lastmentioned certificate**).

- (b) The lastmentioned certificate shall take effect or be deemed to have taken effect on and from the expiration of three months after the firstmentioned certificate took effect.

- (c) Subject to this subsection, the holder of the lastmentioned certificate shall, for all purposes of this Act, be deemed to be, and, where the certificate was issued after the expiration of the period of three months after the firstmentioned certificate took effect, to have been, as from the expiration of that period, the holder of the certificate of registration specified in the application until such time as a certificate of registration or renewal of a certificate of registration is issued to him or her pursuant to this section or until the application is refused or withdrawn or until the expiration of three months after the date on which the lastmentioned certificate took effect, whichever first occurs.
- (d) One or more, but not more than three, provisional certificates of registration may be issued under this subsection in relation to one application.
- (4D) If a certificate of registration or a renewal of a certificate of registration is so issued to a person to whom a provisional certificate has been issued under subsection (4A) that certificate or renewal shall take effect as from the date upon which the provisional certificate took effect.
- (4E) Upon the refusal or withdrawal of an application for registration or renewal of registration, there shall be refunded to the applicant or to any other person who appears to the Director-General to be entitled thereto, the prescribed fees paid by the applicant, reduced by such amount as bears to those prescribed fees the same proportion as the period in months (disregarding any fraction of a month) for which the provisional certificate of registration issued under subsection (4A) in relation to the application and any provisional certificates of registration issued under subsection (4CA) in relation thereto had effect bears to twelve months.
- (4F)
- (a) A member of the police force, with the approval in writing of the reviewing officer, may object to the grant of an application for registration (not being a prescribed application or an application for renewal of registration), or the Director-General may object to the grant of an application for registration or renewal of registration and, where he or she does so, a statement setting out the nature of the objection proposed to be made shall be lodged by the Director-General or by that member of the police force, as the case may be, with the Clerk of the Local Court having jurisdiction under subsection (8) of section 3.
- (b) A copy of a statement so lodged by a member of the police force shall be included in any report furnished pursuant to subsection (4).
- (4G) Where no objection to the grant of the application for registration has been made pursuant to subsection (4F), the Director-General shall issue the certificate of registration.
- (5) Despite any other provision of this section, a certificate of registration is not to be

issued to an applicant who has not previously held a certificate of registration unless:

- (a) the applicant is over the age of 16 years, and
- (b) the applicant has obtained an educational qualification that is approved for the time being by the Minister for applicants of the class to which the applicant belongs.

(6) Each applicant for registration shall lodge with the application:

- (a) the prescribed application fee.
- (b) (Repealed)

(7) Where a member of the police force or the Director-General objects pursuant to subsection (4F) to the grant of the application:

- (a) the clerk of the court shall notify the applicant that the grant of the application will be objected to, and shall set out shortly in the notice the nature of the objection proposed to be made,
- (b) the application shall be heard and determined by the court, which for that purpose shall be constituted by a Magistrate or two or more justices,
- (c) such hearing shall not take place until after the expiration of seven days after the lodging of the application,
- (d) the hearing of the application shall be in open court and the consideration of the application shall be deemed to be a judicial proceeding,
- (e) where the Director-General has objected to the grant of the application, the Director-General may appear at the hearing personally or by any police officer or officer of the Department or by barrister or solicitor.

Upon determination of the application the clerk of the court shall forthwith notify the decision of the court to the Director-General.

If the court grants the application, the Director-General shall, upon receipt of the notification, issue to the applicant a certificate of registration.

(8) A certificate of registration shall not be issued to an applicant who is not of good fame and character nor otherwise a fit and proper person to hold a certificate of registration.

(9)

- (a) Subject to this Act a certificate of registration shall be in force for a period of twelve months from the date of its issue.

(b) Subject to this Act, a certificate of registration may be renewed and on each renewal shall be in force for a further period of twelve months.

(b1) (Repealed)

(c) Every applicant for the renewal of a certificate of registration must lodge with the application:

(i) the prescribed application fee.

(ii) (Repealed)

(d) The holder of a certificate of registration under this Part who desires to surrender the certificate may by instrument in writing notify the Director-General that the holder so desires and may deliver the certificate to the Director-General.

The Director-General shall, upon receipt of the notification and certificate, endorse on the certificate the word "surrendered" and record in the register kept by the Director-General under section 58 the fact that the certificate has been surrendered.

(10) (Repealed)

(11) A certificate of registration shall not be issued if the application therefor contains any matter that is false or misleading in a material particular.

(12) The Director-General may, upon application made to the Director-General and accompanied by the prescribed fee, issue a duplicate certificate of registration in the place of a certificate of registration that has been lost, destroyed or damaged.

(13) In this section, **prescribed application** means an application for a certificate of registration (not being an application for renewal of registration) that is made by a person to whom has been issued, and who is the holder of, a certificate of registration (not being a provisional certificate of registration).

58 Register to be kept by Director-General

(1) (Repealed)

(2) The Director-General shall keep a register of all certificates of registration, which shall be available for perusal by any member of the public upon payment of the prescribed fee.

58A Registration of supervising licensees

(1) The Director-General is to keep a register of the licensees in charge of the places of business at which holders of certificates of registration are or have been employed and of the class of each licence held by each of those licensees.

- (2) The register is to be compiled from information supplied by licensees, applicants for registration and holders of certificates of registration.
- (3) The holder of a certificate of registration is required to give the Director-General written notice of any change in the particulars last provided to the Director-General by the holder about the place of business at which the holder is employed for the time being. The notice should be given within 14 days of the change occurring.
- (4) When assessing the experience and capability of an applicant for a licence for the purposes of section 23 (10A) (c), the Director-General is entitled to rely on information obtained from the register.

59 Registered employer and registered address

- (1) Every holder of a certificate of registration under this Part shall have a registered employer and a registered address in New South Wales.
- (2) The registered employer and the registered address of a holder of a certificate of registration under this Part shall be specified in the certificate of registration.
- (3) The employer specified in the application for registration as being the employer by whom the applicant is, or is to be, employed shall, upon the grant of registration (whether provisional or otherwise), be specified in the certificate of registration granted on the application as the registered employer of the holder of that certificate.
- (4) The address of the registered office of the registered employer by whom or by which the holder of a certificate of registration is, or is to be, employed shall, upon the grant of registration (whether provisional or otherwise), be specified in the certificate of registration granted on the application as the registered address of the holder of that certificate.
- (5) The Director-General shall, upon application made by the holder of a certificate of registration under this Part and upon payment of the prescribed fee, vary the certificate of registration:
 - (a) by substituting for the name of the registered employer specified therein the name of some other employer by whom the holder of the certificate is, or is to be, employed, or
 - (b) by substituting for the registered address specified therein the address of the registered employer by whom the holder of the certificate is, or is to be, employed.
- (6) The Director-General shall record in the register kept under section 58 any variation made under subsection (5).
- (7) Where there is a change of address of the registered office of the registered employer

by whom or by which the holder of a certificate of registration under this Part is, or is to be, employed, the holder of the certificate shall, within the prescribed time after the change or the issue of the certificate (whichever last occurs), make application under subsection (5) for the certificate to be varied accordingly, unless within that time the holder makes application under that subsection for the name of the registered employer specified therein to be substituted.

60 Cancellation of certificate of registration

- (1) Upon complaint being made to him or her by a member of the police force, with the approval of the reviewing officer, or by the Director-General any justice of the peace may summon a real estate salesperson, stock and station salesperson, business salesperson or trainee managing agent to appear before a Local Court constituted by a Magistrate sitting alone to show cause why his or her certificate of registration should not be cancelled and why the salesperson or trainee managing agent should not be disqualified either permanently or temporarily from holding a certificate of registration on the ground:
 - (a) that the salesperson or trainee managing agent improperly obtained his or her certificate of registration contrary to the provisions of this Act, or
 - (b) that the salesperson or trainee managing agent is not a fit and proper person to continue any longer to hold a certificate of registration, or
 - (c) that the salesperson or trainee managing agent has been guilty of such conduct as renders the salesperson or trainee managing agent unfit to continue any longer to hold a certificate of registration.
- (2) If upon the day and at the time and place appointed by the summons issued in accordance with the provisions of subsection (1) the person named therein does not appear, then, upon proof of the due service of the summons upon the person a reasonable time before the time appointed for the person's appearance, such Local Court may proceed to hear and determine the matter of such complaint in the absence of such person.

Service of the summons may be proved by the oath of the person who served it or by affidavit or otherwise.
- (3) Upon being satisfied of the truth of any of the grounds aforesaid the court may order that the certificate of registration (if any) of such person be delivered up to the Director-General forthwith and cancelled and that such person be disqualified either permanently or for such period as the court specifies from holding a certificate of registration under this Act, and upon the making of such order such certificate of registration (if any) shall thereafter be deemed and taken to be cancelled.
- (4) On the cancellation of a certificate of registration or the disqualification of any person under this section by a Local Court, the Clerk of the Local Court must notify the

decision of the Court to the Director-General.

60AA Disqualification of former certificate of registration holders

- (1) In this section, **former holder** means a person who is not the holder of a certificate of registration but who, within a period of 12 months before a complaint in respect of that person is made under subsection (2), was at any time the holder of a certificate of registration.
- (2) On complaint being made by a police officer or by the Director-General, a prescribed justice may summon a former holder to appear before a Local Court constituted by a Magistrate sitting alone to show cause why the former holder should not be disqualified either permanently or temporarily from holding a certificate of registration on the ground that the former holder has been guilty of conduct that renders the former holder unfit to hold a certificate of registration.
- (3) If, on the day and at the time and place appointed by the summons issued under this section, the former holder does not appear, the Local Court may, on proof of the due service of the summons on the former holder a reasonable time before the time appointed for the appearance, proceed to hear and determine the matter of the complaint in the absence of the former holder.
- (4) The Local Court may, on being satisfied as to the truth of the ground specified in the summons, order that the former holder be disqualified, either permanently or for such period as the Court specifies in the order, from holding a certificate of registration under this Act.
- (5) On the disqualification of any person under this section by a Local Court, the Clerk of the Local Court must notify the decision of the Court to the Director-General.

60A Commencement of certain determinations and orders

Notwithstanding anything in this Act, where, after the commencement of the *Auctioneers and Agents (Amendment) Act 1972*, the court makes:

- (a) a determination refusing an application for the renewal of registration under section 57, or
- (b) an order under section 60,

the determination or order shall have no force or effect until the expiration of twenty-one days after the making thereof and, where within that period of twenty-one days an appeal to a District Court is commenced under section 61 in relation to the determination or order, until the Court confirms the determination or order or dismisses the appeal.

61 Appeal

- (1) Where the Court:

- (a) refuses any application under section 57 or makes an order under section 60, or
- (b) grants an application under section 57 to the granting of which a member of the police force or the Director-General has objected, or
- (c) dismisses a complaint made under section 60,

the person making the application or the holder of the certificate of registration, as the case may be, where paragraph (a) applies, or the member of the police force or the Director-General where paragraph (b) applies, or the complainant where paragraph (c) applies, may appeal in accordance with the rules of court of the District Court to the District Court exercising jurisdiction in the district within which the court refusing such application, granting such application, making such order, or dismissing such complaint is situated.

- (2) Every such appeal shall be in the nature of a rehearing.
- (3) Notice of appeal shall be given to such persons as may be prescribed by rules of court of the District Court, or as the District Court may direct.
- (4)
 - (a) An appeal shall lie to the Supreme Court against any ruling, order, direction or decision of the District Court in point of law or upon the admission or rejection of any evidence.
 - (b) For the purposes of such appeal the parties to the appeal to the District Court shall be deemed to include any of the following persons:
 - (i) the person making the application or the holder of the certificate of registration, as the case may be,
 - (ii) the member of the police force who objected to the grant of the application—in any case where the appeal is in proceedings arising out of an application to the granting of which such member of the police force had objected,
 - (iii) the member of the police force who made the complaint—in any case where the appeal is in proceedings arising out of a complaint made by him under section 60,
 - (iv) the Director-General—in any case where the appeal is in proceedings arising out of an application to the granting of which the Director-General had objected, or out of a complaint made by the Director-General under section 60.
- (4A) An appeal under this section in any case to which paragraph (a) of subsection (1) applies shall not be commenced after the expiration of twenty-one days after the date of the determination refusing the application or the date of the order under section 60,

as the case may be.

- (5) Any appeal under this section in any case to which paragraph (b) or paragraph (c) of subsection (1) applies shall not be made unless the Minister approves.

62 Production of certificate of registration

Every holder of a certificate of registration shall, on demand, produce the certificate of registration to any member of the police force, to any officer of the Department authorised under subsection (1) of section 38B, or to any person with whom the holder is transacting or attempting to transact any business as a real estate salesperson, stock and station salesperson, business salesperson or trainee managing agent, as the case may be.

63 Holder not to lend certificate of registration

Any holder of a certificate of registration who lets out, hires or lends a certificate of registration held by him or her to any other person or permits any other person to use the certificate of registration shall be guilty of an offence against this Act, and on conviction for such offence, and in addition to any penalty therefor, any certificate of registration held by him or her shall thereupon become absolutely void and shall be delivered up to the court which shall forward it to the Director-General to be cancelled by the Director-General.

63A Failure to deliver up certificate

Where the court has made an order that a certificate of registration be delivered up to the Director-General the holder of such certificate shall, if the holder refuses, neglects or fails to comply with such order, be guilty of an offence against this Act.

Part 4A Property Services Statutory Interest Account

63B Statutory Interest Account

The Director-General is to cause to be established and maintained in the accounting records of the Department an account, called the Property Services Statutory Interest Account.

63C Money payable to Statutory Interest Account

The Statutory Interest Account is to consist of:

- (a) the amounts held in or payable to the Property Services Council Statutory Interest Account immediately before the commencement of this paragraph, and
- (b) any money required or permitted to be paid to the credit of the Statutory Interest Account, whether by this Act or any other Act, and
- (c) income from the investment of the Statutory Interest Account.

63D Application of money in Statutory Interest Account

- (1) Money in the Statutory Interest Account may be applied for any purpose for which it is required or permitted to be applied by or under this or any other Act.
- (2) The Director-General may, with the consent of the Minister, apply money held in the Statutory Interest Account for all or any of the following purposes:
 - (a) supplementing the Compensation Fund by such amount as may be needed to enable the current liabilities of the fund to be met,
 - (b) providing grants or loans for providing or undertaking education or research programs relating to the property services industry (as defined in section 25I of the *Fair Trading Act 1987*) and approved by the Minister,
 - (c) meeting the costs of administering this Act, the *Conveyancers Licensing Act 1995*, the *Valuers Registration Act 1975* and any other Act prescribed by the regulations for the purposes of this paragraph (or the prescribed provisions of any other Act),
 - (d) meeting the costs of the administration of the Property Services Advisory Council,
 - (e) meeting the costs of operating a scheme or schemes for resolving disputes arising between consumers and providers of property services,
 - (f) investing in:
 - (i) schemes that relate to the provision of residential accommodation, or
 - (ii) subject to such terms and conditions as may be prescribed by the regulations, loans to building societies registered under an Act.
- (3) The Treasurer may determine:
 - (a) whether any such money is to be invested in any such scheme or loan, and
 - (b) if any such money is to be so invested, the amount to be invested in the scheme or loan concerned.
- (4) In this section:

property services means services provided in the property services industry as defined in section 25I of the *Fair Trading Act 1987*.

63E Application of money for purposes of certain Acts

- (1) In addition to the purposes set out in section 63D, such contributions from the moneys of the Statutory Interest Account, as are agreed between the Minister, the Minister administering the *Landlord and Tenant (Rental Bonds) Act 1977* and the Minister administering the *Residential Tenancies Act 1987*, the *Residential Tribunal Act 1998* and the *Residential Parks Act 1998*, shall be paid for half the costs, charges and

expenses of the administration of the *Residential Tenancies Act 1987*, the *Residential Tribunal Act 1998* and the *Residential Parks Act 1998* in the year ending 30 June next succeeding the year in which an agreement is made.

- (2) Notwithstanding subsection (1), there shall be paid from the Statutory Interest Account for the purposes set out in subsection (1) such additional contributions as the Ministers referred to in that subsection may at any time agree.
- (2A) There is also payable from the Statutory Interest Account any amount authorised by the Director-General, with the consent of the Minister, to be paid out of the account in payment of any costs and expenses incurred in the administration of the *Retirement Villages Act 1999*.
- (3) Contributions referred to in this section shall be paid in the manner determined by the Treasurer.

63F Application of money for the purposes of the *Fair Trading Act 1987*

- (1) In addition to payments made under sections 63D and 63E, such contributions from the moneys of the Statutory Interest Account as are agreed between:
 - (a) the Minister, and
 - (b) the Minister administering the *Fair Trading Act 1987*,shall be paid towards the costs, charges and expenses of the administration of the *Fair Trading Act 1987* in the year ending on 30 June next succeeding the year in which an agreement is made.
- (2) Contributions referred to in subsection (1) shall be paid in the manner determined by the Treasurer.

63G (Repealed)

63H Application of money for the purposes of *Strata Schemes Management Act 1996*

- (1) In addition to payments made under other provisions of this Part, such contributions from the moneys of the Statutory Interest Account as are agreed between the Minister and the Minister administering the *Strata Schemes Management Act 1996* are to be paid towards the costs, charges and expenses of the administration of that Act in the year ending on 30 June next succeeding the year in which the agreement is made.
- (2) Despite subsection (1), there is to be paid from the Statutory Interest Account for the purposes referred to in that subsection such additional contributions as those Ministers may at any time agree.

Part 5

64 (Repealed)

Part 6 Compensation Fund

Division 1 Establishment and management

64A Compensation Fund

The Director-General is to cause to be established and maintained in the accounting records of the Department a fund, called the Property Services Compensation Fund.

64B Money payable to Compensation Fund

The Compensation Fund is to consist of:

- (a) the amounts held in or payable to the Property Services Council Compensation Fund immediately before the commencement of this paragraph, and
- (b) any amounts paid by licensees by way of levy under this Act, and
- (c) any amounts required or permitted to be paid to the credit of the Compensation Fund, whether by this Act or any other Act, and
- (d) any amounts payable to the Compensation Fund from the Statutory Interest Account, and
- (e) income from the investment of the Compensation Fund.

64C Application of money in Compensation Fund

- (1) Money in the Compensation Fund may be applied for any purpose for which it is required or permitted to be applied by or under this or any other Act.
- (2) The Director-General may apply money held in the Compensation Fund (in such order as the Director-General decides) for all or any of the following purposes:
 - (a) satisfying claims (including costs) established against the Compensation Fund in accordance with this or any other Act,
 - (b) meeting legal expenses incurred by the Director-General in connection with claims against the Compensation Fund,
 - (c) meeting expenses incurred by the Director-General in or in relation to court appearances with respect to licences under this Act or the [Conveyancers Licensing Act 1995](#),
 - (d) meeting the costs of administering the Compensation Fund,
 - (e) investing in:
 - (i) schemes that relate to the provision of residential accommodation, or

(ii) subject to such terms and conditions as may be prescribed by the regulations, loans to building societies registered under an Act.

(3) The Treasurer may determine:

- (a) whether any such money is to be invested in any such scheme or loan, and
- (b) if any such money is to be so invested, the amount to be invested in the scheme or loan concerned.

Division 2 Contributions and levies

64D Contributions

- (1) A contribution of \$135 or, where another amount not exceeding \$500 is prescribed by the regulations, that amount is, subject to this section, to be paid every 3 years by every licensee.
- (2) If a person holds more than one class of licence, only one contribution is payable by the person under this section in respect of all the licences.
- (3) Contributions under this section are in addition to any fees and levies payable under this Act.

64E Levies

- (1) If the Director-General is at any time of the opinion that the Compensation Fund is likely to be insufficient to meet the liabilities to which it is subject, the Director-General may, with the approval of the Minister, impose a levy on each licensee.
- (2) A levy is payable to the Director-General at the time, and in the manner, fixed by the Director-General.
- (3) The Director-General may, in any special case, allow time for the payment of the whole or part of any levy.
- (4) If, after being given the notice prescribed by the regulations, a licensee fails to pay a levy in accordance with this section, the Director-General may suspend the licence held by the licensee while the failure continues.

Division 3 Claims

64F Definitions

In this Division:

associate of a licensee means:

- (a) an employee or agent of the licensee, or

- (b) a person who has the apparent control or charge for the time being of the business of the licensee or of any office at which that business is carried on.

failure to account has the meaning set out in section 64G.

pecuniary loss from a failure to account includes:

- (a) all costs (including the legal costs and disbursements of making and proving a claim), charges and expenses that a claimant has suffered or incurred as a direct consequence of the failure to account, and
- (b) all interest on money or other valuable property that a claimant would have received but for the failure to account for the money or other property.

That interest is as calculated to the date on which the Director-General determines the claimant's claim to (or a judgment is recovered against the Director-General in relation to the Compensation Fund in respect of) that money or other property.

64G Meaning of "failure to account"

- (1) In this Division, a reference to a failure to account is a reference to a failure by a licensee to account for money or other valuable property entrusted to the licensee or an associate of the licensee in the course of the licensee's business as a licensee.
- (2) This section applies only to a failure to account that arises from an act or omission of the licensee or associate.
- (3) For the purposes of this section, it does not matter that the failure to account occurred after the licensee ceased to be licensed, if the money or other valuable property concerned was entrusted to the licensee (or an associate of the licensee) before the licensee ceased to be licensed.
- (4) This section applies whether the failure to account, or the act or omission, took place before or after the commencement of this section.

64H Application of Compensation Fund

- (1) The Compensation Fund is held, and is to be applied, for the purpose of compensating persons who suffer pecuniary loss because of a failure to account.
- (2) A person who claims to have suffered a pecuniary loss because of a failure to account may make a claim against the Compensation Fund, but only if the claim is made in writing to the Director-General within:
 - (a) a period of 12 months after the person has become aware of the failure to account, or
 - (b) a period of 2 years after the date of the failure to account,

whichever period first ends.

- (3) However, a claim caused by a failure of a licensee (or an employee or agent of a licensee) to lodge a rental bond with the Rental Bond Board may also be made at any time within one year after the termination of the tenancy agreement.
- (4) A licensee does not have a claim against the Compensation Fund in respect of a pecuniary loss suffered in connection with the licensee's business as a licensee because of a failure to account.

64I Claims against Compensation Fund

- (1) Subject to section 64H, the Director-General may receive and allow, in whole or in part, any claim against the Compensation Fund at any time after the relevant failure to account arose.
- (2) The Director-General may disallow any claim, in whole or in part, in appropriate cases.

64J Legal proceedings

- (1) A person cannot, without the leave of the Director-General, commence any proceedings in relation to the Compensation Fund unless the person has made a claim and the Director-General has disallowed the person's claim.
- (2) A person cannot recover from the Compensation Fund by way of any such proceedings an amount greater than the amount of pecuniary loss suffered by the person, after deducting from the total amount of the pecuniary loss:
 - (a) the amount or value of all money or other benefits received or recovered from any source (other than the Compensation Fund) in reduction of the pecuniary loss, and
 - (b) any such amount or value that, in the opinion of the Director-General, might have been received or recovered but for the person's neglect or default.
- (3) Any proceedings in relation to any claim against the Compensation Fund are to be as for a debt due by the Crown and are to be brought in a court of competent jurisdiction. Any such proceedings do not lie against the Director-General.
- (4) In any proceedings referred to in subsection (3), all defences that would have been available to the licensee in relation to whom the claim arose are available to the Crown.
- (5) In any proceedings referred to in subsection (3), all questions of costs are in the discretion of the court or, where the proceedings are tried with a jury, the judge presiding at the trial.
- (6) Any order for the payment of costs made by a Local Court operates as a judgment debt under the [Local Courts \(Civil Claims\) Act 1970](#) and is enforceable as such under

that Act.

- (7) No proceedings can be brought against the Crown in relation to a claim against the Compensation Fund after the end of:
- (a) a period of 6 months after the claimant has been notified that the claim has been disallowed, or
 - (b) such longer period as the court may permit, on sufficient cause being shown and on such terms as it thinks fit.

64K Maximum recoverable

The amount that a person may recover from the Compensation Fund cannot, in any case or in any event, exceed \$500,000 or, if another amount is prescribed by the regulations, the prescribed amount.

64L Aggregate recoverable

- (1) The aggregate sum that may be applied in compensating all persons who suffer or incur pecuniary loss because of a failure to account, or of related failures to account, cannot exceed \$2,000,000 or, if another amount is prescribed by the regulations, the prescribed amount.
- (2) The Director-General may disregard subsection (1) in the case of successive failures to account by a licensee, to the extent that the Director-General is satisfied that the failures are not connected.

64M Advertisements

- (1) The Director-General may cause to be published a notice relating to a defaulting licensee and fixing a date within which claims must be made under this Part.
- (2) The notice is to be published in a newspaper circulating in the district in which the defaulting licensee is or was carrying on business, and also in a newspaper circulating in Sydney. One newspaper may satisfy both requirements.

64N Action after advertisement

- (1) Any claim not made in writing on or before the date fixed under section 64M is barred, unless the Director-General otherwise determines.
- (2) After the date fixed under section 64M, the Director-General may distribute compensation in accordance with this Part, having regard only to judgments obtained and claims allowed against the Compensation Fund.

64O Subrogation

On payment out of the Compensation Fund in settlement in whole or in part of a claim

under this Act, the Crown is subrogated, to the extent of the payment, to all the rights and remedies of the claimant against the licensee, or the former licensee, in relation to whom the claim arose, or any other person.

64P Production of documents

- (1) The Director-General may, at any time and from time to time, require the production of documents necessary to support any claim under this Act, or available for that purpose, or for the purpose of exercising functions in respect of a defaulting licensee.
- (2) The Director-General may reject a claim if documents are not produced as required.

64Q Satisfaction of claims and judgments

- (1) A claim or judgment against the Compensation Fund can only be satisfied to the extent of money in the Compensation Fund (either then or at a later time). No other money or property (whether of the Crown or otherwise) is available for that purpose.

(2) If:

- (a) a number of claims or judgments (or both) against the Compensation Fund cannot be satisfied because of an insufficiency of money in the Compensation Fund, or
- (b) the total amount of claims or judgments (or both) exceeds the relevant aggregate sum (as referred to in section 64L),

the Director-General has an uncontrolled discretion to determine the division and allocation of the available money among the various parties, and whether or not to the exclusion of any one or more of them.

Division 4 Examination of accounts of licensees and former licensees

64R Definitions

In this Division:

associate has the same meaning as in Division 3.

qualified person means a person with such qualifications or experience as in the opinion of the Director-General are appropriate for the purpose of exercising functions under this Division.

64S Appointment of qualified person to examine licensee's accounts

- (1) For the purpose of safeguarding the Compensation Fund in relation to the affairs of a licensee, the Director-General may, at any time and from time to time, appoint an appropriately qualified person to examine the accounts kept by the licensee in connection with the licensee's business.

- (2) The qualified person is to furnish to the Director-General a confidential report about the accounts, indicating whether there is any irregularity or alleged or suspected irregularity in the accounts or any other matter that in the person's opinion should, in the interests of the Compensation Fund, be further investigated.
- (3) A copy of the report is required to be sent by post by the Director-General to the licensee as soon as practicable.
- (4) The appointment of the qualified person under this section is to be by instrument in writing.
- (5) On production by the qualified person of the instrument of appointment, the qualified person may require the licensee (or, in the absence of the licensee, an associate of the licensee):
 - (a) to produce to the qualified person or any assistant of the qualified person:
 - (i) all books, papers, accounts, securities or other documents relating to the business of the licensee, or
 - (ii) any written record made and kept by the licensee under section 38, and
 - (b) to give all information relating to those matters, and
 - (c) to produce all authorities and orders to bankers and other documents that may be reasonably required.
- (6) The licensee or associate is guilty of an offence against this Act if the licensee or associate, without lawful justification or excuse (proof of which lies on the licensee or associate):
 - (a) refuses or fails to comply with such a requirement, or
 - (b) otherwise hinders, obstructs or delays the qualified person in the exercise or performance of the qualified person's powers or duties under this section.

64T Confidentiality

- (1) The qualified person must not communicate to any person (other than a partner, employer, employee or assistant of the qualified person):
 - (a) the fact of the qualified person's appointment under this Division, or
 - (b) any matter that comes to the qualified person's knowledge in the course of the examination,except in the course of the preparing and furnishing of the report to the Director-General or in the same circumstances as information can be published under section 86A.

(2) A partner, employer, employee or assistant (the **colleague**) of the qualified person must not communicate to any person (other than the qualified person or a partner, employer, employee or assistant of the qualified person):

- (a) the fact of the qualified person's appointment under this section, or
- (b) any matter that comes to the colleague's knowledge in the course of the examination,

except in the course of the preparing and furnishing of the report to the Director-General or in the same circumstances as information can be published under section 86A.

(3) A person who contravenes this section is guilty of an offence against this Act.

64U Former licensees

This Division extends, with any necessary adaptations, to a former licensee, so that a reference in this Division to a licensee includes a reference to:

- (a) a former licensee, and
- (b) any person who has the possession, custody or control of a written record relating to a former licensee and preserved in accordance with section 38.

65-83 (Repealed)

Part 6A Receivers

83A Definitions

In this Division, unless inconsistent with the context or subject matter:

Court means the Supreme Court.

Defalcation means any larceny, embezzlement, omitting to account, fraudulent misappropriation or other act punishable by imprisonment, of or in relation to any money or other property.

Licensee means any person who is or has been a licensee and includes, where the context so admits or requires, the personal representative of a deceased licensee.

Money includes instrument for the payment of money in any case where the instrument may be paid into a financial institution, and any security for money the title to which is transferable by delivery.

Property, in relation to a licensee, means:

- (a) money or other property which was in the course of or in connection with the business of the licensee, or the business of any firm of licensees of which the licensee is or has

been a member, entrusted to or received on behalf of any other person by the licensee or firm or by any of the licensee's or their clerks, servants or agents or by any licensee with whom the licensee or firm shares remuneration and which has not been paid or delivered by the licensee or firm to the person entitled thereto or as that person has directed or otherwise according to law,

- (b) money or other property which would, were it not for the appointment of a receiver as provided in this Division, be receivable on behalf of any other person by the licensee or firm of licensees after the appointment of that receiver,
- (c) money received by the receiver during a receivership under this Division being interest, dividends or other income arising from any property held by the receiver under this Division, and
- (d) ledgers, books of account, vouchers, records, deeds, files and other documents and writings of any description.

83B Power of Court to appoint receiver in certain cases

Where the Director-General is of opinion:

- (a) that any defalcation has been or may have been committed in relation to any trust account or trust fund of any licensee, or
- (b) that through:
 - (i) the mental or physical infirmity of a licensee,
 - (ii) the death or insolvency or the sequestration or assignment for the benefit of creditors of the estate of a licensee,
 - (iii) the abandonment of a licensee's business,
 - (iv) a licensee having been disqualified from holding a licence, or
 - (v) the licence of a licensee having been cancelled or a licensee's application for a renewal of a licence having been refused,

any person is unable to obtain payment or delivery of money or other property held for or on behalf of that person by the licensee or by any firm of licensees of which the licensee is or was a partner,

the Court, on application in that behalf by the Director-General and on being satisfied that the Director-General has reasonable grounds for that opinion, may appoint a receiver of all or any property which is held by the licensee or the firm of licensees of which the licensee is or was a partner or by some other person on the licensee's behalf or is recoverable by the licensee or firm, or, where the licensee is dead, which by reason of the licensee's death is or may be recoverable by the licensee's personal representative.

83C Application for appointment of receiver

- (1) The Court may dispense with service of the originating process of an application under this Division for the appointment of a receiver.
- (2) Unless the Court otherwise orders the originating process shall be served upon the licensee not less than forty-eight hours before the hearing of the application.
- (3), (4) (Repealed)

83D Copy of order appointing receiver to be served on licensee

Unless the Court dispenses with service, a copy of the order of the Court appointing the receiver shall, as soon as practicable, be served on the licensee and on any other person to whom the Court directs that notice of the appointment of the receiver should be given.

83E Receiver may require delivery of property

- (1) The receiver may require any person to give to the receiver such information concerning any property of which he or she has been appointed receiver as may reasonably be required.
- (2) Any person so required to give information, who without lawful justification or excuse (the proof whereof shall lie on the person) refuses or fails so to do or otherwise hinders, obstructs or delays the receiver in the performance of the receiver's duties or the exercise of the receiver's powers under this Division shall be guilty of an offence against this Act.

83F Receiver may forbid withdrawal of moneys from financial institution

- (1) Where the receiver has reasonable grounds for believing that there is in any account kept with a financial institution money received for or on behalf of any person by the licensee or by the firm of licensees of which the licensee is or was a partner, the receiver may serve on the institution a notice in writing with a copy of the order of the Court attached or appended thereto forbidding, except by the receiver or on the receiver's authority, any withdrawal of moneys from or any dealing (including in any case the completion of any uncompleted dealing commenced before the service of the notice) with that account, whether the account is in the name of the licensee or the name of any firm of licensees of which the licensee is or was a partner or, where the licensee is dead, any account which is in that name or firm name or which was formerly in that name or firm name and is now in the name of the licensee's personal representative.
- (2) Without prejudice to any other mode of service, service of any notice pursuant to this section may be effected by leaving the notice and copy of the order attached or appended thereto with the manager, accountant or such other person as appears to be at the time of service in charge of the branch of the financial institution at which

there is an account to which subsection (1) refers.

- (3) The financial institution on which the notice is served shall not permit any withdrawal from or dealing with any account to which the notice relates except by or on the authority of the receiver.
- (4) The receiver may withdraw all the moneys in any such account or from time to time withdraw any of those moneys and pay them into a special account or special accounts in the receiver's own name and may operate on and otherwise deal with the special account or special accounts in accordance with law.

83G Receiver may take possession of property

- (1) The receiver may acquire or take possession of any property of which he or she has been appointed receiver:

Provided that all ledgers, books of account, vouchers, records, deeds, files and other documents and writings (other than those relating either to any property referred to in paragraph (a) or (b) of the definition of **Property** in section 83A or to any former business of the licensee) shall, as soon as is reasonable, be returned to the licensee.

- (2) If the licensee or any other person, on being required by the receiver to transfer or deliver to the receiver or to permit the receiver to take possession of any such property in his or her possession or at his or her disposition or under his or her control does not comply with the requirement, or if it appears to the receiver that any such person on being thus required has not fully complied with the requirement, the receiver may apply to the Court for an order for the transfer or delivery to the receiver of the property, whereupon the Court may make that order.
- (3) If it appears to the receiver that an order made by the Court under subsection (2) is not complied with, the Court may, on application by the receiver, authorise any member of the police force, or the receiver or some other person and any member of the police force, to enter any premises or other place specified in the order and to search for any property of which the receiver is entitled to take possession under the provisions of this section and to seize any such property and remove it to such place as the receiver thinks fit and on such application the Court may make such further order in the matter as to the Court seems fit.
- (4) Wilful failure to comply with any order made by the Court under subsection (2) shall be punishable as a contempt of the Court.

83H Improperly withdrawing money or destroying or concealing property

Any person who at any time with intent to defeat the purposes of this Division and whether before or after a receiver has been appointed:

- (a) withdraws money from or makes any payment out of any account, or

- (b) destroys or conceals or removes from one place to another place or delivers into the possession or places under the control of any other person any property of which a receiver has been or is likely to be appointed,

shall be guilty of an offence against this Act.

83I Power of receiver to deal with property

- (1) The receiver may deal with any property which the receiver has acquired or of which the receiver has taken possession under the provisions of this Division in any manner in which the licensee or the firm of which the licensee is or was a partner might lawfully have dealt with the property and shall as soon as is reasonably possible and to the extent to which ownership can be established deliver the property to the persons lawfully entitled thereto.
- (2) Without restricting or in any way derogating from the powers of the receiver under the provisions of subsection (1), the receiver may:
 - (a) prove, grant, claim and draw a dividend in respect of any debt due to the licensee in connection with any property of which the receiver has been appointed receiver,
 - (b) give receipts for any money received by the receiver, which shall effectually discharge the person paying the money from all responsibility in respect of the application thereof, and
 - (c) employ a barrister or solicitor or other agent to give advice or take any proceedings or otherwise act for the receiver in relation to any property of which he or she has been appointed receiver.

83J Application for directions

The receiver, the licensee, any member of the firm of which the licensee is or was a partner or the personal representative of a deceased licensee, or any person who has submitted to the receiver a claim in respect of any property may apply to the Court for directions as to the manner in which the receiver shall exercise or perform the powers or duties conferred or imposed on the receiver by this Division either generally or in respect of any particular matter specified in the application, whereupon the Court may make such order as to the Court seems fit.

83K Property claimed by licensee

- (1) The receiver may give notice to the licensee or any other person that, if the licensee or other person has any claim to any property, he or she shall within the time specified in the notice (being not less than thirty days from the giving of the notice) submit to the receiver full particulars of the property claimed and the grounds of the claim.
- (2) If such a notice has been given the receiver may disregard any claim made by the

licensee or other person otherwise than in accordance with the terms of the notice.

- (3) The licensee shall not be entitled to any payment in respect of or otherwise to enforce any such claim and shall not be entitled except as against a licensee to a lien upon any document or writing held by the receiver unless and until the proper claims of all other claimants are fully satisfied and the expenses of the receivership, as defined in section 83Q, have been paid.

83L Liens for costs on property held by receiver

- (1) If the licensee or the firm of which the licensee is or was a partner claims a lien for costs on any document, writing or other property held by the receiver, the receiver may by notice in writing require the licensee or them to give to the receiver within a time specified in the notice (being not less than thirty days from the giving of the notice) particulars of all documents, writings and other property on which the licensee claims or they claim a lien together with a detailed itemised account relating to the amount in respect of which each lien is claimed.
- (2) If the licensee or firm fails to comply with any such requirement in respect of any lien claimed by the licensee or them the receiver may in dealing with the document, writing or other property disregard the lien.
- (3) (Repealed)
- (4) If the licensee or firm so requests in writing, the receiver shall give to the licensee or firm or any other person on the licensee's or their behalf such access to all relevant books and documents as is reasonably necessary to enable the preparation of the itemised account and in such event the time specified in the notice pursuant to subsection (1) shall not commence until that access has been given.

83M Power of Court to order person to appear for examination by receiver

- (1) The receiver may apply to the Court for an order that the licensee or any other person appear before the Court to be examined by the receiver as to any property of which the receiver has been appointed receiver, whereupon the Court may make such order as to the examination of the licensee or other person as to the Court seems fit.
- (2) Upon any such examination before the Court the receiver and the licensee or other person may be represented by counsel, and the Court may put or allow to be put to the licensee or other person such questions as it thinks fit.
- (3) The licensee or other person shall be examined on oath and shall answer all such questions.
- (4) The licensee or other person may object to any question upon the ground that the answer may tend to incriminate him or her but shall be compellable to answer such question notwithstanding such objection.

- (5) No answer given subject to any such objection shall be admitted in evidence in any proceedings for any offence except that of perjury in connection with the examination.

83N Application for termination of appointment of receiver

- (1) The Director-General, the receiver or the licensee or the firm of licensees of which the licensee is or was a partner may at any time apply to the Court for an order that the appointment of a receiver be terminated, whereupon the Court may make such an order and may if it thinks fit appoint another person to be the receiver in his or her place.
- (2) If a receiver's appointment is terminated by an order of the Court and another person is appointed to be the receiver in his or her place, the former receiver shall, as soon as the former receiver reasonably may and subject to any directions given by the Court under this section, transfer or deliver to the receiver appointed in his or her place all property and any documents, writings and other property which the former receiver holds by virtue of his or her appointment as receiver.
- (3) If a receiver's appointment is terminated by order of the Court and no other person is within fourteen days of the termination appointed to be receiver in his or her place, the former receiver may, and upon demand in writing by the licensee or the firm of licensees of which the licensee is or was a partner shall, as soon as the former receiver reasonably may and subject to any directions given by the Court under this section and subject, unless the Director-General shall otherwise determine, to the payment by the licensee or firm to the Director-General of the expenses of the receivership, as defined in section 83Q, transfer or deliver to the licensee or firm all property which the former receiver then holds by virtue of his or her appointment as receiver.

83O Property not dealt with by receiver

- (1) All moneys and other property which come into the possession of the receiver in the course of the receivership and which the receiver has not dealt with in accordance with the provisions of this Division, other than this section, shall be paid or delivered by the receiver to the Director-General on and to the extent of a request by the Director-General for the payment or delivery, but where no such request is made, the moneys and other property shall be paid or delivered to the licensee or to the firm of licensees of which the licensee is or was a partner, as the case may require.
- (2) Where property is delivered to the Director-General pursuant to subsection (1), the Director-General shall deal with the property in such manner as the Court, upon application by the Director-General, may direct, and where the property is sold, the proceeds of the sale shall, for the purposes of subsection (3), be deemed to be moneys paid by the receiver to the Director-General in accordance with subsection (1).

- (3) All moneys paid by the receiver to the Director-General in accordance with subsection (1) shall be paid to the Compensation Fund to be applied firstly in the reimbursement to it of any claims paid by it in respect of the licensee or the firm of licensees of which the licensee is or was a partner, secondly in the satisfaction of or partial satisfaction of claims against the licensee or firm of licensees of which the licensee is or was a partner to the extent to which they or any of them have not otherwise been fully satisfied and thirdly in payment of the expenses of the receivership, as defined in section 83Q.
- (4) If after the moneys have been so applied there remains a surplus of moneys paid by the receiver to the Director-General, the surplus shall be paid to the licensee or to the firm of licensees of which the licensee is or was a partner, as the case may require.

83P Receiver may invest moneys in hands

- (1) The receiver may invest any moneys in his or her hands in the course of his or her receivership in any manner in which trustees are for the time being authorised by law to invest funds.
- (2) Any income accruing from the investment of any such moneys and any profit from the sale of any such investment shall be added to and form part of the property of which he or she has been appointed receiver.

83Q Remuneration of receiver and expenses of receivership

- (1) All moneys payable to the receiver as remuneration for his or her services, all costs of legal proceedings and other expenses incurred by the receiver in the course of his or her receivership, and any reimbursement made pursuant to section 83S (all of which are hereafter in this section referred to as ***the expenses of the receivership***) shall, to the extent that they have not otherwise been paid to the receiver under this Act, be paid to the receiver by the Director-General out of the Compensation Fund.
- (2) Any amount paid out of the Compensation Fund for the expenses of the receivership shall be recoverable by the Director-General from the licensee as a debt owing by the licensee to the Director-General.
- (3) In default of agreement between the Director-General and the receiver as to the amount to be paid to the receiver as the receiver's remuneration the Court may, on application by the Director-General or the receiver, determine the amount to be so paid.

83R Cost of proceedings

In any proceedings in the Court under the provisions of this Division the Court may make such order as to the payment of the costs of the proceedings and costs incurred in the execution of any order made by the Court as to the Court seems fit.

83S Claim or charge against receiver may be paid from Compensation Fund

If any claim or charge is made by any person against the receiver for any act or omission by the receiver or by the receiver's servants or agents done or made by the receiver or them in good faith and in the execution or purported execution of the powers conferred or duties imposed on the receiver by or under this Division, the Director-General may reimburse the receiver out of the Compensation Fund for all or any costs, charges, expenses or damages which the receiver may have incurred in relation to the claim or charge.

83T Re-opening of agreement as to receiver's remuneration

The Court, on application by the licensee or by any firm of which the licensee is or was a partner, may re-open any agreement between the Director-General and the receiver as to the amount to be paid to the receiver as the receiver's remuneration, and may determine the amount to be so paid.

83U Court may review receiver's expenses

(1) Where proceedings are taken by the Director-General under subsection (2) of section 83Q for the recovery of any amount paid out of the Compensation Fund for the expenses of the receivership therein referred to and there is evidence which satisfies the Court that the amounts charged for those expenses are excessive, the Court may take an account between the Director-General and the receiver and relieve the licensee from payment of any sum in excess of the sum adjudged by the Court to be fairly payable in respect of those expenses.

If any excess has been paid or allowed in account by the Director-General, the Court may order the receiver to repay it.

(2) The Court shall have and may, on the application of the licensee or of any firm of which the licensee is or was a partner, exercise the like powers as may be exercised under this section where proceedings are taken for the recovery of any amount paid out of the Compensation Fund for the expenses of the receivership pursuant to section 83Q, and the Court shall have power to entertain any such application, notwithstanding that the expenses of the receivership have not been paid to the receiver.

(3) No proceedings to obtain any relief under this section shall be taken after three months from the time when the expenses of the receivership have been paid, but the legal personal representative of a deceased licensee may take any such proceedings at any time within six months thereafter.

83V Power of Court to give general directions

For carrying out the objects of this Division or the administration by a receiver of all or any property the Court may, without derogating from any other provisions of this Division,

authorise the receiver to do such things as it thinks fit and may give directions accordingly.

83W Receiver not deemed to be personal representative

Where a licensee dies, a receiver in the execution of the receiver's functions under this Division shall not be deemed or taken to be a personal representative of the licensee.

83X Property held by receiver to be free from execution or attachment

Property held by a receiver under the provisions of this Division shall not be levied upon or taken or attached under any judgment.

83Y Returns by receiver

Subject to any directions given by the Court, every receiver shall at such times as the Court determines furnish to the Court and to the Director-General a report of his or her receivership containing such information as the Court requires and upon the conclusion of his or her receivership shall forthwith lodge with the Court, in addition to his or her final report, all documents and writings in his or her possession or under his or her control relating to his or her receivership, and subject to any order of the Court for their destruction or otherwise, such documents and writings shall be kept in the custody of the Court.

Part 7 General

84 Offences in connection with the sale of allotments of land

- (1) Any real estate agent or any partner or employee of a real estate agent shall be guilty of an offence against this Act if with the intention of inducing a prospective purchaser to buy an allotment of land or any interest in an allotment of land:
 - (a) he or she makes any representation that is false or misleading (whether to his or her knowledge or not), or
 - (b) he or she states that he or she or some other person named by him or her will buy, at a profit to be received in the future by such prospective purchaser, the said allotment of land or any part thereof or any interest therein or any other land or chattel owned by the prospective purchaser, or
 - (c) he or she states that he or she or some other person named by him or her will at some future time obtain for the prospective purchaser a profit on the sale of such allotment of land or any part thereof or any interest therein.
- (1A) Without limiting the generality of paragraph (a) of subsection (1) a representation shall, for the purposes of that subsection, be deemed to be false or misleading if it is of such a nature that it would reasonably tend to lead to a belief in the existence of a state of affairs that does not in fact exist, whether or not the representation indicates

that that state of affairs does exist.

- (2) Any real estate agent or any partner or employee of a real estate agent shall be guilty of an offence against this Act if while the real estate agent is retained by any person as agent for the sale of any allotment of land at a stipulated price he or she, either on his or her own behalf or on behalf of some person other than the person by whom such agent is so retained, negotiates for or arranges the sale of such allotment of land or any interest in such allotment at a price higher than such stipulated price.
- (3) If any person is charged with an offence against this Act by reason of a contravention of paragraph (a) of subsection (1), it shall be a sufficient defence if the person charged proves:
 - (a) in relation to a representation, not being a representation referred to in subsection (1A), that the person had reasonable grounds for believing and did in fact believe that the representation was true, or
 - (b) in relation to a representation referred to in subsection (1A) that the person had reasonable grounds for believing in the existence of the state of affairs first referred to in that subsection and did in fact believe that that state of affairs existed,

and that otherwise the person acted innocently.

84AA Proposed contract for sale of residential property

- (1) In this section:

purchaser includes a grantee of an option.

residential property has the meaning given by section 66Q of the [Conveyancing Act 1919](#).

- (2) A real estate agent who, expressly or by implication:
 - (a) indicates that residential property is for sale or is to be auctioned at any future time, or
 - (b) offers to sell residential property, or
 - (c) invites an offer to purchase residential property, or
 - (d) indicates that a person may be willing to grant an option to purchase residential property,

is guilty of an offence unless the required documents are all available for inspection at the real estate agent's registered office by any prospective purchaser at all times at which an offer to purchase the property may be made (or at such other place or at such other times as may be prescribed by the regulations).

- (3) For the purposes of this section, the required documents are:
- (a) a copy of the proposed contract for the sale of the property (excluding particulars of the purchaser and purchase price), and
 - (b) the documents required by section 52A of the *Conveyancing Act 1919* to be attached to the contract before signature by the purchaser, and
 - (c) in the case of an option as referred to in subsection (2) (d)—a copy of the proposed option document (excluding particulars of the purchaser and consideration for the option).
- (4) Without limiting subsection (2) (a), a real estate agent is to be taken to indicate that residential property is for sale if the real estate agent:
- (a) advertises or promotes the property in any way which, in the circumstances, may reasonably be taken to indicate that the property is or may be for sale, or
 - (b) places a sign on or near the property which, in the circumstances, may reasonably be taken to indicate that the property is or may be for sale, or
 - (c) advertises or in any way gives notice that the property is to be auctioned at any future time, or
 - (d) places on display particulars or a description of, or a photograph, drawing or other representation of, the property in or on any premises, vehicle or place where the real estate agent conducts business as a real estate agent, or
 - (e) shows the property to a prospective purchaser or gives the address of the property to a prospective purchaser,
- or causes or permits any of the above to be done.
- (5) This section does not apply in circumstances prescribed by the regulations.

84AB Contracts for sale of residential property

- (1) A real estate agent may fill up a proposed contract for the sale of residential property, by inserting details of the purchaser's name, address and description, the purchaser's solicitor's name and address, the purchase price and the date.
- (2) A real estate agent may insert in or delete from a contract for the sale of residential property any description of any furnishings or chattels to be included with the sale of the property.
- (3) A real estate agent may participate in the exchange or making of contracts for the sale of residential property, subject to subsection (4).
- (4) If a prospective party to a proposed contract for the sale of residential property for

whom a real estate agent acts in relation to the exchange or making of the contract notifies the real estate agent, or it is apparent from the proposed contract, that a solicitor is or will be acting for the party, the real estate agent may only participate in the exchange or making of the contract if expressly authorised to do so by the party or the solicitor.

- (5) A real estate agent who exercises any function described in subsection (1), (2) or (3) on behalf of any person who is a party or a prospective party to any contract or proposed contract is liable to compensate that person for any loss, damage or expense suffered or incurred by that person as a result of any negligent act or omission, or any unauthorised action, of the real estate agent in the exercise of that function.
- (6) A contract is not invalid merely because of the failure of a real estate agent to comply with subsection (4).
- (7) A real estate agent may not charge a fee for anything authorised to be done under this section.
- (8) Subsections (2) and (3) of section 117 of the *Legal Profession Act 1987* do not apply to a real estate agent in relation to anything authorised to be done under this section.
- (9) The enactment of this section is not to be taken to affect the existence or nature of any other functions or responsibilities of licensees that exist or may exist apart from this section.
- (10) In this section, a reference to a solicitor includes a reference to a licensee within the meaning of the *Conveyancers Licensing Act 1992*.

84AC Procedure following rescission

- (1) This section applies where a contract for the sale of residential property or an option for the purchase of residential property is rescinded under Division 8 or 9 of Part 4 of the *Conveyancing Act 1919*, and a real estate agent holds money paid by the purchaser by way of deposit under or in relation to the contract or the proposed contract attached to the option.
- (2) The real estate agent is authorised to pay to the vendor so much of the money as does not exceed the amount (if any) forfeited under section 66V or 66ZE of that Act, and receipt by the real estate agent of the original or a copy of an effective notice of rescission served by the purchaser under section 66U or 66ZD of that Act is sufficient authority for the real estate agent to make the payment to the vendor.
- (3) The regulations may make provision for or with respect to authorising the real estate agent to pay to the purchaser the balance of the money.
- (4) This section has effect despite anything in section 36.

(5) In this section:

deposit includes any amount paid by the purchaser in relation to the contract or the proposed contract attached to the option or on account of the purchase price of residential property.

purchaser includes a prospective purchaser, and also includes a grantee or prospective grantee of an option.

84A Penalty for publishing false or misleading advertisements

- (1) Any licensee who publishes or causes to be published in the course of the licensee's business as such any statement which:
- (a) is intended or apparently intended by such licensee to promote the sale or lease of any property, and
 - (b) is (whether to the licensee's knowledge or not) false or misleading in any material particular,
- shall be guilty of an offence against this Act.
- (1A) Without limiting the generality of subsection (1) a statement shall, for the purposes of that subsection, be deemed to be false or misleading if it is of such a nature that it would reasonably tend to lead to a belief in the existence of a state of affairs that does not in fact exist, whether or not the statement indicates that that state of affairs does exist.
- (2) A statement shall be deemed to be published within the meaning of this section if it is:
- (a) inserted in any newspaper or any other publication printed and published in New South Wales, or
 - (b) publicly exhibited:
 - (i) in, on, over or under any building, vehicle or place (whether or not a public place and whether on land or water), or
 - (ii) in the air in view of persons being or passing in or on any street or public place, or
 - (c) contained in any document gratuitously sent or delivered to any person or thrown or left upon premises in the occupation of any person, or
 - (d) broadcast by wireless transmission or television.
- (3) It shall be a sufficient defence for a person charged with an offence against this Act arising under paragraph (b) of subsection (1) if that person proves that:

- (a) the person took all reasonable precautions against committing the offence,
 - (b) in relation to a statement:
 - (i) not being a statement referred to in subsection (1A), the person had reasonable grounds for believing and did in fact believe that the statement was true, or
 - (ii) referred to in subsection (1A), the person had reasonable grounds for believing in the existence of the state of affairs first referred to in that subsection and did in fact believe that that state of affairs existed, and
 - (c) the person had no reason to suspect that the statement was false or misleading.
- (4) Notwithstanding any proceedings against any person for an offence under this section (whether resulting in a conviction or otherwise) such person shall remain liable to all civil proceedings in like manner as if the proceedings for an offence had not been taken.
- (5) This section shall be read and construed as in aid of and not in derogation from any enactment or law relating to false or misleading advertisements or other statements.
- (6) In this section **newspaper** includes any periodical publication.

84B Misrepresentation by licensee, salesperson or trainee managing agent

- (1) A person who, while exercising or performing any function as:
- (a) a real estate agent, or
 - (b) a stock and station agent, or
 - (c) a business agent, or
 - (d) a strata managing agent, or
 - (e) a community managing agent, or
 - (f) an on-site residential property manager, or
 - (g) a real estate salesperson, or
 - (h) a stock and station salesperson, or
 - (i) a business salesperson, or
 - (j) a trainee managing agent,
- by any statement, representation or promise that is false, misleading or deceptive (whether to the knowledge of the person or not) or by any concealment of a material

fact (whether intended or not), induces any other person to enter into any contract or arrangement is guilty of an offence against this Act.

- (2) Without limiting the generality of subsection (1), a statement, representation or promise is taken to be false, misleading or deceptive if it is of such a nature that it would reasonably tend to lead to a belief in the existence of a state of affairs that does not in fact exist, whether or not the statement, representation or promise indicates that the state of affairs does exist.
- (3) It is a sufficient defence to a prosecution for an offence under this section if the defendant proves that the defendant did not know, and had no reasonable cause to suspect, that the statement, representation or promise was false, misleading or deceptive.

85 Construction of certain agreements

No term or provision of any agreement (whether entered into before or after the commencement of this Act) for the sale and purchase of an allotment of land or any interest therein shall be so construed as to prevent the purchaser from claiming or being awarded damages or any other relief in respect of any fraudulent misrepresentation in connection with the sale and purchase of such allotment of land or interest therein.

85A Live stock auctions: warranty as to certain diseases and conditions

- (1) Where any meat from any live stock sold by auction is, within 5 days after the sale, condemned, at any abattoir or slaughter house, under the authority of any Act as unfit for human consumption (and is certified in writing by an inspector appointed under the [Stock Diseases Act 1923](#) or a meat inspector appointed under the [Meat Industry Act 1978](#) to be unfit) because of a disease or condition prescribed for the purposes of this section (not being a disease to which the [Cattle Compensation Act 1951](#) applies or a special disease within the meaning of the [Stock Diseases Act 1923](#)), the purchaser shall, if the purchaser was the owner of the meat at the time of condemnation, be entitled to damages from the vendor as for a breach of warranty that the meat of the live stock was not, immediately before the auction sale, affected by that disease or condition.
- (2) A regulation prescribing a disease or condition for the purposes of this section is not to be made unless the Minister for Agriculture and Rural Affairs has recommended the making of the regulation.

85B Contracting out of prescribed terms and conditions of auction sales

- (1) Any provision in, or applying to, an agreement for the sale of property by auction and purporting to exclude or restrict (otherwise than in accordance with this or any other Act) the operation of the conditions (if any) prescribed as being applicable to or in respect of the sale by auction of that property or property of a class or description to

which that property belongs is void.

- (2) A person who notifies or causes to be notified in the conditions of sale by auction of any property any provision purporting to exclude or restrict the conditions (if any) prescribed as being applicable to or in respect of the sale by auction of that property or property of a class or description to which that property belongs shall be guilty of an offence against this Act.
- (3) In this section, **property** means land or livestock.

85C Auction sales: successful bidder to supply information to auctioneer etc

The actual successful bidder at a sale by auction of any land or livestock shall, as soon as practicable after the auctioneer conducting the sale has indicated the actual successful bidder but not in any case later than the day of the sale, supply to the auctioneer or an employee of the auctioneer:

- (a) where he or she bid for the land or livestock on his or her own behalf—his or her name, or
- (b) where he or she bid for the land or livestock on behalf of another person—the name of the person on whose behalf he or she bid.

86 Furnishing incorrect particulars in applications

- (1) Any person who in any application made pursuant to this Act, or in any statement, referred to in subsection (13) of section 23, accompanying a special application (as defined in that subsection), makes any statement which is not correct or furnishes any particulars which are not correct or omits to furnish any particulars required to be furnished by or under this Act shall be guilty of an offence against this Act and shall be liable to a penalty not exceeding 10 penalty units.
- (2) If any person is charged with an offence against this Act by reason of any contravention of subsection (1), it shall be a sufficient defence if the person charged proves:
 - (a) where the charge relates to the making of a statement that is not correct or to the furnishing of particulars which are not correct—that the person had reasonable grounds for believing and did in fact believe that the statement made or the particulars furnished were correct, or
 - (b) where the charge relates to the omission to furnish particulars—that the omission was not made with intent to evade the requirements of this Act or, that the person had reasonable grounds for believing and did in fact believe that the person had furnished all particulars required to be furnished by or under this Act.

86A Officers of Department not to disclose information

- (1) It shall not be lawful for any officer of the Department, except for the purposes of the administration of this Act or the regulations, to make publicly known or to make available to any person or court any information furnished to the Director-General pursuant to the provisions of section 38A, or disclosed by an inspection made under the provisions of section 38B or by an audit made under the provisions of section 38D, or in an accountant's report made pursuant to section 83, except:
 - (a) to the court before which any proceedings are pending or being taken for:
 - (i) the grant of a licence to or the renewal, restoration or cancellation of a licence of,
 - (ii) the registration or cancellation of the registration of, or
 - (iii) the disqualification under section 29A or 60 of,the person to whom the information is relevant, or
 - (b) to the court in which proceedings are being taken for a breach of this Act against the person to whom such information is relevant, or
 - (c) to the court which or the judge or magistrate who may by order in accordance with subsection (4) of section 64J certify that any person should be permitted to claim against the Compensation Fund, or
 - (d) to any law enforcement officer for the purposes of ascertaining whether any criminal proceedings should be instituted under any law of the Commonwealth or of the State, another State or a Territory or for the purposes of such proceedings, or
 - (e) to any court before which criminal proceedings are being taken for the breach of any law of the Commonwealth or of the State, another State or a Territory.
- (2) The Director-General may communicate to any person directly concerned in any transaction with a licensee in connection with his or her business as a licensee any information furnished to the Director-General in accordance with the provisions of this Act, in so far as it relates to any such transaction and directly concerns any such person.
- (3) Any person who commits a breach of any provision of this section shall, in addition to any other proceedings, penalty or punishment to which the person may be liable, be guilty of an offence against this Act.
- (4) In this section, **law enforcement officer** means:
 - (a) a member of the Police Service, the Australian Federal Police or of the police force

of another State or a Territory, or

- (b) the Director of Public Prosecutions or the Crown Prosecutor of the State or the Director of Public Prosecutions or the Crown Prosecutor of the Commonwealth or of another State or Territory, or
- (c) any other person, or officer of an authority, responsible for the prosecution of offences under laws of the Commonwealth or of the State, another State or a Territory.

86B Service of writs etc

- (1) All writs, summonses, notices or other documents required or authorised to be served on or given to a licensee, shall be deemed to be duly served or given if left at the licensee's registered office or registered address, as the case may be, with some person apparently in the employ of such licensee, or apparently in charge of the office or business of such licensee, or if sent by registered post, postage prepaid, addressed to such licensee at the licensee's registered office or registered address as the case may be.
- (2) All writs, summonses, notices or other documents required or authorised to be served on or given to the holder of a certificate of registration under Part 4 shall be deemed to be duly served or given if left at the holder's registered address with an inmate apparently over the age of fourteen years or if sent by registered post, postage prepaid, addressed to the holder of such a certificate at the holder's registered address.

86C Penalty notices

- (1) An authorised officer may serve a penalty notice on a person if:
 - (a) it appears to the officer that the person has committed an offence against this Act or the regulations, and
 - (b) the regulations prescribe the offence as being one for which a penalty notice may be issued.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may pay, within the time and to the person specified in the notice, the penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice may be served personally or by post.
- (4) If the amount of the penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (5) Payment under this section is not an admission of liability for the purposes of, and

does not affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.

- (6) The regulations may:
- (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
 - (b) prescribe the amount of penalty for an offence if dealt with under this section, and
 - (c) prescribe different amounts of penalty for different offences or classes of offences.
- (7) The amount of penalty prescribed under this section for an offence may not exceed the maximum amount of penalty that could be imposed for the offence by a court.
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.
- (9) In this section:

authorised officer means:

- (a) the Director-General, or
- (b) a person authorised in writing by the Director-General as an authorised officer for the purposes of this section, or
- (c) an investigator appointed under section 18 of the [Fair Trading Act 1987](#).

87 Offences against Act

- (1) Every person who commits any contravention of or fails to comply with any of the provisions of this Act shall be guilty of an offence against this Act.
- (2) Where no penalty is specially provided for any offence against this Act any person guilty of such offence shall be liable, if a corporation, to a penalty not exceeding 40 penalty units, and, if an individual, to a penalty not exceeding 20 penalty units.
- (3) Where any person is convicted of an offence against this Act the court may, in addition to any penalty or imprisonment imposed, order that the registration of the person be cancelled or order that the licence or licences (if any) or the certificate of registration (if any) held by such person be delivered up and cancelled, whereupon such registration or licence or licences or certificate of registration shall thereafter be deemed and taken to be cancelled and/or that such person be disqualified, for such period as the court may think fit, from holding any licence or certificate of registration under this Act.
- (4) Any penalty imposed by this Act or by the regulations may be recovered in a summary manner in a Local Court holden before a Magistrate.

- (5) Where two or more persons commit or knowingly authorise or permit the commission of any offence against this Act each of such persons shall be liable therefor and the liability of each of them shall be independent of the liability of the other or others.

87A Time for laying information

An information for an offence against this Act (other than section 88) or the regulations may be laid at any time within three years from the time when the matter of the information arose.

88 Wrongful conversion and false accounts

Without affecting the generality of the provisions of the *Crimes Act 1900*, any licensee who:

- (a) fraudulently converts to the licensee's own use or to the use of any other person:
- (i) any moneys received by the licensee on behalf of any person in respect of any transaction in the licensee's capacity as a real estate agent, a stock and station agent, a business agent, a strata managing agent, a community managing agent or an on-site residential property manager, or
 - (ii) any moneys so received which are held by the licensee as a stakeholder or in trust pending the completion of any transaction,
- or any part of any such moneys, or
- (b) fraudulently omits to account for, deliver or pay:
- (i) any such moneys received by the licensee as aforesaid on behalf of any person or any part thereof to such person, or
 - (ii) any such moneys received by the licensee as aforesaid which are or were held by the licensee as a stakeholder or in trust as aforesaid pending the completion of the transaction or any part of such moneys to the person or persons entitled to such moneys, or
- (c) fraudulently renders an account:
- (i) of any moneys received by the licensee as aforesaid on behalf of any person or any part of such moneys, or
 - (ii) of any moneys received by the licensee as aforesaid which are or were held by the licensee as a stakeholder or in trust pending the completion of any transaction or any part of such moneys, or
 - (iii) of expenses, commission or other charges incidental to any transaction or proposed or contemplated transaction as a real estate agent, a stock and station agent, a business agent, a strata managing agent, a community managing agent

or an on-site residential property manager,

knowing such account to be false in any material particular,

shall be guilty of an indictable offence and shall be liable to imprisonment for a term of not more than ten years.

89 Certificate evidence of licence or registration

A document purporting to be a certificate under the hand of the Director-General and stating that any person is or is not or was or was not on any date or during any period mentioned therein the holder of a licence of the class specified therein or the holder of a certificate of registration shall in all courts and before all persons and bodies authorised by law to receive evidence be prima facie evidence of the facts alleged.

90 Civil remedy not affected by proceedings for an offence

Notwithstanding any proceedings against any person for an offence against this Act (whether resulting in a conviction or otherwise) such person shall remain liable to all civil proceedings in like manner as if the proceedings for an offence had not been taken.

91 Corporations

- (1) (Repealed)
- (2) Where any act which by this Act is declared to be an offence and which is committed by a body corporate is proved to have been committed with the consent or approval of any director, manager, secretary or other officer of the body corporate, he or she, as well as the body corporate, shall be deemed to be guilty of the offence, and he or she may be proceeded against and shall be liable to the pecuniary penalty or imprisonment or both provided by this Act in the case of an offence by a person who is not a corporation.

92 Regulations

- (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without prejudice to the generality of the power conferred by subsection (1) the Governor may, in and by the regulations:
 - (a) (Repealed)
 - (b) prescribe the procedure to be followed on applications and other proceedings under this Act,
 - (c)-(e) (Repealed)

- (e1) fix the maximum amount of remuneration to which a licensee is entitled, by way of commission, fee, gain or reward, for services performed by him or her as a licensee,
- (e2) require licensees to display or otherwise publicise or give notice of particulars of their remuneration and prescribe the consequences of a failure to comply with any such requirement,
- (f) prescribe the books, accounts and records to be kept by a licensee and the mode of keeping the same,
- (f1) prescribe the conditions applicable to and in respect of the sale by auction of land or livestock,
- (f2) prescribe the manner in which the conditions of the sale by auction of land or livestock shall be notified.

(g), (h) (Repealed)

(2A) The regulations may prescribe rules of conduct to be observed in the course of carrying on his or her business by a licensee, or the holder of a certificate of registration.

(2B) A provision of the regulations requiring the keeping of any accounting or other records in the form of a book shall be deemed to have been complied with if those accounting or other records are kept in another form approved by the Director-General.

(2C) (Repealed)

(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.

(4) (Repealed)

93 Savings and transitional provisions

Schedule 2 has effect.

Schedule 1

(Section 5)

[Auctioneers' Licensing Act 1898 No 24](#)
[Auctioneers Licensing \(Amendment\) Act 1924 No 28](#)
[Auctioneers Licensing \(Amendment\) Act 1925 No 9](#)
[Auctioneers Licensing \(Amendment\) Act 1934 No 44](#)

Schedule 2 Savings and transitional provisions

(Section 93)

Part 1 General

1A Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

the *Auctioneers and Agents (Amendment) Act 1992*,

the *Property, Stock and Business Agents (Amendment) Act 1994*.

- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect as from the date of assent to the Act concerned or a later date.
- (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.

Part 2 Provisions consequential on the *Auctioneers and Agents (Amendment) Act 1992*

1 Definition

In this Part, **amending Act** means the *Auctioneers and Agents (Amendment) Act 1992*.

2 Termination of certain licences on commencement of Schedule 1 to the amending Act

- (1) Auctioneers' licences known as primary products licences and chattel auctioneers' licences cease to have effect on the repeal of section 22 (2) by the amending Act.
- (2) A stock buyer's licence ceases to have effect on the repeal of section 22 (1) (b1) by the amending Act.

3 Termination of other licences on commencement of Schedule 2 to the amending Act

All other auctioneers' licences, being those formerly known as general auctioneers' licences, cease to have effect on the repeal of section 22 (1) (a) by the amending Act,

except as provided by clause 4.

4 Variation of former general auctioneers' licences

- (1) A former general auctioneer's licence that would otherwise cease to have effect because of clause 3:
 - (a) is taken to be a real estate agent's licence or a stock and station agent's licence (or both), if the General Manager approves in writing, and
 - (b) is taken to be restricted in its operation under section 22 (1A) to such purpose, if any, as may be specified by the General Manager in the approval,for the rest of the term for which the former licence was issued or last renewed, subject to this Act.
- (2) Any such licence that is restricted in its operation cannot be renewed more than once.
- (3) The regulations may provide, and may empower a Local Court to make orders providing, that the former holder of a general auctioneer's licence that ceased to have effect because of this Part is taken to be the holder of a specified licence for a specified period or pending a specified event so as to ensure that the former holder is not disadvantaged:
 - (a) while the General Manager is making a decision under this clause with respect to the licence, or
 - (b) while an appeal concerning any such decision is being determined.

5 Appeals relating to approvals

- (1) A person who has applied to the General Manager for an approval (or who has been advised of a decision under clause 4 affecting the person's licence) and who does not agree with any decision made by the General Manager may appeal to the Local Court that would hear an application for the licence sought if an objection had been made to its being granted.
- (2) An appeal must be brought within 30 days of the person's being advised of the decision appealed against.
- (3) For the purpose of such an appeal, the General Manager is taken to have advised an applicant for an approval that the approval is refused if the applicant has not been given a decision on the application within 60 days of the date of making the application.
- (4) The decision of the Magistrate constituting the Local Court to which any appeal is brought is to be given effect to by the General Manager.
- (5) Section 23 (10A) (a), as amended by the amending Act, is taken to be in force so as to

allow:

- (a) the granting of approvals under this clause, and
- (b) the bringing, hearing and determination of appeals in accordance with this clause.

6 Termination of certain registration

- (1) Registration of a person as a real estate dealer ceases to have effect on the repeal of Division 2 of Part 4 by the amending Act.
- (2) Registration of a person as a trainee stock buying agent ceases to have effect on the repeal of section 56A (1) (d) by the amending Act.

7 Saving of certain licences and registration

- (1) A real estate agent's licence, stock and station agent's licence, a business agent's licence or strata managing agent's licence (whether or not a licence restricted under section 22 (1A)) in force immediately before the repeal of section 22 (1) (a)-(e) by the amending Act continues in force for the residue of the term for which the licence was issued or last renewed, subject to this Act.
- (2) A holder of a certificate of registration immediately before the repeal of section 51 by the amending Act is taken to be registered under, and the certificate is taken to be a certificate of registration issued under, Part 4 (as amended by the amending Act) on that repeal.

8 Replacement licences and registration certificates

- (1) The General Manager may issue replacement licences or certificates of registration to take the place of any licences or certificates of registration that continue to have effect because of this Part.
- (2) For the purposes of this Part, a licence is taken to continue to have effect even if it has effect as a licence of a different kind because of the operation of this Part.

9 (Repealed)

10 Restricted licences

- (1) A licence restricted in its operation to a specified region or place ceases to be so restricted on the repeal of section 22 (1A) by the amending Act.
- (2) After the repeal of section 22 (1A) by the amending Act, a real estate agent's licence, stock and station agent's licence, a business agent's licence or strata managing agent's licence that (before that repeal) was restricted to a specified purpose:
 - (a) continues to be so restricted, and
 - (b) cannot be renewed more than once.

11 Unclaimed trust account money

- (1) On the repeal of section 36C (3) by the amending Act, the Council must pay to the Treasurer for payment into the Consolidated Fund the balance of all unclaimed trust account money that was paid into the fund under that provision.
- (2) Any money paid into the Consolidated Fund under this clause is taken to have been paid into the Consolidated Fund under section 36C, as amended by the amending Act.

12 Claims against the fund

- (1) A claim against the Real Estate Services Council Compensation Fund concerning a failure of a licensee to account that occurred when the person held a licence is not defeated only because the licence has ceased to have effect as a result of the amending Act.
- (2) A claim against the Real Estate Services Council Compensation Fund concerning a failure of a registered real estate dealer to account that occurred when the person was so registered is not defeated only because the registration has ceased to have effect as a result of the amending Act.

13 Records

- (1) Section 38 (**Record to be kept**) applies to a person whose licence has ceased to have effect as a result of the amending Act as if the person continued to hold the licence for 3 years after it ceased to have effect.
- (2) Section 55 (**Record to be kept**) is taken to continue in force after its repeal by the amending Act and to apply (for 3 years after that repeal) to each person whose registration as a real estate dealer ceased to have effect as a result of that Act.

14 Subrogation

Section 79 (**Subrogation**) applies to any person whose licence or registration is terminated by the amending Act as if the person's licence or registration had not ceased to have effect.

15 Fees

A refund or partial refund of an annual fee paid for a licence or of an application or annual fee paid for registration is not payable as a consequence of the abolition by the amending Act of the class of licence or registration concerned.

Part 3 Provisions consequential on the [Property, Stock and Business](#)

Agents (Amendment) Act 1994

16 Definition

In this Part, **amending Act** means the *Property, Stock and Business Agents (Amendment) Act 1994*.

17 Money deposited with the Council to be returned to licensees

- (1) As soon as practicable after the repeal of section 36E, the Council must repay all money deposited with it under section 36D to the person or firm that deposited it.
- (2) However, if the person or firm that deposited the money is no longer a licensee, the Council must pay the money to the Treasurer for payment to the Consolidated Fund.
- (3) The Treasurer must, on application made to the Treasurer by any person entitled to money paid into the Consolidated Fund under subclause (2), pay the money to the person.
- (4) Despite the repeal of section 36E, the money so deposited may, pending its repayment or payment under this clause, continue to be invested as provided by subsection (3) of that section.
- (5) Section 36 applies to a person or firm to which money is repaid under subclause (1).

18 Transfer of money held in the RESC Special Account

As soon as practicable (and in any case not later than 3 months) after the requirements of clause 17 (1) and (2) have been complied with, the Council must close the Real Estate Services Council Special Account.

19 Investment of money held in the Statutory Interest Account

Any money in the Statutory Interest Account invested under section 63D (as in force immediately before the commencement of Schedule 2 (4) to the amending Act) is taken to have been invested under that section (as in force after that commencement).

20 Claims against the fund

Section 74 (as in force after the commencement of Schedule 2 (7) to the amending Act) does not apply to a claim that has been barred by section 74 (as in force immediately before that commencement).

21 Restoration of licences etc

Subsections (1B) and (1C) of section 23C, and subsection (3) of section 64A, extend to a licence that expired before the commencement of those subsections.

Part 4 Provisions consequential on the **Conveyancers Licensing Act**

1995

22 Change of name of Accounts and Fund

- (1) The Property Services Council Administration Account is a continuation of the Real Estate Services Council Administration Account. A reference in an existing instrument to the Real Estate Services Council Administration Account is to be read as a reference to the Property Services Council Administration Account.
- (2) The Property Services Council Statutory Interest Account is a continuation of the Real Estate Services Council Statutory Interest Account. A reference in an existing instrument to the Real Estate Services Council Statutory Interest Account is to be read as a reference to the Property Services Council Statutory Interest Account.
- (3) The Property Services Council Compensation Fund is a continuation of the Real Estate Services Council Compensation Fund. A reference in an existing instrument to the Real Estate Services Council Compensation Fund is to be read as a reference to the Property Services Council Compensation Fund.
- (4) In this clause existing instrument means each of the following:
 - (a) another Act enacted before the commencement of this clause,
 - (b) an instrument made under an Act before the commencement of this clause,
 - (c) an instrument of any other kind executed before the commencement of this clause.

Part 5 Provision consequential on the [Statute Law \(Miscellaneous Provisions\) Act 1996](#)

23 Surrender of licence and grant of refund to certain persons

- (1) This clause applies to a person to whom a 3-year licence, or a 3-year renewal of a licence, was granted on or after 1 March 1996 and before the date of commencement of Schedule 1.25 to the [Statute Law \(Miscellaneous Provisions\) Act 1996](#).
- (2) A person to whom this section applies may notify the Council in writing that the person wishes to surrender the licence in respect of the second and third years of the licence's operation and may deliver the licence to the Council.
- (3) If the Council receives such a notice and licence, the Council must:
 - (a) endorse on the licence the words "surrendered with respect to the second and third year of operations", and
 - (b) record in the register kept by the Council under section 30 (2) the fact that the licence has been surrendered to that extent, and

- (c) issue a replacement licence in respect of the first year of the 3-year licence (that is, in respect of the period ending one year after the 3-year licence commenced), and
 - (d) refund to the licence holder two-thirds of the amounts payable in respect of issuing or renewing the 3-year licence.
- (4) This clause does not affect the rights of any person to surrender a licence completely under section 22 (4).
- (5) This clause ceases to have effect on the first anniversary of the commencement of Schedule 1.25 to the *Statute Law (Miscellaneous Provisions) Act 1996*.

Part 6 Provisions consequential on the [Fair Trading Tribunal Act 1998](#)

24 Proceedings under section 42A

Proceedings instituted under section 42A but not determined before 1 March 1999 are to be determined in accordance with that section as in force when the proceedings are determined.

25 Notice to be included in statements of claim or itemised accounts under section 42A

Until 31 August 1999, a licensee must append to a statement of claim or itemised account under section 42A a notice in the form last approved under section 42A (4A).

Schedule 3 (Repealed)