



Australian Capital Territory

## **Agents Act 1968      No 26**

**Republication No 10 (RI)**

**Effective: 7 October 2002**

Republication date: 8 October 2002

Reissued: 6 February 2003 for retrospective amendment made by Act 2002 No 49

Last amendment made by Act 2002 No 27

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Agents Act 1968* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 8 October 2002. It also includes any amendment, repeal or expiry affecting the republished law to 7 October 2002.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

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- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



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Australian Capital Territory

# Agents Act 1968

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An Act relating to the licensing of agents

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## Part 1 Preliminary

### 1 Short title

This Act may be cited as the *Agents Act 1968*.

### 3 Application of Act

- (1) Subject to subsection (1A), this Act does not apply to or in relation to—
  - (a) an executor, an administrator, the public trustee, a trustee, a trustee company, a liquidator, a manager under the *Guardianship and Management of Property Act 1991*, a bailiff, a court officer, or a bank, as defined by the *Banking Act 1959* (Cwlth), in the exercise of rights and powers, or the performance of duties and obligations, as such; or
  - (b) the holder of a licence under the *Auctioneers Act 1959* in conducting a sale by auction within the meaning of that Act; or
  - (c) a legal practitioner in the exercise of rights and powers or the performance of duties and obligations in his or her professional capacity; or
  - (d) a Minister of State; or
  - (e) a prescribed authority.
- (2) Sections 57B, 57C, 57D and 57G apply in relation to the personal representative of a licensed agent to whom part 6, division 2 applies.
- (3) The Minister may, in writing, declare that a provision of this Act does not apply to a person.
- (4) A declaration may be given subject to conditions.

- (5) A declaration is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*

## 5 Interpretation

- (1) In this Act:

*Note* A definition applies except so far as the contrary intention appears (see *Legislation Act 2001*, s 155).

***administration account*** means the agents administration account established under section 71R.

***administrator*** means a person appointed under section 84 (3) to administer an agent's business.

***agent*** means a real estate agent, stock and station agent, business agent, travel agent or employment agent.

***applicant*** means an applicant for registration or for a licence.

***authorised officer*** means the registrar, a deputy registrar or an inspector.

***board*** means the Agents Board of the Australian Capital Territory established under section 8 (1).

***board of trustees*** means the board of trustees of the trust established by the trust deed under which the compensation scheme is administered.

***business***, in relation to a real estate agent, stock and station agent, business agent, travel agent or employment agent, means the business carried on by the agent as mentioned in section 5A, 5B, 5C, 5D or 5DA respectively.

***business agent*** means a person who, by virtue of section 5C, carries on business as a business agent.

***chairperson*** means the person who is the chairperson of the board by virtue of section 10 (1).

***commercial premises*** means premises in which a business, trade, profession or calling is carried on, excluding any part of the premises that is used for residential purposes.

***company*** includes—

- (a) a cooperative society; and
- (b) a trade union.

***compensation fund*** means the fund established and administered under the trust deed.

***compensation scheme*** means the compensation scheme established and administered under the trust deed.

***cooperative society*** means a trading society formed pursuant to of the *Co-operative Societies Act 1939*, section 13 and registered as such a society under that Act.

***Corporations Law*** means the Corporations Law set out in the *Corporations Act 1989*, section 82 (Cwlth).

***corresponding law*** means a law of a State or another Territory that provides for the registration or licensing of a person who carries on business as an agent.

***deputy chairperson*** means the deputy chairperson of the board elected under section 10 (2).

***deputy registrar*** means a Deputy Registrar of Agents under section 6A.

***director***, in relation to a trade union, means an officer of the trade union.

***employment agent*** means a person who, under section 5DA, carries on business as an employment agent.



***failure to account***, in relation to a licensed agent, means a failure by—

- (a) the licensed agent; or
- (b) an employee or agent of the licensed agent; or
- (c) a person who has the apparent control or charge for the time being of the business of the licensed agent or of an office at which that business is carried on;

to account for money or other property entrusted, in the course of the conduct of the business of the licensed agent, to that licensed agent or that employee, agent or person.

***fund*** means the agents fidelity guarantee fund established under section 71U.

***inquiry*** means an inquiry in accordance with section 88.

***inspector*** means an inspector under section 6B.

***interest account*** means the agents statutory interest account established under section 71N.

***land*** includes a unit within the meaning of the *Unit Titles Act 2001*.

***lease*** includes a sublease.

***licence***, in relation to a real estate agent, a stock and station agent, a business agent, a travel agent or an employment agent, means a licence to carry on business as a real estate agent, a stock and station agent, a business agent, a travel agent or an employment agent respectively.

***licensed agent*** means an agent in respect of whose business a licence is in force.

***member*** means a member of the board, including the chairperson.

***memorandum of association***, in relation to a cooperative society or a trade union, means the rules of the society or union.

***Minister of State*** means a Minister of the Crown of a State or a Minister of the Northern Territory.

***model*** includes a person employed—

- (a) to pose for a photographer, or for a painter, sculptor or other artist; or
- (b) to wear and display clothes and other articles to potential customers or the public.

***occupier***, in relation to premises, includes the proprietor or a person who is, or is reasonably believed to be, in charge of the premises.

***officer***, in relation to a company, means—

- (a) a director of the company; or
- (b) in the case of a trade union—an officer of the union; or
- (c) a secretary of the company; or
- (d) a receiver or manager of property of the company; or
- (e) an administrator of the company; or
- (f) an official manager or deputy official manager of the company; or
- (g) a liquidator of the company appointed in a voluntary winding up of the company; or
- (h) a trustee or other person administering a compromise or arrangement made between the company and another person.

***participant*** has the same meaning as in the trust deed.

***pecuniary loss***, in relation to a failure to account, includes—

- (a) costs (including legal costs and disbursements of making and proving a claim for compensation in respect of the failure to account), charges and expenses incurred by a person as a direct consequence of the failure to account; and

- (b) interest, in respect of the money or other property in relation to which the failure to account occurred to and including the date on which the entitlement of a claimant for compensation to the money or other property is established in accordance with this Act.

**performer** means an actor, singer, dancer, musician, acrobat, disc jockey or compere, or any other performer of any kind.

**prescribed qualifications** means the qualifications referred to in section 47C.

**real estate agent** means a person who, by virtue of section 5A, carries on business as a real estate agent.

**receiver** means a receiver appointed under section 84 (1) or (2).

**register** means a register kept pursuant to section 7 (1).

**registered** means registered under this Act.

**registrar** means the Registrar of Agents under section 6

**rules of conduct** means the rules of conduct established by part 2.

**rural purposes** has the same meaning as in the *Leases Act 1918*, section 4AA.

**stock and station agent** means a person who, by virtue of section 5B, carries on business as a stock and station agent.

**trade union** has the same meaning as in the *Workplace Relations Act 1996* (Cwlth).

**travel agent** means a person who, by virtue of section 5D, carries on business as a travel agent.

**trust account** means an account opened and maintained under section 56 (1).

***trust deed*** means—

- (a) the deed made 12 December 1986 by the Crown in the rights of the States of New South Wales, Victoria, South Australia and Western Australia, being the deed under which are established and administered a travel compensation fund, and a compensation scheme, in relation to business carried on by travel agents; or
- (b) if that deed is amended under the deed—that deed as amended; or
- (c) if that deed is superseded by another deed under which are established and administered such a fund and scheme—
  - (i) that other deed; or
  - (ii) if that other deed is amended under a clause of the deed—that other deed as amended.

***trust money*** means money deemed to be held in trust pursuant to section 55.

- (1A) Subject to subsection (1B), a reference in this Act to a ***company*** shall be read as a reference to a body corporate whether formed or incorporated in the Territory or outside the Territory.
- (1B) A reference in part 5 to a ***company*** shall not be read as including a reference to—
  - (a) a body corporate incorporated within the Commonwealth that is a public authority or instrumentality or agency of the Crown; or
  - (b) a corporation sole; or
  - (c) a building society; or
  - (d) a credit union; or
  - (e) an association, society, institution or body incorporated under the *Associations Incorporation Act 1991*.

**5A Real estate agents—interpretation**

A person carries on business as a real estate agent if, in the course of carrying on business, the person acts, or holds out or advertises that he or she is prepared to act, as agent for principals—

- (a) in the sale, purchase, exchange, leasing or letting of land; or
- (b) in the collection of rents payable under leases, or in respect of letting, of land; or
- (c) in the collection of payments under a mortgage of land or payments under a terms contract in respect of land;

whether the land is used for rural or other purposes.

**5B Stock and station agents—interpretation**

A person carries on business as a stock and station agent if, in the course of carrying on business, the person acts, or holds out or advertises that he or she is prepared to act, as agent for principals—

- (a) in the sale, purchase, exchange, leasing or letting of land used for rural purposes; or
- (b) in the collection or rents payable under leases, or in respect of the letting, of land used for rural purposes; or
- (c) in the sale, purchase or exchange of livestock; or
- (d) in the provision of agistment for livestock; or
- (e) in the collection of charges for the agistment of livestock.

**5C Business agents—interpretation**

A person carries on business as a business agent if, in the course of carrying on business, the person acts, or holds out or advertises that he or she is prepared to act, as agent for principals in the sale, purchase or exchange, or in other dealings with, or in the disposition of, or in the negotiations for the sale, purchase, exchange or other

dealing with, or disposition of, the goodwill in, or stock-in-trade of, businesses.

**5D Travel agents—interpretation**

- (1) A person carries on business as a travel agent if, in the course of carrying on business, the person—
  - (a) sells tickets entitling another person to travel, or otherwise arranges for another person a right of passage, on a conveyance; or
  - (b) sells to, or arranges or makes available for, another person rights of passage to, and hotel or other accommodation at, 1 or more places (whether or not the place, or any of the places, is in the Territory); or
  - (c) purchases for resale the right of passage on a conveyance; or
  - (d) holds out or advertises that he or she is prepared to carry on an activity referred to in paragraph (a), (b) or (c).
- (2) A person shall not be taken to carry on business as a travel agent—
  - (a) in respect of an activity referred to in subsection (1) (a)—
    - (i) if the person is the proprietor of the conveyance in respect of which the activity is carried on; or
    - (ii) if the conveyance is used solely for the purposes of carrying passengers from a place and returning them to that place on the same day; or
  - (b) in respect of an activity referred to in subsection (1) (b)—if the person is the proprietor of the conveyance and place of accommodation in respect of which the activity is carried on; or
  - (c) in respect of an activity referred to in subsection (1) (c)—if the conveyance is used solely for the purposes of carrying

passengers from a place and returning them to that place on the same day; or

- (d) only because the person holds out or advertises that he or she is prepared to carry on an activity as mentioned in paragraph (a), (b) or (c).
- (3) In subsection (2):
- (a) a reference to the *proprietor of a conveyance*—
    - (i) shall be read as including a reference to a person who has lawful possession of the conveyance but not the property in it; and
    - (ii) shall not be read as including a reference to a person who has the property in the conveyance but does not have possession of it because of its being the subject of a mortgage, bill of sale, hire-purchase agreement or other hiring agreement, lease, licence or bailment; and
  - (b) a reference to the *proprietor of a place of accommodation* shall be read as a reference to the person in possession of the land that is, or on which is situated, the place of accommodation.

### **5DA Employment agents—interpretation**

- (1) A person carries on business as an employment agent if, in the course of carrying on business, the person—
  - (a) finds or assists in finding a person to carry out work for a person seeking to have work carried out; or
  - (b) finds or assists in finding employment for a person seeking to be employed; or
  - (c) holds out or advertises that he or she is prepared to carry on an activity referred to in paragraph (a) or (b).

- (2) A person shall not be taken to carry on business as an employment agent only because the person—
- (a) publishes an advertisement placed by or on behalf of some other person who is seeking to have work carried out or to be employed; or
  - (b) carries out any functions in the course of his or her employment by some other person.
- (3) For the purposes of subsection (1) it is immaterial whether the employment or work referred to in that subsection is to be undertaken or carried out pursuant to a contract of employment or otherwise.

#### **5E Employees of agents**

A person shall not be taken to carry on business as an agent only because the person does anything referred to in section 5A, 5B, 5C, 5D or 5DA in the course of his or her employment.

#### **5F Fit and proper person**

- (1) Without limiting the generality of sections 51 (3) (e) (ii), (f) (i) and (ii), (g) (ii) and (h) (i) and (ii), 77 (1) (b) and 82A (3) (a), when determining whether a person is a fit and proper person for the purposes of those provisions, the board may have regard to whether the person—
- (a) has been convicted of an offence involving fraud or dishonesty within the period of 10 years immediately preceding—
    - (i) if the board is considering whether to refuse an application for the grant of a licence on the grounds referred to in section 51 (3) (e) (ii), (f) (i) or (ii), (g) (ii) or (h) (i) or (ii)—the day on which the application was made; or



- (ii) in any other case—the day on which the board considers whether to revoke an agent’s registration or licence on the grounds referred to in section 77 (1) (b), or the day on which the board considers whether to disqualify the person from being involved in the direction, management or conduct of an agent’s business on the grounds referred to in section 82A (3) (a), as the case requires; or
  - (b) has, within that period, served any part of a term of imprisonment for such an offence; or
  - (c) is, at the time the application, revocation or disqualification, as the case may be, is considered by the board—
    - (i) bound in relation to such an offence by a recognisance; or
    - (ii) the subject of a charge pending in relation to such an offence; or
  - (d) has, at any time, been convicted of an offence against this Act or a corresponding law; or
  - (e) has been refused a licence under a corresponding law; or
  - (f) has been the subject of action taken under a corresponding law that has an effect similar to the effect of action taken under section 75.
- (2) A reference in subsection (1) to a person’s **conviction** shall be read as including a reference to an order made in relation to the person under the *Crimes Act 1900*, section 402 or under a law of a State or another Territory that provides for the conditional release of offenders without proceeding to conviction.

## 6 Registrar of Agents

- (1) There shall be a Registrar of Agents.

- (2) The chief executive shall create and maintain an office in the public service the duties of which include performing the functions of the Registrar of Agents.
- (3) The registrar shall be the public servant for the time being performing the duties of the public service office referred to in subsection (2).

#### **6A Deputy Registrars of Agents**

- (1) There may be 1 or more Deputy Registrars of Agents.
- (2) A deputy registrar may perform any function of the registrar, subject to any direction of the registrar.
- (3) The chief executive shall create and maintain 1 or more offices in the public service the duties of which include performing the functions of a Deputy Registrar of Agents.
- (4) A deputy registrar shall be any public servant for the time being performing the duties of a public service office referred to in subsection (3).

#### **6B Inspectors**

- (1) There may be 1 or more inspectors for the purposes of this Act.
- (2) An inspector shall perform such functions for the purposes of this Act as the registrar directs.
- (3) The chief executive shall create and maintain 1 or more offices in the public service the duties of which include performing the functions of an inspector.
- (4) An inspector shall be any public servant for the time being performing the duties of a public service office referred to in subsection (3).

**6C Inspectors—identity cards**

- (1) The chief executive must issue to the registrar, the deputy registrar and each inspector an identity card that—
  - (a) states the name and position of the person to whom it is issued; and
  - (b) includes a recent photograph of the person.
- (2) A person—
  - (a) to whom an identity card was issued under subsection (1); and
  - (b) who ceases to occupy or act in the position the person held when the card was issued;

must, unless the person has a reasonable excuse, return the card to the chief executive as soon as practicable, but no later than 21 days, after ceasing to occupy or act in the position.

Maximum penalty: 1 penalty unit.

**7 Register**

- (1) The registrar shall keep the following registers:
  - (a) the register of real estate agents;
  - (b) the register of stock and station agents;
  - (c) the register of business agents;
  - (d) the register of travel agents;
  - (e) the register of employment agents.
- (2) The registrar shall enter in a register such particulars as are prescribed or as the board directs.

## Part 2 The agents board

### 8 The agents board

- (1) For the purposes of this Act, there shall be an Agents Board of the Australian Capital Territory.
- (2) The board—
  - (a) is a body corporate, with perpetual succession; and
  - (b) shall have a common seal; and
  - (c) may acquire, hold and dispose of personal property; and
  - (d) may sue and be sued in its corporate name.
- (3) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the board affixed to a document and shall presume that it was duly affixed.

### 9 Constitution of the board

- (1) The board shall consist of 7 members, of whom 1 at least shall be a legal practitioner.
- (2) The members of the board shall be appointed by the Minister.
- (3) A member holds office for such period, not exceeding 3 years, as is specified in the instrument of appointment.
- (5) Where the office of a member becomes vacant before the expiration of his or her term of office, the Minister may appoint a person to hold the office for the unexpired part of that term.
- (6) A member is eligible for reappointment.

## 10 Chairperson and deputy chairperson

- (1) The Minister shall in writing appoint a member to be chairperson of the board.
- (2) There shall be a deputy chairperson of the board who shall be 1 of the members of the board (other than the chairperson of the board) elected by members of the board.
- (3) The deputy chairperson holds office for a period of 1 year but is eligible for re-election.

## 12 Ending of appointments

The Minister may end the appointment of a member—

- (a) if the member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or
- (b) for misbehaviour; or
- (c) for physical or mental incapacity; or
- (d) if the member is convicted in Australia of an offence the maximum punishment for which is imprisonment for at least 1 year; or
- (e) if the member is absent, except on leave granted by the chairperson, from 3 consecutive meetings of the board; or
- (f) if the member, without reasonable excuse, contravenes section 16A (Disclosure of interests).

*Note* A person's appointment also ends if the person resigns (see *Legislation Act 2001*, s 210)

## **15 Acting appointments**

- (1) The Minister may, in writing, appoint a person to act as a member—
  - (a) during a vacancy in the office of a member, whether or not an appointment has previously been made to the office; or
  - (b) during any period, or during all periods, when a member is absent from duty or from the Territory or is, for any other reason, unable to perform the functions of the office;

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

- (2) A person appointed under this section shall be paid such remuneration and allowances as are payable to a member.
- (3) Anything done by, or in relation to, a person purporting to act under this section is not invalid on the ground that—
  - (a) the occasion for the person's appointment had not arisen; or
  - (b) there is a defect or irregularity in connection with the person's appointment; or
  - (c) the person's appointment has ceased to have effect.

## **16 Meetings of the board**

- (1) The board shall meet as and when necessary and so that not more than 6 months elapses between any 2 meetings of the board.
- (2) A meeting of the board shall be convened by the chairperson by notice in writing to other members of the board, and shall be held at the time and place specified in the notice.
- (3) The chairperson shall preside at all meetings of the board at which he or she is present.
- (4) At a meeting of the board at which the chairperson is not present, the deputy chairperson shall preside.

- (5) At a meeting of the board, the chairperson or deputy chairperson and 2 other members constitute a quorum.
- (6) A question arising at a meeting of the board shall be determined by a majority of votes of the members present and voting.
- (7) The member presiding at a meeting of the board has a deliberative vote and, in the event of any equality of votes, also has a casting vote.
- (8) The board shall keep a record of its proceedings.
- (9) Subject to this Act, the procedure at meetings of the board shall be as the board determines.

#### **16A Disclosure of interests**

- (1) A member who has a relevant interest in an issue being considered, or about to be considered, by the board must, as soon as practicable after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the board.
- (2) The disclosure must be recorded in the board's minutes and, unless the board otherwise decides, the member must not—
  - (a) be present when the board considers the issue; or
  - (b) take part in a decision of the board on the issue.
- (3) Any other member who also has a relevant interest in the issue must not—
  - (a) be present when the board is considering its decision under subsection (2); or
  - (b) take part in making the decision.
- (4) Within 7 days after the end of each financial year, the chairperson must give the Minister a statement of any disclosure of interest made under this section during the financial year.

(5) The Minister must give a copy of a statement received under subsection (4) to the relevant committee of the Legislative Assembly within 14 days after the day the Minister receives the statement.

(6) In subsection (5):

*relevant committee* means—

- (a) a standing committee of the Legislative Assembly nominated by the Speaker for subsection (5); or
- (b) if no nomination under paragraph (a) is in effect—the standing committee of the Legislative Assembly responsible for the scrutiny of public accounts.

*relevant interest* means—

- (a) a direct or indirect financial interest; or
- (b) a direct or indirect interest of any other kind if the interest could conflict with the proper exercise of the member's functions in relation to the board's consideration of an issue.

## 17 Delegation by board

- (1) The board may, either generally or in relation to a matter or class of matters, by writing under its seal, delegate to a member or to a committee consisting of members any of its powers under this Act, except this power of delegation.
- (2) A power so delegated may be exercised by the delegate in accordance with the instrument of delegation.
- (3) A delegation under this section is revocable at will and does not prevent the exercise of a power by the board.



**17A Annual reports of board**

The report of the board under the *Annual Reports (Government Agencies) Act 1995* for a financial year must include—

- (a) the number, and an outline of the nature and outcome, of the complaints made to the board during the financial year; and
- (b) the name of anyone who was subject to an inquiry completed by the board during the financial year and an outline of the nature and outcome of the inquiry; and
- (c) the number of agents given a licence or registered during the financial year; and
- (d) an outline of the educational activities undertaken by the board during the financial year to tell consumers about their rights under this Act; and
- (e) a list of the names of all employment agents licensed under this Act at any time during the financial year.

## Part 3

# Carrying on business without a licence and related matters

### 18 Natural persons to be licensed

- (1) A person (other than a company) shall not carry on business in the Territory as a real estate agent unless—
- (a) the person is the holder of a real estate agent's licence; or
  - (b) the person is a member of a partnership or firm carrying on business as real estate agents, he or she is a registered agent and another member of the partnership or firm is the holder of a real estate agent's licence.

Maximum penalty: 20 penalty units.

- (2) A person (other than a company) shall not carry on business in the Territory as a stock and station agent unless—
- (a) the person is a holder of a stock and station agent's licence; or
  - (b) the person is a member of a partnership or firm carrying on business as stock and station agents, he or she is a registered agent and another member of the partnership or firm is the holder of a stock and station agent's licence.

Maximum penalty: 20 penalty units.

- (3) A person (other than a company) shall not carry on business in the Territory as a business agent unless—
- (a) the person is a holder of a business agent's licence; or

- (b) the person is a member of a partnership or firm carrying on business as business agents, he or she is a registered agent and another member of the partnership or firm is the holder of a business agent's licence.

Maximum penalty: 20 penalty units.

- (4) A person (other than a company) shall not carry on business as a travel agent unless the person holds a travel agent's licence.

Maximum penalty: 20 penalty units.

- (5) A person (other than a company) shall not carry on business as an employment agent unless the person holds an employment agent's licence.

Maximum penalty: 20 penalty units.

## **19 Companies to be licensed**

- (1) A company shall not carry on business as a real estate agent unless the company is the holder of a real estate agent's licence.

Maximum penalty: 20 penalty units.

- (2) A company shall not carry on business as a stock and station agent unless the company is the holder of a stock and station agent's licence.

Maximum penalty: 20 penalty units.

- (3) A company shall not carry on business as a business agent unless the company is the holder of a business agent's licence.

Maximum penalty: 20 penalty units.

- (4) A company shall not carry on business as a travel agent unless it holds a travel agent's licence.

Maximum penalty: 20 penalty units.

- (5) A company shall not carry on business as an employment agent unless it holds an employment agent's licence.

Maximum penalty: 20 penalty units.

### **19A Unlicensed travel agents—additional penalty**

- (1) Where a travel agent is convicted of an offence against section 18 (4) or 19 (4) the court may, in addition to imposing a penalty in respect of the offence, order the person to pay to the registrar an amount determined by the court, being an amount not exceeding the profit derived by the agent from carrying on business as a travel agent in the period during which the agent was carrying on business without a licence.
- (2) An amount equal to the amount paid to the registrar pursuant to subsection (1) shall be paid to the board of trustees for the purposes of the trust.
- (3) An amount payable under an order made pursuant to subsection (1) is recoverable by the Territory in a court of competent jurisdiction as a debt due.

### **19B Licensed employment agents—receipt of remuneration**

- (1) A person or company who holds an employment agent's licence shall not, in connection with carrying on business as an employment agent, demand or receive any fee, charge or other remuneration except from a person for whom the licensee finds, or assists in finding, a person to undertake employment or otherwise to carry out work.

Maximum penalty: 20 penalty units.

- (2) This section does not apply in relation to a model or performer.

## **Part 4**                      **Registration of agents**

### **Division 4.1**              **General**

#### **20**      **Definitions for pt 4**

In this part:

*prescribed date* means the date fixed, for the purposes of this division, under section 21.

*prescribed person* means a person who has the required qualifications for registration as an agent by virtue of section 26 (2), 30 (2) or 34 (2).

#### **21**      **Prescribed date**

The regulations may specify, for the purposes of this division, a date, not being a date earlier than 3 years after the date of commencement of this Act, as the date after which applicants for registration, other than applicants who are prescribed persons, shall hold the educational qualifications required by the regulations to be held by applicants for registration.

#### **22**      **Regulations to prescribe educational qualifications to be held after the prescribed date**

The regulations may make provision for or in relation to the educational qualifications to be held by persons, other than prescribed persons, who apply, after the date specified under section 21, for registration as real estate agents, as stock and station agents and as business agents.

## **Division 4.2**                      **Qualifications required for registration as real estate agents**

### **26**      **Qualifications for registration as real estate agent— applications after prescribed date**

- (1) A person who applies, after the prescribed date, for registration as a real estate agent has the required qualifications for registration as a real estate agent if the person—
  - (a) has attained the age of 18 years; and
  - (b) is of good fame and character; and
  - (c) holds the educational qualifications required by the regulations to be held by an applicant for registration as a real estate agent; and
  - (d) has been employed by a person, partnership, firm or company carrying on business either within or outside the Territory as a real estate agent for a period of, or for periods that aggregate, not less than 3 years; and
  - (e) has—
    - (i) an adequate knowledge of the duties, obligations and rights of a real estate agent; and
    - (ii) gained, in the employment referred to in paragraph (d), adequate practical experience relevant to the business of a real estate agent.
- (2) A person who applies, after the prescribed date, for registration as a real estate agent has the required qualifications for registration as a real estate agent if—
  - (a) the person is licensed or registered as a real estate agent under the law of a State or another Territory providing for the licensing or registration of real estate agents; and

- (b) the person satisfies the board that he or she has an adequate knowledge of the duties, obligations and rights of a real estate agent.

## **27 Provisions applicable in relation to periods of employment**

- (1) Where an applicant for registration as a real estate agent—
  - (a) is an employee of a person, partnership, firm or company carrying on within the Territory business as a real estate agent; and
  - (b) before becoming such an employee carried on, within or outside the Territory, business as a real estate agent on his or her own account or as a member of a partnership or firm for a period;

the applicant shall, for the purposes of this division, be deemed to have been, during the period referred to in paragraph (b), employed by a person, partnership, firm or company carrying on business as a real estate agent.

- (2) Where—
  - (a) the period for which an applicant for registration as a real estate agent has been, or is to be deemed to have been, employed by a person, partnership, firm or company carrying on business as a real estate agent is a period that is less than 3 years; and
  - (b) the applicant has been employed by a person, partnership, firm or company carrying on, within or outside the Territory, business as a stock and station agent or a business agent, for a period which, when added to the period for which he or she was employed as a real estate agent, exceeds 3 years;

the board may in its discretion, regard that person as being a person who has been employed by a person, partnership, firm or company

carrying on business as a real estate agent for a period of, or for periods that aggregate, not less than 3 years.

- (3) In this division, a reference to a person, partnership, firm or company carrying on business as a real estate agent outside the Territory shall be read as a reference to a person, partnership, firm or company who is, under the law of the State where the business is carried on, licensed to carry on that business.
- (4) In this division, a reference to a person, partnership, firm or company carrying on business as a real estate agent within the Territory shall, on and after the date of commencement of this Act, be read as a reference to a person carrying on business as a licensed real estate agent, to a partnership or firm 1 of the members of which is a licensed real estate agent or to a company which is a licensed real estate agent, as the case requires.

### **Division 4.3 Qualifications required for registration as stock and station agents**

#### **30 Qualifications for registration as stock and station agent—applications after prescribed date**

- (1) A person who applies, after the prescribed date, for registration as a stock and station agent has the required qualifications for registration as a stock and station agent if the person—
  - (a) has attained the age of 18 years; and
  - (b) is of good fame and character; and
  - (c) holds the educational qualifications required by the regulations to be held by an applicant for registration as a stock and station agent; and
  - (d) has been employed by a person, partnership, firm or company carrying on business either within or outside the Territory as a



stock and station agent for a period of, or for periods that aggregate, not less than 3 years; and

- (e) has—
  - (i) an adequate knowledge of the duties, obligations and rights of a stock and station agent; and
  - (ii) gained, in the employment referred to in paragraph (d), adequate practical experience relevant to the business of a stock and station agent.
- (2) A person who applies, after the prescribed date, for registration as a stock and station agent has the required qualifications for registration as a stock and station agent if—
  - (a) the person is licensed or registered as a stock and station agent under the law of a State or another Territory providing for the licensing or registration of stock and station agents; and
  - (b) the person satisfies the board that he or she has an adequate knowledge of the duties, obligations and rights of a stock and station agent.

### **31 Provisions applicable in relation to periods of employment**

- (1) Where an applicant for registration as a stock and station agent—
  - (a) is an employee of a person, partnership, firm or company carrying on, within the Territory, business as a stock and station agent; and
  - (b) before becoming such an employee carried on, within or outside the Territory, business as a stock and station agent on his or her own account or as a member of a partnership or firm for a period;

the applicant, shall, for the purposes of this division, be deemed to have been, during the period referred to in paragraph (b), employed

by a person, partnership, firm or company carrying on business as a stock and station agent.

(2) Where—

- (a) the period for which an applicant for registration as a stock and station agent has been, or is to be deemed to have been, employed by a person, partnership, firm or company carrying on business as a stock and station agent is a period that is less than 3 years; and
- (b) the applicant has been employed by a person, partnership, firm or company carrying on, within or outside the Territory, business as a real estate agent or a business agent, for a period which when added to the period for which he or she was employed as a stock and station agent exceeds 3 years;

the board may, in its discretion, regard that person as being a person who has been employed by a person, partnership, firm or company carrying on business as a stock and station agent for a period of, or for periods that aggregate, not less than 3 years.

- (3) In this division, a reference to a person, partnership, firm or company carrying on business as a stock and station agent outside the Territory shall be read as a reference to a person, partnership, firm or company who is, under the law of the State where the business is carried on, licensed to carry on that business.
- (4) In this division, a reference to a person, partnership, firm or company carrying on business as a stock and station agent within the Territory shall, on and after the date of commencement of this Act be read as a reference to a person carrying on business as a licensed stock and station agent, to a partnership or firm 1 of the members of which is a licensed stock and station agent or to a company which is a licensed stock and station agent, as the case requires.

## **Division 4.4                      Qualifications required for    registration as business agents**

### **34      Qualifications for registration as business agent—                  applications after prescribed date**

- (1) A person who applies, after the prescribed date, for registration as a business agent has the required qualifications for registration as a business agent if the person—
  - (a) has attained the age of 18 years; and
  - (b) is of good fame and character; and
  - (c) holds the educational qualifications required by the regulations to be held by an applicant for registration as a business agent; and
  - (d) has been employed by a person, partnership, firm or company carrying on business either within or outside the Territory as a business agent for a period of, or for periods that aggregate, not less than 3 years; and
  - (e) has—
    - (i) an adequate knowledge of the duties, obligations and rights of a business agent; and
    - (ii) gained, in the employment referred to in paragraph (d), adequate practical experience relevant to the business of a business agent.
- (2) A person who applies, after the prescribed date, for registration as a business agent has the required qualifications for registration as a business agent if—
  - (a) the person is licensed or registered as a business agent under the law of a State or another Territory providing for the licensing or registration of business agents; and

- (b) the person satisfies the board that he or she has an adequate knowledge of the duties, obligations and rights of a business agent.

### **35 Provisions applicable in relation to periods of employment**

- (1) Where an applicant for registration as a business agent—
  - (a) is an employee of a person, partnership, firm or company carrying on, within the Territory, business as a business agent; and
  - (b) before becoming such an employee carried on, within or outside the Territory, business as a business agent on his or her own account or as a member of a partnership or firm for a period;

the applicant shall, for the purposes of this division, be deemed to have been, during the period referred to in paragraph (b), employed by a person, partnership, firm or company carrying on business as a business agent.

- (2) Where—
  - (a) the period for which an applicant for registration as a business agent has been, or is to be deemed to have been, employed by a person, partnership, firm or company carrying on business as a business agent is a period that is less than 3 years; and
  - (b) the applicant has been employed by a person, partnership, firm or company carrying on, within or outside the Territory, business as a real estate agent or a stock and station agent, for a period which, when added to the period for which he or she was employed as a business agent exceeds 3 years;

the board may, in its discretion, regard that person as being a person who has been employed by a person, partnership, firm or company

carrying on business as a business agent for a period of, or for periods that aggregate, not less than 3 years.

- (3) In this division, a reference to a person, partnership, firm or company carrying on business as a business agent outside the Territory shall be read as a reference to a person, partnership, firm or company who is, under the law of the State where the business is carried on, licensed to carry on that business.
- (4) In this division, a reference to a person, partnership, firm or company carrying on business as a business agent within the Territory shall, on or after the date of commencement of this Act, be read as a reference to a person carrying on business as a licensed business agent, to a partnership or firm one of the members of which is a licensed business agent or to a company which is a licensed business agent, as the case requires.

## **Division 4.5                      Applications for registration and objections to applications**

### **36      Applications for registration**

An application for registration as an agent—

- (a) shall be lodged with the registrar not earlier than 7 days after, and not later than 14 days after, the applicant has—
  - (i) caused to be published in a daily newspaper published and circulating in the Territory notice of the fact that he or she intends to apply for registration as a real estate agent, as a stock and station agent or as a business agent and stating the applicant's full name and residential address; and
  - (ii) served on the commissioner of police notice of the fact that he or she intends to apply for registration as an agent and setting out the applicant's full name, date and place of birth, present residential address and any other

addresses at which he or she has resided during the 3 years immediately preceding the date on which the notice is given to the commissioner of police; and

- (b) shall be accompanied by a copy of each of the notices referred to in paragraph (b) and a statement setting out the date on which those notices were published and served; and
- (c) shall be accompanied by evidence of the applicant's age; and
- (d) shall be accompanied by a written statement setting out such particulars as are necessary to show that the applicant has the required qualifications for registration; and
- (e) shall be accompanied by certificates by 2 persons certifying with respect to the fame and character of the applicant.

*Note* If a form is approved under s 121 (Approved forms) for an application, the form must be used.

### **37 Objections to registration**

- (1) The commissioner of police may, within 21 days after the date on which the notice referred to in section 36 (a) (ii) is served on him or her, object, by notice in writing lodged with the registrar, to the application for registration on the ground that the applicant is not of good fame and character.
- (2) Any other person may, within 14 days after the publication of the notice referred to in section 36 (a) (i), object, by notice in writing lodged with the registrar, to the grant of the application for registration on the ground that the applicant is not of good fame and character.
- (3) The registrar may, within 14 days after the lodgment of an application for registration, object by notice in writing signed by him or her to the grant of the application on the ground that the applicant does not have the required qualifications for registration as an agent.

- (4) A notice of objection under this section shall be filed by the registrar and a copy of the notice shall be served on the applicant for registration.

## **Division 4.6                      Determination by the board of applications**

### **38      Grant or refusal of registration**

- (1) The board shall consider each application for registration as an agent and—
- (a) shall grant the application and authorise the issue of a certificate of registration to the applicant; or
  - (b) may refuse the application.
- (2) The board may, whether or not an objection to the grant of an application for registration has been lodged, require an applicant, to attend in person before the board and may require the applicant to furnish to the board, either in writing or orally, such further information as the board requires to be furnished.
- (3) Except as provided in subsection (4), the board shall not refuse an application for registration as an agent unless—
- (a) the applicant for registration refuses or fails to attend before the board or to furnish the further information required by the board in pursuance of subsection (2); or
  - (b) the applicant for registration fails to establish that he or she has the required qualifications for registration; or
  - (c) the application does not comply with the requirements of section 36.
- (4) Where the board finds that, in the case of an objection made by the registrar on the ground specified in section 37 (3) (c), the ground has been established, the board may grant or refuse the application for registration as an agent.

**39 Inquiry to be held by the board before refusing registration**

Where an objection is lodged under section 37 or the board considers that there may be grounds for refusing an application for registration as an agent, the board shall hold an inquiry into the matter.

**40 Grounds for refusing application to be notified to the applicant**

Where the board refuses to grant an application for registration as an agent, the board shall—

- (a) record the reasons for its decision; and
- (b) serve on the applicant, within 7 days, after so deciding, notice of its decision; and
- (c) if the applicant so requests, supply him or her with a copy of those reasons.

**41 Registration certificates**

Where the board grants an application for registration as an agent, the registrar must issue a certificate of registration as an agent to the applicant.

*Note* A fee may be determined under s 120A (Determination of fees) for this section.

**Division 4.7 Periodic fees**

**41A Fees payable by registered agents**

- (1) Before 1 July in each financial year, a registered agent must pay to the registrar the annual registration fee for the financial year.



(2) In this section:

*annual registration fee*, for a financial year, means the fee determined under section 120A (Determination of fees) for this section for a financial year.

## **Part 5 Licences to carry on business as agents**

### **Division 5.1 Eligibility for grant of licence as real estate agent**

#### **42 Eligibility—natural persons**

A person, other than a company, is eligible for the grant of a licence to carry on business as a real estate agent if—

- (a) the person is a registered real estate agent or has applied for registration as a real estate agent; and
- (b) by reason of the person's experience as a real estate agent before the commencement of this Act or of the person's experience as a registered real estate agent after that commencement, or both, he or she is competent to carry on business on his or her own account as a licensed real estate agent; and
- (c) the person is of good fame and character.

#### **43 Eligibility—companies**

- (1) A company is eligible for the grant of a licence to carry on business as a real estate agent if—
  - (a) the company is not prohibited by its memorandum of association from carrying on business as a real estate agent; and
  - (b) at least 1 of the directors of the company is a registered real estate agent or has applied for registration as a real estate agent and that director's experience has been such that he or she is competent to carry on business on his or her own account as a licensed real estate agent; and

- (c) each director of the company is a person of good fame and character.

## **Division 5.2                    Eligibility for grant of licence as stock and station agent**

### **44    Eligibility—natural persons**

A person, other than a company, is eligible for the grant of a licence to carry on business as a stock and station agent if—

- (a) the person is a registered stock and station agent or has applied for registration as a stock and station agent; and
- (b) the person's experience as a stock and station agent before the commencement of this Act or the person's experience as a registered stock and station agent after that commencement, or both, has been such that he or she is competent to carry on business on his or her own account as a licensed stock and station agent; and
- (c) the person is of good fame and character.

### **45    Eligibility—companies**

- (1) A company is eligible for the grant of a licence to carry on business as a stock and station agent if—
- (a) the company is not prohibited by its memorandum of association from carrying on business as a stock and station agent; and
- (b) at least 1 of the directors of the company is a registered stock and station agent or has applied for registration as a stock or station agent and that director's experience has been such that he or she is competent to carry on business on his or her own account as a licensed stock and station agent; and

- (c) each director of the company is a person of good fame and character.

## **Division 5.3 Eligibility for grant of licence as business agent**

### **46 Eligibility—natural persons**

A person, other than a company, is eligible for the grant of a licence to carry on business as a business agent if—

- (a) the person is a registered business agent or has applied for registration as a business agent; and
- (b) the person's experience as a business agent before the commencement of this Act or his or her experience as a registered business agent after that commencement, or both, has been such that the person is competent to carry on a business on his or her own account as a licensed business agent; and
- (c) the person is of good fame and character.

### **47 Eligibility companies**

- (1) A company is eligible for the grant of a licence to carry on business as a business agent if—
  - (a) the company is not prohibited by its memorandum of association from carrying on business as a business agent; and
  - (b) at least 1 of the directors of the company is a registered business agent or has applied for registration as a business agent and that director's experience has been such that he or she is competent to carry on business on his or her own behalf as a licensed business agent; and
  - (c) each director of the company is a person of good fame and character.

## **Division 5.4**                      **Eligibility for grant of travel agent's licence**

### **47A Eligibility—natural persons**

A person other than a company is eligible for the grant of a travel agent's licence if—

- (a) the person is at least 18 years of age; and
- (b) the person has the prescribed qualifications; and
- (c) the board of trustees has determined under the trust deed that the person is eligible to be a participant; and
- (d) the person has paid an initial contribution to the compensation fund in accordance with the trust deed; and
- (e) the person is not disqualified under section 82A (1) or (2) or a corresponding law from holding a travel agent's licence; and
- (f) the person is not disqualified under section 82A (3) or a corresponding law from being involved in the direction, management or conduct of a travel agent's business.

### **47B Eligibility—companies**

A company is eligible for the grant of a travel agent's licence if—

- (a) each person involved in the management of the company is at least 18 years of age; and
- (b) a director of the company has the prescribed qualifications; and
- (c) the company is not prohibited by its memorandum of association from carrying on business as a travel agent; and
- (d) the board of trustees has determined under the trust deed that the company is eligible to be a participant; and
- (e) the company has paid an initial contribution to the compensation fund in accordance with the trust deed; and

- (f) the company is not disqualified under section 82A (1) or (2) or a corresponding law from holding a travel agent's licence; and
- (g) no officer of the company is disqualified under section 82A (3) or a corresponding law from being involved in the direction, management or conduct of a travel agent's business.

#### **47C Qualifications for travel agent, director or manager**

For the purposes of sections 47A (b) and 47B (b), a person has the prescribed qualifications if the person—

- (a) is of good fame and character; and
- (b) has 3 years experience in carrying on business as a travel agent or as an employee of a travel agent; and
- (c) has a qualification set out in schedule 1.

### **Division 5.5 Eligibility for grant of employment agent's licence**

#### **47CA Eligibility—natural persons**

A person, other than a company, is eligible for the grant of an employment agent's licence if—

- (a) the person is at least 18 years of age; and
- (b) the person is not disqualified under section 82A (1) or (2) or a corresponding law from holding an employment agent's licence; and
- (c) the person is not disqualified under section 82A (3) or a corresponding law from being involved in the direction, management or conduct of an employment agent's business.

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### **47CB Eligibility—companies**

A company is eligible for the grant of an employment agent's licence if—

- (a) each person involved in the management of the company is at least 18 years of age; and
- (b) the company is not prohibited by its memorandum of association from carrying on business as an employment agent; and
- (c) the company is not disqualified under section 82A (1) or (2) or a corresponding law from holding an employment agent's licence; and
- (d) no officer of the company is disqualified under section 82A (3) or a corresponding law from being involved in the direction, management or conduct of an employment agent's business.

## **Division 5.6 Licences held by partnerships**

### **47D Application**

Where a licence issued in the name of 1 of a number of partners is held for the purposes of the partnership, sections 47F, 47G and 47H apply in relation to the licensee and to each partner—

- (a) whether or not the partner's name appears on the licence; and
- (b) whether or not section 47E (1), (2), (3) or (4), as the case requires, has been complied with in relation to the partner.

### **47E Notice of partnership**

- (1) Where 1 of a number of partners applies for a licence for the purposes of the partnership, the applicant shall attach to the application written particulars of—
  - (a) the name and residential address of each partner; and

- (b) the name under which the partners are or will be carrying on the business in respect of which the application is made.
- (2) Where a licensee enters into partnership with another person or persons after the licence is issued, and the licence is to be held for the purposes of the partnership, the licensee shall, within 1 month after the partnership was formed—
  - (a) give the registrar written particulars of—
    - (i) the name and residential address of each partner; and
    - (ii) the name under which the partners are or will be carrying on the business to which the licence relates; and
  - (b) if the licence has been issued—lodge the licence with the registrar.
- (3) Where a licence issued before the commencement of the *Agents (Amendment) Act (No. 2) 1988* is held by 1 of a number of partners for the purposes of the partnership, the licensee shall, within 1 month after that commencement—
  - (a) give the registrar written particulars of—
    - (i) the name and residential address of each partner; and
    - (ii) the name under which the partners are carrying on business at the premises to which the licence relates; and
  - (b) lodge the licence with the registrar.
- (4) If any change occurs in the particulars referred to in subsection (1) (whether before or after the licence is issued) or in the particulars referred to in subsection (2) or (3), the applicant or the licensee, as the case requires—
  - (a) shall give the registrar particulars of the change within 1 month after its occurrence; and



- (b) if the licence has been issued—lodge the licence with the registrar.

*Note* A fee may be determined under s 120A (Determination of fees) for this section.

- (5) Where a licence has been lodged with the registrar pursuant to subsection (2), (3) or (4), the registrar shall, with the approval of the board, endorse on the licence the particulars most recently given to the registrar and shall, as soon as practicable, send the licence to the licensee.

#### **47F Rights and liabilities of partners**

Where a licence issued in the name of 1 of a number of partners is held for the purposes of the partnership, each partner has, in relation to the licence, all the rights and duties of the licensee.

#### **47G Offences by partners**

- (1) For the purposes of this Act, where—
- (a) a licence issued in the name of 1 of a number of partners is held for the purposes of the partnership; and
  - (b) any of the partners who is involved in the direction, management or conduct of the business in respect of which the licence was issued—
    - (i) does anything that would constitute a breach of the rules of conduct if it were done by the licensee; or
    - (ii) is convicted of an offence against this Act;

the licensee shall be taken respectively to be guilty of a breach of the rules of conduct or to have been convicted of that offence.

- (2) A reference in subsection (1) to a person's conviction shall be read as including a reference to an order made in relation to the person under the *Crimes Act 1900*, section 402 or under a law of a State or

another Territory that provides for the conditional release of offenders without proceeding to conviction.

#### **47H Suspension or cancellation of a partner's licence**

Where a licence held by 1 of a number of partners for the purposes of the partnership is suspended or cancelled as a result of an act or omission, while the suspension or cancellation is in force, the licence shall not be transferred, and a licence shall not be issued, to any person who was or is, at the time of the act or omission, or while the suspension or cancellation is in force, a member of the partnership.

### **Division 5.7 Applications, objections and determination of applications for licences**

#### **48 Applications for licences by individuals**

- (1) An application by an individual for the grant of a licence to carry on business as an agent—
  - (a) shall be in writing and signed by the applicant; and
  - (b) shall be lodged with the registrar not earlier than 7 days, and not later than 14 days, after the applicant has—
    - (i) caused a notice of the fact that the applicant intends to apply for a licence to be published in a daily newspaper published and circulating in the Territory; and
    - (ii) served on the commissioner of police a notice, stating that the applicant intends to apply for a licence, and including particulars of the applicant's full name, date and place of birth, present residential address and the address of any other place at which the applicant has resided during the 3 years immediately preceding the date of service of the notice; and

- (iii) in the case of an application for a licence to carry on business as a travel agent—served on the commissioner of police a notice of particulars in relation to each person (other than the applicant) who is to be present and in charge of the day-to-day conduct of the applicant's business at a place where the business is to be carried on, being particulars of the person's full name, date and place of birth, present residential address and the address of any other place at which the person has resided during the 3 years immediately preceding the date of the notice; and
- (c) shall be accompanied by a copy of each notice published or served by the applicant pursuant to paragraph (b) and a statement setting out the date on which each notice was published or served; and
- (d) shall be accompanied by certificates by 2 persons certifying with respect to the fame and character of the applicant; and
- (e) in the case of an application for a licence to carry on business as a real estate agent, stock and station agent or business agent—shall be accompanied by a written statement of the applicant's experience as such an agent or as an employee of such an agent; and
- (f) in the case of an application for a travel agent's licence—shall be accompanied by a written statement of such particulars as are necessary to show that the applicant has the prescribed qualifications; and
- (g) shall be accompanied by a written statement specifying the place or places at which the applicant proposes to carry on business in the Territory and, if more than 1 place is so specified, which of those places is to be the principal place at which the applicant proposes to carry on business in the Territory; and

- (h) shall be accompanied by a written statement by the applicant that he or she is not a bankrupt, is not for the time being taking the benefit of any law for the relief of bankrupt or insolvent debtors, or is not a person whose remuneration is, for the time being, assigned for the benefit of his or her creditors.
- (2) Where an applicant for registration as a real estate agent, stock and station agent or business agent applies for a licence to carry on business as such an agent before the board has considered the application for registration, the board is not required to consider the application for the licence unless it grants the application for registration.

#### **49 Applications for licences by companies**

- (1) An application by a company for the grant of a licence to carry on business as an agent—
  - (a) shall be in writing and signed on behalf of the company by a director of the company; and
  - (b) shall be accompanied by a certified copy of the certificate of incorporation of the company; and
  - (c) shall be accompanied by a statement setting out the names and present residential addresses of the directors of the company; and
  - (d) in the case of an application for a licence to carry on business as a real estate agent, stock and station agent or business agent—shall be accompanied by a written statement of the experience, as such an agent or as an employee of such an agent, of each director of the company who is registered, or has applied for registration, as such an agent; and
  - (e) in the case of an application for a travel agent's licence—shall be accompanied by a written statement of such particulars, in respect of each director of the company who has the prescribed

qualifications, as are necessary to show that the director has those qualifications; and

- (f) shall be lodged with the registrar not earlier than 7 days after, and not later than 14 days, after the company has—
- (i) caused to be published in a daily newspaper published and circulated in the Territory notice of the fact that it intends to apply for a licence; and
  - (ii) served on the commissioner of police notice of the fact that it intends to apply for a licence and setting out the full name, the date and place of birth and present residential address of each director of the company and any other residential address at which each director of the company has resided during the 3 years immediately preceding the date on which the notice is given to the commissioner of police; and
  - (iii) in the case of an application for a licence to carry on business as a travel agent—served on the commissioner of police a notice of particulars in relation to each person (other than a director of the company) who is to be present and in charge of the day-to-day conduct of the applicant's business at each place where the business is to be carried on, being particulars of the person's full name, date and place of birth, present residential address and the address of any other place at which the person has resided during the 3 years immediately preceding the date of the notice; and
- (g) shall be accompanied by a copy of each of the notices referred to in paragraph (f) and a statement setting out the date on which those notices were published and served; and
- (h) shall be accompanied by certificates, in respect of each of the directors of the company, by 2 persons certifying with respect to the fame and character of each of the directors; and

- (i) shall be accompanied by a written statement signed on behalf of the company by a director that—
    - (i) a liquidator, receiver, official manager or receiver and manager has not been appointed in relation to the company, any of its assets or any part of its affairs or undertaking; and
    - (ii) no compromise or arrangement of a kind specified in the Corporations Law, part 5.1 has been entered into or is proposed; and
    - (iii) the company is solvent; and
  - (j) shall be accompanied by a written statement specifying the place or places at which it proposes to carry on business in the Territory and, if more than 1 place is so specified, which of those places is to be the principal place at which it proposes to carry on business in the Territory.
- (2) An application under subsection (1) may be lodged by a company at a time when none of the directors of the company is a registered agent, but such an application shall only be regarded as an application for the grant of a licence if the board grants the application made by 1 of the directors for registration as an agent.
- (3) In this section:

*certificate of incorporation*, in relation to a trade union, means the registration certificate of the trade union.

## **50 Objections to grant of licence**

- (1) The registrar may, within 14 days after an application for a licence is lodged with him or her, object by notice in writing signed by him or her to the grant of the application on the ground that the applicant is a person who, or is a company which, is not eligible to apply for a licence as an agent.

- (2) The commissioner of police may, within 21 days after being served with the notice referred to in section 48 (1) (b) (ii) or 49 (1) (f) (ii), as the case may be, object by notice in writing delivered to the registrar to the grant of the application to which the notice relates on the ground that—
- (a) the applicant; or
  - (b) where the applicant is a company—a director of the company; is not a person of good fame and character.
- (4) A notice of objection under this section shall be filed by the registrar and a copy of the notice shall be served on the applicant for a licence.

## **51 Grant or refusal of licence**

- (1) The board shall consider each application for the grant of a licence to carry on business as an agent and—
- (a) shall grant the application and authorise the issue of the licence; or
  - (b) may, subject to this division, refuse the application.
- (2) The board may, whether or not an objection to the grant of an application for a licence to carry on business as an agent has been lodged, require an applicant, or any other person involved in the direction, management or conduct of the applicant's business as an agent, to attend before the board and may require the applicant or other person to furnish to the board, either orally or in writing, such further information as the board requires to be furnished.
- (3) The board shall not refuse an application for the grant of a licence to carry on business as an agent unless—
- (a) the applicant or another person refuses or fails to attend before the board or to furnish the further information required by the board pursuant to subsection (2); or

- (b) the applicant for the grant of a licence fails to establish that he, she or it is eligible for the grant of the licence; or
- (c) the application does not comply with the requirements of section 48 or 49, as the case requires; or
- (d) in the case of an application by a person other than a company—the applicant is a bankrupt, is a person who is for the time being taking the benefit of any law for the relief of bankrupt or insolvent debtors or is a person whose remuneration is, for the time being, assigned for the benefit of his or her creditors; or
- (e) in the case of an application for the grant of a travel agent's licence—the board has reasonable grounds for believing that—
  - (i) the applicant is not likely to carry on business as a travel agent honestly and fairly; or
  - (ii) the applicant is in any other way not a fit and proper person to hold a travel agent's licence; or
  - (iii) if a person employed or to be employed by the applicant to be in charge of the day-to-day conduct of the applicant's business at a particular place were to apply for a travel agent's licence, the board would, by virtue of paragraph (b) or (d) or subparagraph (i) or (ii), be entitled to refuse the application; or
- (f) in the case of an application by a company for the grant of a travel agent's licence—the board has reasonable grounds for believing that—
  - (i) the reputation of the company is such that it would not be a fit and proper person to hold a travel agent's licence; or
  - (ii) if a director of, or a person concerned in the management of, the company were to apply for a travel agent's licence, the board would, by virtue of paragraph (b), (d) or (e), be entitled to refuse the application; or



- (iii) any person (other than an officer of the company) who has or is reasonably believed by the board to have control or substantial control of the company is not of good fame and character or is not likely to exercise that control honestly and fairly; or
- (g) in the case of an application for the grant of an employment agent's licence—the board has reasonable grounds for believing that—
  - (i) the applicant is not likely to carry on business as an employment agent honestly and fairly; or
  - (ii) the applicant is in any other way not a fit and proper person to hold an employment agent's licence; or
  - (iii) if a person employed or to be employed by the applicant to be in charge of the day-to-day conduct of the applicant's business at a particular place were to apply for an employment agent's licence, the board would, by virtue of paragraph (b) or (d) or subparagraph (i) or (ii), be entitled to refuse the application; or
- (h) in the case of an application by a company for the grant of an employment agent's licence—the board has reasonable grounds for believing that—
  - (i) the reputation of the company is such that it would not be a fit and proper person to hold an employment agent's licence; or
  - (ii) if a director of, or a person concerned in the management of, the company were to apply for an employment agent's licence, the board would, by virtue of paragraph (b), (d) or (g), be entitled to refuse the application; or
  - (iii) any person (other than an officer of the company) whom the board has reasonable grounds for believing has

control or substantial control of the company is not likely to exercise that control honestly and fairly.

- (4) Where the board refuses to grant an application for a grant of a licence to the applicant, the board shall—
- (a) record the reasons for its decision; and
  - (b) serve on the applicant, within 7 days after so deciding, notice of its decision; and
  - (c) if the applicant so requests, supply him or her with a copy of those reasons.

## **52 Inquiry to be held by the board before refusing to grant a licence**

Where an objection is lodged under section 50 or the board considers that there may be grounds for refusing an application for the grant of a licence to carry on business as an agent, the board shall hold an inquiry into the matter.

## **53 Issue of licences**

- (1) Where the board grants an application for a licence to carry on business as an agent, the registrar must issue to the applicant a licence to carry on business as an agent at the place or places specified in the licence.

*Note* A fee may be determined under s 120A (Determination of fees) for this section.

- (2) A licence issued to a company (other than a licence issued to an employment agent) shall specify the name of the director of the company who has, or the names of the directors of the company who have, had the experience referred to in section 43 (1) (b), 45 (1) (b) or 47 (1) (b), or the prescribed qualifications, as the case requires.

- (3) A licence issued to a travel agent or employment agent shall specify the name or names under which the licensee is authorised by the board to carry on business.

### **53A Licences subject to conditions**

A licence is subject to a condition that each place at which the licensee carries on business as an agent shall comply with any prescribed requirements.

### **54 Company directors specified in licence**

- (1) Where, in an application by a company for the grant of a licence to carry on business as an agent, the company claims that each of 2 or more of the directors of the company is competent to carry on business as a licensed agent, the registrar may, whether or not an objection has been lodged under section 50, object by notice in writing signed by him or her to the claim by the company that any 1 of those directors is competent to carry on business, on his or her own behalf, as a licensed agent.
- (2) A company may—
- (a) after an application has been made by it for a licence to carry on business as an agent; or
  - (b) after the grant of a licence to a company to carry on business as an agent;

apply to the board for an order that the name of a director of the company who is competent to carry on business on his or her own account as a licensed agent be added to the name of the director who is or the name of directors of the company who are stated in the application or licence to be so competent or be substituted for the name of a director who is stated in the application or licence to be so competent.

- (3) An application under this section shall be lodged with the registrar.

- (4) The registrar may, within 14 days after the application is lodged with him or her, object by notice in writing signed by him or her to the application on the ground that the director is not competent to carry on business on his or her own account as a licensed agent.
- (5) A notice of objection under this section shall be filed by the registrar and a copy of the notice shall be served on the company.
- (6) Whether or not an objection is made under subsection (1) or (4), the board may require any or all of the directors of the company to attend before the board and to give the board, either orally or in writing, or both, any further information the board requires in relation to the competence or qualifications of the director or directors.
- (7) If—
- (a) the board considers that there may be grounds for believing that a director specified in an application for a licence or in an application for an order under subsection (2)—
    - (i) has not had the experience referred to in section 43 (1) (b), 45 (1) (b) or 47 (1) (b) or has not the prescribed qualifications, as the case requires; or
    - (ii) is otherwise not competent to carry on business as a licensed agent on the director's own behalf; or
  - (b) an objection is made under subsection (1) or (4);
- the board shall hold an inquiry into the matter.
- (8) The board shall—
- (a) authorise the registrar to specify in a licence the name of a director specified in the application for the licence; or
  - (b) make an order under subsection (2);
- unless it is satisfied, after holding an inquiry into the matter, that—

- 
- (c) the director has not had the experience referred to in section 43 (1) (b), 45 (1) (b) or 47 (1) (b) or has not the prescribed qualifications, as the case requires; or
  - (d) the director is otherwise not competent to carry on business as a licensed agent on the director's own behalf; or
  - (e) if an objection was lodged under subsection (1) or (4) in relation to the director—the ground of objection has been established.

## **Division 5.8                  Periodic fees**

### **54A    Fees payable by licensed agents**

- (1) Before 1 July in each financial year, a licensed agent must pay to the registrar the annual licence fee for the financial year.

- (2) In this section:

*annual licence fee*, for a financial year, means the fee determined under section 120A (Determination of fees) for this section for a financial year.

## **Part 6** Trust moneys, trust accounts and agents' records

### **Division 6.1** Trust moneys

#### **55** Trust money

- (1) All moneys received by a licensed agent in his or her capacity as agent and in the course of the business that he or she is licensed to carry on and all moneys received by a licensed agent as a stakeholder shall, for all purposes, be deemed to be held in trust by the agent for the principal on whose behalf the moneys are received.
- (2) Subsection (1) does not apply in relation to travel agents or employment agents.

### **Division 6.2** Trust accounts

#### **55A** Application of div 6.2

This division does not apply in relation to travel agents or employment agents.

#### **56** Opening of trust accounts

- (1) A licensed agent shall open, and shall maintain, an account at a bank in the Territory under a title that includes—
  - (a) the name of the agent or, if he or she carries on the business under a registered business name, the name under which the agent carries on business; and
  - (b) the words 'trust account'.
- (2) Subsection (1) does not prevent a licensed agent from opening and maintaining 2 or more trust accounts at a bank or banks under titles that include the matters referred to in paragraphs (1) (a) and (b).

- (3) A licensed agent shall, within 48 hours after the licence is granted to the licensed agent and within 48 hours after he or she opens an account under subsection (1), notify the registrar of the name and address of the bank at which the trust account is maintained and the title of the account.

### **57 Payments of moneys into and from trust account**

- (1) A licensed agent shall, before the close of business on the next day on which banks are open for business after the day on which the licensed agent receives any trust moneys, pay those moneys into a trust account maintained by him or her.
- (2) A licensed agent shall not pay money out of a trust account maintained by him or her except by means of a cheque made payable to a specified person, being a cheque that is crossed and marked 'not negotiable'.
- (3) A licensed agent shall not withdraw any money from a trust account maintained by him or her except for the purposes of payment to, or disbursement according to the directions of, the person for whom or on whose behalf moneys was received.

### **57A Unclaimed trust moneys held by licensed agent**

- (1) Where, in a relevant month—
- (a) a licensed agent holds moneys in a trust account maintained by the agent; and
  - (b) those moneys were received by the agent more than 6 years before that month;
- the agent shall, during that month, furnish to the board a statement in respect of those moneys.
- (2) A statement under subsection (1) in respect of moneys to which that subsection applies shall contain particulars of—

- (a) the name and last-known address of each person for whom or on whose behalf the moneys are held; and
  - (b) the amount of money held for each of those persons on the day on which the statement is furnished; and
  - (c) in respect of each of those persons, the purposes for which the moneys were paid to the licensed agent.
- (3) Subsection (1) does not apply to moneys specified in the regulations or included in a class of moneys specified in the regulations.
- (4) A licensed agent shall maintain, in writing, a record of any moneys held by the agent that are of a kind referred to in subsection (3).
- (5) In this section:  
*relevant month* means the month of July in each year.

#### **57B Trust moneys held by former licensed agent**

- (1) Where—
- (a) a person ceases to be a licensed agent; and
  - (b) at the time the person ceased to be a licensed agent moneys were held in a trust account maintained by the person as a licensed agent;
- the person shall, within 3 months after ceasing to be a licensed agent, furnish to the board a statement in respect of those moneys.
- (2) Where—
- (a) a licensed agent dies; and
  - (b) at the time the agent died moneys were held in a trust account maintained by the agent;
- the personal representative of the agent shall, within 3 months after becoming the personal representative, furnish to the board a statement in respect of those moneys.



- (3) A statement under subsection (1) or (2) in respect of moneys to which the subsection applies shall contain particulars of—
- (a) the name and last-known address of each person for whom or on whose behalf the moneys are held; and
  - (b) the amount of moneys held for each of those persons on the day on which the statement is furnished; and
  - (c) in respect of each of those persons, the purposes for which the moneys were paid to the person furnishing the statement or licensed agent by whom the trust account was maintained.

### **57C Additional statement to be furnished**

- (1) Where—
- (a) a person is required by section 57B to furnish to the board a statement (the *first statement*); and
  - (b) at the expiration of the period of 12 months commencing at the expiration of the last day available for furnishing the first statement that person still holds moneys to which the first statement related;
- he or she shall within 14 days furnish to the board a further statement containing particulars of—
- (c) the name and last-known address of each person for whom or on whose behalf the moneys are held; and
  - (d) the amount of moneys held for each of those persons at the expiration of the period referred to in paragraph (b); and
  - (e) any payments made out of the trust account in which the moneys are held since the first statement was prepared.
- (2) Where—
- (a) subsection (1) (a) applies; and

- (b) before the expiration of the period referred to in subsection (1) (b) the person ceases to hold moneys to which the first statement related;

he or she shall, within 14 days of ceasing to hold those moneys, furnish to the board a statement containing particulars of their disposal.

**57D Duties of board in relation to unclaimed moneys in trust account**

- (1) If the board receives a statement under section 57A or 57C, it must, within 6 months after receiving the statement, prepare a written notice—
- (a) containing particulars of—
- (i) the name and last-known address of each person on whose behalf moneys are held; and
- (ii) the amount of money held for or on behalf of that person; and
- (b) stating that, if the moneys are not paid out of the trust account in which they are held within 3 months after notification of the notice under the *Legislation Act 2001*, the person holding the moneys will be required to pay them to the public trustee.
- (2) The notice is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

- (3) The board must also publish the notice in a daily newspaper printed and published in the ACT as soon as practicable after preparing the notice.
- (4) The board may, at any time after the expiration of the period of 3 months after notification of the notice under the *Legislation Act 2001*, by notice in writing served on the person holding the moneys to which that firstmentioned notice related, require him or her,

within such period of not less than 14 days as is specified in the notice—

- (a) to pay to the public trustee any of those moneys still being held by the person; and
- (b) to furnish to the board a statement containing particulars of any payments made out of those moneys since the statement under section 57A or 57C, as the case requires, was furnished.

### **57E Application to recover moneys**

- (1) A person who claims to be entitled to moneys paid to the public trustee under section 57D (2) may apply to the board for payment of those moneys.
- (2) An application under subsection (1)—
  - (a) shall be in writing; and
  - (b) shall be lodged with the board; and
  - (c) shall state the full name and residential address of the applicant; and
  - (d) shall contain full particulars of the claim.
- (3) The board may, by notice in writing, require an applicant to furnish to it, either orally or in writing, within the period specified in the notice, such further information relating to the application as the board requires.

### **57F Determination of applications**

- (1) The board shall consider an application under section 57E and shall determine—
  - (a) the amount of the moneys paid to the public trustee under section 57D (2) to which the applicant is entitled; or
  - (b) that the applicant is not entitled to any of those moneys.

- (2) Where the board determines that an applicant is entitled to moneys paid to the public trustee under section 57D (2), the board shall direct the public trustee to pay to the applicant an amount equal to the amount that he or she is entitled to.
- (3) The public trustee shall comply with a direction under subsection (2).
- (4) Where the board makes a requirement under section 57E (3) in relation to an application, it is not required to take any further action in relation to the application until the requirement is satisfied.

### **57G Offences etc**

- (1) A person shall not, without reasonable excuse, fail to comply with section 57B (1) or (2) or 57C.

Maximum penalty: 20 penalty units.

- (2) A person who is not a licensed agent shall not, without reasonable excuse, fail to comply with a requirement made of him or her under section 57D (2).

Maximum penalty: 50 penalty units.

- (3) A person who is a licensed agent shall not, without reasonable excuse, fail to comply with a requirement made of him or her under section 57D (2).

### **58 Protection of trust moneys**

- (1) Subject to this section, moneys standing to the credit of a trust account maintained by a licensed agent are not available for the payment of debts of the licensed agent and, subject to subsection (2), are not liable to be attached or taken in execution for the purposes of satisfying a judgment against the agent.
- (2) Nothing in subsection (1) prevents trust moneys to the extent that the licensed agent holds those trust moneys in trust for the person for whom or on whose behalf the moneys were received from being

available for the discharge of the liability of the licensed agent to that person.

### **59 Provisions applicable to banks**

- (1) A bank at which a trust account is maintained is not under any obligation to control or supervise transactions in relation to the trust account or to see to the application by the agent of money drawn out of the account.
- (2) Nothing in subsection (1) authorises a bank to pay money out of a trust account except by the means referred to in section 57 (2).
- (3) The bank at which an agent maintains a trust account in accordance with this part shall not, in respect of any liability of the agent to the bank, have or obtain any recourse or right, whether by way of settlement, counterclaim, charge or otherwise against money standing to the credit of the trust account.
- (4) Nothing in this section relieves a bank from any liability or obligation to which it is subject apart from this Act.

### **59A Arrangement relating to trust bank account**

The board may enter into an arrangement with a bank in the Territory for payment by the bank to the board of amounts in respect of moneys held in any trust account maintained by an agent at the bank.

## **Division 6.3 Agents' records**

### **60 Accounting records**

- (1) A licensed agent (other than a travel agent or employment agent) shall keep such accounting and other records as disclose particulars of all trust moneys received from day-to-day by the licensed agent on behalf of each principal for whom he or she acts and all payments made by the licensed agent from day-to-day out of the

trust moneys so received by the licensed agent on behalf of each principal for whom he or she acts.

- (1A) A licensed travel agent shall keep accounting and other records disclosing the particulars of any money received or paid by the agent in respect of an activity referred to in section 5D (1) (a), (b) or (c), being an activity in respect of which the agent is, by virtue of section 5D, carrying on business as a travel agent.
- (1B) A licensed employment agent shall keep accounting and other records disclosing the particulars of any money received by the agent in respect of the activity referred to in section 5DA (1) (a), being an activity in respect of which the agent is, by virtue of section 5DA, carrying on business as an employment agent.
- (2) A licensed agent shall—
- (a) keep the accounts—
    - (i) at the place at which he or she carries on business; or
    - (ii) if he or she carries on business at more than 1 place of business, at the place of business specified in the licence as his or her principal place of business; or
    - (iii) with the approval of the board, at another place in the Territory; and
  - (b) cause those records to be kept in such a manner that they can be conveniently and properly audited; and
  - (c) preserve those records for the period of 6 years commencing on 30 September next following the last entry in those records.
- (3) It shall be sufficient compliance with subsection (1), (1A) or (1B) if a licensed agent, within 7 days after the day on which any trust moneys or money referred to in subsection (1A) or (1B) are received or paid by the licensed agent, enters in the records referred to in this section the particulars that he or she is required to make in relation to those moneys.

## 61 Receipts

- (1) A licensed agent shall give to a person from whom he or she receives trust money or money referred to in section 60 (1A) or (1B) a receipt for the money specifying briefly the subject matter or purpose in respect of which the money was received.
- (2) A licensed agent shall keep a legible carbon duplicate of a receipt given in accordance with subsection (1).
- (3) A receipt shall be taken from a bound book bearing a number or mark identifying the book and containing not less than 50 receipt forms arranged so that a carbon duplicate of each receipt remains in the book.
- (4) A receipt and the carbon duplicate shall bear such a number or mark as will enable the receipt to be identified by reference to that number or mark and so that the receipt and carbon duplicate bear the same number or mark.
- (5) Subsections (2), (3) and (4) do not apply to, or in relation to, a licensed agent who, in accordance with an authority given by the board, issues receipts in a manner specified in the authority.

## Division 6.4                      Audit and inspection of trust accounts

### 61A Application of div 6.4

Sections 62 to 68 do not apply in relation to travel agents or employment agents.

### 62 Meaning of *prescribed period* in div 6.4

In this division:

*prescribed period* means the period of 12 months ending on 30 June in each year or the period of 12 months ending on such other date as

the licensed agent specifies, by notice in writing lodged with the registrar, to be the date in each year for the purposes of this part.

### 63 Audit of accounts

- (1) Within 3 months after the end of each prescribed period, a licensed agent shall cause to be audited his or her accounting and other records relating to trust moneys received and paid by him or her during that prescribed period.
- (2) An agent shall produce to the auditor at an audit the auditor's report in respect of the last preceding audit.

### 64 Qualification of auditors

- (1) A licensed agent shall not engage as his or her auditor, or permit the audit of his or her accounting and other records relating to trust moneys to be made by, a person—
  - (a) who is not a registered company auditor within the meaning of the Corporations Law; or
  - (b) who is an employee, a partner, the spouse or de facto spouse, a child, a parent, or a brother or sister, of the licensed agent; or
  - (c) who is an employee of any other licensed agent; or
  - (d) who is engaged in keeping and entering those records or has those records in his or her custody or control; or
  - (e) who is a registered agent; or
  - (f) who is an officer or employee of a company that is a licensed agent.
- (2) In subsection (1) (b):

*de facto spouse*, in relation to an agent, means a person of the opposite sex to the agent who lives with the agent as the husband or wife of the agent on a bona fide domestic basis although not married to the agent.



**65 Agent to furnish documents and information to auditor**

A licensed agent shall, when required by an auditor so to do for the purpose of an audit of his or her accounting and other records relating to trust moneys, produce to the auditor all books, papers, accounts, receipt books, securities and documents in his or her possession relating in any way to trust moneys received or paid by the agent during the period to which the audit relates and shall furnish to the auditor such information, and answer all questions, relating to those books, papers, accounts, receipt books, securities and documents and in relation to all transactions by the agent in the course of carrying on his or her business as licensed agent as the auditor requires.

**66 Auditor's report**

- (1) As soon as is reasonably practicable after the completion of an audit, the auditor shall prepare a report of the result of the audit and shall deliver the report to the licensed agent and a copy of the report to the registrar.
- (2) An auditor shall state in his or her report—
  - (a) whether, in the auditor's opinion, the licensed agent has kept, in accordance with this Act, the accounting and other records relating to all trust moneys received and paid by him or her; and
  - (b) whether those records were ready for his or her examination within a reasonable time after the auditor required their production; and
  - (c) whether the agent has complied with the auditor's requirements and so complied within a reasonable time; and
  - (d) any matter or thing in relation to those records of which the agent or the registrar should, in the opinion of the auditor, be informed.

## 67 Agent's statement relating to trust money

- (1) In this section:

*quarter*, in relation to a licensed agent, means each period of 3 months ending on 30 September, 31 December, 31 March and 30 June, or, if the prescribed period applicable in relation to the agent ends on a day other than 30 June, each successive period of 3 months after the commencement of that prescribed period.

- (2) A licensed agent shall, not later than 21 days after the end of each quarter, prepare a statement setting out, as at the close of business on the last day of the quarter—
- (a) the names of persons on behalf of whom the agent held trust moneys; and
  - (b) the amount shown in the accounts kept by the agent in accordance with this part as the amount of trust money held by the agent on behalf of each of those persons; and
  - (c) the amount of trust money held by the agent in the form of cash; and
  - (d) the amount standing to the credit of the trust bank account kept by the agent in accordance with this part.
- (3) For the purpose of subsection (2), in ascertaining the amount standing to the credit of a trust bank account, cheques drawn on the account but not presented for payment shall be regarded as having been paid.
- (4) A licensed agent shall retain each statement prepared in respect of a quarter until the end of a period of 3 years after the end of that quarter.
- (5) A licensed agent shall, whenever required so to do by the auditor carrying out an audit of his or her accounting and other records relating to his or her trust moneys, produce each of the statements

prepared in respect of each quarter in the year in respect of which the audit is being carried out.

### **68 Report by auditor to registrar**

If, in the course of an audit, an auditor considers—

- (a) that the accounting and other records relating to trust moneys have been so kept that he or she has not been able to audit them properly; or
- (b) that there is any loss or deficiency of trust moneys or any failure to pay or account for trust moneys; or
- (c) that there has been any failure to comply with a provision of this part;

the auditor shall report to the agent accordingly in sufficient detail and shall, within 21 days after completing his or her report, forward a copy of the report to the registrar.

## **Division 6.5 Other records to be kept by licensed agents**

### **70 Records of other money**

- (1) A licensed agent shall keep such accounting and other records as disclose particulars of all moneys (other than trust moneys or money referred to in section 60 (1A) or (1B)) received by the agent in the course of carrying on his or her business as a licensed agent and all payments made by him or her out of those moneys.
- (2) The board may, if it is satisfied that it is necessary to do so for the purposes of ascertaining whether or not a licensed agent has complied with the provisions of this part, require by notice in writing the licensed agent or any other person in whose custody or control those accounting records are, to produce to the registrar or a specified inspector the accounting and other records referred to in subsection (1).

- (3) A licensed agent shall not refuse or fail to comply with a requirement made under subsection (2).
- (4) A person other than a licensed agent to whom a requirement under subsection (2) was made shall not refuse or fail to comply with the requirement.  
Maximum penalty: 50 penalty units.
- (5) The registrar or an inspector may make notes, copies or extracts from those accounting and other records.
- (6) The registrar or an inspector may retain, for such period as he or she considers necessary, any of the accounting or other records referred to in subsection (1).

## **Division 6.6 Information to be furnished by banks**

### **71 Inspection of bank accounts**

- (1) The manager or other principal officer of a branch of a bank—
  - (a) at which a licensed agent (other than a travel agent or employment agent) maintains a trust account; or
  - (b) at which a licensed agent maintains a bank account for the purpose of holding money referred to in section 60 (1A) or (1B);

shall, on receiving a written notice signed by the registrar and delivered personally to the manager or other officer, permit the registrar or an inspector specified in the notice to inspect and make copies of the account and any related documents or records held by the bank at that branch.

- (2) Where the board has reasonable grounds for believing that there is, in a bank account maintained by a licensed agent or by a partnership of which he or she is a member, whether in his or her own name, the name of the partnership or any other name, a credit arising from the

payment into that account of trust moneys or money referred to in section 60 (1A) or (1B) received by the licensed agent or the partnership and dealt with by the licensed agent otherwise than in accordance with the provisions of this part, the board may, by notice in writing given to the manager, or other person in charge, of the branch of the bank at which the firstmentioned account is maintained—

- (a) require the manager or other person in charge of the branch to permit the registrar or a specified inspector to inspect and make copies of that firstmentioned account and of the documents and records relating to that account; or
  - (b) withdraw the authority of the person or persons authorised to withdraw money from that firstmentioned account.
- (3) Where a notice is given under subsection (2)—
- (a) the manager or other principal person of the branch shall permit the registrar or the specified inspector to inspect and make copies of the account or of the documents and records relating to the account; or
  - (b) no moneys shall be paid out of the account except with the authority of the board;
- as the case requires.
- (4) The manager or other principal officer in the Territory of a bank shall, on personal delivery to him or her of a written notice signed by the registrar—
- (a) make available at the principal place of business of the bank in the Territory to the registrar or an inspector specified in the notice; and
  - (b) permit the registrar or inspector to inspect and make copies of; all the accounts and any related documents or records held by any branch of the bank relating to—

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- (c) any trust account held by a licensed agent (other than a travel agent) named in the notice; or
- (d) if the notice so specifies, all trust accounts held by all licensed agents (other than travel agents).

Maximum penalty: 50 penalty units.

## **Part 6A**

# **Travel agents-miscellaneous provisions**

### **71A Qualified supervisors for travel agents' businesses**

A travel agent shall not carry on business at any place unless the agent, or another person who would, by virtue of section 51 (3), be entitled to be granted a travel agent's licence if the person were to apply for one, is present and in charge of the day-to-day conduct of the business carried on at that place.

### **71B Participation in compensation scheme**

- (1) A travel agent shall not carry on business unless the agent is a participant.
- (2) If a licensed travel agent ceases to be a participant, the agent's licence is suspended, by force of this section, until the agent again becomes a participant, or the licence is surrendered or revoked, whichever happens first.
- (3) For the purposes of subsections (1) and (2), a travel agent shall not be taken to be a participant unless the agent complies with—
  - (a) any provisions of the trust deed that are applicable to the agent; and
  - (b) any requirement made of the agent under the trust deed by the board of trustees.

### **71C Powers of board of trustees**

In relation to a travel agent in the Territory, the board of trustees has, by force of this Act and not otherwise, the powers set out in the trust deed.

**71D Legal action by board of trustees**

The board of trustees may sue and be sued in the name of the 'Travel Compensation Fund' and, in any action brought by the board it shall be presumed, unless the contrary is established, that any condition precedent to bringing the action that is imposed on the board under the trust deed has been complied with.

**71E Rights of board of trustees**

- (1) Where a payment is made to a person under the compensation scheme because of an act or omission of a travel agent, the board of trustees is subrogated to the rights of the person in respect of the act or omission.
- (2) Any rights exercisable by the board of trustees against a company are enforceable jointly and severally against the company and each person who was a director of the company at the time of the act or omission.
- (3) The rights are not enforceable against a director if the director adduces evidence that the act or omission occurred without the director's knowledge and consent and that evidence is not rebutted.

**71F Dealings with unlicensed travel agents**

- (1) A person who, in the course of carrying on a business, provides an unlicensed travel agent with goods or services for disposal or authorises an unlicensed travel agent to dispose of rights to goods or services provided by the person, knowing the agent to be unlicensed, where the disposal of the goods, services or rights would constitute the carrying on by the agent of business as a travel agent, shall be deemed to have carried on business as an unlicensed travel agent.
- (2) If an act or omission referred to in section 71E (1) was the act or omission of an unlicensed travel agent, any person who, in the course of carrying on a business, knowing the agent to be unlicensed, provided the agent with goods or services, or authorised



the agent to dispose of rights to goods or services provided by the person, being goods, services or rights in relation to which the act or omission occurred, shall be deemed to have been carrying on business, at the time of the act or omission, as a travel agent in partnership with the agent.

- (3) Subsections (1) and (2) do not apply if the name or names under which the unlicensed travel agent was carrying on business, at the time the goods or services were provided or the disposal of the rights was authorised, was or were specified in a notice in force, at that time, under section 71G.
- (4) Subsection (2) applies only for the purposes of section 71E and only to the extent that the act or omission involved the goods, services or rights.

### **71G Publication of names of licensed travel agents**

- (1) The board must, from time to time, prepare a written notice stating—
  - (a) the name or names under which each person holding a travel agent's licence on a stated date was authorised to carry on business as a travel agent; and
  - (b) the date on which the notice ceases to be in force.
- (2) The notice is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

## Part 6B Entry and inspection of premises

### 71H Interpretation for pt 6B

- (1) For the purposes of this part, a thing is *connected* with a particular offence if—
  - (a) the offence has been committed with respect to it; or
  - (b) it will afford evidence of the commission of the offence; or
  - (c) it was used, or it is intended to be used, for the purpose of committing the offence.
- (2) A reference in this part to an *offence* shall be read as including a reference to an offence that there are reasonable grounds for believing has been, or will be, committed.

### 71J Entry and inspection of premises

- (1) An authorised officer may enter commercial premises during normal business hours, and may exercise the powers of an authorised officer referred to in subsection (3), if the officer has reasonable grounds for believing that a person is carrying on business as an agent on the premises.
- (2) An authorised officer may enter any premises, and may exercise the powers of an authorised officer referred to in subsection (3), if the entry is made, and the powers are exercised—
  - (a) pursuant to a warrant issued under section 71L (1); or
  - (b) with the consent of the occupier of the premises; or
  - (c) pursuant to an order of a court.

- (3) For the purposes of subsections (1) and (2) an authorised officer may—
- (a) require the occupier of the premises to give the officer his or her name and residential address; and
  - (b) inspect the premises; and
  - (c) require the occupier to produce to the officer any documents relating to an agent's business; and
  - (d) inspect any documents referred to in paragraph (c), and retain any such documents for as long as the officer considers necessary; and
  - (e) take extracts from, or make copies of, any documents referred to in paragraph (c); and
  - (f) if any document of a kind referred to in paragraph (c), or any information relating to such a document, is stored or kept by means of a data processing device—require the occupier of the premises to cause all or part of the document or information to be displayed or printed out; and
  - (g) seize any thing that the officer has reasonable grounds for believing to be connected with an offence against this Act; and
  - (h) require the occupier to give the officer such assistance as is necessary to enable the officer to exercise his or her powers under this section.
- (4) An authorised officer who enters premises under subsection (1) is not authorised to remain on the premises if, on the request of the occupier of the premises, the officer does not show his or her identity card to the occupier.
- (5) In this section:

**accounts** means—

- (a) ledgers, journals, profit and loss accounts and balance sheets; and
- (b) any statements, reports or notes attached to, or intended to be read with, any books or documents of a kind referred to in paragraph (a).

**data processing device** means a computer or other device by means of which information can be stored and from which stored information can be retrieved, whether with or without the use of another device.

**documents** includes books, papers, securities, accounts, accounting records and records kept pursuant to section 60 (1) or (1A) or 70 (1).

**records** includes—

- (a) invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes, vouchers and other documents of prime entry; and
- (b) the working papers and other documents necessary to explain the methods and calculations by which accounts are made up.

### **71K Consent to entry and inspection**

- (1) Before seeking the consent of the occupier of premises or land for the purposes of section 71J (2) (b), an authorised officer shall inform the occupier that he or she may refuse to give that consent.
- (2) If the authorised officer obtains the occupier's consent for those purposes, the officer shall ask the occupier to sign a written acknowledgment—
  - (a) that the occupier has given the officer consent, for the purposes of section 71J (2) (b), to enter the occupier's premises and to exercise the powers of an authorised officer referred to in section 71J (3); and

- (b) that the occupier has been informed that he or she may refuse to give that consent; and
  - (c) of the day on which, and the time at which, that consent was given.
- (3) Where it is material, in any proceedings, for a court to be satisfied that an occupier has consented for the purposes of section 71J (2) (b), and an acknowledgment, in accordance with subsection (2) and signed by the occupier, is not produced in evidence, it shall be presumed that the occupier did not consent unless the contrary is established.

### **71L Search warrants**

- (1) Where an information on oath is laid before a magistrate alleging that there are reasonable grounds for suspecting that there may be on any premises a thing of a particular kind connected with a particular offence against this Act, and the information sets out those grounds, the magistrate may issue a search warrant authorising an authorised officer named in the warrant, with such assistance and by such force as is necessary and reasonable—
- (a) to enter the premises; and
  - (b) to search the premises for things of that kind; and
  - (c) to exercise any of the powers of an authorised officer referred to in section 71J (3).
- (2) A magistrate shall not issue a warrant unless—
- (a) the informant or another person has given the magistrate, either orally or by affidavit, any further information that the magistrate requires concerning the grounds on which the issue of the warrant is being sought; and
  - (b) the magistrate is satisfied that there are reasonable grounds for issuing the warrant.

- (3) A warrant shall—
- (a) state the purpose for which it is issued; and
  - (b) specify the nature of the offence in relation to which the entry and search are authorised; and
  - (c) specify particular hours during which the entry is authorised, or state that the entry is authorised at any time of day or night; and
  - (d) include a description of the kinds of things in relation to which the powers referred to in section 71J (3) may be exercised; and
  - (e) specify the date, being a date not later than 1 month after the date of issue of the warrant, on which the warrant ceases to have effect.

**71M Contravention of officer's requirements**

- (1) A licensed agent shall not, without reasonable excuse, contravene a reasonable requirement made by an authorised officer who has entered premises in accordance with section 71J (1) or (2).
- (2) A person (other than a licensed agent) who, without reasonable excuse, contravenes a reasonable requirement made by an authorised officer who has entered premises in accordance with section 71J (1) or (2) commits an offence.

Maximum penalty (subsection (2)): 50 penalty units.

## **Part 6C                      Administrative accounts**

### **Division 6C.1              Agents statutory interest account**

#### **71N    Establishment and operation of interest account**

- (1) The board shall establish and maintain an account to be called the agents statutory interest account.
- (2) The interest account shall be operated by the board in such manner as the board from time to time determines.

#### **71P    Payment of moneys into interest account**

There shall be paid to the credit of the interest account—

- (a) any fees paid under section 41, 53 (1), 93 (6) or (11) or 110; and
- (b) interest received in respect of investments made by the board of—
  - (i) an amount standing to the credit of the interest account that is not immediately required to be applied in accordance with section 71Q; and
  - (ii) an amount standing to the credit of the administration account that is not immediately required to be applied in accordance with section 71T; and
  - (iii) an amount standing to the credit of the fund and not immediately required to be applied in accordance with section 71W; and
- (c) any amount paid to the board pursuant to an arrangement of a kind referred to in section 59A; and
- (d) any other moneys that may lawfully be paid into the interest account.

### **71Q Application of moneys in interest account**

- (1) Moneys standing to the credit of the interest account at the end of each financial year shall, during the next following financial year, be applied by the board towards—
  - (a) the payment to the credit of the administration account of such amount as is estimated by the board to be the aggregate of the amounts that, during that financial year, will be required to be withdrawn from the administration account under section 71T; and
  - (b) the supplementation of the fund by such amount as the board, with the approval of the Minister, determines.
- (2) Where, after payment of the amounts referred to in subsection (1), there remains in the interest account a balance of the moneys standing to its credit at the end of the previous financial year, that balance shall be applied by the board towards—
  - (a) the promotion of, and the provision of assistance for, educational programs relating to real estate matters for agents and members of the public; and
  - (b) the provision of financial assistance (whether by way of grant or loan) or of other assistance under a program established for the purpose of enabling or assisting persons to acquire or rent dwellings in which they intend to reside.
- (3) The board shall not make a payment to the fund under subsection (1) (b) if the amount standing to the credit of the fund exceeds the amount determined by the Minister in writing unless the amount in the fund is not sufficient to meet the payments that are required to be made out of the moneys of the fund.
- (4) A determination is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.



- (5) The amount that may be applied for a purpose referred to in subsection (2) is such amount as the board, with the approval of the Minister, from time to time, determines.

## **Division 6C.2 Agents administration account**

### **71R Establishment and operation of administration account**

- (1) The board shall establish and maintain an account to be called the agents administration account.
- (2) Pending the investment or application in accordance with section 71T of moneys standing to the credit of the administration account, the board shall pay the moneys into a bank account maintained under the *Financial Management Act 1996*, section 55.
- (3) The administration account shall be operated by the board in such manner as the board from time to time determines.

### **71S Payment of moneys into administration account**

There shall be paid to the credit of the administration account—

- (a) the amount referred to in section 71Q (1) (a); and
- (b) any other moneys that may lawfully be paid into the administration account.

### **71T Application of moneys in administration account**

- (1) Moneys standing to the credit of the administration account shall be applied by the board for the following purposes:
- (a) the payment of the costs, charges and expenses incurred by the board in connection with the administration of—
- (i) this Act; and
- (ii) the interest account; and
- (iii) the fund;

- (b) the remuneration and allowances payable to—
  - (i) members; and
  - (ii) persons appointed under section 6;
- (c) the payment of legal expenses—
  - (i) incurred by the board in connection with claims made against the fund and applications to review decisions of the board in respect of the fund; or
  - (ii) otherwise incurred in relation to the fund;
- (d) the payment of costs and expenses in relation to proceedings under part 12;
- (e) where proceedings are instituted by a claimant for compensation in accordance with a requirement under section 71ZC—the payment of the costs and expenses necessarily incurred by the claimant in connection with the proceedings.

## **Part 6D**                      **Agents fidelity guarantee fund**

### **Division 6D.1**                **Establishment of agents fidelity guarantee fund**

#### **71U**    **Establishment and operation of fund**

- (1) The board shall establish and maintain a fund to be called the agents fidelity guarantee fund.
- (2) The assets of the fund—
  - (a) are the property of the board; and
  - (b) shall be kept separate from all other property of the board; and
  - (c) shall be expended only for the purposes set out in this Act.
- (3) The fund shall be administered by the board.
- (4) Pending the investment or application in accordance with section 71W of moneys belonging to the fund, the board shall pay the moneys into a bank account maintained under the *Financial Management Act 1996*, section 55 and called the agents fidelity guarantee account.
- (5) The agents fidelity guarantee account shall be operated by the board in such manner as the board from time to time determines.

#### **71V**    **Moneys of fund**

The fund shall consist of—

- (a) the amounts paid out of the interest account for the purposes of the fund; and
- (b) any other moneys that may be lawfully paid into the fund.

### **71W Application of moneys of fund**

There shall from time to time be paid out of the fund—

- (a) the amount of all claims, including costs, allowed or established against the fund; and
- (b) any other moneys payable out of the fund in accordance with this Act.

## **Division 6D.2 Claims against the fund**

### **71X Application of div 6D.2**

This division does not apply in relation to a travel agent.

### **71Y Entitlement of person to claim compensation**

- (1) A person who, after the commencement of this section, suffers pecuniary loss by reason of a failure to account by a licensed agent is entitled to claim compensation from the fund in respect of the loss.
- (2) The amount that a claimant is entitled to claim as compensation from the fund is the amount of the actual pecuniary loss suffered by the claimant less any amount that the claimant has recovered or that is recoverable in respect of the loss from a source other than the fund.
- (3) Nothing in subsection (1) entitles an agent to claim compensation against the fund in respect of any pecuniary loss suffered by the agent in the course of carrying on business as an agent.

### **71Z Advertisement relating to claims**

- (1) The board may cause to be published in accordance with this section a notice inviting persons entitled to make a claim for compensation under this part in relation to any act or omission of a specified licensed agent to make their claims within such period as is specified in the notice.

- (2) A notice shall be published—
  - (a) in a daily newspaper printed and published in the Territory;  
and
  - (b) on at least 2 different occasions; and
  - (c) at intervals of not less than 1 month between each publication.
- (3) A notice shall, in addition to specifying the name of the licensed agent—
  - (a) specify the name under which, and the place or places at which, the agent carries or carried on business; and
  - (b) contain such other details as the board considers necessary to enable the identity of the agent to be clearly established.
- (4) The period to be specified in a notice is a period of not less than 6 months after the notice was first published.
- (5) An action for damages does not lie against the board in respect of the publication in good faith of a notice under this section.

### **71ZA Claims**

- (1) A claim for compensation must—
  - (a) be in writing; and
  - (b) be given to the board within the appropriate period; and
  - (c) state the full name and home address of the claimant; and
  - (d) contain full particulars of the claim; and
  - (e) be accompanied by a statutory declaration to the effect that the particulars contained in the claim are true.
- (2) The board must reject a claim that does not, at the time it is given, comply with subsection (1).

- (3) The *appropriate period* is the earlier of—
- (a) 1 year after the day the claimant becomes aware of the failure to account to which the claim relates; or
  - (b) 2 years after the day the failure to account happens.
- (4) However, if before the end of the period within which a claim for compensation would, apart from this subsection, be required to be given, a notice about the making of the claim is published under section 71Z, the *appropriate period* is the period mentioned in the notice.

**71ZB Requirement to furnish information and produce documents**

- (1) The board may, by notice in writing, require a claimant—
- (a) to furnish to it, either orally or in writing, within the period specified in the notice, such further information relating to the claim as the board requires; or
  - (b) to deliver to it, within the period specified in the notice, such documents in the custody or control of the claimant as are specified in the notice that may be of assistance to the board—
    - (i) in determining the claim; or
    - (ii) in exercising against a licensed agent the rights vested in the board pursuant to section 71ZH.
- (2) The board may, for the purpose of determining a claim for compensation—
- (a) inspect a document produced under subsection (1); and
  - (b) make copies of, or take extracts from, such parts of the document as are relevant to a matter connected with the claim; and

- (c) retain possession of the document for as long as is necessary for those purposes.
- (3) Where the board retains possession of a document under subsection (2)—
  - (a) the board shall, as soon as practicable, supply the person otherwise entitled to possession of the document with a copy certified by the board to be a true copy; and
  - (b) the certified copy shall be received in all courts as evidence as if it were the original; and
  - (c) until the certified copy is so supplied, the board shall, at such times and places as it thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by that person, to inspect and make copies of, or take extracts from, the document.

### **71ZC Requirement to institute proceedings**

The board may, if it considers the circumstances so warrant, by notice in writing require a claimant for compensation to institute proceedings for the recovery of the money that is the subject of the claim against—

- (a) the licensed agent to whom the claim relates; or
- (b) any other person considered by the board to be liable in respect of the loss suffered by the claimant.

### **71ZD Determination of claims**

- (1) The board shall consider a claim for compensation made in accordance with this part and—
  - (a) shall determine—

- (i) the amount of the pecuniary loss in respect of which compensation may be paid to the claimant under this part; or
    - (ii) that there is no pecuniary loss in respect of which compensation may be so paid; or
  - (b) where the board considers the circumstances so warrant, hold an inquiry into the matter.
- (2) Where the board makes a requirement under section 71ZB (1) or 71ZC in relation to a claim, it is not required to take any further action in relation to the claim until—
- (a) the requirement is satisfied; and
  - (b) in a case in which section 71ZC applies—the relevant proceedings are determined.

### **71ZE Payment of compensation**

- (1) Where an amount has been determined under this part as the amount of pecuniary loss in respect of which compensation may be paid to a claimant, the board shall, subject to this section, pay to the claimant out of the fund an amount equal to the amount so determined.
- (2) The board shall not make a payment under subsection (1) until—
  - (a) all claims for compensation made in respect of a licensed agent have been determined; and
  - (b) any inquiry under section 71ZD (1) (b) has been completed; and
  - (c) the board has ascertained whether the amount standing to the credit of the fund is sufficient for the payment of all amounts required by subsection (1) to be paid to claimants.



### **71ZF Interim payment of compensation**

- (1) Where an amount has been determined under this part as the amount of pecuniary loss in respect of which compensation may be paid to a claimant, the board may, upon the written request of the claimant, if it is satisfied that—
  - (a) as a direct consequence of the pecuniary loss the claimant is suffering financial hardship; or
  - (b) prescribed circumstances exist;make an interim payment of compensation to the claimant out of the fund of such amount as the board determines.
- (2) An amount paid to a claimant under subsection (1) shall be set off against the amount of compensation required by section 71ZE to be paid to the claimant.

### **71ZG Insufficiency of fund**

- (1) Where, at any time, the amount standing to the credit of the fund is insufficient for the payment of all amounts that would, but for this subsection, be required by section 71ZE to be paid to claimants for compensation—
  - (a) the board shall, for the purpose of making payments to the claimants, divide the amount in the fund among the claimants in proportion to those amounts; and
  - (b) the balance of those amounts shall be paid out of future accumulations of the fund.
- (2) Where the board makes a payment under subsection (1) (a) it shall advise in writing each claimant of the extent of the insufficiency.
- (3) The fund is the only property of the board available for the satisfaction of a claim for compensation under this part.

### **71ZH Subrogation**

Where compensation is paid to a person in respect of a claim, the board is, to the extent of the payment, subrogated to the rights of that person against the licensed agent in respect of whom the claim for compensation was made.

## Part 7 Rules of conduct for agents

### 72 Rules of conduct—licensed agents

- (1) A licensed agent who—
  - (a) contravenes or fails to comply with a provision of part 6; or
  - (b) contravenes or fails to comply with any other provision of this Act, not being a provision for a contravention of, or for a failure to comply with, which a penalty is imposed; or
  - (ba) contravenes a condition applicable to him or her by virtue of a declaration in force under section 3 (2); or
  - (c) without the consent of the principal on whose behalf he or she acts or has acted, makes use in any manner prejudicial to the interests of the principal of any material or information acquired by the agent in the course of so acting; or
  - (d) fails to perform the licensed agent's duties to his or her principal and to carry out the instructions of his or her principal; or
  - (e) fails to exercise due skill, care and diligence in carrying out his or her duties on behalf of his or her principal; or
  - (f) having any interest in, or likely to obtain any interest in, any transaction entered into on behalf of the principal, fails to disclose to the principal the exact nature of his or her interest or of the interest that he or she is likely to obtain; or
  - (g) fails to make to his or her principal a full disclosure of all material facts and circumstances and of everything known to the licensed agent regarding the matter in respect of which he or she is authorised to act as agent; or

- (h) fails to inform his or her principal that any price or other consideration that the principal is prepared to accept on the sale of any property may be, if such is, in the opinion of the licensed agent, the case, less than the fair market value of the property; or
- (i) without the consent of the principal on whose behalf he or she acts or has acted, discloses, except when required to do so in pursuance of a law in force in the Territory, information relating to the affairs of the principal obtained by him or her whilst so acting; or
- (j) advertises that he or she is authorised to sell any property that he or she is not authorised to sell; or
- (k) publishes or causes to be published any advertisement or statement which is false, misleading or likely to deceive any person; or
- (l) accepts or demands any fee or payment from any person other than his or her principal in respect of any service performed or to be performed by the licensed agent, being a service in respect of which the licensed agent has received payment, or is entitled to receive payment, from his or her principal; or
- (m) without the consent in writing of the principal on whose behalf he or she acts, advertises that he or she is authorised to sell property at a price higher than or lower than the price that the principal is prepared to accept;

is guilty of a breach of the rules of conduct for agents.

- (2) A licensed agent who attempts to do any act the doing of which would be a breach of the rules of conduct for agents is guilty of a breach of the rules of conduct for agents.
- (3) A licensed agent (other than a travel agent or employment agent) is guilty of a breach of the rules of conduct unless a registered agent is

present and in charge of the day-to-day conduct of the licensed agent's business at each place at which the business is carried on.

- (5) Where—
- (a) a company is a licensed agent acting on behalf of a principal; and
  - (b) a director or employee of the company does an act, or fails to do an act, or attempts to do an act, the doing of, or the failure to do, which would, if the director or employee were acting on behalf of the principal, make the director or employee guilty of a breach of the rules of conduct for agents;

the company shall be deemed to be guilty of a breach of the rules of conduct for agents.

### **73 Rules of conduct—registered agents**

- (1) A registered agent who, being a director of a company that is a licensed agent or being employed by, or being a partner of, a licensed agent, aids, abets, counsels or procures, or by act or omission is in any way directly or indirectly knowingly concerned in or party to a breach, or any attempt to commit a breach, by the licensed agent of the rules of conduct for agents, is guilty of a breach of the rules of conduct for agents.
- (2) A registered agent who—
- (aa) contravenes a provision of this Act, not being a provision for a contravention of which a penalty is imposed; or
  - (a) without the consent of the principal on whose behalf his or her employer acts or has acted, makes use in any manner prejudicial to the interests of the principal of any material or information acquired by the agent or his or her employer whilst that employer is so acting; or
  - (b) fails to exercise due skill, care and diligence in carrying out his or her duties as an employee of a licensed agent; or

- (c) having any interest in or likely to obtain any interest in, any transaction entered into on behalf of the principal on whose behalf his or her employer acts, fails to disclose to the principal and his or her employer or partner the exact nature of his or her interest or of the interest that he or she is likely to obtain; or
- (d) fails to make to his or her employer a full disclosure of all material facts and circumstances and of everything known to him or her respecting the matter in respect of which his or her employer is authorised to act as agent; or
- (e) without the consent of the principal on whose behalf his or her employer acts or has acted, discloses, except when required to do so in pursuance of a law in force in the Territory, information relating to the affairs of the principal obtained by him or her whilst his or her employer is so acting; or
- (f) advertises that his or her employer is authorised to sell any property when he or she is not authorised to sell that property; or
- (g) publishes or causes to be published any advertisement or statement which is false, misleading or likely to deceive any person; or
- (h) accepts or demands any fee or payment from any person in respect of any service performed or to be performed by his or her employer, being a service in respect of which his or her employer has received payment, or is entitled to receive payment, from the principal for whom his or her employer acts;

is guilty of a breach of the rules of conduct for agents.

- (3) In the application of subsection (2) to and in relation to a registered agent who is a member of a partnership or firm, the reference to his or her employer shall be read as a reference to the partnership or firm of which he or she is a member.

- (4) A registered agent who attempts to do any act the doing of which would be a breach of the rules of conduct for agents is guilty of a breach of the rules of conduct for agents.

## **Part 8**

# **Proceedings for breaches of rules of conduct for agents**

### **74 Registrar to call upon agent who appears to have committed a breach of rules of conduct**

- (1) The registrar may, if it appears to him or her that there are grounds for believing that a licensed agent or a registered agent is guilty of a breach of the rules of conduct for agents, notify the chairperson accordingly by delivering to the chairperson a statement setting out particulars of the alleged breach.
- (2) Upon receipt of the statement referred to in subsection (1), the chairperson shall fix a time at which an inquiry shall be held by the board into the question whether or not the agent has been guilty of the breach of the rules and shall inform the registrar accordingly.
- (3) The registrar shall, by notice in writing given to the licensed agent or registered agent, notify the agent of the time and the place at which the inquiry by the board into the allegation is to be held and shall furnish to the agent a copy of the statement furnished by the registrar to the chairperson.

### **75 Inquiry by board**

- (1) The board shall, at the time and place so specified, inquire into the allegation and if satisfied that the licensed agent or the registered agent has been guilty of the alleged breach of the rules of conduct for agents, take any 1 or more of the following forms of action:
  - (a) reprimand the agent;
  - (b) order the agent to pay to the registrar within the period specified in the order a fine not exceeding—
    - (i) in the case of a natural person—\$1,000; or



- (ii) in the case of a company—\$5,000;
  - (c) order the agent to pay the costs of the inquiry;
  - (d) disqualify a person involved in the direction, management or conduct of the agent's business from being involved in the direction, management or conduct of an agent's business;
  - (e) in the case of a registered agent—revoke the agent's registration;
  - (f) in the case of a licensed agent—
    - (i) impose a condition or restriction on the licence; or
    - (ii) suspend the licence for a period determined by the board;  
or
    - (iii) revoke the licence.
- (2) Where the board orders a licensed agent or a registered agent to pay a fine under subsection (1) (b) and the fine is not paid within the time specified in the order or within such further time as the board, on the application of the agent, allows, the board shall revoke the licence issued to the registered agent or revoke the registration of the registered agent, or both, as the case requires.
- (3) Where an application is made under section 98 (1) (e) for a review of a decision of the board ordering an agent to pay a fine, time does not run for the purposes of subsection (2) from the date on which the application is made until the date on which the application is withdrawn, dismissed or heard and determined, as the case may be.

## Part 8A Code of practice for employment agents

### 75A Approval of code of practice

- (1) The Minister may, in writing, approve a code of practice for employment agents.
- (2) An approved code of practice is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

### 75B Complying with approved code of practice

An employment agent must comply with a code of practice approved under section 75A.

## Part 9                      Surrender and revocation of licences

### 76      Surrender of licences

- (1) A registered agent or a licensed agent may, by notice in writing delivered to the registrar, apply to the board for permission to surrender his or her registration or licence on and from a date not being a date earlier than 1 month after the date on which the notice is delivered to the registrar.
- (2) The board shall not, except as provided in subsection (3), grant permission to the registered agent or licensed agent to surrender his or her registration or his or her licence if—
  - (a) the registrar has, before the date of the delivery by a registered agent or licensed agent of a notice under subsection (1), given, or gives, within the period of 1 month referred to in that subsection, notice to the board under section 74 that he or she has reason to believe that the registered agent or the licensed agent has been guilty of a breach of the rules of conduct for agents; or
  - (b) the registrar has, before the date of the delivery by a registered agent or licensed agent of a notice under subsection (1), given, or gives, within the period of 1 month referred to in subsection (1), notice under section 77 (2) to the registered agent or the licensed agent calling on the registered agent or licensed agent to show cause why the registration or licence, or both, should not be revoked.
- (3) The board may grant permission to the registered agent or licensed agent to surrender his or her registration or licence if—

- (a) the board finds that the agent is not guilty of the breach of the rules of conduct for agents specified in the notice referred to in subsection (2) (a); or
  - (b) the board does not direct that the registration or licence be revoked;
- as the case requires.

### **77 Revocation of registration or licence**

- (1) The board may, of its own motion or on the application of the registrar, revoke an agent's registration or licence if—
  - (a) the agent is carrying on business dishonestly or unfairly; or
  - (b) a person (other than the agent) who is involved in the direction, management or conduct of the agent's business is not a fit and proper person to be involved in the direction, management or conduct of an agent's business; or
  - (c) in the case of a licensed company—the company has carried on business for a period during which—
    - (i) if the name of only 1 person is specified in the company's licence as the name of a director who has had the experience referred to in section 43 (1) (b), 45 (1) (b) or 47 (1) (b) or the prescribed qualifications, as the case requires—that person was not a director of the company; or
    - (ii) if the names of 2 or more persons are so specified—both or all of those persons respectively were not directors of the company; or
  - (d) in the case of a travel agent—
    - (i) the board of trustees has declared under the trust deed that the person is no longer a participant; or

- (ii) the board has reasonable grounds for believing that the agent does not have, or is not likely to continue to have, sufficient financial resources to enable the agent to continue to carry on business; or
  - (e) the agent has contravened this Act; or
  - (f) the agent has been refused registration or a licence, or has been disqualified from being registered or from holding a licence, under a corresponding law; or
  - (g) registration or a licence granted to the agent under a corresponding law has been revoked or cancelled under that law; or
  - (h) the agent's registration or licence was obtained by means of misrepresentation, or was otherwise improperly obtained; or
  - (j) there were grounds for refusing to grant the registration or licence at the time it was granted that were unknown to the board at that time; or
  - (k) the board would be entitled, on a ground referred to in section 38 (3) or 51 (3) (being a ground that did not exist, or which was unknown to the board, at the time the agent's registration or licence was granted), to refuse to grant the agent registration or a licence respectively if the agent were not registered or licensed; or
  - (l) the agent has been convicted of an offence involving fraud or dishonesty that is punishable by imprisonment for 3 months or more; or
  - (m) the agent has failed to comply with section 41A or 54A; or
  - (n) the agent has ceased carrying on business.
- (2) Before revoking an agent's registration or licence, the board shall direct the registrar to give written notice—
- (a) to the agent; and

- (b) if the board proposes to revoke the registration or licence on the grounds referred to in subsection (1) (b)—to the person referred to in that subsection;

calling upon the agent, or the agent and that person, as the case requires, to show cause why the registration or licence should not be revoked.

- (3) The notice shall—
- (a) set out the grounds on which the board proposes to revoke the agent's registration or licence; and
  - (b) include a statement to the effect that the board is entitled to revoke the registration or licence without further notice unless, within 21 days after the date of the notice or within any further time allowed by the board, the agent lodges with the registrar written notice that the agent intends to show cause why the registration or licence should not be revoked.

## **78 Revocation where change of directors**

- (1) Where a person becomes a director of a company which holds a licence to carry on business as an agent either in addition to, or in place of, 1 of the persons, who immediately before he or she became a director, were directors of the company and—
- (a) a notice that complies with the requirements of subsection (2) has not been given to the registrar within 21 days after the date on which the person becomes a director of the company; or
  - (b) an objection is lodged under subsection (4) by the registrar or the commissioner of police;
- the board shall direct the registrar to give notice to the company calling upon it to show cause why the licence granted to it should not be revoked.
- (2) A notice complies with the requirements of this subsection if—

- (a) it specifies the full name, the date of birth and the present residential address of the person appointed as a director and any other address at which that person has resided during the 3 years immediately preceding the date of the notice; and
  - (b) it is accompanied by certificates by 2 persons certifying with respect to the fame and character of the person appointed as a director of the company.
- (3) The registrar shall forward a copy of a notice given to him or her in accordance with subsection (2) to the commissioner of police.
- (4) The registrar or the commissioner of police may, within 21 days after a notice is given to the registrar under this section, object by notice in writing to the continuation in force of the licence issued to the company on the ground that the person who has become a director of the company is not a person of good fame and character.
- (5) This section applies whether the person who has become a director of the company became a director of the company before, or becomes a director of the company after, the grant to the company of a licence to carry on business as an agent.

## **79 Agent may give notice of intention to show cause against revocation**

The registered agent or licensed agent to whom a notice is given under section 77 or 78 may, within 21 days after the date on which the notice is served on him or her, lodge with the registrar a notice in writing stating that the agent intends to show cause why his or her registration or the licence issued to him or her should not be revoked.

## **80 Failure to notify intention to show cause**

If the registered agent or licensed agent does not, within a period of 21 days after the date on which the notice calling upon him or her to show cause why his or her registration or licence should not be revoked or within any further time allowed by the board on the

application of the agent, lodge with the registrar a notice in writing that he or she intends to show cause why the registration or licence should not be revoked, the board shall, unless it withdraws the notice, revoke the registration or licence.

### **81 Inquiry where agent shows cause**

- (1) If the registered agent or the licensed agent lodges a notice in writing that he, she or it intends to show cause why his or her registration or licence should not be revoked, the board shall hold an inquiry.
- (2) If, at the inquiry, the registered agent or licensed agent does not show to the satisfaction of the board cause why his or her registration or the licence granted to him, her or it should not be revoked, the board may revoke the registration or licence.
- (3) The board shall record the reasons for its decision, and, if so requested by the registered agent or licensed agent, furnish to the agent a copy of those reasons.

### **82 Suspension of travel or employment agent's licence**

The board may suspend a travel agent's or employment agent's licence—

- (a) for a period not exceeding 14 days pending a decision by the board whether a notice is to be served on the agent pursuant to section 77 (2); or
- (b) where a notice under section 77 (2) has been served on the agent—for a period of 21 days or for the period (being not less than 21 days) specified in the notice; or
- (c) for a period not exceeding 14 days pending a decision by the board whether or not to revoke the agent's licence under section 77 (1).



**82A Disqualification**

- (1) Where an agent's registration or licence is revoked, the former agent is, by force of this subsection, disqualified from being registered or holding a licence.
- (2) The board may disqualify a person from being registered or from holding a licence if—
  - (a) the person has been refused registration or a licence under this Act or a corresponding law; or
  - (b) the person's registration or licence under a corresponding law has been revoked or cancelled under that law; or
  - (c) the person has been disqualified under a corresponding law from being registered or from holding a licence; or
  - (d) the person has been disqualified under this Act or a corresponding law from being involved in the direction, management or conduct of an agent's business.
- (3) The board may disqualify a person from being involved in the direction, management or conduct of an agent's business if—
  - (a) the board has reasonable grounds for believing that the person is not a fit and proper person to be involved in the direction, management or conduct of an agent's business; or
  - (b) the board would be entitled, by virtue of section 51 (3) (b) or (d), to refuse to grant the person a licence to carry on business as an agent if the person were to apply for one; or
  - (c) the person has been disqualified under this Act or a corresponding law from holding a licence to carry on business as an agent.
- (4) A disqualification remains in force—
  - (a) during the period specified by the board; or
  - (b) if no period is specified—until the board otherwise orders.

**83 Effect of revocation**

A registration or a licence that is revoked ceases to have effect from and including the day on which it is revoked, and the person who was registered or to whom a licence was granted ceases to be a registered agent or a licensed agent, as the case may be, on and from that day.

**83A Record of disqualification**

- (1) Where an agent is disqualified under section 82A (1) from being registered or from holding a licence, the registrar shall enter in the appropriate register details of the revocation of the former agent's registration or licence and of the disqualification, including a note of the period during which the disqualification remains in force by virtue of section 82A (3).
- (2) Where a person is disqualified under section 82A (2) from being registered or from holding a licence, or is disqualified under section 75 (1) (e) or 82A (3) from being involved in the direction, management or conduct of an agent's business, the registrar shall keep a record of the details of the disqualification, including a note of the period during which the disqualification remains in force by virtue of section 82A (4).

## Part 10                      Appointment of receiver or administrator

### 84      Appointment of receiver or administrator

- (1) Where the registrar has given notice to an agent calling upon the agent to show cause why his or her licence should not be revoked, the board may appoint a person to be receiver of the trust moneys of the agent.
- (2) The board may—
  - (a) on the written request of an agent based on the ground that the agent has through illness become incapacitated to carry on his or her business; or
  - (b) on the death of an agent; or
  - (c) if the board is satisfied that an agent has, through physical or mental illness, become incapable of carrying on business as an agent; or
  - (d) if an agent's licence has been suspended or revoked;appoint a person to be receiver of the trust moneys of the agent.
- (3) The board may appoint a person to administer an agent's business if the agent's licence has been suspended or revoked.
- (4) The appointment of an administrator continues in force until the board otherwise directs.
- (5) While the appointment of an administrator is in force, the agent or, if the agent is a company, a director of the company, shall not be involved in the direction, management or conduct of the agent's business.

**85 Notice to bank**

- (1) Where a receiver or administrator has been appointed in relation to an agent's business, the board may, by instrument—
  - (a) give notice of the appointment to the person in charge of a bank at which the agent maintains—
    - (i) a trust account; or
    - (ii) an account for the purpose of holding money referred to in section 60 (1A) or (1B); or
    - (iii) an account for the purpose of holding money (other than trust money or money referred to in section 60 (1A) or (1B)) received by the agent in the course of carrying on the business; and
  - (b) revoke the authority of the agent or an authorised person to withdraw money from the account.
- (2) Where the board has revoked the authority of an agent or authorised person to withdraw money from a bank account—
  - (a) only the receiver or administrator, or a person authorised for the purpose by the receiver or administrator by written notice delivered to the bank, is authorised to withdraw money from the account; and
  - (b) the bank shall not pay any money out of the account without the written authority of the receiver or administrator or a person referred to in paragraph (a).
- (3) A copy of an instrument given by the board under this section shall be served on the licensed agent either personally or by leaving it at the place at which the licensed agent carried on business.
- (4) In this section:  
*authorised person* means a person authorised by the agent to withdraw money from a bank account.

- (5) In this section, a reference to *withdrawing money* from a bank account shall be read as including a reference to signing a cheque for the payment of money out of a bank account.

## **86 Powers, duties and liability of receiver or administrator**

- (1) A receiver or administrator appointed in relation to an agent's business may act on behalf of the agent and, for that purpose, may carry out any function, and shall carry out any duty, that the agent is respectively permitted or required to carry out under this Act.
- (2) A person who is or was a receiver or administrator is not liable to an action (other than an action in negligence) or other proceeding for or in relation to an act done or omitted to be done in good faith in the performance of purported performance of any function, or in the exercise or purported exercise of any power or authority, conferred on the person as receiver or administrator.
- (3) The board is not liable for any loss sustained by an agent as a result of an act done or omitted to be done by a receiver or administrator, whether or not the receiver or administrator is liable.

## **87 Remuneration of receiver or administrator**

- (1) A receiver or administrator who is not a public servant—
- (a) shall be paid by the Territory such remuneration as the board determines; and
  - (b) is entitled to reimbursement by the Territory of the expenses necessarily incurred by him or her in carrying out the receivership or administration.
- (2) An amount of fees paid to a receiver or administrator and the amount reimbursed to him or her by the Territory are recoverable by the Territory from the agent for whom the person is appointed receiver or administrator.

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- (3) If a receiver or an administrator is a public servant, the board shall certify an amount that represents the amount of remuneration of the receiver or administrator that is referable to carrying out the receivership or administration, and that amount is recoverable by the Territory as a debt due from the agent in relation to whose business the receiver or administrator was appointed.

## Part 11 Inquiries by the agents board

### 88 Inquiries

- (1) Where, by this Act, the board is required to hold an inquiry, the board shall fix a time and place for the hearing of the inquiry.
- (2) The chairperson shall cause written notice of the matter to be inquired into and of the time and place fixed for the hearing to be given—
  - (a) in the case of an inquiry in relation to an application for registration or a licence—
    - (i) to the applicant; and
    - (ii) to any person (other than the applicant) who is required to attend before the board pursuant to section 51 (2); and
    - (iii) to any person who has lodged an objection to the granting of the registration or licence; and
  - (aa) in the case of an inquiry in relation to a claim for compensation under part 6D—
    - (i) to the claimant; and
    - (ii) to the licensed agent in respect of whom the claim is made; and
  - (b) in any other case—
    - (i) to the agent to whom the inquiry relates; and
    - (ii) if the inquiry relates to a director or any other person involved in the direction, management or conduct of the agent's business—to that director or other person; and
  - (c) to the member of the board referred to in section 9 (1) (b); and

- (d) to 3 other members of the board; and
  - (e) to the registrar.
- (3) The board may adjourn the hearing of an inquiry from time to time.
  - (4) An inquiry shall not be open to the public.
  - (5) At an inquiry, the board may take evidence on oath or affirmation, and for that purpose a member of the board may administer an oath or affirmation.
  - (6) Subject to the regulations, the procedure at an inquiry is within the discretion of the board.
  - (7) An applicant, claimant or other person to whom notice of an inquiry is required to be given pursuant to subsection (2) (a) (i) or (ii), (aa) (i) or (ii) or (b) (i) or (ii) may be represented at the inquiry by an agent or by a legal practitioner.
  - (8) The Minister may appoint a legal practitioner to assist the board, and the practitioner may examine witnesses and address the board.
  - (9) In conducting the inquiry, the board is not bound by rules of evidence but may inform itself in such manner as it thinks fit.
  - (10) A member of the board shall not participate in an inquiry as a member if the inquiry concerns a matter directly affecting the member.
  - (11) Section 16 (3), (4), (5), (6), (7) and (9) applies in relation to an inquiry as if the references in those subsections to a meeting or meetings of the board were references to an inquiry or inquiries held by the board.

## **89 Power to summon witnesses**

- (1) The chairperson or the deputy chairperson may, in writing signed by him or her, summon a person to attend an inquiry by the board at a time and place specified in the summons and then and there to give evidence and produce such books, documents or writings in the



person's custody or control as he or she is required by the summons to produce.

- (2) A summons under this section may be served—
- (a) personally; or
  - (b) by sending it by post to the person at his or her place of abode or business last-known to the chairperson or the deputy chairperson; or
  - (c) by leaving it at that place of abode or business with some person apparently living or employed at that place and apparently not less than 16 years of age.

## **91 Failure to attend or produce documents**

- (1) A person served with a summons to attend an inquiry before the board shall not refuse or fail, without reasonable excuse, to attend at the inquiry before the board or to produce the books, documents or writings in the person's custody or control that he or she is required by the summons to produce.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) It is a defence to a prosecution for refusing or failing, without reasonable excuse, to produce a book, document or writing if the defendant proves that the book, document or writing was not relevant to the matter the subject of the inquiry before the board.

## **92 Refusal to be sworn or give evidence**

- (1) A person appearing as a witness at an inquiry before the board shall not refuse to be sworn or to make an affirmation or to answer a question relevant to the proceedings put to him or her by a member of the board.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) A statement or disclosure made, or a document or thing produced, by a witness in the course of giving evidence before the board, or any information, document or thing obtained as a direct or indirect consequence of the statement or disclosure or the production of the firstmentioned document or thing, is not admissible in evidence in civil or criminal proceedings in a court except—
- (a) in proceedings for an offence against this Act; or
  - (b) in proceedings for giving false testimony at an inquiry before the board.

### **93      Record of proceedings at inquiry**

- (1) Subject to subsection (2), a record of the evidence of a witness at an inquiry under this part shall be made—
- (a) by means of sound-recording apparatus; or
  - (b) if the board so directs, by means of shorthand or any similar means.
- (2) Where the board so directs, the evidence of a witness at an inquiry under this part shall not be recorded in accordance with subsection (1), but shall be taken down in writing, and, after being read over to the witness or given to the witness to read, signed by the witness and the chairperson.
- (3) The registrar shall have the custody of any record of evidence made in accordance with subsection (1).
- (4) The registrar shall give such directions as he or she considers necessary for ensuring that, in any case where a transcript of the record of any evidence made in accordance with subsection (1) is or may be required, a transcript is prepared, and, for the purpose of enabling the transcript to be prepared, the record shall be produced out of the custody of the registrar.
- (5) Where a transcript of a record is prepared in accordance with the directions of the registrar given under subsection (4), the person

who prepared the transcript, or under whose supervision the transcript was prepared, shall certify on the transcript, in writing signed by him or her, that the transcript is a true transcript of a record produced out of the custody of the registrar.

- (6) Subject to subsection (13), the registrar shall, upon application made to him or her by a person, furnish to that person a copy of any transcript prepared in accordance with the directions of the registrar of a record made in accordance with subsection (1) of any evidence, or, where evidence was taken down in writing in accordance with subsection (2), a copy of the evidence as so taken down, and may certify, in writing signed by him or her, that the copy is a true copy of the transcript as so taken down.

*Note* A fee may be determined under s 120A (Determination of fees) for this section.

- (7) Where a record made by means of sound recording apparatus, shorthand or similar means is produced out of the custody of the registrar and the record purports to be a record made in accordance with subsection (1) of the evidence of a witness at an inquiry under this part, the record is evidence that that person gave that evidence at that inquiry.
- (8) Where—
- (a) a sound recording is produced out of the custody of the registrar; and
  - (b) the sound recording contains a record of comments that purport—
    - (i) to have been made at the same time as a sound recording made in accordance with subsection (1) of the evidence of a witness at an inquiry under this part; and
    - (ii) to have been made for the purpose of identifying the proceedings, voices recorded on the lastmentioned sound recording or any other matter or thing so recorded;

the firstmentioned sound recording is evidence of the identity of the proceedings, of the voices or of that other matter or thing, as the case may be.

(9) Where—

- (a) a document purports to be a transcript, or a copy of a transcript, of a record made in accordance with subsection (1) of evidence given by a witness at an inquiry under this part; and
- (b) the document bears a certificate that purports to be a certificate given in accordance with subsection (5) or (6);

the document is evidence that the witness gave the evidence of which the document purports to be a transcript at that inquiry.

(10) Where a document—

- (a) purports to be the evidence of a witness at an inquiry under this part as taken down in writing and signed in accordance with subsection (2); or
- (b) purports to be a copy of the evidence of a witness at such an inquiry as so taken down in writing and signed and bears a certificate that purports to be a certificate given in accordance with subsection (6);

the document is evidence that the witness gave the evidence appearing in the document at that inquiry.

(11) Where a record of any part of the proceedings at an inquiry under this part, not being a record of the evidence of a witness, has been made by means of sound-recording apparatus or by any other means, the registrar may, upon application made to him or her by a person, but subject to subsection (13), furnish to that person a copy of a transcript of that record.

*Note*        A fee may be determined under s 120A (Determination of fees) for this section.

- (12) Where a person makes application to the registrar to furnish to him or her under this section a copy of any transcript and a copy of the transcript is not available, the registrar may, before causing a copy of the transcript to be prepared, require the applicant to deposit with the registrar on account of the fee that will become payable in respect of the furnishing of the copy to the applicant such amount as the registrar determines, being an amount that does not, in the opinion of the registrar, exceed the amount of the fee that will become so payable.
- (13) Nothing in subsection (6) or (11) requires the registrar to furnish a copy of a transcript or of any evidence to a person, not being a person who was represented at the inquiry to which the transcript relates or at which the evidence was given, unless the person applying for the copy satisfies the registrar or the chairperson that he or she has good reason for so applying.

#### **94 Protection of members of the board**

An action or proceeding, civil or criminal, does not lie against a member of the board for or in respect of an act or thing done in good faith by the member in his or her capacity as a member.

#### **95 Protection of legal practitioners, witnesses etc**

- (1) A legal practitioner or other person appearing before the board has the same protection and immunity as a barrister has in appearing for a party in proceedings in the Supreme Court.
- (2) A witness summoned to attend or appearing before the board has the same protection as a witness in proceedings in the Supreme Court.

#### **96 Fees and expenses to witnesses**

- (1) A person who attends for the purpose of giving evidence before the board is entitled to receive such fees and travelling expenses in accordance with the scale in the *Public Works Committee Regulations 1969*, schedule 2 under the *Public Works Committee*

*Act 1969* (Cwlth) as the chairperson or, if the chairperson is absent from the meeting of the board, the deputy chairperson determines.

- (2) Fees and expenses payable to a person in accordance with subsection (1) are payable—
- (a) if the person attended before the board whether on summons or not, by reason of a request by a person other than the chairperson, the deputy chairperson, the registrar, the commissioner of police or public servant—by the person at whose request the firstmentioned person attended; or
  - (b) in any other case—by the Territory.

**97      Board may inspect books etc**

The board may inspect books, documents or writings produced at an inquiry before it, and may retain them for such reasonable period as it thinks fit and may make copies of such portions of them as are relevant to a matter before the board.

## Part 12                      Review of decisions

### 98      Review of decisions

- (1) An application may be made to the administrative appeals tribunal for a review of a decision by the board—
- (a) refusing, under section 38 (1), an application for registration as an agent; or
  - (b) refusing, under section 51 (1), an application for a grant of a licence to carry on business as an agent; or
  - (c) refusing an application for an order under section 54 (2); or
  - (d) refusing to authorise the registrar under section 54 (8) to specify in a licence the name of a director specified in the application for the licence; or
  - (da) determining, under section 57F (1)—
    - (i) the amount of moneys to which an applicant is entitled; or
    - (ii) that an applicant is not entitled to any moneys; or
  - (db) determining, under section 71ZD (1)—
    - (i) the amount of pecuniary loss in respect of which compensation may be paid to a claimant; or
    - (ii) that there is no pecuniary loss in respect of which compensation may be paid to a claimant; or
  - (e) taking any action under section 75 (1); or
  - (f) revoking a licence under section 80 or 81; or
  - (g) suspending a travel agent's licence under section 82; or

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- (h) disqualifying a person under section 82A (2) from being registered or from holding a licence; or
  - (j) disqualifying a person under section 82A (3) from being involved in the direction, management or conduct of an agent's business; or
  - (k) refusing to consent under section 99 (1) to an agent employing a particular person.
- (2) An application may be made to the administrative appeals tribunal for a review of a decision of the board of trustees under the trust deed determining that a person—
- (a) is eligible to be a participant subject to conditions; or
  - (b) is not eligible to be a participant; or
  - (c) remains eligible to be a participant subject to conditions; or
  - (d) is no longer eligible to remain a participant.

**98A Notification of decisions**

- (1) Where the board makes a decision of a kind referred to in section 98 (1) it shall cause written notice of the decision to be given—
- (a) to the applicant or agent concerned; and
  - (b) if the decision also relates to a person other than the applicant or agent—to that person.
- (1A) Where the board of trustees makes a decision of a kind referred to in section 98 (2), it shall cause written notice of the decision to be given to the person to whom the decision relates.
- (2) A notice under subsection (1) or (1A) shall be in accordance with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).



## Part 13                      Miscellaneous

### 99      Employment of disqualified persons

- (1) Except with the consent of the board, a registered or licensed agent shall not employ a person in the agent's business knowing—
- (a) that the person is disqualified under this Act or a corresponding law from being registered as an agent or from holding a licence to carry on business as an agent; or
  - (b) that the person is disqualified under this Act or a corresponding law from being involved in the direction, management or conduct (however expressed) of an agent's business; or
  - (c) that an application by the person under this Act or a corresponding law for registration as an agent or for a licence to carry on business as an agent has been refused on the ground (however expressed) that the person—
    - (i) is not likely to carry on business honestly and fairly; or
    - (ii) is in any way not a fit and proper person to be registered or licensed; or
  - (d) that an application by the person under this Act or a corresponding law for registration as an agent has been refused on the ground (however expressed) that the person is not of good fame or character; or
  - (e) that the person's adverse qualities were responsible for a company's being refused registration as an agent or a licence to carry on business as an agent under this Act or a corresponding law on a ground (however expressed) referred to in section 51 (3) (f) (ii) or (iii).

- (2) A licensed agent is not guilty of a breach of the rules of conduct in relation to an employee by virtue of a failure to comply with subsection (1) if the agent adduces evidence that—
- (a) the agent made reasonable inquiries about the employee; and
  - (b) the agent did not know, and could not reasonably be expected to have known, that the employee was a person of a kind whose employment by an agent is prohibited by subsection (1);
- and that evidence is not rebutted.

### **100 Offences by companies**

- (1) Where, in proceedings for an offence against this Act in respect of any conduct engaged in by a company, it is necessary to establish the state of mind of the company, it is sufficient to show that an officer, servant or agent of the company, being an officer, servant or agent by whom the conduct was engaged in within the scope of his or her actual or apparent authority, had that state of mind.
- (2) Any conduct engaged in on behalf of a company—
- (a) by an officer, servant or agent of the company within the scope of his or her actual or apparent authority; or
  - (b) by any other person at the direction or with the consent or agreement (whether express or implied) of an officer, servant or agent of the company, where giving the direction, consent or agreement is within the scope of the actual or apparent authority of the officer, servant or agent;
- shall be deemed, for the purposes of this Act, to have been engaged in also by the company.
- (3) If a company does or omits to do any act or thing of which the doing or omission constitutes an offence, a person (by whatever name called and whether or not the person is an officer of the company) who is concerned in, or takes part in, the management of the

company shall be taken to have committed the offence and is punishable accordingly.

- (4) A person shall not be taken, pursuant to subsection (3), to have committed an offence if the person adduces evidence that the person—
- (a) did not aid, abet, counsel or procure the company's act or omission; and
  - (b) was not in any way, by act or omission, directly or indirectly, knowingly concerned in, or a party to, the act or omission;
- and that evidence is not rebutted.
- (5) A reference in subsection (1) to the *state of mind* of a person shall be read as including a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for his or her intention, opinion, belief or purpose.
- (6) For the purposes of subsection (3), an officer of a company shall be presumed to be concerned in, and to take part in, the management of the company unless the officer adduces evidence to the contrary and that evidence is not rebutted.

### **101 Agent not to share commission**

- (1) A licensed agent (other than a travel agent or employment agent) shall not share with another person (not being a licensed agent or a partner of the firstmentioned agent) any commission, fee, gain or reward payable to the firstmentioned agent in respect of a transaction in his or her capacity as agent.
- (2) In subsection (1), a reference to a *licensed agent* shall be read as including a reference to a person licensed under a corresponding law to carry on business as an agent.

**102 Improper use of licence**

A licensed agent shall not permit any other person to have possession of his or her licence with the intent that that other person shall represent himself or herself as the person to whom the licence was granted.

**103 Improper use of title of real estate agent**

- (1) A person other than a licensed real estate agent or a registered real estate agent shall not use, in an advertisement or otherwise, words which would reasonably lead to the belief that he or she is a licensed real estate agent or a registered real estate agent.

Maximum penalty: 30 penalty units.

- (2) Without limiting the effect or application of subsection (1), a person other than a licensed real estate agent or a registered real estate agent who—

- (a) places, or suffers or permits to be placed, on the building in which his or her office is situated; or
- (b) places on a document, as a description of his or her business;

the words 'real estate agent', 'estate agent', 'land agent', 'property agent' or words that imply that, in the course of his or her business, the person acts or is prepared to act as agent for principals in connection with any of the matters referred to in section 5A (a), (b) or (c) commits an offence.

Maximum penalty: 30 penalty units.

**104 Improper use of title of stock and station agent**

- (1) A person other than a licensed stock and station agent or a registered stock and station agent shall not use, in an advertisement or otherwise, words which would reasonably lead to the belief that he or she is a licensed stock and station agent or a registered stock and station agent.

Maximum penalty: 30 penalty units.

- (2) Without limiting the effect or application of subsection (1), a person other than a licensed stock and station agent or a registered stock and station agent who—

- (a) places, or suffers or permits to be placed, on the building in which his or her office is situated; or
- (b) places on a document, as a description of his or her business;

the words ‘stock and station agent’, ‘stock agent’ or ‘station agent’ or words that imply that in the course of his or her business, the person acts, or is prepared to act, as agent for principals in connection with any of the matters referred to in section 5B (a), (b), (c), (d) or (e) commits an offence.

Maximum penalty: 30 penalty units.

**105 Improper use of title of business agent**

- (1) A person other than a licensed business agent or a registered business agent shall not use, in an advertisement or otherwise, words which would reasonably lead to the belief that he or she is a licensed business agent or a registered business agent.

Maximum penalty: 30 penalty units.

- (2) Without limiting the effect or application of subsection (1), a person other than a licensed business agent or a registered business agent who—

(a) places, or suffers or permits to be placed, on the building in which his or her office is situated; or

(b) places on a document, as a description of his or her business;

the words 'business agent' or words that imply that, in the course of his or her business, the person acts, or is prepared to act, as agent for principals in connection with any of the matters referred to in section 5C commits an offence.

Maximum penalty: 30 penalty units.

### **105A Improper use of title of travel agent**

(1) A person who is not a licensed travel agent shall not use, in an advertisement or otherwise, words which would reasonably lead to the belief that the person is a licensed travel agent.

Maximum penalty: 30 penalty units.

(2) Without limiting the effect or application of subsection (1), a person who is not a licensed travel agent who—

(a) places, or suffers or permits to be placed, on a building in which the person's business is carried on; or

(b) places on a document, as a description of his or her business;

the words 'travel agent' or other words that imply that, in the course of carrying on business, the person acts, or is prepared to act, as agent for principals in connection with any activity in respect of which the agent is, by virtue of section 5D, carrying on business as a travel agent, commits an offence.

Maximum penalty: 30 penalty units.

**105B Improper use of title of employment agent**

- (1) A person who is not a licensed employment agent shall not use, in an advertisement or otherwise, words which would reasonably lead to the belief that the person is a licensed employment agent.

Maximum penalty: 10 penalty units.

- (2) Without limiting the effect or application of subsection (1), a person who is not a licensed employment agent who—

(a) places, or suffers or permits to be placed, on a building in which the person's business is carried on; or

(b) places on a document, as a description of his or her business;

the words 'employment agent' or other words that imply that, in the course of carrying on business, the person acts, or is prepared to act, as agent for principals in connection with any activity in respect of which the agent is, by virtue of section 5DA, carrying on business as an employment agent, commits an offence.

Maximum penalty: 10 penalty units.

**106 False or misleading advertisements**

A licensed agent shall not, in an advertisement published in connection with his or her business as a licensed agent, make a statement or representation that is false, misleading or is intended to deceive.

Maximum penalty: 30 penalty units.

**107 Preservation of accounting records**

A former licensed agent who fails to preserve records in accordance with section 60 (2) (c) commits an offence.

Maximum penalty: 10 penalty units.

**108 Obstruction of authorised officer**

A person who, without reasonable excuse, obstructs or hinders an authorised officer in the exercise of the officer's powers under this Act, or in the performance of the officer's duties under this Act, commits an offence.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

**109 Production of licence for inspection**

A licensed agent shall, upon demand by the registrar or an inspector, produce his or her licence for inspection.

Maximum penalty: 5 penalty units.

**110 Inspection of register**

Any person may inspect a register and may take extracts from the register.

*Note* A fee may be determined under s 120A (Determination of fees) for this section.

**111 Withholding deposits**

Where an agent is authorised to retain in a trust account money received as a deposit in respect of a transaction in his or her capacity as agent and the money is to be withheld or not repaid, the agent shall, within a period of 14 days from the completion of the transaction, inform in writing all persons involved (including his or her principal) of the reasons for withholding or not repaying the money.

**112 Address of agent in advertisement**

A licensed agent shall not publish an advertisement relating to or in connection with his or her business as an agent unless the licensed



agent specifies in the advertisement that he or she is a licensed agent and the address of the place at which he or she carries on business.

### **113 Misrepresentation of authority to act as real estate agent**

- (1) A person other than a licensed real estate agent shall not represent, by any means whatsoever, that he or she is authorised to act as agent in the sale, purchase, exchange, leasing or letting of any land in the Territory.

Maximum penalty: 30 penalty units.

- (2) It is not an offence against subsection (1) if a licensed stock and station agent represents that he or she is authorised to act as agent in the sale, purchase, exchange, leasing or letting of land for rural purposes.

### **114 Misrepresentation of authority to act as business agent**

A person other than a licensed business agent shall not represent, by any means whatsoever, that he or she is authorised to act as agent in the sale or purchase of the goodwill of a business carried on in the Territory.

Maximum penalty: 30 penalty units.

### **115 Notices to be displayed**

- (1) A licensed agent shall exhibit and keep exhibited at the place or each place specified in his or her licence as a place at which the licensed agent is authorised to carry on business as a licensed agent, a notice stating—
- (a) his or her name; and
  - (b) that he or she is licensed as an agent; and
  - (c) if the licensed agent carries on business in a name other than his or her own name—the name or style under which the licensed agent carries on business as an agent.

- (2) A notice under subsection (1) shall be exhibited—
- (a) in a prominent place; and
  - (b) so as to be easily read from outside that place of business.

Maximum penalty: 5 penalty units.

### **116 Actions for commission**

- (1) A person, other than a person referred to in section 3 (1), is not entitled to bring an action to recover any commission, fee, gain or reward for acting as an agent for a principal in relation to a matter referred to in section 5A unless the person—
- (a) was a licensed real estate agent at the time that he or she was engaged to act as an agent; and
  - (b) was such an agent at the time of acting as agent.
- (2) A person, other than a person referred to in section 3 (1), is not entitled to bring an action to recover any commission, fee, gain or reward for acting as an agent for a principal in relation to a matter referred to in section 5B unless the person—
- (a) was a licensed stock and station agent at the time that he or she was engaged to act as an agent; and
  - (b) was such an agent at the time of acting as agent.
- (3) A person, other than a person referred to in section 3 (1), is not entitled to bring an action to recover any commission, fee, gain or reward for acting as an agent for a principal in relation to a matter referred to in section 5C unless the person—
- (a) was a licensed business agent at the time that he or she was engaged to act as an agent; and
  - (b) was such an agent at the time of acting as agent.

**117 Rent collection by persons other than real estate agents**

A person other than a licensed real estate agent or a person employed by a licensed real estate agent who, for fee or reward, collects rents or other moneys payable in respect of the occupation of land in the Territory or payments under a mortgage or a terms contract in respect of land in the Territory commits an offence.

Maximum penalty: 50 penalty units.

**118 Service upon licensed agents and applicants for licences**

- (1) A document required by this Act to be given to, or served upon, a licensed agent may be given or served by leaving it at a place specified in the agent's licence as the place or the principal place at which he or she carries on business as a licensed agent.
- (2) A document required by this Act to be given to or served upon an applicant for a licence may be given or served by sending it by post to the applicant at his or her last-known place of residence.

**119 Evidence of licensing**

A document purporting to be a certificate under the hand of the chairperson, the deputy chairperson or the registrar and stating that a person was or was not on a date or dates or during a period mentioned in the document the holder of a real estate agent's licence, a stock and station agent's licence, a business agent's licence, a travel agent's licence or an employment agent's licence is, in all courts and before all persons and bodies authorised to receive evidence, evidence of the matters so stated.

**120 Requirement by registrar or inspector**

Where the registrar or an inspector is empowered by this Act to require a person to do anything, the registrar or the inspector may make the requirement orally or in writing served upon that person.

**120A Determination of fees**

- (1) The Minister may, in writing, determine fees for this Act.

*Note* The *Legislation Act 2001* contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).

- (2) A determination is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

**120B Agreements for regulations of travel agents' business**

The Minister may—

- (a) enter into an agreement with a Minister of State responsible for administering a corresponding law with respect to travel agents, being an agreement relating to the establishment, implementation, administration and maintenance of a joint scheme of regulations and compensation in relation to business carried on by travel agents; and
- (b) execute a trust deed under which are established and administered a travel compensation fund, and a compensation scheme, in relation to business carried on by travel agents.

**121 Approved forms**

- (1) The Minister may, in writing, approve forms for this Act.
- (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.
- (3) An approved form is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

**122 Regulation-making power**

- (1) The Executive may make regulations for this Act.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

- (2) The regulations may prescribe offences for contraventions of the regulations and prescribe maximum penalties of not more than 10 penalty units for offences against the regulations.

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## Schedule 1 Qualifications—travel agents

(see s 47C)

<b>column 1 item</b>	<b>column 2 qualification</b>
1	successful completion of the Travel Consultant's Course offered by the A.C.T. Institute of Technical and Further Education
2	Travel Consultant's Certificate awarded by a College of Technical and Further Education in the State of New South Wales
3	Travel and Tourism Associate Diploma awarded by a College of Technical and Further Education
4	certificate awarded by Hayton Travel Training on successful completion of a course known as the Fares and Ticketing Course
5	certificate awarded by Qantas Airways Limited on successful completion of the courses known as Ticketing 1 and Ticketing 2
6	diploma awarded by the Universal Federation of Travel Agents Associations
7	Associate Diploma in Tourism awarded by a College of Technical Education or College of Technical and Further Education in the State of South Australia
8	Certificate in Travel Operations awarded by a College of Technical and Further Education in the State of Western Australia
9	Certificate in Travel Operations, Senior Travel Consultant, awarded by a College of Further Education in the State of South Australia
10	Certificate of Business Studies (Travel and Tourism) awarded by a College of Technical and Further Education in the State of Victoria

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<b>column 1 item</b>	<b>column 2 qualification</b>
11	certificate awarded by a College of Technical and Further Education in the State of Victoria on successful completion of the courses known as Ticketing 1 and Ticketing 2
12	Class L membership of the Australian Institute of Travel and Tourism
13	Diploma in Travel and Tourism (Stage 1) awarded by a College of Technical and Further Education in the State of Tasmania
14	Diploma in Travel and Tourism (Stage 2) awarded by a College of Technical and Further Education in the State of Tasmania

## Endnotes

1 About the endnotes

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## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	p = page
cl = clause	par = paragraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	prov = provision
exp = expires/expired	pt = part
Gaz = Gazette	r = rule/subrule
hdg = heading	reg = regulation/subregulation
IA = Interpretation Act 1967	renum = renumbered
ins = inserted/added	reloc = relocated
LA = Legislation Act 2001	R[X] = Republication No
LR = legislation register	RI = reissue
LRA = Legislation (Republication) Act 1996	s = section/subsection
mod = modified / modification	sch = schedule
No = number	sdiv = subdivision
num = numbered	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired



### 3 Legislation history

This Act was originally a Commonwealth ordinance—the *Agents Ordinance 1968* No 26 (Cwlth).

The *Australian Capital Territory (Self-Government) Act 1988* (Cwlth), s 34 (4) converted most former Commonwealth ordinances in force in the ACT into ACT enactments. This allowed the ACT Legislative Assembly to amend and repeal the laws. This Act was converted into an ACT enactment on 11 May 1989 (self-government day).

As with most ordinances in force in the ACT, the name was changed from *Ordinance* to *Act* by the *Self-Government (Citation of Laws) Act 1989* No 21, s 5 on 11 May 1989 (self-government day).

Before 11 May 1989, ordinances commenced on their notification day unless otherwise stated (see *Seat of Government (Administration) Act 1910* (Cwlth), s 12).

After 11 May 1989 and before 10 November 1999, Acts commenced on their notification day unless otherwise stated (see *Australian Capital Territory (Self-Government) Act 1988* (Cwlth) s 25).

#### Legislation before becoming Territory enactment

##### **Agents Act 1968 No 26**

notified 16 December 1968 (Cwlth Gaz 1968 No 104)  
commenced 17 December 1968 (s 2)

as amended by

##### **Agents Ordinance 1970 No 8**

notified 5 March 1979 (Cwlth Gaz 1970 No 15)  
commenced 5 March 1979

##### **Agents Ordinance (No 2) 1970 No 18**

notified 25 June 1970 (Cwlth Gaz 1970 No 50)  
commenced 25 June 1970

##### **Agents Ordinance 1971 No 22**

notified 23 September 1971 (Cwlth Gaz 1971 No 90)  
commenced 23 September 1971

##### **Agents Ordinance 1972 No 33**

notified 5 October 1972 (Cwlth Gaz 1972 No 96)  
commenced 5 October 1972

## Endnotes

3 Legislation history

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### **Agents Ordinance 1973 No 39**

notified 20 September 1973 (Cwlth Gaz 1973 No 129)  
ss 1, 2, 9 commenced 20 September 1973 (s 2 (1))  
remainder commenced 1 October 1972 (s 2 (2))

### **Agents Ordinance (No 2) 1973 No 54**

notified 19 December 1973 (Cwlth Gaz 1973 No 193)  
commenced 19 December 1973

### **Ordinances Revision (Age of Majority) Ordinance 1974 No 47 sch 1**

notified 24 October 1974 (Cwlth Gaz 1974 No 87A)  
commenced 1 November 1974 (s 2)

### **Agents (Amendment) Ordinance 1976 No 43**

notified 13 September 1976 (Cwlth Gaz 1976 No S160)  
commenced 13 September 1976

### **Ordinances Revision (Remuneration) Ordinance 1976 No 61 s 2**

notified 16 November 1976 (Cwlth Gaz 1976 No S204)  
commenced 16 November 1976

### **Ordinances Revision Ordinance 1978 No 46 sch 2**

notified 28 December 1978 (Cwlth Gaz 1978 No S292)  
commenced 28 December 1978

### **Agents (Amendment) Ordinance 1984 No 49**

notified 12 September 1984 (Cwlth Gaz 1984 No S358)  
commenced 1 February 1985 (s 2 and Cwlth Gaz 1985 No S23)

### **Agents (Amendment) Ordinance 1985 No 6**

notified 28 February 1985 (Cwlth Gaz 1985 No S62)  
commenced 1 March 1985 (s 2)

### **Public Trustee (Miscellaneous Amendments) Ordinance 1985 No 9 sch 2**

notified 8 March 1985 (Cwlth Gaz 1985 No S69)  
commenced 28 October 1985 (s 2 and Cwlth Gaz 1985 No 42)

### **Sex Discrimination (Miscellaneous Amendments) Ordinance 1986 No 31 s 24**

notified 31 July 1986 (Cwlth Gaz 1986 No S375)  
commenced 1 August 1986 (s 2)

**Agents (Amendment) Ordinance 1987 No 25**

notified 15 June 1987 (Cwlth Gaz 1987 No S127)  
commenced 15 June 1987

**Agents (Amendment) Ordinance 1988 No 5**

notified 9 March 1988 (Cwlth Gaz 1988 No S69)  
commenced 9 March 1988

**Agents (Amendment) Ordinance (No 2) 1988 No 47**

notified 3 August 1988 (Cwlth Gaz 1988 No GN28)  
commenced 15 October 1988 (s 2 and Cwlth Gaz 1988 No GN38)

**Agents (Amendment) Ordinance 1989 No 4**

notified 8 March 1989 (Cwlth Gaz 1989 No GN9)  
commenced 8 March 1989

**Self-Government (Consequential Amendments) Ordinance 1989 No 38 sch 1**

notified 10 May 1989 (Cwlth Gaz 1989 No S160)  
s 1, s 2 commenced 10 May 1989 (s 2 (1))  
sch 1 commenced 11 May 1989 (s 2 (2) and see Cwlth Gaz 1989 No S164)

**Remuneration (Miscellaneous Amendments) Ordinance 1989 No 50 sch**

notified 10 May 1989 (Cwlth Gaz 1989 No S160)  
commenced 10 May 1989

**Legislation after becoming Territory enactment****Agents (Amendment) Act 1992 No 22**

notified 2 June 1992 (Gaz 1992 No S67)  
ss 1-3 commenced 2 June 1992 (s 2 (1))  
ss 14, 15, 19, 20, 28 commenced 1 July 1992 (s 2 (2))  
remainder commenced 1 July 1992 (Gaz 1992 No S91)

**Statute Law Revision (Miscellaneous Provisions) Act 1992 No 23 sch 1**

notified 4 June 1992 (Gaz 1992 No S71)  
commenced 4 June 1992

## Endnotes

3 Legislation history

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### **Financial Institutions (Consequential Amendments) Act 1992 No 30 sch 1**

notified 1 July 1992 (Gaz 1992 No S92)  
s 1, s 2 commenced 1 July 1992 (s 2 (1))  
sch 1 commenced 1 July 1992 (s 2 (2) and Gaz 1992 No S92)

### **Statute Law Revision (Miscellaneous Provisions) Act 1993 No 1 sch 1**

notified 1 March 1993 (Gaz 1993 No S23)  
commenced 1 March 1993

### **Registrar-General (Consequential Provisions) Act 1993 No 64 sch 1**

notified 6 September (Gaz 1993 No S172)  
s 1, s 2 commenced 6 September 1993 (s 2 (1))  
sch 1 commenced 1 October 1993 (s 2 (2) and see Gaz 1993 No S207)

### **Public Sector Management (Consequential and Transitional Provisions) Act 1994 No 38 sch 1 pt 5**

notified 30 June 1994 (Gaz 1994 No S121)  
s 1, s 2 commenced 30 June 1994 (s 2 (1))  
sch 1 pt 5 commenced 1 July 1994 (s 2 (2) and Gaz 1994 No S142)

### **Mental Health (Consequential Provisions) Act 1994 No 45 sch**

notified 7 September 1994 (Gaz 1994 No S177)  
s 1, s 2 commenced 7 September 1994 (s 2 (1))  
sch commenced 6 February 1995 (s 2 (2) and Gaz 1995 No S33)

### **Administrative Appeals (Consequential Amendments) Act 1994 No 60 sch 1**

notified 11 October 1994 (Gaz 1994 No S197)  
s 1, s 2 commenced 11 October 1994 (s 2 (1))  
sch 1 commenced 14 November 1994 (s 2 (2) and see Gaz 1994 No S250)

### **Legal Practitioners (Amendment) Act 1994 No 76 sch**

notified 23 November 1994 (Gaz 1994 No S247)  
commenced 23 November 1994 (s 2)

### **Statutory Offices (Miscellaneous Provisions) Act 1994 No 97 sch pt 1**

notified 15 December 1994 (Gaz 1994 No S280)  
s 1, s 2 commenced 15 December 1994 (s 2 (1))  
sch pt 1 commenced 15 December 1994 (s 2 (2) and Gaz 1994 No S293)

**Statute Law Revision Act 1995 No 46 sch**

notified 18 December 1995 (Gaz 1995 No S306)  
commenced 18 December 1995 (s 2)

**Financial Management and Audit (Consequential and Transitional Provisions) Act 1996 No 26 sch pt 2**

notified 1 July 1996 (Gaz 1996 No S130)  
commenced 1 July 1996 (s 2)

**Remuneration Tribunal (Consequential Amendments) Act 1997 No 41 sch 1 (as am by Act 2002 No 49 amdt 3.222)**

notified 19 September 1997 (Gaz 1997 No S264)  
commenced 24 September 1997 (s 2 as am by Act 2002 No 49 amdt 3.222)

**Legal Practitioners (Consequential Amendments) Act 1997 No 96 sch 1**

notified 1 December 1997 (Gaz 1997 No S380)  
s 1, s 2 commenced 1 December 1997 (s 2 (1))  
sch 1 commenced 1 June 1998 (s 2 (2))

**Statute Law Revision (Penalties) Act 1998 No 54 sch**

notified 27 November 1998 (Gaz 1998 No S207)  
s 1, s 2 commenced 27 November 1998 (s 2 (1))  
sch commenced 9 December 1998 (s 2 (2) and Gaz 1998 No 49)

**Agents (Amendment) Act 1998 No 60**

notified 11 December 1998 (Gaz 1998 No S209)  
ss 1-3 commenced 11 December 1998 (s 2 (1))  
remainder commenced 24 February 1999 (s 2 (2) and Gaz 1999 No 8)

**Financial Sector Reform (ACT) Act 1999 No 33 sch**

notified 25 June 1999 (Gaz 1999 No S34)  
s 1, s 2, dict commenced 25 June 1999 (s 2 (1))  
sch commenced 1 July 1999 (s 2 (2) and Cwlth Gaz 1999 S283)

**Law Reform (Miscellaneous Provisions) Act 1999 No 66 sch 3**

notified 10 November 1999 (Gaz 1999 No 45)  
commenced 10 November 1999 (s 2)

## Endnotes

### 4 Amendment history

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#### **Agents Amendment Act 2000 No 9**

notified 6 April 2000 (Gaz 2000 No 14)  
s 1, s 2 commenced 6 April 2000 (IA s 10B)  
s 3 commenced 6 April 2000 (s 2 (1))  
s 9 commenced 10 August 2000 (s 2 (2) and Gaz 2000 No 32)  
remainder commenced 6 October 2000 (IA s 10E)

#### **Unit Titles Consequential Amendments Act 2001 No 17 sch 2**

notified 5 April 2001 (Gaz 2001 No 14)  
s 1, s 2 commenced 5 April 2001 (IA s 10B)  
sch 2 commenced 5 October 2001 (s 2)

#### **Legislation (Consequential Amendments) Act 2001 No 44 sch 1 pt 9**

notified 26 July 2001 (Gaz 2001 No 30)  
s 1, s 2 commenced 26 July 2001 (IA s 10B)  
sch 1 pt 9 commenced 12 September 2001 (s 2 and see Gaz 2001 No S65)

#### **Agents Amendment Act 2001 No 67**

notified 10 September 2001 (Gaz 2001 No S66)  
commenced 10 September 2001 (s 2)

#### **Justice and Community Safety Legislation Amendment Act 2002 No 27 pt 3**

notified LR 9 September 2002  
s 1, s 2 commenced 9 September 2002 (LA s 75)  
pt 3 commenced 7 October 2002 (s 2 (2))

#### **Statute Law Amendment Act 2002 (No 2) No 49 amdt 3.222**

notified LR 20 December 2002  
s 1, s 2 taken to have commenced 7 October 1994 (LA s 75 (2))  
amdt 3.222 commenced 24 September 1997 (s 2 (3))

*Note* This Act only amends the Remuneration Tribunal (Consequential Amendments) Act 1997 No 41.

## 4 Amendment history

### **Commencement**

s 2 am 1992 No 23 sch 1  
om R7 LRA (see also 2001 No 44 amdt 1.82)

**Application of Act**

s 3 am 1984 No 49 s 8; 1985 No 9 sch 2; 1988 No 47 s 4; 1989 No 38 sch 1; 1992 No 22 s 4; 1993 No 1 sch 1; 1994 No 45 sch; 1997 No 96 sch; 2001 No 44 amdt 1.83, amdt 1.84; R8 LA

**Parts**

s 4 om 1976 No 43 s 2

**Interpretation**

s 5 am 1970 No 18 s 2; 1984 No 49 s 4, s 8; 1988 No 47 s 5; 1992 No 22 s 5; 1992 No 30 sch 1; 1993 No 1 sch 1; 1999 No 33 sch

def **Administration Account** ins 1992 No 22 s 5

def **administrator** ins 1988 No 47 s 5

def **agent** sub 1988 No 47 s 5  
am 2000 No 9 s 4

def **applicant** sub 1988 No 47 s 5

def **authorised officer** ins 1988 No 47 s 5

def **Board** ins 1988 No 47 s 5

def **Board of Trustees** ins 1998 No 60 s 4

def **business** ins 1988 No 47 s 5  
am 2000 No 9 s 4

def **business agent** ins 1988 No 47 s 5

def **Chairman** ins 1988 No 47 s 5  
am 1993 No 1 sch 1

def **commercial premises** ins 1988 No 47 s 5

def **company** om 1970 No 18 s 2  
ins 1988 No 47 s 5

def **compensation fund** ins 1988 No 47 s 5

def **compensation scheme** ins 1988 No 47 s 5

def **co-operative society** ins 1988 No 47 s 5

def **Corporations Law** ins 1992 No 22 s 5

def **corresponding law** ins 1988 No 47 s 5

def **Department** ins 1984 No 49 s 4

def **departmental member** ins 1988 No 47 s 5  
om 1989 No 38 sch 1

def **Deputy Chairman** ins 1988 No 47 s 5  
am 1993 No 1 sch 1

def **Deputy Registrar** ins 1988 No 47 s 5  
sub 1994 No 97 sch

def **determined fee** ins 1992 No 22 s 5  
am 2001 No 44 amdt 1.85

def **director** ins 1988 No 47 s 5

def **employment agent** ins 2000 No 9 s 4

def **failure to account** ins 1992 No 22 s 5

def **Financial Institutions (ACT) Code** ins 1992 No 30 sch 1  
om 1999 No 33 sch

def **Fund** ins 1992 No 22 s 5

## Endnotes

### 4 Amendment history

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- def **identity card** ins 1988 No 47 s 5  
om 1999 No 66 sch 3
- def **inquiry** sub 1988 No 47 s 5
- def **inspector** sub 1988 No 47 s 5; 1994 No 97 sch
- def **Interest Account** ins 1992 No 22 s 5
- def **land** ins 1988 No 47 s 5  
am 2001 No 17 amdt 2.1
- def **lease** sub 1988 No 47 s 5
- def **licence** ins 1988 No 47 s 5  
am 2000 No 9 s 4
- def **licensed agent** sub 1988 No 47 s 5
- def **member** sub 1988 No 47 s 5  
am 1992 No 22 s 5; 1993 No 1 sch 1
- def **memorandum of association** ins 1988 No 47 s 5
- def **Minister of State** ins 1988 No 47 s 5
- def **model** ins 2000 No 9 s 4
- def **occupier** ins 1988 No 47 s 5
- def **officer** ins 1988 No 47 s 5
- def **participant** ins 1988 No 47 s 5  
sub 1998 No 60 s 4
- def **pecuniary loss** ins 1992 No 22 s 5
- def **performer** ins 2000 No 9 s 4
- def **prescribed qualifications** ins 1988 No 47 s 5
- def **public service member** ins 1989 No 38 sch 1  
om 1992 No 22 s 5
- def **real estate agent** ins 1988 No 47 s 5
- def **receiver** ins 1988 No 47 s 5
- def **register** sub 1988 No 47 s 5
- def **registered** sub 1988 No 47 s 5
- def **Registrar** ins 1988 No 47 s 5  
sub 1994 No 97 sch
- def **rules of conduct** ins 1988 No 47 s 5
- def **rural purposes** am 1984 No 49 s 8  
sub 1988 No 47 s 5
- def **stock and station agent** ins 1988 No 47 s 5
- def **the Board** om 1988 No 47 s 5
- def **the Chairman** om 1988 No 47 s 5
- def **the departmental member** sub 1973 No 39 s 3  
am 1984 No 49 s 8  
om 1988 No 47 s 5
- def **the Deputy Chairman** om 1988 No 47 s 5
- def **the Registrar** om 1988 No 47 s 5
- def **trade union** ins 1988 No 47 s 5  
sub 1993 No 1 sch 1



def **travel agent** ins 1988 No 47 s 5  
def **trust account** sub 1988 No 47 s 5  
def **trust deed** ins 1988 No 47 s 5  
am 1998 No 60 s 4  
def **trustees** ins 1988 No 47 s 5  
om 1998 No 60 s 4  
def **trust money** sub 1988 No 47 s 5

**Real estate agents—interpretation**

s 5A ins 1988 No 47 s 6

**Stock and station agents—interpretation**

s 5B ins 1988 No 47 s 6

**Business agents—interpretation**

s 5C ins 1988 No 47 s 6

**Travel agents—interpretation**

s 5D ins 1988 No 47 s 6  
am 1993 No 1 sch 1

**Employment agents—interpretation**

s 5DA ins 2000 No 9 s 5

**Employees of agents**

s 5E ins 1988 No 47 s 6  
am 2000 No 9 s 6

**Fit and proper person**

s 5F ins 1988 No 47 s 6  
am 1993 No 1 sch 1; 2000 No 9 s 7

**Registrar of Agents**

s 6 am 1973 No 39 s 4; 1984 No 49 s 8; 1988 No 47 s 7; 1989 No  
38 sch 1; 1993 No 1 sch 1  
sub 1994 No 97 sch

**Deputy Registrars of Agents**

s 6A ins 1988 No 47 s 8  
sub 1994 No 97 sch

**Inspectors**

s 6B ins 1994 No 97 sch

**Inspectors—identity cards**

s 6C ins 1994 No 97 sch  
am 1998 No 54 sch  
sub 1999 No 66 sch 3

**Register**

s 7 am 1988 No 47 s 9; 2000 No 9 s 8

## Endnotes

### 4 Amendment history

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#### **The agents board**

s 8 am 1992 No 22 s 6

#### **Constitution of the board**

s 9 am 1971 No 22 s 2; 1972 No 33 s 2  
sub 1973 No 39 s 5  
am 1984 No 49 s 8; 1988 No 47 s 10; 1989 No 38 sch 1; 1992  
No 22 s 7; 1993 No 1 sch 1; 1994 No 76 sch; 1997 No 96 sch

#### **Chairperson and deputy chairperson**

s 10 am 1992 No 22 s 8; 1993 No 1 sch 1

#### **Remuneration and allowances**

s 11 sub 1973 No 39 s 6; 1976 No 61 s 2; 1989 No 50 sch  
om 1997 No 41 sch 1

#### **Ending of appointments**

s 12 sub 2002 No 27 s 7

#### **Vacation of office**

s 13 am 1973 No 39 s 7; 1988 No 47 s 11; 1993 No 1 sch 1  
om 2002 No 27 s 7

#### **Resignation of member**

s 14 am 1989 No 38 sch 1; 1992 No 22 s 9  
sub 1993 No 1 sch 1  
om 2002 No 27 s 7

#### **Acting appointments**

s 15 am 1973 No 39 s 8; 1984 No 49 s 8; 1989 No 38 sch 1; 1992  
No 22 s 10; 1992 No 23 sch 1; 1993 No 1 sch 1; 1997 No 41  
sch 1

#### **Meetings of the board**

s 16 am 1988 No 47 s 12; 1993 No 1 sch 1; 2002 No 27 s 8; ss  
renum R10 LA

#### **Disclosure of interests**

s 16A ins 2002 No 27 s 9

#### **Annual reports of board**

s 17A ins 1976 No 43 s 3  
sub 1992 No 22 s 11  
om 1996 No 26 sch pt 2  
ins 2000 No 9 s 9

#### **Carrying on business without a licence and related matters**

pt 3 hdg sub 1988 No 47 s 13

#### **Natural persons to be licensed**

s 18 am 1988 No 47 s 14; 1992 No 23 sch 1; 1998 No 54 sch; 2000  
No 9 s 10

**Companies to be licensed**

s 19 am 1988 No 47 s 15; 1998 No 54 sch; 2000 No 9 s 11

**Unlicensed travel agents—additional penalty**

s 19A ins 1988 No 47 s 16  
am 1989 No 38 sch 1; 1998 No 60 s 5

**Licensed employment agents—receipt of remuneration**

s 19B ins 2000 No 9 s 12

**General**

div 4.1 hdg (prev pt 4 div 1 hdg) renum R8 LA (see 2001 No 67 s 14)

**Definitions for pt 4**

s 20 sub 1985 No 6 s 4  
def **prescribed date** ins 1985 No 6 s 4  
def **prescribed person** ins 1985 No 6 s 4

**Prescribed date**

s 21 am 1985 No 6 s 5; 1993 No 1 sch 1

**Regulations to prescribe educational qualifications to be held after the prescribed date**

s 22 am 1985 No 6 s 6; 1993 No 1 sch 1

**Certain persons ineligible to apply for registration without leave of the Board**

s 23 om 1988 No 47 s 17

**Qualifications for registration for persons engaged in business at the commencement of this Ordinance**

s 24 am 1974 No 47 sch 1  
om 1992 No 22 s 12

**Qualifications of persons other than those referred to in section 24 who apply for registration before prescribed date**

s 25 am 1974 No 47 sch 1  
om 1992 No 22 s 12

**Qualifications required for registration as real estate agents**

div 4.2 hdg (prev pt 4 div 2 hdg) renum R8 LA (see 2001 No 67 s 14)

**Qualifications for registration as real estate agent—applications after prescribed date**

s 26 am 1974 No 47 sch 1; 1985 No 6 s 7; 1987 No 25 s 3; 1992 No 23 sch 1; 1993 No 1 sch 1

**Provisions applicable in relation to periods of employment**

s 27 am 1993 No 1 sch 1

**Qualifications for registration for persons engaged in business at the commencement of this Ordinance**

s 28 am 1974 No 47 sch 1  
om 1992 No 22 s 12

## Endnotes

4 Amendment history

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**Qualifications of persons other than those referred to in section 28 who apply for registration before prescribed date**

s 29 am 1974 No 47 sch 1  
om 1992 No 22 s 12

**Qualifications required for registration as stock and station agents**

div 4.3 hdg (prev pt 4 div 3 hdg) renum R8 LA (see 2001 No 67 s 14)

**Qualifications for registration as stock and station agent—applications after prescribed date**

s 30 am 1974 No 47 sch 1; 1985 No 6 s 8; 1987 No 25 s 4; 1992 No 23 sch 1; 1993 No 1 sch 1

**Provisions applicable in relation to periods of employment**

s 31 am 1993 No 1 sch 1

**Qualifications for registration for persons engaged in business at the commencement of this Ordinance**

s 32 am 1974 No 47 sch 1  
om 1992 No 22 s 12

**Qualifications of persons other than those referred to in section 32 who apply for registration before prescribed date**

s 33 am 1974 No 47 sch 1  
om 1992 No 22 s 12

**Qualifications required for registration as business agents**

div 4.4 hdg (prev pt 4 div 4 hdg) renum R8 LA (see 2001 No 67 s 14)

**Qualifications for registration as business agent—applications after prescribed date**

s 34 am 1974 No 47 sch 1; 1985 No 6 s 9; 1987 No 25 s 5; 1992 No 23 sch 1; 1993 No 1 sch 1

**Provisions applicable in relation to periods of employment**

s 35 am 1992 No 23 sch 1; 1993 No 1 sch 1

**Applications for registration and objections to applications**

div 4.5 hdg (prev pt 4 div 5 hdg) renum R8 LA (see 2001 No 67 s 14)

**Applications for registration**

s 36 am 1993 No 1 sch 1; 2001 No 44 amdts 1.86-1.88

**Objections to registration**

s 37 am 1992 No 22 s 13; 1992 No 23 sch 1; 1993 No 1 sch 1; 2001 No 44 amdt 1.89

**Determination by the board of applications**

div 4.6 hdg (prev pt 4 div 6 hdg) renum R8 LA (see 2001 No 67 s 14)

**Grant or refusal of registration**

s 38 am 1993 No 1 sch 1

**Inquiry to be held by the board before refusing registration**

s 39 am 1993 No 1 sch 1

**Grounds for refusing application to be notified to the applicant**

s 40 am 1993 No 1 sch 1

**Registration certificates**

s 41 am 1988 No 47 s 18; 1992 No 22 s 14; 2001 No 44  
amds 1.90-1.93

**Periodic fees**

div 4.7 hdg (prev pt 4 div 7 hdg) ins 1992 No 22 s 15  
renum R8 LA (see 2001 No 67 s 14)

**Fees payable by registered agents**

s 41A ins 1992 No 22 s 15  
sub 2001 No 44 amdt 1.94

**Eligibility for grant of licence as real estate agent**

div 5.1 hdg (prev pt 5 div 1 hdg) renum R8 LA (see 2001 No 67 s 14)

**Eligibility—natural persons**

s 42 am 1988 No 47 s 19; 1993 No 1 sch 1

**Eligibility—companies**

s 43 am 1970 No 18 s 3; 1984 No 49 s 8; 1988 No 47 s 20; 1993  
No 1 sch 1

**Eligibility for grant of licence as stock and station agent**

div 5.2 hdg (prev pt 5 div 2 hdg) renum R8 LA (see 2001 No 67 s 14)

**Eligibility—natural persons**

s 44 am 1988 No 47 s 21; 1993 No 1 sch 1

**Eligibility—companies**

s 45 am 1970 No 18 s 4; 1984 No 49 s 8; 1988 No 47 s 22; 1993 No  
1 sch 1

**Eligibility for grant of licence as business agent**

div 5.3 hdg (prev pt 5 div 3 hdg) renum R8 LA (see 2001 No 67 s 14)

**Eligibility—natural persons**

s 46 am 1988 No 47 s 23; 1992 No 23 sch 1

**Eligibility companies**

s 47 am 1970 No 18 s 5; 1978 No 46 sch 2; 1984 No 49 s 8; 1988  
No 47 s 24; 1993 No 1 sch 1

**Eligibility for grant of travel agent's licence**

div 5.4 hdg (prev pt 5 div 3A hdg) ins 1988 No 47 s 25  
renum R8 LA (see 2001 No 67 s 14)

## Endnotes

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### **Eligibility—natural persons**

s 47A ins 1988 No 47 s 25  
am 1998 No 60 s 6

### **Eligibility—companies**

s 47B ins 1988 No 47 s 25  
am 1998 No 60 s 7

### **Qualifications for travel agent, director or manager**

s 47C ins 1988 No 47 s 25

### **Eligibility for grant of employment agent's licence**

div 5.5 hdg (prev pt 5 div 3AA hdg) ins 2000 No 9 s 13  
renum R8 LA (see 2001 No 67 s 14)

### **Eligibility—natural persons**

s 47CA ins 2000 No 9 s 13

### **Eligibility—companies**

s 47CB ins 2000 No 9 s 13

### **Licences held by partnerships**

div 5.6 hdg (prev pt 5 div 3B hdg) ins 1988 No 47 s 25  
renum R8 LA (see 2001 No 67 s 14)

### **Application**

s 47D ins 1988 No 47 s 25  
am 1993 No 1 sch 1

### **Notice of partnership**

s 47E ins 1988 No 47 s 25  
am 1992 No 22 s 34; 1993 No 1 sch 1; 2001 No 44 amdt 1.95

### **Rights and liabilities of partners**

s 47F ins 1988 No 47 s 25  
am 1993 No 1 sch 1

### **Offences by partners**

s 47G ins 1988 No 47 s 25  
am 1993 No 1 sch 1

### **Suspension or cancellation of a partner's licence**

s 47H ins 1988 No 47 s 25  
am 1993 No 1 sch 1

### **Applications for licences by individuals**

s 48 am 1984 No 49 s 8; 1988 No 47s 26; 1989 No 4 s 3; 1989  
No 38 sch 1; 1992 No 22 s 16; 1993 No 1 sch 1; 1994 No 38  
sch 1 pt 5; 2001 No 67 ss 4-7; pars renum R8 LA (see 2001  
No 67 s 8)

### **Applications, objections and determination of applications for licences**

div 5.7 hdg (prev pt 5 div 4 hdg) renum R8 LA (see 2001 No 67 s 14)

**Applications for licences by companies**

s 49 am 1984 No 49 s 8; 1988 No 47 s 27; 1989 No 4 s 4; 1989 No 38 sch 1; 1992 No 22 s 17; 1993 No 1 sch 1; 1994 No 38 sch 1 pt 5; 2001 No 67 ss 9-11; pars renum R8 LA (see 2001 No 67 s 12)

**Objections to grant of licence**

s 50 am 1992 No 22 s 18; 1993 No 1 sch 1

**Grant or refusal of licence**

s 51 am 1988 No 47 s 28; 1993 No 1 sch 1; 2000 No 9 s 14

**Inquiry to be held by the board before refusing to grant a licence**

s 52 am 1993 No 1 sch 1

**Issue of licences**

s 53 am 1988 No 47 s 29; 1992 No 22 s 19; 2000 No 9 s 15; 2001 No 44 amds 1.96-1.98

**Licences subject to conditions**

s 53A ins 1988 No 47 s 30

**Company directors specified in licence**

s 54 am 1988 No 47 s 31; 1993 No 1 sch 1

**Periodic fees**

div 5.8 hdg (prev pt 5 div 5 hdg) ins 1992 No 22 s 20  
renum R8 LA (see 2001 No 67 s 14)

**Fees payable by licensed agents**

s 54A ins 1992 No 22 s 20  
sub 2001 No 44 amdt 1.99

**Trust moneys**

div 6.1 hdg (prev pt 6 div 1 hdg) renum R8 LA (see 2001 No 67 s 14)

**Trust money**

s 55 am 1988 No 47 s 32; 1993 No 1 sch 1; 2000 No 9 s 16

**Trust accounts**

div 6.2 hdg (prev pt 6 div 2 hdg) renum R8 LA (see 2001 No 67 s 14)

**Application of div 6.2**

s 55A ins 1988 No 47 s 33  
am 2000 No 9 s 17

**Opening of trust accounts**

s 56 am 1993 No 1 sch 1

**Payments of moneys into and from trust account**

s 57 am 1993 No 1 sch 1

**Unclaimed trust moneys held by licensed agent**

s 57A ins 1992 No 22 s 21

## Endnotes

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#### **Trust moneys held by former licensed agent**

s 57B ins 1992 No 22 s 21

#### **Additional statement to be furnished**

s 57C ins 1992 No 22 s 21

#### **Duties of board in relation to unclaimed moneys in trust account**

s 57D ins 1992 No 22 s 21  
am 1993 No 64 sch 1; 2001 No 44 amdt 1.100-1.105; 2002  
No 27 s 10

#### **Application to recover moneys**

s 57E ins 1992 No 22 s 21  
am 1993 No 64 sch 1; 2002 No 27 s 11

#### **Determination of applications**

s 57F ins 1992 No 22 s 21  
am 1993 No 64 sch 1; 2002 No 27 s 12

#### **Offences etc**

s 57G ins 1992 No 22 s 21  
am 1998 No 54 sch

#### **Protection of trust moneys**

s 58 am 1993 No 1 sch 1

#### **Provisions applicable to banks**

s 59 am 1993 No 1 sch 1

#### **Arrangement relating to trust bank account**

s 59A ins 1992 No 22 s 22

#### **Agents' records**

div 6.3 hdg (prev pt 6 div 3 hdg) renum R8 LA (see 2001 No 67 s 14)

#### **Accounting records**

s 60 am 1988 No 47 s 34; 1993 No 1 sch 1; 2000 No 9 s 18

#### **Receipts**

s 61 am 1988 No 47 s 35; 1993 No 1 sch 1; 2000 No 9 s 19

#### **Audit and inspection of trust accounts**

div 6.4 hdg (prev pt 6 div 4 hdg) renum R8 LA (see 2001 No 67 s 14)

#### **Application of div 6.4**

s 61A ins 1988 No 47 s 36  
am 2000 No 9 s 20

#### **Meaning of *prescribed period* in div 6.4**

s 62 am 1993 No 1 sch 1

#### **Audit of accounts**

s 63 am 1993 No 1 sch 1



**Qualification of auditors**

s 64 am 1984 No 49 s 8; 1986 No 31 s 24; 1993 No 1 sch 1; 1995  
No 46 sch

**Agent to furnish documents and information to auditor**

s 65 am 1993 No 1 sch 1

**Auditor's report**

s 66 am 1993 No 1 sch 1

**Agent's statement relating to trust money**

s 67 am 1993 No 1 sch 1

**Report by auditor to registrar**

s 68 am 1993 No 1 sch 1

**Inspections**

s 69 om 1988 No 47 s 37

**Other records to be kept by licensed agents**

div 6.5 hdg (prev pt 6 div 5 hdg) renum R8 LA (see 2001 No 67 s 14)

**Records of other money**

s 70 am 1988 No 47 s 38; 1993 No 1 sch 1; 1998 No 54 sch; 2000  
No 9 s 21

**Information to be furnished by banks**

div 6.6 hdg (prev pt 6 div 6 hdg) renum R8 LA (see 2001 No 67 s 14)

**Inspection of bank accounts**

s 71 am 1988 No 47 s 39; 1992 No 22 s 23; 1993 No 1 sch 1; 1998  
No 54 sch; 2000 No 9 s 22

**Travel agents—miscellaneous provisions**

pt 6A hdg ins 1988 No 47 s 40

**Qualified supervisors for travel agents' businesses**

s 71A ins 1988 No 47 s 40

**Participation in compensation scheme**

s 71B ins 1988 No 47 s 40  
am 1998 No 60 s 8

**Powers of board of trustees**

s 71C ins 1988 No 47 s 40  
am 1998 No 60 s 9

**Legal action by board of trustees**

s 71D ins 1988 No 47 s 40  
am 1998 No 60 s 10

**Rights of board of trustees**

s 71E ins 1988 No 47 s 40  
am 1998 No 60 s 11

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### **Dealings with unlicensed travel agents**

s 71F ins 1988 No 47 s 40

### **Publication of names of licensed travel agents**

s 71G ins 1988 No 47 s 40  
sub 2001 No 44 amdt 1.106

### **Entry and inspection of premises**

pt 6B hdg ins 1988 No 47 s 40

### **Interpretation for pt 6B**

s 71H ins 1988 No 47 s 40

### **Entry and inspection of premises**

s 71J ins 1988 No 47 s 40

### **Consent to entry and inspection**

s 71K ins 1988 No 47 s 40

### **Search warrants**

s 71L ins 1988 No 47 s 40  
am 1993 No 1 sch 1

### **Contravention of officer's requirements**

s 71M ins 1988 No 47 s 40  
am 1998 No 54 sch

### **Administrative accounts**

pt 6C hdg ins 1992 No 22 s 24

### **Agents statutory interest account**

div 6C.1 hdg (prev pt 6C div 1 hdg) ins 1992 No 22 s 24  
renum R8 LA (see 2001 No 67 s 14)

### **Establishment and operation of interest account**

s 71N ins 1992 No 22 s 24

### **Payment of moneys into interest account**

s 71P ins 1992 No 22 s 24

### **Application of moneys in interest account**

s 71Q ins 1992 No 22 s 24  
am 2001 No 44 amdts 1.107-1.109

### **Agents administration account**

div 6C.2 hdg (prev pt 6C div 2 hdg) ins 1992 No 22 s 24  
renum R8 LA (see 2001 No 67 s 14)

### **Establishment and operation of administration account**

s 71R ins 1992 No 22 s 24  
am 1996 No 26 sch pt 2

### **Payment of moneys into administration account**

s 71S ins 1992 No 22 s 24

**Application of moneys in administration account**

s 71T ins 1992 No 22 s 24  
am 1999 No 66 sch 3

**Agents fidelity guarantee fund**

pt 6D hdg ins 1992 No 22 s 24

**Establishment of agents fidelity guarantee fund**

div 6D.1 hdg (prev pt 6D div 1 hdg) ins 1992 No 22 s 24  
renum R8 LA (see 2001 No 67 s 14)

**Establishment and operation of fund**

s 71U ins 1992 No 22 s 24  
am 1996 No 26 sch pt 2

**Moneys of fund**

s 71V ins 1992 No 22 s 24

**Application of moneys of fund**

s 71W ins 1992 No 22 s 24

**Claims against the fund**

div 6D.2 hdg (prev pt 6D div 2 hdg) ins 1992 No 22 s 24  
renum R8 LA (see 2001 No 67 s 14)

**Application of div 6D.2**

s 71X ins 1992 No 22 s 24

**Entitlement of person to claim compensation**

s 71Y ins 1992 No 22 s 24

**Advertisement relating to claims**

s 71Z ins 1992 No 22 s 24

**Claims**

s 71ZA ins 1992 No 22 s 24  
sub 2001 No 67 s 13

**Requirement to furnish information and produce documents**

s 71ZB ins 1992 No 22 s 24

**Requirement to institute proceedings**

s 71ZC ins 1992 No 22 s 24

**Determination of claims**

s 71ZD ins 1992 No 22 s 24

**Payment of compensation**

s 71ZE ins 1992 No 22 s 24

**Interim payment of compensation**

s 71ZF ins 1992 No 22 s 24

## Endnotes

4 Amendment history

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### **Insufficiency of fund**

s 71ZG ins 1992 No 22 s 24

### **Subrogation**

s 71ZH ins 1992 No 22 s 24

### **Rules of conduct—licensed agents**

s 72 am 1988 No 47 s 41; 1992 No 22 s 25; 1993 No 1 sch 1; 2000 No 9 s 23

### **Rules of conduct—registered agents**

s 73 am 1992 No 22 s 26; 1993 No 1 sch 1

### **Registrar to call upon agent who appears to have committed a breach of rules of conduct**

s 74 am 1993 No 1 sch 1

### **Inquiry by board**

s 75 am 1988 No 47 s 42; 1992 No 22 s 27; 1993 No 1 sch 1

### **Code of practice for employment agents**

pt 8A hdg ins 2000 No 9 s 24

### **Approval of code of practice**

s 75A ins 2000 No 9 s 24  
am 2001 No 44 amdt 1.110, amdt 1.111

### **Complying with approved code of practice**

s 75B ins 2000 No 9 s 24

### **Surrender of licences**

s 76 am 1993 No 1 sch 1

### **Revocation of registration or licence**

s 77 am 1984 No 49 s 5  
sub 1988 No 47 s 43  
am 1992 No 22 s 28; 1993 No 1 sch 1; 1998 No 60 s 12

### **Revocation where change of directors**

s 78 am 1988 No 47 s 44; 1993 No 1 sch 1

### **Agent may give notice of intention to show cause against revocation**

s 79 sub 1993 No 1 sch 1

### **Failure to notify intention to show cause**

s 80 am 1988 No 47 s 45; 1993 No 1 sch 1

### **Inquiry where agent shows cause**

s 81 am 1988 No 47 s 46; 1993 No 1 sch 1

### **Suspension of travel or employment agent's licence**

s 82 hdg sub 2000 No 9 s 25  
s 82 sub 1988 No 47 s 47  
am 2000 No 9 s 25

**Disqualification**

s 82A ins 1988 No 47 s 47

**Effect of revocation**

s 83 am 1988 No 47 s 48

**Record of disqualification**

s 83A ins 1988 No 47 s 49

**Appointment of receiver or administrator**

pt 10 hdg sub 1988 No 47 s 50

**Appointment of receiver or administrator**

s 84 am 1988 No 5 s 2; 1988 No 47 s 51; 1993 No 1 sch 1

**Notice to bank**

s 85 am 1988 No 47 s 52; 2000 No 9 s 26

**Powers, duties and liability of receiver or administrator**

s 86 sub 1988 No 47 s 53

**Remuneration of receiver or administrator**

s 87 am 1988 No 47 s 54; 1989 No 38 sch 1

**Inquiries**

s 88 am 1988 No 47 s 55; 1989 No 38 sch 1; 1992 No 22 s 29; 1993 No 1 sch 1; 1997 No 96 sch

**Power to summon witnesses**

s 89 am 1993 No 1 sch 1

**Affirmation in lieu of oath**

s 90 om 1993 No 1 sch 1

**Failure to attend or produce documents**

s 91 am 1988 No 47 s 56; 1993 No 1 sch 1; 1998 No 54 sch

**Refusal to be sworn or give evidence**

s 92 am 1988 No 47 s 57; 1993 No 1 sch 1; 1998 No 54 sch

**Record of proceedings at inquiry**

s 93 am 1992 No 22 s 34; 1993 No 1 sch 1; 2001 No 44 amdts 1.112-1.116

**Protection of members of the board**

s 94 am 1973 No 54 s 2; 1993 No 1 sch 1

**Protection of legal practitioners, witnesses etc**

s 95 am 1997 No 96 sch

**Fees and expenses to witnesses**

s 96 am 1970 No 8 s 2; 1970 No 18 s 6; 1984 No 49 s 8; 1989 No 38 sch 1; 1993 No 1 sch 1

## Endnotes

### 4 Amendment history

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#### **Review of decisions**

pt 12 hdg sub 1988 No 47 s 58

#### **Interpretation**

s 97A ins 1989 No 38 sch 1  
om 1994 No 60 sch 1

#### **Review of decisions**

s 98 sub 1988 No 47 s 58  
am 1989 No 38 sch 1; 1992 No 22 s 30; 1994 No 60 sch 1;  
1998 No 60 s 13

#### **Notification of decisions**

s 98A ins 1988 No 47 s 58  
am 1989 No 38 sch 1; 1994 No 60 sch 1; 1998 No 60 s 14

#### **Employment of disqualified persons**

s 99 sub 1988 No 47 s 59

#### **Offences by companies**

s 100 sub 1988 No 47 s 59

#### **Agent not to share commission**

s 101 am 1988 No 47 s 60; 1993 No 1 sch 1; 2000 No 9 s 27

#### **Improper use of licence**

s 102 am 1988 No 47 s 61; 1993 No 1 sch 1

#### **Improper use of title of real estate agent**

s 103 am 1988 No 47 s 62; 1993 No 1 sch 1; 1998 No 54 sch

#### **Improper use of title of stock and station agent**

s 104 am 1978 No 46 sch 2; 1988 No 47 s 63; 1993 No 1 sch 1; 1998  
No 54 sch

#### **Improper use of title of business agent**

s 105 am 1988 No 47 s 64; 1993 No 1 sch 1; 1998 No 54 sch

#### **Improper use of title of travel agent**

s 105A ins 1988 No 47 s 65  
am 1992 No 22 s 31; 1998 No 54 sch

#### **Improper use of title of employment agent**

s 105B ins 2000 No 9 s 28

#### **False or misleading advertisements**

s 106 am 1988 No 47 s 66; 1993 No 1 sch 1; 1998 No 54 sch

#### **Preservation of accounting records**

s 107 sub 1988 No 47 s 67  
am 1998 No 54 sch

**Obstruction of authorised officer**

s 108 sub 1988 No 47 s 67  
am 1998 No 54 sch

**Production of licence for inspection**

s 109 am 1988 No 47 s 68; 1993 No 1 sch 1; 1998 No 54 sch

**Inspection of register**

s 110 am 1992 No 22 s 34; 2001 No 44 amdt 1.117, amdt 1.118

**Withholding deposits**

s 111 am 1988 No 47 s 69; 1993 No 1 sch 1

**Address of agent in advertisement**

s 112 am 1988 No 47 s 70; 1993 No 1 sch 1

**Misrepresentation of authority to act as real estate agent**

s 113 am 1988 No 47 s 71; 1993 No 1 sch 1; 1998 No 54 sch

**Misrepresentation of authority to act as business agent**

s 114 am 1988 No 47 s 72; 1993 No 1 sch 1; 1998 No 54 sch

**Notices to be displayed**

s 115 am 1988 No 47 s 73  
sub 1993 No 1 sch 1  
am 1998 No 54 sch

**Actions for commission**

s 116 sub 1992 No 22 s 32

**Rent collection by persons other than real estate agents**

s 117 am 1988 No 47 s 74; 1998 No 54 sch

**Service upon licensed agents and applicants for licences**

s 118 am 1993 No 1 sch 1

**Evidence of licensing**

s 119 am 1988 No 47 s 75; 1993 No 1 sch 1; 2000 No 9 s 29

**Determination of fees**

s 120A ins 1984 No 49 s 6  
sub 2001 No 44 amdt 1.119

**Agreements for regulations of travel agents' business**

s 120B ins 1988 No 47 s 76

**Approved forms**

s 121 om 1992 No 22 s 33  
ins 2001 No 44 amdt 1.120

**Regulation-making power**

s 122 am 1984 No 49 s 7; 1988 No 47 s 77; 1989 No 38 sch 1; 1998  
No 54 sch  
sub 2001 No 44 amdt 1.121

## Endnotes

### 5 Earlier republications

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#### **Qualifications—travel agents**

sch 1 (prev sch) ins 1988 No 47 s 78  
renum R8 LA

## 5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

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<b>Republication No</b>	<b>Amendments to</b>	<b>Republication date</b>
1	Ordinance 1989 No 50	30 June 1991
2	Act 1992 No 30	1 July 1992
3	Act 1993 No 1	1 July 1993
4	Act 1995 No 46	31 January 1996
5	Act 1996 No 26	30 November 1996
6	Act 1998 No 60	1 March 1999
7	Act 2001 No 17	20 June 2001
8	Act 2001 No 67	12 September 2001
9	Act 2001 No 67	10 October 2001
10	Act 2002 No 27	8 October 2002

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