

This PUBLIC BILL originated in the LEGISLATIVE COUNCIL and, having this day passed, is now ready for presentation to the LEGISLATIVE ASSEMBLY for its concurrence.

Clerk of the Parliaments

Legislative Council

NEW SOUTH WALES



Act No. , 1992

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.

5 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.

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

(Sec. 3)

(1) Long title:

- (a) After "auctioneers", insert "of land or livestock".
- 15 (b) Omit "stock buying agents,".
- (c) Omit "real estate dealers and".
- (d) Omit "the Business Agents Act 1935 and".

(2) Section 3 (Definitions):

- 20 (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
 - 25 monetary or otherwise) any land or any livestock; or
 - (b) who sells or offers for sale, or who attempts to sell, any land or any livestock by way of auction.
- 30 (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 "land or livestock".

Auctioneers and Agents (Amendment) 1992

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

- (c) From section 3 (1), omit the definitions of “Farm produce”, “Real estate dealer” and “Stock buying agent”.
- (d) From section 3 (6) and (8) (c), omit “sections 39AA, 52A and 54” wherever occurring, insert instead “section 39AA”.

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- (e) Omit section 3 (8) (b), insert instead:

 - (b) the registered address of a real estate salesman, trainee auctioneer, business salesman or stock and station salesman or the proposed registered address of an applicant for registration under this Act,

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- (f) 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”.

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- (g) 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”.

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- (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.

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- (c) After section 4 (4), insert:

 - (5) Nothing in this Act requires a business agent or a business salesman to hold a business agent’s licence or a certificate of registration as a business salesman under this Act if:

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- (a) the person holds a dealer’s licence under the Corporations Law; or

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- (b) the person holds a proper authority, within the meaning of the Corporations Law, from the holder of such a dealer’s licence.

Auctioneers and Agents (Amendment) 1992

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

- (4) Part 3, heading:
Omit "STOCK BUYING AGENTS,".
- 5 (5) Section 20 (**Agents required to be licensed**):
- (a) At the end of section 20 (2) (a), insert "or".
 - (b) Omit section 20 (2) (a1), (2AA).
 - (c) From section 20 (2A) (a), omit "under the Business Agents Act 1935–1941 or a business agent's licence".
 - 10 (d) From section 20 (3), omit "a stock buying agent, a real estate 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) and (1C).
- 15 (7) Section 22 (**Licences**):
- (a) Omit section 22 (1) (b1) and (2).
 - (b) Omit section 22 (5), insert instead:
 - (5) A single licence may be issued to a person on which are recorded particulars of the class of each licence held by the person.
 - 20 (6) The Council is to issue a replacement licence on which are recorded particulars of the class of each licence (if any) that the person continues to hold if any licence of a class the particulars of which are so recorded is surrendered or cancelled.
- 25 (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 licences issued to the person that expire at the same time.
 - 30 (b) Omit section 23 (10A) (b) (v), (11) and (12).
 - 35 (c) From section 23 (10A) (b) (iv), omit "or", insert instead "and".

Auctioneers and Agents (Amendment) 1992

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

- (d) At the end of section 23 (10A), insert:
 Paragraphs (a) and (b) do not apply to a Certified Practising Accountant member of the Australian Society of Certified Practising Accountants, New South Wales Division, or to a member of the Institute of Chartered Accountants in Australia, New South Wales Branch, who holds a Certificate of Public Practice issued by that Institute. 5
- (9) Section 32 (**Effect of disqualification on membership etc. of corporation**): 10
 Omit “a stock buying agent, a real estate agent”, insert instead “a real estate agent”.
- (10) Section 35 (**Publication of name of licensee**):
 Omit section 35 (3) (b) (ia). 15
- (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”, insert instead “a real estate agent”. 20
- (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 25
 (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,”. 30
 (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, a real estate agent or a business agent, a person to do anything as a result of doing which the person would be a trainee auctioneer, a stock and station salesman, a real estate 35

Auctioneers and Agents (Amendment) 1992

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

- 5 salesman or a business salesman (within the meaning of Part
4) unless the person is registered under Part 4 as a trainee
auctioneer, a stock and station salesman, a real estate
salesman or a business salesman.
- (14) Section 40 (**Production of licence**):
Omit “, a stock buying agent”.
- 10 (15) Section 42 (**Provisions as to commission etc.**):
Omit section 42 (1) (b1).
- (16) Section 44 (**Definition**):
Omit the section.
- (17) Sections 45–47:
15 Omit “property” wherever occurring, insert instead “land or
livestock”.
- (18) Section 48 (**Misrepresentation as to quality etc.**):
Omit “property or of wool”, insert instead “land or
livestock”.
- 20 (19) Section 49 (**Bidding by seller or auctioneer or persons on their
behalf**):
Before section 49 (1), insert:
(1A) This section applies to sales by auction only in so far
as they relate to land or livestock.
- (20) Part 3, Division 6 (section 50J):
25 Omit the Division.
- (21) Part 4, heading:
Omit the heading to Part 4, insert instead:

PART 4—REAL ESTATE SALESMEN, TRAINEE
AUCTIONEERS, BUSINESS SALESMEN AND STOCK
30 AND STATION SALESMEN
- (22) Section 51 (**Definitions**):
(a) Omit the definition of “Trainee stock buying agent”.

Auctioneers and Agents (Amendment) 1992

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

- (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 “estate, goods or effects”, insert instead “land or livestock”.

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- (23) Part 4, Division 2 (sections 51A–55):
Omit the Division.

(24) Part 4, Division 3, heading:
Omit the heading, insert instead:

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

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- (25) 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”.

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

(a) At the end of section 56A (1) (b) (iii), insert “or”.

(b) From section 56A (1) (c) (iii), omit “salesman; or”, insert instead “salesman.”.

(c) Omit section 56A (1) (d), (2) (d) and (2A).

(d) At the end of section 56A (2) (b), insert “or”.

(e) From section 56A (2) (c), omit “licence; or”, insert instead “licence.”.

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

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

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Auctioneers and Agents (Amendment) 1992

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

- (28) Section 60 (**Cancellation of certificate of registration**):
5 From section 60 (1), omit “, stock and station salesman or
 trainee stock buying agent”, insert instead “or stock and
 station salesman”.
- (29) Section 62 (**Production of certificate of registration**):
10 From section 62, omit “, stock and station salesman or
 trainee stock buying agent”, insert instead “or stock and
 station salesman”.
- (30) 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”.
- 15 (31) Section 67 (**Composition of the fund**):
 From section 67 (a), omit “and real estate dealers”.
- (32) Section 68 (**Expenditure**):
 (a) From section 68 (e), omit “or for registration as a real estate
 dealer”.
20 (b) From section 68 (e), omit “or of any such registration”.
- (33) Section 71 (**Contributions to fund**):
 Omit section 71 (1A) and (1B).
- (34) Section 72 (**Levies**):
 (a) From section 72 (1), omit “and real estate dealer”.
25 (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).
- 30 (35) Section 74 (**Application of fund**):
 From section 74 (3), omit “or real estate dealer” wherever
 occurring.

Auctioneers and Agents (Amendment) 1992

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

- (36) **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” 5
 wherever occurring.
- (37) **Section 76 (Advertisement relating to defaulting licensee and claims):**
 Omit “or real estate dealer”.
- (38) **Section 79 (Subrogation):** 10
 Omit “or real estate dealer”, insert instead “, or the former licensee or former real estate dealer,”.
- (39) **Section 80 (Council may require production etc. of documents):**
 Omit “or real estate dealer”. 15
- (40) **Section 83 (Examination of account):**
 From section 83 (1) and (3), omit “or real estate dealer” wherever occurring.
- (41) **Section 84 (Offences in connection with the sale of allotments of land):** 20
 From section 84 (1), omit “or real estate dealer” wherever occurring.
- (42) **Section 84A (Penalty for publishing false or misleading advertisements):**
 From section 84A (1), omit “or real estate dealer” wherever occurring. 25
- (43) **Section 85B (Contracting out of prescribed terms and conditions of auction sales):**
 After section 85B (2), insert:
 (3) In this section, “property” means land or livestock. 30
- (44) **Section 85C (Auction sales: successful bidder to supply information to auctioneer etc.):**
 Omit “property” wherever occurring, insert instead “land or livestock”.

Auctioneers and Agents (Amendment) 1992

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

- (45) Section 86A (**Members or officers of Council not to disclose information**):
- 5 (a) From section 86A (2), omit “or real estate dealer” wherever occurring.
- (b) From section 86A (2), omit “, as the case may be,”.
- (46) Section 86B (**Service of writs etc.**):
- 10 (a) From section 86B (1), omit “or real estate dealer” wherever occurring.
- (b) From section 86B (1), omit “, registered place of business”.
- (c) From section 86B (1), omit “registered place of business” where secondly occurring.
- (47) Section 88 (**Wrongful conversion and false accounts**):
- 15 From section 88 (a) (i) and (c) (iii), omit “a stock buying agent,” wherever occurring.
- (48) Section 89 (**Certificate evidence of licence or registration**):
- Omit “, stock and station salesman or trainee stock buying agent or registered as a real estate dealer”, insert instead “or stock and station salesman”.
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- (49) Section 92 (**Regulations**):
- (a) From section 92 (2) (f1) and (f2), omit “property” wherever occurring, insert instead “land or livestock”.
- 25 (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)

- 30 (1) Long title:
- Omit the long title, insert instead:
- An Act to regulate real estate, stock and station, business and managing agents, and for other purposes.

Auctioneers and Agents (Amendment) 1992

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

(2) Section 1:

Omit the section, insert instead:

Short title

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1. This Act may be cited as the Property, Stock and Business Agents Act 1941.

(3) Section 3 (Definitions):

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

“Land” includes:

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(a) a lot within the meaning of the Strata Titles Act 1973 or the Community Land Development Act 1989 and a leasehold interest in a lot within the meaning of the Strata Titles (Leasehold) Act 1986; and

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(b) shares which, under a company title scheme, entitle their holder to the possession of premises.

“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:

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(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

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(b) collecting bonds, deposits, rents, fees or other charges in connection with any such lease, licence or other contract or arrangement.

“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.

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(b) Omit from section 3 (1) the definitions of “Real estate agent” and “Stock and station agent”, insert instead, respectively:

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Auctioneers and Agents (Amendment) 1992

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

5 **“Real estate agent”** means a person (whether or not the person carries on any other business) who, for reward (whether monetary or otherwise), carries on business as an agent for:

- (a) inducing or attempting to induce or negotiating with a view to inducing any person:
 - 10 • to buy, sell, exchange, lease, assign or otherwise dispose of any land; or
 - to make an offer to buy, sell, exchange, lease, assign or otherwise dispose of any land; or
 - 15 • to accept an offer to buy, sell, exchange, lease, assign or otherwise dispose of any land; or
 - to enter into a contract for the buying, selling, exchanging, leasing, assigning or other disposal of land; or
- 20 (b) buying, selling, exchanging, leasing, assigning or otherwise disposing of any land, whether or not an auction is involved; or
- (c) collecting rents payable in respect of any lease of land; or
- 25 (d) compiling for publication or compiling and publishing any document that contains a list relating solely or substantially to the acquisition or disposal by any person of land,

30 but does not include a person who carries on business as such an agent in respect of any parcel of land used for agricultural or pastoral purposes with an area of more than 2.5 hectares.

35 **“Stock and station agent”** means a person (whether or not the person carries on any other business) who, for reward (whether monetary or otherwise), carries on business as an agent for:

- (a) doing (where the land concerned consists of land used for agricultural or pastoral purposes) any one or more of the things referred to in paragraph (a)—(d) of the definition of “Real estate agent”; or
- 40

*Auctioneers and Agents (Amendment) 1992***SCHEDULE 2—AMENDMENTS CREATING NEW CLASSES OF LICENCES AND REGISTRATION—*continued***

- (b) inducing or attempting to induce or negotiating with a view to inducing any person:
- to buy, sell or otherwise dispose of any livestock; or 5
 - to make an offer to buy, sell or otherwise dispose of any livestock; or
 - to accept an offer to buy, sell or otherwise dispose of any livestock; or 10
 - to enter into a contract for the purchase, sale or other disposal of livestock; or
- (c) selling, buying or exchanging any livestock, whether or not an auction is involved; or
- (d) providing agistment for livestock or collecting of fees for such agistment. 15
- (c) From section 3 (2), omit “letting or taking on lease of”, insert instead “leasing”.
- (d) Omit section 3 (3A).
- (e) Omit section 3 (8) (b), insert instead: 20
- (b) the registered address of a real estate salesperson, stock and station salesperson, business salesperson or trainee managing agent or the proposed registered address intended for registration,
- (4) Section 4 (Act not to apply to any Government department etc.): 25
- (a) From section 4 (5), omit “salesman” where firstly occurring, insert instead “salesperson”.
- (b) From section 4 (5), omit “as a business salesman”.
- (5) Part 3, heading: 30
- Omit the heading, insert instead:
- PART 3—REAL ESTATE AGENTS, STOCK AND STATION AGENTS, BUSINESS AGENTS, STRATA MANAGING AGENTS, COMMUNITY MANAGING AGENTS AND ON-SITE RESIDENTIAL PROPERTY MANAGERS 35

*Auctioneers and Agents (Amendment) 1992***SCHEDULE 2—AMENDMENTS CREATING NEW CLASSES OF LICENCES AND REGISTRATION—*continued*****(6) Section 20 (Agents to be licensed):**

(a) Omit section 20 (1), (2) and (2B), insert instead:

5 (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):

10 (a) a real estate agent, unless the person is the holder of a real estate agent's licence; or

(b) a stock and station agent, unless the person is the holder of a stock and station agent's licence; or

(c) a business agent, unless the person is the holder of a business agent's licence; or

15 (d) a strata managing agent, unless the person is the holder of a strata managing agent's licence; or

(e) a community managing agent, unless the person is the holder of a strata managing agent's licence; or

20 (f) 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.

25 (2A) A natural person, other than the holder of a real estate 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:

30 (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.

35 (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 estate agent, a stock and station agent, a strata managing agent, a community managing agent or an on-site residential property manager".

Auctioneers and Agents (Amendment) 1992

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

- (c) Omit section 20 (3A), insert instead:
- (3A) A real estate agent, stock and station agent, business agent, strata managing agent, community managing agent or on-site residential property manager need not hold more than one licence to perform lawfully any of the functions of the agent that are also functions of any other of those agents. 5
- (7) Section 22 (**Licences**):
- Omit section 22 (1) (a)–(e), insert instead: 10
- (a) a real estate agent's licence;
- (b) a stock and station agent's licence;
- (c) a business agent's licence;
- (d) a strata managing agent's licence;
- (e) an on-site residential property manager's licence. 15
- (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 20
- (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 25
- (9) Section 32 (**Effect of disqualification on membership etc. of corporation**):
- Omit "an auctioneer, a stock and station agent, a real estate agent, a business agent, a strata managing agent or a community managing agent", insert instead "a real estate agent, a stock and station agent, a business agent, a strata managing agent, a community managing agent or an on-site residential property manager". 30

Auctioneers and Agents (Amendment) 1992

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

(10) Section 35 (Publication of name of licensee):

Omit section 35 (3) (b) (i)–(v), insert instead:

- 5 • as a real estate agent, unless the person is the holder of
 a real estate agent's licence; or
- as a stock and station agent, unless the person is the
 holder of a stock and station agent's licence; or
- 10 • as a business agent, unless the person is the holder of a
 business agent's licence; or
- as a strata managing agent or a community managing
 agent, unless the person is the holder of a strata
 managing agent's licence; or
- 15 • 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 estate agent's licence.

**(11) Section 36D (Licensees to deposit part of trust account with
the Council):**

20 From section 36D (6), omit the definition of "carry on
 business", insert instead:

"carry on business" means carry on business as a real
 estate agent, a stock and station agent, a business agent,
 a strata managing agent, a community managing agent
 or an on-site residential property manager;

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

Omit section 39 (3), insert instead:

- 30 (3) A licensee must not employ (in or in connection with
 the licensee's business as a real estate agent, a stock and
 station agent, a business 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 estate
 salesperson, a stock and station salesperson, a business
 salesperson or a trainee managing agent unless the person is
 the holder of a certificate of registration under Part 4.

Auctioneers and Agents (Amendment) 1992

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

(13) Section 40 (Production of licence):

Omit “an auctioneer, a stock and station agent, a real estate agent, a business agent, a strata managing agent or a community managing agent, as the case may be”, insert instead “a real estate agent, a stock and station agent, a business agent, a strata managing agent, a community managing agent or an on-site residential property manager”. 5

(14) Section 42 (Provisions as to commission etc.) 10

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

(a) as a real estate agent, unless the person was the holder of a real estate agent’s licence, or employed such a holder, at the time of performing the service; or

(b) as a stock and station agent, unless the person was the holder of a stock and station agent’s licence, or employed such a holder, at the time of performing the service; or 15

(c) as a business agent, unless the person was the holder of a business agent’s licence, or employed such a holder, at the time of performing the service; or 20

(d) as a strata managing agent or as a community managing agent, unless the person was the holder of a strata managing agent’s licence, or employed such a holder, at the time of performing the service; or 25

(e) as an on-site residential property manager, unless the person was the holder of an on-site residential property manager’s licence or a real estate agent’s licence, or employed such a holder, at the time of performing the service, 30

(15) Section 50A (Misrepresentation by business agent or salesman):

Omit the section.

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

Omit the section. 35

Auctioneers and Agents (Amendment) 1992

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

(17) Part 4, heading:

Omit the heading, insert instead:

5 PART 4—REAL ESTATE SALESPERSONS, STOCK
 AND STATION SALESPERSONS, BUSINESS
 SALESPERSONS AND TRAINEE MANAGING
 AGENTS

(18) Section 51:

10 Omit the section, insert instead:

Definitions

51. In this Part:

“business salesperson” means a person (other than the
holder of a business agent’s licence) who:

15 (a) for or on behalf of a business agent, induces or
 attempts to induce or negotiates with a view to
 inducing any person to sell, buy, exchange or
 otherwise deal with or dispose of:

- 20 • any business or professional practice; or
- any share or interest in or concerning the
 goodwill of, or any stocks connected with,
 any business or professional practice; or

25 (b) for or on behalf of a business agent and otherwise
 than at a place at which that business agent carries
 on business, collects instalments of principal or
 interest payable:

- 30 • under a bill of sale given in respect of a
 business or professional practice; or
- under a contract for the sale on terms of a
 business or professional practice;

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

35 (a) induces or attempts to induce or negotiates with a
 view to inducing any person:

- to buy, sell, exchange, lease, assign or
 otherwise dispose of any land; or

Auctioneers and Agents (Amendment) 1992

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

- to make an offer to buy, sell, exchange, lease, assign or otherwise dispose of any land; or 5
- to accept an offer to buy, sell, exchange, lease, assign or otherwise dispose of any land; or
- to enter into a contract for the buying, selling, exchanging, leasing, assigning or other disposal of land; or 10
- (b) elsewhere than at a place of business of the employer:
 - collects rent payable in respect of any lease of land; or 15
 - collects instalments of principal or interest payable under a mortgage of land or under a contract for the sale on terms of land; or
 - collects amounts payable to a company by a person whose shares in the company entitle their holder to the possession of premises; or 20
- (c) for or on behalf of the employer, introduces or arranges for the introduction of prospective buyers, sellers, lessees or licensees of premises to a real estate agent or stock and station agent or to the owner, or to an agent of the owner, of the premises; or 25
- (d) for or on behalf of the employer, arranges for the erection of buildings for any other person, 30
except where the land concerned is used for agricultural or pastoral purposes and has an area of more than 2.5 hectares;
- “registered” means registered under this Part;
- “stock and station salesperson” means a person (other than the holder of a stock and station agent’s licence) who, as an employee of a stock and station agent or a corporation that employs a stock and station agent (“the employer”): 35

Auctioneers and Agents (Amendment) 1992

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

- 5 (a) does (where the land concerned consists of land used for agricultural or pastoral purposes) any one or more of the things referred to in paragraph (a)–(d) of the definition of “real estate salesperson”; or
- 10 (b) induces or attempts to induce or negotiates with a view to inducing any person:
- to buy, sell or otherwise dispose of any livestock; or
 - to make an offer to buy, sell or otherwise dispose of any livestock; or
 - 15 • to accept an offer to buy, sell or otherwise dispose of any livestock; or
 - to enter into a contract for the purchase, sale or other disposal of livestock; or
- 20 (c) arranges for the provision of agistment for livestock; or
- (d) elsewhere than at a place of business of the employer, collects fees for the agistment of livestock;
- 25 “**trainee community managing agent**” means a person (other than a community managing agent holding a strata managing agent’s licence) who, as an employee of a community managing agent or a corporation that employs a community managing agent, exercises or performs any of the functions of a community managing agent;
- 30 “**trainee on-site residential property manager**” means a person (other than the holder of an on-site residential property manager’s licence or the holder of a real estate agent’s licence) who, as an employee of an on-site residential property manager or a corporation that employs an on-site residential property manager,
- 35 exercises or performs any of the functions of an on-site residential property manager;

Auctioneers and Agents (Amendment) 1992

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

“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. 5

(19) Part 4, Division 3, heading:

Omit the heading, insert instead: 10

Division 3—Real Estate Salespersons, Stock and Station Salespersons, Business Salespersons and Trainee Managing Agents

(20) Section 56 (**Persons required to be registered**):

Omit section 56 (1) and (1A), insert instead: 15

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

(a) be or remain as a real estate salesperson, stock and station salesperson, business salesperson or trainee managing agent in the employment of a person licensed (or required to be licensed) under this Act; or 20

(b) represent, whether expressly or impliedly, that the person is a real estate salesperson, stock and station salesperson, business salesperson or trainee managing agent in the employment of a person licensed (or required to be licensed) under this Act; or 25

(c) act as or exercise or perform any of the functions of a real estate salesperson, stock and station salesperson, business 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 estate salesperson, stock and station salesperson, business salesperson or trainee managing agent unless the person does so as an employee of the holder of a licence under this Act. 30
35

Auctioneers and Agents (Amendment) 1992

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

- 5 (1B) A real estate salesperson, stock and station salesperson, business salesperson or trainee managing agent must not exercise or perform any of the functions of a real estate salesperson, stock and station salesperson, business salesperson or trainee managing agent unless he or she does so under the supervision of a person:
- 10 (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.
- 15 (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 do anything that, in the absence of this section, the licensee could lawfully do as the holder of the licence.
- 20 (21) Section 56A (**Trainee auctioneers and stock and station salesmen to be registered**):
- Omit the section.
- (22) Section 57 (**Procedure**):
- (a) Omit section 57 (1), insert instead:
- 25 (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
- 30 (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
- 35 (c) From section 57 (4A), omit “as a real estate salesman, trainee auctioneer, business salesman or stock and station salesman, as the case may be”.

Auctioneers and Agents (Amendment) 1992

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

- (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”. 5
- (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: 10
- (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. 15
- (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, business salesman or stock and station salesman” wherever occurring. 20
- (h) From section 57 (7), omit “, as the case may require”.
- (i) Omit section 57 (9) (b1).
- (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”. 25
- (23) Section 58A:
- After section 58, insert: 30
- 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 class of each licence held by each of those licensees. 35
- (2) The register is to be compiled from information supplied by licensees, applicants for registration and holders of certificates of registration.

Auctioneers and Agents (Amendment) 1992

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

5 (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.

10 (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.

(24) Section 60 (**Cancellation of certificate of registration**):

15 From section 60 (1), omit "real estate salesman, trainee auctioneer, business salesman or stock and station salesman", insert instead "real estate salesperson, stock and station salesperson, business salesperson or trainee managing agent".

(25) Section 60AA:

20 After section 60, insert:

Disqualification of former certificate of registration holders

25 60AA. (1) In this section, "former holder" means a person who is not the holder of a certificate of registration 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.

30 (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.

35 (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

Auctioneers and Agents (Amendment) 1992

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

- 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. 5
- (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. 10
- (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.
- (26) Section 62 (**Production of certificate of registration**): 15
- From section 62, omit “real estate salesman, trainee auctioneer, business salesman or stock and station salesman”, insert instead “real estate salesperson, stock and station salesperson, business salesperson or trainee managing agent”. 20
- (27) Sections 84AA, 84AB, 84AC:
- Omit “licensee” wherever occurring, insert instead “real estate agent”.
- (28) Section 84AA (**Proposed contract for sale of residential property**): 25
- From section 84AA (2), omit “licensee’s”, insert instead “real estate agent’s”.
- (29) Section 84B:
- After section 84A, insert:
- Misrepresentation by licensee, salesperson or trainee managing agent** 30
- 84B. (1) A person who, while exercising or performing any function as:
- (a) a real estate agent; or
- (b) a stock and station agent; or 35
- (c) a business agent; or
- (d) a strata managing agent; or
- (e) a community managing agent; or

Auctioneers and Agents (Amendment) 1992

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

- 5 (f) an on-site residential property manager; or
(g) a real estate salesperson; or
(h) a stock and station salesperson; or
(i) a business salesperson; or
(j) a trainee managing agent,
by any statement, representation or promise that is false,
misleading or deceptive (whether to the knowledge of the
10 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.
- 15 (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
20 statement, representation or promise indicates that the state of
affairs does exist.
- 25 (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.
- (30) 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, business agent, a
strata managing agent or a community managing agent”
30 wherever occurring, insert instead “a real estate agent, a
stock and station agent, business agent, a strata managing
agent, a community managing agent or an on-site residential
property manager”.
- 35 (31) Section 89 (**Certificate evidence of licence or registration**):
Omit “as a real estate salesman, trainee auctioneer, business
salesman 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 the Commissioner for the purposes of this definition.

5

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

10

(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.

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

15

(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”.

20

(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”.

25

(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”.

30

(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:

35

Auctioneers and Agents (Amendment) 1992

SCHEDULE 3—MISCELLANEOUS AMENDMENTS—*continued*

- 5 (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:
- 10 (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
 15 occurring, insert instead "General Manager".
- (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**):
- 20 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
 25 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
 30 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)".

Auctioneers and Agents (Amendment) 1992

SCHEDULE 3—MISCELLANEOUS AMENDMENTS—*continued*

- (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. 5
- (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”. 10
- (b) From section 36C (2) (a), omit “to the Council”, insert instead “into the Consolidated Fund”. 10
- (c) From section 36C (2) (b), omit “Council”, insert instead “Treasurer”. 10
- (d) Omit section 36C (3) and (4), insert instead:
 (3) 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. 15
- (10) Section 39A (**Licensee not to share commission etc. with certain persons**): 20
- (a) From section 39A (1), after “not licensed under this Act”, insert “or a corresponding Act”. 20
- (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. 25
- (11) Section 60 (**Cancellation of certificate of registration**):
- (a) In section 60 (3), after “registration” where firstly and lastly occurring, insert “(if any)”. 30
- (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. 30
- (12) Section 71 (**Contributions to fund**): 35
- (a) From section 71 (1), omit “twenty dollars”, insert instead “\$150”. 35

Auctioneers and Agents (Amendment) 1992

SCHEDULE 3—MISCELLANEOUS AMENDMENTS—*continued*

(b) From section 71 (1), omit “annually”, insert instead “every 3 years”.

(13) Section 87A (**Time for laying information**):

5 After “section 88)”, insert “or the regulations”.

(14) Section 92 (**Regulations**):

 After section 92 (2) (e1), insert:

10 (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;

**SCHEDULE 4—SAVINGS AND TRANSITIONAL
AMENDMENTS**

(Sec. 3)

15 (1) Section 93:

 After section 92, insert:

Savings and transitional provisions

 93. Schedule 2 has effect.

(2) Schedule 2:

20 After Schedule 1, insert:

**SCHEDULE 2—SAVINGS AND TRANSITIONAL
AMENDMENTS**

(Sec. 93)

Definition

25 1. In this Schedule, “**amending Act**” means the
 Auctioneers and Agents (Amendment) Act 1992.

**Termination of certain licences on commencement of
Schedule 1 to the amending Act**

30 2. (1) Auctioneers’ licences known as primary products
 licences and chattel auctioneers’ licences cease to have effect
 on the repeal of section 22 (2) by the amending Act.

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

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

**Termination of other licences on commencement of
Schedule 2 to the amending Act**

3. All other auctioneers' licences, being those formerly known as general auctioneers' licences, cease to have effect on the repeal of section 22 (1) (a) by the amending Act, except as provided by clause 4.

5

Variation of former general auctioneers' licences

4. (1) A former general auctioneer's licence that would otherwise cease to have effect because of clause 3:

10

(a) is taken to be a real estate agent's licence or a stock and station 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,

15

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

(2) Any such licence that is restricted in its operation cannot be renewed more than once.

20

(3) The regulations may provide, and may empower a Local Court to make orders providing, that the former holder of a general auctioneer's 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:

25

(a) while the General Manager is making a decision under this clause with respect to the licence; or

30

(b) while an appeal concerning any such decision is being determined.

Appeals relating to approvals

5. (1) A person who has applied to the General Manager for an approval (or who has been advised of a decision under clause 4 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.

35

40

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

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

5 (3) 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 making the application.

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

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

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

Termination of certain registration

20 6. (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 trainee stock buying agent ceases to have effect on the repeal of section 56A (1) (d) by the amending Act.

25 **Saving of certain licences and registration**

30 7. (1) A real estate agent's licence, stock and station agent's licence, a business agent's licence or 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) (a)–(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.

35 (2) 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.

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

Replacement licences and registration certificates

8. (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. 5

(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. 10

Phasing in of 3-year licences

9. (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. 15

(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: 20

(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 have renewed the licence for a term of 3 years. 25

(3) This Act and the regulations apply to each renewal of a licence pursuant to such an election as if: 30

(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. 35

Restricted licences

10. (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. 40

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

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

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

Unclaimed trust account money

11. (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

12. (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

13. (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.

Auctioneers and Agents (Amendment) 1992

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

14. 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. 5

Fees

15. 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. 10
