



New South Wales

Property, Stock and Business Agents Bill 2001

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to repeal and re-enact the *Property, Stock and Business Agents Act 1941* with the following modifications:

- (a) the issue of licences under the Act will be on the basis of entry-level competence, good character, continuing professional development and professional indemnity insurance,
- (b) professional indemnity insurance requirements will be introduced for all licence holders,
- (c) there will be provision for requiring licence holders to undertake continuing professional development,
- (d) licences will be renewable annually,
- (e) caretaker managers will be required to be licensed as on-site residential property managers,

- (f) provision for the issue of certificates of registration for industry employees will parallel the new licensing provisions except that there will be no requirement for professional indemnity insurance,
- (g) the Director-General of the Department of Fair Trading will be able to grant exemptions from the requirement that there be a licensee in charge at each place of business under a licence,
- (h) the requirement that at least 50% of the directors of a corporate licensee must be licensed for the business conducted by the corporation is replaced with a requirement that at least one of the directors must be appropriately licensed,
- (i) obligations are placed on a licensee and the licensee in charge at a place of business to properly supervise the business carried on under a licence,
- (j) simplified and modernised disciplinary provisions are introduced, including provision for show cause proceedings, power to suspend, appointment of a manager of a licensee's business, and the keeping of a register of disciplinary action,
- (k) procedures for the taking of action in relation to general trust account deficiencies are simplified,
- (l) powers of inspection and enforcement are enhanced, and broadened to cover unlicensed trading,
- (m) provision is made for a register of bidders at auctions of residential property and rural land and for limiting vendor bids to 1 bid,
- (n) misleading advertisements and statements as to the estimated selling price of residential property are prohibited,
- (o) all benefits received by a licensee will be required to be disclosed in the relevant agency agreement,
- (p) provision is made for the disclosure of information to the client by a real estate agent who provides financial or investment advice,
- (q) the circumstances in which a licensee is required to declare a beneficial interest in a property transaction are clarified,
- (r) provision is made for the prescription by regulation of standard form agency agreements, the introduction of a cooling-off period for agency agreements, and requiring approved information to be provided to consumers prior to entering into an agency agreement,
- (s) the prohibition against recovery of commission under an agency agreement when a copy of the agreement is not served on the consumer in the required time is modified to allow a court to permit recovery of commission in some cases,

- (t) provisions for the payment of compensation out of a Compensation Fund in the event of defalcation by a licensee are extended to apply to transactions where the consumer reasonably believed he or she was dealing with a licensee,
- (u) penalty levels for offences are revised,
- (v) the language of the Act is modernised and simplified, redundant provisions are removed and various changes of a minor or statute law revision nature are made.

The Bill also contains savings and transitional provisions and makes consequential amendments to various Acts.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 defines certain words and expressions used in the proposed Act.

Clause 4 exempts certain persons from the requirement to hold a licence under the proposed Act.

Clause 5 provides that notes in the proposed Act are explanatory only and do not form part of the Act.

Part 2 Licences and certificates of registration

Division 1 Requirement for licence or certificate of registration

Clause 6 specifies the kinds of licences and certificates of registration that may be granted under the proposed Act.

Clause 7 provides that a natural person must not, without a relevant licence, carry on the business of (or advertise, notify or state that the person acts as or carries on the business of or is willing to act as or carry on the business of):

- (a) a real estate agent, or

- (b) a stock and station agent, or
- (c) a business agent, or
- (d) a strata management agent or community managing agent, or
- (e) an on-site residential property manager.

The clause also provides that a natural person is not entitled to bring any proceeding in any court or tribunal to recover any commission, fee, gain or reward for any service performed by the person in that capacity unless the person was the holder of a relevant licence.

Clause 8 provides that a corporation must not act as or carry on the business of (or advertise, notify or state that the corporation acts as or carries on the business or is willing to act as or carry on the business of) an agent unless the corporation holds a corporation licence.

The clause also provides that a corporation is not entitled to bring any proceeding in any court to recover any commission, fee, gain or reward for any service performed by the corporation as an agent unless the corporation was the holder of a corporation licence at the time of performing the service.

Clause 9 provides that a person must not do any of the following things unless the person is the holder of a certificate of registration:

- (a) be or remain as a real estate salesperson, stock and station salesperson, business salesperson or trainee managing agent, or
- (b) represent that the person is a real estate salesperson, stock and station salesperson, business salesperson or trainee managing agent, or
- (c) act as, or exercise any of the functions of, a real estate salesperson, stock and station salesperson, business salesperson or trainee managing agent.

Clause 10 provides that the holder of a certificate of registration must not act as, or exercise any of the functions of, a real estate salesperson, stock and station salesperson, business salesperson or trainee managing agent unless the person is employed and supervised by the holder of a licence under the proposed Act.

Clause 11 provides that a licensee or registered person must, if requested to do so, produce his or her licence or certificate of registration to an authorised person and allow the authorised person to inspect the licence or certificate.

Clause 12 provides that the holder of a licence or certificate of registration must not let out, hire or lend the licence or certificate to any other person.

Division 2 Eligibility, qualifications and disqualification

Clause 13 specifies the matters of which the Director-General must be satisfied for a natural person or corporation to be eligible to hold a licence or certificate of registration.

Clause 14 specifies that the qualifications required for the issue of a licence or certificate of registration are the qualifications approved by the Minister from time to time by order published in the Gazette.

The Minister's power to approve qualifications includes, but is not limited to, the power to approve qualifications by reference to the completion of a course of study, the completion of a period of training in a particular activity, the attainment of a standard of competency in a particular activity and the satisfaction of professional development requirements.

Clause 15 specifies the grounds on which a person is disqualified from holding a licence or certificate of registration.

Clause 16 specifies that an *approved policy of professional indemnity insurance* for the purposes of the Act is a policy, or a policy of a kind, that is approved by the Minister for the time being by order published in the Gazette.

Division 3 Application and issue procedure

Clause 17 sets out the procedure for applying for a licence or certificate of registration. An application is to be made to the Director-General in a form approved by the Director-General.

Clause 18 provides that the Director-General may make the inquiries in relation to an application. If requested by the Director-General, the Commissioner of Police must investigate an application and make a report on the investigation to the Director-General.

Clause 19 provides that the Director-General must grant or refuse an application and cause notice of the decision to be given to the applicant.

Clause 20 provides that a licence or certificate of registration may be granted subject to conditions, including any of the following conditions:

- (a) a condition prohibiting a real estate agent or stock and station agent from acting as an auctioneer unless he or she has completed an approved course of study,
- (b) a condition prohibiting the holder of a licence or certificate of registration from exercising certain functions other than as an employee of a licensee,

- (c) a condition requiring the holder of a licence or certificate of registration to undertake or complete specified study, education or training.

Clause 21 specifies special conditions in respect of an on-site residential property manager's licence or certificate of registration of a trainee on-site residential property manager.

Clause 22 provides that licences and certificates of registration are to be in the form, and specify the information, determined by the Director-General.

Clause 23 provides that a licence or certificate of registration has effect for 1 year from the date on which it is granted, or the later date specified.

Clause 24 specifies the procedure for the reissue or restoration of a licence or certificate of registration.

Clause 25 provides that a person may apply to the Administrative Decisions Tribunal for a review of a decision by the Director-General to refuse to grant a licence or certificate of registration to the person, or to impose a condition on the person's licence or certificate.

Part 3 General conduct of licensees and registered persons

Division 1 Place and name of business

Clause 26 provides that a licensee must have a registered office within New South Wales.

Clause 27 provides that a licensee must display the licensee's name and description as a licensee outside the licensee's registered office and any other place at which the licensee's business is carried on.

Clause 28 provides that a licensee may carry out business, or advertise or hold out that the licensee carries on business as a licensee, only under the licensee's name (and the name of each other person, if any, with whom the licensee is carrying on business) or another name approved by the Director-General.

Division 2 Business practices and supervision

Clause 29 provides that an individual who carries on business under a licence at more than one place of business, or a corporation that holds a corporation licence, must employ at each place of business as the person in charge, a person who is the holder of a relevant licence.

Clause 30 provides that a licensee must properly supervise the business carried on by the licensee. A similar obligation is placed on a licensee employed by another licensee as the person in charge of business at a place.

The requirement to properly supervise the conduct of the business includes a requirement to properly supervise employees engaged in the business, to establish procedures designed to ensure that the provisions of the Act (and any other laws relevant to the conduct of that business) are complied with and to monitor compliance with the procedures.

The Director-General may issue guidelines as to what constitutes proper supervision of the business of a licensee.

Clause 31 provides that a licensee must not enter into an arrangement with an unlicensed person whereby the unlicensed person is entitled to a share of the commission, fee, gain or reward payable to the licensee in respect of any transaction.

Clause 32 provides that any agreement between licensees to share any commission, fee, gain or reward must be in writing, signed by the licensees and contain the terms, if any, prescribed by the regulations.

Clause 33 provides that a licensee who enters into a franchising agreement in connection with the conduct of the licensee's business as a licensee must give notice of the agreement to the Director-General.

Clause 34 provides that a licensee cannot commence an action or other proceedings for the recovery of remuneration or reimbursement of expenses until 28 days after a statement of claim has been served on the person to be charged with the remuneration or expenses.

A person served with a statement of claim may apply to the Tribunal for the determination of a consumer claim within the meaning of the *Consumer Claims Act 1998*.

Clause 35 provides that regulations may prescribe rules of conduct to be observed in the course of the carrying on of business under a licence.

Clause 36 provides that the Director-General may accept a written undertaking from the holder of a licence or a certificate of registration as to the manner in which the holder will exercise functions under the licence or certificate.

Clause 37 imposes an obligation of a licensee to notify the Director-General of any failure to account by the licensee.

Division 3 Employees

Clause 38 provides that a licensee is liable, in tort and contract, for anything done or not done, by an employee within the scope of the employee's authority or for the benefit, or purported or intended benefit, of the licensee or the licensee's business.

Clause 39 specifies the records a licensee must keep in respect of employees.

Clause 40 provides that a licensee must not employ certain specified persons in any capacity in connection with the carrying on of the business conducted by the licensee.

Clause 41 imposes a duty on a licensee to notify the Director-General within 7 days of becoming aware that a person employed by the licensee has become a disqualified person.

Clause 42 imposes a duty on an employee of a licensee to notify the licensee within 7 days if the employee becomes a disqualified person.

Division 4 Conflicts of interest

Clause 43 provides that the regulations may make provision for or with respect to requiring a real estate agent who provides financial or investment advice to a person in connection with the sale or purchase of land to provide to the person specified information or warnings.

Clause 44 provides that a licensee cannot act on behalf of both the buyer and seller of land at the same time.

Clause 45 provides that a real estate agent who is retained by a client as an agent for the sale of a property, or a real estate salesperson employed by the agent, must not obtain a beneficial interest in the property.

Division 5 Advertisements and representations

Clause 46 provides that a licensee must not publish an advertisement relating to or in connection with the licensee's business unless the advertisement includes specified information relating to the licensee's name or business name and the licence number.

Clause 47 provides that a licensee must not publish, or cause to be published, any statement that is intended, or apparently intended, by the licensee to promote the sale or lease of any property if the statement is false, misleading or deceptive.

Clause 48 provides that a person regulated under the proposed Act who, by any false, misleading or deceptive statement, representation or promise, induces another person to enter into any contract or arrangement is guilty of an offence.

Clause 49 provides that an agreement for the sale and purchase of land, or any interest in land, cannot operate to prevent the purchaser from claiming or being awarded damages or other relief for fraudulent misrepresentation.

Part 4 Agency agreements

Division 1 Requirements for agency agreements

Clause 50 defines certain terms used in the Division.

Clause 51 provides that a licensee is not entitled to any commission or expenses from a person for or in connection with services performed by the licensee in the capacity of licensee for or on behalf of the person unless the services were performed pursuant to a written agreement, the agreement complies with any applicable requirements of the regulations and a copy of the agreement was served by the licensee on that person within 48 hours after the agreement was signed.

The regulations may make provision for or with respect to the form, and the terms, conditions and other provisions, of such agreements and may prescribe standard forms for such agreements.

Clause 52 provides that a real estate agent must not enter into an agreement with a person for the sale of residential property unless the agent has provided the person with a copy of the relevant guide approved by the Director-General.

Clause 53 provides that a real estate agent is not entitled to any expenses from a person for or in connection with services performed by the agent in the capacity of licensee unless the licensee has disclosed all rebates, discounts or commissions that the licensee will or may receive in respect of those expenses.

Clause 54 provides that a licensee must not enter into an agreement with a person in respect of the sale of residential property or rural land if the property or land is or is to be the subject of a sole agency agreement or exclusive agency agreement with another licensee.

Division 2 Cooling-off period for residential or rural agency agreements

Clause 55 provides that there is to be a cooling-off period for every agency agreement in respect of the sale of residential property or rural land. The cooling-off period commences when the agency agreement is signed and ends at 5 pm on the next day that is a business day or a Saturday.

Clause 56 provides that a client can rescind an agency agreement by serving a notice of rescission on the agent during the cooling-off period and sets out the requirement for a notice of rescission to be effective.

Clause 57 provides for the effect of a rescission of an agency agreement.

Clause 58 provides that a provision of an agreement or arrangement is void to the extent that it would have the effect of excluding, modifying or restricting the operation of the Division.

Part 5 Residential property and rural land sales

Division 1 Contract for sale of residential property

Clause 59 provides that a real estate agent must not offer residential property for sale unless the required documents are available for inspection at the real estate agent's registered office by a prospective purchaser or a prospective purchaser's agent. The required documents include a copy of the proposed contract for the sale of the property and the documents required by section 52A of the *Conveyancing Act 1919* to be attached to the contract before signature by the purchaser.

Clause 60 provides that a real estate agent may insert the purchaser's details in a contract for the sale of residential property, insert in or delete from a contract for the sale of residential property any description of furnishings or chattels to be included in the sale or participate in the exchange or making of contracts for the sale of residential property.

Clause 61 sets out the procedure following the rescission of a contract for the sale of residential property, or an option for the purchase of residential property.

Division 2 Bidding at auction of residential property or rural land

Clause 62 provides that a sale by auction of residential property or rural land must include in the conditions of sale the right by the seller, or by any person acting on behalf of the seller or auctioneer, to make 1 bid. The seller, or any person acting on behalf of the seller or auctioneer, must not make more than 1 bid.

Clause 63 provides that the auctioneer at a sale by auction of residential property or rural land must not take a bid from a person unless the person's relevant details have been entered in a Bidders Record and the person is identified at the auction by the person displaying an identifying number.

Clause 64 imposes an obligation on a real estate agent engaged to act in respect of the sale of residential property or rural land by auction to make a record (the *Bidders Record*) of the persons who will be entitled to bid at the auction.

Clause 65 provides that a real estate agent must not enter a person's name and address in a Bidders Record unless those details are established by proof of identity of the person or, if the person is acting on behalf of another person, a letter of authority to act on behalf of that person specifying that person's name and address.

Clause 66 provides that a Bidders Record is confidential.

Clause 67 provides that the Director-General may approve a consumer education guide for prospective bidders at an auction of residential or rural land.

Division 3 Representations as to selling price of residential property

Clause 68 provides that a real estate agent, or an agent's employee, must not make a false representation to a seller or prospective seller of residential property as to the agent's or employee's true estimate of the selling price of the property.

Clause 69 creates offences in relation to a real estate agent, or an agent's employee, making false representations to a prospective buyer of residential property, including falsely understating the estimated selling price of the property or indicating the price at which it is thought bidding at an auction of the property will start.

Clause 70 provides that the Director-General may require a real estate agent to substantiate any estimate of the selling price of residential property made by the agent.

Clause 71 provides that the Division extends to an estimated price range in the same way as it applies to estimated price.

Clause 72 provides a definition of *estimate* as used in the Division.

Part 6 Auctions—general

Clause 73 prohibits the use of collusive practices at auction sales of land or livestock.

Clause 74 provides that an auctioneer, or an auctioneer's employee, must not knowingly enter in any record kept or required to be kept by the auctioneer as the purchaser of any land or livestock sold by auction any name other than the name of the actual successful bidder of the land or livestock.

Clause 75 provides that an auctioneer must not knowingly misrepresent, or cause or permit to be misrepresented, the value, composition, structure, character or quality, or the origin of manufacture, of any land or livestock put up for sale at an auction conducted by the auctioneer.

Clause 76 provides that a sale by auction of livestock may be notified in the conditions of sale to be subject to the right by the seller, or by any person on behalf of the seller or auctioneer, to make 1 bid or a specified number of bids.

Clause 77 provides that any provision in, or applying to, an agreement for the sale of property by auction that purports to exclude or restrict (otherwise than in accordance with the proposed Act or any other Act) the operation of any conditions prescribed as being applicable to or in respect of the sale by auction of that property, or property of that class or description, is void.

Clause 78 provides that the successful bidder at an auction of land or livestock must supply to the auctioneer, or an employee of the auctioneer, the bidder's name or, if bidding on behalf of another person, the name of the person on whose behalf he or she bid.

Clause 79 provides that an auctioneer must not, at an auction for the sale of livestock, sell any lot for a price lower than any price bid in relation to the sale of that lot.

Part 7 Trust accounts

Division 1 Preliminary

Clause 80 defines certain terms used in the Part.

Division 2 Payment of trust money into trust account

Clause 81 provides that money received for or on behalf of any person by a licensee:

- (a) is to be held exclusively for that person, and
- (b) is to be paid to the person or disbursed as the person directs, and
- (c) until paid or disbursed is to be kept in a trust account with an authorised deposit-taking institution in New South Wales and approved by the Director-General.

Clause 82 provides that the Director-General may approve an authorised deposit-taking institution for the purposes of the Part.

Clause 83 provides that trust money is not available for the payment of the licensee's debts.

Clause 84 provides that a licensee must notify the Director-General of certain particulars within 5 days after becoming aware that a trust account of the licensee is overdrawn.

Clause 85 provides that interest earned on trust accounts is to be paid to the Statutory Interest Account.

Division 3 Responsibilities of authorised deposit-taking financial institutions

Clause 86 provides that authorised deposit-taking institutions must notify the Director-General of certain matters with respect to trust accounts kept with the institution, including the number of trust accounts opened with the institution during a month and the names of the licensees who opened the accounts.

Clause 87 provides that an authorised deposit-taking institution must inform the Director-General of the name and number of any trust account kept with it that has been closed, and the date on which the account was closed.

Clause 88 provides that an authorised deposit-taking institution must, within 5 business days of becoming aware that a trust account kept with it under this Part is overdrawn, notify the Director-General.

Clause 89 provides that an authorised deposit-taking institution must, within 5 days of becoming aware that a cheque presented on a trust account kept with it under this Part has been dishonoured, inform the Director-General.

Clause 90 provides that, within 14 days of the end of each month, an authorised deposit-taking institution must provide a written report to the Director-General, certified as correct by the institution, containing specified information in relation to trust accounts kept by it under this Part.

Clause 91 provides that an authorised deposit-taking institution must, on an annual basis, provide to the Director-General a certificate given by a registered company auditor certifying that the institution has complied with the requirements of this Part in relation to trust accounts and the total amount of interest that the institution paid to the Director-General in respect of those trust accounts for payment to the Statutory Interest Account.

Clause 92 provides an authorised deposit-taking institution with a limited protection from liability in relation to any transaction concerning an account of a licensee kept with the institution or with another financial institution.

Division 4 Unclaimed trust money

Clause 93 provides that a licensee who has held trust account money for more than 2 years must give the Director-General a statement showing particulars of the money held, each person for whom or on whose behalf the money is held and the address of each of those persons last known to the licensee.

Clause 94 provides that a former licensee, or the personal representative of a deceased licensee, who holds money in a trust account kept under the proposed Act must give the Director-General a statement giving particulars of the money held in the trust account.

Clause 95 provides a procedure for the Director-General to dispose of unclaimed money held in licensees' trust accounts. If trust money is not claimed, the money is to be paid into the Compensation Fund and then, if still unclaimed, into the Consolidated Fund.

Clause 96 provides that if an application for the payment to which a person is entitled is made while the money is held in the Compensation Fund or Consolidated Fund, the money must be paid to the person.

Division 5 Information about trust accounts or transactions

Clause 97 provides that the Director-General may require a licensee to give the Director-General a written statement setting out particulars in relation to the licensee's trust accounts, trust money paid to the licensee or transactions by or with the licensee as licensee.

Clause 98 provides that a person directly concerned in a transaction by or with a licensee as licensee may ask the licensee to give the person an itemised account of the transaction.

Clause 99 creates an offence for a licensee who fails, without reasonable excuse, to comply with a requirement under this Division.

Part 8 Records

Division 1 Keeping and inspection of records

Clause 100 defines the term *licensee's records*.

Clause 101 specifies the records a licensee must make and the requirements for keeping the records.

Clause 102 provides for inspection of a licensee's records by an authorised officer.

Clause 103 provides for inspection by an authorised officer of the records of an authorised deposit-taking institution with which a licensee has deposited any money in any account, whether the licensee's own account or a general or separate trust account.

Clause 104 provides an authorised officer with power to require a licensee or another person who has possession, custody or control of licensee's records to produce specified licensee's records.

Clause 105 provides an authorised officer with power to take possession of a record produced under this Part if the authorised officer considers it necessary to do so for the purpose of obtaining evidence or protecting evidence from destruction.

Clause 106 imposes additional requirements in relation to the records to be kept by a strata managing agent or community managing agent.

Clause 107 creates offences in relation to a person delaying or obstructing an authorised officer exercising the officer's functions under this Division or failing to comply with a requirement under this Division.

Division 2 Audit of licensee's records

Clause 108 requires a licensee, former licensee or the personal representative of a licensee, within 3 months after the end of the audit period, to have records and documents relating to money held during that period in a trust account audited by an auditor. The auditor's report on the audit must be lodged with the Director-General.

Clause 109 provides that the audit period is the year ending on 30 June, or another period fixed by the Director-General.

Clause 110 provides that if a licensee did not in an audit period receive or hold money for or on behalf of another person, the licensee must make and lodge with the Director-General a statutory declaration to that effect.

Clause 111 specifies the obligations of partners in relation to the audit of records and documents of the partnership.

Clause 112 specifies the qualifications a person must have to act as an auditor for the purposes of this Division.

Clause 113 specifies the duties of an auditor.

Division 3 Freezing of accounts

Clause 114 defines certain terms used in this Division.

Clause 115 provides that the Director-General may give a direction under this Division if it appears to the Director-General that a licensee, the person in charge of a licensee's business at a place or a licensee's employee has, or may have, stolen, misappropriated or misapplied trust money. The Director-General's direction may direct that an amount of trust money be paid to the Director-General, that an amount not be drawn from an account or that an account may be operated only under specified conditions.

Clause 116 provides that a financial institution given a direction under this Division must not pay a cheque or other instrument drawn on the account concerned unless it is also signed by the Director-General (or a person authorised by the Director-General) or give effect to another transaction on the account that is not authorised because of the direction.

Clause 117 provides that after a direction under this Division has been given to the holder of an account, the holder must not (while the direction remains in force) sign a cheque or other instrument drawn on the account unless the cheque or other instrument has been signed by the Director-General, or a person authorised by the Director-General.

Clause 118 provides that the Director-General (or a person authorised by the Director-General) may operate an account that is the subject of a direction under this Division if the holder of the account refuses to operate the account.

Clause 119 provides that the Director-General may withdraw a direction under this Division.

Part 9 Complaints and disciplinary action

Clause 120 specifies the grounds on which disciplinary action may be taken against a person who is or was the holder of a licence or certificate of registration.

Clause 121 specifies the disciplinary action that the Director-General may take against a person.

Clause 122 provides that the Director-General may, at any stage of a matter that is the subject of consideration by the Director-General under this Part, determine to take no further action.

Clause 123 provides that any person may make a complaint to the Director-General setting out matters that are alleged to constitute grounds for taking disciplinary action against a person. Action may be taken against a person whether or not a complaint has been made.

Clause 124 provides that the Director-General may serve a show cause notice on a person if the Director-General is of the opinion there is reasonable cause to believe that there are grounds for taking disciplinary action against the person.

Clause 125 provides that the Director-General may, when a show cause notice is served on a person, suspend the person's licence or certificate of registration pending a determination by the Director-General of whether or not to take disciplinary action. The Director-General may only suspend a licence or certificate of registration if satisfied that the grounds for disciplinary action specified in the show cause notice would, if established, justify the suspension or cancellation of the licence or certificate.

Clause 126 provides the Director-General with power to conduct inquiries and make investigations in relation to the matters to which a show cause notice relates.

Clause 127 provides that if the Director-General is satisfied that there are grounds for taking disciplinary action against a person on whom a show cause notice has been served, the Director-General may take such disciplinary action against the person as the Director-General thinks is warranted.

Clause 128 provides for the recovery as a debt in a court of competent jurisdiction of a monetary penalty imposed by disciplinary action under the Part.

Clause 129 provides that a person against whom disciplinary action is taken may apply to the Administrative Decisions Tribunal under the *Administrative Decisions Tribunal Act 1997* for a review of the decision on the disciplinary action or on a review of the disciplinary action.

Clause 130 provides that the Director-General may authorise publication of a notice warning persons of particular risks involved in dealing with a specified holder of a licence, or a person who does not hold a licence, in connection with the activities of licensees.

Clause 131 creates an offence for a person who is disqualified under this Part from being involved in the direction, management or conduct of the business of a licensee and who acts contrary to the direction.

Clause 132 provides that a person who has possession of a licence or certificate of registration that has been suspended or cancelled must give the licence or certificate to an officer of the department within 7 days after the suspension or cancellation takes effect.

Part 10 Management and receivership

Division 1 Preliminary

Clause 133 defines certain terms used in the Part.

Clause 134 specifies what is meant by a reference in this Part to a licensee's associate.

Clause 135 specifies what is meant by a reference in this Part to a *failure to account*.

Division 2 Management

Clause 136 provides that the Director-General may appoint a manager for a licensee's business in certain circumstances if the Director-General is of the opinion that it is necessary to make the appointment in order to protect the interests of other persons.

Clause 137 specifies qualifications necessary for a person to be eligible for appointment as the manager of a licensee's business.

Clause 138 specifies the powers of a person appointed as the manager of a licensee's business.

Clause 139 provides that the manager of a licensee's business may continue to exercise his or her functions even if a receiver is appointed in respect of the licensee's property.

Clause 140 provides that an act of the manager of a licensee's business is, for the purposes of any proceedings or transaction that relies on that act, taken to have been done by the licensee.

Clause 141 provides the Director-General may reimburse a manager for any damages and costs recovered by the manager, or the manager's employee or agent, for anything done or omitted in good faith and in the purported exercise of a function under this Act.

Clause 142 provides that the expenses of the management of a licensee's business that have not otherwise been paid to the manager out of the receipts of the business are to be paid to the manager by the Director-General. An amount paid under this section is recoverable by the Director-General as a debt owed by the relevant licensee.

Clause 143 provides that the manager of a licensee's business must report to the Director-General on the management of the business.

Clause 144 provides that Part 8 (Records) applies to the accounts kept by a manager in the same way as it applies to the accounts kept by a licensee.

Clause 145 provides that the regulations may make provision with respect to the accounts to be kept by the manager of a licensee's business and the purposes for which money in any such account may be expended.

Clause 146 provides that when a licensee's business ceases to be under management any money held by the manager in connection with the business becomes the property of the licensee.

Clause 147 creates an offence for a person hindering, obstructing or delaying a manager in the exercise of his or her functions.

Division 3 Receivership

Clause 148 provides that the Supreme Court may, on the application of the Director-General, appoint a receiver for all or any of the property of a licensee. An application may be made by the Director-General only in specified circumstances.

Clause 149 provides that if, on the application of a receiver, the Supreme Court is satisfied that all or any of the property of a licensee's associate should be declared to be receivable property, the Court may appoint the receiver to be receiver of all or any of the property.

Clause 150 provides that before commencing to hear an application for the appointment of a receiver, the Supreme Court may order from the Court any person who is not necessary to the hearing.

Clause 151 provides that on the appointment of a receiver the Director-General must cause a copy of the order of appointment to be served on the relevant licensee or relevant associate and any other person on whom the Supreme Court has directed a copy be served.

Clause 152 provides that the receiver may take possession of receivable property of the relevant licensee or relevant associate.

Clause 153 provides that a person who has information relating to receivable property, or property that a receiver believes on reasonable grounds to be receivable property, must give the information to the receiver.

Clause 154 provides that a receiver who believes on reasonable grounds that money held in an account with an authorised deposit-taking institution is receivable property may serve on the institution concerned an order prohibiting operations on the account by any person other than the receiver or a person authorised by the receiver.

Clause 155 provides that a person must not, with intent to defeat the purposes of this Division, improperly deal with receivable property, or property that is likely to become receivable property, or operate an account at an authorised deposit-taking institution.

Clause 156 provides that if receivable property has at any time been taken by, or paid or transferred to, a person unlawfully or in breach of trust in certain circumstances the receiver may recover from the person, as a debt, the amount

taken, paid or transferred, the amount of any inadequate consideration for the taking, payment or transfer, the amount of any debt resulting from the taking, payment or transfer, or the value of the property taken or transferred, as appropriate.

Clause 157 provides that a certificate given by the receiver, or a person authorised by the Director-General, in relation to certain matters, such as the receipt of property by the licensee or an associate, is admissible in any proceedings taken by a receiver and is evidence of the matters specified in the certificate.

Clause 158 provides that proceedings taken in the name of the receiver in relation to any property may be so taken as if the receiver were beneficially entitled to the property.

Clause 159 provides that a receiver may deal with receivable property in any manner in which the relevant licensee or relevant associate could, had the receiver not been appointed, have dealt with it.

Clause 160 specifies other powers of a receiver.

Clause 161 provides that a receiver may give notice to the relevant licensee or associate, or another person, that any claim the licensee, associate or other person has to receivable property must be submitted to the receiver within 1 month after the giving of the notice, or the longer period stated in the notice. A receiver may disregard a claim made by a person given a notice if the claim is not made in accordance with the notice.

Clause 162 specifies the procedure to be followed if a licensee claims a lien for costs on receivable property.

Clause 163 provides that the Supreme Court may, on the application of a receiver, may make such order as it thinks fit for the examination by the receiver of a licensee or other person in relation to receivable property.

Clause 164 specifies the procedure to be followed in respect of receivable property under the control of a receiver that has not been dealt with in accordance with the proposed Act.

Clause 165 provides that a receiver may invest receivable property in any manner in which trustees are authorised by the *Trustee Act 1925* to invest trust funds.

Clause 166 provides that the Director-General may reimburse a receiver for any damages or costs recovered against the receiver, or the receiver's employee or agent, for any act or omission done or omitted in good faith and in the purported exercise of the receiver's functions.

Clause 167 provides that the Director-General may pay the expenses of the receivership that have not otherwise been paid to the receiver. An amount paid may be recovered by the Director-General from the relevant licensee as a debt.

Clause 168 provides that, on the application of the relevant licensee, the Supreme Court may, if satisfied the expenses of the receivership are excessive, order the taking of accounts between the Director-General and the receiver.

Clause 169 provides that receivable property of a relevant licensee or associate is not liable to be taken in execution of any judgment, order or other process of any court or tribunal.

Clause 170 provides that a receiver, a licensee or a licensee's associate who holds receivable property, or a person who claims receivable property, may apply to the Supreme Court for directions as to the performance of the receiver's functions. The Supreme Court may give such directions as it thinks fit.

Clause 171 provides that the Supreme Court may give general directions to a receiver for the exercise of the receiver's functions.

Clause 172 provides that a receiver must, at such times and in respect of such period as the Supreme Court directs, submit reports on the receivership to the Supreme Court and the Director-General.

Clause 173 provides for the termination of the appointment of a receiver.

Clause 174 creates an offence for a person hindering, obstructing or delaying a receiver in the exercise of his or her functions.

Part 11 Compensation Fund

Division 1 Establishment and management

Clause 175 provides for the establishment by the Director-General of a Property Services Compensation Fund.

Clause 176 provides that certain amounts must be paid into the Compensation Fund.

Clause 177 specifies the purposes for which money in the Compensation Fund is to be applied.

Division 2 Contributions and levies

Clause 178 provides that an applicant for a licence must pay a contribution to the Compensation Fund at the time the application is made. The amount of the contribution is the amount prescribed by the regulations.

Clause 179 provides that if the Director-General is of the opinion that the Compensation Fund is likely to be insufficient to meet the liabilities to which it is subject, the Director-General may, with the approval of the Minister, impose a levy on licensees.

Division 3 Claims

Clause 180 defines certain terms used in the Division.

Clause 181 defines what is meant by failure to account.

Clause 182 specifies that the Division extends to a case where a person entrusts money or other valuable property to another person reasonably believing that the other person is a licensee, or an associate of a licensee, and that the money is entrusted in the course of a licensee's business as a licensee.

Clause 183 specifies the procedure for making a claim against the Compensation Fund.

Clause 184 provides that a person cannot, without the Director-General's leave, commence any proceedings in relation to the Compensation Fund unless the person has made a claim and the Director-General has disallowed the person's claim. The clause specifies other matters relevant to legal proceedings against the Compensation Fund.

Clause 185 specifies the limits on an amount that is recoverable by a person from the Compensation Fund.

Clause 186 provides that the Director-General may cause to be published a notice relating to a defaulting licensee and fixing a date within which claims against the Compensation Fund must be made.

Clause 187 provides that on payment out of the Compensation Fund in settlement in whole or in part of a claim, the Crown is subrogated, to the extent of the payment, to all the rights and remedies of the claimant against the licensee, or the former licensee, or any other person.

Clause 188 provides for the recovery, by the Director-General, from the director of a body corporate of a payment out of the Compensation Fund for the consequence of an act or omission of the body corporate.

Clause 189 provides that the Director-General may require the production of documents necessary to support any claim under the Act, or available for that purpose, or for the purpose of exercising functions in respect of a defaulting licensee.

Clause 190 provides that a claim against the Compensation Fund can only be satisfied to the extent of money in the Compensation Fund.

Division 4 Examination of accounts of licensees and former licensees

Clause 191 defines certain terms used in the Division.

Clause 192 provides that the Director-General may appoint an appropriately qualified person as an accounts examiner to examine the accounts kept by the licensee in connection with the licensee's business.

Clause 193 provides that an accounts examiner is to give the Director-General a confidential report about the accounts concerned, indicating whether there is any irregularity, or alleged or suspected irregularity, in the accounts or another matter that in the examiner's opinion should be further investigated.

Clause 194 sets out the powers of an accounts examiner.

Clause 195 provides that an accounts examiner must not communicate to any person (other than a partner, employer, employee or assistant) the fact that the examiner has been appointed or any matter that comes to the examiner's knowledge in the course of the examination, other than in preparing or furnishing the report to the Director-General or in other specified circumstances.

Clause 196 extends the operation of this Division to former licensees.

Part 12 Property Services Statutory Interest Account

Clause 197 provides that a Property Services Statutory Interest Account is to be established and maintained in the accounting records of the Department.

Clause 198 specifies the money that is payable to the Statutory Interest Account.

Clause 199 specifies how money in the Statutory Interest Account is to be applied by the Director-General, with the consent of the Minister.

Clause 200 specifies that certain other amounts are also payable from the Statutory Interest Account.

Part 13 Enforcement

Clause 201 defines the term *authorised officer*.

Clause 202 specifies the purposes for which an authorised officer may exercise the officer's powers.

Clause 203 provides a power for an authorised officer to enter and inspect premises that the officer believes on reasonable grounds are used for the carrying on of the business of an agent, whether or not the business is being carried on by the holder of a licence. An authorised officer's powers after entering premises are specified in the clause.

Clause 204 creates an offence for refusing or failing to comply with a requirement made, or to answer a question asked by, an authorised officer, or wilfully delaying, hindering, or obstructing an authorised officer.

Clause 205 provides that an authorised officer may take possession of, and retain until the completion of any proceedings, records for the purpose of obtaining evidence or protecting evidence from destruction.

Clause 206 specifies the procedure for an authorised officer to obtain a search warrant for premises.

Clause 207 provides that the Supreme Court may grant an injunction restraining a threatened or apprehended contravention, or the continuation of a contravention, of a provision of the Act or regulations.

Part 14 Offences and proceedings

Division 1 Offences

Clause 208 creates offences for a licensee or registered person fraudulently converting money received by the licensee or registered person on behalf of any person in respect of any transaction in the licensee's or registered person's capacity as a licensee or registered person, or money held by the licensee or registered person as a stakeholder or in trust. Offences are also created for fraudulently omitting to account for such money and fraudulently rendering an account of such money.

Clause 209 creates an offence for a licensee or registered person who fraudulently renders an account of expenses, commission or other charges incidental to any transaction, or proposed or contemplated transaction, as a licensee or registered person knowing the account to be false in any material particular.

Clause 210 provides that nothing in this Division affects the provisions of the *Crimes Act 1900*.

Division 2 Proceedings

Clause 211 provides that proceedings for an offence against the Act or the regulations may be taken and prosecuted only by the Director-General, or a person acting with the authority of the Director-General.

Such proceedings may be dealt with summarily before a Local Court constituted by a Magistrate sitting alone or summarily before the Supreme Court in its summary jurisdiction.

Clause 212 provides that the regulations may prescribe an offence as a penalty notice offence.

Clause 213 provides that proceedings for an offence against the Act (other than proceedings that are to be dealt with on indictment) or the regulations may be commenced within 3 years after the date on which the offence is alleged to have been committed.

Clause 214 makes specific provision in relation to offences by corporations.

Part 15 Administration

Clause 215 prohibits a person who obtains information in connection with the administration or execution of the Act from disclosing the information except in specified circumstances.

Clause 216 requires the Director-General to maintain a Register for the purposes of the Act and specifies the information to be entered and kept in that Register.

Clause 217 provides that a certificate signed by the Director-General certifying that a person is or is not or was or was not on any date or during any period the holder of a licence of a specified class or the holder of a certificate of registration is prima facie evidence of the matters certified.

Clause 218 provides that the Director-General may delegate the exercise of any of the Director-General's functions under the Act to any public servant employed in the Department or any person, or class of persons, authorised by regulation.

Part 16 Miscellaneous

Clause 219 provides that the Act does not limit or otherwise affect the exercise of any function under the *Fair Trading Act 1987*.

Clause 220 provides for the service of notices under the Act.

Clause 221 repeals the *Property, Stock and Business Agents Act 1941*.

Clause 222 is a formal provision giving effect to Schedule 1 (Savings and transitional provisions).

Clause 223 is a formal provision giving effect to Schedule 2 (Consequential amendments).

Clause 224 provides a general regulation-making power.

Clause 225 provides that the Minister must review the Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives. The review must be undertaken 5 years after the Act commences.

Schedules

Schedule 1 contains savings and transitional provisions consequent on the enactment of the proposed Act.

Schedule 2 contains consequential amendments to various Acts.



New South Wales

Property, Stock and Business Agents Bill 2001

Contents

	Page
Part 1 Preliminary	
1 Name of Act	2
2 Commencement	2
3 Definitions	2
4 Exemptions from Act	10
5 Notes	12
Part 2 Licences and certificates of registration	
Division 1 Requirement for licence or certificate of registration	
6 Kinds of licences and certificates of registration	13
7 Agents required to be licensed	13
8 Corporations require corporation licence	14
9 Salespersons and trainees require certificate of registration	15

Contents

	Page
10 Registered salespersons and trainees required to be employed and supervised by licensee	15
11 Production of licence or certificate of registration	16
12 Lending of licence or certificate of registration prohibited	16
Division 2 Eligibility, qualifications and disqualification	
13 Eligibility for licence or certificate of registration	16
14 Qualifications for licence or certificate of registration	17
15 Disqualified persons	18
16 What constitutes approved policy of professional indemnity insurance	20
Division 3 Application and issue procedure	
17 Application for licence or certificate of registration	21
18 Consideration of applications	22
19 Determination of applications	22
20 Conditions	22
21 Special conditions for on-site residential property managers and trainees	23
22 Issue of licence or certificate of registration	23
23 Duration	24
24 Reissue and restoration of a licence or certificate of registration	24
25 Review by ADT	25
Part 3 General conduct of licensees and registered persons	
Division 1 Place and name of business	
26 Registered office and address	26
27 Display of name at registered office	26
28 Business names	27
Division 2 Business practices and supervision	
29 Each place of business to be in charge of licensee	28
30 Duty of licensee and person in charge to properly supervise business	29
31 Licensee not to share commission with certain persons	30
32 Subagency agreements to be in writing	30
33 Franchising agreements	31
34 Review of commission and fees	32

Contents

	Page
35 Rules of conduct for licensee's business	33
36 Undertakings by licensees and registered persons	33
37 Duty of licensee to notify defalcation	33
Division 3 Employees	
38 Liability of licensee for acts of employees	34
39 Licensee to keep records of certain employees	34
40 Duty of licensee not to employ certain persons	34
41 Duty of licensee to notify disqualification of employee	35
42 Employees required to notify disqualification	35
Division 4 Conflicts of interest	
43 Financial and investment advice by real estate agents	35
44 Duty not to act for both buyer and seller of land	35
45 Restrictions on licensee obtaining beneficial interest in property	36
Division 5 Advertisements and representations	
46 Advertisements to include information about licensee	38
47 Publishing false or misleading advertisements	39
48 Misrepresentation by licensee or registered person	40
49 Damages for fraudulent misrepresentation	41
Part 4 Agency agreements	
Division 1 Requirements for agency agreements	
50 Definitions	42
51 No entitlement to commission or expenses without agency agreement	42
52 Approved guide to be provided before agency agreement for residential property signed	43
53 Agency agreement must disclose rebates, discounts and commissions	43
54 Prohibition against listing residential or rural land subject to sole or exclusive agency	44

	Page
Division 2 Cooling-off period for residential or rural agency agreements	
55 Cooling-off period for residential or rural agency agreements	45
56 Agency agreement can be rescinded during cooling-off period	45
57 Effect of rescission	46
58 No contracting out	46
 Part 5 Residential property and rural land sales	
 Division 1 Contract for sale of residential property	
59 Proposed contract for sale of residential property	47
60 Contracts for sale of residential property	48
61 Procedure following rescission	49
 Division 2 Bidding at auction of residential property or rural land	
62 Restrictions on bidding by or on behalf of seller or auctioneer	50
63 Bids may only be taken from registered bidders	50
64 Bidders Record	51
65 Details to be established by proof of identity	52
66 Confidentiality of Bidders Record	52
67 Approved consumer education guide for bidders at auctions	53
 Division 3 Representations as to selling price of residential property	
68 False representation to seller or prospective seller	53
69 False representation to prospective buyer	53
70 Requirement to substantiate selling price estimates—residential property	54
71 Division extends to estimates of price range	54
72 Extended meaning of “estimate”	54
 Part 6 Auctions—general	
73 Collusive practices at auction sales	55
74 False entry in auction record	56

Contents

	Page
75 Misrepresentation as to quality etc	57
76 Restrictions on bidding by or on behalf of seller or auctioneer of livestock	57
77 Contracting out of prescribed terms and conditions of auction sales	57
78 Successful bidder at auction to supply information	58
79 Livestock auctions—"comeback" prohibited	58
 Part 7 Trust accounts	
 Division 1 Preliminary	
80 Interpretation	59
 Division 2 Payment of trust money into trust account	
81 Trust money to be paid to trust account	59
82 Approval of authorised deposit-taking institutions	60
83 Trust money not available to pay licensee's debts	60
84 Licensee to notify trust account becoming overdrawn	60
85 Interest earned on trust accounts to be paid to Statutory Interest Account	61
 Division 3 Responsibilities of authorised deposit-taking financial institutions	
86 Institutions to provide Director-General with certain information	62
87 Closure of trust accounts	63
88 Overdrawn trust accounts	63
89 Dishonoured cheques	64
90 Monthly certification	64
91 Annual certification by auditor	65
92 Protection of authorised deposit-taking institutions from liability	65
 Division 4 Unclaimed trust money	
93 Unclaimed trust money held by licensee	66
94 Unclaimed trust money held by former licensee or personal representative	66
95 Disposal of unclaimed money in trust accounts	67
96 Repayment of unclaimed trust money	68

	Page
Division 5 Information about trust accounts or transactions	
97 Director-General may require information	69
98 Person concerned in transaction may request itemised account	69
99 Offence	70
 Part 8 Records	
 Division 1 Keeping and inspection of records	
100 Licensee's records	71
101 Licensee to make and keep certain records	71
102 Inspection of licensee's records	72
103 Inspection of records of financial institutions	73
104 Power to require production of licensee's records	73
105 Power to take possession of records to be used as evidence	74
106 Additional requirements for managing agents	74
107 Offence	75
 Division 2 Audit of licensee's records	
108 Requirement for audit	75
109 Audit period	76
110 Statutory declaration required when no trust money held or received	76
111 Audit obligations of partners	76
112 Qualifications of auditors	77
113 Duties of auditors	77
 Division 3 Freezing of accounts	
114 Definitions	78
115 Director-General may freeze licensee's accounts in particular cases	78
116 Financial institution must comply with direction	79
117 Account not to be operated unless Director-General allows	80
118 Director-General may operate account	80
119 Withdrawal of direction	80

	Page
Part 9 Complaints and disciplinary action	
120 Grounds for disciplinary action	81
121 Disciplinary action	82
122 Decision to take no further action	83
123 Complaints	83
124 Show cause notice	83
125 Power to suspend licence or certificate of registration when show cause notice served	84
126 Inquiries and investigation	84
127 Taking of disciplinary action	84
128 Recovery of monetary penalty	85
129 Review of disciplinary action by ADT	85
130 Warning notices	85
131 Failure to comply with disqualification from involvement in business	86
132 Return of suspended or cancelled licence	86
 Part 10 Management and receivership	
 Division 1 Preliminary	
133 Definitions	87
134 Associates of a licensee	88
135 Failure to account	89
 Division 2 Management	
136 Appointment of manager	89
137 Qualifications for appointment as manager	90
138 Powers of manager	90
139 Management continues under receivership	91
140 Acts of manager taken to be acts of licensee	91
141 Manager may be reimbursed for damages	91
142 Payment of expenses of management	92
143 Manager to report to Director-General	92
144 Trust money	92
145 Office accounts	93
146 Termination of management	93
147 Obstruction of managers	93

	Page
Division 3 Receivership	
148 Supreme Court may appoint receiver	93
149 Receivership may extend to property of licensee's associate	94
150 Court to be closed	94
151 Order to be served	95
152 Receiver may take possession of property	95
153 Information about receivable property	96
154 Stop order on account	97
155 Improper dealing with property	97
156 Recovery of compensation for disposal of receivable property	98
157 Receiver may give certificate	99
158 Receiver taken to be beneficially entitled to property	100
159 Receiver may deal with property	100
160 Other powers of receiver	100
161 Notice to claim receivable property	101
162 Lien for costs on receivable property	101
163 Examination by receiver	102
164 Property not dealt with by receiver	102
165 Investment of money by receiver	103
166 Receiver may be reimbursed for damages	103
167 Payment of expenses of receivership	103
168 Supreme Court may review expenses of receivership	104
169 Receivable property not to be attached	104
170 Applications for directions by receiver, licensee etc	104
171 Supreme Court may give general directions to receiver	104
172 Receiver to report to Supreme Court and Director-General	105
173 Termination of appointment of receiver	105
174 Obstruction of receivers	106
Part 11 Compensation Fund	
Division 1 Establishment and management	
175 Compensation Fund	107
176 Money payable to Compensation Fund	107
177 Application of money in Compensation Fund	107
Division 2 Contributions and levies	
178 Contributions	108
179 Levies	108

	Page
Division 3 Claims	
180 Definitions	109
181 Meaning of "failure to account"	109
182 Division applies when person reasonably believed to be a licensee	110
183 Claims against Compensation Fund	110
184 Legal proceedings	111
185 Limits on amounts recoverable	112
186 Advertisements	112
187 Subrogation	113
188 Recovery of payments from directors	113
189 Production of documents	114
190 Satisfaction of claims and judgments	114
Division 4 Examination of accounts of licensees and former licensees	
191 Definitions	114
192 Appointment of accounts examiner to examine licensee's accounts	115
193 Accounts examiner to report on accounts	115
194 Powers of accounts examiner	115
195 Confidentiality	116
196 Former licensees	117
Part 12 Property Services Statutory Interest Account	
197 Statutory Interest Account	118
198 Money payable to Statutory Interest Account	118
199 Application of money in Statutory Interest Account	118
200 Application of money for purposes of certain Acts	119
Part 13 Enforcement	
201 Authorised officers	120
202 Purposes for which powers of authorised officers can be exercised	120
203 Powers of entry, inspection etc	120
204 Obstruction etc of authorised officers	121
205 Taking possession of records to be used as evidence	122
206 Search warrants	122
207 Injunctions	123

	Page
Part 14 Offences and proceedings	
Division 1 Offences	
208 Fraudulent conversion and false accounts of money received by licensee or registered person	124
209 Fraudulent accounts for expenses, commission and other charges	125
210 Operation of Crimes Act not affected	125
Division 2 Proceedings	
211 Proceedings for offences	125
212 Penalty notices	126
213 Time for laying information	127
214 Offences by corporations	127
Part 15 Administration	
215 Disclosure of information	128
216 Register	129
217 Certificate evidence	130
218 Delegation	130
Part 16 Miscellaneous	
219 Fair Trading Act not affected	131
220 Service of notices	131
221 Repeals	132
222 Savings and transitional provisions	132
223 Consequential amendments of Acts	132
224 Regulations	132
225 Review of Act	133
Schedules	
1 Savings and transitional provisions	134
2 Consequential amendments	138



New South Wales

Property, Stock and Business Agents Bill 2001

No , 2001

A Bill for

An Act to provide for the registration and regulation of property, stock and business agents; to repeal the *Property, Stock and Business Agents Act 1941*; and for other purposes.

The Legislature of New South Wales enacts: 1

Part 1 Preliminary 2

1 Name of Act 3

This Act is the *Property, Stock and Business Agents Act 2001*. 4

2 Commencement 5

This Act commences on a day or days to be appointed by proclamation. 6
7

3 Definitions 8

(1) In this Act: 9

agency agreement means an agreement pursuant to which a licensee performs or agrees to perform services in the capacity of a licensee. 10
11

agent means: 12

(a) a real estate agent, or 13

(b) a stock and station agent, or 14

(c) a business agent, or 15

(d) a strata managing agent, or 16

(e) a community managing agent, or 17

(f) an on-site residential property manager. 18

auctioneer means any person: 19

(a) who, in the course of trade or business and at an auction sale (or a proposed auction sale), acts as an auctioneer or sells for reward (whether monetary or otherwise) any land or any livestock, or 20
21
22
23

(b) who sells or offers for sale, or who attempts to sell, any land or any livestock by way of auction. 24
25

auction means the sale of property by any means (including the Internet) whereby: 26
27

(a) the highest, the lowest, or any bidder is the purchaser, or the first person who claims the property submitted for sale at a certain price named by the person acting as auctioneer is the purchaser, or 28
29
30
31

-
- (b) there is a competition for the purchase of the property in any way commonly known and understood to be by auction. 1
2
- authorised officer** has the meaning given in Part 13 (Enforcement). 3
- business agent** means any person (whether or not the person carries on any other business) who for reward (whether monetary or otherwise) exercises or carries on business as an agent for performing any of the following functions: 4
5
6
7
- (a) selling, buying or exchanging or otherwise dealing with or disposing of, or 8
9
- (b) negotiating for the sale, purchase or exchange or any other dealing with or disposition of, or 10
11
- (c) compiling for publication or compiling and publishing a document that contains a list relating solely or substantially to the acquisition or disposal by any person of, 12
13
14
- businesses or professional practices or any share or interest in or concerning or the goodwill of or any stocks connected with businesses or professional practices. 15
16
17
- business day** means a day other than a Saturday, Sunday, public holiday or bank holiday in New South Wales. 18
19
- business salesperson** means a person (other than the holder of a business agent's licence) who: 20
21
- (a) for or on behalf of a business agent, induces or attempts to induce or negotiates with a view to inducing any person to sell, buy, exchange or otherwise deal with or dispose of: 22
23
24
- (i) any business or professional practice, or 25
- (ii) any share or interest in or concerning the goodwill of, or any stocks connected with, any business or professional practice, or 26
27
28
- (b) for or on behalf of a business agent and otherwise than at a place at which that business agent carries on business, collects instalments of principal or interest payable: 29
30
31
- (i) under a bill of sale given in respect of a business or professional practice, or 32
33
- (ii) under a contract for the sale on terms of a business or professional practice. 34
35
- certificate of registration** means a certificate of registration under this Act. 36
37
-

community managing agent means a person who is engaged or appointed, for monetary or other reward, to exercise functions of an association constituted for a scheme under the <i>Community Land Development Act 1989</i> but who is not:	1
	2
	3
	4
(a) the proprietor of a lot within the scheme, or	5
(b) the secretary or treasurer of the association, or	6
(c) a person authorised by the management statement for the scheme to exercise the functions of the secretary or treasurer of the association, or	7
	8
	9
(d) a person who maintains or repairs any property that the association is required to maintain and keep in repair.	10
	11
Compensation Fund or Fund means the Property Services Compensation Fund established and maintained under this Act.	12
	13
Corporations Act means the <i>Corporations Act 2001</i> of the Commonwealth.	14
	15
Department means the Department of Fair Trading.	16
Director-General means the Director-General of the Department.	17
employee includes any person employed whether on salary, wages, bonus, commission, fees, allowance or other remuneration and includes a director or member of the governing body of a corporation.	18
	19
	20
former licensee means a person who has been but has ceased to be a licensee.	21
	22
individual means a natural person and does not include a corporation.	23
land includes:	24
(a) a lot within the meaning of the <i>Strata Schemes (Freehold Development) Act 1973</i> or the <i>Community Land Development Act 1989</i> and a leasehold interest in a lot within the meaning of the <i>Strata Schemes (Leasehold Development) Act 1986</i> , and	25
	26
	27
	28
(b) shares that, under a company title scheme, entitle their holder to the possession of premises.	29
	30
licence means a licence under this Act.	31
licensee means the holder of a licence under this Act.	32
licensee's records has the meaning given in Part 8 (Records).	33
livestock includes horses, cattle, asses, mules, sheep, swine, camels, goats, alpacas, ostriches and emus.	34
	35

-
- money** includes an instrument for the payment of money in any case where the instrument may be paid into a bank or other authorised deposit-taking institution. 1
2
3
- money received for or on behalf of any person** includes money held for or on behalf of any person, whether originally received for or on the person's behalf or not. 4
5
6
- on-site residential property manager** means a person (whether or not the person carries on any other business) who, for reward (whether monetary or otherwise) carries on business: 7
8
9
- (a) as an agent for giving possession of residential premises under a lease, licence or other contract or arrangement, or 10
11
 - (b) as an agent for collecting bonds, deposits, rents, fees or other charges in connection with any such lease, licence or other contract, or 12
13
14
 - (c) as a provider of building management services for residential premises (for example, management of the repair, maintenance and security of the premises). 15
16
17
- Note.** It is a condition of an on-site residential property manager's licence that the licensee may act as an on-site residential property manager only in respect of premises at which the licensee's principal place of residence is situated and only if the licensee owns or has a prescribed interest in that principal place of residence. 18
19
20
21
- principal place of business** means, in relation to a corporation that carries on business at more than one place, the place of business specified in the application made by the corporation for a licence on its own behalf to be its principal place of business. 22
23
24
25
- real estate agent** means a person (whether or not the person carries on any other business) who, for reward (whether monetary or otherwise), carries on business as an agent for: 26
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- (a) inducing or attempting to induce or negotiating with a view to inducing any person: 29
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 - (i) to buy, sell, exchange, lease, assign or otherwise dispose of any land, or 31
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 - (ii) to make an offer to buy, sell, exchange, lease, assign or otherwise dispose of any land, or 33
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 - (iii) to accept an offer to buy, sell, exchange, lease, assign or otherwise dispose of any land, or 35
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 - (iv) to enter into a contract for the buying, selling, exchanging, leasing, assigning or other disposal of land, or 37
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- (b) buying, selling, exchanging, leasing, assigning or otherwise disposing of any land, whether or not an auction is involved, or 1
 - (c) collecting rents payable in respect of any lease of land, or 2
 - (d) compiling for publication or compiling and publishing any document that contains a list relating solely or substantially to the acquisition or disposal by any person of land, 3
- but does not include a person who carries on business as such an agent in respect of any parcel of rural land with an area of more than 2.5 hectares. 4
- real estate salesperson*** means a person (other than the holder of a real estate agent's licence) who, as an employee of a real estate agent or a corporation that employs a real estate agent (***the employer***): 5
- (a) induces or attempts to induce or negotiates with a view to inducing any person: 6
 - (i) to buy, sell, exchange, lease, assign or otherwise dispose of any land, or 7
 - (ii) to make an offer to buy, sell, exchange, lease, assign or otherwise dispose of any land, or 8
 - (iii) to accept an offer to buy, sell, exchange, lease, assign or otherwise dispose of any land, or 9
 - (iv) to enter into a contract for the buying, selling, exchanging, leasing, assigning or other disposal of land, or 10
- (b) elsewhere than at a place of business of the employer: 11
- (i) collects rent payable in respect of any lease of land, or 12
- (ii) collects instalments of principal or interest payable under a mortgage of land or under a contract for the sale on terms of land, or 13
- (iii) collects amounts payable to a company by a person whose shares in the company entitle their holder to the possession of premises, or 14
- (c) for or on behalf of the employer, introduces or arranges for the introduction of prospective buyers, sellers, lessees or licensees of premises to a real estate agent or stock and station agent or to the owner, or to an agent of the owner, of the premises, or 15

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- (d) for or on behalf of the employer, arranges for the erection of buildings for any other person, 1
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- except where the land concerned is rural land and has an area of more than 2.5 hectares. 3
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- registered person** means the holder of a certificate of registration under this Act. 5
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- residential property** has the same meaning as in Division 8 of Part 4 of the *Conveyancing Act 1919*. 7
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- rural land** means land that is used or apparently intended to be used for gain or profit for grazing of livestock, dairying, poultry farming, viticulture, orcharding, beekeeping, horticulture, the growing of crops of any kind, vegetable growing or any other purpose declared by the regulations to be a rural purpose. 9
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- Statutory Interest Account** means the Property Services Statutory Interest Account referred to in Part 12. 14
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- stock and station agent** means a person (whether or not the person carries on any other business) who, for reward (whether monetary or otherwise), carries on business as an agent for: 16
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- (a) doing (where the land concerned consists of rural land) any one or more of the things referred to in paragraph (a)–(d) of the definition of **real estate agent**, or 19
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- (b) inducing or attempting to induce or negotiating with a view to inducing any person: 22
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- (i) to buy, sell or otherwise dispose of any livestock, or 24
- (ii) to make an offer to buy, sell or otherwise dispose of any livestock, or 25
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- (iii) to accept an offer to buy, sell or otherwise dispose of any livestock, or 27
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- (iv) to enter into a contract for the purchase, sale or other disposal of livestock, or 29
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- (c) selling, buying or exchanging any livestock, whether or not an auction is involved, or 31
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- (d) providing agistment for livestock or collecting of fees for such agistment. 33
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- stock and station salesperson** means a person (other than the holder of a stock and station agent's licence) who, as an employee of a stock and station agent or a corporation that employs a stock and station agent (**the employer**): 35
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- (a) does (where the land concerned consists of rural land) any one or more of the things referred to in paragraphs (a)–(d) of the definition of *real estate salesperson*, or
 - (b) induces or attempts to induce or negotiates with a view to inducing any person:
 - (i) to buy, sell or otherwise dispose of any livestock, or
 - (ii) to make an offer to buy, sell or otherwise dispose of any livestock, or
 - (iii) to accept an offer to buy, sell or otherwise dispose of any livestock, or
 - (iv) to enter into a contract for the purchase, sale or other disposal of livestock, or
 - (c) arranges for the provision of agistment for livestock, or
 - (d) elsewhere than at a place of business of the employer, collects fees for the agistment of livestock.
- strata managing agent* means a person (whether or not such person carries on any other business) who, for reward (whether monetary or otherwise), exercises or performs any function of an owners corporation within the meaning of the *Strata Schemes Management Act 1996*, not being:
- (a) a person who:
 - (i) is the proprietor of a lot to which the strata scheme for which the owners corporation is constituted relates, or
 - (ii) is the lessee of a lot to which the leasehold strata scheme for which the owners corporation is constituted relates, or
 - (iii) is the secretary or treasurer of the executive committee of the owners corporation,and who exercises or performs only functions of the owners corporation required, by the by-laws in force in respect of the strata scheme or leasehold strata scheme for which the owners corporation is constituted, to be exercised or performed by the secretary or treasurer of that executive committee or of the owners corporation, or
 - (b) a person who maintains or repairs any property for the maintenance or repair of which the owners corporation is responsible.

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- trainee community managing agent*** means a person (other than a community managing agent holding a strata managing agent's licence) who, as an employee of a community managing agent or a corporation that employs a community managing agent, exercises any of the functions of a community managing agent.
- trainee managing agent*** means a trainee strata managing agent, trainee community managing agent or trainee on-site residential property manager.
- trainee on-site residential property manager*** means a person (other than the holder of an on-site residential property manager's licence or the holder of a real estate agent's licence) who, as an employee of an on-site residential property manager or a corporation that employs an on-site residential property manager, exercises any of the functions of an on-site residential property manager.
- trainee strata managing agent*** means a person (other than the holder of a strata managing agent's licence) who, as an employee of a strata managing agent or a corporation that employs a strata managing agent, exercises any of the functions of a strata managing agent.
- trust account*** means a trust account required to be kept under this Act.
- (2) A reference in the definition of ***real estate agent*** in subsection (1) to the leasing of land includes a reference to the introduction, or arranging for the introduction, of a prospective lessee or licensee of premises to another licensed agent or to the owner, or the agent of the owner, of premises.
- (3) Where a person carries on business:
- (a) as a business agent and also carries on business as an agent for the collection of instalments of principal or interest payable under bills of sale given in respect of businesses or professional practices or under contracts for the sale on terms of businesses or professional practices, a reference in this Act to any such person acting as, or carrying on the business of, a business agent includes a reference to that person carrying on business as an agent for the collection of those instalments, or
 - (b) as a real estate agent and also carries on:
 - (i) business as an agent for the collection of instalments of principal or interest payable under mortgages of land or under contracts for the sale on terms of land, or

- (ii) business as an agent for the collection of amounts payable in relation to any premises to a company by a person who is the holder of shares in the company and who, by reason of the person's holding those shares, is entitled to possession of those premises, or
 - (iii) the business of arranging for the erection of buildings for or on behalf of other persons,
 - a reference in this Act to any such person acting as, or carrying on the business of, a real estate agent includes a reference to that person carrying on business as an agent for the collection of those instalments or amounts or to that person carrying on the business of so arranging for the erection of buildings, or
 - (c) as a stock and station agent and also carries on business as an agent for the collection of instalments of principal or interest payable under mortgages of rural land or under contracts for the sale on terms of any such land, a reference in this Act to any such person acting as, or carrying on the business of a stock and station agent includes a reference to that person carrying on business as an agent for the collection of those instalments.
- 4 Exemptions from Act**
- (1) This Act does not require a licence to be held by any of the following:
- (a) a Minister of the Crown whether a Minister of the State of New South Wales or of the Commonwealth,
 - (b) any Government Department of the State of New South Wales or the Commonwealth (including any statutory corporation representing the Crown),
 - (c) a council within the meaning of the *Local Government Act 1993*,
 - (d) any public statutory authority prescribed by the regulations,
 - (e) any officer or employee of the Crown or of any such Minister, department, corporation, council or authority in the exercise of his or her functions as such officer or employee,
 - (f) the Public Trustee, the Protective Commissioner or any executor, administrator, trustee, liquidator, official receiver, trustee in bankruptcy of a bankrupt's estate, trustee under a composition or scheme of arrangement or under a deed of arrangement or under a deed of assignment, or manager of an

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| estate appointed under the <i>Protected Estates Act 1983</i> , in the | 1 |
| exercise of functions as such, | 2 |
| (g) any person for the purposes of any sale made of Crown lands | 3 |
| or other Crown property or for the purposes of any sale of any | 4 |
| property made by virtue of any writ or process issued out of any | 5 |
| Court or made in obedience to any process issued by any Court | 6 |
| or judge or justice for the recovery of any fine, penalty or | 7 |
| award, or under any rule, order or decree of any competent | 8 |
| Court or made pursuant to the <i>Impounding Act 1993</i> , | 9 |
| (h) a receiver appointed under this Act, in the exercise of the | 10 |
| receiver's functions under this Act, | 11 |
| (i) the New South Wales Land and Housing Corporation, | 12 |
| (j) the New South Wales Department of Housing, | 13 |
| (k) the Office of Community Housing of the Department of | 14 |
| Housing, | 15 |
| (l) the Aboriginal Housing Office, | 16 |
| (m) an organisation for the time being registered with the Office of | 17 |
| Community Housing, or under Part 5 of the <i>Aboriginal</i> | 18 |
| <i>Housing Act 1998</i> , | 19 |
| (n) an organisation prescribed by the regulations. | 20 |
| (2) This Act does not prevent any person for the time being entitled to | 21 |
| practise as a legal practitioner from performing any function, | 22 |
| exercising any power or carrying out any duty that, had this Act not | 23 |
| been enacted, the person might lawfully have performed, exercised or | 24 |
| carried out as a legal practitioner. | 25 |
| (3) An exemption under subsection (1) (f) that allows a person to carry on | 26 |
| a business lawfully without a licence expires 3 months after the | 27 |
| management of the business vests in the person. | 28 |
| (4) This Act does not apply to a sale by auction made for the purposes of | 29 |
| or in the course of a fundraising appeal within the meaning of the | 30 |
| <i>Charitable Fundraising Act 1991</i> if the appeal is made, and the | 31 |
| proceeds of the sale are applied, in accordance with that Act. | 32 |
| (5) This Act does not require a business agent or a business salesperson to | 33 |
| hold a business agent's licence or a certificate of registration under this | 34 |
| Act if: | 35 |
| (a) the person holds a dealers licence under the <i>Corporations</i> | 36 |
| <i>Act 2001</i> of the Commonwealth, or | 37 |
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Clause 4 Property, Stock and Business Agents Bill 2001

Part 1 Preliminary

(b) the person holds a proper authority, within the meaning of the *Corporations Act 2001* of the Commonwealth, from the holder of such a dealers licence.

5 Notes 4

Notes included in this Act do not form part of this Act. 5

Part 2	Licences and certificates of registration	1
Division 1	Requirement for licence or certificate of registration	2
		3
6	Kinds of licences and certificates of registration	4
	There are the following kinds of licences and certificates of registration under this Act:	5
		6
	(a) real estate agent's licence,	7
	(b) stock and station agent's licence,	8
	(c) business agent's licence,	9
	(d) strata managing agent's licence,	10
	(e) on-site residential property manager's licence,	11
	(f) corporation licence,	12
	(g) certificate of registration as a real estate salesperson, stock and station salesperson, business salesperson or trainee managing agent.	13
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7	Agents required to be licensed	16
	(1) A natural person must not act as or carry on the business of (or advertise, notify or state that the person acts as or carries on the business of or is willing to act as or carry on the business of):	17
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	(a) a real estate agent, unless the person is the holder of a real estate agent's licence, or	20
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	(b) a stock and station agent, unless the person is the holder of a stock and station agent's licence, or	22
		23
	(c) a business agent, unless the person is the holder of a business agent's licence, or	24
		25
	(d) a strata managing agent or community managing agent, unless the person is the holder of a strata managing agent's licence, or	26
		27
	(e) an on-site residential property manager, unless the person is the holder of an on-site residential property manager's licence.	28
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	Maximum penalty: 100 penalty units.	30

Clause 7	Property, Stock and Business Agents Bill 2001
Part 2	Licences and certificates of registration
Division 1	Requirement for licence or certificate of registration

(2)	A natural person is not entitled to bring any proceeding in any court or tribunal to recover any commission, fee, gain or reward for any service performed by the person:	1
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(a)	as a real estate agent, unless the person was the holder of a real estate agent's licence, or employed the holder of such a licence, at the time of performing the service, or	4
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(b)	as a stock and station agent, unless the person was the holder of a stock and station agent's licence, or employed the holder of such a licence, at the time of performing the service, or	7
		8
		9
(c)	as a business agent, unless the person was the holder of a business agent's licence, or employed the holder of such a licence, at the time of performing the service, or	10
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(d)	as a strata managing agent or as a community managing agent, unless the person was the holder of a strata managing agent's licence, or employed the holder of such a licence, at the time of performing the service, or	13
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(e)	as an on-site residential property manager, unless the person was the holder of an on-site residential property manager's licence or a real estate agent's licence, or employed the holder of such a licence, at the time of performing the service.	17
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(3)	This section applies to a natural person whether or not the person is a member of a partnership.	21
		22
(4)	The fact that a particular activity is an activity for which more than one class of licence may be appropriate does not require the holding of more than one class of licence so long as at least one of the licences that is appropriate to the activity is held.	23
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(5)	For the purposes of this section, a person is not considered to carry on a business merely because the person is engaged in a partnership that carries on that business.	27
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	Note. Subsection (5) makes it clear that "silent" partners are not required to be licensed.	30
		31
8	Corporations require corporation licence	32
(1)	A corporation must not act as or carry on the business of (or advertise, notify or state that the corporation acts as or carries on the business of or is willing to act as or carry on the business of) an agent unless the corporation holds a corporation licence.	33
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	Maximum penalty: 200 penalty units.	37

- (2) A corporation is not entitled to bring any proceeding in any court to recover any commission, fee, gain or reward for any service performed by the corporation as an agent unless the corporation was the holder of a corporation licence at the time of performing the service.

9 Salespersons and trainees require certificate of registration

- (1) A person must not do any of the following things unless the person is the holder of a certificate of registration:
- (a) be or remain as a real estate salesperson, stock and station salesperson, business salesperson or trainee managing agent in the employment of a person licensed (or required to be licensed) under this Act, or
 - (b) represent, whether expressly or impliedly, that the person is a real estate salesperson, stock and station salesperson, business salesperson or trainee managing agent in the employment of a person licensed (or required to be licensed) under this Act, or
 - (c) act as or exercise any of the functions of a real estate salesperson, stock and station salesperson, business salesperson or trainee managing agent.
- (2) An employed licensee is not required to hold both a certificate of registration and a licence to allow the licensee lawfully to do anything that, in the absence of this section, the licensee could lawfully do as the holder of the licence.
- Maximum penalty: 100 penalty units.

10 Registered salespersons and trainees required to be employed and supervised by licensee

- (1) The holder of a certificate of registration must not act as or exercise any of the functions of a real estate salesperson, stock and station salesperson, business salesperson or trainee managing agent unless the person does so as an employee of the holder of a licence under this Act.
- (2) The holder of a certificate of registration must not exercise any of the functions of a real estate salesperson, stock and station salesperson, business salesperson or trainee managing agent unless he or she does so under the supervision of a person who:
- (a) is the licensee in charge of the place of business at which the employee is employed, and

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| <ul style="list-style-type: none"> (e) the person has paid such part of any contribution or levy payable under Part 11 (Compensation Fund) as is due and payable on the granting of the licence, and (f) the person will, for the whole of the period of the licence, be insured under an approved policy of professional indemnity insurance in force with respect to the person or his or her employer, or will as a licensee be exempt under the regulations from the requirement for professional indemnity insurance. | <p>1
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| <p>(2) A corporation is eligible to hold a corporation licence only if the Director-General is satisfied that:</p> <ul style="list-style-type: none"> (a) the corporation is a fit and proper person to hold a licence, and (b) each director of the corporation is a fit and proper person to hold a licence, and (c) no director of the corporation or executive officer (within the meaning of the <i>Corporations Act</i>) is a disqualified person, and (d) at least one of the directors of the corporation holds a licence that a natural person is required to hold to carry on the business that the corporation carries on or proposes to carry on, and (e) the corporation has paid such part of any contribution or levy payable under Part 11 (Compensation Fund) as is due and payable on the granting of the licence, and (f) the corporation will, for the whole of the period of the licence, be insured under an approved policy of professional indemnity insurance. | <p>9
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| <p>(3) A person is eligible to hold a certificate of registration only if the Director-General is satisfied that the person:</p> <ul style="list-style-type: none"> (a) is an individual who is at least 16 years of age, and (b) is a fit and proper person to hold a licence, and (c) has the qualifications required for the issue of a certificate of registration of the class concerned, and (d) is not a disqualified person. | <p>25
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| <p>14 Qualifications for licence or certificate of registration</p> <p>(1) The qualifications required for the issue of a licence or certificate of registration are such qualifications as the Minister may approve from time to time by order published in the Gazette.</p> | <p>32
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- (2) Without limiting the Minister's power to approve qualifications, the Minister may approve qualifications by reference to any one or more (or a combination of any one or more) of the following:
- (a) the completion of a course of study,
 - (b) the completion of a period of training in a particular activity,
 - (c) the attainment of a standard of competency in a particular activity,
 - (d) satisfaction of professional development requirements.
- (3) Qualifications may be approved for a limited range of activities specified in the approval, so as to enable a person who has those qualifications to be granted a licence or certificate of registration subject to conditions that limit the person to exercising the functions of licensee or certificate of registration holder in relation to that limited range of activities only.
- (4) A person does not have the qualifications required for the issue of a licence or certificate of registration by way of the reissue of an earlier licence or certificate of registration if the person failed to comply with any condition of the earlier licence or certificate of registration that required the holder to undertake professional development, continuing education or a course of study, unless the Director-General otherwise determines in a particular case.
- (5) The issue of a licence or certificate of registration is considered to be by way of the reissue of an earlier licence or certificate of registration if it is of the same kind as the earlier licence or certificate of registration and the application for it is made during or within 12 months after the end of the period for which the earlier licence or certificate of registration is in force.
- 15 Disqualified persons**
- (1) A person is a disqualified person for the purposes of this Act if the person:
- (a) has a conviction in New South Wales or elsewhere for an offence involving dishonesty that was recorded in the last 10 years, unless the Director-General has determined under subsection (2) that the offence should be ignored, or
 - (b) has a conviction that was recorded in the last 5 years for an offence under section 12 (Lending of licence or certificate of registration prohibited) of this Act or section 41 (Licensee not

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| to lend licence) of the <i>Property, Stock and Business Agents Act 1941</i> , unless the Director-General has determined under subsection (2) that the offence should be ignored, or | 1 |
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| (c) is an undischarged bankrupt or is a director or person concerned in the management of a corporation that is the subject of a winding up order or for which a controller or administrator has been appointed, or | 4 |
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| (d) at any time in the 3 years preceding the application for the licence or certificate of registration was an undischarged bankrupt, applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounded with his or her creditors or made an assignment of his or her remuneration for their benefit, unless the Director-General is satisfied that the person took all reasonable steps to avoid bankruptcy, or | 8 |
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| (e) at any time in the 3 years preceding the application for the licence or certificate of registration was concerned in the management of a corporation when the corporation was the subject of a winding up order or when a controller or administrator was appointed, unless the Director-General is satisfied that the person took all reasonable steps to avoid the liquidation or administration, or | 15 |
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| (f) is a mentally incapacitated person, or | 22 |
| (g) is disqualified from holding a licence, certificate of registration or other authority under a corresponding law or under the <i>Fair Trading Act 1987</i> or is the holder of such a licence, certificate of registration or other authority that is suspended, or | 23 |
| | 24 |
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| (h) is in partnership with a person who is a disqualified person, or | 27 |
| (i) is for the time being declared to be a disqualified person under Part 9 (Complaints and disciplinary action), or | 28 |
| | 29 |
| (j) is a corporation that is the subject of a winding up order or for which a controller or administrator has been appointed, or | 30 |
| | 31 |
| (k) has failed to pay a contribution or levy payable by the person under Part 11 (Compensation Fund) and the failure continues, or | 32 |
| | 33 |
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| (l) has failed to pay any monetary penalty payable by the person under Part 9 (Complaints and disciplinary action) or has failed to comply with a direction given by the Director-General under that Part, and the failure continues, or | 35 |
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- (m) has failed to provide the Director-General with an auditor's report that the person is required to provide under this Act on the audit of the records and documents relating to any money held in a trust account kept by the person under this Act, or 1
 - (n) is in breach of any provision of this Act or the regulations that is prescribed by the regulations as a disqualifying breach. 2
 - (2) The Director-General may determine that an offence committed by a person should be ignored for the purposes of this section because of the time that has passed since the offence was committed or because of the triviality of the acts or omissions giving rise to the offence. 3
 - (3) In this section: 4
 - corresponding law* means a law of another Australian jurisdiction that is declared by the Minister from time to time by order published in the Gazette to be a law that corresponds to this Act. 5
- 16 What constitutes approved policy of professional indemnity insurance** 6
- (1) For the purposes of this Act, an *approved policy of professional indemnity insurance* is a policy, or a policy of a kind, that is approved by the Minister for the time being by order published in the Gazette. 7
 - (2) An order may provide that a policy is an approved policy if the policy complies with either or both of the following: 8
 - (a) the policy complies with the conditions set out in the order, 9
 - (b) the policy is described in the order by reference to the insurer and the number of the policy or is identified in the order by other specified particulars. 10
 - (3) If an order requires an approved policy to comply with conditions set out in the order a policy ceases to be an approved policy if it ceases to comply with those conditions. 11
 - (4) An order may: 12
 - (a) apply generally or be limited in its application by reference to specified exceptions or factors, or 13
 - (b) apply differently according to different factors of a specified kind. 14
 - (5) An order takes effect on the day it is published in the Gazette or on a later date specified in the order. An order may contain provisions of a savings or transitional nature consequent on the making of the order. 15

- (6) If an order takes effect during the term of a licence, any policy in force in respect of the licensee immediately before the order takes effect that is at that time an approved policy of professional indemnity insurance:
 - (a) is taken to continue to be an approved policy of professional indemnity insurance in relation to the licensee until the expiry of the term of the licence, and
 - (b) is subject to the same conditions to which it was subject immediately before the order took effect.
- (7) Subsection (6) is subject to any express provision to the contrary contained in the order.

Division 3 Application and issue procedure

17 Application for licence or certificate of registration

- (1) An application for a licence or certificate of registration is to be made to the Director-General in a form approved by the Director-General.
 - (2) The application is to be accompanied by:
 - (a) an application fee of an amount prescribed by the regulations, and
 - (b) in the case of an application for a licence, the contribution to the Compensation Fund required to accompany the application, and
 - (c) such information and evidence as the Director-General may request for the purposes of determining the application.
 - (3) The Director-General may require further information and evidence to be given in connection with an application.
 - (4) The Director-General may require the application, and any such information or evidence, to be verified by statutory declaration.
 - (5) An application is not duly made until any requirement under this section is complied with.
 - (6) A person who in an application for a licence or certificate of registration provides information that is false or misleading in a material particular is guilty of an offence.
- Maximum penalty: 50 penalty units.

18	Consideration of applications	1
(1)	The Director-General may make such inquiries as the Director-General considers necessary in relation to an application.	2 3
(2)	The Commissioner of Police must, if the Director-General so requests, investigate an application and must, as soon as practicable after completing the investigation, make a report on the investigation to the Director-General.	4 5 6 7
19	Determination of applications	8
(1)	After considering an application, the Director-General is to determine the application by either granting or refusing the application.	9 10
(2)	The application must not be granted unless the applicant is eligible to be granted the licence or certificate of registration concerned (as provided by section 13).	11 12 13
(3)	The Director-General must cause notice of the Director-General's decision on an application (including reasons for the decision if the decision is to refuse the application) to be given to the applicant.	14 15 16
(4)	For the purposes only of any appeal proceedings arising in connection with an application, the Director-General is taken to have refused the application if the Director-General has not determined the application within 8 weeks after the application was duly made.	17 18 19 20
20	Conditions	21
	A licence or certificate of registration may be granted subject to conditions, including (but not limited to) conditions of the following kind:	22 23 24
(a)	a condition prohibiting the holder of a real estate agent's licence or stock and station agent's licence from acting as an auctioneer unless the licensee is accredited by the Director-General as having satisfactorily completed a course of training approved by the Director-General in connection with the conduct of auctions and the functions of auctioneers,	25 26 27 28 29 30
(b)	a condition prohibiting the holder from exercising functions under the licence or certificate of registration otherwise than as an employee of a licensee whose licence does not contain such a condition,	31 32 33 34
(c)	a condition requiring the holder to undertake or complete a specified course of studies within a specified period of time,	35 36

- (d) a condition requiring a licensee or holder of a certificate of registration to undertake by way of professional development specified further education or training during the term of the licence or certificate of registration, 1
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- (e) a condition prohibiting the holder from exercising functions under the authority of the licence or certificate of registration in relation to specified activities, or prohibiting the holder from exercising functions under the authority of the licence or certificate of registration except in relation to specified activities. 5
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- Note.** An example of a condition under paragraph (e) is a condition that the holder of a real estate agent's licence act only as a buyer's agent. 11
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- 21 Special conditions for on-site residential property managers and trainees** 13
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- (1) An on-site residential property manager's licence is subject to the condition that the licensee must not carry on business as an on-site residential property manager in respect of premises unless: 15
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- (a) the licensee's principal place of residence is situated at those premises, and 18
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- (b) the person owns, or has an interest prescribed by the regulations in, that principal place of residence. 20
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- Note.** This condition prevents a person from being an on-site residential property manager for more than one residential complex. To do that, a person must hold a real estate agent's licence. 22
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- (2) The certificate of registration of a trainee on-site residential property manager is subject to a condition that the person must not act as or exercise any of the functions of a trainee on-site residential property manager except in respect of premises in which are situated the principal place of residence of the licensee who employs the person. 25
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- 22 Issue of licence or certificate of registration** 30
- (1) Licences and certificates of registration are issued by the Director-General and are to be in such form and specify such information as the Director-General determines. 31
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- (2) The Director-General may determine that a licence or certificate of registration is to display a photograph of the holder and for that purpose may require an applicant to provide a photograph or to permit his or her photograph to be taken. 34
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- (3) A licence or certificate of registration may be issued to replace one that the Director-General is satisfied has been lost, stolen, damaged or destroyed. The Director-General may require payment of a fee prescribed by the regulations for the issue of a replacement licence or certificate of registration. 1
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23 Duration 6

- (1) A licence or certificate of registration takes effect on the date on which it is granted or on such later date as may be specified in it and (unless it is sooner suspended or cancelled) remains in force for 1 year. 7
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- (2) If an application for a licence or certificate of registration is by way of the reissue of an existing licence or certificate of registration, the existing licence or certificate of registration remains in force until the application is determined (even if as a result the existing licence or certificate of registration is in force for more than 1 year). 10
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- (3) The holder of a licence or certificate of registration may at any time surrender it by notice in writing to the Director-General and the licence is thereby cancelled. 15
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24 Reissue and restoration of a licence or certificate of registration 18

- (1) Application may be made for the reissue of a licence or certificate of registration during the current term of the licence or certificate of registration. 19
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- (2) An application for the *reissue* of a licence or certificate of registration constitutes an application for a new licence or certificate of registration that is the same as the current licence or certificate of registration, with the new licence to take effect on the expiry of the current licence or certificate of registration. 22
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- (3) If a licence or certificate of registration expires without an application having been made for its reissue, an application may be made for the restoration of the expired licence or certificate or registration but such an application can only be made within 3 months after the expiry of the licence or certificate of registration. 27
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- (4) The regulations may prescribe a fee as a late application fee to accompany an application for restoration of an expired licence or certificate of registration (in addition to any other fee required to accompany an application for a licence or certificate of registration). 32
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- (5) An application for the restoration of an expired licence or certificate of registration constitutes an application for a new licence or certificate of registration that is the same as the expired licence or certificate of registration, with the new licence to be back-dated to take effect on the expiry of the expired licence or certificate of registration. 1
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- Note.** In all other respects applications for reissue or restoration are subject to the same requirements as apply to and in respect of ordinary applications for a licence or certificate of registration. 6
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- (6) If an application for the restoration of an expired licence or certificate of registration is duly made: 9
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- (a) anything done by the holder of the expired licence or certificate of registration between its expiry and the determination of the application for restoration (whether the application is granted or refused) is taken to have been done as the holder of a licence or certificate of registration, except for the purposes of sections 7–9, and 11
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- (b) if the application is granted, the restored licence or certificate of registration is taken to have had effect from the expiry of the expired licence or certificate of registration (and is to be expressed to take effect accordingly). 17
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- 25 Review by ADT** 21
- A person may apply to the Administrative Decisions Tribunal for a review of any of the following decisions of the Director-General: 22
23
- (a) a decision refusing to grant a licence or certificate of registration to the person (including such a decision pursuant to an application for the reissue or restoration of a licence or certificate of registration), 24
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- (b) a decision of the Director-General to impose a condition on a licence or certificate of registration of the person. 28
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- (2) In addition, a licensee that is a corporation must display legibly and conspicuously:
- (a) outside the corporation's registered office, the name of the person in charge of the corporation's registered office, and
 - (b) outside any other place at which the business of the corporation is carried on, the name of the person in charge at that place.
- (3) A person must not display or exhibit outside or near the person's office, house or place of business any sign or other matter that indicates or implies that the office, house or place of business is that of a person licensed as a kind of agent under this Act unless the person is licensed as an agent of that kind.
- Maximum penalty: 50 penalty units.

28 Business names

- (1) A licensee must not, either alone or together with other persons, carry on business as a licensee under a name or advertise or hold out that the licensee carries on business as a licensee under a name unless:
- (a) the name consists of the name of the licensee and the name of each other person, if any, with whom the licensee is carrying on, or advertising or holding out that the licensee is carrying on, business as a licensee, or
 - (b) the Director-General has approved of the licensee carrying on, or advertising or holding out that the licensee carries on, that business as a licensee under that name.
- (2) The name of a licensee (other than a corporation) consists of the licensee's full name, or the licensee's surname (or family name) together with:
- (a) the licensee's other name or names, or
 - (b) the initial or initials of the licensee's other name or names, or
 - (c) a combination of one or more of the licensee's other name or names and the initial or initials of the licensee's remaining other name or names, or
 - (d) the other name or names by which the licensee is commonly known or the initial or initials by which the licensee is commonly known or any combination of one or more of those names or initials.

Clause 28 Property, Stock and Business Agents Bill 2001

Part 3 General conduct of licensees and registered persons

Division 1 Place and name of business

- (3) The name of a licensee that is a corporation consists of the corporate name of the corporation. 1
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- (4) The Director-General may refuse to approve of a licensee carrying on, 3
or advertising or holding out that the licensee carries on, business as a 4
licensee under a name if: 5
- (a) the name is the same as, or is a name closely resembling, the 6
name under which a person whose licence has been cancelled 7
under or in pursuance of this Act was carrying on business 8
immediately before the person's licence was cancelled, or 9
- (b) the name implies or is capable of being construed as implying 10
that the licensee is the successor in the business, or in any way 11
interested or concerned in continuing the business as a licensee, 12
of a person whose licence has been cancelled under or in 13
pursuance of this Act, or 14
- (c) the name is, in the opinion of the Director-General and in the 15
circumstances of any particular case, undesirable as being 16
contrary to the public interest. 17
- (5) This section does not affect the *Business Names Act 1962*. 18

Division 2 Business practices and supervision 19

29 Each place of business to be in charge of licensee 20

- (1) An individual who carries on business under a licence at more than 21
one place of business must employ at each of those places of business 22
(except the place at which the licensee is personally in charge) as the 23
person in charge of business at that place a person who is the holder 24
of a licence that an individual is required to hold to carry on that 25
business. 26
- (2) A corporation that holds a corporation licence must employ as the 27
person in charge at each place of business at which the corporation 28
carries on business under the licence a person who is the holder of a 29
licence that an individual is required to hold to carry on that business. 30
- (3) A licensee must not employ a person to be the person in charge of 31
business at a place of business of the licensee if the person is also 32
employed to be the person in charge of business at another place of 33
business of the licensee or at a place of business of another licensee. 34

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- (4) A person employed as the person in charge of business at a place of business of a licensee must not exercise functions or provide services on behalf of 2 or more licensees at that place (whether corporations or individuals) unless those licensees are in partnership. 1
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- (5) The Director-General may grant a person an exemption from a provision of this section. The exemption may be granted unconditionally or subject to conditions. The Director-General may at any time by notice in writing to a person granted an exemption revoke the exemption or vary the conditions of the exemption. 5
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- (6) The regulations may specify the matters to be taken into account by the Director-General in considering whether to grant a person an exemption from a provision of this section. 10
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- Maximum penalty: 13
- (a) 200 penalty units in the case of a corporation, or 14
- (b) 100 penalty units in any other case. 15
- 30 Duty of licensee and person in charge to properly supervise business** 16
- (1) A licensee must properly supervise the business carried on by the licensee. 17
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- (2) A licensee employed by another licensee (*the principal licensee*) as the person in charge of business at a place of business of the principal licensee must properly supervise the business of the principal licensee carried on at that place. 19
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- (3) The requirement to properly supervise the conduct of business includes the following requirements: 23
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- (a) a requirement to properly supervise employees engaged in the business, and 25
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- (b) a requirement to establish procedures designed to ensure that the provisions of this Act and any other laws relevant to the conduct of that business are complied with, and 27
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- (c) a requirement to monitor the conduct of business in a manner that will ensure as far as practicable that those procedures are complied with. 30
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Clause 30 Property, Stock and Business Agents Bill 2001

Part 3 General conduct of licensees and registered persons

Division 2 Business practices and supervision

- (4) The Director-General may from time to time issue and notify to licensees guidelines as to what constitutes the proper supervision of the business of a licensee. A failure to comply with the requirements of any such guidelines in connection with the supervision of a business constitutes a failure to properly supervise the business. 1
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Maximum penalty: 6
(a) 200 penalty units in the case of a corporation, or 7
(b) 100 penalty units in any other case. 8
- 31 Licensee not to share commission with certain persons** 9
- (1) A licensee must not enter into an arrangement with or act in conjunction with a person that the licensee knows to be an unlicensed person (other than an employee in the licensee's business as a licensee) whereby the unlicensed person is entitled to a share of the commission, fee, gain or reward payable to the licensee in respect of any transaction by or with him or her as a licensee or generally. 10
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- (2) In this section: 16
unlicensed person means a person who is not licensed under this Act or a corresponding Act. 17
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Maximum penalty: 19
(a) 100 penalty units in the case of a corporation, or 20
(b) 50 penalty units in any other case. 21
- 32 Subagency agreements to be in writing** 22
- (1) An agreement between licensees to share any commission, fee, gain or reward paid or payable to a licensee in respect of any services performed by him or her as a licensee is unenforceable unless the agreement is in writing, is signed by the licensees and contains such terms (if any) as may be prescribed by the regulations. 23
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- (2) Any provision in, or applying to, such an agreement and purporting to exclude or restrict the operation of the terms (if any) required to be contained in that agreement has no force or effect. 28
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- (3) A licensee who enters into an agreement that is unenforceable because of this section is guilty of an offence. 31
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Maximum penalty: 50 penalty units. 33

- (4) This section does not apply to: 1
- (a) an agreement between licensees who are in partnership with one another or in the relationship of employer and employee with one another, or 2
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 - (b) an agreement, transaction, circumstance or person prescribed by the regulations as exempt from this section or an agreement, transaction, circumstance or person of a class or description prescribed by the regulations as exempt from this section. 5
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- 33 Franchising agreements** 9
- (1) A licensee who enters into a franchising agreement in connection with the conduct of the licensee's business as licensee must give notice of the agreement to the Director-General. The notice must be in the form approved by the Director-General and must be given within 30 days after the agreement is entered into. 10
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Maximum penalty: 100 penalty units. 15
- (2) The franchisor under a franchising agreement must notify the Director-General in writing within 7 days after becoming aware of any failure to account by a licensee who is a party to the franchising agreement. 16
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Maximum penalty: 100 penalty units. 19
- (3) The regulations may make provision for or with respect to requiring a party to a franchising agreement to provide specified information to the Director-General in respect of the franchising agreement and activities or other matters connected with the franchising agreement, including (but not limited to): 20
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- (a) the occurrence of any event that entitles the franchisor to terminate the franchise agreement, and 25
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 - (b) the occurrence of any event that results in the franchisee being unable to meet the franchisee's obligations under the franchising agreement as and when they fall due. 27
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- (4) In this section: 30
- franchising agreement*** means an agreement whereby a licensee is authorised to carry on business under any name in consideration of any other person entitled to carry on business under that name receiving any consideration whether by way of a share in the profits of the licensee's business or otherwise. 31
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failure to account has the same meaning as in Part 10 (Management and receivership).

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34 Review of commission and fees

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(1) An action or other proceedings cannot be commenced by a licensee for the recovery of remuneration or any sum as reimbursement for expenses until the expiration of 28 days after a statement of claim has been served personally or by post on the person to be charged with the remuneration or expenses.

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(2) The statement of claim must be in writing, set out the amount claimed and contain details of the services performed by the licensee in respect of which the remuneration or expenses are claimed

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(3) If money has been paid to or is or has been retained by a licensee (out of money received by or paid to the licensee) in respect of any transaction by or with the licensee as a licensee and has been so paid or retained as remuneration or as reimbursement for expenses in connection with the transaction, the person paying the money or the person who would be entitled to the money had the money not been retained, may require the licensee to furnish the person with an itemised account of the transaction in accordance with the regulations.

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(4) A person who is served with a statement of claim under this section or is provided with an itemised account of a transaction as provided by this section may apply to the Tribunal for the determination of a consumer claim within the meaning of *Consumer Claims Act 1998* in relation to:

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

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

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

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(6) The Tribunal has jurisdiction to hear and determine any such consumer claim despite:

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

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- (b) the amount being more or less than the maximum amount (if any) of remuneration to which a licensee is entitled under this Act. 1
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- (7) The regulations may make provision for or with respect to requiring the inclusion, in the manner prescribed by the regulations, in a statement of claim or itemised account for the purposes of this section, of a notice, in a form approved by the Director-General, containing advice concerning remedies available under the *Consumer Claims Act 1998*. 4
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- (8) This section does not limit the *Consumer Claims Act 1998*. 10
- (9) In this section: 11
- expenses* means expenses or charges incurred in connection with services performed by a licensee in his or her capacity as a licensee. 12
13
- remuneration* means remuneration by way of commission, fee, gain or reward for services performed by a licensee in his or her capacity as a licensee. 14
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16
- Tribunal* means the Tribunal under the *Consumer Claims Act 1998*. 17
- 35 Rules of conduct for licensee's business** 18
- The regulations may prescribe rules of conduct to be observed in the course of the carrying on of business under a licence. 19
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- Note.** Part 9 (Complaints disciplinary action) provides that a contravention of a provision of the regulations is grounds for taking disciplinary action against a person. 21
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- 36 Undertakings by licensees and registered persons** 24
- The Director-General may accept a written undertaking from the holder of a licence or certificate of registration as to the manner in which the holder will exercise functions under the licence or certificate of registration. 25
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- Note.** Part 9 provides that a breach of such an undertaking is grounds for taking disciplinary action against a person. 29
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- 37 Duty of licensee to notify defalcation** 31
- (1) A licensee must notify the Director-General as soon as practicable after becoming aware of any failure to account by the licensee. 32
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- Maximum penalty: 50 penalty units. 34
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Clause 37 Property, Stock and Business Agents Bill 2001

Part 3 General conduct of licensees and registered persons

Division 2 Business practices and supervision

- (2) In this section: 1
failure to account has the same meaning as in Part 10 (Management 2
and receivership). 3

Division 3 Employees 4

38 Liability of licensee for acts of employees 5

- A licensee who employs a person at any place of business of the 6
licensee is responsible, in tort and in contract, for anything done or not 7
done by the person: 8
- (a) within the scope of the employee's authority, or 9
- (b) for the benefit, or the purported or intended benefit, of the 10
licensee or the licensee's business. 11

39 Licensee to keep records of certain employees 12

- (1) A licensee must make and keep a record of the name and residential 13
address of each employee that the licensee employs as a real estate 14
salesperson, stock and station salesperson, business salesperson or 15
trainee managing agent. 16
- (2) The licensee must keep the record for at least 3 years after the person 17
ceases to be an employee. 18
- (3) The licensee must keep the record in the form of a register of 19
employees and that register must be kept at the place of business of the 20
licensee at which the employee is employed. 21
- Maximum penalty: 50 penalty units. 22

40 Duty of licensee not to employ certain persons 23

- (1) A licensee must not employ a person in any capacity in connection 24
with the carrying on of the business conducted by the licensee if the 25
person: 26
- (a) is a disqualified person, or 27
- (b) has had his or her licence or certificate of registration 28
suspended or cancelled under this Act (unless the person 29
currently holds a licence), or 30

(c)	has had an application for a licence or certificate of registration refused on the ground that the person was not a fit and proper person to hold a licence or certificate of registration (unless the person currently holds a licence).	1 2 3 4
	Maximum penalty: 50 penalty units.	5
(2)	It is a defence to a prosecution for an offence under this section if the licensee establishes that the licensee did not know, and could not reasonably be expected to have known after diligent inquiry, that the person was a person whose employment by the licensee was prohibited by this section.	6 7 8 9 10
41	Duty of licensee to notify disqualification of employee	11
	A licensee must notify the Director-General in writing within 7 days after becoming aware that a person employed by the licensee has become a disqualified person.	12 13 14
	Maximum penalty: 50 penalty units.	15
42	Employees required to notify disqualification	16
	A person employed by a licensee must notify the licensee within 7 days after the person becomes a disqualified person.	17 18
	Maximum penalty: 50 penalty units.	19
Division 4	Conflicts of interest	20
43	Financial and investment advice by real estate agents	21
(1)	The regulations may make provision for or with respect to requiring a real estate agent who provides financial or investment advice to a person in connection with the sale or purchase of land to provide to the person specified information or warnings.	22 23 24 25
(2)	A real estate agent who fails to comply with a requirement of the regulations under this section is guilty of an offence.	26 27
	Maximum penalty: 200 penalty units.	28
44	Duty not to act for both buyer and seller of land	29
(1)	A licensee must not act in his or her capacity as licensee on behalf of both the buyer and the seller of land at the same time.	30 31

Clause 44 Property, Stock and Business Agents Bill 2001

Part 3 General conduct of licensees and registered persons

Division 4 Conflicts of interest

- (2) A licensee must not enter into agency agreements in respect of the purchase or sale of land if the performance of services by the licensee under the agreements will or can result in the licensee acting in his or her capacity as licensee on behalf of both the buyer and the seller of the land at the same time. 1
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Maximum penalty: 6

(a) 200 penalty units in the case of a body corporate, or 7

(b) 100 penalty units in any other case. 8

45 Restrictions on licensee obtaining beneficial interest in property 9

- (1) A real estate agent who has been retained by a person (*the client*) as an agent for the sale of property must not obtain or be in any way concerned in obtaining a beneficial interest in the property. 10
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Maximum penalty: 200 penalty units or imprisonment for 2 years, or both. 13
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- (2) A real estate salesperson employed by the real estate agent must not obtain or be in any way concerned in obtaining a beneficial interest in the property. 15
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Maximum penalty: 200 penalty units or imprisonment for 2 years, or both. 18
19

- (3) A person does not contravene this section by obtaining a beneficial interest in property if: 20
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(a) before the person obtains the interest, the client consents in writing in a form approved by the Director-General to the person obtaining the interest, and 22
23
24

(b) the person acts fairly and reasonably in relation to the obtaining of the interest, and 25
26

(c) no commission or other reward is payable to the person in relation to the transaction by which the interest is obtained. 27
28

- (4) Without limitation, a person is considered to obtain a beneficial interest in property if: 29
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(a) the person or a close relative of the person obtains a beneficial interest in the property, or 31
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- (b) a corporation having not less than 100 members and of which the person or a close relative of the person is a member, or a subsidiary of such a corporation, obtains a beneficial interest in the property, or 1
- (c) a corporation of which the person or a close relative of the person is an executive officer obtains a beneficial interest in the property, or 2
- (d) the trustee of a discretionary trust of which the person or a close relative of the person is a beneficiary obtains a beneficial interest in the property, or 3
- (e) a member of a firm or partnership of which the person or a close relative of the person is also a member obtains a beneficial interest in the property, or 4
- (f) the person or a close relative of the person has, directly or indirectly, a right to participate in the income or profits of a business carried on for profit or gain and another person carrying on that business obtains a beneficial interest in the property. 5
- (5) Without limitation, each of the following is considered to constitute the obtaining of a beneficial interest in property : 6
- (a) purchasing property, 7
- (b) obtaining an option to purchase property, 8
- (c) being granted a general power of appointment in respect of property. 9
- (6) In this section: 10
- close relative** of a person means: 11
- (a) a spouse of the person, or 12
- (b) a de facto partner who is living or has lived with the person as the person's husband or wife on a bona fide domestic basis although not married to the person, or 13
- (c) a child, grandchild, sibling, parent or grandparent of the person, whether derived through paragraph (a) or (b) or otherwise, or 14
- (d) any other person who has a relationship with the person that is prescribed by the regulations as constituting the relationship of close relative for the purposes of this section. 15
- property** includes an interest in property. 16

Clause 46	Property, Stock and Business Agents Bill 2001
Part 3	General conduct of licensees and registered persons
Division 5	Advertisements and representations

Division 5	Advertisements and representations	1
46	Advertisements to include information about licensee	2
(1)	A licensee must not publish (in a newspaper or otherwise) an advertisement relating to or in connection with the licensee's business unless the advertisement includes the following:	3
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(a)	if the licensee is an individual carrying on business in the licensee's own name and is not a member of a partnership—the licensee's name and licence number,	6
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(b)	if the licensee is an individual carrying on business under a business name registered under any Act relating to the registration of business names—either the licensee's name or that business name, and the licensee's licence number,	9
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		12
(c)	if the licensee carries on business as a member of a partnership—either the licensee's name or the name of the partnership, or the name under which the partnership is registered under any Act relating to the registration of business names, and the licence number of the licensee or another member of the partnership,	13
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(d)	if the licensee is a corporation and the corporation is carrying on business in its own name—the name of the corporation and the licence number of the corporation,	19
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(e)	if the licensee is a corporation and the corporation is carrying on business under a business name registered under any Act relating to the registration of business names—either its own name or that business name, and the licence number of the corporation.	22
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(2)	If a licensee has an interest in any real or personal property as a principal, the licensee must not publish an advertisement relating to or in connection with the property in a newspaper or otherwise without disclosing that interest in the advertisement.	27
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	Maximum penalty: 100 penalty units.	31

47 Publishing false or misleading advertisements

- (1) A licensee must not publish or cause to be published in the course of carrying on business as a licensee any statement that:
- (a) is intended or apparently intended by the licensee to promote the sale or lease of any property, and
 - (b) is false, misleading or deceptive (whether to the licensee's knowledge or not).
- Maximum penalty: 200 penalty units.
- (2) Without limiting the generality of subsection (1), a statement is taken to be false or misleading for the purposes of this section if it is of such a nature that it would reasonably tend to lead to a belief in the existence of a state of affairs that does not in fact exist, whether or not the statement indicates that the state of affairs does exist.
- (3) A statement is *published* if it is:
- (a) inserted in any newspaper, periodical publication or other publication, or
 - (b) publicly exhibited in, on, over or under any building, vehicle or place (whether or not a public place and whether on land or water), or in the air in view of persons being or passing in or on any street or public place, or
 - (c) contained in any document gratuitously sent or delivered to any person or thrown or left upon premises in the occupation of any person, or
 - (d) broadcast by radio or television, or
 - (e) disseminated by means of an Internet website or electronic mail.
- (4) It is a defence to a prosecution against a person for an offence under this section if the person proves that:
- (a) the person took all reasonable precautions against committing the offence, and
 - (b) the person believed on reasonable grounds that the statement was true or (in the case of a statement that would reasonably tend to lead to a belief in the existence of a state of affairs that does not in fact exist) the person believed on reasonable grounds that the state of affairs existed, and

- (4) It is a sufficient defence to a prosecution for an offence under this section if the defendant proves that the defendant did not know, and had no reasonable cause to suspect, that the statement, representation or promise was false, misleading or deceptive.

49 Damages for fraudulent misrepresentation

No term or provision of any agreement (whether entered into before or after the commencement of this section) for the sale and purchase of land or any interest in land operates to prevent the purchaser from claiming or being awarded damages or any other relief in respect of any fraudulent misrepresentation in connection with the sale and purchase of the land or interest.

Part 4 Agency agreements 1

Division 1 Requirements for agency agreements 2

50 Definitions 3

In this Division: 4

commission means remuneration by way of commission, fee, gain or
reward for services performed by a licensee in his or her capacity as
licensee. 5
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expenses means any sum or reimbursement for expenses or charges
incurred in connection with services performed by a licensee in the
capacity of licensee. 8
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51 No entitlement to commission or expenses without agency agreement 11

(1) A licensee is not entitled to any commission or expenses from a
person for or in connection with services performed by the licensee in
the capacity of licensee for or on behalf of the person unless: 12
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(a) the services were performed pursuant to an agreement in
writing (an ***agency agreement***) signed by or on behalf of the
person and the licensee, and 15
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(b) the agency agreement complies with any applicable
requirements of the regulations, and 18
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(c) a copy of the agency agreement signed by the licensee was
served by the licensee on that person within 48 hours after the
agreement was signed by or on behalf of the person. 20
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(2) The regulations may make provision for or with respect to regulating
the form of agency agreements and the terms, conditions and other
provisions that an agency agreement must or must not contain. Without
limitation, the regulations may prescribe one or more standard forms
of agency agreement. 23
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(3) Without limiting the means by which a copy of the agency agreement
may be served on a person, it may be served by means of facsimile
transmission or by such other means as the regulations may allow. 28
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-
- (4) A court or tribunal before which proceedings are taken by a licensee for the recovery of commission or expenses from a person may order that the commission or expenses are wholly or partly recoverable despite a failure by the licensee to serve a copy of the relevant agency agreement on the person within 48 hours after it was signed by or on behalf of the person. 1
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- (5) A court or tribunal is not to make such an order unless satisfied that: 7
- (a) the failure to serve a copy of the agreement within the required time was occasioned by inadvertence or other cause beyond the control of the licensee, and 8
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10
- (b) the commission or expenses that will be recoverable if the order is made are in all the circumstances fair and reasonable, and 11
12
13
- (c) failure to make the order would be unjust. 14
- 52 Approved guide to be provided before agency agreement for residential property signed** 15
16
- (1) A real estate agent must not enter into an agency agreement with a person for the sale of residential property unless the agent has provided the person with a copy of the approved guide not more than 1 month before the agreement is signed by or on behalf of the person. 17
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- Maximum penalty: 40 penalty units. 21
- (2) In this section: 22
- approved guide* means a guide with respect to the sale of residential property approved by the Director-General from time to time for the purposes of this section. 23
24
25
- (3) A contravention of this section does not affect the validity of the agency agreement. 26
27
- 53 Agency agreement must disclose rebates, discounts and commissions** 28
- A licensee is not entitled to any expenses from a person for or in connection with services performed by the licensee in the capacity of licensee for or on behalf of the person unless the agency agreement pursuant to which the licensee performs those services contains a statement identifying the source and estimated amount of all rebates, discounts or commissions that the licensee will or may receive in respect of those expenses. 29
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54	Prohibition against listing residential or rural land subject to sole or exclusive agency	1
		2
(1)	A licensee must not enter into an agency agreement with a person in respect of the sale of residential property or rural land by the person if:	3
		4
(a)	the agreement provides for an entitlement to commission in respect of services to be provided at a time when the property or land is or is to be the subject of a sole agency agreement or exclusive agency agreement with another licensee, and	5
		6
		7
		8
(b)	the licensee knows or has reasonable cause to suspect that the person has entered into that sole agency agreement or exclusive agency agreement.	9
		10
		11
(2)	A licensee must not solicit or encourage a person to enter into an agency agreement with the licensee if the licensee is prohibited from entering into the agreement by this section.	12
		13
		14
	Maximum penalty:	15
(a)	200 penalty units in the case of a corporation, or	16
(b)	100 penalty units in any other case.	17
(3)	A licensee is not entitled to any commission or expenses from a person for or in connection with services performed by the licensee pursuant to an agency agreement entered into by the licensee in contravention of this section.	18
		19
		20
		21
(4)	In this section:	22
	commission includes fee, gain and reward.	23
	exclusive agency agreement means an agency agreement under which an agent agrees to act for the seller on the sale of property and that provides for the agent to be entitled to commission on the happening of an event whether or not the agent is the effective cause of the happening of the event and whether or not the seller is the effective cause of the happening of the event.	24
		25
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		29
	sole agency agreement means an agency agreement under which an agent agrees to act for the seller on the sale of property and that provides for the agent to be entitled to commission on the happening of an event (whether or not the agent is the effective cause of the happening of the event) unless the seller is the effective cause of the happening of the event.	30
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Division 2	Cooling-off period for residential or rural agency agreements	1
		2
55	Cooling-off period for residential or rural agency agreements	3
(1)	There is to be cooling-off period for every agency agreement in respect of the sale of residential property or rural land.	4 5
(2)	The cooling-off period commences when the agency agreement is signed and ends at 5 pm on the next day that is a business day or a Saturday.	6 7 8
(3)	An agency agreement is <i>signed</i> when it is signed by or on behalf of the person (<i>the client</i>) for whom services are to be performed under the agreement. If there is more than one client, the agreement is signed when the last client to sign signs the agreement.	9 10 11 12
(4)	The cooling-off period may be extended by a provision of the agency agreement, or by the agent in writing before the end of the cooling-off period.	13 14 15
56	Agency agreement can be rescinded during cooling-off period	16
(1)	The client can rescind an agency agreement by serving a notice of rescission on the agent under the agreement during the cooling-off period for the agreement.	17 18 19
(2)	To be effective, the notice of rescission must:	20
(a)	be in writing addressed to the agent and be to the effect that the client rescinds the agreement, and	21 22
(b)	be signed by the client or the client's solicitor or, if there is more than one client, by each client or their respective solicitors, and	23 24 25
(c)	be served on the agent in one of the ways provided for by this section.	26 27
(3)	A notice of rescission may be served on an agent in any of the following ways:	28 29
(a)	by being given to the agent personally,	30
(b)	by being delivered to or left at a place of business of the agent or at any other address specified in the agency agreement as a place where a notice of rescission may be given,	31 32 33

Clause 56	Property, Stock and Business Agents Bill 2001
Part 4	Agency agreements
Division 2	Cooling-off period for residential or rural agency agreements

(c)	by facsimile transmission.	1
57	Effect of rescission	2
(1)	On service of a notice of rescission, the agency agreement is taken to be rescinded from the time it was entered into.	3 4
(2)	Neither the agent nor the client is liable to pay any sum for commission, damages, costs or expenses for or in connection with the agency agreement or its rescission.	5 6 7
(3)	The agent must refund to the client any money paid to the agent under a rescinded agency agreement.	8 9
58	No contracting out	10
	A provision of an agency agreement or any other agreement or arrangement is void to the extent that it would (but for this section) have the effect of excluding, modifying or restricting the operation of this Division.	11 12 13 14

Part 5 Residential property and rural land sales

1

Division 1 Contract for sale of residential property

2

59 Proposed contract for sale of residential property

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(1) In this section:

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purchaser includes a grantee of an option.

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(2) A real estate agent must not offer residential property for sale unless the required documents are all available for inspection at the real estate agent's registered office by a prospective purchaser or agent for a prospective purchaser at all times at which an offer to purchase the property may be made (or at such other place or at such other times as may be prescribed by the regulations).

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(3) A real estate agent is considered to offer residential property for sale when the agent, expressly or by implication:

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(a) indicates that residential property is for sale or is to be auctioned at any future time, or

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(b) offers to sell residential property, or

16

(c) invites an offer to purchase residential property, or

17

(d) indicates that a person may be willing to grant an option to purchase residential property.

18

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(4) The *required documents* for the purposes of this section are:

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(a) a copy of the proposed contract for the sale of the property (excluding particulars of the purchaser and purchase price), and

21

22

(b) the documents required by section 52A of the *Conveyancing Act 1919* to be attached to the contract before signature by the purchaser, and

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(c) in the case of an option to purchase residential property—a copy of the proposed option document (excluding particulars of the purchaser and consideration for the option).

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(5) Without limitation, a real estate agent is to be taken to indicate that residential property is for sale if the real estate agent does any of the following or causes or permits any of the following to be done:

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- (a) advertises or promotes the property in any way that, in the circumstances, may reasonably be taken to indicate that the property is or may be for sale, or
 - (b) places a sign on or near the property that, in the circumstances, may reasonably be taken to indicate that the property is or may be for sale, or
 - (c) advertises or in any way gives notice that the property is to be auctioned at any future time, or
 - (d) places on display particulars or a description of, or a photograph, drawing or other representation of, the property in or on any premises, vehicle or place where the real estate agent conducts business as a real estate agent, or
 - (e) shows the property to a prospective purchaser or gives the address of the property to a prospective purchaser.
- (6) This section does not apply to anything done by a real estate agent when acting on behalf of a prospective purchaser of residential property.
- (7) The regulations may create exceptions to this section.
Maximum penalty: 100 penalty units.
- 60 Contracts for sale of residential property**
- (1) A real estate agent may do any of the following:
 - (a) fill up a proposed contract for the sale of residential property, by inserting details of the purchaser's name, address and description, the purchaser's solicitor's name and address, the purchase price and the date,
 - (b) insert in or delete from a contract for the sale of residential property any description of any furnishings or chattels to be included in the sale of the property, or
 - (c) participate in the exchange or making of contracts for the sale of residential property.
- (2) If a prospective party to a proposed contract for the sale of residential property for whom a real estate agent acts in relation to the exchange or making of the contract notifies the real estate agent, or it is apparent from the proposed contract, that a solicitor is or will be acting for the party, the real estate agent may not participate in the exchange or

- making of the contract unless expressly authorised to do so by the party or the solicitor. A contract is not invalid merely because of the failure of a real estate agent to comply with this subsection.
- (3) A real estate agent who exercises any function pursuant to this section on behalf of any person who is a party or a prospective party to any contract or proposed contract is liable to compensate that person for any loss, damage or expense suffered or incurred by that person as a result of any negligent act or omission, or any unauthorised action, of the real estate agent in the exercise of that function.
- (4) A real estate agent may not charge a fee for anything authorised to be done under this section.
- (5) This section does not affect the existence or nature of any other functions or responsibilities of licensees that exist or may exist apart from this section.
- (6) In this section:
solicitor includes a licensee under the *Conveyancers Licensing Act 1995*.
- 61 Procedure following rescission**
- (1) If a contract for the sale of residential property or an option for the purchase of residential property is rescinded under Division 8 or 9 of Part 4 of the *Conveyancing Act 1919*, and a real estate agent who holds money paid by the purchaser by way of deposit under or in relation to the contract or the proposed contract attached to the option is authorised to deal with that money as provided by this section.
- (2) The real estate agent is authorised to pay to the vendor so much of the money as does not exceed the amount (if any) forfeited under section 66V or 66ZE of that Act, and receipt by the real estate agent of the original or a copy of an effective notice of rescission served by the purchaser under section 66U or 66ZD of that Act is sufficient authority for the real estate agent to make the payment to the vendor.
- (3) The regulations may make provision for or with respect to authorising the real estate agent to pay to the purchaser the balance of the money.
- (4) In this section:
deposit includes any amount paid by the purchaser in relation to the contract or the proposed contract attached to the option or on account of the purchase price of residential property.

Clause 61 Property, Stock and Business Agents Bill 2001

Part 5	Residential property and rural land sales
Division 1	Contract for sale of residential property

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

Division 2 Bidding at auction of residential property or rural land

62 Restrictions on bidding by or on behalf of seller or auctioneer 5

(1)	A sale by auction of residential property or rural land must be notified in the conditions of sale to be subject to the right by the seller or by any person on behalf of the seller or auctioneer to make 1 bid (and only 1 bid).	6 7 8 9
(2)	At a sale by auction of residential property or rural land:	10
(a)	the seller or any person on behalf of the seller or auctioneer must not bid unless the right to bid has been notified in the conditions of sale, and	11 12 13
(b)	the seller or any person on behalf of the seller or auctioneer must not make more than one bid and must not make any bid if one of them has already bid, and	14 15 16
(c)	the auctioneer must not take from the seller or any person on behalf of the seller or auctioneer any bid knowing that the bid is in contravention of this section.	17 18 19
	Maximum penalty: 50 penalty units.	20

63 Bids may only be taken from registered bidders 21

(1)	The auctioneer at a sale by auction of residential property or rural land must not take a bid from a person unless:	22
		23
(a)	the relevant details of the person have been entered before the bid is taken in a Bidders Record made in respect of the auction in accordance with section 64, and the auctioneer is in possession of that record when the bid is taken, and	24
		25
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		27
(b)	the person is identified at the auction by the person displaying an identifying number allocated to the person for the purposes of the auction and recorded in the Bidders Record as the identifying number allocated to the person.	28
		29
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		31
	Maximum penalty: 50 penalty units.	32

- (2) An auctioneer who refuses to take a bid from a person pursuant to a requirement under this Division does not incur a liability to any person as a result of that refusal. 1
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64 Bidders Record 4

- (1) Before residential property or rural land is offered for sale by auction, a record (the ***Bidders Record***) must be made of the persons who will be entitled to bid at the auction and there must be entered in the Bidders Record in respect of each of those persons: 5
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8
- (a) the relevant details of the person, and 9
 - (b) the identifying number allocated to the person for the purposes of identifying the person at the auction, and 10
11
 - (c) such other information as the regulations may require. 12
- (2) The relevant details of a person are: 13
- (a) the person's name and address and the number or other identifier of proof of identity for that person, and 14
15
 - (b) in addition, in the case of a person bidding on behalf of another person, the name and address of that other person and the number or other identifier of proof of identity for that other person. 16
17
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- (3) A real estate agent engaged to act in respect of the sale of residential property or rural land by auction is responsible for making the Bidders Record for the auction unless some other agent engaged to act in respect of the sale or acting for or on behalf of the auctioneer has made the Bidders Record for the auction. 20
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- (4) An agent is to keep a Bidders Record made by the agent for at least 3 years and is to keep all the Bidders Records made by the agent together, in the form of a Register of Bidders Records. 25
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27
- (5) When residential property or rural land is to be offered for sale by auction or is sold by auction, the agent who makes a Bidders Record for the auction must, at the request of the seller, permit the seller to inspect and take notes from the Bidders Record. Such a request may be made before or after the auction. 28
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- (6) The regulations may make provision for or with respect to the manner and form in which a Bidders Record is to be made and kept. 33
34
- Maximum penalty: 50 penalty units. 35

65	Details to be established by proof of identity	1
(1)	An agent must not enter a person's name and address in a Bidders Record unless those details are established by the production to the agent of:	2
		3
		4
(a)	proof of identity for the person, or	5
(b)	in the case of the details of a person on whose behalf another person is to bid, a letter of authority to bid on the person's behalf specifying the person's name and address and the number or other identifier of proof of identity for that person.	6
		7
		8
		9
	Maximum penalty: 50 penalty units.	10
(2)	The only proof of identity that may be used for a person for the purposes of an entry in a Bidders Record is:	11
		12
(a)	a motor vehicle driver's licence issued in Australia that displays a photograph of the person, or	13
		14
(b)	an Australian passport, or	15
(c)	such other proof of identity as may be prescribed by the regulations.	16
		17
(3)	An agent must not enter the relevant details of a person in a Bidders Record if the agent knows or has reasonable cause to suspect that the details are false in a material particular.	18
		19
		20
	Maximum penalty: 50 penalty units.	21
66	Confidentiality of Bidders Record	22
(1)	An agent who makes a Bidders Record, and any auctioneer to whom the contents of a Bidders Record are disclosed under this Division, must not:	23
		24
		25
(a)	divulge any information that the Bidders Record contains except as authorised or required by this Division, and	26
		27
(b)	must not use the Bidders Record or the information that it contains for any purpose not authorised by this Division.	28
		29
	Maximum penalty: 50 penalty units.	30
(2)	This section does not prevent the divulging of information to an authorised officer in accordance with a requirement imposed by or under this Act.	31
		32
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67	Approved consumer education guide for bidders at auctions	1
(1)	The Director-General may from time to time approve a consumer education guide for prospective bidders at an auction of residential property or rural land.	2
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		4
(2)	A real estate agent engaged to act in respect of the sale by auction of residential property or rural land must ensure that a person who bids at the auction has been provided before the auction with a copy of the consumer education guide currently approved under this section.	5
		6
		7
		8
	Maximum penalty: 40 penalty units.	9
Division 3	Representations as to selling price of residential property	10
		11
68	False representation to seller or prospective seller	12
	A real estate agent or employee of a real estate agent must not make a false representation to a seller or prospective seller of residential property as to the agent's or employee's true estimate of the selling price of the property.	13
		14
		15
		16
	Maximum penalty: 100 penalty units.	17
69	False representation to prospective buyer	18
(1)	A real estate agent acting pursuant to an agency agreement for the sale of residential property or the employee of such an agent must not, by a statement made in the course of marketing the property falsely understate the estimated selling price of the property.	19
		20
		21
		22
	Maximum penalty: 100 penalty units.	23
(2)	A real estate agent acting pursuant to an agency agreement for the sale of residential property or the employee of such an agent must not, by a statement made in the course of marketing the property make a statement that indicates the price at which it is thought bidding at an auction of the property will start.	24
		25
		26
		27
		28
	Maximum penalty: 100 penalty units.	29
(3)	An agent or employee is considered to falsely understate the estimated selling price of residential property if the agent or employee states as his or her estimate of that selling price a price that is less than his or her true estimate of that selling price.	30
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Clause 69 Property, Stock and Business Agents Bill 2001

Part 5 Residential property and rural land sales

Division 3 Representations as to selling price of residential property

- (4) A statement is considered to be made in the course of marketing residential property if the statement is made: 1
2
(a) in an advertisement in respect of the property that is published 3
or caused to be published by the agent, or 4
(b) to a person (orally or in writing) as a prospective purchaser of 5
the property. 6
(5) A statement in the agency agreement of the agent's estimate of the 7
selling price of residential property is evidence for the purposes of this 8
section of the agent's true estimate of that selling price. 9
- 70 Requirement to substantiate selling price estimates—residential 10
property 11**
- (1) The Director-General may by notice in writing to a real estate agent 12
require the agent to provide evidence of the reasonableness of any 13
estimate of the selling price of residential property made by the agent 14
in a statement: 15
(a) orally or in writing to a seller or prospective seller of the 16
property, or 17
(b) in an advertisement in respect of the property that is published 18
or caused to be published by the agent, or 19
(c) orally or in writing to a person as a prospective purchaser of the 20
property. 21
(2) A real estate agent who fails to comply with a notice under this section 22
within the period for compliance specified in the notice is guilty of an 23
offence. 24
Maximum penalty: 100 penalty units. 25
- 71 Division extends to estimates of price range 26**
- This Division extends to estimated price range in the same way as it 27
applies to estimated price and for that purpose a reference in this 28
Division to price is taken to include a reference to price range. 29
- 72 Extended meaning of "estimate" 30**
- In this Division, *estimate* includes opinion and belief. 31

Part 6 Auctions—general

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73 Collusive practices at auction sales

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- (1) A person must not, in relation to the sale by auction of any land or livestock, by a collusive practice induce or attempt to induce any other person:

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(a) to abstain from bidding generally, or

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(b) to abstain from bidding for any particular lot, or

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(c) to bid to a limited extent only, or

8

(d) to do any other act or thing that might in any way prevent or tend to prevent free and open competition.

9

10

Maximum penalty:

11

(e) 200 penalty units in the case of a corporation, or

12

(f) 100 penalty units in any other case.

13

- (2) A person must not as a result of a collusive practice, at a sale by auction of any land or livestock:

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15

(a) abstain or agree to abstain from bidding generally, or

16

(b) abstain or agree to abstain from bidding for any particular lot, or

17

18

(c) bid or agree to bid to a limited extent only, or

19

(d) do or agree to do any other act or thing that might in any way prevent or tend to prevent free and open competition.

20

21

Maximum penalty:

22

(e) 200 penalty units in the case of a corporation, or

23

(f) 100 penalty units in any other case.

24

- (3) An auctioneer must not sell by auction any land or livestock unless notice is given prior to the auction, in such manner and in such terms as may be prescribed by the regulations of the material parts of this section.

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Maximum penalty: 20 penalty units.

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- (4) In this section: 1
- collusive practice* means a promise, express or implied, made by a 2
person that the person will if the person is the successful bidder at 3
auction for land or livestock: 4
- (a) give the person to whom the promise is made the right to elect 5
to take over as purchaser through the auctioneer all or any of 6
the land or livestock at the auction price, or 7
- (b) that the ownership of all or any of the land or livestock will be 8
determined by tossing or the drawing of lots or any other 9
method. 10

74 False entry in auction record 11

- (1) An auctioneer or an employee of an auctioneer must not knowingly 12
enter in any record kept or required to be kept by the auctioneer as the 13
purchaser of any land or livestock sold by auction any name other than 14
the name of the actual successful bidder of the land or livestock. 15
- Maximum penalty for a first offence: In the case of a corporation, 50 16
penalty units or, in the case of an individual, 20 penalty units. 17
- Maximum penalty for a second or subsequent offence: In the case of 18
a corporation, 100 penalty units or, in the case of an individual, 50 19
penalty units. 20
- (2) Any auctioneer who employs any person, being a person who enters, 21
in any record required to be kept by the auctioneer, as the purchaser of 22
any land or livestock sold by auction any name other than the name of 23
the actual successful bidder for the land or livestock, is guilty of an 24
offence unless the auctioneer establishes that the auctioneer did not 25
know that a name other than the name of the actual successful bidder 26
was entered. 27
- Maximum penalty for a first offence: In the case of a corporation, 50 28
penalty units or, in the case of an individual, 20 penalty units. 29
- Maximum penalty for a second or subsequent offence: In the case of 30
a corporation, 100 penalty units or, in the case of an individual, 50 31
penalty units. 32
- (3) If the actual successful bidder at a sale by auction of any land or 33
livestock, as soon as practicable after the auctioneer conducting the 34
sale has indicated the actual successful bidder but not in any case later 35
than the day of the sale, informs the auctioneer that the bidder bid on 36

behalf of another person and informs the auctioneer of the name of that person, the auctioneer or employee is not guilty of an offence under this section by reason of the name of that other person being entered in a record as purchaser of the land or livestock.	1 2 3 4
75 Misrepresentation as to quality etc	5
An auctioneer must not knowingly misrepresent, or cause or permit to be misrepresented, the value, composition, structure, character or quality, or the origin of manufacture, of any land or livestock put up for sale at a sale by auction conducted by the auctioneer.	6 7 8 9
Maximum penalty: 50 penalty units.	10
76 Restrictions on bidding by or on behalf of seller or auctioneer of livestock	11 12
(1) A sale by auction of livestock may be notified in the conditions of sale to be subject to the right by the seller or by any person on behalf of the seller or auctioneer to make 1 bid or a specified number of bids.	13 14 15
(2) At a sale by auction of livestock:	16
(a) the seller or any person on behalf of the seller or auctioneer must not bid unless the right to bid has been notified in the conditions of sale, and	17 18 19
(b) the seller or any person on behalf of the seller or auctioneer must not make more than the number of bids notified in the conditions of sale, and	20 21 22
(c) the auctioneer must not take from the seller or any person on behalf of the seller or auctioneer any bid knowing that the bid is in contravention of this section.	23 24 25
Maximum penalty: 50 penalty units.	26
77 Contracting out of prescribed terms and conditions of auction sales	27
(1) Any provision in, or applying to, an agreement for the sale of property by auction and purporting to exclude or restrict (otherwise than in accordance with this or any other Act) the operation of any conditions prescribed as being applicable to or in respect of the sale by auction of that property or property of that class or description is void.	28 29 30 31 32

- (2) A person must not notify or cause to be notified in the conditions of sale by auction of any property any provision purporting to exclude or restrict any conditions prescribed as applicable to or in respect of the sale by auction of that property or property of that class or description. 1
2
3
4
Maximum penalty: 50 penalty units. 5
- (3) In this section: 6
property means land or livestock. 7

78 Successful bidder at auction to supply information 8

- (1) The actual successful bidder at a sale by auction of any land or livestock must, as soon as practicable after the auctioneer conducting the sale has indicated the actual successful bidder but not in any case later than the day of the sale, supply to the auctioneer or an employee of the auctioneer: 9
10
11
12
13
(a) the bidder's name if the bidder bid on his or her own behalf, or 14
(b) the name of the person on whose behalf the bidder bid if the bidder bid on behalf of another person—the name of the person on whose behalf he or she bid. 15
16
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Maximum penalty: 20 penalty units. 18
- (2) An auctioneer must not sell by auction any land or livestock unless notice is given, in such manner and in such terms as may be prescribed by the regulations, of the material parts of this section. 19
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21
Maximum penalty: 20 penalty units. 22

79 Livestock auctions—"comeback" prohibited 23

- (1) An auctioneer must not, at an auction for the sale of livestock, sell by auction any lot for a price lower than any price bid in relation to the sale of that lot. 24
25
26
- (2) For the purposes of this section, a price is bid if it is called by a prospective purchaser or is attributed to a prospective purchaser by the auctioneer as being the amount of a bid, and is not withdrawn by the prospective purchaser prior to the sale of that lot. 27
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Part 7 Trust accounts

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Division 1 Preliminary

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80 Interpretation

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(1) In this Part:

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trust money means money received for or on behalf of any person by a licensee.

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(2) A reference in this Part to a licensee includes a reference to a person who has ceased to be a licensee and to the personal representative of a licensee who has died, and in the application of this Part to:

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(a) a person who has ceased to be a licensee, a reference to moneys received for or on behalf of a person by a licensee is to be read as a reference to moneys received by that person for or on behalf of any other person in connection with his or her business as a licensee, and

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(b) the personal representative of a licensee who has died, a reference to moneys received for or on behalf of a person by a licensee is to be read as a reference to moneys received by that licensee or personal representative for or on behalf of a person in connection with the business carried on by that licensee.

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Division 2 Payment of trust money into trust account

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81 Trust money to be paid to trust account

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(1) Money received for or on behalf of any person by a licensee:

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(a) is to be held by the licensee or (if the licensee is employed by a corporation) by the corporation, exclusively for that person, and

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(b) is to be paid to the person or disbursed as the person directs, and

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(c) until so paid or disbursed is to be paid into and retained in a trust account (whether general or separate) at an authorised deposit-taking institution in New South Wales and approved by the Director-General for the purposes of this Part.

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- (2) If the licence is held by a corporation, the trust account is to be in the name of the corporation and in any other case is to be in the name of the licensee or of the firm of licensees of which the licensee is a member. 1
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3
- (3) The words “Trust Account” are to appear in the name of the trust account and in the description of the trust account in the books and records of the licensee and also on all cheques drawn on the trust account. 4
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7
- (4) When opening a trust account at an authorised deposit-taking institution for the purpose of complying with this section, the licensee concerned must ensure that the authorised deposit-taking institution is notified in writing that the account is a trust account required by this Act. 8
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- (5) A licensee must, within 14 days after closing a trust account, notify the Director-General in writing of the closure. 13
14
- Maximum penalty: 100 penalty units. 15
- 82 Approval of authorised deposit-taking institutions 16**
- (1) The Director-General may approve an authorised deposit-taking institution for the purposes of this Part and may revoke any such approval by notice in writing to the authorised deposit-taking institution. 17
18
19
20
- (2) The Director-General is not to approve an authorised deposit-taking institution for the purposes of this Part unless satisfied that the institution is able to discharge the obligations of an authorised deposit-taking institution under this Part. 21
22
23
24
- 83 Trust money not available to pay licensee’s debts 25**
- (1) Trust money is not available for the payment of the debts of the licensee to any other creditor of the licensee, or liable to be attached or taken in execution under the order or process of any court at the instance of any other creditor of the licensee. 26
27
28
29
- (2) This section does not take away or affect any just claim or lien that any licensee may have against or upon trust money. 30
31
- 84 Licensee to notify trust account becoming overdrawn 32**
- A licensee must, within 5 days after becoming aware that a trust account of the licensee has become overdrawn, notify the Director-General in writing of: 33
34
35

- (a) the name and number of the account, and 1
 - (b) the amount by which the account is overdrawn, and 2
 - (c) the reason for the account becoming overdrawn. 3
- Maximum penalty: 100 penalty units. 4

85 Interest earned on trust accounts to be paid to Statutory Interest Account 5
6

- (1) On the first business day after the end of each named month, each 7
authorised deposit-taking institution must: 8
 - (a) calculate interest on the daily balances of all money held during 9
the month in trust accounts kept with the authorised deposit- 10
taking institution (being trust accounts notified to the 11
institution as trust accounts required by this Act) by applying to 12
those balances the prescribed percentage of the trust account 13
rate applicable to the institution for the purposes of this section, 14
and 15
 - (b) pay the amount of that interest to the Director-General for 16
crediting to the Statutory Interest Account. 17

Maximum penalty: 100 penalty units. 18
- (2) The Minister is required to determine from time to time for the 19
purposes of this section, after consultation with the Treasurer, a trust 20
account rate for each authorised deposit-taking institution. The rate 21
may be a fixed or variable rate and is to be determined by reference to 22
an interest rate that applies in the short term money market. 23
- (3) As soon as practicable after determining a trust account rate for an 24
authorised deposit-taking institution, the Minister must inform the 25
authorised deposit-taking institution of the rate by notice in writing and 26
publish a notice of the rate in the Gazette. 27
- (4) The *prescribed percentage* for the purposes of this section is 60 per 28
cent or such other percentage as the Minister may, from time to time, 29
determine after consultation with the Treasurer and notify by order 30
published in the Gazette. 31
- (5) An authorised deposit-taking institution must not deduct transaction or 32
other charges, other than statutory charges (such as account debits tax), 33
from the balances referred to in subsection (1) or from an amount of 34
interest calculated under that subsection. 35

Clause 85 Property, Stock and Business Agents Bill 2001

Part 7 Trust accounts

Division 2 Payment of trust money into trust account

- (6) The Director-General may, by proceedings brought in a court of competent jurisdiction, recover as a debt an amount due and payable to the Director-General under this section. 1
2
3
- (7) This section does not apply to: 4
- (a) a separate trust account kept on the instructions of a client of a licensee or a firm of licensees for the exclusive benefit of the client (not being a separate trust account kept as a sub-account of a general trust account), or 5
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- (b) to a trust account of a class of trust accounts prescribed by the regulations as exempt from this section. 9
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Division 3 Responsibilities of authorised deposit-taking financial institutions 11
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86 Institutions to provide Director-General with certain information 13

- (1) Within 14 days after the end of each named month, an authorised deposit-taking institution must notify the Director-General in writing of the following matters with respect to the trust accounts that are opened with the institution under this Part during the month: 14
15
16
17
- (a) the number of those trust accounts that were opened with the institution during the month, 18
19
- (b) the names of the licensees who opened those accounts, 20
- (c) the names and numbers of those accounts and the addresses of the branches of that institution at which those accounts are kept. 21
22
- Maximum penalty: 100 penalty units. 23
- (2) The regulations may: 24
- (a) require authorised deposit-taking institutions to provide the Director-General with such information relating to all or any trust accounts as is specified or described in the regulations, and 25
26
27
- (b) authorise the Director-General to require an authorised deposit-taking institution to provide the Director-General with such information relating to trust accounts identified by the Director-General as is specified or described by the Director-General, and 28
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(c)	make provision for or with respect to any associated matter, including the manner in which, and the time within which, any such information is to be provided to the Director-General.	1 2 3
(3)	This section has effect irrespective of any other law or any rule of practice to the contrary.	4 5
(4)	This section does not apply to:	6
(a)	a separate trust account kept on the instructions of a client of a licensee or a firm of licensees for the exclusive benefit of the client (not being a separate trust account kept as a sub-account of a general trust account), or	7 8 9 10
(b)	to a trust account of a class of trust accounts prescribed by the regulations as exempt from this section.	11 12
87	Closure of trust accounts	13
	Within 14 days after the end of each month, an authorised deposit-taking institution must, by notice in writing, inform the Director-General of the following if a trust account kept with it under this Part was closed during the month:	14 15 16 17
(a)	the name and number of the account,	18
(b)	the date on which the account was closed.	19
	Maximum penalty: 100 penalty units.	20
88	Overdrawn trust accounts	21
	When an authorised deposit-taking institution becomes aware that a trust account kept with it under this Part is overdrawn, the institution must as soon as practicable (and in any case within 5 business days) after becoming so aware inform the Director-General of the following by notice in writing:	22 23 24 25 26
(a)	the name and business address of the licensee concerned, and	27
(b)	the name and number of the account, and	28
(c)	the date on which the account became overdrawn, and	29
(d)	the amount by which the account is overdrawn.	30
	Maximum penalty: 100 penalty units.	31

Clause 89	Property, Stock and Business Agents Bill 2001
Part 7	Trust accounts
Division 3	Responsibilities of authorised deposit-taking financial institutions

89 Dishonoured cheques	1
Within 5 business days of an authorised deposit-taking institution becoming aware that a cheque presented on a trust account kept with it under this Part has been dishonoured, the institution must, by notice in writing, inform the Director-General of the following:	2
(a) the name and number of the account,	3
(b) the amount of the dishonour,	4
(c) the date on which the cheque was dishonoured.	5
Maximum penalty: 100 penalty units.	6
90 Monthly certification	7
Within 14 days of the end of each month, an authorised deposit taking institution must provide a written report to the Director-General, certified as correct by the institution, containing the following information in relation to trust accounts kept by it under this Part during the month:	8
(a) the name of the institution and its branch number or its BSB number,	9
(b) the period to which the report relates,	10
(c) the name of each account,	11
(d) the number of each account,	12
(e) the end of month balance for each account (including any nil or overdrawn balances),	13
(f) the interest earned on each account during the month,	14
(g) the interest rate applied to calculate the interest earned on each account during the month,	15
(h) the total amount of interest that the institution paid under this Part to the Director-General during the month in respect of the accounts for crediting to the Statutory Interest Account.	16
Maximum penalty: 100 penalty units.	17

91 Annual certification by auditor

Not later than 31 May in each year, an authorised deposit-taking institution approved for the purposes of this Part must provide to the Director-General a certificate given by a registered company auditor (within the meaning of the *Corporations Act*) certifying as to the following:

- (a) that the institution has complied with the requirements of this Part in relation to trust accounts kept by it under this Part during the 12 month period ending on 30 April immediately preceding that 31 May,
- (b) the total amount of interest that the institution paid under this Part to the Director-General during that 12 month period in respect of those trust accounts for crediting to the Statutory Interest Account.

Maximum penalty: 100 penalty units.

92 Protection of authorised deposit-taking institutions from liability

- (1) An authorised deposit-taking institution:

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

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

- (2) This section does not relieve an authorised deposit-taking institution from any liability or obligation that it would have apart from this Act.
- (3) An authorised deposit-taking institution at which a licensee keeps an account for clients' money does not, as regards any liability that the licensee has to the institution (other than a liability relating to that account), have a right to any of the money held in that account, whether by way of set-off, counterclaim, charge or otherwise.

Division 4 Unclaimed trust money

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93 Unclaimed trust money held by licensee

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- (1) A licensee who in the month of January in a year holds in a trust account kept by the licensee money that was received by the licensee more than 2 years before that month must furnish to the Director-General in that month a statement (an ***unclaimed money statement***) showing particulars of:

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- (a) the money so held, and

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- (b) each person for whom or on whose behalf the money is held, and

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- (c) the address of each of those persons last known to the licensee.

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- (2) A statement under this section is to be in the form approved by the Director-General.

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94 Unclaimed trust money held by former licensee or personal representative

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- (1) A former licensee, or the personal representative of a deceased licensee, who holds money in a trust account kept under this Act must furnish to the Director-General a statement giving particulars of:

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- (a) the money held in the trust account as at the date on which the statement is furnished, and

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- (b) the names of the persons for whom or on whose behalf the money is held, and

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- (c) the address of each of those persons last known to the person furnishing the statement.

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- (2) This statement is the first statement that the former licensee or personal representative is required to furnish and it is to be furnished within 3 months after the date on which the person ceased to be a licensee or became the personal representative of the deceased licensee.

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- (3) The former licensee or personal representative must furnish a further statement (an ***unclaimed money statement***) within 14 days after the period of 12 months has elapsed since the first statement was furnished.

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- (4) The further statement is to give particulars of the same matters as the first statement and also include particulars of any payments made from the trust account since the date of the first statement. 1
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- (5) A statement under this section is to be in the form approved by the Director-General. 4
5
- (6) The regulations may exempt money or a class of money from the operation of this section. 6
7

95 Disposal of unclaimed money in trust accounts 8

- (1) When the Director-General receives an unclaimed money statement under this Division, the Director-General is to: 9
10
 - (a) send by post to each person for whom or on whose behalf any money referred to in the statement is held a notice (an *individual notice*) in writing addressed to the person at the person's address shown in the statement stating the particulars of the moneys held for or on behalf of that person, and 11
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 - (b) cause notification to be published in the Gazette (a *Gazette notification*) stating the particulars of the money held for or on behalf of each of those persons. 16
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- (2) Each individual notice and the Gazette notification is to state that, if the money is not paid out of the trust account in which it is held within 3 months after the date of publication of the Gazette notice, the person holding the money will be required to pay it to the Director-General. 19
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22
- (3) At any time after the expiration of that 3 months the Director-General may, by a notice in writing served personally or by post on the person by whom the money is held, require that person: 23
24
25
 - (a) to pay to the Director-General any moneys referred to in the Gazette notification that have not been previously paid by that person out of the trust account in which they are held, and 26
27
28
 - (b) to furnish to the Director-General, within such period as may be specified in the notice to the person, a statement showing particulars of any payments made out of the money referred to in the Gazette notification since the unclaimed money statement was made. 29
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- (4) The Director-General must pay any money received by the Director-General under this section into the Compensation Fund. 34
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Clause 95 Property, Stock and Business Agents Bill 2001

Part 7 Trust accounts

Division 4 Unclaimed trust money

- (5) Within 2 months after 31 December in each year, the Director-General must pay into the Consolidated Fund all money received by the Director-General and paid into the Compensation Fund under this section during the period of 12 months ending on that 31 December. 1
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- (6) When the Director-General makes a payment into the Consolidated Fund, the Director-General is to give the Treasurer a statement containing the following particulars: 5
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- (a) the name and last known address of each person for whom or on whose behalf the money received by the Director-General was held, 8
9
10
- (b) the amount held in respect of each of those persons, 11
- (c) the date of gazettal of the Gazette notification in respect of that money, 12
13
- (d) the name and address of each licensee who furnished an unclaimed money statement to the Director-General in respect of that money. 14
15
16
- (7) A person who fails to comply with the requirements of any notice served on the person under this section is guilty of an offence. 17
18
- Maximum penalty: 50 penalty units. 19
- 96 Repayment of unclaimed trust money** 20
- (1) The Treasurer must, on application made to the Treasurer by a person entitled to money paid into the Consolidated Fund under this Division, pay the money to the person. 21
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23
- (2) If an application for the payment of money to which a person is entitled is made while the money is held in the Compensation Fund, the Director-General must pay the money to the person from the Compensation Fund. 24
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Division 5	Information about trust accounts or transactions	1
97	Director-General may require information	2
(1)	The Director-General may by notice in writing served on a licensee require the licensee to furnish to the Director-General in the manner required by the notice a statement in writing setting out full particulars as to any of the following:	3
(a)	the name of the trust account on which the licensee operates in accordance with this Act, the name of the authorised deposit-taking institution at which the account is current, the balance of the money standing to the credit of the account as at a date specified in the requisition, and particulars of all cheques drawn on the account as at such date and not presented and duly paid, or	4 5 6 7 8 9 10 11 12 13
(b)	any money paid by any person to the licensee or received by the licensee for or on behalf of any person in connection with the licensee's business as a licensee, and if not still held by the licensee the manner and time of its disbursement, or	14 15 16 17
(c)	any transaction by or with the licensee as a licensee.	18
(2)	The licensee must comply with a notice under this section within 7 days after it is served on the licensee.	19 20
(3)	A notice under this section cannot relate to any transaction by or with the licensee more than 3 years before the notice is served on the licensee.	21 22 23
98	Person concerned in transaction may request itemised account	24
(1)	A person directly concerned in any transaction by or with a licensee in connection with the licensee's business as a licensee may request the licensee in writing to render to the person in the manner prescribed by the regulations an itemised account of the transaction.	25 26 27 28
(2)	The licensee must comply with the request within 14 days after the request is served on the licensee.	29 30
(3)	A person may not request an itemised account of a transaction that took place more than 6 months before the making of the request.	31 32

Clause 99 Property, Stock and Business Agents Bill 2001

Part 7 Trust accounts

Division 5 Information about trust accounts or transactions

99 Offence	1
(1) A licensee must not fail without reasonable excuse (proof which lies on the licensee) to comply with a requirement under this Division.	2 3
(2) A licensee must not, in purported compliance with a requirement under this Division, furnish information that the licensee knows is false or misleading in a material particular.	4 5 6
Maximum penalty: 100 penalty units.	7

Part 8 Records

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Division 1 Keeping and inspection of records

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100 Licensee's records

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(1) In this Act:

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licensee's records means:

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(a) records required to be kept by a licensee by or under this Act that are in the possession, custody or control of the licensee, and

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(b) records and documents in the possession, custody or control of a licensee that relate to any account (whether or not a trust account) kept by the licensee in connection with his or her business as a licensee or to any transaction by or with the licensee in connection with his or her business as a licensee.

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(2) If records or documents that were licensee's records are in the possession, custody or control of a person as a former licensee, as the personal representative of a deceased licensee, or as a result of the transfer of the business of the licensee or otherwise, those records or documents are still *licensee's records* for the purposes of this Division.

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(3) An account on which a strata managing agent operates for or on behalf of an owners corporation, or on which a community managing agent operates on behalf of an association constituted under the *Community Land Development Act 1989* is taken to be an account kept by the agent in connection with his or her business as a licensee.

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(4) This Part extends to records in the possession, custody or control of a person even when the records are located outside the State.

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101 Licensee to make and keep certain records

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(1) A licensee must make the following records:

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(a) a record containing full particulars of all transactions by or with the licensee in connection with his or her business as a licensee,

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(b) such other records relating to the licensee's business as a licensee as may be required by the regulations.

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- (2) A record required by this section must be kept for at least 3 years after it is made. 1
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- (3) The record must be kept: 3
- (a) by the licensee at the licensee's registered office (while the licensee remains a licensee), or 4
5
- (b) if the licensee ceases to be a licensee, by the former licensee in his or her possession, custody or control unless the former licensee authorises some other person to have possession, custody or control of the record, or 6
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- (c) by any other person who obtains possession, custody or control of the record whether as a result of being the personal representative of a deceased licensee or by transfer of the business of the licensee or otherwise. 10
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13
- (4) The regulations may make provision for the manner and form in which a record required by this section is to be kept. 14
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- (5) An entry in a record made under this section and kept at the registered office of a licensee is presumed, unless the contrary is proved, to have been made by or with the authority of the licensee. 16
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- (6) A person who contravenes a provision of this section is guilty of an offence. 19
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- Maximum penalty: 50 penalty units. 21

102 Inspection of licensee's records 22

- (1) A licensee's records are at all reasonable times open to inspection by an authorised officer. 23
24
- (2) An authorised officer may require a person who has possession, custody or control of a licensee's records: 25
26
- (a) to produce the licensee's records for inspection, 27
- (b) to furnish all authorities and orders to financial institutions as may be reasonably required of the person. 28
29
- (3) If a licensee is absent from an office or place of business of the licensee, any employee or agent of the licensee for the time being having the apparent control or charge of the office or place of business is taken to have possession, custody or control of the licensee's records at that office or place of business. 30
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- (4) An authorised officer may take copies of or extracts from, or make notes from, any licensee's records produced to the authorised officer under this section and for that purpose may take temporary possession of those records. 1
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103 Inspection of records of financial institutions 5

- (1) An authorised officer may serve on an authorised deposit-taking institution with which a licensee has deposited any money in any account (whether the licensee's own account or a general or separate trust account) a notice, in a form approved by the Director-General and signed by the Director-General or a member of the police force: 6
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- (a) certifying as to the reason for serving the notice, as provided by this section, and 11
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- (b) requiring the authorised deposit-taking institution to produce to the authorised officer for inspection the records of the institution relating to the account. 13
14
15
- (2) Each of the following is a reason for serving a notice under this section: 16
17
- (a) the licensee cannot be located, 18
- (b) the licensee has left the State, 19
- (c) the licensee or any other person required to do so has failed to furnish any authority or order on the institution in accordance with a requirement under this Division, 20
21
22
- (d) the licensee has ceased to be a licensee. 23
- (3) An authorised officer may take copies of or extracts from, or make notes from, any licensee's records produced to the authorised officer under this section and for that purpose may take temporary possession of those records. 24
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26
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104 Power to require production of licensee's records 28

- (1) An authorised officer may give a written notice to a licensee or to another person that the officer reasonably believes has possession, custody or control of the licensee's records requiring the licensee or person to produce the licensee's records specified in the notice at the time and place specified in the notice. 29
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32
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- (2) An authorised officer may inspect any record produced in response to a notice under this section and may take copies of or extracts from, or make notes from, any such record. 1
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- (3) A licensee does not contravene a provision of this Act if the licensee was unable to comply with the provision because an authorised officer retained possession of a record or document under this section. 4
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105 Power to take possession of records to be used as evidence 7

- (1) An authorised officer to whom any record is produced under this Part may take possession of the record if the authorised officer considers it necessary to do so for the purpose of obtaining evidence or protecting evidence from destruction. 8
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- (2) If an authorised officer takes possession of any record under this section, the record may be retained by the officer until the completion of any proceedings (including proceedings on appeal) in which the record may be evidence. 12
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- (3) The person from whom the record was taken must be provided, within a reasonable time after the record is taken, with a copy of the record certified by an authorised officer as a true copy. 16
17
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- (4) A copy of a record provided under this section is, as evidence, of equal validity to the record of which it is certified to be a copy. 19
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106 Additional requirements for managing agents 21

- (1) A strata managing agent or community managing agent must keep a copy of the following instruments: 22
23
- (a) an instrument of appointment appointing the agent as strata managing agent or community managing agent, and 24
25
- (b) an instrument delegating to the agent any powers, authorities, duties or functions of an owners corporation or an association. 26
27
- (2) A copy of an instrument of appointment kept under this section is a licensee's record for the purposes of this Part. 28
29
- (3) In this section: 30
- association** means a community association, precinct association or neighbourhood association constituted under section 25 of the *Community Land Development Act 1989*. 31
32
33
- owners corporation** means an owners corporation constituted under the *Strata Schemes Management Act 1996*. 34
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107 Offence

(1) A person must not:

- (a) wilfully delay or obstruct an authorised officer in the exercise of the authorised officer's functions under this Division, or
- (b) fail to comply with a requirement under this Division to produce a record or document in the person's possession, custody, or control, or
- (c) fail to comply with a requirement under this Division to furnish any authority or order reasonably required of the person under this Division or
- (d) in purported compliance with a requirement under this Division produce a document or record knowing it to be false or misleading in a material particular.

Maximum penalty: 100 penalty units.

- (2) A court that convicts a person of an offence under this section may, in addition to any penalty imposed, order the person to produce the records in respect of which the offence occurred to the Director-General or an authorised officer within such time as the court specifies in the order.
- (3) A person who fails to produce a record in accordance with an order of a court made under this section is guilty of an offence punishable by a penalty not exceeding 10 penalty units in respect of each day that the failure continues.

Division 2 Audit of licensee's records**108 Requirement for audit**

- (1) A person who is a licensee, a former licensee or the personal representative of a licensee must, within 3 months after the end of the audit period applicable to the person:
 - (a) cause the records and documents relating to any money held during that period in a trust account kept by the person in accordance with this Act to be audited by a person qualified to act as an auditor for the purposes of this Division, and
 - (b) lodge the auditor's report on the audit with the Director-General.

(2)	The Director-General may in a particular case or class of cases by order in writing extend the period of 3 months under subsection (1).	1 2
(3)	The person must retain a copy of the auditor's report on the audit for a period of three years after the date on which the report was made.	3 4
(4)	The auditor's report is to be in a form approved by the Director-General and is to be signed by the auditor.	5 6
	Maximum penalty:	7
(a)	100 penalty units in the case of a corporation, or	8
(b)	50 penalty units in any other case.	9
109	Audit period	10
(1)	The audit period applicable to a person is the year ending on 30 June or such other period as the Director-General may fix in respect of the person under this section.	11 12 13
(2)	The Director-General may by order in writing served on a person fix some other period as the audit period applicable to the person.	14 15
(3)	Such an order may be made on the application of the person or on the Director-General's own initiative.	16 17
(4)	Such an order may be made with such limitations as to time or circumstances, and subject to such conditions, as the Director-General considers appropriate.	18 19 20
110	Statutory declaration required when no trust money held or received	21
	A licensee who in the course of the audit period applicable to the licensee neither received nor held any money for or on behalf of any other person must, within the period of three months after that day, make and lodge with the Director-General a statutory declaration to that effect.	22 23 24 25 26
111	Audit obligations of partners	27
	If the provisions of this Division are complied with by any one of the licensees in a partnership of licensees in relation to the audit of the records and documents of the partnership, each of those partners is taken to have complied with those provisions.	28 29 30 31

112 Qualifications of auditors

- (1) A person is qualified to act as an auditor for the purposes of this Division if the person:
 - (a) is a registered company auditor within the meaning of the *Corporations Act 2001*, or
 - (b) is a person who has been nominated by the person whose records and documents are to be audited and who has been approved by the Director-General by order in writing.
- (2) Such a person is not qualified to act as an auditor for the purposes of this Division if the person:
 - (a) is or has at any time within 2 years before the last day of the period in respect of which the audit is to be made, been an employee or partner of the person whose records or documents are to be audited, or
 - (b) is a licensee, or a shareholder in a corporation that is a licensee and that has not more than twenty shareholders.

113 Duties of auditors

- (1) If an auditor in the course of making an audit for the purposes of this Division discovers that any breach of this Act or the regulations has been committed, that there is any discrepancy relating to the trust account to which the audit relates or that the records or documents concerned are not kept in such a manner as to enable them to be properly audited, the auditor must:
 - (a) fully set out the facts so discovered by the auditor in the report made by the auditor for the purposes of the audit, and
 - (b) forward a copy of the report to the Director-General.
- (2) An auditor, or an assistant of an auditor, appointed to make an audit for the purposes of this Division must not communicate any matter which may come to the auditor's knowledge in the course of the audit to any person except:
 - (a) in the course of the auditor's duties as an auditor or assistant of an auditor, or
 - (b) in accordance with this section, or
 - (c) in the like circumstances and to the like extent as an officer of the Department is permitted under this Act to publish that information.

Clause 113 Property, Stock and Business Agents Bill 2001

Part 8 Records

Division 2 Audit of licensee's records

- (3) An auditor's report under this Division (including under this section) relating to documents or records of any person, and any statutory declaration lodged with the Director-General under this Division, are available in the hands of the Director-General for inspection by an auditor appointed to carry out for the purposes of this Division any subsequent audit of the records or documents of that person.

Division 3 Freezing of accounts

114 Definitions

In this Division:

account means:

- (a) a trust account in a licensee's name with a financial institution, or
- (b) an account in a licensee's name or in which a licensee has an interest with a financial institution, or
- (c) another account to which trust money is deposited.

holder of an account means the licensee or other person authorised to operate on the account.

licensee includes a former licensee and the personal representative of a deceased licensee.

trust money means money received for or on behalf of any person by a licensee (whether or not the money is deposited in a trust account required to be kept by a licensee).

115 Director-General may freeze licensee's accounts in particular cases

- (1) A direction under this Division may be given when it appears to the Director-General that any of the following persons has, or may have, stolen, misappropriated or misapplied trust money:
- (a) a licensee,
- (b) the person in charge of a licensee's business at a place,
- (c) an employee of a licensee.

- (2) The Director-General may by direction in writing direct that:
 - (a) if a claim has been made against the Fund concerning the trust money, all or part of the amount to the credit of a specified account be paid to the Director-General, or
 - (b) an amount must not be drawn from a specified account other than with the Director-General's written approval, or
 - (c) a specified account may be operated only under specified conditions.
- (3) The direction must be given to each holder of the account and the financial institution at which the account is kept, and must identify the account to which it relates.
- (4) Any amount paid to the Director-General pursuant to such a direction must be paid into the Fund.

116 Financial institution must comply with direction

- (1) A financial institution to which a direction under this Division is given (whether or not the direction has been given to anyone else) must not, while the direction is in force:
 - (a) pay a cheque or other instrument drawn on the account concerned unless the cheque or instrument is also signed by the Director-General or a person authorised by the Director-General for the purposes of this section, or
 - (b) give effect to another transaction on the account that is not authorised because of the direction.

Maximum penalty: 500 penalty units.
 - (2) The signature of the Director-General or authorised person on a cheque or other instrument is sufficient evidence of the Director-General's approval to draw an amount from the account to honour the cheque or other instrument.
 - (3) A manager or principal officer in charge of an office or branch of the financial institution where an account is kept, or another officer of the financial institution, must not knowingly permit a contravention of this section by the financial institution.
- Maximum penalty: 100 penalty units or imprisonment for 12 months, or both.

- (4) A person to whom a direction is given does not incur a civil liability to another person by reason only of complying with the direction. 1
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117 Account not to be operated unless Director-General allows 3

After a direction under this Division has been given to the holder of an account, the holder must not (while the direction remains in force) sign a cheque or other instrument drawn on the account unless the cheque or other instrument has first been signed by the Director-General or a person authorised by the Director-General to sign the cheque or instrument. 4
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Maximum penalty: 100 penalty units or imprisonment for 12 months, or both. 10
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118 Director-General may operate account 12

- (1) The Director-General or a person authorised in writing by the Director-General (an *authorised person*) may operate on an account that is the subject of a direction under this Division if the holder of the account refuses to operate the account. 13
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- (2) A statutory declaration made by the Director-General or authorised person to the effect that the account holder is refusing to operate on the account is sufficient evidence to the licensee's financial institution of that fact. 17
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119 Withdrawal of direction 21

- (1) A direction remains in force until it is withdrawn. 22
- (2) The Director-General may withdraw a direction under this Division at any time. 23
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- (3) When a direction is withdrawn, the Director-General is to give all persons who were given the direction a notice that the direction has been withdrawn. Failure to give notice does not affect the withdrawal of the direction. 25
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Part 9 Complaints and disciplinary action

120 Grounds for disciplinary action

Disciplinary action under this Part can be taken against a person who is or was the holder of a licence or certificate of registration on any one or more of the following grounds:

- (a) the person has contravened a provision of this Act or any other Act administered by the Minister, or the regulations under any such Act, whether or not the person has been prosecuted or convicted of an offence in respect of the contravention, or
- (b) the person has contravened a condition of the licence or certificate of registration, or
- (c) the person has, in the course of carrying on business or exercising functions under the licence or certificate of registration, acted unlawfully, improperly, unfairly or incompetently, or
- (d) the person is not a fit and proper person to hold a licence or certificate of registration,
- (e) the person is not a fit and proper person to be involved in the direction, management or conduct of the business of a licensee,
- (f) the person is a disqualified person,
- (g) the person has failed to pay any part of a contribution or levy that is due and payable under Part 11 (Compensation Fund),
- (h) in the case of a licensee, there is no approved policy of professional indemnity insurance in force with respect to the licensee (unless the licensee is exempt under the regulations from the requirement for professional indemnity insurance),
- (i) the person has breached an undertaking given by the person to the Director-General under this Act or the *Fair Trading Act 1987*, in respect of the person's conduct of business or exercise of functions under the licence or certificate of registration,
- (j) the person has failed to comply with a direction given to the person by the Director-General pursuant to the taking of disciplinary action under this Part,

- (k) the person has failed to pay a monetary penalty imposed on the person by the Director-General pursuant to the taking of disciplinary action under this Part, 1
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- (l) the issue of the person's licence or certificate of registration was obtained by fraud or mistake. 4
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121 Disciplinary action 6

- (1) Each of the following actions is disciplinary action that the Director-General can take against a person under this Act: 7
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 - (a) caution or reprimand the person, 9
 - (b) give a direction to the person requiring the person to give a specified undertaking to the Director-General as to the manner in which the person will conduct business or exercise functions under a licence or certificate of registration held by the person, 10
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 - (c) give a direction to the person requiring the person to take specified action within a specified time in connection with the conduct of business or the exercise of functions under a licence or certificate of registration, 14
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 - (d) impose a monetary penalty on the person of an amount not exceeding 100 penalty units in the case of an individual or 200 penalty units in the case of a corporation, 18
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 - (e) impose a condition on the person's licence or certificate of registration, 21
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 - (f) suspend the person's licence or certificate of registration for a period that does not exceed the unexpired term of the licence or certificate of registration, 23
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 - (g) cancel the person's licence or certificate of registration, 26
 - (h) declare the person to be a disqualified person for the purposes of this Act, either permanently or for a specified period, 27
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 - (i) disqualify the person from being involved in the direction, management or conduct of the business of a licensee. 29
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- (2) A power conferred by this Act to take disciplinary action against a person is a power to take any one or more of the actions that constitute disciplinary action. 31
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(3) When a licence or certificate of registration is suspended, it is taken not to be in force except for such provisions of this Act or the regulations as the regulations may prescribe as provisions that remain applicable to a suspended licence.	1 2 3 4
122 Decision to take no further action	5
The Director-General may at any stage of a matter that is the subject of consideration by the Director-General under this Part determine to take no further action in respect of the matter, whether or not the matter is the subject of a complaint or a show cause notice and whether or not the Director-General determines that there are grounds for taking disciplinary action in connection with the matter.	6 7 8 9 10 11
123 Complaints	12
(1) Any person may make a complaint to the Director-General setting out matters that are alleged to constitute grounds for taking disciplinary action against a person under this Act.	13 14 15
(2) Action can be taken under this Part whether or not a complaint has been made.	16 17
124 Show cause notice	18
(1) The Director-General may serve a show cause notice on a person if the Director-General is of the opinion that there is reasonable cause to believe that there are grounds for taking disciplinary action against the person.	19 20 21 22
(2) A show cause notice is a notice requiring a person to show cause why disciplinary action should not be taken against the person under this Act on the grounds specified in the notice.	23 24 25
(3) A show cause notice is to be in writing and is to specify a period of not less than 14 days after service of the notice as the period that the person to whom the notice is directed has to show cause as required by the notice.	26 27 28 29
(4) The person on whom a show cause notice is served may within the period allowed by the notice make oral or written submissions to the Director-General in respect of the matters to which the notice relates. In the case of a corporation, submissions may be made by a director or officer of the corporation.	30 31 32 33 34

125	Power to suspend licence or certificate of registration when show cause notice served	1
		2
(1)	When a show cause notice is served on a person, the Director-General may by notice in writing to the person suspend the person's licence or certificate of registration pending a determination by the Director-General of whether to take disciplinary action under this Act against the person.	3
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(2)	The Director-General may only suspend a licence or certificate of registration under this section if satisfied that the grounds for disciplinary action specified in the show cause notice would, if established, justify the suspension or cancellation of the licence or certificate of registration.	8
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(3)	Such a suspension may not be imposed for a period of more than 60 days after the show cause notice is served.	13
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(4)	The Director-General is not required to afford a person an opportunity to be heard before taking action against the person under this section.	15
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(5)	The Director-General can revoke a suspension under this section at any time by notice in writing to the suspended person.	17
		18
(6)	This section does not limit or otherwise affect any power to suspend a licence or certificate of registration under section 64A of the <i>Fair Trading Act 1987</i> .	19
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126	Inquiries and investigation	22
	The Director-General may conduct inquiries and make investigations in relation to the matters to which a show cause notice relates and the submissions, if any, made by or on behalf of the person to whom the show cause notice relates in relation to those matters, as the Director-General thinks fit.	23
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127	Taking of disciplinary action	28
(1)	If the Director-General is satisfied that there are grounds for taking disciplinary action under this Act against a person on whom a show cause notice has been served, the Director-General may by order in writing served on the person take such disciplinary action against the person as the Director-General thinks is warranted.	29
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(2)	The order must include a statement of the reasons for the Director-General's decision on the matter.	34
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128	Recovery of monetary penalty	1
	A monetary penalty imposed on a person by disciplinary action under this Part may be recovered by the Director-General in a court of competent jurisdiction as a debt due to the Crown.	2 3 4
129	Review of disciplinary action by ADT	5
	A person against whom disciplinary action is taken by the Director-General may apply to the Administrative Decisions Tribunal under the <i>Administrative Decisions Tribunal Act 1997</i> for a review of the Director-General's decision on the disciplinary action or on a review of the disciplinary action.	6 7 8 9 10
130	Warning notices	11
(1)	The Director-General may authorise publication of a notice warning persons of particular risks involved in dealing with a specified holder of a licence, or a person who does not hold a licence, in connection with the activities of licensees.	12 13 14 15
(2)	For example, a warning may relate to the risks involved in dealing with a person who has a recent history of unconscionable conduct in the person's dealings with consumers.	16 17 18
(3)	The Director-General may authorise publication of such a notice in any one or more of the following ways:	19 20
(a)	to any person making inquiries to the Director-General about the licensee concerned,	21 22
(b)	by advertisement by the use of any medium,	23
(c)	to any media representatives.	24
(4)	Publication of such a notice may not be authorised unless an investigation has been conducted by the Director-General, whether or not a complaint has been made.	25 26 27
(5)	Before authorising publication of such a notice, the Director-General must give the person concerned an opportunity for a period of not less than 48 hours to make representations to the Director-General about publication of such a notice, unless:	28 29 30 31
(a)	the Director-General is not able, after making reasonable efforts to do so, to contact the person promptly and advise the person of that opportunity, or	32 33 34
(b)	the person refuses to make any representations.	35

(6)	No opportunity to make representations is required to be given if, in the opinion of the Director-General, there is an immediate risk to the public.	1 2 3
(7)	No liability is incurred by a person for publishing in good faith:	4
(a)	a notice under this section, or	5
(b)	a fair report or summary of such a notice.	6
131	Failure to comply with disqualification from involvement in business	7
	A person who is disqualified under this Part from being involved in the direction, management or conduct of the business of a licensee must not act contrary to the disqualification.	8 9 10
	Maximum penalty:	11
(a)	200 penalty units in the case of a corporation, or	12
(b)	100 penalty units in any other case.	13
132	Return of suspended or cancelled licence	14
	A person who has possession of a licence or certificate of registration that has been suspended or cancelled under this Part must give the licence or certificate of registration to an officer of the Department at any office of the Department within 7 days after the suspension or cancellation takes effect.	15 16 17 18 19
	Maximum penalty:	20
(a)	40 penalty units in the case of a corporation, or	21
(b)	20 penalty units in any other case.	22

Part 10 Management and receivership

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Division 1 Preliminary

2

133 Definitions

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In this Part:

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associate, in relation to a licensee, has the meaning given to it by section 134.

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expenses, in relation to management, means:

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(a) the remuneration payable to the manager, or

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(b) the expenses incurred in the course of the management or receivership, or

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(c) the costs of legal proceedings involved in the management or receivership, or

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(d) any reimbursement of the manager or receiver under this Part.

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failure to account has the meaning given to it by section 135.

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licensee includes:

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(a) a firm of licensees, and

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(b) a former licensee, and

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(c) in relation to anything done or omitted by a licensee—a deceased licensee and a deceased former licensee, and

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(d) except in relation to anything done or omitted by a licensee—the personal representative of a deceased licensee or a deceased former licensee.

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Operating Account means the Department of Fair Trading Operating Account or a departmental account prescribed by the regulations for the purposes of this definition.

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property, in relation to a licensee, means:

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(a) money or other property received by the licensee on behalf of another person in the conduct of the licensee's business, or

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(b) interest, dividends, income, profits or other property derived from or acquired with money or other property referred to in paragraph (a), or

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- (c) documents and records of any description relating to anything referred to in paragraph (a) or (b) or to the licensee's business, or 1
2
3
- (d) any means by which any records referred to in paragraph (c) that are not written may be reproduced in writing, 4
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- and, in relation to a licensee whose business is under management, includes any property of the business. 6
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- receivable property** means property of a licensee or an associate of a licensee that is the subject of an order appointing a receiver, and includes property that, but for its having being taken, paid or transferred unlawfully or in breach of trust, would be receivable property. 8
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- receiver** means a receiver appointed by the Supreme Court under this Part. 13
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- relevant associate** means a licensee's associate of whose property a receiver has been appointed under this Part. 15
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- relevant licensee** means a licensee of whose property a receiver has been appointed. 17
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134 Associates of a licensee 19

- (1) In this Part, a reference to a licensee's associate is a reference to: 20
- (a) a partner of the licensee, or 21
- (b) an employee or agent of the licensee, or 22
- (c) a corporation, or a member of a corporation, partnership, syndicate or joint venture, in which the licensee or a person referred to in paragraph (a), (b) or (d) has a beneficial interest, or 23
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- (d) a person who bears a prescribed relationship to the licensee or to a person referred to in paragraphs (a)–(c), or 27
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- (e) a corporation that (if a person referred to in paragraphs (b)–(d) is a corporation) is a subsidiary of the person within the meaning of the *Corporations Act*, or 29
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31
- (f) a person declared by the regulations to be an associate of the licensee or belonging to a class of persons so declared. 32
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- (2) For the purposes of subsection (1) (d), a person bears a prescribed relationship to a licensee or other person if the relationship is that of:
- (a) a spouse, or
 - (b) a de facto partner who is living or has lived with him or her as his or her wife or husband on a bona fide domestic basis although not married to him or her, or
 - (c) a child, grandchild, sibling, parent or grandparent, whether derived through paragraph (a) or (b) or otherwise, or
 - (d) a kind prescribed by the regulations for the purposes of this section.

135 Failure to account

- (1) In this Part, *failure to account* means a failure by a licensee to account for, pay or deliver money or other valuable property:
- (a) that has been received by or entrusted to the licensee, or an associate of the licensee, in the course of the licensee's business, and
 - (b) that is, in the case of money or other valuable property received by or entrusted to an associate of the licensee, under the direct or indirect control of the licensee,
- being a failure that arises from an act or omission of the licensee or associate.
- (2) The reference in the definition of *failure to account* in subsection (1) to money or other valuable property received by or entrusted to a licensee includes a reference to money or other valuable property that is received by or entrusted to the licensee as trustee, agent, bailee or stakeholder, or in any other capacity.

Division 2 Management**136 Appointment of manager**

- (1) The Director-General may appoint a manager for a licensee's business in any of the following cases if the Director-General is of the opinion that it is necessary to make the appointment in order to protect the interests of other persons:

- (a) the licensee has made a request to the Director-General for the appointment of a manager, or 1
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- (b) the licensee's licence has been cancelled or is under suspension, 3
or 4
- (c) the Director-General is of the opinion that there has been, or 5
that there may have been, a failure to account by the licensee, 6
or 7
- (d) the Director-General is of the opinion that a person is unable to 8
obtain payment or delivery of property held by the licensee 9
because the licensee: 10
 - (i) is mentally or physically infirm, or 11
 - (ii) is bankrupt, has applied to take the benefit of any law 12
for the relief of bankrupt or insolvent debtors, has 13
compounded with his or her creditors or has made an 14
assignment of his or her remuneration for their benefit, 15
or 16
 - (iii) is an inmate within the meaning of the *Crimes* 17
(*Administration of Sentences*) Act 1999, or 18
 - (iv) has died, or 19
 - (v) has abandoned his or her business. 20
- (2) In the case of a business that is conducted by 2 or more licensees in 21
partnership, a reference in subsection (1) to a licensee is to be read as 22
a reference to all of the licensees in the partnership. 23
- (3) The terms of appointment of a manager must specify the remuneration 24
to which the manager is to be entitled in connection with the 25
management of the business for which the manager is appointed. 26

137 Qualifications for appointment as manager 27

A person is not eligible to be appointed as the manager of a licensee's 28
business unless the person is a licensee or has such other 29
qualifications or experience as the Director-General considers 30
appropriate in a particular case. 31

138 Powers of manager 32

- (1) The manager of a licensee's business may, subject to the terms of his 33
or her appointment: 34
 - (a) carry out work on behalf of the existing clients of the business, 35
and 36

(b)	accept instructions from, and carry out work on behalf of, new clients, and	1 2
(c)	dispose of, and otherwise deal with, any property in relation to the business, and	3 4
(d)	exercise any right in the nature of a lien over property held by the manager on behalf of the clients of the business, and	5 6
(e)	incur such expenses as are reasonably related to the conduct of the business, and	7 8
(f)	do all such things as are ancillary to the exercise of the powers referred to in paragraphs (a)–(e),	9 10
	as if he or she were the licensee to whom the business belongs.	11
(2)	The manager of a licensee's business may not exercise any of the functions conferred by this section in relation to the affairs of a client of the business unless the client's consent has been obtained to the manager's exercise of those functions.	12 13 14 15
139	Management continues under receivership	16
(1)	The manager of a licensee's business may continue to exercise his or her functions under this Division even if a receiver is appointed under Division 3 in respect of the licensee's property.	17 18 19
(2)	The manager of a licensee's business for which a receiver is appointed must comply with any lawful direction given by the receiver in connection with the conduct of the business.	20 21 22
140	Acts of manager taken to be acts of licensee	23
(1)	An act done by the manager of a licensee's business is, for the purposes of any proceedings or transaction that relies on that act, taken to have been done by the licensee.	24 25 26
(2)	Nothing in this section subjects a licensee to any personal liability in relation to any act done by the manager of the licensee's business.	27 28
141	Manager may be reimbursed for damages	29
(1)	The Director-General may reimburse a manager for any damages and costs recovered against the manager, or an employee or agent of the manager, for anything done or omitted to be done in good faith in the purported exercise of a function under this Act.	30 31 32 33

- (2) Reimbursement under this section is to be by way of payment from the Operating Account. 1
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- (3) Neither the manager of a licensee's business nor the Director-General is liable for any loss incurred by the licensee as a consequence of any act or omission of the manager or the Director-General in the conduct of the business if the act or omission was done or omitted in good faith and in the purported exercise of a function under this Act. 3
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142 Payment of expenses of management 8

- (1) So much of the expenses of the management of a licensee's business as have not otherwise been paid to the manager out of the receipts of the business are to be paid to the manager by the Director-General from the Operating Account. 9
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- (2) An amount paid under this section is recoverable by the Director-General as a debt owed by the relevant licensee. 13
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143 Manager to report to Director-General 15

- (1) The manager of a licensee's business must report to the Director-General on the management of the business. A report must be made at such times as the Director-General directs and be in accordance with any directions given by the Director-General. 16
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- (2) A report is to include such information as the Director-General directs. 20
- (3) On the conclusion of the management of a licensee's business, the manager must, when giving the Director-General his or her final report, lodge with the Director-General all the manager's records that relate to the management. 21
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144 Trust money 25

- (1) Part 8 (Records) applies to the accounts kept by a manager in the same way as it applies to the accounts kept by a licensee. 26
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- (2) The trust accounts and controlled money accounts of a business under management are to be maintained separately from the trust accounts and controlled money accounts of any other business under management. 28
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145	Office accounts	1
	The regulations may make provision with respect to:	2
	(a) the accounts that are to be kept in relation to the income accrued, and the expenses incurred, by the manager of a licensee's business in connection with the conduct of the business, and	3 4 5 6
	(b) the purposes for which money in any such account may be expended.	7 8
146	Termination of management	9
	When a licensee's business ceases to be under management, any money held by the manager in connection with the business (after reimbursement of any money paid out of the Operating Account in connection with the management of the business and after payment of the expenses of the management of the business) becomes the property of the licensee.	10 11 12 13 14 15
147	Obstruction of managers	16
	A person must not hinder, obstruct or delay a manager in the exercise of his or her functions under this Division.	17 18
	Maximum penalty: 50 penalty units.	19
Division 3	Receivership	20
148	Supreme Court may appoint receiver	21
	(1) The Supreme Court may, on the application of the Director-General, appoint a receiver of all or any of the property of a licensee and may make the appointment whether or not the licensee has been notified of the application or is a party to the proceedings.	22 23 24 25
	(2) Such an application may be made by the Director-General only if:	26
	(a) the licensee has made a request to the Director-General for the appointment of a receiver, or	27 28
	(b) the licensee's licence has been suspended or cancelled, or	29
	(c) the Director-General is of the opinion that there has been, or that there may have been, a failure to account by the licensee, or	30 31 32

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| (1) | Before commencing to hear an application for the appointment of a receiver, the Supreme Court may order from the precincts of the Court any person who is not: | 29 |
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| | | 31 |
| (a) | an officer of the Court, or | 32 |
| (b) | a party, a legal representative of a party or a clerk of such a legal representative, or | 33 |
| | | 34 |
| (c) | a member of the same firm of licensees as the respondent, or | 35 |
| (d) | a person who is in the course of giving evidence, or | 36 |

(e)	an authorised officer, or	1
(f)	a person permitted by the Court to be present in the interests of justice.	2 3
(2)	The Supreme Court may, whether or not at the instance of a party, prohibit the publication of any report relating to the evidence or other proceedings or of any order made on the hearing of an application for the appointment of a receiver.	4 5 6 7
151	Order to be served	8
(1)	On the appointment of a receiver, the Director-General is to cause a copy of the order of appointment to be served on:	9 10
(a)	the relevant licensee or relevant associate, and	11
(b)	any other person on whom the Supreme Court directs a copy of the order to be served.	12 13
(2)	The Supreme Court may give directions as to the manner of service and may dispense with service if it thinks fit.	14 15
152	Receiver may take possession of property	16
(1)	A receiver may take possession of receivable property of the relevant licensee or relevant associate.	17 18
(2)	A person in possession, or having control, of receivable property must permit the receiver to take possession of the property if required by the receiver to do so.	19 20 21
(3)	If a person fails to comply with such a requirement, the Supreme Court may, on the application of the receiver, order the person to deliver the property to the receiver.	22 23 24
(4)	If, on the application of a receiver, the Supreme Court is satisfied that such an order has not been complied with, the Court:	25 26
(a)	may order the seizure of any receivable property located on premises specified in the order, and	27 28
(b)	may make such further order in the matter as it thinks fit.	29
(5)	An order under subsection (4) (a) authorises:	30
(a)	any police officer, or	31

- (b) the receiver, or a person authorised by the receiver, together with any police officer, to enter the premises specified in the order and to search for, seize and remove any property that appears to be receivable property. 1
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- (6) An application by a receiver under subsection (3) may be made: 5
 - (a) in the case of property in the possession, or under the control, of the relevant licensee or relevant associate—in the name of the receiver, or 6
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 - (b) in any other case—in the name of the relevant licensee or relevant associate. 9
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- (7) A receiver must, as soon as possible, return property seized under this section if it transpires that it is not receivable property. 11
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153 Information about receivable property 13

- (1) A person who has information relating to receivable property, or property that a receiver believes on reasonable grounds to be receivable property, must give the information to the receiver if required by the receiver to do so. 14
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Maximum penalty: 100 penalty units. 18
- (2) A licensee who has any such information may not refuse to comply with such a requirement merely because the information was obtained in confidence from a client or former client of the licensee. 19
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- (3) A person who complies with a requirement under this section is not, merely because of that compliance, subject to any liability, claim or demand. 22
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- (4) Information given to a receiver under this section is not admissible as evidence in any legal proceedings, other than: 25
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 - (a) proceedings taken by a receiver for the recovery of receivable property, or 27
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 - (b) proceedings taken under this Part, or 29
 - (c) proceedings taken under Part 6 against a licensee: 30
 - (i) if the information was given to the receiver otherwise than by the licensee, or 31
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 - (ii) if the information was given to the receiver by the licensee and is given in evidence in those proceedings with the licensee's consent. 33
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154 Stop order on account

- (1) A receiver who believes on reasonable grounds that money held in an account with an authorised deposit-taking institution is receivable property may serve on the institution concerned an order (in this section referred to as a stop order) prohibiting operations on the account by any person other than the receiver or a person authorised by the receiver.
- (2) A stop order may be served by leaving it with the manager, accountant or other person appearing to be in charge at the branch of the authorised deposit-taking institution at which the account is kept, but has no effect unless there is annexed to it a copy of the order appointing the receiver.
- (3) An authorised deposit-taking institution served with a stop order:
 - (a) must permit the receiver, or a person authorised by the receiver, to operate on the account to which the order relates, and
 - (b) must not permit any withdrawal from the account otherwise than by, or by the authority of, the receiver.
- (4) A receiver may transfer money from an account the subject of a stop order to another account with the authorised deposit-taking institution in the name of the receiver to be dealt with as receivable property.
- (5) The authorised deposit-taking institution has the same obligations and protections:
 - (a) in relation to an account the subject of a stop order, and
 - (b) in relation to an account to which money in such an account is transferred,
 as if the receiver were the relevant licensee or relevant associate.

155 Improper dealing with property

- A person must not, with intent to defeat the purposes of this Division:
- (a) operate on an account at an authorised deposit-taking institution, or
 - (b) destroy or conceal receivable property or property that is likely to become receivable property, or

- (b) to the extent to which the full amount or value is not recovered from the person under paragraph (a)—may take such proceedings in relation to the claimed cause of action as the person could have taken. 1
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- (4) If a receiver takes proceedings under subsection (3) (b) in relation to a cause of action claimed by a person, the receiver may not later take proceedings under subsection (3) (a) to recover property paid or transferred to the person in respect of the same cause of action. 5
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- (5) If receivable property is used unlawfully or in breach of trust to discharge a debt or liability of a person, the receiver may recover from the person as a debt the amount that was required for the discharge of the debt or liability, reduced by the value of any consideration provided by the person for the discharge. 9
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- (6) Recovery proceedings under this section may be taken in the name of the receiver or in the name of any other person who, had the receiver not been appointed, would have been entitled to take the proceedings. 14
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- 157 Receiver may give certificate** 17
- (1) A receiver, or a person authorised by the Director-General, may give a certificate as to any one or more of the following: 18
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- (a) the receipt of property by a licensee or a licensee's associate, the nature and value of the property received, the date of its receipt by the licensee or associate and the identity of the person from whom it was received, 20
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- (b) the taking or transfer of property, the nature and value of the property, the date of its taking or transfer and the identity of the person by whom it was taken or to whom it was transferred, 24
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- (c) the payment of money, the amount of money paid, the date of the payment and the identity of the person who received the payment, 27
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29
- (d) the entries made in the records of a licensee or a licensee's associate and the truth or falsity of the entries, 30
31
- (e) the use of property unlawfully or in breach of trust. 32
- (2) A certificate under this section is admissible in any proceedings taken by a receiver under this Division and is evidence of the matters specified in the certificate. 33
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158	Receiver taken to be beneficially entitled to property	1
(1)	Proceedings taken under this Division in the name of a receiver in relation to any property may be so taken as if the receiver were beneficially entitled to the property.	2 3 4
(2)	If receivable property has been taken by, or paid or transferred to, a person or otherwise used unlawfully or in breach of trust, a receiver may take proceedings in the name of the receiver as if the receiver were beneficially entitled to the property at the time the property was so taken, paid, transferred or used.	5 6 7 8 9
159	Receiver may deal with property	10
(1)	A receiver may deal with receivable property in any manner in which the relevant licensee or relevant associate could, had the receiver not been appointed, have dealt with it.	11 12 13
(2)	A receiver must, as soon as possible after receiving receivable property, vest the property in the person on whose behalf it was held by the relevant licensee or relevant associate.	14 15 16
160	Other powers of receiver	17
(1)	A receiver may:	18
(a)	prove, grant, claim or draw a dividend in respect of a debt that is receivable property, and	19 20
(b)	take proceedings to recover damages for a tort committed in relation to receivable property, and	21 22
(c)	give a receipt for money that is receivable property, and	23
(d)	employ a person to advise or act in relation to receivable property, in the name of the receiver or in the name of the relevant licensee or relevant associate.	24 25 26
(2)	A receipt given to a person under subsection (1) (c) discharges the person from any responsibility to see to the application of the money for which the receipt was given.	27 28 29
(3)	A receiver is not, in the exercise of his or her functions as a receiver, a personal representative of a deceased licensee.	30 31

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- 161 Notice to claim receivable property** 1
- (1) A receiver may give notice to: 2
- (a) the relevant licensee or relevant associate, or 3
- (b) any other person, that any claim the licensee, associate or other 4
person has to receivable property must be submitted to the 5
receiver within 1 month after the giving of the notice or within 6
such longer period as is stated in the notice. 7
- (2) A claim submitted in response to such a notice must state: 8
- (a) full particulars of the property, and 9
- (b) the grounds of the claim. 10
- (3) A receiver may disregard a claim made by a licensee, a licensee's 11
associate or any other person who has been given a notice under this 12
section if the claim is not made in accordance with the notice. 13
- (4) The relevant licensee or relevant associate is not entitled: 14
- (a) to enforce a claim to receivable property, or 15
- (b) except against a client—to the benefit of a lien against a 16
document that is receivable property, unless all other 17
enforceable claims against the property have been satisfied and 18
the expenses of the receivership paid. 19
- 162 Lien for costs on receivable property** 20
- (1) If a licensee claims a lien for costs on receivable property, the receiver 21
may serve on the licensee a written notice requiring the licensee to give 22
to the receiver, within a specified period of not less than 1 month: 23
- (a) particulars sufficient to identify the property, and 24
- (b) a detailed bill of costs. 25
- (2) The notice, or a subsequent written notice served on the licensee, may 26
require the licensee to apply for an assessment of the bill of costs 27
within a reasonable time specified in the notice. 28
- (3) If the licensee requests the receiver in writing to allow access to 29
receivable property to enable the licensee to have a bill of costs 30
assessed, the time allowed for taxation does not begin to run until 31
access is provided. 32

- (4) If a requirement of a notice under this section is not complied with, the receiver may disregard the claim in dealing with the property claimed to be subject to a lien. 1
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163 Examination by receiver 4

- (1) The Supreme Court may, on the application of a receiver, make such order as it thinks fit for the examination by the receiver of a licensee or other person in relation to receivable property. 5
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- (2) On an examination under this section: 8
- (a) the licensee or other person may be represented by a solicitor or barrister, and 9
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- (b) the Supreme Court may put, or allow to be put, to the licensee or other person such questions as it thinks fit. 11
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- (3) The licensee or other person may be examined on oath or affirmation. 13
- (4) The licensee or other person is compellable to answer all questions asked in the course of the examination, including any question to which an objection is made on the ground that the answer would tend to incriminate the licensee or other person. 14
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- (5) An answer given by a licensee or other person to a question to which such an objection is made is not admissible in any criminal proceedings other than proceedings relating to the falsity of the answer. 18
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164 Property not dealt with by receiver 22

- (1) If receivable property under the control of the receiver has not been dealt with in accordance with this Division, the receiver must cause notice of that fact to be given to the Director-General and: 23
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- (a) if the Director-General so requires within 1 month after the notice is given—must transfer and deliver the property to the Director-General, or 26
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28
- (b) if no such requirement is made—must transfer and deliver the property to the relevant licensee or relevant associate. 29
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- (2) If property other than money is transferred or delivered to the Director-General under this section, the Director-General: 31
32
- (a) must deal with it as the Supreme Court directs, and 33
- (b) if the property is sold—must treat the proceeds as money paid to the Director-General under this section. 34
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(3) The Director-General must apply money paid to the Director-General under this section:	1
(a) firstly—towards the satisfaction of wholly or partly unsatisfied claims against the relevant licensee, and	2
(b) secondly—in payment of the expenses of the receivership.	3
(4) Any money paid to the Director-General under this section that is surplus to the requirements of this section must be paid to the relevant licensee or relevant associate.	4
165 Investment of money by receiver	5
(1) A receiver may invest receivable property in any manner in which trustees are authorised by the <i>Trustee Act 1925</i> to invest trust funds.	6
(2) Income received from an investment under this section, and any profit made on the sale of such an investment, is receivable property.	7
166 Receiver may be reimbursed for damages	8
(1) The Director-General may reimburse a receiver for any damages or costs recovered against the receiver, or an employee or agent of the receiver, for anything done or omitted to be done in good faith in the purported exercise of the receiver's functions.	9
(2) Reimbursement under this section is to be by way of payment from the Operating Account.	10
167 Payment of expenses of receivership	11
(1) So much of the expenses of receivership as have not otherwise been paid to the receiver are to be paid to the receiver by the Director-General from the Operating Account.	12
(2) An amount paid under this section may be recovered by the Director-General from the relevant licensee as a debt.	13
(3) If the Director-General and a receiver fail to agree on the remuneration to be paid to the receiver, the Supreme Court may, on the application of the Director-General or the receiver, determine the amount to be paid.	14
(4) The Supreme Court, on the application of the relevant licensee:	15
(a) may re-open any agreement between the Director-General and a receiver for remuneration of the receiver, and	16

- (b) may determine the amount to be paid. 1

168 Supreme Court may review expenses of receivership 2

- (1) If, on the application of the relevant licensee, the Supreme Court is 3
satisfied that the expenses of the receivership are excessive, the 4
Supreme Court may order the taking of accounts between the 5
Director-General and the receiver. 6
- (2) After the taking of accounts, the Supreme Court: 7
- (a) may relieve the relevant licensee from payment of any amount 8
in excess of that determined by the Supreme Court to be fairly 9
payable, or 10
- (b) if the receiver has been paid, or allowed on account, an amount 11
that includes such an excess—may order the receiver to repay 12
the excess. 13

169 Receivable property not to be attached 14

The receivable property of a relevant licensee or relevant associate is 15
not liable to be taken in execution of any judgment, order or other 16
process of any court or tribunal. 17

170 Applications for directions by receiver, licensee etc 18

- (1) A receiver, a licensee or a licensee's associate who holds receivable 19
property, or a person who claims receivable property so held, may 20
apply to the Supreme Court for directions as to the performance of the 21
receiver's functions. 22
- (2) On an application under this section, the Supreme Court may give 23
such directions as it thinks fit. 24

171 Supreme Court may give general directions to receiver 25

- (1) The Supreme Court: 26
- (a) may authorise a receiver to do such things in the exercise of the 27
receiver's functions as the Supreme Court considers 28
appropriate, and 29
- (b) may give directions for the exercise of any such authority. 30
- (2) A receiver must exercise any authority so conferred in accordance with 31
any direction so given. 32

172	Receiver to report to Supreme Court and Director-General	1
(1)	A receiver must, at such times and in respect of such periods as the Supreme Court directs, submit reports on the receivership to the Supreme Court and the Director-General.	2 3 4
(2)	A report is to deal with such matters as the Supreme Court directs and with such other matters as the receiver considers appropriate to include in the report.	5 6 7
(3)	On the conclusion of a receivership, the receiver must lodge with the Supreme Court all of the receiver's records that relate to the receivership.	8 9 10
(4)	Unless the Supreme Court orders their destruction, records lodged under this section are to remain in the custody of the Court.	11 12
173	Termination of appointment of receiver	13
(1)	The Supreme Court:	14
(a)	may terminate the appointment of a receiver, and	15
(b)	may, if it thinks fit, appoint a new receiver either immediately or at any time within the next 14 days.	16 17
(2)	The former receiver must transfer or deliver the receivable property:	18
(a)	if a new receiver is appointed—to the new receiver in accordance with any directions given by the Supreme Court, or	19 20
(b)	if a new receiver is not appointed and if the relevant licensee or relevant associate so requires by notice in writing served on the receiver—to the licensee or associate.	21 22 23
	Maximum penalty: 50 penalty units.	24
(3)	The receivable property must, in accordance with any directions given by the Supreme Court, be transferred or delivered as soon as possible after the former receiver's appointment is terminated.	25 26 27
(4)	A former receiver is not required to comply with the requirements of this section unless:	28 29
(a)	the expenses of the receivership have been paid to the Director-General, or	30 31
(b)	the Director-General otherwise directs in relation to those expenses.	32 33

Part 11 Compensation Fund	1
Division 1 Establishment and management	2
175 Compensation Fund	3
The Director-General is to cause to be established and maintained in the accounting records of the Department a fund, called the Property Services Compensation Fund.	4 5 6
176 Money payable to Compensation Fund	7
The Compensation Fund is to consist of:	8
(a) any amounts paid by licensees by way of levy under this Act, and	9 10
(b) any amounts required or permitted to be paid to the credit of the Compensation Fund, whether by this Act or any other Act, and	11 12
(c) any amounts payable to the Compensation Fund from the Statutory Interest Account, and	13 14
(d) income from the investment of the Compensation Fund.	15
177 Application of money in Compensation Fund	16
(1) Money in the Compensation Fund may be applied for any purpose for which it is required or permitted to be applied by or under this or any other Act.	17 18 19
(2) The Director-General may apply money held in the Compensation Fund (in such order as the Director-General decides) for all or any of the following purposes:	20 21 22
(a) satisfying claims (including costs) established against the Compensation Fund in accordance with this or any other Act,	23 24
(b) meeting legal expenses incurred by the Director-General in connection with claims against the Compensation Fund,	25 26
(c) meeting expenses incurred by the Director-General in or in relation to appearances before a court or tribunal with respect to licences under this Act or the <i>Conveyancers Licensing Act 1995</i> ,	27 28 29 30
(d) meeting the costs of administering the Compensation Fund,	31

Division 3	Claims	1
180	Definitions	2
	In this Division:	3
	<i>associate</i> of a licensee means:	4
	(a) an employee or agent of the licensee, or	5
	(b) a person who has the apparent control or charge for the time being of the business of the licensee or of any office at which that business is carried on.	6 7 8
	<i>failure to account</i> has the meaning given in section 181.	9
	<i>pecuniary loss</i> from a failure to account includes:	10
	(a) all costs (including the legal costs and disbursements of making and proving a claim), charges and expenses that a claimant has suffered or incurred as a direct consequence of the failure to account, and	11 12 13 14
	(b) all interest on money or other valuable property that a claimant would have received but for the failure to account for the money or other property, with that interest calculated to the date on which the Director-General determines the claimant's claim or a judgment is recovered against the Director-General in relation to the Compensation Fund in respect of that money or other property.	15 16 17 18 19 20 21
181	Meaning of "failure to account"	22
	(1) In this Division, a reference to a failure to account is a reference to a failure by a licensee to account for money or other valuable property entrusted to the licensee or an associate of the licensee in the course of the licensee's business as a licensee.	23 24 25 26
	(2) This Division applies only to a failure to account that arises from an act or omission of the licensee or associate.	27 28
	(3) For the purposes of this Division, it does not matter that the failure to account occurred after the licensee ceased to be licensed, if the money or other valuable property concerned was entrusted to the licensee (or an associate of the licensee) before the licensee ceased to be licensed.	29 30 31 32

- (4) This Division applies whether the failure to account, or the act or omission, took place before or after the commencement of this Division. 1
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182 Division applies when person reasonably believed to be a licensee 4

- (1) This Division extends to a case where a person entrusts money or other valuable property to another person reasonably believing that the other person is a licensee or an associate of a licensee and that the money or other valuable property is entrusted in the course of a licensee's business as licensee. 5
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- (2) In such a case, the person believed to be a licensee is taken to be a licensee for the purposes of the operation of this Division and the money or other valuable property is taken to have been entrusted in the course of the licensee's business as licensee. 10
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183 Claims against Compensation Fund 14

- (1) The Compensation Fund is held, and is to be applied, for the purpose of compensating persons who suffer pecuniary loss because of a failure to account. 15
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- (2) A person who claims to have suffered a pecuniary loss because of a failure to account may make a claim against the Compensation Fund, but only if the claim is made in writing to the Director-General within: 18
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- (a) a period of 12 months after the person has become aware of the failure to account, or 21
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- (b) a period of 2 years after the date of the failure to account, 23
 whichever period ends first. 24
- (3) However, a claim caused by a failure of a licensee (or an employee or agent of a licensee) to lodge a rental bond with the Rental Bond Board may also be made at any time within one year after the termination of the tenancy agreement. 25
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- (4) A licensee does not have a claim against the Compensation Fund in respect of a pecuniary loss suffered in connection with the licensee's business as a licensee because of a failure to account. 29
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- (5) Subject to this section, the Director-General may receive and allow, in whole or in part, any claim against the Compensation Fund at any time after the relevant failure to account arose. 32
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- (6) The Director-General may disallow any claim, in whole or in part, in appropriate cases. In particular the Director-General may disallow a claim to the extent that pecuniary loss was suffered as a result of a failure to mitigate loss or was occasioned by unreasonable delay in making a claim.

184 Legal proceedings

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

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

185 Limits on amounts recoverable

- (1) The amount that a person may recover from the Compensation Fund cannot, in any case or in any event, exceed \$500,000 or, if another amount is prescribed by the regulations, the prescribed amount.
- (2) The aggregate sum that may be applied in compensating all persons who suffer or incur pecuniary loss because of a failure to account, or of related failures to account, cannot exceed \$2,000,000 or, if another amount is prescribed by the regulations, the prescribed amount.
- (3) The Director-General may disregard subsection (2) in the case of successive failures to account by a licensee, to the extent that the Director-General is satisfied that the failures are not connected.
- (4) If the total amount of claims or judgments (or both) exceeds the aggregate sum provided for by this section, the Director-General has an unfettered discretion to determine the division and allocation of the available money among the various parties (whether or not to the exclusion of any one or more of them).

186 Advertisements

- (1) The Director-General may cause to be published a notice relating to a defaulting licensee and fixing a date within which claims must be made under this Part.
- (2) The notice is to be published in a newspaper circulating in the district in which the defaulting licensee is or was carrying on business, and also in a newspaper circulating in Sydney. One newspaper may satisfy both requirements.
- (3) Any claim not made in writing on or before the date fixed by the notice is barred, unless the Director-General otherwise determines.
- (4) After that date, the Director-General may distribute compensation in accordance with this Part, having regard only to judgments obtained and claims allowed against the Compensation Fund.

187 Subrogation

- (1) On payment out of the Compensation Fund in settlement in whole or in part of a claim under this Act, the Crown is subrogated, to the extent of the payment, to all the rights and remedies of the claimant against the licensee, or the former licensee, in relation to whom the claim arose, or any other person.
- (2) A certificate given by the Director-General certifying that a specified amount has been paid out of the Compensation Fund in settlement in whole or in part of a claim under this Act is evidence of the matter certified.
- (3) In the enforcement of any rights or remedies to which the Director-General is subrogated under this section for the purpose of recovering an amount paid out of the Compensation Fund, the amount is taken to be a debt due to the Crown and may be recovered accordingly.

188 Recovery of payments from directors

- (1) This section applies when the payment of an amount out of the Compensation Fund has been made as a consequence of the act or omission of a body corporate (including the payment of any amount to an administrator of the affairs and property of the body corporate).
- (2) The Director-General may recover, jointly or severally, from any person who was a director or persons who were directors of the body corporate at the time of the relevant act or omission, the amount of the payment as a debt in any court of competent jurisdiction.
- (3) In any proceedings for the recovery of an amount under this section, judgment is not to be entered against a defendant who proves that the act or omission occurred without the defendant's express or implied authority or consent.
- (4) Proceedings may be brought for the recovery of an amount under this section whether or not the person against whom the proceedings are brought, or any other person, has been convicted of an offence in respect of the act or omission as a consequence of which the amount was paid.

- (5) When this section renders a person or persons liable to pay an amount as a consequence of an act or omission of a body corporate, the payment by the person or either or any of those persons of the whole or any part of the amount does not render the body corporate liable to the person concerned in respect of the amount so paid. 1
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189 Production of documents 6

- (1) The Director-General may, at any time and from time to time, require the production of documents necessary to support any claim under this Act, or available for that purpose, or for the purpose of exercising functions in respect of a defaulting licensee. 7
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- (2) The Director-General may reject a claim if documents are not produced as required. 11
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190 Satisfaction of claims and judgments 13

- (1) A claim or judgment against the Compensation Fund can only be satisfied to the extent of money in the Compensation Fund (either then or at a later time). No other money or property (whether of the Crown or otherwise) is available for that purpose. 14
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- (2) If a number of claims or judgments (or both) against the Compensation Fund cannot be satisfied because of an insufficiency of money in the Compensation Fund, the Director-General has an unfettered discretion to determine the division and allocation of the available money among the various parties (whether or not to the exclusion of any one or more of them). 18
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Division 4 Examination of accounts of licensees and former licensees 24
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191 Definitions 26

In this Division: 27

accounts examiner means a person appointed as an accounts examiner under this Division. 28
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associate has the same meaning as in Division 3. 30

192	Appointment of accounts examiner to examine licensee's accounts	1
(1)	For the purpose of safeguarding the Compensation Fund in relation to the affairs of a licensee, the Director-General may, at any time and from time to time, appoint an appropriately qualified person as an accounts examiner to examine the accounts kept by the licensee in connection with the licensee's business.	2 3 4 5 6
(2)	A person is appropriately qualified for appointment if the person has such qualifications or experience as in the opinion of the Director-General are appropriate for the purpose of exercising functions under this Division.	7 8 9 10
(3)	The appointment of an accounts examiner is to be by instrument in writing.	11 12
(4)	The Director-General may publicly notify the appointment of an accounts examiner in relation to the accounts of a licensee.	13 14
193	Accounts examiner to report on accounts	15
(1)	An accounts examiner is to furnish to the Director-General a confidential report about the accounts concerned, indicating whether there is any irregularity or alleged or suspected irregularity in the accounts or any other matter that in the person's opinion should, in the interests of the Compensation Fund, be further investigated.	16 17 18 19 20
(2)	A copy of the report is required to be sent by post by the Director-General to the licensee as soon as practicable.	21 22
194	Powers of accounts examiner	23
(1)	On production by an accounts examiner of his or her instrument of appointment, the accounts examiner may require the licensee (or, in the absence of the licensee, an associate of the licensee) to do any one or more of the following things:	24 25 26 27
(a)	produce to the accounts examiner or any assistant of the accounts examiner all books, papers, accounts, securities or other documents relating to the business of the licensee, or	28 29 30
(b)	produce to the accounts examiner or any assistant of the accounts examiner any written record made and kept by the licensee under this Act, or	31 32 33
(c)	give the accounts examiner or any assistant of the accounts examiner all information relating to any material required to be produced under this section, or	34 35 36

Clause 194 Property, Stock and Business Agents Bill 2001

Part 11 Compensation Fund

Division 4 Examination of accounts of licensees and former licensees

- (d) produce to the accounts examiner or any assistant of the accounts examiner all authorities and orders to financial institutions and other documents that may be reasonably required. 1
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- (2) The licensee or associate is guilty of an offence if the licensee or associate, without lawful justification or excuse (proof of which lies on the licensee or associate): 5
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 - (a) refuses or fails to comply with a requirement under this section, or 8
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 - (b) otherwise hinders, obstructs or delays an accounts examiner in the exercise or performance of the accounts examiner's functions under this sections. 10
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- Maximum penalty: 50 penalty units. 13

195 Confidentiality

- (1) An accounts examiner must not communicate to any person (other than a partner, employer, employee or assistant of the accounts examiner): 14
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 - (a) the fact of the accounts examiner's appointment under this Division, or 18
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 - (b) any matter that comes to the accounts examiner's knowledge in the course of the examination, 20
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- except in the course of preparing and furnishing the report to the Director-General or in the same circumstances as information obtained in connection with the administration or execution of this Act can be disclosed under section 215. 22
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- (2) A partner, employer, employee or assistant (*the colleague*) of the accounts examiner must not communicate to any person (other than the accounts examiner or a partner, employer, employee or assistant of the accounts examiner): 26
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 - (a) the fact of the accounts examiner's appointment under this Division, or 30
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 - (b) any matter that comes to the colleague's knowledge in the course of the examination, 32
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- except in the course of the preparing and furnishing of the report to the Director-General or in the same circumstances as information obtained 34
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in connection with the administration or execution of this Act can be disclosed under section 215.

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

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Maximum penalty: 50 penalty units.

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196 Former licensees

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This Division extends, with any necessary adaptations, to a former licensee, so that a reference in this Division to a licensee includes a reference to a former licensee and any person who has the possession, custody or control of a written record relating to a former licensee and preserved in accordance with this Act.

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Part 12 Property Services Statutory Interest Account

197 Statutory Interest Account

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

198 Money payable to Statutory Interest Account

The Statutory Interest Account is to consist of:

- (a) any money required or permitted to be paid to the credit of the Statutory Interest Account, whether by this Act or any other Act, and
- (b) income from the investment of the Statutory Interest Account.

199 Application of money in Statutory Interest Account

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

(f)	investing in schemes that relate to the provision of residential accommodation or, subject to such terms and conditions as may be prescribed by the regulations, in loans to authorised deposit-taking institutions.	1 2 3 4
(3)	The Treasurer may determine whether any such money is to be invested in any such scheme or loan and the amount to be invested in a scheme or loan.	5 6 7
(4)	In this section:	8
	<i>property services</i> means services provided in the property services industry as defined in section 25I of the <i>Fair Trading Act 1987</i> .	9 10
200	Application of money for purposes of certain Acts	11
(1)	The following amounts are also payable from the Statutory Interest Account:	12 13
(a)	such contributions towards the costs, charges and expenses of administration of the <i>Residential Tenancies Act 1987</i> , the <i>Consumer, Trader and Tenancy Tribunal Act 2001</i> and the <i>Residential Parks Act 1998</i> as may be agreed from time to time by the Minister and the Ministers administering the <i>Landlord and Tenant (Rental Bonds) Act 1977</i> , the <i>Residential Tenancies Act 1987</i> , the <i>Consumer, Trader and Tenancy Tribunal Act 2001</i> and the <i>Residential Parks Act 1998</i> ,	14 15 16 17 18 19 20 21
(b)	such contributions towards the costs, charges and expenses of the administration of the <i>Retirement Villages Act 1999</i> as may be authorised by the Director-General with the consent of the Minister,	22 23 24 25
(c)	such contributions as may be agreed by the Minister and the Minister administering the <i>Fair Trading Act 1987</i> towards the costs, charges and expenses of the administration of that Act,	26 27 28
(d)	such contributions as may be agreed by the Minister and the Minister administering the <i>Strata Schemes Management Act 1996</i> and <i>Community Land Management Act 1989</i> towards the costs, charges and expenses of the administration of those Acts.	29 30 31 32 33
(2)	Contributions referred to in this section are to be paid in the manner determined by the Treasurer.	34 35

Part 13	Enforcement	1
201	Authorised officers	2
(1)	In this Act:	3
	<i>authorised officer</i> means:	4
(a)	an officer of the Department for the time being appointed under this Part as an authorised officer, or	5 6
(b)	an investigator appointed under section 18 of the <i>Fair Trading Act 1987</i> , or	7 8
(c)	a police officer.	9
(2)	The Director-General may appoint any officer of the Department as an authorised officer for the purposes of this Act.	10 11
(3)	An authorised officer who is not a police officer is to be provided by the Director-General with a certificate of identification.	12 13
(4)	An authorised officer (other than a police officer) must, when exercising on any premises any function of the authorised officer under this Act, produce the officer's certificate of identification to any person apparently in charge of the premises who requests its production.	14 15 16 17 18
202	Purposes for which powers of authorised officers can be exercised	19
	An authorised officer may exercise the powers conferred by this Part for the purpose of:	20 21
(a)	ascertaining whether the provisions of this Act or the regulations are being complied with or have been contravened, or	22 23 24
(b)	investigating a complaint made or intended to be made under this Act.	25 26
203	Powers of entry, inspection etc	27
(1)	An authorised officer may enter and inspect at any reasonable time any premises that the officer believes on reasonable grounds are used for the carrying on of the business of an agent, whether or not the business is being carried on by the holder of a licence.	28 29 30 31

(2) While on premises entered under this section or under the authority of a search warrant under this Part, an authorised officer may do any one or more of the following:	1
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(a) require any person on those premises to produce any records in the possession or under the control of that person relating to the carrying on of the business of an agent,	4
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(b) inspect, take copies of or extracts from, or make notes from, any such records, and for that purpose may take temporary possession of any such records,	7
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(c) take possession of any such records if the authorised officer considers it necessary to do so for the purpose of obtaining evidence or protecting evidence from destruction,	10
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(d) take such photographs, films and audio, video and other recordings as the authorised officer considers necessary,	13
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(e) require any person on those premises to answer questions or otherwise furnish information in relation to the carrying on of the practice of the business of an agent or a contravention of a provision of this Act or the regulations,	15
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(f) require the owner or occupier of those premises to provide the authorised officer with such assistance and facilities as is or are reasonably necessary to enable the authorised officer to exercise the functions of an authorised officer under this section.	19
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(3) An authorised officer is not entitled to enter a part of premises used for residential purposes, except:	23
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(a) with the consent of the occupier of the part, or	25
(b) a part of premises on which an auction of residential property is being conducted, or	26
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(c) under the authority of a search warrant.	28
204 Obstruction etc of authorised officers	29
A person must not:	30
(a) without reasonable excuse, refuse or fail to comply with any requirement made or to answer any question asked by an authorised officer under the authority of this Part, or	31
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(b) wilfully delay, hinder or obstruct an authorised officer in the exercise of the officer's functions under this Part, or	34
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- (c) furnish an authorised officer exercising functions under this 1
Part with information knowing it to be false or misleading in a 2
material particular. 3
- Maximum penalty: 100 penalty units or imprisonment for 6 months, 4
or both. 5

205 Taking possession of records to be used as evidence 6

- (1) If an authorised officer takes possession of any records under this Part 7
for the purpose of obtaining evidence or protecting evidence from 8
destruction, they may be retained by the officer until the completion of 9
any proceedings (including proceedings on appeal) in which they may 10
be evidence. 11
- (2) The person from whom the records are taken must be provided, within 12
a reasonable time after the records are taken, with a copy of the records 13
certified by an authorised officer as a true copy. 14
- (3) A copy of records provided under this section is, as evidence, of equal 15
validity to the records of which it is certified to be a copy. 16

206 Search warrants 17

- (1) An authorised officer may apply to an authorised justice for the issue 18
of a search warrant for premises if the officer believes on reasonable 19
grounds: 20
- (a) that a provision of this Act or the regulations is being or has 21
 been contravened on the premises, or 22
- (b) that there is on the premises evidence of a contravention of a 23
 provision of this Act or the regulations. 24
- (2) An authorised justice to whom such an application is made may, if 25
satisfied that there are reasonable grounds for doing so, issue a search 26
warrant authorising an authorised officer named in the warrant: 27
- (a) to enter and inspect the premises, and 28
- (b) to exercise on the premises any function of an authorised 29
 officer under this Part. 30
- (3) Part 3 of the *Search Warrants Act 1985* applies to a search warrant 31
issued under this section. 32
- (4) In this section, *authorised justice* has the same meaning as in the 33
Search Warrants Act 1985. 34

207 Injunctions

- (1) On the application of the Director-General, the Supreme Court may grant an injunction restraining a threatened or apprehended contravention, or the continuation of a contravention, of a provision of this Act or the regulations. 1
- (2) An injunction may be granted without the Director-General being required to show a likelihood of damage. 2
- (3) If in the opinion of the Court it is desirable to do so, the Court may grant an interim injunction pending determination of the application. 3
- (4) When the Director-General makes an application for the grant of an injunction under this section, the Court is not to require the Director-General or any other person, as a condition of granting an interim injunction, to give an undertaking as to damages. 4
- (5) This section does not limit any provision of the *Fair Trading Act 1987*. 5

Part 14 Offences and proceedings

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Division 1 Offences

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208 Fraudulent conversion and false accounts of money received by licensee or registered person

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(1) This section applies to:

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(a) any money received by a licensee or registered person on behalf of any person in respect of any transaction in the licensee's or registered person's capacity as a licensee or registered person, or any part of any such money, and

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(b) any money so received that is held by the licensee or registered person as a stakeholder or in trust pending the completion of any transaction.

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(2) If the licensee or registered person fraudulently converts the money or any part of that money to his or her own use or to the use of any other person, the licensee or registered person is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years.

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(3) If the licensee or registered person fraudulently omits to account for, deliver or pay the money or any part of the money to the person from whom it was received or to the person or persons entitled to it, the licensee or registered person is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years.

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(4) If the licensee or registered person fraudulently renders an account of the money or any part of the money knowing the account to be false in any material particular, the licensee or registered person is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years.

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(5) On the prosecution of a person for an offence under this section it is not necessary to prove the fraudulent conversion by the accused of any specific sum of money if there is proof of a general deficiency on the examination of the books of account, or entries kept, or made by the accused, or otherwise, and the jury are satisfied that the accused fraudulently converted the deficient money or any part of it.

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209	Fraudulent accounts for expenses, commission and other charges	1
	If a licensee or registered person fraudulently renders an account of expenses, commission or other charges incidental to any transaction or proposed or contemplated transaction as a licensee or registered person knowing the account to be false in any material particular, the licensee or registered person is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years.	2 3 4 5 6 7
210	Operation of Crimes Act not affected	8
	Nothing in this Division affects the generality of any provisions of the <i>Crimes Act 1900</i> .	9 10
Division 2	Proceedings	11
211	Proceedings for offences	12
(1)	Proceedings for an offence under this Act or the regulations may be taken and prosecuted only by the Director-General or, in the name of the Director-General, by a person acting with the authority of the Director-General.	13 14 15 16
(2)	Proceedings for an offence under this Act or the regulations may be dealt with:	17 18
(a)	summarily before a Local Court constituted by a Magistrate sitting alone, or	19 20
(b)	summarily before the Supreme Court in its summary jurisdiction.	21 22
(3)	If proceedings are brought in a Local Court, the maximum monetary penalty that the Local Court may impose for the offence is 100 penalty units or such other amount as may be prescribed by the regulations, despite any higher maximum monetary penalty provided in respect of the offence.	23 24 25 26 27
(4)	Despite any proceedings against a person for an offence against this Act or the regulations (whether resulting in a conviction or otherwise) the person remains liable to civil proceedings in the same manner as if the proceedings for an offence had not been taken.	28 29 30 31

212 Penalty notices

- (1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence against this Act or the regulations, being an offence prescribed by the regulations as a penalty notice offence.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person can pay, within the time and to the person specified in the notice, the amount of the penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice may be served personally or by post.
- (4) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (5) Payment under this section is not to be regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (6) The regulations may:
- (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
 - (b) prescribe the amount of penalty payable for the offence if dealt with under this section, and
 - (c) prescribe different amounts of penalties for different offences or classes of offences.
- (7) The amount of a penalty prescribed under this section for an offence is not to exceed the maximum amount of penalty that could be imposed for the offence by a court.
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.
- (9) In this section:
- authorised officer*** means a person authorised in writing by the Director-General as an authorised officer for the purposes of this section.

213 Time for laying information

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Proceedings for an offence against this Act (other than proceedings
that are to be dealt with on indictment) or the regulations may be
commenced within 3 years after the date on which the offence is
alleged to have been committed.

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5**214 Offences by corporations**

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- (1) If a corporation contravenes, whether by act or omission, any
provision of this Act or the regulations, each director of the
corporation, and each person concerned in the management of the
corporation, is taken to have contravened the same provision unless
the director or person satisfies the court that:

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- (a) he or she was not in a position to influence the conduct of the
corporation in relation to its contravention of the provision, or
(b) he or she, being in such a position, used all due diligence to
prevent the contravention by the corporation.

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- (2) A person may be proceeded against and convicted under a provision
pursuant to subsection (1) whether or not the corporation has been
proceeded against or been convicted under that provision.

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- (3) Nothing in subsection (1) prejudices or affects any liability imposed by
a provision of this Act or the regulations on any corporation by which
an offence against the provision is actually committed.

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Part 15 Administration

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215 Disclosure of information

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- (1) A person must not disclose any information obtained in connection with the administration or execution of this Act unless that disclosure is made:

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- (a) with the consent of the person from whom the information was obtained, or

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- (b) in connection with the administration or execution of this Act, or

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- (c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings, or

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- (d) in accordance with a requirement imposed under the *Ombudsman Act 1974*, or

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- (e) to a regulatory officer or law enforcement officer, for the purposes of assisting the officer in the exercise of the officer's functions, or

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- (f) as otherwise authorised by this section or the regulations, or

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- (g) with other lawful excuse.

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Maximum penalty: 20 penalty units or imprisonment for 6 months, or both.

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- (2) The Director-General may communicate to any person directly concerned in any transaction with a licensee in connection with his or her business as a licensee any information furnished to the Director-General in connection with the administration or execution of this Act, in so far as it relates to any such transaction and directly concerns any such person.

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- (3) The Director-General may request and receive information from a law enforcement officer or regulatory officer for the purpose of assisting the Director-General in the exercise of functions under this Act or under any other Act administered by the Minister.

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- (4) The Director-General may enter into agreements and other arrangements for the sharing or exchange of information as authorised by this section.

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- (5) In this section: 1
- law enforcement officer*** means: 2
- (a) a member of the Police Service, the Australian Federal Police 3
or of the police force of another State or a Territory, or 4
 - (b) the Director of Public Prosecutions or the Crown Prosecutor of 5
the State or the Director of Public Prosecutions or the Crown 6
Prosecutor of the Commonwealth or of another State or 7
Territory, or 8
 - (c) any other person, or officer of an authority, responsible for the 9
investigation or prosecution of offences under laws of the State, 10
the Commonwealth, another State or a Territory. 11
- regulatory officer*** means an officer or employee of a government 12
agency (including the government of a jurisdiction outside the State 13
and outside Australia) exercising functions under an enactment with 14
respect to fair trading or an enactment that provides for the issue of 15
licences or other authorities in connection with the undertaking of an 16
activity regulated under the enactment. 17

216 Register 18

- (1) The Director-General is to maintain a Register for the purposes of this 19
Act and is to enter and keep in the Register particulars of such of the 20
following as the regulations may require: 21
- (a) the licences and certificates of registration issued under this 22
Act, 23
 - (b) prosecutions taken under this Act and the result of those 24
prosecutions, 25
 - (c) penalty notices issued under this Act, 26
 - (d) warning notices that the Director-General has authorised 27
publication of under this Act, 28
 - (e) formal cautions issued under this Act, 29
 - (f) disciplinary action taken under this Act, 30
 - (g) undertakings given under this Act by the holder of a licence or 31
certificate of registration, 32
 - (h) the appointment of a manager or receiver under this Act, 33
 - (i) such other matters as may be prescribed by the regulations. 34

Part 16 Miscellaneous

219 Fair Trading Act not affected

This Act does not limit or otherwise affect the exercise of any function under the *Fair Trading Act 1987*.

220 Service of notices

- (1) A notice or direction in writing that is required or permitted to be given under this Act may be given as provided by this section.
- (2) A notice or direction may be given to a person other than a body corporate:
 - (a) by giving it to the person himself or herself, or
 - (b) by leaving it at his or her place of residence with someone who apparently resides there and has apparently reached the age of 16 years, or
 - (c) by leaving it at his or her place of employment or business with someone who is apparently employed there and has apparently reached the age of 16 years, or
 - (d) by posting it in a letter addressed to him or her at the address last known to the Director-General of his or her place of residence, employment or business.
- (3) A notice or direction may be given to a body corporate:
 - (a) by giving it to the secretary of the body corporate, or any other person concerned in the management of the body corporate, personally, or
 - (b) by leaving it at the body corporate's only or principal place of business with someone who is apparently employed there and has apparently reached the age of 16 years, or
 - (c) by posting it in a letter addressed to the body corporate at the address last known to the Director-General of its only or principal place of business.
- (4) This section does not limit any provision of the *Corporations Act*.

221	Repeals	1
(1)	The <i>Property, Stock and Business Agents Act 1941</i> is repealed.	2
(2)	The <i>Property, Stock and Business Agents (General) Regulation 1993</i> is repealed.	3 4
222	Savings and transitional provisions	5
	Schedule 1 has effect.	6
223	Consequential amendments of Acts	7
	Schedule 2 has effect.	8
224	Regulations	9
(1)	The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.	10 11 12 13
(2)	In particular the Governor may make regulations for or with respect to:	14
(a)	prescribing the procedure to be followed in respect of applications under this Act,	15 16
(b)	fixing the maximum amount of remuneration to which a licensee is entitled, by way of commission, fee, gain or reward, for services performed by him or her as a licensee,	17 18 19
(c)	requiring licensees to display or otherwise publicise or give notice of particulars of their remuneration and prescribe the consequences of a failure to comply with any such requirement,	20 21 22 23
(d)	prescribing the accounts and other records to be kept by a licensee and the manner in which they are to be kept,	24 25
(e)	prescribing the conditions applicable to and in respect of the sale by auction of land or livestock,	26 27
(f)	prescribing the manner in which the conditions of the sale by auction of land or livestock must be notified,	28 29
(g)	prescribing exemptions from requirements of this Act.	30
(3)	A regulation may create an offence punishable by a penalty not exceeding 40 penalty units in the case of a body corporate or 20 penalty units in any other case.	31 32 33

225 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

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Schedule 1	Savings and transitional provisions	1
	(Section 222)	2
1	Definition	3
	In this Schedule:	4
	<i>repealed Act</i> means the <i>Property, Stock and Business Agents Act 1941</i> .	5 6
2	Regulations	7
(1)	The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:	8 9 10
	this Act	11
(2)	Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.	12 13 14
(3)	To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:	15 16 17
(a)	to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or	18 19 20
(b)	to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.	21 22 23
3	Licences and certificates of registration under repealed Act	24
(1)	A person who was the holder of a licence or certificate of registration under a provision of the repealed Act immediately before its repeal is taken to be the holder of the corresponding licence or certificate of registration under this Act.	25 26 27 28
(2)	The corresponding licence or certificate of registration:	29
(a)	is taken to have been issued subject to the same conditions to which it was subject under the repealed Act, and	30 31 32

(b)	remains in force for the remainder of the period for which it was issued.	1 2
Note.	Licences under the repealed Act were issued for 3 years.	3
4	Pending applications and objections	4
(1)	The repealed Act continues to apply as if it had not been repealed to and in respect of:	5 6
(a)	an application for the issue, renewal or restoration of a licence or certificate of registration under a provision of the repealed Act that was pending immediately before its repeal, and	7 8 9 10
(b)	any objection under a provision of the repealed Act in respect of such an application.	11 12
(2)	A licence or certificate of registration issued or renewed under a provision of the repealed Act pursuant to subclause (1) is taken to have been issued or renewed immediately before the repeal of the provision.	13 14 15 16
5	Pending complaints	17
(1)	The repealed Act continues to apply as if it had not been repealed to and in respect of a complaint that was made under section 29, 29A, 60 or 60AA of the repealed Act and was pending immediately before the repeal of those sections.	18 19 20 21
(2)	For the purposes of the operation of this Schedule, any action taken by a court on such a complaint is to have effect as if it was made immediately before the repeal of the provision of the repealed Act under which the complaint was made.	22 23 24 25
6	Pending appeals	26
(1)	Any appeal pending under section 31 or 61 of the repealed Act immediately before the repeal of the section under which the appeal was made is to continue and be determined as if the repealed Act had not been repealed.	27 28 29 30
(2)	For the purposes of the operation of this Schedule, the determination of the appeal is to have effect as if the appeal was made immediately before the repeal of the provision of the repealed Act under which it was made.	31 32 33 34

7	Records	1
	Any records kept under or for the purposes of a provision of the repealed Act are taken to be kept under or for the purposes of the corresponding provision of this Act.	2 3 4
8	Compensation Fund	5
(1)	The Compensation Fund under this Act is a continuation of the Compensation Fund under the repealed Act.	6 7
(2)	Any amount payable to the Compensation Fund under the repealed Act immediately before the commencement of this clause is payable instead to the Compensation Fund under this Act.	8 9 10 11
(3)	Contributions made to the Compensation Fund under the repealed Act are taken to have been made to the Compensation Fund under this Act.	12 13 14
9	Statutory Interest Account	15
(1)	The Statutory Interest Account under this Act is a continuation of the Statutory Interest Account under the repealed Act.	16 17
(2)	Any amount payable to the Statutory Interest Account under the repealed Act immediately before the commencement of this clause is payable instead to the Statutory Interest Account under this Act.	18 19 20 21
(3)	Contributions made to the Statutory Interest Account under the repealed Act are taken to have been made to the Statutory Interest Account under this Act.	22 23 24
10	Trust account rates	25
	A trust account rate determined for an authorised deposit-taking institution and in force under section 36AA of the repealed Act immediately before its repeal is taken to have been determined under section 85 of this Act in respect of that institution until a different rate is determined for that institution under that section.	26 27 28 29 30 31

11	Approval of business name	1
	The Director-General is taken to have approved of a licensee carrying on, or advertising or holding out that the licensee carries on, business as a licensee under a name for the purposes of this Act if, immediately before the commencement of this clause, the licensee carried on business as a licensee under that name in compliance with section 43A of the repealed Act.	2 3 4 5 6 7 8
12	Licences cancelled under repealed Act	9
	A reference in this Act to a licence cancelled under this Act includes a reference to a licence cancelled under the repealed Act.	10 11 12
13	Receivers	13
	The repealed Act continues to apply to and in respect of a receiver whose appointment under the repealed Act is in force immediately before the commencement of this clause as if the repealed Act had not been repealed.	14 15 16 17
14	Act extends to acts and omissions before commencement	18
	Unless the context otherwise indicates or requires, a provision of this Act extends to any act or omission occurring before the commencement of the provision.	19 20 21
15	Continuity of things done before commencement	22
	Anything done by the Director-General or a licensee under or for the purposes of a provision of the repealed Act is, to the extent that the thing done has effect immediately before the repeal of the provision, taken to have been done under or for the purposes of the corresponding provision of this Act.	23 24 25 26 27
16	Disclosure of information	28
	For the purposes of section 215 (Disclosure of information) of this Act, information obtained in connection with the administration or execution of the repealed Act is taken to have been obtained in connection with the administration or execution of this Act.	29 30 31 32 33

Schedule 2	Consequential amendments	1
	(Section 223)	2
2.1	Community Land Management Act 1989 No 202	3
	Section 3 Definitions	4
	Omit “ <i>Property, Stock and Business Agents Act 1941</i> ” from the definition of <i>managing agent</i> in section 3 (1).	5
	Insert instead “ <i>Property, Stock and Business Agents Act 2001</i> ”.	6
		7
2.2	Conveyancers Licensing Act 1995 No 57	8
[1]	Section 5 Disqualified persons	9
	Omit section 5 (1) (h). Insert instead:	10
	(h) is a disqualified person under the <i>Property, Stock and Business Agents Act 2001</i> .	11
		12
[2]	Section 5 (2) (b)	13
	Omit “ <i>Property, Stock and Business Agents Act 1941</i> ”.	14
	Insert instead “ <i>Property, Stock and Business Agents Act 2001</i> ”.	15
[3]	Section 19 Multidisciplinary partnerships	16
	Omit “ <i>Property, Stock and Business Agents Act 1941</i> ” from section 19 (3).	17
	Insert instead “ <i>Property, Stock and Business Agents Act 2001</i> ”.	18
[4]	Section 22 Sharing staff of legal practitioners and real estate and other agents	19
	Omit “ <i>Property, Stock and Business Agents Act 1941</i> ” from section 22 (1).	20
	Insert instead “ <i>Property, Stock and Business Agents Act 2001</i> ”.	21
		22

[5] Section 29	1
Omit the section. Insert instead:	2
29 Bankers to pay interest to Statutory Interest Account	3
(1) Sections 85 and 86 of the <i>Property, Stock and Business Agents Act 2001</i> apply in respect of all money held in a general trust account under this Division as if:	4
(a) the trust account were a trust account opened and kept under section 81 of that Act, and	5
(b) the licensee who opened and keeps the trust account were a licensee under that Act.	6
(2) A licensee must, when opening a trust account at an authorised deposit-taking institution under this Division, ensure that the authorised deposit-taking institution is notified that the trust account is, for the purposes of sections 85 and 86 of that Act, to be regarded as a trust account required by that Act. Such a notification is, for the purposes of those sections, to be regarded as a notification that the trust account is required by that Act.	7
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[6] Section 37 Definition	18
Omit “ <i>Property, Stock and Business Agents Act 1941</i> ” from the definition of <i>PSBA Act</i> in section 37.	19
Insert instead “ <i>Property, Stock and Business Agents Act 2001</i> ”.	20
	21
[7] Section 38 Claims can be made against Compensation Fund	22
Omit “Part 6 (Compensation Fund) of the PSBA Act” from section 38 (1).	23
Insert instead “Part 11 of the PSBA Act”.	24
[8] Section 38 (3)	25
Omit “Section 64E (4) of the PSBA Act”.	26
Insert instead “Section 179 (4) of the PSBA Act”.	27
[9] Section 39 Contributions by licensees	28
Omit “section 64D or 64E of the PSBA Act” from section 39.	29
Insert instead “section 178 or 179 of the PSBA Act”.	30

[10] Section 43 Appointment of manager	1
Omit “a determination by the Director-General under Part 6 of the <i>Property, Stock and Business Agents Act 1941</i> ” from section 43 (1) (c).	2
	3
Insert instead “a determination by the Director-General under Part 11 of the <i>Property, Stock and Business Agents Act 2001</i> ”.	4
	5
[11] Section 55 Supreme Court may appoint receiver	6
Omit “ <i>Property, Stock and Business Agents Act 1941</i> ” from section 55 (2) (c).	7
	8
Insert instead “ <i>Property, Stock and Business Agents Act 2001</i> ”.	9
2.3 Fair Trading Act 1987 No 68	10
[1] Section 8 Delegation by Director-General	11
Omit “ <i>Property, Stock and Business Agents Act 1941</i> ” from section 8 (1) (f).	12
	13
Insert instead “ <i>Property, Stock and Business Agents Act 2001</i> ”.	14
[2] Section 25I Functions	15
Omit “ <i>Property, Stock and Business Agents Act 1941</i> ” from paragraph (a) of the definition of <i>property services industry</i> in section 25I (2).	16
	17
Insert instead “ <i>Property, Stock and Business Agents Act 2001</i> ”.	18
2.4 Fines Act 1996 No 99	19
Schedule 1 Statutory provisions under which penalty notices issued	20
	21
Omit “ <i>Property, Stock and Business Agents Act 1941</i> , section 86C” from Schedule 1.	22
	23
Insert instead “ <i>Property, Stock and Business Agents Act 2001</i> , section 212”.	24

2.5	Landlord and Tenant (Rental Bonds) Act 1977 No 44	1
	Section 20 Rental Bond Interest Account	2
	Omit “ <i>Property, Stock and Business Agents Act 1941</i> ” from section 20 (2A).	3
		4
	Insert instead “ <i>Property, Stock and Business Agents Act 2001</i> ”.	5
2.6	Pawnbrokers and Second-hand Dealers Act 1996 No 13	6
	Section 4 Restrictions on operation of this Act	7
	Omit “ <i>Property, Stock and Business Agents Act 1941</i> ” from section 4 (1).	8
	Insert instead “ <i>Property, Stock and Business Agents Act 2001</i> ”.	9
2.7	Retirement Villages Act 1999 No 81	10
[1]	Section 23 Deposits to be kept in trust	11
	Omit “ <i>Property, Stock and Business Agents Act 1941</i> ” from section 23 (3) (b).	12
		13
	Insert instead “ <i>Property, Stock and Business Agents Act 2001</i> ”.	14
[2]	Section 168 Sale of premises	15
	Omit “ <i>Property, Stock and Business Agents Act 1941</i> ” from the note to section 168 (1).	16
		17
	Insert instead “ <i>Property, Stock and Business Agents Act 2001</i> ”.	18
[3]	Section 202 Costs of administration	19
	Omit “ <i>Property, Stock and Business Agents Act 1941</i> , in accordance with section 63E of that Act” from section 202 (b).	20
		21
	Insert instead “ <i>Property, Stock and Business Agents Act 2001</i> , in accordance with section 200 of that Act”.	22
		23

2.8 Strata Schemes Management Act 1996 No 138	1
[1] Chapter 2, Part 4	2
Omit “ <i>Property, Stock and Business Agents Act 1941</i> ” from the introductory note under the heading to Part 4 of Chapter 2.	3
Insert instead “ <i>Property, Stock and Business Agents Act 2001</i> ”.	4
[2] Section 26 What is a strata managing agent?	5
Omit “ <i>Property, Stock and Business Agents Act 1941</i> ” from section 26.	6
Insert instead “ <i>Property, Stock and Business Agents Act 2001</i> ”.	7
[3] Section 26	8
Omit “ <i>Property, Stock and Business Agents Act 1941</i> ” from the note to section 26.	9
Insert instead “ <i>Property, Stock and Business Agents Act 2001</i> ”.	10
[4] Section 33 Information may be required relating to strata managing agent’s trust account	11
Omit “section 36 of the <i>Property, Stock and Business Agents Act 1941</i> ” from section 33.	12
Insert instead “the <i>Property, Stock and Business Agents Act 2001</i> ”.	13
[5] Section 38 Who is responsible for providing information if a strata managing agent ceases to hold a licence or dies?	14
Omit “ <i>Property, Stock and Business Agents Act 1941</i> ” from section 38.	15
Insert instead “ <i>Property, Stock and Business Agents Act 2001</i> ”.	16
[6] Section 38 (a)	17
Omit “section 36 (6) of”.	18
[7] Section 38 (b)	19
Omit “section 38 (2) of”.	20
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[8] Section 40 Certain provisions of other Acts requiring agents to provide information not to apply to affairs of owners corporation	1 2
Omit “section 38A (3), (4), (5), (6) and (7) of the <i>Property, Stock and Business Agents Act 1941</i> ” from section 40 and from the note to that section wherever occurring.	3 4 5
Insert instead “section 98 of the <i>Property, Stock and Business Agents Act 2001</i> ”.	6 7
[9] Section 105 Owners corporation may require certain persons to produce records, accounts and property of the owners corporation	8 9
Omit “section 38 of the <i>Property, Stock and Business Agents Act 1941</i> ” from section 105 (4).	10 11
Insert instead “the <i>Property, Stock and Business Agents Act 2001</i> ”.	12
[10] Section 105	13
Omit “Section 38 of the <i>Property, Stock and Business Agents Act 1941</i> ” from the note to section 105.	14 15
Insert instead “The <i>Property, Stock and Business Agents Act 2001</i> ”.	16
[11] Section 162 Order appointing strata managing agent to exercise certain functions	17 18
Omit “ <i>Property, Stock and Business Agents Act 1941</i> ” from section 162 (4) (a).	19 20
Insert instead “ <i>Property, Stock and Business Agents Act 2001</i> ”.	21
