

New South Wales

Property, Stock and Business Agents Amendment Bill 2005

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Property, Stock and Business Agents Act 2002* (*the Act*) as follows:

- (a) to make the following changes to the provisions that disqualify a person from holding a licence or certificate of registration:
 - (i) extend the ground of disqualification concerned with involvement in corporate insolvency by basing disqualification on involvement in an externally administered body corporate and by including as a ground of disqualification involvement in the management of a corporation up to 12 months prior to an external administrator being appointed,
 - (ii) make it clear that an existing discretion to grant a licence in a case of undischarged bankruptcy extends to a case of involvement in the management of an insolvent (externally administered) corporation,
 - (iii) make it clear that when considering steps taken to avoid bankruptcy or corporate insolvency regard is to be had to steps taken after financial difficulties first arose,

- (iv) limit disqualification based on bankruptcy or involvement with an insolvent corporation to licences (so that certificates of registration will not be subject to disqualification on those grounds),
 - (v) include as an additional ground of disqualification the suspension of or disqualification from holding an authority under another Act administered by the Minister (with a discretion for the Director-General to ignore such a disqualification),
- (b) to make it clear, for the purposes of the duty of disclosure of a seller's agent to prospective buyers, that a **prospective buyer** is a person who has made an offer of which the principal has been informed to purchase the land concerned and also to make it clear that a bid at auction does not make the bidder a prospective buyer for this purpose,
- (c) to make it clear that the duty of disclosure of a buyer's or seller's agent with respect to benefits to be received by third parties only applies to third parties to whom the agent has referred the client or a prospective buyer,
- (d) to extend the duty of disclosure that a licensee has when the licensee advertises a property in which the licensee has an interest as principal to cover situations where the licensee is a corporation and a director is an owner of the property or the licensee is a director of a corporation and the corporation is an owner of the property,
- (e) to require real estate agents, stock and station agents and their employees to disclose in the course of the marketing of residential property or rural land that the highest bid at an auction of the property was a vendor bid if the property was passed in and the bid is referred to in marketing the property,
- (f) to make it clear that the requirement to verify a bidder's name and address for the purposes of the Bidders Record can be satisfied by using 2 proof of identity documents (one to verify name and the other to verify address),
- (g) to strengthen existing controls for the prevention of dummy bidding at auctions of residential property or rural land, including by prohibiting the making of bids on behalf of the seller except one bid made by the auctioneer (with exceptions for bids by a co-owner trying to purchase the interest of a co-owner and bids by executors and administrators of deceased estates), and by increasing penalties,
- (h) to increase the penalty for engaging in collusive practices at auction sales from the existing penalty of 200 penalty units for a corporation and 100 for an individual to 500 penalty units for a corporation and 250 for an individual,
- (i) to make it an offence for an auctioneer to falsely announce a bid,
- (j) to require the name of a trust account kept by a licensee to include the name of the licensee or firm and to allow inclusion, at the end of the account name, of the name or other identifier of the person on whose behalf the account is held,
- (k) to require authorised deposit-taking institutions with which trust accounts are kept and that are required to pay monthly interest on trust account balances to

the Statutory Interest Account to pay that interest before the end of the 7th business day of the following month (rather than the 1st business day as at present),

- (l) to enable the Director-General to give directions to authorised deposit-taking institutions with which trust accounts are kept as to the manner and form in which information about trust accounts is to be provided to the Director-General,
- (m) to change the existing procedure for repayment of unclaimed money paid to the Consolidated Fund by authorising the Director-General to deal with claims by way of payments to or from the Compensation Fund kept under the Act,
- (n) to make it clear that a licensee director of a licensee corporation or the licensee in charge of a licensee's place of business is not required to be accredited as an auctioneer merely because auctions will be conducted as part of the business of the corporation or place of business,
- (o) to increase the penalty for breaches of the rules of conduct prescribed under the Act,
- (p) to provide for the Director-General to require a licensee to discontinue unjust conduct and to rectify the consequences of that conduct,
- (q) to make other amendments of a minor, consequential or savings and transitional nature.

Outline of provisions

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 is a formal provision that gives effect to the amendments to the *Property, Stock and Business Agents Act 2002* set out in Schedule 1.

Schedule 1 Amendments

Disqualification from holding a licence or certificate of registration

Section 16 of the Act sets out the circumstances that disqualify a person from being the holder of a licence or certificate of registration under the Act.

Schedule 1 [3]–[6] amend section 16 as follows:

- (a) Currently, a person is disqualified by being involved, in the 3 years prior to an application for a licence or certificate of registration, in the management of a corporation that was the subject of a winding up order or for which a controller or administrator was appointed. The amendments extend the disqualification to other forms of corporate insolvency by referring to a body corporate that is externally administered (with an exception for voluntary winding up). The amendments also extend the disqualification to cover a person concerned in

the management of a body corporate within 12 months before it became externally administered.

- (b) Currently the Director-General has a discretion to grant a licence or registration to an undischarged bankrupt. The amendments make it clear that this discretion extends to cases of involvement in the management of an insolvent corporation and also make it clear that in determining whether to exercise the discretion the Director-General is to have regard to steps that could have been taken by the person to avoid bankruptcy or corporate insolvency from when the financial difficulties concerned first arose (not just from when the bankruptcy or insolvency was notified).
- (c) Grounds of disqualification that relate to bankruptcy or involvement in corporate insolvency will be limited to disqualification from holding a licence (so as not to apply to a certificate of registration).
- (d) Suspension or disqualification from holding a licence, permit or other authority under legislation administered by the Minister is added as a further ground of disqualification from holding a licence or certificate of registration, with a discretion for the Director-General to ignore such a suspension or disqualification.

Schedule 1 [1] and [10] make consequential amendments.

Licensee conduct

Schedule 1 [9] increases the penalty for a contravention by a licensee of the rules of conduct prescribed by the regulations. The offence is currently in the regulations and the amendment transfers the offence to the Act, increasing the penalty from 40 penalty units in the case of a corporation or 20 penalty units in any other case to 100 penalty units in the case of a corporation or 50 penalty units in any other case.

Schedule 1 [8] makes a consequential amendment.

Schedule 1 [11] makes it clear, for the purposes of an agent's duty to disclose details of any relationship the agent has with a person to whom the agent refers the client or a prospective buyer of land, that *prospective buyer* means a person who has made an offer to buy the land of which the principal has been informed.

Schedule 1 [12] makes it clear that the duty of disclosure of a buyer's or seller's agent with respect to the details of benefits to be received by third parties in connection with the sale or purchase of land only applies to third parties to whom the agent has referred the client or a prospective buyer.

Schedule 1 [13] inserts a definition of *prospective buyer* that makes it clear that a bid at auction does not make the person a prospective buyer for the purposes of agents' disclosure duties.

Schedule 1 [14] extends the existing requirement that a licensee must include in an advertisement relating to property details of any interest that the licensee has in the property as a principal so that the requirement will also require disclosure of the fact that:

- (a) the licensee is a corporation and a director of the corporation is an owner of the property, or
- (b) the licensee is a director of a corporation and the corporation is an owner of the property.

Schedule 1 [15] inserts the following new provisions to give the Director-General power to deal with unjust conduct by licensees:

- (a) Proposed section 53A provides a definition of *unjust conduct*.
- (b) Proposed section 53B provides for the Director-General, with the consent of the Minister, to require the giving of various undertakings by a licensee who has repeatedly engaged in unjust conduct, or to apply to the Consumer, Trader and Tenancy Tribunal for an order that the licensee refrain from that conduct or comply with any such undertaking.
- (c) Proposed section 53C requires a licensee to observe any undertakings given by the licensee and also provides for lodgment with the Tribunal and registration of undertakings given by licensees.
- (d) Proposed section 53D confers various powers on the Tribunal to order a licensee to refrain from unjust conduct and to observe any undertakings given to the Director-General.
- (e) Proposed section 53E provides for the variation and discharge of the Tribunal's orders.

Auctions

Existing section 66 allows only one bid to be made by or on behalf of the seller at an auction of residential property or rural land. **Schedule 1 [16]** replaces that section and adds a new section 66A that will prevent dummy bidding by:

- (a) prohibiting the seller from making a bid, prohibiting a person from making a bid on behalf of the seller (except one bid made by the auctioneer on behalf of the seller) and prohibiting a person from procuring another person to make a bid on behalf of the seller, and
- (b) prohibiting an auctioneer from acknowledging a bid that was not made, prohibiting an auctioneer from accepting a bid that the auctioneer knows was made by or on behalf of the seller (except the one bid that the auctioneer can make on behalf of the seller) and prohibiting an auctioneer from making more than one bid on behalf of the seller, and
- (c) preventing an auctioneer from making a bid on behalf of the seller unless the auction conditions permit it and are announced before the auction and the bid is announced as a vendor bid.

The prohibition against bidding by or on behalf of the seller will not apply to bids by an executor or administrator of a deceased estate, or bids by a co-owner trying to buy the interest of another co-owner. For such a bid to be allowed, the auction conditions will have to permit it, the auctioneer will have to announce before the auction starts

that such a vendor bid is allowed, and the auctioneer will have to announce such a bid to be a vendor bid as soon as it is made.

Schedule 1 [17] makes it clear that the regulations can require other information to be included in the Bidders Record for an auction.

Schedule 1 [18] makes it clear that for the purposes of an entry in the Bidders Record both a bidder's name and address must be established by proof of identity documents but that 2 proof of identity documents can be used for that purpose (one to verify name and the other to verify address).

Schedule 1 [20] provides that a real estate agent, stock and station agent or an employee of such an agent must not in the course of marketing residential property or rural land that was passed in at auction indicate the highest bid made at the auction if the bid was a vendor bid without also indicating that the bid was a vendor bid (that is, a bid made on behalf of the seller). **Schedule 1 [19]** makes a consequential amendment to a heading.

Schedule 1 [21] increases the penalty for the existing offence under the Act of engaging in various collusive practices in relation to the sale by auction of land or livestock. The existing maximum penalty is 200 penalty units for a corporation or 100 penalty units for an individual. The new maximum penalty will be 500 penalty units for a corporation or 250 penalty units for an individual.

Trust accounts

Schedule 1 [22] provides that the name of a trust account and the description of a trust account in the records of a licensee must include the name of the licensee or firm of licensees and may include at the end of the account's name a name or other matter to identify the person on whose behalf money in the account is held.

Schedule 1 [23] alters the existing requirement for authorised deposit-taking institutions with which trust accounts are kept to pay monthly interest on trust account balances to the Statutory Interest Account so that the interest will be payable before the end of the 7th business day of the following month, rather than before the end of the 1st business day of the following month as at present.

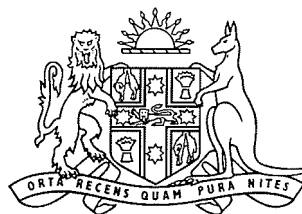
Schedule 1 [24]–[27] provide for the giving of directions by the Director-General to authorised deposit-taking institutions as to the manner and form in which those institutions are required to provide certain information concerning licensee trust accounts kept at those institutions.

Schedule 1 [28]–[30] vary the provisions dealing with unclaimed money in licensee trust accounts to enable the Director-General to deal with claims for repayment of unclaimed money and make those payments from the Compensation Fund under the Act, with provision for the Compensation Fund to be reimbursed from the Consolidated Fund in the case of repayment of unclaimed money already paid to the Consolidated Fund. This will replace the existing regime whereby claims for repayment of unclaimed money are made to the Treasurer for payment from the Consolidated Fund.

Other amendments

Schedule 1 [2] and [7] make it clear that a licensee director of a licensee corporation or the licensee in charge of a licensee's place of business is not required to be accredited as an auctioneer merely because auctions will be conducted as part of the business of the corporation or place of business. This does not limit the existing requirement that real estate agents and stock and station agents who conduct auctions are required to be accredited as auctioneers.

Schedule 1 [31] and [32] enact consequential savings and transitional provisions.



New South Wales

Property, Stock and Business Agents Amendment Bill 2005

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New South Wales

Property, Stock and Business Agents Amendment Bill 2005

No , 2005

A Bill for

An Act to amend the *Property, Stock and Business Agents Act 2002* to make further provision with respect to licence disqualification, advertising, auction sales, trust accounts and penalties; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Property, Stock and Business Agents Amendment Act 2005</i> .	3 4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6
3 Amendment of Property, Stock and Business Agents Act 2002 No 66	7
The <i>Property, Stock and Business Agents Act 2002</i> is amended as set out in Schedule 1.	8 9

Schedule 1 Amendments

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(Section 3)	
[1] Section 14 Eligibility for licence or certificate of registration	3
Insert at the end of section 14 (3):	4
Note. The grounds of disqualification in section 16 (1A) do not disqualify a person from eligibility to hold a certificate of registration.	5 6
[2] Section 14 (4)	7
Insert after section 14 (3):	8
(4) The requirement that at least one of the directors of a 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 does not require a director to be accredited as an auctioneer under section 21 merely because the corporation carries on or proposes to carry on the business of an auctioneer.	9 10 11 12 13 14
[3] Section 16 Disqualified persons	15
Omit section 16 (1) (c)–(e).	16
[4] Section 16 (1) (h)	17
Omit the paragraph. Insert instead:	18
(h) is the holder of a licence, permit or other authority that is suspended under legislation administered by the Minister or is disqualified from holding a licence, permit or other authority under legislation administered by the Minister, or	19 20 21 22 23
[5] Section 16 (1A)	24
Insert after section 16 (1):	25
(1A) A person is also a disqualified person for the purposes of this Act (except for the purposes of eligibility to hold a certificate of registration) if the person:	26 27 28
(a) is an undischarged bankrupt, or	29
(b) at any time in the last 3 years 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, or	30 31 32 33 34
(c) is, or was at any time in the last 3 years, a director or person concerned in the management of an externally-	35 36

	administered body corporate (within the meaning of the Corporations Act) except in a case of the voluntary winding up of the body corporate, or	1
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(d)	is, or was at any time in the last 3 years, a director or person concerned in the management of a body corporate that within 12 months after the person ceased to be a director or person concerned in the management of the body corporate became an externally-administered body corporate (within the meaning of the Corporations Act) except in a case of the voluntary winding up of the body corporate.	4
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[6]	Section 16 (2A)–(2C)	11
	Insert after section 16 (2):	12
(2A)	The Director-General may, in any case that the Director-General thinks it appropriate to do so, determine that a suspension or disqualification from holding a licence, permit or other authority under legislation administered by the Minister (as referred to in subsection (1) (h)) is to be ignored for the purposes of this section.	13
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(2B)	The Director-General may exempt a person from the operation of subsection (1A) (a), (b), (c) or (d) by:	19
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(a)	certifying, in the case of exemption from subsection (1A) (a), that the Director-General is satisfied that the person took all reasonable steps to avoid the bankruptcy concerned, or	21
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(b)	certifying, in the case of exemption from subsection (1A) (b), that the Director-General is satisfied that the person took all reasonable steps to avoid the bankruptcy or other financial difficulties concerned, or	25
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(c)	certifying, in the case of exemption from subsection (1A) (c) or (d), that the Director-General is satisfied that the person took all reasonable steps (while a director or person concerned in the management of the body corporate) to avoid the body corporate becoming an externally-administered body corporate.	29
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(2C)	In determining for the purposes of subsection (2B) what reasonable steps could have been taken by a person to avoid a particular outcome, the Director-General is to have regard to the steps that could have been taken by the person from the time that the financial difficulties that gave rise to the outcome first arose.	35
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[7] Section 31 Each place of business to be in charge of licensee	1
Insert after section 31 (6):	2
(7) A requirement of this section that the person employed as the	3
person in charge of business at a place of business must be the	4
holder of a licence that an individual is required to hold to carry	5
on that business does not require the person to be accredited as an	6
auctioneer under section 21 merely because the business includes	7
the business of an auctioneer.	8
[8] Section 37 Rules of conduct for licensee's business	9
Omit the note to the section.	10
[9] Section 37 (2)	11
Insert at the end of section 37:	12
(2) A licensee or registered person who without reasonable excuse	13
contravenes a rule of conduct prescribed for the purposes of this	14
section is guilty of an offence.	15
Maximum penalty:	16
(a) 100 penalty units in the case of a corporation, or	17
(b) 50 penalty units in any other case.	18
[10] Sections 43–45	19
Insert “(other than a person whose disqualification is on a ground that does not	20
disqualify the person from eligibility to hold a certificate of registration)” after	21
“disqualified person” wherever occurring.	22
[11] Section 47 Duty of disclosure to client and prospective buyer of land	23
Insert “who has made an offer of which the principal has been informed” after	24
“any prospective buyer of the land” in section 47 (1).	25
[12] Section 47 (1) (c)	26
Omit the paragraph. Insert instead:	27
(c) the amount, value or nature of any benefit a person to	28
whom the agent has referred the client or a prospective	29
buyer has received, receives, or expects to receive in	30
connection with the sale, or for promoting the sale, or for	31
providing a service in connection with the sale, of the land.	32

[13] Section 47 (3)	1
Insert in alphabetical order:	2
<i>prospective buyer</i> of land means a person who has made an offer (orally or in writing) to buy the land but not including an offer made by bid at an auction of the land.	3 4 5
[14] Section 50 Advertisements to include information about licensee	6
Omit section 50 (2) and the penalty to section 50. Insert instead:	7
(2) A licensee who has a relevant interest in the sale of real or personal property must not in the course of acting on the sale publish or cause to be published an advertisement relating to or in connection with the proposed sale of the property unless the relevant interest is disclosed in the advertisement.	8 9 10 11 12
(3) A licensee has a <i>relevant interest</i> in the sale of real or personal property if:	13 14
(a) the licensee has an interest in the property as an owner of the property, or	15 16
(b) the licensee is a corporation and a director of the corporation is an owner of the property, or	17 18
(c) the licensee is a director of a corporation and the corporation is an owner of the property.	19 20
Maximum penalty: 100 penalty units.	21
[15] Part 3, Division 6	22
Insert after Division 5 of Part 3:	23
Division 6 Unjust conduct by licensees	24
53A Interpretation	25
(1) For the purposes of this Division, conduct of a licensee is unjust if it is conduct:	26 27
(a) that is dishonest or unfair, or	28
(b) that consists of anything done, or omitted to be done, in breach of contract, whether or not proceedings in respect of the breach have been brought, or	29 30 31
(c) that consists of the contravention of this Act or the regulations or any other enactment administered by the Minister, or	32 33 34

(d)	that consists of the failure to comply with a condition or restriction to which the licence is subject or an order of the Tribunal applicable to the holder.	1 2 3
(2)	In this Division: <i>Tribunal</i> means the Consumer, Trader and Tenancy Tribunal established by the <i>Consumer, Trader and Tenancy Tribunal Act 2001</i> .	4 5 6 7
53B	Undertakings by licensee	8
(1)	Where it appears to the Director-General that a licensee has, in the course of carrying on business as a licensee, repeatedly engaged in unjust conduct, the Director-General may, with the consent of the Minister:	9 10 11 12
(a)	request the licensee to execute a deed in terms approved by the Director-General whereby the licensee gives undertakings as to:	13 14 15
(i)	the discontinuance of the unjust conduct, and	16
(ii)	the licensee's future conduct, and	17
(iii)	the action the licensee will take to rectify the consequences of the licensee's unjust conduct, or	18 19
(b)	apply to the Tribunal for an order under section 53D.	20
(2)	Where the Director-General makes a request or application under subsection (1), it is to be presumed, unless the contrary is proved, that the Director-General does so with the consent of the Minister.	21 22 23 24
(3)	Where a licensee executes a deed under this Division and observes the undertakings given in the deed, the Director-General may not apply for an order under section 53D by reason of any conduct to which the undertakings relate.	25 26 27 28
53C	Register of Undertakings	29
(1)	When a licensee executes a deed under this Division, the Director-General must:	30 31
(a)	lodge a copy of the deed with the Registrar of the Tribunal, and	32 33
(b)	give a copy of the deed to the licensee who executed it.	34
(2)	The Director-General must retain all deeds and register the deeds in a Register of Undertakings kept by the Director-General and containing the prescribed particulars.	35 36 37

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| (3) | The Register of Undertakings may, at any reasonable time, be inspected by any person free of charge. | 1
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| (4) | A licensee must observe undertakings given by the licensee in a deed executed under this Division.
Maximum penalty: 100 penalty units. | 3
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| (5) | A prosecution for an offence under subsection (4) may not be instituted except by the Director-General with the leave of the Tribunal given when making an order in accordance with section 53D. | 6
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| 53D | Restraint of unjust conduct | 10 |
| (1) | Where, on the application of the Director-General, the Tribunal is satisfied after inquiry that a licensee has repeatedly engaged in unjust conduct, the Tribunal may order the licensee to refrain from engaging in unjust conduct in the course of carrying on business as a licensee and the licensee must comply with the order. | 11
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| (2) | Where, on the application of the Director-General, the Tribunal is satisfied that a licensee has failed to observe an undertaking given by the licensee in a deed executed under this Division, the Tribunal may: | 17
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| (a) | make an order under subsection (1) against the licensee, and | 21
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| (b) | in addition, in the case of an undertaking to take action to rectify the consequences of the licensee's unjust conduct, make an order to observe that undertaking within a time specified by the Tribunal when making the order. | 23
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| (3) | If the licensee is a body corporate and the Tribunal is satisfied that the unjust conduct or breach of undertaking concerned was engaged in with the consent or connivance of a person who, at the time of the conduct or breach, was a director of, or a person concerned in the management of, the body corporate, the Tribunal may, in addition to any other order it may make under this section, make an order prohibiting the person from consenting to, or conniving at, engagement in unjust conduct, or a breach of an undertaking under this Division, by the body corporate or any other body corporate of which the person is a director or in the management of which the person is concerned. | 27
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| (4) | The person to whom an order under subsection (3) relates must comply with the order.
Maximum penalty: 100 penalty units. | 38
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(5)	An order under this section may be made subject to such conditions (whether as to the duration of the order or otherwise) as the Tribunal thinks fit, including conditions as to the future conduct of the licensee and conditions specifying the action to be taken by the licensee to rectify the consequences of the licensee's unjust conduct.	1 2 3 4 5 6
53E	Variation etc of restraining order	7
	The Tribunal may, on the application of the Director-General, vary or discharge an order made under this Division.	8 9
[16]	Sections 66 and 66A	10
	Omit section 66. Insert instead:	11
66	Prevention of dummy bidding	12
(1)	At a sale by auction of residential property or rural land:	13
(a)	the seller must not make a bid, and	14
(b)	a person must not make a bid on behalf of the seller unless the person is the auctioneer and makes only one bid on behalf of the seller, and	15 16 17
(c)	a person must not procure another person to make a bid on behalf of the seller in contravention of this section.	18 19
	Maximum penalty:	20
(a)	500 penalty units in the case of a corporation, or	21
(b)	250 penalty units in any other case.	22
(2)	For the purposes of this section, a bid can be found to have been made on behalf of a seller even though it is not made at the request of, or with the knowledge of, the seller.	23 24 25
(3)	Without limiting what constitutes the making of a bid on behalf of the seller, a bid made with the dominant purpose of benefiting the seller in making the bid constitutes the making of a bid on behalf of the seller.	26 27 28 29
(4)	An auctioneer must not sell by auction any residential property or rural land 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.	30 31 32 33
	Maximum penalty: 20 penalty units.	34
(5)	This section does not apply to the making of a bid by or on behalf of a seller in either of the following cases so long as the	35 36

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| requirements of subsection (6) for bids by or on behalf of a seller as co-owner or as executor or administrator are complied with: | 1 |
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| (a) the seller is a co-owner of the land (whether as a joint tenant or tenant in common) and the bid was made to enable the seller to purchase the interest of another co-owner in the land, | 3 |
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| (b) the seller is the executor or administrator of the estate of a deceased owner of the land. | 7 |
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| (6) The requirements for bids by or on behalf of a seller as co-owner or as executor or administrator are as follows: | 9 |
| | 10 |
| (a) the conditions under which the auction is conducted must permit the making of bids by or on behalf of a seller to purchase the interest of another co-owner in the land or to purchase as executor or administrator, | 11 |
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| (b) the auctioneer must have announced at the auction, before the start of bidding, that bids to purchase the interest of a co-owner in the land or to purchase as executor or administrator may be made by or on behalf of the seller, | 15 |
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| (c) immediately before, or in the process of, making the bid, the auctioneer must announce that the bid is made by or on behalf of the seller or announces "vendor bid". | 19 |
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| 66A Offences by auctioneers | 22 |
| (1) At a sale by auction of residential property or rural land, the auctioneer: | 23 |
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| (a) must not acknowledge the making of a bid if the bid was not made, and | 25 |
| | 26 |
| (b) must not accept a bid if the auctioneer knows that the bid was made by or on behalf of the seller in contravention of section 66, and | 27 |
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| | 29 |
| (c) must not make more than one bid on behalf of the seller. | 30 |
| Maximum penalty: 250 penalty units. | 31 |
| (2) An auctioneer at a sale by auction of residential property or rural land must not make a bid on behalf of the seller unless: | 32 |
| | 33 |
| (a) the conditions under which the auction is conducted permit the making of one bid by the auctioneer on behalf of the seller, and | 34 |
| | 35 |
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| (b) the auctioneer announced at the auction, before the start of bidding, that the auctioneer is permitted to make one bid on behalf of the seller, and | 37 |
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	(c) immediately before, or in the process of, making the bid, the auctioneer announces that the bid is made on behalf of the seller or announces "vendor bid".	1 2 3
	Maximum penalty: 250 penalty units.	4
	(3) Merely announcing the name of the person on whose behalf a bid is made (without stating that the person is the seller) is not sufficient to constitute announcing that the bid is made on behalf of the seller.	5 6 7 8
[17]	Section 68 Bidders Record	9
	Insert at the end of section 68 (5) (b):	10
	, and	11
	(c) requiring other information to be included in the Bidders Record.	12 13
[18]	Section 69 Details to be established by proof of identity	14
	Omit section 69 (1). Insert instead:	15
	(1) An agent must not enter a person's name and address in a Bidders Record unless both the person's name and their address details are established by the production to the agent of:	16 17 18
	(a) one or more proofs of identity for the person, and	19
	(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 one or more proofs of identity for that person.	20 21 22 23 24
	Maximum penalty: 100 penalty units.	25
	Note. Both name and address must be established by proof of identity but need not be established by the same proof of identity. For example, an Australian passport could be used to establish a person's name and another proof of identity allowed by subsection (2) used to establish the person's address.	26 27 28 29 30
[19]	Part 5, Division 3, heading	31
	Omit the heading to the Division. Insert instead:	32
	Division 3 Representations as to selling price	33

[20] Section 76A	1
Insert after section 76:	2
76A Marketing statements about vendor bids when property passed in	3
(1) When residential property or rural land is passed in at auction and the last bid accepted at the auction was a vendor bid, a real estate agent or stock and station agent, or an employee of such an agent, must not, by a statement made in the course of marketing the residential property or rural land, indicate the amount of the last bid accepted at the auction unless the statement also clearly indicates that the bid was a vendor bid.	4 5 6 7 8 9 10
Maximum penalty: 200 penalty units.	11
(2) A statement is considered to be made by a person in the course of marketing residential property or rural land if the statement is made:	12 13 14
(a) in an advertisement in respect of the property or land that is published or caused to be published by the person, or	15 16
(b) to a person (orally or in writing) as a prospective purchaser of the property or land.	17 18
(3) It is a defence to a prosecution for a contravention of this section if the defendant satisfies the court that the defendant did not know and had no reasonable cause to suspect that the bid concerned was a vendor bid.	19 20 21 22
(4) Residential property or rural land is <i>passed in</i> at auction if the auction is stopped without the property or land being sold at the auction.	23 24 25
(5) In this section:	26
<i>vendor bid</i> means a bid made by the auctioneer on behalf of the seller.	27 28
[21] Section 78 Collusive practices at auction sales	29
Omit the penalty at the end of subsections (1) and (2) wherever occurring.	30
Insert instead:	31
Maximum penalty:	32
(a) 500 penalty units in the case of a corporation, or	33
(b) 250 penalty units in any other case.	34

[22] Section 86 Trust money to be paid into trust account	1
Omit section 86 (3). Insert instead:	2
(3) The name of a trust account and the description of the trust account in the books and records of the licensee and also on all cheques drawn on the trust account:	3
(a) must include the name of the licensee corporation, licensee or firm of licensees in whose name the trust account is kept, and	4
(b) must include the words "Trust Account", and	5
(c) may include, at the end of the account's name, a name or other matter to identify the person on whose behalf money in the account is held.	6
[23] Section 90 Interest earned on trust accounts to be paid to Statutory Interest Account	7
Omit section 90 (1). Insert instead:	8
(1) Each authorised deposit-taking institution must:	9
(a) after the end of each named month, calculate interest on the daily balances of all money held during the month in trust accounts kept with the authorised deposit-taking institution (being trust accounts notified to the institution as trust accounts required by this Act) by applying to those balances the prescribed percentage of the trust account rate applicable to the institution for the purposes of this section, and	10
(b) before the end of the 7th business day of the next named month pay the amount of that interest to the Director-General for crediting to the Statutory Interest Account.	11
Maximum penalty: 100 penalty units.	12
[24] Section 91 Monthly returns by authorised deposit-taking institutions	13
Omit "in writing" from section 91 (1).	14
Insert instead "(in such manner and form as the Director-General may from time to time direct)".	15
[25] Section 91 (2)	16
Omit ", by notice in writing, inform the Director-General".	17
Insert instead "inform the Director-General (in such manner and form as the Director-General may from time to time direct)".	18

[26] Section 91 (3)	1
Omit “provide a written report to the Director-General”.	2
Insert instead “provide a report to the Director-General (in such manner and form as the Director-General may from time to time direct)”.	3 4
[27] Section 91 (4) (c)	5
Insert “and form” after “manner”.	6
[28] Section 98 Disposal of unclaimed money in trust accounts	7
Insert “(less any of that money that has been paid from the Compensation Fund to the person entitled to the money)” after “that 31 December” in section 98 (5).	8 9 10
[29] Section 98 (6)	11
Omit the subsection.	12
[30] Section 99	13
Omit the section. Insert instead:	14
99 Repayment of unclaimed trust money	15
(1) The Director-General must, on application by a person entitled to an amount of money paid under this Division into the Compensation Fund or the Consolidated Fund, pay that amount to the person out of the Compensation Fund.	16 17 18 19
(2) When an amount is paid out of the Compensation Fund in respect of an amount that has been paid into the Consolidated Fund, the Treasurer must, on application by the Director-General, pay that amount to the Director-General out of the Consolidated Fund (which is appropriated accordingly) for payment into the Compensation Fund.	20 21 22 23 24 25
[31] Schedule 1 Savings and transitional provisions	26
Omit clauses 1 and 2. Insert instead:	27
Part 1 General	28
1 Regulations	29
(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:	30 31 32
this Act	33

<i>Property, Stock and Business Agents Amendment Act 2005</i>	1
(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.	2 3
(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:	4 5 6
(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	7 8 9
(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.	10 11 12
Part 2 Provisions consequent on the enactment of this Act	13 14
2 Definition	15
In this Part:	16
<i>repealed Act</i> means the <i>Property, Stock and Business Agents Act 1941</i> .	17 18
[32] Schedule 1, Part 3	19
Insert at the end of the Schedule:	20
Part 3 Provisions consequent on enactment of Property, Stock and Business Agents Amendment Act 2005	21 22 23
19 Definition	24
In this Part:	25
<i>2005 amending Act</i> means the <i>Property, Stock and Business Agents Amendment Act 2005</i> .	26 27
20 Unjust conduct by licensees	28
Division 6 of Part 3 extends to conduct that occurred before the commencement of the Division.	29 30
21 Marketing statements about vendor bids	31
Section 76A extends to auctions conducted before the commencement of that section (but only in respect of statements	32 33

Property, Stock and Business Agents Amendment Bill 2005

Schedule 1 Amendments

made in the course of marketing the property after that commencement) and applies in respect of such an auction as if a reference in that section to a vendor bid included a reference to a bid made by or on behalf of the seller.	1 2 3 4
22 Collusive practices—increased penalties	5
The amendment of section 78 by the 2005 amending Act does not apply to a contravention of that section that occurred before the commencement of the amendment.	6 7 8
23 Naming of trust accounts	9
The amendment of section 86 by the 2005 amending Act extends to a trust account opened before the commencement of the amendment.	10 11 12