

AUCTIONEERS AND AGENTS (AMENDMENT) BILL 1989

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Auctioneers and Agents Act 1941—

- (a) to enable the Council of Auctioneers and Agents (“the Council”) to exercise certain functions at a meeting having a quorum of 3 instead of 9; and
- (b) to provide for the delegation of functions by the Council and by the Department Head; and
- (c) to simplify the procedure for restoration of a licence that is not renewed on time; and
- (d) to modernise the powers of the Council in relation to the investment of the funds under its control.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act is to commence on a day or days to be appointed by proclamation.

Clause 3 gives effect to Schedules 1–3.

Clause 4 is a transitional provision.

SCHEDULE 1—AMENDMENTS RELATING TO THE COUNCIL

Schedule 1 (1) reduces from 9 to 3 the quorum necessary for a meeting of the Council that reviews a claim or statement of account for remuneration or charges made by a licensee.

Schedule 1 (2) inserts proposed section 18A enabling the Council to delegate any of its functions other than the power of delegation and the functions exercisable with a quorum of 3. The proposed section also confers on the Department Head certain powers of delegation under the Public Sector Management Act 1988. Investment powers may not, without the consent of the Treasurer, be delegated to an external manager.

Auctioneers and Agents (Amendment) 1989

Schedule 1 (3) extends from 21 days to 28 days the time within which a person who receives a claim, or an itemised account, for remuneration or charges payable to a licensee may apply to the Council for a review of the claim or account.

SCHEDULE 2—AMENDMENTS RELATING TO RESTORATION OF LICENCES

Schedule 2 (1) makes a consequential amendment.

Schedule 2 (2) inserts proposed sections 23A–23C.

Proposed section 23A enables the registrar of the Council to issue a new licence to replace an expired licence unless the Council decides to lodge an objection.

Proposed section 23B requires the registrar to refer to the appropriate Local Court for hearing and determination an application for restoration of a licence to which the Council objects.

Proposed section 23C provides for the effect of a decision by the registrar or a Local Court to grant an application for restoration of an expired licence and for a refund of fees (other than the administration fee and the prescribed late fee) if the Court refuses to grant an application.

Schedule 2 (3) and (4) make consequential amendments.

SCHEDULE 3—AMENDMENTS RELATING TO FUNDS

The Principal Act requires the establishment of the Administration Account (section 25), the Special Account (section 36F), the Statutory Interest Account (section 63B) and the Compensation Fund (section 65).

The administration fee accompanying an application for, or for renewal of, a licence is paid into the Administration Account and from the Account is paid expenditure incurred by the Council in exercising its functions under the Act. Into this Account would also be paid the late fee payable under proposed section 23A.

A proportion of the money held in trust by a licensee is paid into the Special Account and the income from investment of the money in the Special Account is paid into the Statutory Interest Account.

At present, 50 per cent of the money in the Statutory Interest Account is paid into the Compensation Fund and certain expenses are also met from the Account.

The Compensation Fund is used to compensate those who suffer pecuniary loss because of a failure to account by a licensee or a real estate dealer and also to meet connected expenses.

Schedule 3 (1) enables money held in the Administration Account to be invested as provided by proposed Schedule 3 to the Principal Act. It also authorises expenditure approved by the Minister for educational purposes in the same way as is at present authorised in relation to the Statutory Interest Account.

Schedule 3 (2) makes a consequential amendment.

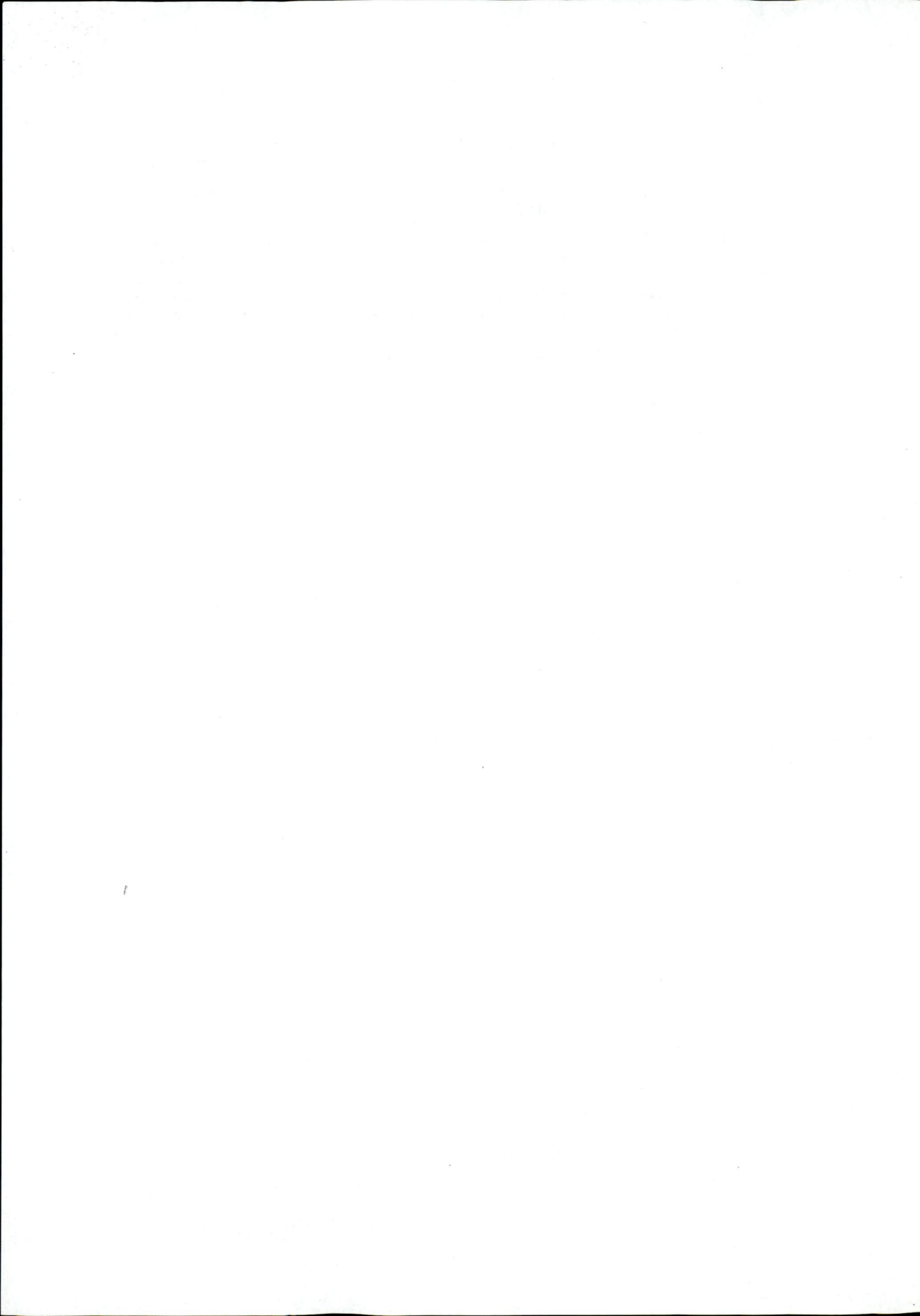
Schedule 3 (3) replaces the present requirement for payment to the Compensation Fund of 50 per cent of the amount in the Statutory Interest Account with a requirement to pay only so much as is required to meet the current commitments under the Compensation Fund. Provision is also made for money held in the Statutory Interest Account to be invested as provided by proposed Schedule 3 to the Principal Act.

Schedule 3 (4) makes a consequential amendment.

Auctioneers and Agents (Amendment) 1989

Schedule 3 (5) provides for money held in the Compensation Fund to be invested as provided by proposed Schedule 3 to the Principal Act.

Schedule 3 (6) inserts in the Principal Act proposed Schedule 3 which specifies investment powers conferred on statutory authorities by the operation of section 24 of the Public Authorities (Financial Arrangements) Act 1987 with the addition of investments approved by the Minister for the provision of residential accommodation and the existing power to invest in loans to building societies registered under the Co-operation Act 1923.



AUCTIONEERS AND AGENTS (AMENDMENT) BILL 1989

NEW SOUTH WALES



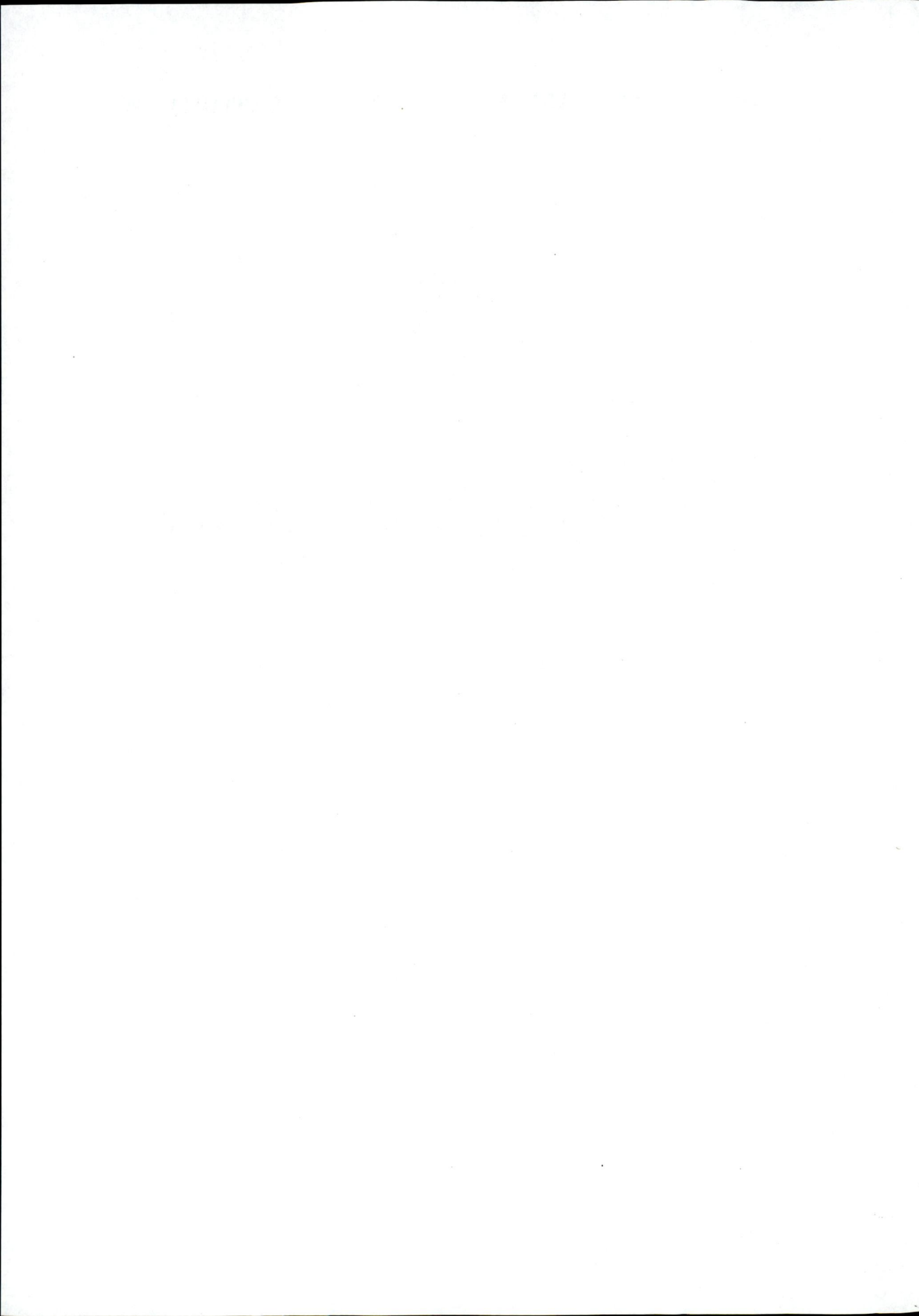
TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Auctioneers and Agents Act 1941 No. 28
4. Transitional provision

SCHEDULE 1—AMENDMENTS RELATING TO THE COUNCIL

SCHEDULE 2—AMENDMENTS RELATING TO RESTORATION OF LICENCES

SCHEDULE 3—AMENDMENTS RELATING TO FUNDS



AUCTIONEERS AND AGENTS (AMENDMENT) BILL 1989

NEW SOUTH WALES



No. , 1989

A BILL FOR

An Act to amend the Auctioneers and Agents Act 1941 with respect to delegations, the restoration of expired licences and the investment of funds; and for other purposes.

*Auctioneers and Agents (Amendment) 1989***The Legislature of New South Wales enacts:****Short title**

1. This Act may be cited as the Auctioneers and Agents (Amendment) Act 1989.

5 Commencement

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

Amendment of Auctioneers and Agents Act 1941 No. 28

3. The Auctioneers and Agents Act 1941 is amended as set out in 10 Schedules 1-3.

Transitional provision

4. The amendment by this Act of section 42A of the Auctioneers and Agents Act 1941 does not operate to extend a time that had commenced to run under subsection (1) or (4) of that section as in force before the 15 amendment.

SCHEDULE 1—AMENDMENTS RELATING TO THE COUNCIL

(Sec. 3)

(1) Section 15 (Quorum)—

Section 15 (1)—

20 Omit the subsection, insert instead:

(1) The quorum at a meeting of the council is—

(a) except as provided by paragraph (b)—9 members; or

25 (b) for the purpose of exercising or performing its powers, authorities, duties and functions under section 42A (Review of commissions, fees etc.)—3 members.

(2) Section 18A—

After section 18, insert:

Delegations

30 18A. (1) The council may delegate to any person any of its functions other than—

(a) this power of delegation; and

(b) the functions conferred or imposed by section 42A (Review of commissions, fees etc.).

*Auctioneers and Agents (Amendment) 1989***SCHEDULE 1—AMENDMENTS RELATING TO THE COUNCIL—**
continued

5 (2) The power of delegation to an officer that is conferred on the appropriate Department Head by section 12 of the Public Sector Management Act 1988 may, with the consent of the Minister, be exercised to delegate to the holder of a statutory office the exercise or performance of a function under that Act relating to the administration of this Act.

10 (3) Unless the Treasurer consents and any conditions imposed by the Treasurer in giving the consent are complied with, a power conferred by this section may not be exercised to delegate to a person other than a person engaged in the administration of this Act any of the functions conferred or imposed on the council by—

- 15 (a) section 25 (6) (relating to the investment of money held in the Administration Account); or
- (b) section 36E (3) (relating to the investment of trust money deposited with the council); or
- (c) section 63D (2) (relating to the investment of money held in the Statutory Interest Account); or
- (d) section 70 (imposing on the council the duty of administering the Compensation Fund); or
- 20 (e) section 73 (relating to the investment of money held in the Compensation Fund).

(4) In this section—

“function” includes a power, authority and duty.

(3) Section 42A (**Review of commissions, fees etc.**)—

25 Section 42A (1), (4)—

Omit “twenty-one” wherever occurring, insert instead “28”.

SCHEDULE 2—AMENDMENTS RELATING TO RESTORATION OF LICENCES

(1) Section 3 (**Definitions**)—

30 Section 3 (8) (a)—

After “for”, insert “, or for the restoration of”.

SCHEDULE 2—AMENDMENTS RELATING TO RESTORATION OF LICENCES—*continued*

(2) Sections 23A–23C—

Omit section 23A, insert instead:

Restoration of licence by the registrar

23A. (1) If a licence is not renewed because renewal was not applied for before the licence expired, application for its restoration may be lodged with the registrar in the prescribed form accompanied by—

- (a) the application fee, administration fee and contribution that would have been payable if application had been duly made for renewal of the licence; and
- (b) the prescribed late fee.

(2) An application for restoration of a licence may not be made more than 6 months after expiration of the licence.

(3) The registrar shall notify the council of an application for restoration of a licence and shall issue the licence if, within 28 days after being notified of the application, the council—

- (a) decides not to object to the granting of the application; or
- (b) does not lodge with the registrar an objection under section 23B.

Objection to application for restoration of licence

23B. (1) If, before the registrar issues a licence applied for under section 23A, the council lodges with the registrar an objection to the granting of the application, the registrar shall refer the application and objection for hearing and determination by the Local Court having jurisdiction under section 3 (8).

(2) An objection by the council must state the grounds on which it is made and they may be any grounds on which—

- (a) this Act would have precluded renewal of the licence; or
- (b) objection could have been made to the issue of the licence.

(3) The clerk of the Local Court shall notify the applicant—

- (a) of the grounds of the objection; and
- (b) of the reference of the application for hearing and determination by the Local Court, specifying the Court.

(4) The application and objection shall be heard by the Local Court in open court as a judicial proceeding and the council may appear at the hearing by—

- (a) a member of the Police Force; or
- (b) the registrar; or

Auctioneers and Agents (Amendment) 1989

SCHEDULE 2—AMENDMENTS RELATING TO RESTORATION OF LICENCES—*continued*

(c) a barrister or solicitor.

(5) The Local Court—

(a) shall dismiss the application if it would have been required to dismiss an application for renewal of the licence; or

5 (b) if it is not required to act under paragraph (a), may grant or dismiss the application.

(6) If the Local Court grants the application, the registrar shall issue a new licence to the applicant.

Effect of decision on application for restoration of licence

10 23c. (1) Except in relation to proceedings under section 20 (relating to unlicensed persons), a licence issued under section 23A or 23B—

(a) shall be taken to have had effect from the expiration of the expired licence; and

15 (b) unless sooner surrendered or cancelled, remains in force for the balance of the period for which, but for its expiration, the expired licence could have been renewed.

20 (2) If an application for restoration of a licence is refused or withdrawn, the application fee and contribution charge accompanying the application shall be refunded to the applicant.

(3) Section 25 (Fees payable for licence)—

Section 25 (4)—

25 After “licence” where secondly occurring, insert “, and the administration fee and late fee required to accompany an application under section 23A for restoration of a licence,”.

(4) Section 68 (Expenditure)—

Section 68 (e)—

After “renewals”, insert “or restorations”.

SCHEDULE 3—AMENDMENTS RELATING TO FUNDS

30 (1) Section 25 (Fees payable for licence)—

(a) Section 25 (4)—

After “shall” where firstly occurring, insert “, together with income derived from investments under subsection (6),”.

SCHEDULE 3—AMENDMENTS RELATING TO FUNDS—*continued***(b) Section 25 (6)—**

Omit the subsection, insert instead:

(6) Any surplus money in the account may be—

(a) invested by the council in accordance with Schedule 3; or

5 (b) with the consent of the Minister—applied in the same way as money in the Statutory Interest Account may be applied under section 63D (1) (b) (which relates to expenditure for educational purposes).

(2) Section 63C (Money in the Statutory Interest Account)—

10 Section 63C (a)—

Omit “interest earned on”, insert instead “income derived from”.

(3) Section 63D (Application of money in the Statutory Interest Account)—

(a) Section 63D (1) (a)—

15 Omit the paragraph, insert instead:

(a) the supplementation of the fund by so much as is required to enable current liabilities under section 68 to be met;

(b) Section 63D (1) (b) (ii)—

20 Omit “or lectures organised by or for the council for licensees;”, insert instead “, lectures or courses of study organised by or for the council;”.

(c) Section 63D (1) (c)—

Omit the paragraph.

(d) Section 63D (2)—

25 Omit the subsection, insert instead:

(2) Any money in the Statutory Interest Account not immediately required for the purposes of subsection (1) may be invested by the council in accordance with Schedule 3.

(e) Section 63D (3)—

30 Omit the subsection.

(4) Section 67 (Composition of the fund)—

Section 67 (b)—

Omit “interest”, insert instead “income”.

*Auctioneers and Agents (Amendment) 1989***SCHEDULE 3—AMENDMENTS RELATING TO FUNDS—*continued*****(5) Section 73—**

Omit the section, insert instead:

Investment of the fund

5 73. Any money in the fund that is not immediately required for the purposes of the fund may be invested by the council in accordance with Schedule 3.

(6) Schedule 3—

After Schedule 2, insert:

SCHEDULE 3—INVESTMENT OF FUNDS

10

(Secs. 25, 63D, 73)

Definitions

1. In this Part—

15 “bank” means a bank within the meaning of the Banking Act 1959 of the Commonwealth or a bank constituted by a law of a State or of the Commonwealth, and includes the Reserve Bank of Australia;

“eligible company” means—

(a) a company which, by regulations made under the Public Authorities (Financial Arrangements) Act 1987, is given a prescribed credit rating by a prescribed credit rating organisation; or

20 (b) a company the liabilities of which are unconditionally guaranteed by a company to which paragraph (a) applies;

“State” means State of the Commonwealth and includes the Northern Territory.

Investment powers

25 2. (1) Money to be invested in accordance with this Schedule may be invested by means of any of the following:

(a) any manner authorised for the investment of trust funds;

(b) deposit with the Treasury Corporation;

30 (c) a bill of exchange that has been accepted or endorsed by a bank;

(d) a promissory note made by—

(i) a statutory body constituted under an Act of the Commonwealth or a State; or

(ii) an eligible company;

35 (e) a loan of money on the security of a letter of credit which is issued or confirmed by a bank;

(f) an advance to a bank;

(g) an advance to an eligible company secured by such legally enforceable documents or other security as the Treasurer or a person appointed by the Treasurer for the purpose approves;

40 (h) futures contracts traded on the Sydney Futures Exchange Limited;

*Auctioneers and Agents (Amendment) 1989***SCHEDULE 3—AMENDMENTS RELATING TO FUNDS—*continued***

- (i) forward exchange or interest rate agreements complying with the publication of the Australian Bankers' Association entitled "The Australian Dollar Forward Rate Agreements Recommended Terms and Conditions";
- 5 (j) foreign currency deposits with, or foreign currency advances to, a bank;
- (k) foreign currency deposits with, or foreign currency advances to, an eligible company secured by such legally enforceable documents or other security as the Treasurer or a person appointed by the Treasurer for the purpose approves;
- 10 (l) foreign currency investments in securities issued by—
- (i) a statutory body constituted under an Act of the Commonwealth or a State;
- (ii) a bank; or
- (iii) an eligible company;
- 15 (m) the purchase and the sale prior to, and at, maturity of an investment prescribed by any of the preceding paragraphs;
- (n) schemes that relate to the provision of residential accommodation and are approved by the Minister;
- 20 (o) with the consent of the Minister and subject to such terms and conditions as may be prescribed—loans to building societies registered under the Co-operation Act 1923;
- (p) any other manner prescribed for the purposes of Part 2 of Schedule 4 to the Public Authorities (Financial Arrangements) Act 1987.
- (2) The Treasurer may—
- 25 (a) nominate the investments (if any) in which funds shall be invested; and
- (b) determine the amount of funds that shall be invested in each investment so nominated.

