

FIRST PRINT

AUCTIONEERS AND AGENTS (AMENDMENT) BILL 1992

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 so as:

- to simplify and modify the classes of licences and certificates of registration under that Act; and
- to abolish the requirement for stock buyers, business agents and, by stages, auctioneers to be licensed (unless they deal as agents with real property or livestock) and the requirement for real estate dealers to be registered; and
- to extend the terms of licences under that Act to 3 years and make numerous other miscellaneous amendments to that Act.

In particular, the proposed Act:

- (a) abolishes the following classes of licence:
 - stock buyer's licence
 - business agent's licence
 - auctioneer's (general) licence
 - auctioneer's (primary products) licence
 - chattel auctioneer's licence
- (b) creates the following 3 new classes of licence:
 - livestock agent's licence
(this licence will authorise the activities currently engaged in by a stock and station agent or a general auctioneer in relation to the selling, buying or exchanging of livestock)
 - real property agent's licence
(this licence will authorise the activities currently engaged in by a real estate agent, a stock and station agent or a general auctioneer in relation to real property, including rural property)
 - on-site residential property manager's licence
(this licence will authorise the holder to act for owners of holiday units by letting them, and by collecting rents and deposits)

Auctioneers and Agents (Amendment) 1992

(c) abolishes the following classes of certificates of registration:

- real estate salesman
- trainee auctioneer
- business salesman
- stock and station salesman
- trainee stock buying agent

(d) provides for a single class of registration.

The proposed Act allows those changes to be phased in at different times.

Clause 1 specifies the short title of the proposed Act.

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

Clause 3 gives effect to the Schedules of amendments to the Principal Act.

Schedule 1 contains amendments that are intended for early commencement.

Schedule 2 contains amendments intended to be commenced at a later time.

Schedule 3 contains miscellaneous amendments that, generally, may be commenced at any time.

Schedule 4 contains amendments in the nature of savings and transitional provisions consequent on other proposed amendments.

**SCHEDULE 1—AMENDMENTS ABOLISHING CERTAIN CLASSES OF
LICENCES AND REGISTRATION**

Schedule 1 contains amendments that abolish:

- the stock buyer's, business agent's, general auctioneer's, primary products auctioneer's and chattel auctioneer's classes of licences (but a general auctioneer's licence will continue in force as an auctioneer's licence until the commencement of the new classes of licences to be introduced by amendments in Schedule 2); and
- the registration of real estate dealers.

Consequential amendments are also made to provisions that refer to those licences and the activities they currently authorise or that relate to real estate dealers.

Schedule 1 contains amendments omitting from the Act references to business salesmen and trainee stock buying agents.

(Schedule 1 (1) (b)–(d), (2) (a) and (c)–(g), (3)–(6), (7) (a), (8) (b)–(d), (9), (10), (12)–(15), (18)–(41) and (44)–(47))

Schedule 1 also amends the meanings of "auction" and "auctioneer" in the Act so that they will refer only to the sale by auction of real property (which term includes a lease of land or shares that entitle their holder to the occupation of premises) or of livestock. The offences in the Principal Act relating to the conduct of auctions are confined to auctions of real property or of livestock.

Auctioneers and Agents (Amendment) 1992

These provisions foreshadow the intended division of functions currently performed by auctioneers and stock and station agents into those relating to real property dealings and those relating to livestock dealings.

(Schedule 1 (1) (a), (2) (b), (11), (16), (17), (42), (43) and (48))

The practice of issuing a single licence form containing particulars of all of the classes of licences held by a person under the Act is recognised.

(Schedule 1 (7) (b))

The Act is amended so that only a single licence fee will be payable regardless of the number of licences of different classes taken out under the Act by the same person.

(Schedule 1 (8) (a))

SCHEDULE 2—AMENDMENTS CREATING NEW CLASSES OF LICENCES AND REGISTRATION

Amendments in Schedule 2 substitute the long and short titles of the Act to reflect the change of emphasis of the legislation from the regulation of auctioneers and agents of various kinds to the regulation of agents dealing with real property, livestock and property management.

(Schedule 2 (1) and (2))

Other amendments will create the real property agent's, livestock agent's and on-site residential property managing agent's classes of licences.

The activities that these licences will authorise are specified, certain references to auction sales (which will be treated as only one of many different methods of dealing with property) are omitted and consequential amendments are made to substitute or modify current provisions.

(Schedule 2 (3) (a)–(g), (4)–(11), (13)–(22), (33), (35) and (37)–(39))

Amendments in Schedule 2 will abolish the different classes of certificates of registration currently required to be held by employees before they obtain a licence under the Act.

The classes of unlicensed employees who perform specified activities for or on behalf of a licensee, or a corporation employing a licensee, are specified. The classes correspond with the classes of licensees as follows:

- livestock salesperson
- real property salesperson
- trainee managing agent (being a trainee strata managing agent, a trainee community managing agent or a trainee on-site residential property manager)

The amendments will require such employees to be registered with the Real Estate Services Council. Consequential amendments are made to the current provisions.

The opportunity is taken to make the registration scheme parallel to the licensing scheme under the Act. For example:

- (a) a minimum age requirement (of 16 years) is imposed for holders of certificates of registration; and

Auctioneers and Agents (Amendment) 1992

- (b) applicants for such certificates will be required to have an educational qualification approved by the Minister; and
- (c) a Magistrate may make an order disqualifying a person from holding a certificate of registration.

An applicant for a licence (other than an on-site residential property manager's licence) will be required to have held a certificate of registration for at least 2 years.

(Schedule 2 (3) (b) and (h), (12), (23)–(32) and (36))

SCHEDULE 3—MISCELLANEOUS AMENDMENTS

Schedule 3 (1) and (3) omit references in the Act to the superintendent of licences because that office has been abolished and replaces them with references to the reviewing officer (the Commissioner of Police or the Commissioner's nominee).

Schedule 3 (2) repeals the power to restrict the operation of a licence under the Act to a particular region and prevents a licence that is restricted to a particular purpose from being renewed more than once.

Schedule 3 (2) also extends the term of a licence from 1 year to 3 years and Schedule 3 (4) makes amendments consequential on that amendment.

Schedule 3 (5) and (6) provide for an application for restoration of a licence to be dealt with by the General Manager and not (as at present) by the Council.

Schedule 3 (7) provides for the annual payment to the Consolidated Fund of part of the fees paid for licences and registration under the Act.

Schedule 3 (8) and (11) provide that, in disposing of proceedings taken for the cancellation of a person's licence or registration, the person may be disqualified from obtaining a new licence or new registration regardless of whether the previous licence or registration has expired or been surrendered.

Schedule 3 (9) provides for unclaimed money in licensees' or former licensees' trust accounts to be paid to the Consolidated Fund (instead of to the Council) and for the Treasurer to meet any claims made by persons entitled to any of that money.

Schedule 3 (10) allows a licensee to share a commission etc. with a person licensed under a corresponding Act of another State or Territory.

Schedule 3 (12) increases (from \$20 to \$150) the maximum periodic contribution by licensees to the Real Estate Services Council Compensation Fund ("the fund") that may be prescribed.

Schedule 3 (13) extends to 3 years the time for bringing proceedings for an offence against the regulations made under the Principal Act.

Schedule 3 (14) provides for regulations to be made requiring licensees to publicise their commission, fees or other charges.

SCHEDULE 4—SAVINGS AND TRANSITIONAL PROVISIONS

Schedule 4 (1) inserts proposed section 93 which gives effect to a new Schedule to be inserted into the Principal Act by Schedule 4 (2), being proposed Schedule 2 (Savings and Transitional Provisions), of which:

Auctioneers and Agents (Amendment) 1992

Clause 1 defines the proposed Act as "the amending Act".

Clause 2 provides for the termination of existing licences of the following kinds when the relevant repealing provisions take effect:

- auctioneer (primary products) licence
- chattel auctioneer's licence
- auctioneer's (general) licence
- stock buyer's licence
- business agent's licence
- restricted stock and station agent's licence

Clause 3 empowers the General Manager to approve of a former general auctioneer's licence or a restricted stock and station agent's licence which would otherwise be terminated under clause 2 being treated as a real property agent's licence or a livestock agent's licence (or both) for the residue of the term for which the current licence was issued or last renewed. The General Manager may impose conditions on any such licence.

The clause provides for appeals to Local Courts against any decision of the General Manager in either regard.

Clause 4 provides for the termination of registration of the following kinds when the relevant repealing provisions take effect:

- real estate dealer
- business salesman
- trainee stock buying agent

Clause 5 provides that each of the following kinds of licences will be treated as a licence of the kind specified in respect of it when the relevant repealing provision takes effect. The new kind of licence will (subject to the Principal Act) remain in force for the residue of the term for which the current licence was issued or last renewed:

- an unrestricted stock and station agent's licence
(a real property agent's licence and a livestock agent's licence)
- a real estate agent's licence, whether restricted or not
(a real property agent's licence)

The clause also preserves strata managing agent's licences and the current registration of employees of licensees after the relevant repealing provisions take effect. Those employees will be treated as if registered under the new registration scheme.

Clause 6 allows the General Manager to issue replacement licences or certificates of registration for licences and certificates saved by the Schedule.

Clause 7 allows a continuing licensee to have 3 years to adjust to the proposed 3-year fee and licensing period. During that time, a continuing licensee can elect to have a licence renewed each year.

Clause 8 continues restrictions imposed on certain licences (except those relating to locality). A restricted licence may be renewed once only.

Clause 9 requires the Council to pay unclaimed trust money sent to the Council by licensees and former licensees and accumulated in the fund kept by the Council to the Consolidated Fund.

Auctioneers and Agents (Amendment) 1992

Clause 10 preserves the liability of the fund in relation to a failure of a former licensee or a former registered real estate dealer even though the licence or registration has ceased to have effect because of the proposed Act.

Clause 11 preserves the obligation on former licensees and former registered real estate dealers to keep certain records for a period of 3 years after the licences and registration have ceased to have effect because of the proposed Act.

Clause 12 preserves the Council's rights of subrogation.

Clause 13 provides that a refund or partial refund of fees is not payable on the abolition of a class of licence or registration under the proposed Act.

FIRST PRINT

AUCTIONEERS AND AGENTS (AMENDMENT) BILL 1992

NEW SOUTH WALES



TABLE OF PROVISIONS

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

SCHEDULE 1—AMENDMENTS ABOLISHING CERTAIN CLASSES OF
LICENCES AND REGISTRATION

SCHEDULE 2—AMENDMENTS CREATING NEW CLASSES OF LICENCES
AND REGISTRATION

SCHEDULE 3—MISCELLANEOUS AMENDMENTS

SCHEDULE 4—SAVINGS AND TRANSITIONAL PROVISIONS

AUCTIONEERS AND AGENTS (AMENDMENT) BILL 1992

NEW SOUTH WALES



No. , 1992

A BILL FOR

An Act to amend the Auctioneers and Agents Act 1941 to simplify licensing and registration under that Act and for other purposes.

Auctioneers and Agents (Amendment) 1992

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Auctioneers and Agents (Amendment) Act 1992.

Commencement

2. This Act commences on 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 Schedules 1–4.
-

**SCHEDULE 1—AMENDMENTS ABOLISHING CERTAIN
CLASSES OF LICENCES AND REGISTRATION**

(Sec. 3)

(1) Long title:

- (a) After “auctioneers”, insert “of real property or livestock”.
- (b) Omit “stock buying agents,”.
- (c) Omit “business agents,”.
- (d) Omit “real estate dealers and”.
- (e) Omit “the Business Agents Act 1935 and”.

(2) Section 3 (**Definitions**):

- (a) From section 3 (1), omit the definition of “Auctioneer”, insert instead:

“Auctioneer” means any person:

- (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 estate in real property or any livestock; or
- (b) who sells or offers for sale, or who attempts to sell, any estate in real property or any livestock by way of auction.

Auctioneers and Agents (Amendment) 1992

SCHEDULE 1—AMENDMENTS ABOLISHING CERTAIN
CLASSES OF LICENCES AND REGISTRATION—*continued*

- (b) From the definition of "Auction sale, sale by auction, sell by way of auction" in section 3 (1), omit "estate, goods, or effects" wherever occurring, insert instead "real property or livestock".
 - (c) From section 3 (1), omit the definitions of "Business agent", "Farm produce", "Real estate dealer" and "Stock buying agent".
 - (d) Omit section 3 (3) (a).
 - (e) From section 3 (6), omit "sections 39AA, 52A and 54", insert instead "section 39AA".
 - (f) Omit section 3 (8) (b), insert instead:
 - (b) the registered address of a real estate salesman, trainee auctioneer or stock and station salesman or the proposed registered address of an applicant for registration under this Act,
 - (g) From section 3 (8) (c), omit ", proposed registered office, registered address, proposed registered address, registered place of business or proposed registered place of business", insert instead "or address or the proposed registered office or address".
 - (h) From section 3 (8) (d), omit ", proposed registered office, registered address, proposed registered address, registered place of business, or proposed registered place of business", insert instead "or address or the proposed registered office or address".
- (3) Section 4 (**Act not to apply to Government department etc.**):
- (a) Omit the proviso to section 4 (2) (a).
 - (b) After section 4 (2), insert:
 - (2A) An exemption under subsection (2) (a) that allows a person to carry on a business lawfully without a licence expires 3 months after the management of the business vests in the person.
- (4) Part 3, heading:
- Omit "STOCK BUYING AGENTS, REAL ESTATE AGENTS, BUSINESS AGENTS", insert instead "REAL ESTATE AGENTS".

Auctioneers and Agents (Amendment) 1992

SCHEDULE 1—AMENDMENTS ABOLISHING CERTAIN
CLASSES OF LICENCES AND REGISTRATION—*continued*

- (5) Section 20 (**Real property or livestock agents to be licensed**):
 - (a) At the end of section 20 (2) (a), insert “or”.
 - (b) Omit section 20 (2) (a1), (2AA), (2A).
 - (c) From section 20 (3), omit “a stock buying agent, a real estate agent, a business agent”, insert instead “a real estate agent”.
- (6) Section 21 (**Each separate place of business to be in charge of licensee**):
 - Omit section 21 (1A), (1B), (1C) and (2A).
- (7) Section 22 (**Licences**):
 - (a) Omit section 22 (1) (b1) and (d) and (2).
 - (b) Omit section 22 (5), insert instead:
 - (5) The Council is, and is taken to have always been, entitled to issue a single licence on which are recorded particulars of each of the classes of licences held by a person instead of issuing separate licences of each class.
 - (6) The Council is to issue a replacement licence on which are recorded particulars of such class or classes of licences (if any) as continue to be held by the person if any licence of a class the particulars of which are so recorded is surrendered or cancelled.
- (8) Section 23 (**Procedure**):
 - (a) After section 23 (2), insert:
 - (2A) An applicant for the issue or renewal of two or more licences, or an applicant for the issue of a licence who is already a licensee, is not liable to pay more than one prescribed application fee, administration fee and contribution for licenses issued to the person that expire at the same time.
 - (b) At the end of section 23 (10A) (b) (ii), insert “or”.
 - (c) Omit section 23 (10A) (b) (iii) and (v), (11) and (12).
 - (d) From section 23 (10A) (b) (iv), omit “or”, insert instead “and”.
- (9) Section 32 (**Effect of disqualification on membership etc. of corporation**):
 - Omit “a stock buying agent, a real estate agent, a business agent”, insert instead “a real estate agent”.

Auctioneers and Agents (Amendment) 1992

SCHEDULE 1—AMENDMENTS ABOLISHING CERTAIN
CLASSES OF LICENCES AND REGISTRATION—*continued*

- (10) Section 35 (**Publication of name of licensee**):
- (a) Omit section 35 (3) (b) (ia) and (iv).
 - (b) At the end of section 35 (3) (b) (iii), insert “or”.
- (11) Section 36 (**Payment into bank**):
- Omit section 36 (5).
- (12) Section 36D (**Licensees to deposit part of trust account with the Council**):
- From the definition of “carry on business” in section 36D (6), omit “a stock buying agent, a real estate agent, a business agent” insert instead “a real estate agent”.
- (13) Section 39 (**Certain persons not to be employed by licensees**):
- (a) Omit section 39 (1) (a), insert instead:
 - (a) who is for the time being disqualified under this Act from holding a licence or whose licence under this Act has been cancelled, unless a licence has subsequently been granted to the person; or
 - (b) From section 39 (1) (b), omit “, or the Auctioneers’ Licensing Act 1898–1934 or the Business Agents Act 1935, as the case may be,”.
 - (c) Omit section 39 (3), insert instead:
 - (3) A licensee must not employ, in or in connection with the licensee’s business as an auctioneer, a stock and station agent or a real estate agent, a person to do anything as a result of doing which the person would be a trainee auctioneer, a stock and station salesman or a real estate salesman (within the meaning of Part 4) unless the person is registered under Part 4 as a trainee auctioneer, a stock and station salesman or a real estate salesman.
- (14) Section 40 (**Production of licence**):
- Omit “a stock buying agent, a real estate agent, a business agent” insert instead “a real estate agent”.
- (15) Section 42 (**Provisions as to commission etc.**):
- (a) Omit section 42 (1) (b1) and (d).
 - (b) At the end of section 42 (1) (c), insert “or”.

Auctioneers and Agents (Amendment) 1992

SCHEDULE 1—AMENDMENTS ABOLISHING CERTAIN
CLASSES OF LICENCES AND REGISTRATION—*continued*

(16) Section 44:

Omit the section, insert instead:

Application of Division

44. (1) This Division applies to auction sales only in so far as they relate to real property or livestock.

(2) In this Division, “**property**” means real property or livestock.

(17) Section 48 (**Misrepresentation as to quality etc.**):

Omit “or of wool”.

(18) Part 3, Division 4 (sections 50A–50D):

Omit the Division.

(19) Part 3, Division 6 (section 50J):

Omit the Division.

(20) Part 4, heading:

Omit the heading to Part 4, insert instead:

**PART 4—REAL ESTATE SALESMEN,
TRAINEE AUCTIONEERS AND STOCK AND
STATION SALESMEN**

(21) Section 51:

(a) Omit the definitions of “Business salesman” and “Trainee stock buying agent”.

(b) From paragraph (a) of the definition of “Real estate salesman”, omit “or real estate dealer”.

(c) From the definition of “Stock and station salesman”, omit “, a stock and station agent, a stock buying agent or a trainee stock buying agent”, insert instead “or a stock and station agent”.

(d) From the definition of “Trainee auctioneer”, omit “, goods or effects”, insert instead “in real property or any livestock”.

(22) Part 4, Division 2 (sections 51A–55):

Omit the Division.

Auctioneers and Agents (Amendment) 1992

SCHEDULE 1—AMENDMENTS ABOLISHING CERTAIN
CLASSES OF LICENCES AND REGISTRATION—*continued*

- (23) Part 4, Division 3, heading:

Omit the heading, insert instead:

**Division 3—Real Estate Salesmen, Trainee
Auctioneers and Stock and Station Salesmen**

- (24) Section 56 (**Real estate salesmen to be registered**):

- (a) From section 56 (1) (a), omit “or real estate dealer”.
- (b) From section 56 (1) (b), omit “or a real estate dealer”.
- (c) From section 56 (1A), omit “as an employee of the real estate dealer so specified”.

- (25) Section 56A (**Trainee auctioneers and stock and station salesmen to be registered**):

- (a) At the end of section 56A (1) (a) (iii), insert “or”.
- (b) Omit section 56A (1) (b) and (d), (2) (b) and (d) and (2A).
- (c) From section 56A (1) (c) (iii), omit “salesman; or”, insert instead “salesman.”.
- (d) At the end of section 56A (2) (a) (ii), insert “or”.
- (e) From section 56A (2) (c), omit “licence; or”, insert instead “licence.”.

- (26) Section 57 (**Procedure**):

From section 57 (1), (2) (a), (4A), (7), (8) and (9) (a), omit “, business salesman, stock and station salesman or trainee stock buying agent” wherever occurring, insert instead “or stock and station salesman”.

- (27) Section 60 (**Cancellation of certificate of registration**):

From section 60 (1), omit “, business salesman, stock and station salesman or trainee stock buying agent”, insert instead “or stock and station salesman”.

- (28) Section 62 (**Production of certificate of registration**):

From section 62, omit “, business salesman, stock and station salesman or trainee stock buying agent”, insert instead “or stock and station salesman”.

Auctioneers and Agents (Amendment) 1992

SCHEDULE 1—AMENDMENTS ABOLISHING CERTAIN
CLASSES OF LICENCES AND REGISTRATION—*continued*

- (29) Section 64A (**Definitions**):
- (a) From the definition of “failure to account” in section 64A (1), omit “or real estate dealer” wherever occurring.
 - (b) From section 64A (2), omit “or real estate dealer”.
- (30) Section 67 (**Composition of the fund**):
- From section 67 (a), omit “and real estate dealers”.
- (31) Section 68 (**Expenditure**):
- (a) From section 68 (e), omit “or for registration as a real estate dealer”.
 - (b) From section 68 (e), omit “or of any such registration”.
- (32) Section 71 (**Contributions to fund**):
- Omit section 71 (1A) and (1B).
- (33) Section 72 (**Levies**):
- (a) From section 72 (1), omit “and real estate dealer”.
 - (b) From section 72 (3), omit “or real estate dealer” wherever occurring.
 - (c) From section 72 (3) (a), omit “licence; or”, insert instead “licence.”.
 - (d) Omit section 72 (3) (b).
- (34) Section 74 (**Application of fund**):
- From section 74 (3), omit “or real estate dealer” wherever occurring.
- (35) Section 75 (**Claims against the fund**):
- (a) From section 75 (4), omit “or a real estate dealer”.
 - (b) From section 75 (5) and (6), omit “or real estate dealer” wherever occurring.
- (36) Section 76 (**Advertisement relating to defaulting licensee and claims**):
- Omit “or real estate dealer”.
- (37) Section 79 (**Subrogation**):
- Omit “or real estate dealer”, insert instead “, or the former licensee or former real estate dealer,”.

Auctioneers and Agents (Amendment) 1992

**SCHEDULE 1—AMENDMENTS ABOLISHING CERTAIN
CLASSES OF LICENCES AND REGISTRATION—*continued***

- (38) Section 80 (**Council may require production etc. of documents**):
Omit “or real estate dealer”.
- (39) Section 83 (**Examination of account**):
From section 83 (1) and (3), omit “or real estate dealer” wherever occurring.
- (40) Section 84 (**Offences in connection with the sale of allotments of land**):
From section 84 (1), omit “or real estate dealer” wherever occurring.
- (41) Section 84A (**Penalty for publishing false or misleading advertisements**):
From section 84A (1), omit “or real estate dealer” wherever occurring.
- (42) Section 85B (**Contracting out of prescribed terms and conditions of auction sales**):
After section 85B (2), insert:
(3) In this section, “**property**” means real property or livestock.
- (43) Section 85C (**Auction sales: successful bidder to supply information to auctioneer etc.**):
Omit “property” wherever occurring, insert instead “real property or livestock”.
- (44) Section 86A (**Members or officers of Council not to disclose information**):
(a) From section 86A (2), omit “or real estate dealer” wherever occurring.
(b) From section 86A (2), omit “, as the case may be,”.
- (45) Section 86B (**Service of writs etc.**):
(a) From section 86B (1), omit “or real estate dealer” wherever occurring.
(b) From section 86B (1), omit “registered place of business” wherever occurring.

Auctioneers and Agents (Amendment) 1992

**SCHEDULE 1—AMENDMENTS ABOLISHING CERTAIN
CLASSES OF LICENCES AND REGISTRATION—*continued***

(46) Section 88 (**Wrongful conversion and false accounts**):

From section 88 (a) (i) and (c) (iii), omit “a stock buying agent, a real estate agent, a business agent,” wherever occurring, insert instead “a real estate agent”.

(47) Section 89 (**Certificate evidence of licence or registration**):

Omit “, business salesman, stock and station salesman or trainee stock buying agent or registered as a real estate dealer”, insert instead “or stock and station salesman”.

(48) Section 92 (**Regulations**):

- (a) From section 92 (2) (f1) and (f2), omit “property” wherever occurring, insert instead “real property or livestock”.
- (b) From section 92 (2A), omit “the holder of a certificate of registration or a registered real estate dealer”, insert instead “or the holder of a certificate of registration”.

**SCHEDULE 2—AMENDMENTS CREATING NEW CLASSES
OF LICENCES AND REGISTRATION**

(Sec. 3)

(1) Long title:

Omit the long title, insert instead:

An Act to regulate real property, livestock and managing agents, and for other purposes.

(2) Section 1:

Omit the section, insert instead:

Short title

1. This Act may be cited as the Property and Livestock Agents Act 1941.

(3) Section 3 (**Definitions**):

- (a) Omit the definitions of “Land used for agricultural or pastoral purposes”, “Real estate agent” and “Stock and station agent”.

Auctioneers and Agents (Amendment) 1992

SCHEDULE 2—AMENDMENTS CREATING NEW CLASSES OF
LICENCES AND REGISTRATION—*continued*

(b) In section 3 (1), insert in alphabetical order:

“Livestock 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:

- (a) inducing or attempting to induce or negotiating 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
- (b) selling, buying or exchanging any livestock, whether or not an auction is involved; or
- (c) providing agistment for livestock or collecting of fees for such agistment.

“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 as an agent for:

- (a) giving possession of self-contained residential premises for the purpose of holiday accommodation, on each occasion for a period of less than 2 months, whether under a lease, licence or other contract or arrangement; or
- (b) collecting bonds, deposits, rents, fees or other charges in connection with any such lease, licence or other contract or arrangement.

“Real property” includes:

- (a) a lot within the meaning of the Strata Titles Act 1973 and a leasehold interest in a lot within the meaning of the Strata Titles (Leasehold) Act 1986; and
- (b) shares which entitle their holder to the possession of premises.

Auctioneers and Agents (Amendment) 1992

SCHEDULE 2—AMENDMENTS CREATING NEW CLASSES OF
LICENCES AND REGISTRATION—*continued*

“Real property 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:

- (a) inducing or attempting to induce or negotiating with a view to inducing any person:
 - (i) to buy, sell, exchange, lease, assign or otherwise dispose of any real property; or
 - (ii) to make an offer to buy, sell, exchange, lease, assign or otherwise dispose of any real property; or
 - (iii) to accept an offer to buy, sell, exchange, lease, assign or otherwise dispose of any real property; or
 - (iv) to enter into a contract for the buying, selling, exchanging, leasing, assigning or other disposal of real property; or
- (b) buying, selling, exchanging, leasing, assigning or otherwise disposing of any real property, whether or not an auction is involved; or
- (c) buying, selling, exchanging, assigning or otherwise disposing of any shares in a company which entitle their holder to the possession of premises; or
- (d) collecting rents payable in respect of any lease of real property; or
- (e) 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 real property.

“Trainee managing agent” means a trainee strata managing agent, trainee community managing agent or trainee on-site residential property manager, within the meaning of Part 4.

- (c) From section 3 (2) and (3) (b), omit “estate” wherever occurring, insert instead “property”.
- (d) From section 3 (2), omit “land”, insert instead “real property”.

Auctioneers and Agents (Amendment) 1992

SCHEDULE 2—AMENDMENTS CREATING NEW CLASSES OF
LICENCES AND REGISTRATION—*continued*

- (e) From section 3 (3) (b), omit “buildings; or”, insert instead “buildings.”.
- (f) Omit section 3 (3) (c).
- (g) Omit section 3 (3A).
- (h) Omit section 3 (8) (b), insert instead:
 - (b) the registered address of a real property salesperson, livestock salesperson or trainee managing agent or the proposed registered address intended for registration,
- (4) Part 3, heading:

Omit the heading, insert instead:

**PART 3—REAL PROPERTY AGENTS,
LIVESTOCK AGENTS, STRATA MANAGING
AGENTS, COMMUNITY MANAGING
AGENTS AND ON-SITE RESIDENTIAL
PROPERTY MANAGERS**
- (5) Section 20 (**Agents to be licensed**):
 - (a) Omit section 20 (1), (2) and (2B), insert instead:
 - (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 or is willing to act as or to carry on the business of):
 - (a) a real property agent, unless the person is the holder of a real property agent’s licence; or
 - (b) a livestock agent, unless the person is the holder of a livestock agent’s licence; or
 - (c) a strata managing agent, unless the person is the holder of a strata managing agent’s licence; or
 - (d) a community managing agent, unless the person is the holder of a strata managing agent’s licence; or
 - (e) an on-site residential property manager, unless the person is the holder of an on-site residential property manager’s licence.
 - (2) Subsection (1) applies whether or not the person does the prohibited thing as a member of a partnership.

Auctioneers and Agents (Amendment) 1992

SCHEDULE 2—AMENDMENTS CREATING NEW CLASSES OF
LICENCES AND REGISTRATION—*continued*

(2A) A natural person, other than the holder of a real property agent's licence, must not act as or carry on the business of (or advertise, notify or state that the person acts as or carries on or is willing to act as or to carry on the business of) an on-site residential property manager unless:

- (a) the person's principal place of residence is situated at the premises for the letting of which the manager is an agent; and
 - (b) the person owns, or has a prescribed interest in, that principal place of residence.
- (b) From section 20 (3), omit "an auctioneer, a stock and station agent, a real estate agent, a strata managing agent or a community managing agent", insert instead "a real property agent, a livestock agent, a strata managing agent, a community managing agent or an on-site residential property manager".
- (c) Omit section 20 (3A), insert instead:
- (3A) A holder of a real property agent's licence need not hold an on-site residential property manager's licence to perform lawfully any of the functions of an on-site residential property manager.
- (3B) A holder of an on-site residential property manager's licence need not hold a real property agent's licence to perform lawfully any of the functions of an on-site residential property manager that are also functions of a real property agent.

(6) Section 21 (**Each separate place of business to be in charge of licensee**):

- (a) From section 21 (1), omit "stock and station" wherever occurring, insert instead "livestock".
- (b) From section 21 (2), omit "real estate" wherever occurring, insert instead "real property".

(7) Section 22 (**Licences**):

Omit section 22 (1) (a)–(e), insert instead:

- (a) a real property agent's licence; or
- (b) a livestock agent's licence; or

Auctioneers and Agents (Amendment) 1992

SCHEDULE 2—AMENDMENTS CREATING NEW CLASSES OF
LICENCES AND REGISTRATION—*continued*

- (c) a strata managing agent's licence; or
 - (d) an on-site residential property manager's licence.
- (8) Section 23 (**Procedure**):
- Omit section 23 (10A) (a) and (b), insert instead:
- (a) has passed the examination conducted by the Technical and Further Education Commission that is approved for the time being by the Minister for applicants for the licence of the class to which the applicant belongs or such other examination as may be so approved; and
 - (b) has been the holder of a certificate of registration under Part 4 for not less than 2 years, unless the licence applied for is an on-site residential property manager's licence; and
- (9) Section 32 (**Effect of disqualification on membership etc. of corporation**):
- Omit "an auctioneer, a stock and station agent, a real estate agent, a strata managing agent or a community managing agent", insert instead "a real property agent, a livestock agent, a strata managing agent, a community managing agent or an on-site residential property manager".
- (10) Section 35 (**Publication of name of licensee**):
- Omit section 35 (3) (b) (i)–(v), insert instead:
- (i) as a real property agent, unless the person is the holder of a real property agent's licence; or
 - (ii) as a livestock agent, unless the person is the holder of a livestock agent's licence; or
 - (iii) as a strata managing agent or a community managing agent, unless the person is the holder of a strata managing agent's licence; or
 - (iv) as an on-site residential property manager, unless the person is the holder of an on-site residential property manager's licence or a real property agent's licence.
- (11) Section 36D (**Licensees to deposit part of trust account with the Council**):
- From section 36D (6), omit the definition of "carry on business", insert instead:

Auctioneers and Agents (Amendment) 1992

SCHEDULE 2—AMENDMENTS CREATING NEW CLASSES OF
LICENCES AND REGISTRATION—*continued*

“carry on business” means carry on business as a real property agent, a livestock agent, a strata managing agent, a community managing agent or an on-site residential property manager;

(12) Section 39 (**Certain persons not to be employed by licensees**):

Omit section 39 (3), insert instead:

(3) A licensee must not employ (in or in connection with the licensee’s business as a real property agent, a livestock agent, a strata managing agent or an on-site residential property manager) a person to do anything as a result of doing which the person would be a real property salesperson, a livestock salesperson or a trainee managing agent unless the person is the holder of a certificate of registration under Part 4.

(13) Section 40 (**Production of licence**):

Omit “an auctioneer, a stock and station agent, a real estate agent, a strata managing agent or a community managing agent, as the case may be”, insert instead “a real property agent, a livestock agent, a strata managing agent, a community managing agent or an on-site residential property manager”.

(14) Section 42 (**Provisions as to commission etc.**)

Omit section 42 (1) (a)–(e), insert instead:

- (a) as a real property agent, unless the person was the holder of a real property agent’s licence, or employed such a holder, at the time of performing the service; or
- (b) as a livestock agent, unless the person was the holder of a livestock agent’s licence, or employed such a holder, at the time of performing the service; or
- (c) 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 such a holder, at the time of performing the service; or
- (d) 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 property agent’s licence, or

Auctioneers and Agents (Amendment) 1992

SCHEDULE 2—AMENDMENTS CREATING NEW CLASSES OF
LICENCES AND REGISTRATION—*continued*

employed such a holder, at the time of performing the
service,

- (15) Section 45 (**Collusive practices at auction sales conducted by real property or livestock agents**):

Before section 45 (1), insert:

(1A) This section applies only to an auction conducted or to be conducted by a real property agent or a livestock agent.

- (16) Section 46 (**Entry of name of successful bidder by real property or livestock agent or employee**):

(a) From section 46 (1), omit “An auctioneer”, insert instead “A real property agent or a livestock agent”.

(b) From section 46 (1), omit “an auctioneer”, insert instead “a real property agent or a livestock agent”.

(c) From section 46 (1), omit “the auctioneer”, insert instead “the real property agent or livestock agent”.

(d) From section 46 (2) and (3), omit “auctioneer” wherever occurring, insert instead “real property agent or livestock agent”.

- (17) Section 47 (**Notice to be given at auction sale**):

Omit “An auctioneer”, insert instead “A real property agent or a livestock agent”.

- (18) Section 48:

Omit the section, insert instead:

Misrepresentation as to quality etc.

48. A real property agent or a livestock agent who knowingly misrepresents, or causes or permits to be misrepresented, the value, composition, structure, character or quality of any real property or livestock put up for sale at an auction sale conducted by the agent is guilty of an offence against this Act.

- (19) Section 49 (**Bidding by seller, real property agent or livestock agent or persons on their behalf**):

Before section 49 (1), insert:

(1A) This section applies only to an auction conducted or to be conducted by a real property agent or a livestock agent.

Auctioneers and Agents (Amendment) 1992

SCHEDULE 2—AMENDMENTS CREATING NEW CLASSES OF
LICENCES AND REGISTRATION—*continued*

(20) Section 50 (**Livestock auctions: “comeback” prohibited**):

- (a) From section 50 (1), omit “An auctioneer”, insert instead “A livestock agent”.
- (b) From section 50 (2), omit “auctioneer”, insert instead “livestock agent”.

(21) Part 3, Division 5, heading:

Omit the heading, insert instead:

Division 5—Livestock Agents

(22) Section 50I (**Misrepresentation by stock and station agent or salesman**):

Omit the section.

(23) Part 4, heading:

Omit the heading, insert instead:

**PART 4—REAL PROPERTY SALESPERSONS,
LIVESTOCK SALESPERSONS AND
TRAINEE MANAGING AGENTS**

(24) Section 51:

Omit the section, insert instead:

Definitions

51. In this Part:

“**livestock salesperson**” means a person (other than the holder of a livestock agent’s licence) who, as an employee of a livestock agent or a corporation that employs a livestock agent:

- (a) 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

Auctioneers and Agents (Amendment) 1992

SCHEDULE 2—AMENDMENTS CREATING NEW CLASSES OF
LICENCES AND REGISTRATION—*continued*

- (b) arranges for the provision of agistment for livestock; or
- (c) elsewhere than at a place of business of a livestock agent, collects fees for the agistment of livestock;

“real property salesperson” means a person (other than the holder of a real property agent’s licence) who, as an employee of a real property agent or a corporation that employs a real property agent:

- (a) induces or attempts to induce or negotiates with a view to inducing any person:
 - (i) to buy, sell, exchange, lease, assign or otherwise dispose of any real property; or
 - (ii) to make an offer to buy, sell, exchange, lease, assign or otherwise dispose of any real property; or
 - (iii) to accept an offer to buy, sell, exchange, lease, assign or otherwise dispose of any real property; or
 - (iv) to enter into a contract for the buying, selling, exchanging, leasing, assigning or other disposal of real property; or
- (b) elsewhere than at a place of business of the real property agent:
 - (i) collects rent payable in respect of any lease of real property; or
 - (ii) collects instalments of principal or interest payable under a mortgage of real property or under a contract for the sale on terms of real property; or
 - (iii) collects amounts payable to a company by a person whose shares in the company entitle their holder to the possession of premises; or
- (c) for or on behalf of the real property agent, introduces or arranges for the introduction of prospective buyers, sellers, lessees or licensees of

Auctioneers and Agents (Amendment) 1992

SCHEDULE 2—AMENDMENTS CREATING NEW CLASSES OF
LICENCES AND REGISTRATION—*continued*

premises to another real property agent or to the owner, or to an agent of the owner, of premises; or

- (d) for or on behalf of the real property agent, arranges for the erection of buildings for any other person;

“registered” means registered under this Part;

“trainee community managing agent” means a person (other than a community managing agent holding a strata managing agent’s licence or the holder of a real property agent’s licence) who, as an employee of a community managing agent or a corporation that employs a community managing agent, exercises or performs any of the functions of a community managing agent;

“trainee on-site residential property manager” means a person (other than the holder of an on-site residential property manager’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 or performs 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 or performs any of the functions of a strata managing agent.

- (25) Part 4, Division 3, heading:

Omit the heading, insert instead:

**Division 3—Real Property Salespersons,
Livestock Salespersons and Trainee Managing
Agents**

- (26) Section 56 (Persons required to be registered):

Omit section 56 (1) and (1A), insert instead:

- (1) A person must not, unless the holder of a certificate of registration issued to the person:

Auctioneers and Agents (Amendment) 1992

SCHEDULE 2—AMENDMENTS CREATING NEW CLASSES OF
LICENCES AND REGISTRATION—*continued*

- (a) be or remain as a real property salesperson, livestock 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 property salesperson, livestock 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 or perform any of the functions of a real property salesperson, livestock salesperson or trainee managing agent.

(1A) A person who is the holder of a certificate of registration must not act as or exercise or perform any of the functions of a real property salesperson, livestock salesperson or trainee managing agent unless the person does so as an employee of the holder of a licence under this Act.

(1B) A real property salesperson, livestock salesperson or trainee managing agent must not exercise or perform any of the functions of a real property salesperson, livestock salesperson or trainee managing agent unless he or she does so under the supervision of a person:

- (a) who is the licensee in charge of the place of business at which the employee is employed; and
- (b) who is the holder of a licence that allows the licensee to exercise or perform that function without contravening this Act.

(1C) Nothing in this section requires an employed licensee to hold both a certificate of registration and a licence to allow the licensee lawfully to perform any function that, in the absence of this section, the licensee could lawfully perform as the holder of the licence.

- (27) Section 56A (**Trainee auctioneers and stock and station salesmen to be registered**):

Omit the section.

- (28) Section 57 (**Procedure**):

- (a) Omit section 57 (1), insert instead:

Auctioneers and Agents (Amendment) 1992

SCHEDULE 2—AMENDMENTS CREATING NEW CLASSES OF
LICENCES AND REGISTRATION—*continued*

- (1) An application for registration or renewal of registration under this Act is to be made in a form approved by the Minister.
- (b) Omit section 57 (2) (a) and (b), insert instead:
- (a) contain such particulars as may be required to complete the approved form; and
 - (b) state the name of the licensee in charge of the place of business at which the applicant intends to be employed and the classes of the licences held by that licensee; and
- (c) From section 57 (4A), omit “as a real estate salesman, trainee auctioneer or stock and station salesman, as the case may be”.
- (d) From section 57 (4E), omit “but nothing in this subsection requires a refund to be made in any case where the applicant applied for registration, or renewal of registration, in two or more capacities and he was granted registration, or renewal of registration, in one or more capacities”.
- (e) After section 57 (4G), insert:
- (5) Despite any other provision of this section, a certificate of registration is not to be issued to an applicant who has not previously held a certificate of registration unless:
- (a) the applicant is over the age of 16 years; and
 - (b) if the application is made more than 18 months after this paragraph commences, the applicant has obtained an educational qualification that is approved for the time being by the Minister for applicants of the class to which the applicant belongs.
- (f) From section 57 (6), omit “, in respect of each capacity in which he applies to be registered,”.
- (g) From section 57 (7), (8) and (9) (a), omit “as a real estate salesman, trainee auctioneer or stock and station salesman” wherever occurring.
- (h) From section 57 (7), omit “, as the case may require”.
- (i) Omit section 57 (9) (b1).

Auctioneers and Agents (Amendment) 1992

SCHEDULE 2—AMENDMENTS CREATING NEW CLASSES OF
LICENCES AND REGISTRATION—*continued*

- (j) From section 57 (9) (c), omit “one or more certificates of registration held by him shall, in respect of each such certificate of registration,”, insert instead “a certificate of registration must”.
- (29) Section 58A:
After section 58, insert:
Registration of supervising licensees
58A. (1) The Council is to keep a register of the licensees in charge of the places of business at which holders of certificates of registration are or have been employed and of the classes of licences held by each such licensee.
(2) The register is to be compiled from information supplied by licensees, applicants for registration and holders of certificates of registration.
(3) The holder of a certificate of registration is required to give the Council written notice of any change in the particulars last provided to the Council by the holder about the place of business at which the holder is employed for the time being. The notice should be given within 14 days of the change occurring.
(4) When assessing the experience and capability of an applicant for a licence for the purposes of section 23 (10A) (c), the Council is entitled to rely on information obtained from the register.
- (30) Section 60 (**Cancellation of certificate of registration**):
From section 60 (1), omit “real estate salesman, trainee auctioneer or stock and station salesman”, insert instead “real property salesperson, livestock salesperson or trainee managing agent”.
- (31) Section 60AA:
After section 60, insert:
Disqualification of former certificate of registration holders
60AA. (1) In this section, “**former holder**” means a person who is not the holder of a certificate of registration

Auctioneers and Agents (Amendment) 1992

SCHEDULE 2—AMENDMENTS CREATING NEW CLASSES OF
LICENCES AND REGISTRATION—*continued*

but who, within a period of 12 months before a complaint in respect of that person is made under subsection (2), was at any time the holder of a certificate of registration.

(2) On complaint being made by a police officer or by the Council, a prescribed justice may summon a former holder to appear before a Local Court constituted by a Magistrate sitting alone to show cause why the former holder should not be disqualified either permanently or temporarily from holding a certificate of registration on the ground that the former holder has been guilty of conduct that renders the former holder unfit to hold a certificate of registration.

(3) If, on the day and at the time and place appointed by the summons issued under this section, the former holder does not appear, the Local Court may, on proof of the due service of the summons on the former holder a reasonable time before the time appointed for the appearance, proceed to hear and determine the matter of the complaint in the absence of the former holder.

(4) The Local Court may, on being satisfied as to the truth of the ground specified in the summons, order that the former holder be disqualified, either permanently or for such period as the Court specifies in the order, from holding a certificate of registration under this Act.

(5) On the disqualification of any person under this section by a Local Court, the Clerk of the Local Court must notify the decision of the Court to the Council.

(32) Section 62 (**Production of certificate of registration**):

From section 62, omit “real estate salesman, trainee auctioneer or stock and station salesman”, insert instead “real property salesperson, livestock salesperson or trainee managing agent”.

(33) Section 84 (**Offences in connection with the sale of allotments of land**):

Omit “real estate”, wherever occurring, insert instead “real property”.

Auctioneers and Agents (Amendment) 1992

SCHEDULE 2—AMENDMENTS CREATING NEW CLASSES OF
LICENCES AND REGISTRATION—*continued*

(34) Sections 84AA, 84AB, 84AC:

Omit “licensee” wherever occurring, insert instead “real property agent”.

(35) Section 84AA (**Proposed contract for sale of residential property**):

From section 84AA (2), omit “licensee’s”, insert instead “real property agent’s”.

(36) Section 84B:

After section 84A, insert:

Misrepresentation by licensee, salesperson or trainee managing agent

84B. (1) A person who, while exercising or performing any function as:

- (a) a real property agent; or
- (b) a livestock agent; or
- (c) a strata managing agent; or
- (d) a community managing agent; or
- (e) an on-site residential property manager; or
- (f) a real property salesperson; or
- (g) a livestock salesperson; or
- (h) a trainee managing agent,

by any statement, misrepresentation or promise that is false, misleading or deceptive (whether to the knowledge of the person or not) or by any concealment of a material fact (whether intended or not), induces any other person to enter into any contract or arrangement is guilty of an offence against this Act.

(2) Without limiting the generality of subsection (1), a statement, representation or promise is taken to be false, misleading or deceptive 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, representation or promise indicates that the state of affairs does exist.

Auctioneers and Agents (Amendment) 1992

SCHEDULE 2—AMENDMENTS CREATING NEW CLASSES OF
LICENCES AND REGISTRATION—*continued*

(3) 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.

- (37) Section 85C (**Auction sales: successful bidder to supply information to agent etc.**):

Omit “auctioneer”, insert instead “real property agent or livestock agent”.

- (38) Section 88 (**Wrongful conversion and false accounts**):

From section 88 (a) (i) and (c) (iii), omit “an auctioneer, a stock and station agent, a real estate agent, a strata managing agent or a community managing agent” wherever occurring, insert instead “a real property agent, a livestock agent, a strata managing agent, a community managing agent or an on-site residential property manager”.

- (39) Section 89 (**Certificate evidence of licence or registration**):

Omit “as a real estate salesman, trainee auctioneer or stock and station salesman”.

SCHEDULE 3—MISCELLANEOUS AMENDMENTS

(Sec. 3)

- (1) Section 3 (**Definitions**):

- (a) In section 3 (1), in alphabetical order, insert:

“**Reviewing officer**” means the Commissioner of Police or such other police officer as may for the time being be nominated by that Commissioner for the purposes of this definition.

- (b) From section 3 (1), omit the definition of “Superintendent of licences”.

- (2) Section 22 (**Licences**):

- (a) Omit section 22 (1A), insert instead:

(1A) A licence may be expressed to be restricted in its operation to a specified purpose.

Auctioneers and Agents (Amendment) 1992

SCHEDULE 3—MISCELLANEOUS AMENDMENTS—*continued*

(1AA) A licence which is restricted in its operation to a specified purpose may be renewed subject to that restriction once only.

- (b) From section 22 (1B), omit “in the region or place, or for the purpose,”, insert instead “for the purpose”.
- (c) From section 22 (4) (a) and (b), omit “twelve months” wherever occurring, insert instead “3 years”.
- (3) Sections 23 (3), (4) and (7) (a), 29 (1), 29A (2), 57 (3), (4) and (4F) (a), 60 (1):
 Omit “superintendent of licences” wherever occurring, insert instead “reviewing officer”.
- (4) Section 23 (**Procedure**):
 - (a) From section 23 (6) (a) (v), omit “twelve months”, insert instead “3 years”.
 - (b) From section 23 (6A) (b), omit “twelve months”, insert instead “36 months”.
- (5) Section 23A (**Restoration of licence by the General Manager**):
 Omit section 23A (3), insert instead:
 - (3) The General Manager must restore a licence in response to an application duly made under this section unless the General Manager:
 - (a) decides to object to the granting of the application; and
 - (b) within 28 days after the application was lodged, refers the application to a Local Court for hearing and determination.
- (6) Section 23B (**Objection to application for restoration of licence**):
 - (a) Omit section 23B (1), insert instead:
 - (1) If the General Manager decides to object to the granting of an application for restoration of a licence, the General Manager must refer the application and the objection for hearing and determination by the Local Court having jurisdiction under section 3 (8).
 - (b) From section 23B (2), (4) and (6), omit “Council” wherever occurring, insert instead “General Manager”.

Auctioneers and Agents (Amendment) 1992

SCHEDULE 3—MISCELLANEOUS AMENDMENTS—*continued*

- (c) Omit section 23B (4) (b), insert instead:
 - (b) an officer of the Council, within the meaning of the Real Estate Services Council Act 1990; or
- (7) Section 25 (**RESC Administration Account**):
 - At the end of section 25 (5) (b), insert:
 - ; and
 - (c) immediately after the end of 1992 and immediately after the end of each subsequent calendar year, to the Treasurer for payment into the Consolidated Fund the amounts received during that year by the Council as the prescribed application fees for, or for the renewal of, licences or registration under this Act.
- (8) Section 29 (**Cancellation of licence**):
 - (a) From section 29 (2), omit “the licensee”, insert instead “the person named in the summons”.
 - (b) From section 29 (2) and (3), omit “such licensee” wherever occurring, insert instead “the person”.
 - (c) In section 29 (3), after “licence” where firstly and lastly occurring, insert “(if any)”.
 - (d) Omit section 29 (3A), insert instead:
 - (3A) On the cancellation of a licence or the disqualification of any person under this section by a Local Court, the Clerk of the Local Court must notify the decision of the Court to the Council.
- (9) Section 36C (**Disposal of unclaimed money in trust accounts**):
 - (a) From section 36C (1), omit “to the Council” where secondly occurring, insert instead “into the Consolidated Fund”.
 - (b) From section 36C (2) (a), omit “to the Council”, insert instead “into the Consolidated Fund”.
 - (c) From section 36C (2) (b), omit “Council” wherever occurring, insert instead “Treasurer”.
 - (d) Omit section 36C (3) and (4), insert instead:
 - (4) The Treasurer must, on application made to the Treasurer by any person entitled to any money paid into the Consolidated Fund under this section, pay the money to the person.

Auctioneers and Agents (Amendment) 1992

SCHEDULE 3—MISCELLANEOUS AMENDMENTS—*continued*

- (10) Section 39A (**Licensee not to share commission etc. with certain persons**):
- (a) From section 39A (1), after “not licensed under this Act”, insert “or a corresponding Act”.
 - (b) At the end of the section, insert:
 - (2) In subsection (1), “**corresponding Act**” means an Act of another State or a Territory which is declared by the regulations to be a corresponding Act.
- (11) Section 60 (**Cancellation of certificate of registration**):
- (a) In section 60 (3), after “registration” where firstly and lastly occurring, insert “(if any)”.
 - (b) Omit section 60 (4), insert instead:
 - (4) On the cancellation of a certificate of registration or the disqualification of any person under this section by a Local Court, the Clerk of the Local Court must notify the decision of the Court to the Council.
- (12) Section 71 (**Contributions to fund**):
- (a) From section 71 (1), omit “twenty dollars”, insert instead “\$150”.
 - (b) From section 71 (1), omit “annually”, insert instead “every 3 years”.
- (13) Section 87A (**Time for laying information**):
- After “section 88)”, insert “or the regulations”.
- (14) Section 92 (**Regulations**)
- After section 92 (2) (e1), insert:
- (e2) require 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;

*Auctioneers and Agents (Amendment) 1992***SCHEDULE 4—SAVINGS AND TRANSITIONAL AMENDMENTS**

(Sec. 3)

(1) Section 93:

After section 92, insert:

Savings and transitional provisions

93. Schedule 2 has effect.

(2) Schedule 2:

After Schedule 1, insert:

SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS

(Sec. 93)

Definition

1. In this Schedule, "amending Act" means the Auctioneers and Agents (Amendment) Act 1992.

Termination of licences

2. (1) Primary products licences and chattel auctioneers' licences cease to have effect on the repeal of section 22 (2) by the amending Act.

(2) An auctioneer's licence (being a former general auctioneer's licence) ceases to have effect on the repeal of section 22 (1) (a) by the amending Act, except as provided by clause 3.

(3) A stock buyer's licence ceases to have effect on the repeal of section 22 (1) (b1) by the amending Act.

(4) A business agent's licence ceases to have effect on the repeal of section 22 (1) (d) by the amending Act.

(5) A stock and station agent's licence that is subject to a restriction imposed under section 22 (1A) ceases to have effect on the repeal of section 22 (1) (b) and (c) by the amending Act, except as provided by clause 3.

Variation of general auctioneers' licences and restricted stock and station agents' licences

3. (1) A former general auctioneer's licence or a restricted stock and station agent's licence that would otherwise cease to have effect because of clause 2:

(a) is taken to be a real property agent's licence or a livestock agent's licence (or both), if the General Manager approves in writing; and

(b) is taken to be restricted in its operation under section 22 (1A) to such purpose, if any, as may be specified by the General Manager in the approval,

for the residue of the term for which the former licence was issued or last renewed, subject to this Act.

(2) A restricted licence in force because of such an approval cannot be renewed more than once.

**SCHEDULE 4—SAVINGS AND TRANSITIONAL
AMENDMENTS—*continued***

(3) A person who has applied to the General Manager for an approval (or who has been advised of a decision under this clause affecting the person's licence) and who does not agree with any decision made by the General Manager may appeal to the Local Court that would hear an application for the licence sought if an objection had been made to its being granted.

(4) An appeal must be brought within 30 days of the person's being advised of the decision appealed against.

(5) For the purpose of such an appeal, the General Manager is taken to have advised an applicant for an approval that the approval is refused if the applicant has not been given a decision on the application within 60 days of the date of the application.

(6) The decision of the Magistrate constituting the Local Court to which any appeal is brought is to be given effect by the General Manager.

(7) Section 23 (10A) (a), as amended by the amending Act, is taken to be in force so as to allow:

- (a) the granting of approvals under this clause; and
- (b) the bringing, hearing and determination of appeals in accordance with this clause.

(8) The regulations may provide, and may empower a court to make orders providing, that the former holder of a licence that ceased to have effect because of this Schedule is taken to be the holder of a specified licence for a specified period or pending a specified event so as to ensure that the former holder is not disadvantaged:

- (a) while the General Manager is making a decision under this clause with respect to the licence; or
- (b) while an appeal concerning any such decision is being determined.

Termination of certain registration

4. (1) Registration of a person as a real estate dealer ceases to have effect on the repeal of Division 2 of Part 4 by the amending Act.

(2) Registration of a person as a business salesman ceases to have effect on the repeal of section 56A (1) (b) by the amending Act.

(3) Registration of a person as a trainee stock buying agent ceases to have effect on the repeal of section 56A (1) (d) by the amending Act.

Saving of certain licences and registration

5. (1) A stock and station agent's licence (other than a licence restricted under section 22 (1A)) in force immediately before the repeal of section 22 (1) (b) by the amending Act is taken to be both a livestock agent's licence and a real property agent's licence on that repeal.

Auctioneers and Agents (Amendment) 1992

SCHEDULE 4—SAVINGS AND TRANSITIONAL
AMENDMENTS—*continued*

(2) A real estate agent's licence (whether or not a licence restricted under section 22 (1A)) in force immediately before the repeal of section 22 (1) (c) by the amending Act is taken to be a real property agent's licence on that repeal.

(3) Any such licence is taken to be a real property agent's licence or a livestock agent's licence for the residue of the term for which the terminated licence was issued or last renewed, subject to this Act.

(4) A strata managing agent's licence (whether or not a licence restricted under section 22 (1A)) in force immediately before the repeal of section 22 (1) (e) by the amending Act continues in force for the residue of the term for which the licence was issued or last renewed, subject to this Act.

(5) A holder of a certificate of registration immediately before the repeal of section 51 by the amending Act is taken to be registered under, and the certificate is taken to be a certificate of registration issued under, Part 4 (as amended by the amending Act) on that repeal.

Replacement licences and registration certificates

6. (1) The General Manager may issue replacement licences or certificates of registration to take the place of any licences or certificates of registration that continue to have effect because of this Schedule.

(2) For the purposes of this Schedule, a licence is taken to continue to have effect even if it has effect as a licence of a different kind because of the operation of this Schedule.

Phasing in of 3-year licences

7. (1) Subject to this Schedule and unless it is previously cancelled or surrendered, a licence in force immediately before the amendment of section 22 (4) (a) and (b) by the amending Act continues in force for the residue of the 12 month term for which it was issued or last renewed.

(2) So as to reduce any hardship to continuing licensees resulting from the introduction of a 3 year licensing period, the holder of a licence continued in force by this Schedule may, by written notice served on the Council, elect:

- (a) to renew the licence for a term of 1 year when it falls due for renewal at any time before the third anniversary of the commencement of this subclause; and
- (b) on each such occasion, to pay one-third of the fees and any other amounts that would be payable if the licensee were to renew the licence for a term of 3 years.

(3) This Act and the regulations apply to each renewal of a licence pursuant to such an election as if:

- (a) the terms prescribed by section 22 (4) (a) and (b) were 1 year; and
- (b) the fees and any other amounts payable in respect of each such renewal were one-third of the amounts payable in respect of renewing the licence for a term of 3 years.

Auctioneers and Agents (Amendment) 1992

SCHEDULE 4—SAVINGS AND TRANSITIONAL
AMENDMENTS—*continued*

Restricted licences

8. (1) A licence restricted in its operation to a specified region or place ceases to be so restricted on the repeal of section 22 (1A) by the amending Act.

(2) After the repeal of section 22 (1A) by the amending Act, a real property agent's licence that was formerly a real estate agent's licence restricted to a specified purpose and a strata managing agent's licence that (before that repeal) was restricted to a specified purpose:

- (a) continue to be so restricted; and
- (b) cannot be renewed more than once.

Unclaimed trust account money

9. (1) On the repeal of section 36C (3) by the amending Act, the Council must pay to the Treasurer for payment into the Consolidated Fund the balance of all unclaimed trust account money that was paid into the fund under that provision.

(2) Any money paid into the Consolidated Fund under this clause is taken to have been paid into the Consolidated Fund under section 36C, as amended by the amending Act.

Claims against the fund

10. (1) A claim against the Real Estate Services Council Compensation Fund concerning a failure of a licensee to account that occurred when the person held a licence is not defeated only because the licence has ceased to have effect as a result of the amending Act.

(2) A claim against the Real Estate Services Council Compensation Fund concerning a failure of a registered real estate dealer to account that occurred when the person was so registered is not defeated only because the registration has ceased to have effect as a result of the amending Act.

Records

11. (1) Section 38 (Record to be kept) applies to a person whose licence has ceased to have effect as a result of the amending Act as if the person continued to hold the licence for 3 years after it ceased to have effect.

(2) Section 55 (Record to be kept) is taken to continue in force after its repeal by the amending Act and to apply (for 3 years after that repeal) to each person whose registration as a real estate dealer ceased to have effect as a result of that Act.

Subrogation

12. Section 79 (Subrogation) applies to any person whose licence or registration is terminated by the amending Act as if the person's licence or registration had not ceased to have effect.

Auctioneers and Agents (Amendment) 1992

SCHEDULE 4—SAVINGS AND TRANSITIONAL
AMENDMENTS—*continued*

Fees

13. A refund or partial refund of an annual fee paid for a licence or of an application or annual fee paid for registration is not payable as a consequence of the abolition by the amending Act of the class of licence or registration concerned.
