

# AUSTRALIAN CAPITAL TERRITORY

## AGENTS ACT 1968

### DECLARATION

INSTRUMENT NO. 83 of 2001

#### EXPLANATORY STATEMENT

Section 3 of the *Agents Act 1968* (the “Act”) permits the Attorney-General, by disallowable instrument, to declare that a specified provision in the Act applies in relation to a person. In addition, the declaration may be expressed to be subject to specified conditions.

Section 71T of the *Agents Act 1968* provides that the Agents Board must make certain payments from a statutory account including the payment of legal expenses incurred in relation to the Fidelity Fund.

The effect of the declaration is that the Board will be required to meet Mr Keith Sutton’s reasonable and verified expenses in defending an appeal brought by the Agents Board in the ACT Supreme Court.

This is a desirable result given the past history of this matter.

Both the Small Claims Tribunal and the AAT have found that an agent, Bryan Rumble Real Estate, lacked authority to deduct certain money held for Mr Sutton on trust. In Small Claims proceedings, the Tribunal ordered the agent to repay \$1,500 to Mr Sutton. The agent repaid this money over an extended period of time.

Mr Sutton subsequently sought compensation from the Agents Fidelity Guarantee Fund from the Agents Board for out-of-pocket expenses on the basis that, while the agent had eventually repaid the money taken by the agent without authority, Mr Sutton had suffered loss of earnings in pursuing the agent, loss of interest and various telephone and postage costs.

While the Agents Board rejected the claim for compensation made by Mr Sutton, the AAT subsequently overturned the Agent Board decision and ordered the Board to pay compensation to Mr Sutton. The Agents Board has now appealed the decision of the AAT.

As Mr Sutton’s expenses in defending such a Supreme Court appeal would greatly exceed the award made by the AAT, this declaration makes it clear that the Board will meet Mr Sutton’s reasonable and verified expenses in defending the appeal.