

FIRST PRINT

**PROPERTY, STOCK AND BUSINESS AGENTS
(AMENDMENT) BILL 1994**

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 Property, Stock and Business Agents Act 1941 so as:

- to provide for interest on licensees' trust accounts to accrue at 25% (or after 2 years, a greater percentage determined by the Minister after consultation with the Treasurer) of an interest rate similarly determined on the whole of the funds held in those trust accounts
 - to abolish the Real Estate Services Council Special Account established under section 36F of the Act and to provide for interest on licensees' trust accounts to be paid to the Real Estate Services Council Statutory Interest Account established under section 63B of the Act
 - to enable licensees' trust accounts and certain other accounts to be kept with building societies as well as with banks
 - to expand the purposes for which money held in the Statutory Interest Account may be applied
 - to extend the period within which a person may make a claim for compensation from the Compensation Fund arising from a licensee's failure to account for money entrusted to the licensee
 - to allow claims against the Compensation Fund for a failure to account by a licensee after his or her licence expires and before an application for restoration of the licence is finally dealt with
 - to make other minor amendments.
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Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the proposed Act to commence on a day or days to be fixed by proclamation.

Clause 3 gives effect to Schedules 1-4, which contain amendments to the Property, Stock and Business Agents Act 1941.

Clause 4 makes a consequential amendment to the Real Estate Services Council Act 1990.

SCHEDULE 1—AMENDMENTS RELATING TO TRUST ACCOUNTS ETC.

Prescribed financial institutions to pay trust account interest to the RESC Statutory Interest Account

Section 36 of the Act requires all licensees under the Act to hold clients' money in trust accounts established at a bank in New South Wales. Section 36D of the Act currently requires a licensee to deposit with the Real Estate Services Council (the Council) 25% of the amount that was the lowest balance in the licensee's (or, if the licensee is a member of a firm, the firm's) trust account on any day during the period of 12 months ending on the preceding 31 March. Section 36F of the Act currently requires the amounts deposited to be held in the Real Estate Services Council Special Account established under that section and section 36E requires the Council to hold those amounts on trust for the licensee or firm concerned and, pending repayment, to invest them either in an interest bearing bank account or with the Treasurer. Sections 36D-36F are to be replaced by a new scheme under which the financial institutions with which licensees keep trust accounts will become responsible for paying interest to the Council for crediting to the Statutory Interest Account.

Under the amended section 36, as well as being able to establish trust accounts at banks, licensees will be able to establish trust accounts at those building societies in which trustees are authorised to invest trust money. A licensee will also be required to notify a prescribed financial institution with which the licensee opens a trust account that the account is a trust account and to notify the Council if a trust account kept by the licensee with the institution is closed or becomes overdrawn.

Proposed section 36AA will require the Minister, after consultation with the Treasurer, to determine a trust account rate for each financial institution at which trust accounts are kept under section 36. For the first 2 years after the commencement of proposed section 36AB, interest on trust account balances is to be calculated at 25% of the trust account rate applicable to the institution. At the end of that period of 2 years, it will be possible under that section to change the percentage to some greater percentage determined by the Minister after consultation with the Treasurer.

Proposed section 36AC will require each financial institution at which licensees and licensees' firms keep their trust accounts, on the first business day after the end of each month, to calculate interest on daily balances held in those trust accounts and pay the amount calculated (free of the institution's transaction charges) to the Council for crediting to the Statutory Interest Account. Proposed section 36AD will require a prescribed financial institution that keeps trust accounts for licensees to make monthly reports to the Council specifying the number of trust accounts opened during the month and the amount of interest earned on all trust accounts kept with the institution during the month. Such an institution will also be required to inform the Council if any of those accounts has become overdrawn. Proposed section 36AE makes it clear that proposed

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sections 36AC and 36AD do not apply to separate trust accounts kept on the instructions of a client of a licensee or a firm of licensees for the exclusive benefit of the client or to trust accounts of a prescribed class. Proposed section 36AF will make it an offence for a prescribed financial institution to fail to comply with a requirement of proposed section 36AC or 36AD. (See Schedule 1 (1), (3)–(5), (7)–(15) and Schedule 4.)

RESC Administration Account and Statutory Interest Account

An amendment to section 25 of the Act will enable the Council, as an alternative to depositing the Administration Account money in a bank account, to deposit that money with a building society in which trustees are authorised to invest trust money. A similar amendment is made to section 63B in relation to the Statutory Interest Account. (See Schedule 1 (2) and (12) (b).)

Unclaimed trust money

An amendment to section 36C will provide for an annual remittance to the Consolidated Fund of unclaimed trust money paid to the Council by licensees. At present the money is paid into the Consolidated Fund when it is received from licensees. (See Schedule 1 (6).)

**SCHEDULE 2—AMENDMENTS RELATING TO THE STATUTORY
INTEREST ACCOUNT AND THE COMPENSATION FUND**

Application of money in the RESC Statutory Interest Account

Section 63D of the Act currently specifies the purposes for which money held in the Statutory Interest Account may be applied. Those purposes include supplementing the RESC Compensation Fund to meet deficiencies in the Fund, meeting costs incurred by organisations in providing educational meetings, lectures and courses of study for the Council and meeting certain administrative costs of the Council. Money held in the Account can also be used to meet part of the cost of administering the Residential Tenancies Tribunal and the Fair Trading Act 1987. Funds not immediately required for any of those purposes can be invested by the Council.

That section is to be replaced by a section which will enable money held in the Account to be applied for the purposes mentioned above and for any of the following additional purposes:

- to provide loans or grants to persons or organisations to enable them to provide facilities for the delivery of courses of study and other educational programs approved by the Council;
- to meet costs involved in providing courses of study and other educational programs in addition to those now organised by or for the Council;
- to meet the cost of providing public information and guidance programs (currently funded from the RESC Administration Account);
- to meet costs involved in establishing a co-regulation scheme for the conduct of real estate services;
- to meet costs involved in establishing a disciplinary tribunal or other body to deal with complaints relating to the conduct of licensees and in establishing a body to resolve disputes arising out of the provision of real estate services;
- to meet deficiencies occurring in the RESC Administration Account.

(See Schedule 2 (4).)

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The amendments relating to the RESC Administration Account made by items (1)–(3), (6) and (8) of Schedule 2 are consequential on the substitution of proposed section 63D.

Compensation Fund account

An amendment to section 66 of the Act (**Separate bank account**) will enable the Council, as an alternative to depositing the Compensation Fund money in a bank account, to deposit that money with a building society. (See Schedule 2 (5).)

Time limit for making compensation claims

Section 74 of the Act entitles a person who has entrusted money to a licensee to make a claim against the Real Estate Services Council Compensation Fund for a failure to account for that money. However, a claim is barred if not made within 6 months after the person becomes aware of the failure to account or within 2 years after the failure to account, whichever occurs first. An amendment to the section will increase the period of 6 months to 12 months. (See Schedule 2 (7) (a).) A further amendment will extend that period until 1 year of the termination of a tenancy agreement if the claim relates to the non-lodgment of a tenancy bond with the Rental Bond Board. (See Schedule 2 (7) (b).)

SCHEDULE 3—AMENDMENTS RELATING TO LICENCES

Schedule 3 (1) and (2) makes the following 2 changes relating to the restoration of licences that have expired:

- (a) an amendment to section 23A (**Restoration of licence by the General Manager**) to enable the late lodgment fee to be waived if the application for restoration is lodged within 7 days of the expiry of the licence;
- (b) an amendment to section 23C (**Effect of decision on application for restoration of licence**) to declare anything done after the expiry of a licence and before the dismissal of an application for restoration to have been done by a licensed person (at present such a declaration is made only if the application for restoration is successful). The declaration will enable claims against the Compensation Fund for a failure to account by a licensee during that period. The declaration does not remove the criminal liability of the person concerned for carrying on business without a licence during that period.

Schedule 3 (3) amends section 64A (**Definition of failure to account**) to make it clear that, if a failure to account occurs after a licensee ceases to be licensed, a claim against the Compensation Fund may still be made if the money concerned was entrusted to the person while the person was licensed or deemed to be licensed.

SCHEDULE 4—SAVINGS AND TRANSITIONAL AMENDMENTS

The Schedule amends Schedule 2 to the Act (**Savings and transitional amendments**):

- to enable savings and transitional regulations to be made; and
- to make transitional and savings provisions consequent on the enactment of the proposed Act.

One of the provisions will require the Council, on the repeal of section 36E (**Moneys deposited by licensee or firm with Council to be invested etc.**), to repay to the persons or firms concerned money deposited with the Council under the existing section 36D. However, if the persons or firms who deposited the money no longer hold licences,

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the money is to be paid to the Treasurer for payment to the Consolidated Fund. Persons entitled to money paid to the Treasurer will be able to claim it from the Treasurer. As soon as practicable after the money deposited under existing section 36D has been repaid (or paid to the Treasurer), the RESC Special Account is to be closed.

Another provision will make it clear that a claim that is already barred under section 74 of the Act (**Application of fund**) will not be resurrected as a result of the amendments made to that section by Schedule 2 (7).

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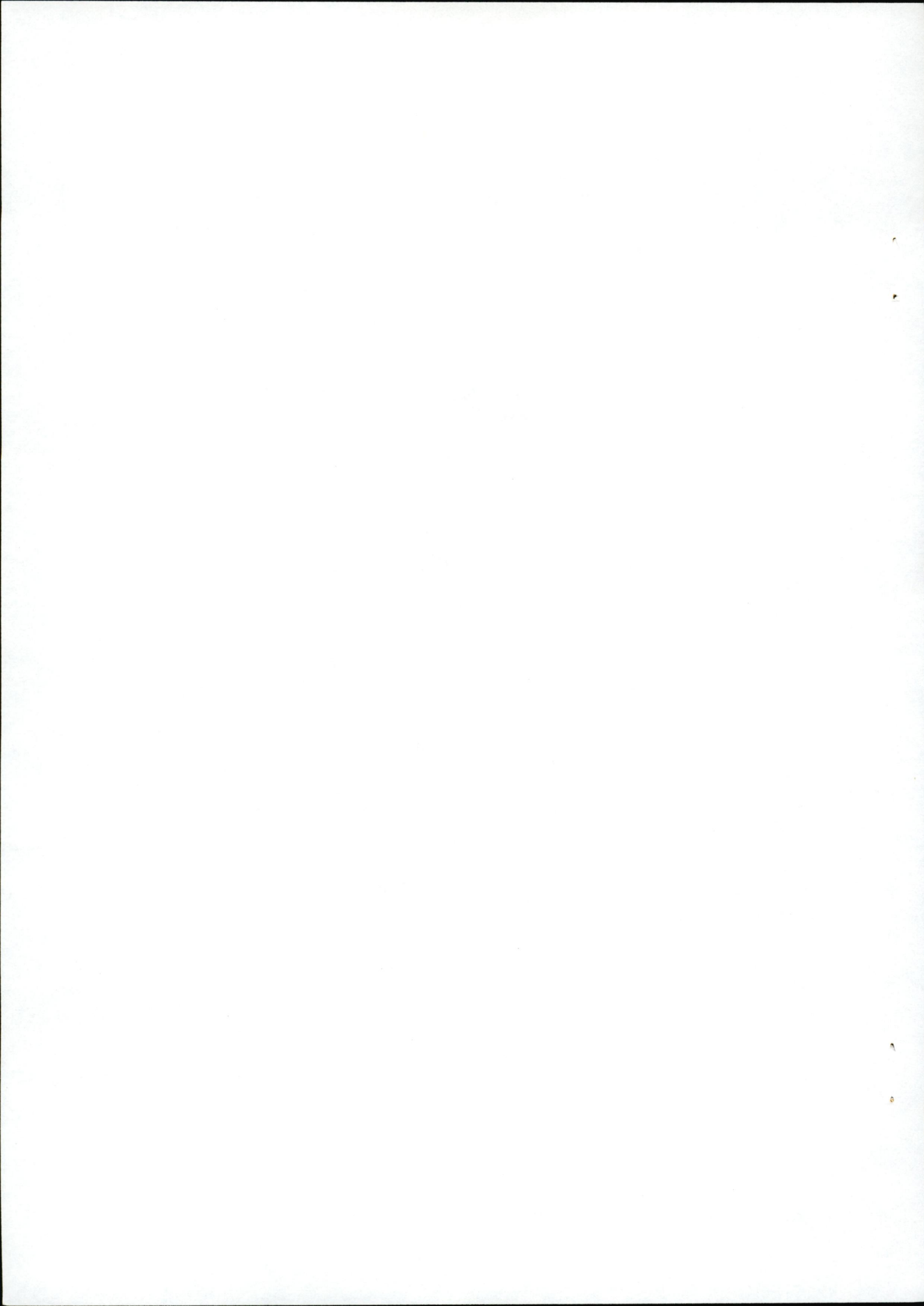
NEW SOUTH WALES



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**PROPERTY, STOCK AND BUSINESS AGENTS
(AMENDMENT) BILL 1994**

NEW SOUTH WALES



No. , 1994

A BILL FOR

An Act to amend the Property, Stock and Business Agents Act 1941 with respect to money held in trust accounts maintained under that Act and the use of funds held in the Real Estate Services Council Statutory Interest Account; and for other purposes.

Property, Stock and Business Agents (Amendment) 1994

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Property, Stock and Business Agents (Amendment) Act 1994.

5 Commencement

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

Amendment of Property, Stock and Business Agents Act 1941 No. 28

3. The Property, Stock and Business Agents Act 1941 is amended as set out in Schedules 1-4.

Consequential amendment of Real Estate Services Council Act 1990 No. 14, s. 13 (Investment)

4. The Real Estate Services Council Act 1990 is amended by omitting section 13 (4).

15 SCHEDULE 1—AMENDMENTS RELATING TO TRUST ACCOUNTS ETC.

(Sec. 3)

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

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

20 **“Business day”** means a day other than a Saturday, Sunday, public holiday or bank holiday in New South Wales.

“Prescribed financial institution” means:

25 (a) a bank authorised to carry on the business of banking under a law of the Commonwealth or of a State or Territory; or

 (b) a building society authorised under the Trustee Act 1925 for the investment of trust funds.

30 **“Statutory Interest Account”** means the Real Estate Services Council Statutory Interest Account established under section 63B.

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SCHEDULE 1—AMENDMENTS RELATING TO TRUST
ACCOUNTS ETC.—*continued*

- (2) Section 25 (**RESC Administration Account**):
From section 25 (4), omit “bank”, insert instead “prescribed financial institution operating”. 5
- (3) Section 36 (**Money to be paid to trust account**):
- (a) From section 36 (1), omit “bank”, insert instead “prescribed financial institution operating”.
- (b) After section 36 (1), insert:
- (1A) When opening a trust account at a prescribed financial institution for the purpose of complying with subsection (1), the licensee concerned must ensure that the institution is notified in writing that the account is a trust account required by this Act. 10
- (1B) If money is held in a trust account in accordance with subsection (1) at the commencement of this subsection, the licensee concerned must, within 1 month after that commencement, ensure that the bank at which the account is kept is notified in writing that the account is a trust account required by this Act. 15
- (c) From section 36 (3), omit “or section 36D”. 20
- (d) After section 36 (3), insert:
- (3A) A licensee must, within 14 days after closing a trust account, notify the Council in writing of the closure.
- (3B) If at any time a trust account becomes overdrawn, the licensee concerned must, within 5 days after becoming aware of the overdrawn, notify the Council in writing of: 25
- (a) the name and number of the account; and
- (b) the amount by which the account is overdrawn; and
- (c) the reason for the account becoming overdrawn. 30
- (e) From section 36 (4A), omit “bank”, insert instead “prescribed financial institution operating”.
- (4) Sections 36AA, 36AB:
- After section 36, insert:
- Determination of trust account rate** 35
- 36AA. (1) For the purposes of sections 36AB and 36AC, the Minister is required to determine from time to time, after

SCHEDULE 1—AMENDMENTS RELATING TO TRUST
ACCOUNTS ETC.—*continued*

5 consultation with the Treasurer, a trust account rate for each prescribed financial institution. The rate, which may be a fixed or variable one, is to be determined by reference to an interest rate that applies in the short term money market.

(2) As soon as practicable after determining a trust account rate for a prescribed financial institution, the Minister must:

10 (a) inform the institution of the rate by notice in writing; and

(b) publish a notice of the rate in the Gazette.

Prescribed percentage of trust account rate

15 36AB. (1) For the purposes of section 36AC, the prescribed percentage, in relation to money held in trust accounts kept with a prescribed financial institution under section 36 (whether opened before or after the commencement of this section), is:

20 (a) during the period of 2 years beginning on the date of that commencement—25 per cent of the trust account rate relevant to the institution; and

(b) during any subsequent period—25 per cent of that rate or such greater percentage of that rate as may be determined under subsection (2) and notified in the Gazette.

25 (2) For the purposes of subsection (1) (b), the Minister may, from time to time, determine a percentage greater than 25 after consultation with the Treasurer.

(5) Sections 36AC–36AF:

Before section 36A, insert:

30 **Interest earned on trust accounts to be paid to Statutory Interest Account**

36AC. (1) On the first business day after the end of each named month beginning after the commencement of this section, every prescribed financial institution must:

35 (a) calculate interest on the daily balances of all money held during the month in trust accounts kept with the institution under section 36 (being trust accounts notified to the institution under that section as trust accounts required by this Act) by applying to those

SCHEDULE 1—AMENDMENTS RELATING TO TRUST
ACCOUNTS ETC.—*continued*

balances the prescribed percentage of the trust account rate applicable to the institution; and

- (b) pay the amount of that interest to the Council for crediting to the Statutory Interest Account. 5

(2) A prescribed financial institution must not deduct transaction or other charges, other than statutory charges (such as bank account debits tax), from the balances referred to in subsection (1) or from an amount of interest calculated under that subsection. 10

(3) The Council may, by proceedings brought in a court of competent jurisdiction, recover as a debt an amount due and payable to it under this section.

Prescribed financial institutions to provide the Council with certain information 15

36AD. (1) Within 14 days after the end of each named month beginning after the commencement of this section, every prescribed financial institution must, by notice in writing, inform the Council of the following matters: 20

- (a) the number of trust accounts opened with the institution during the month under section 36 (being trust accounts notified to the institution under that section as trust accounts required by this Act), the names of the licensees who opened those accounts, the names and numbers of those accounts and the addresses of the branches of that institution at which those accounts are kept; 25

- (b) the total amount of interest that the institution paid for the month under section 36AC (1) (b). 30

(2) As soon as practicable (and in any case within 5 business days) after a prescribed financial institution becomes aware that a trust account kept with it under section 36 is overdrawn (being a trust account notified to the institution under that section as a trust account required by this Act), the institution must, by notice in writing, inform the Council of: 35

- (a) the name and business address of the licensee concerned; and

- (b) the name and number of the account; and 40

SCHEDULE 1—AMENDMENTS RELATING TO TRUST
ACCOUNTS ETC.—*continued*

(c) the amount by which the account is overdrawn.

5 (3) This section has effect irrespective of any other law or any rule of practice to the contrary.

Sections 36AC and 36AD not to apply to certain accounts

36AE. Sections 36AC and 36AD do not apply:

10 (a) to a separate trust account kept on the instructions of a client of a licensee or a firm of licensees for the exclusive benefit of the client; or

(b) to a trust account of a class of trust accounts prescribed by the regulations for the purposes of this section.

Offences by prescribed financial institutions

15 36AF. A prescribed financial institution that fails to comply with a provision of section 36AC or 36AD is guilty of an offence against this Act.

(6) **Section 36C (Disposal of unclaimed money in trust accounts):**

20 (a) From section 36C (1) and (2) (a), omit “into the Consolidated Fund” wherever occurring, insert instead “to the Council”.

(b) From section 36C (2) (b), omit “the Treasurer”, insert instead “the Council”.

(c) After section 36C (2), insert:

25 (2A) The Council must pay any money received by it under subsection (2) into the fund.

(2B) Within 2 months after the end of each year, the Council must pay into the Consolidated Fund all money received by it and paid into the fund during that year. When the Council makes that payment, it must give the Treasurer a statement containing the following particulars:

30 (a) the name and last known address of each person for whom or on whose behalf the money received by the Council was held;

(b) the amount held in respect of each such person;

35 (c) the date of gazettal of the notice under subsection (1) (b) in respect of that money;

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SCHEDULE 1—AMENDMENTS RELATING TO TRUST
ACCOUNTS ETC.—*continued*

- (d) the name and address of each licensee who furnished a statement to the Council under section 36A or 36B in respect of that money. 5
- (d) After section 36C (3), insert:
- (4) If an application for the payment of money to which a person is entitled is made while the money is held in the fund, the Council must pay the money to the person from the fund. 10
- (7) Section 36D (**Licensees to deposit part of trust account with the Council**), section 36E (**Moneys deposited by licensee or firm with Council to be invested etc.**):
- Omit the sections.
- (8) Section 36F (**Real Estate Services Council Special Account**): 15
- Omit the section.
- (9) Section 37:
- Omit the section, insert instead:
- Prescribed financial institutions to be relieved from liability in certain cases** 20
37. (1) A prescribed financial institution:
- (a) does not incur liability, and is not obliged to make inquiries, in relation to any transaction concerning an account of a licensee kept with the institution or with some other financial institution; and 25
- (b) is, in relation to any such transaction, taken not to have any knowledge of a right of any person to money credited to such an account,
- unless it would incur such a liability, be obliged to make such inquiries or be taken to have that knowledge in relation to an account kept with it in respect of a person absolutely entitled to the money held in that account. This subsection is subject to section 36AD. 30
- (2) Subsection (1) does not relieve a prescribed financial institution from any liability or obligation that it would have apart from this Act. 35
- (3) A prescribed financial institution at which a licensee keeps an account for clients' money does not, as regards any

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SCHEDULE 1—AMENDMENTS RELATING TO TRUST
ACCOUNTS ETC.—*continued*

5 liability that the licensee has to the institution (not being a liability relating to that account), have a right to any of the money held in that account, whether by way of set-off, counterclaim, charge or otherwise.

(10) Section 38A (**Furnishing of particulars of trust account or transactions**):

10 From section 38A (1) (a), omit “bank”, insert instead “prescribed financial institution”.

(11) Section 38B (**Inspection of records**):

- (a) From section 38B (2) (b), omit “bankers”, insert instead “financial institutions”.
- 15 (b) From section 38B (2AB) (b), omit “bankers”, insert instead “financial institutions”.
- (c) From section 38B (2A), omit “a banker with whom”, insert instead “a prescribed financial institution with which”.
- (d) From section 38B (2A) (a) (iii), omit “the banker in accordance with subsection (2)”, insert instead “the institution in accordance with subsection (2) or (2AB)”.
- 20 (e) From section 38B (2A) (b), omit “that banker”, insert instead “the institution”.
- (f) From section 38B (2A) (b), omit “the bank”, insert instead “the institution”.

25 (12) Section 63B (**Statutory Interest Account**):

- (a) From section 63B (1), omit “(which is in this Part referred to as ‘the Statutory Interest Account’)”.
- (b) From section 63B (2), omit “bank”, insert instead “prescribed financial institution operating”.

30 (13) Section 63C:

Omit the section, insert instead:

Money in the Statutory Interest Account

35 63C. There is to be paid to the credit of the Statutory Interest Account any money that is required or permitted to be paid to the credit of that Account, whether by this Act or any other Act.

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**SCHEDULE 1—AMENDMENTS RELATING TO TRUST
ACCOUNTS ETC.—*continued***

- (14) Section 83A (**Definitions**):
From the definition of “Money”, omit “bank”, insert instead
“financial institution”. 5
- (15) Section 83F (**Receiver may forbid withdrawal of moneys from
financial institution**):
- (a) From section 83F (1), omit “bank account”, insert instead
“account kept with a financial institution”. 10
- (b) From section 83F (1), omit “the bank”, insert instead “the
institution”. 10
- (c) From section 83F (2) and (3), omit “bank” wherever
occurring, insert instead “financial institution”.

**SCHEDULE 2—AMENDMENTS RELATING TO THE
STATUTORY INTEREST ACCOUNT AND THE
COMPENSATION FUND** 15

(Sec. 3)

- (1) Section 3 (**Definitions**):
In section 3 (1), before the definition of “Auctioneer”,
insert: 20
“**Administration Account**” means the Real Estate
Services Council Administration Account established
under section 25.
- (2) Section 25 (**RESC Administration Account**):
- (a) At the end of section 25 (4) (c), insert: 25
; and
(d) money transferred to the account from the Statutory
Interest Account.
- (b) From section 25 (5), omit “Account”, insert instead
“Administration Account”. 30
- (c) Omit section 25 (6).
- (3) Section 57 (**Procedure**):
From section 57 (10), omit “Real Estate Services Council”.

SCHEDULE 2—AMENDMENTS RELATING TO THE
STATUTORY INTEREST ACCOUNT AND THE COMPENSATION
FUND—*continued*

(4) Section 63D:

- 5 Omit the section, insert instead:
- Application of money in the Statutory Interest Account**
- 63D. (1) The Council may apply money held in the
Statutory Interest Account for all or any of the following
purposes:
- 10 (a) supplementing the fund by such amount as may be
needed to enable the current liabilities of the fund to be
met;
- 15 (b) meeting costs incurred by persons or organisations in
conducting courses of study the successful completion
of which is a pre-requisite to persons becoming
licensees or being registered as real estate salespersons,
business salespersons, stock and station salespersons,
trainee managing agents or practising, non-practising
or associate real estate valuers;
- 20 (c) meeting costs incurred by persons or organisations in
providing professional development or other
educational programs approved by the Council;
- 25 (d) providing grants or loans to persons or organisations to
enable them to carry out capital works so that those
courses and educational programs can be provided;
- (e) meeting costs incurred in conducting lectures,
seminars, courses of study and educational programs
organised by or for the Council;
- 30 (f) meeting the cost of evaluating courses of study and
educational programs referred to in this subsection and
of developing educational standards relating to the
conduct of those courses and programs;
- 35 (g) meeting the cost of providing the public information
and guidance programs referred to in section 10 (1) (c)
of the Real Estate Services Council Act 1990;
- 40 (h) meeting costs involved in establishing a scheme under
which the conduct or provision of real estate services
in New South Wales can be jointly regulated by the
Council, the Government and organisations
representing licensees and registered valuers;

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**SCHEDULE 2—AMENDMENTS RELATING TO THE
STATUTORY INTEREST ACCOUNT AND THE COMPENSATION
FUND—*continued***

- (i) meeting costs involved in establishing a disciplinary tribunal, or some other body, to deal with complaints concerning the conduct of licensees, registered real estate salespersons, registered business salespersons, registered stock and station salespersons, trainee managing agents or registered valuers; 5
- (j) meeting costs involved in establishing a scheme for resolving disputes arising between licensees, registered real estate salespersons, registered business salespersons, registered stock and station salespersons, trainee managing agents or registered valuers and their clients in connection with the provision of real estate services; 10
- (k) meeting any deficiency that has occurred in the Administration Account; 15
- (l) meeting the cost of administering this Part.
- (2) The Council may apply money under this section only with the consent of the Minister. 20
- (3) The Council must:
- (a) transfer to the fund money applied for the purpose specified in subsection (1) (a); and
- (b) transfer to the Administration Account money applied for any of the purposes specified in subsection (1) (k) and (l). 25
- (4) The Council may, in accordance with section 13 of the Real Estate Services Council Act 1990, invest money held in the Statutory Interest Account and not immediately required for the purposes of the Account. 30
- (5) Nothing in this section limits the operation of sections 63E–63G.
- (5) Section 66 (**Fund moneys to be held in a separate account kept with a prescribed financial institution**): 35
- Omit “bank”, insert instead “prescribed financial institution operating”.
- (6) Section 67 (**Composition of the fund**):
- From section 67 (b1), omit “Real Estate Services Council”.

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**SCHEDULE 2—AMENDMENTS RELATING TO THE
STATUTORY INTEREST ACCOUNT AND THE COMPENSATION
FUND—*continued***

(7) Section 74 (Application of fund):

5 (a) From section 74 (2), omit “6”, insert instead “12”.

(b) After section 74 (2), insert:

10 (2A) Despite subsection (2), a claim caused by a failure of a licensee (or any employee or agent of a licensee) to lodge a rental bond with the Rental Bond Board may also be made at any time within 1 year after the termination of the tenancy agreement.

(8) Section 92 (Regulations):

Omit section 92 (2) (g) and (h).

SCHEDULE 3—AMENDMENTS RELATING TO LICENCES

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(Sec. 3)

(1) Section 23A (Restoration of licence by the General Manager):

After section 23A (1), insert:

20 (1A) If the application for restoration of a licence is made less than 7 days after the expiration of the licence, the General Manager may waive the payment of the prescribed late fee.

(2) Section 23C (Effect of decision on application for restoration of licence):

After section 23C (1A), insert:

25 (1B) Anything done (other than the commission of an offence under section 20) between:

(a) the expiration of a licence; and

(b) the dismissal of an application duly made for the restoration of the licence,

30 by the person whose licence had expired is taken to have been done while the person was the holder of the licence.

35 (1C) For the purposes of subsection (1B), if the Local Court dismisses an application for the restoration of a licence and an appeal is duly lodged against the Court's decision, the application is dismissed when the appeal is dismissed or withdrawn.

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**SCHEDULE 3—AMENDMENTS RELATING TO LICENCES—
*continued***

(3) Section 64A (**Definitions**):

After section 64A (2), insert:

(3) For the purposes of the definition of “failure to account” in subsection (1), it does not matter that the failure to account occurred after the licensee ceased to be licensed if the money or other valuable property concerned was entrusted to the person (or the person’s employee or agent) before the person ceased to be licensed.

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**SCHEDULE 4—SAVINGS AND TRANSITIONAL
AMENDMENTS**

(Sec. 3)

(1) Schedule 2:

Before clause 1, insert:

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PART 1—GENERAL

Regulations

1A. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

20

the Auctioneers and Agents (Amendment) Act 1992;
the Property, Stock and Business Agents (Amendment) Act 1994.

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect as from the date of assent to the Act concerned or a later date.

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(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

30

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication;
or

Property, Stock and Business Agents (Amendment) 1994

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

- 5 (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

**PART 2—PROVISIONS CONSEQUENTIAL ON THE
AUCTIONEERS AND AGENTS (AMENDMENT)
ACT 1992**

- 10 (2) Schedule 2, clauses 1, 4 (3), 8, 9:
Omit “Schedule” wherever occurring, insert instead “Part”.

- (3) Schedule 2, Part 3:
After clause 15, insert:

15 **PART 3—PROVISIONS CONSEQUENTIAL ON THE
PROPERTY, STOCK AND BUSINESS AGENTS
(AMENDMENT) ACT 1994**

Definition

16. In this Part, “**amending Act**” means the Property, Stock and Business Agents (Amendment) Act 1994.

20 **Money deposited with the Council to be returned to licensees**

17. (1) As soon as practicable after the repeal of section 36E, the Council must repay all money deposited with it under section 36D to the person or firm that deposited it.

25 (2) However, if the person or firm that deposited the money is no longer a licensee, the Council must pay the money to the Treasurer for payment to the Consolidated Fund.

30 (3) The Treasurer must, on application made to the Treasurer by any person entitled to money paid into the Consolidated Fund under subclause (2), pay the money to the person.

(4) Despite the repeal of section 36E, the money so deposited may, pending its repayment or payment under this

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

clause, continue to be invested as provided by subsection (3) of that section.

(5) Section 36 applies to a person or firm to which money is repaid under subclause (1). 5

Transfer of money held in the RESC Special Account

18. As soon as practicable (and in any case not later than 3 months) after the requirements of clause 17 (1) and (2) have been complied with, the Council must close the Real Estate Services Council Special Account. 10

Investment of money held in the Statutory Interest Account

19. Any money in the Statutory Interest Account invested under section 63D (as in force immediately before the commencement of Schedule 2 (4) to the amending Act) is taken to have been invested under that section (as in force after that commencement). 15

Claims against the fund

20. Section 74 (as in force after the commencement of Schedule 2 (7) to the amending Act) does not apply to a claim that has been barred by section 74 (as in force immediately before that commencement). 20

Restoration of licences etc.

21. Subsections (1B) and (1C) of section 23C, and subsection (3) of section 64A, extend to a licence that expired before the commencement of those subsections. 25

SECOND PRINT

**PROPERTY, STOCK AND BUSINESS AGENTS
(AMENDMENT) BILL 1994**

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
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3. Amendment of Property, Stock and Business Agents Act 1941 No. 28
4. Consequential amendment of Real Estate Services Council Act 1990 No. 14, s. 13 (Investment)

SCHEDULE 1—AMENDMENTS RELATING TO TRUST ACCOUNTS ETC.
SCHEDULE 2—AMENDMENTS RELATING TO THE STATUTORY INTEREST
ACCOUNT AND THE COMPENSATION FUND
SCHEDULE 3—AMENDMENTS RELATING TO LICENCES
SCHEDULE 4—SAVINGS AND TRANSITIONAL AMENDMENTS

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

Clerk of the Legislative Assembly.

Legislative Assembly

NEW SOUTH WALES



Act No. , 1994

An Act to amend the Property, Stock and Business Agents Act 1941 with respect to money held in trust accounts maintained under that Act and the use of funds held in the Real Estate Services Council Statutory Interest Account; and for other purposes.

Property, Stock and Business Agents (Amendment) 1994

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Property, Stock and Business Agents (Amendment) Act 1994.

5 Commencement

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

Amendment of Property, Stock and Business Agents Act 1941 No. 28

3. The Property, Stock and Business Agents Act 1941 is amended as set out in Schedules 1-4.

Consequential amendment of Real Estate Services Council Act 1990 No. 14, s. 13 (Investment)

4. The Real Estate Services Council Act 1990 is amended by omitting section 13 (4).

**15 SCHEDULE 1—AMENDMENTS RELATING TO TRUST
ACCOUNTS ETC.**

(Sec. 3)

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

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

20 **“Business day”** means a day other than a Saturday, Sunday, public holiday or bank holiday in New South Wales.

“Prescribed financial institution” means:

25 (a) a bank authorised to carry on the business of banking under a law of the Commonwealth or of a State or Territory; or

 (b) a building society, or credit union, authorised under the Trustee Act 1925 for the investment of trust funds.

30 **“Statutory Interest Account”** means the Real Estate Services Council Statutory Interest Account established under section 63B.

Property, Stock and Business Agents (Amendment) 1994

**SCHEDULE 1—AMENDMENTS RELATING TO TRUST
ACCOUNTS ETC.—*continued***

- (2) Section 25 (**RESC Administration Account**):
From section 25 (4), omit “bank”, insert instead “prescribed financial institution operating”. 5
- (3) Section 36 (**Money to be paid to trust account**):
- (a) From section 36 (1), omit “bank”, insert instead “prescribed financial institution operating”.
- (b) After section 36 (1), insert:
- (1A) When opening a trust account at a prescribed financial institution for the purpose of complying with subsection (1), the licensee concerned must ensure that the institution is notified in writing that the account is a trust account required by this Act. 10
- (1B) If money is held in a trust account in accordance with subsection (1) at the commencement of this subsection, the licensee concerned must, within 1 month after that commencement, ensure that the bank at which the account is kept is notified in writing that the account is a trust account required by this Act. 15
- (c) From section 36 (3), omit “or section 36D”. 20
- (d) After section 36 (3), insert:
- (3A) A licensee must, within 14 days after closing a trust account, notify the Council in writing of the closure.
- (3B) If at any time a trust account becomes overdrawn, the licensee concerned must, within 5 days after becoming aware of the overdrawing, notify the Council in writing of: 25
- (a) the name and number of the account; and
- (b) the amount by which the account is overdrawn; and
- (c) the reason for the account becoming overdrawn. 30
- (e) From section 36 (4A), omit “bank”, insert instead “prescribed financial institution operating”.
- (4) Sections 36AA, 36AB:
After section 36, insert:
Determination of trust account rate 35
- 36AA. (1) For the purposes of sections 36AB and 36AC, the Minister is required to determine from time to time, after

**SCHEDULE 1—AMENDMENTS RELATING TO TRUST
ACCOUNTS ETC.—*continued***

5 consultation with the Treasurer, a trust account rate for each prescribed financial institution. The rate, which may be a fixed or variable one, is to be determined by reference to an interest rate that applies in the short term money market.

(2) As soon as practicable after determining a trust account rate for a prescribed financial institution, the Minister must:

- 10 (a) inform the institution of the rate by notice in writing; and
(b) publish a notice of the rate in the Gazette.

Prescribed percentage of trust account rate

15 36AB. (1) For the purposes of section 36AC, the prescribed percentage, in relation to money held in trust accounts kept with a prescribed financial institution under section 36 (whether opened before or after the commencement of this section), is:

- 20 (a) during the period of 2 years beginning on the date of that commencement—25 per cent of the trust account rate relevant to the institution; and
(b) during any subsequent period—25 per cent of that rate or such greater percentage of that rate as may be determined under subsection (2) and notified in the Gazette.

25 (2) For the purposes of subsection (1) (b), the Minister may, from time to time, determine a percentage greater than 25 after consultation with the Treasurer.

(5) Sections 36AC–36AF:

Before section 36A, insert:

30 **Interest earned on trust accounts to be paid to Statutory Interest Account**

36AC. (1) On the first business day after the end of each named month beginning after the commencement of this section, every prescribed financial institution must:

- 35 (a) calculate interest on the daily balances of all money held during the month in trust accounts kept with the institution under section 36 (being trust accounts notified to the institution under that section as trust accounts required by this Act) by applying to those

Property, Stock and Business Agents (Amendment) 1994

**SCHEDULE 1—AMENDMENTS RELATING TO TRUST
ACCOUNTS ETC.—*continued***

balances the prescribed percentage of the trust account rate applicable to the institution; and

- (b) pay the amount of that interest to the Council for crediting to the Statutory Interest Account. 5

(2) A prescribed financial institution must not deduct transaction or other charges, other than statutory charges (such as bank account debits tax), from the balances referred to in subsection (1) or from an amount of interest calculated under that subsection. 10

(3) The Council may, by proceedings brought in a court of competent jurisdiction, recover as a debt an amount due and payable to it under this section.

Prescribed financial institutions to provide the Council with certain information 15

36AD. (1) Within 14 days after the end of each named month beginning after the commencement of this section, every prescribed financial institution must, by notice in writing, inform the Council of the following matters: 20

- (a) the number of trust accounts opened with the institution during the month under section 36 (being trust accounts notified to the institution under that section as trust accounts required by this Act), the names of the licensees who opened those accounts, the names and numbers of those accounts and the addresses of the branches of that institution at which those accounts are kept; 25

- (b) the total amount of interest that the institution paid for the month under section 36AC (1) (b). 30

(2) As soon as practicable (and in any case within 5 business days) after a prescribed financial institution becomes aware that a trust account kept with it under section 36 is overdrawn (being a trust account notified to the institution under that section as a trust account required by this Act), the institution must, by notice in writing, inform the Council of: 35

- (a) the name and business address of the licensee concerned; and

- (b) the name and number of the account; and 40

**SCHEDULE 1—AMENDMENTS RELATING TO TRUST
ACCOUNTS ETC.—*continued***

(c) the amount by which the account is overdrawn.

5

(3) This section has effect irrespective of any other law or any rule of practice to the contrary.

Sections 36AC and 36AD not to apply to certain accounts

36AE. Sections 36AC and 36AD do not apply:

10

(a) to a separate trust account kept on the instructions of a client of a licensee or a firm of licensees for the exclusive benefit of the client; or

(b) to a trust account of a class of trust accounts prescribed by the regulations for the purposes of this section.

Offences by prescribed financial institutions

15

36AF. A prescribed financial institution that fails to comply with a provision of section 36AC or 36AD is guilty of an offence against this Act.

(6) Section 36C (Disposal of unclaimed money in trust accounts):

20

(a) From section 36C (1) and (2) (a), omit “into the Consolidated Fund” wherever occurring, insert instead “to the Council”.

(b) From section 36C (2) (b), omit “the Treasurer”, insert instead “the Council”.

(c) After section 36C (2), insert:

25

(2A) The Council must pay any money received by it under subsection (2) into the fund.

(2B) Within 2 months after the end of each year, the Council must pay into the Consolidated Fund all money received by it and paid into the fund during that year. When the Council makes that payment, it must give the Treasurer a statement containing the following particulars:

30

(a) the name and last known address of each person for whom or on whose behalf the money received by the Council was held;

(b) the amount held in respect of each such person;

35

(c) the date of gazettal of the notice under subsection (1)

(b) in respect of that money;

Property, Stock and Business Agents (Amendment) 1994

**SCHEDULE 1—AMENDMENTS RELATING TO TRUST
ACCOUNTS ETC.—*continued***

- (d) the name and address of each licensee who furnished a statement to the Council under section 36A or 36B in respect of that money. 5
- (d) After section 36C (3), insert:
- (4) If an application for the payment of money to which a person is entitled is made while the money is held in the fund, the Council must pay the money to the person from the fund. 10
- (7) Section 36D (**Licensees to deposit part of trust account with the Council**), section 36E (**Moneys deposited by licensee or firm with Council to be invested etc.**):
- Omit the sections.
- (8) Section 36F (**Real Estate Services Council Special Account**): 15
- Omit the section.
- (9) Section 37:
- Omit the section, insert instead:
- Prescribed financial institutions to be relieved from liability in certain cases** 20
37. (1) A prescribed financial institution:
- (a) does not incur liability, and is not obliged to make inquiries, in relation to any transaction concerning an account of a licensee kept with the institution or with some other financial institution; and 25
- (b) is, in relation to any such transaction, taken not to have any knowledge of a right of any person to money credited to such an account,
- unless it would incur such a liability, be obliged to make such inquiries or be taken to have that knowledge in relation to an account kept with it in respect of a person absolutely entitled to the money held in that account. This subsection is subject to section 36AD. 30
- (2) Subsection (1) does not relieve a prescribed financial institution from any liability or obligation that it would have apart from this Act. 35
- (3) A prescribed financial institution at which a licensee keeps an account for clients' money does not, as regards any

Property, Stock and Business Agents (Amendment) 1994

**SCHEDULE 1—AMENDMENTS RELATING TO TRUST
ACCOUNTS ETC.—*continued***

- 5 liability that the licensee has to the institution (not being a liability relating to that account), have a right to any of the money held in that account, whether by way of set-off, counterclaim, charge or otherwise.
- (10) Section 38A (**Furnishing of particulars of trust account or transactions**):
- 10 From section 38A (1) (a), omit “bank”, insert instead “prescribed financial institution”.
- (11) Section 38B (**Inspection of records**):
- (a) From section 38B (2) (b), omit “bankers”, insert instead “financial institutions”.
- 15 (b) From section 38B (2AB) (b), omit “bankers”, insert instead “financial institutions”.
- (c) From section 38B (2A), omit “a banker with whom”, insert instead “a prescribed financial institution with which”.
- (d) From section 38B (2A) (a) (iii), omit “the banker in accordance with subsection (2)”, insert instead “the institution in accordance with subsection (2) or (2AB)”.
- 20 (e) From section 38B (2A) (b), omit “that banker”, insert instead “the institution”.
- (f) From section 38B (2A) (b), omit “the bank”, insert instead “the institution”.
- 25 (12) Section 63B (**Statutory Interest Account**):
- (a) From section 63B (1), omit “(which is in this Part referred to as ‘the Statutory Interest Account’)”.
- (b) From section 63B (2), omit “bank”, insert instead “prescribed financial institution operating”.
- 30 (13) Section 63C:
- Omit the section, insert instead:
- Money in the Statutory Interest Account**
- 35 63C. There is to be paid to the credit of the Statutory Interest Account any money that is required or permitted to be paid to the credit of that Account, whether by this Act or any other Act.

Property, Stock and Business Agents (Amendment) 1994

**SCHEDULE 1—AMENDMENTS RELATING TO TRUST
ACCOUNTS ETC.—*continued***

- (14) **Section 83A (Definitions):**
 From the definition of "Money", omit "bank", insert instead
 "financial institution". 5
- (15) **Section 83F (Receiver may forbid withdrawal of moneys from
financial institution):**
- (a) From section 83F (1), omit "bank account", insert instead
 "account kept with a financial institution".
- (b) From section 83F (1), omit "the bank", insert instead "the
 institution". 10
- (c) From section 83F (2) and (3), omit "bank" wherever
 occurring, insert instead "financial institution".

**SCHEDULE 2—AMENDMENTS RELATING TO THE
STATUTORY INTEREST ACCOUNT AND THE
COMPENSATION FUND** 15

(Sec. 3)

- (1) **Section 3 (Definitions):**
 In section 3 (1), before the definition of "Auctioneer",
 insert: 20
- "Administration Account"** means the Real Estate
 Services Council Administration Account established
 under section 25.
- (2) **Section 25 (RESC Administration Account):**
- (a) At the end of section 25 (4) (c), insert: 25
- ; and
- (d) money transferred to the account from the Statutory
 Interest Account.
- (b) From section 25 (5), omit "Account", insert instead
 "Administration Account". 30
- (c) Omit section 25 (6).
- (3) **Section 57 (Procedure):**
 From section 57 (10), omit "Real Estate Services Council".

SCHEDULE 2—AMENDMENTS RELATING TO THE
STATUTORY INTEREST ACCOUNT AND THE COMPENSATION
FUND—*continued*

(4) Section 63D:

5 Omit the section, insert instead:

Application of money in the Statutory Interest Account

63D. (1) The Council may apply money held in the Statutory Interest Account for all or any of the following purposes:

- 10 (a) supplementing the fund by such amount as may be needed to enable the current liabilities of the fund to be met;
- 15 (b) meeting costs incurred by persons or organisations in conducting courses of study the successful completion of which is a pre-requisite to persons becoming licensees or being registered as real estate salespersons, business salespersons, stock and station salespersons, trainee managing agents or practising, non-practising or associate real estate valuers;
- 20 (c) meeting costs incurred by persons or organisations in providing professional development or other educational programs approved by the Council;
- 25 (d) providing grants or loans to persons or organisations to enable them to carry out capital works so that those courses and educational programs can be provided;
- (e) meeting costs incurred in conducting lectures, seminars, courses of study and educational programs organised by or for the Council;
- 30 (f) meeting the cost of evaluating courses of study and educational programs referred to in this subsection and of developing educational standards relating to the conduct of those courses and programs;
- 35 (g) meeting the cost of providing the public information and guidance programs referred to in section 10 (1) (c) of the Real Estate Services Council Act 1990;
- 40 (h) meeting costs involved in establishing a scheme under which the conduct or provision of real estate services in New South Wales can be jointly regulated by the Council, the Government and organisations representing licensees and registered valuers;

Property, Stock and Business Agents (Amendment) 1994

**SCHEDULE 2—AMENDMENTS RELATING TO THE
STATUTORY INTEREST ACCOUNT AND THE COMPENSATION
FUND—*continued***

- | | |
|--|----|
| <p>(i) meeting costs involved in establishing a disciplinary tribunal, or some other body, to deal with complaints concerning the conduct of licensees, registered real estate salespersons, registered business salespersons, registered stock and station salespersons, trainee managing agents or registered valuers;</p> | 5 |
| <p>(j) meeting costs involved in establishing a scheme for resolving disputes arising between licensees, registered real estate salespersons, registered business salespersons, registered stock and station salespersons, trainee managing agents or registered valuers and their clients in connection with the provision of real estate services;</p> | 10 |
| <p>(k) meeting any deficiency that has occurred in the Administration Account;</p> | 15 |
| <p>(l) meeting the cost of administering this Part.</p> | 20 |
| <p>(2) The Council may apply money under this section only with the consent of the Minister.</p> | 25 |
| <p>(3) The Council must:</p> | 30 |
| <p>(a) transfer to the fund money applied for the purpose specified in subsection (1) (a); and</p> | 35 |
| <p>(b) transfer to the Administration Account money applied for any of the purposes specified in subsection (1) (k) and (l).</p> | 40 |
| <p>(4) The Council may, in accordance with section 13 of the Real Estate Services Council Act 1990, invest money held in the Statutory Interest Account and not immediately required for the purposes of the Account.</p> | 45 |
| <p>(5) Nothing in this section limits the operation of sections 63E–63G.</p> | 50 |
| <p>(5) Section 66 (Fund moneys to be held in a separate account kept with a prescribed financial institution):</p> <p style="padding-left: 2em;">Omit “bank”, insert instead “prescribed financial institution operating”.</p> | 55 |
| <p>(6) Section 67 (Composition of the fund):</p> <p style="padding-left: 2em;">From section 67 (b1), omit “Real Estate Services Council”.</p> | 60 |

Property, Stock and Business Agents (Amendment) 1994

**SCHEDULE 2—AMENDMENTS RELATING TO THE
STATUTORY INTEREST ACCOUNT AND THE COMPENSATION
FUND—*continued***

(7) Section 74 (Application of fund):

5 (a) From section 74 (2), omit "6", insert instead "12".

(b) After section 74 (2), insert:

10 (2A) Despite subsection (2), a claim caused by a failure of
a licensee (or any employee or agent of a licensee) to lodge a
rental bond with the Rental Bond Board may also be made at
any time within 1 year after the termination of the tenancy
agreement.

(8) Section 92 (Regulations):

Omit section 92 (2) (g) and (h).

SCHEDULE 3—AMENDMENTS RELATING TO LICENCES

15

(Sec. 3)

(1) Section 23A (Restoration of licence by the General Manager):

After section 23A (1), insert:

20 (1A) If the application for restoration of a licence is made
less than 7 days after the expiration of the licence, the
General Manager may waive the payment of the prescribed
late fee.

**(2) Section 23C (Effect of decision on application for restoration
of licence):**

After section 23C (1A), insert:

25 (1B) Anything done (other than the commission of an
offence under section 20) between:

(a) the expiration of a licence; and

(b) the dismissal of an application duly made for the
restoration of the licence,

30 by the person whose licence had expired is taken to have
been done while the person was the holder of the licence.

35 (1C) For the purposes of subsection (1B), if the Local
Court dismisses an application for the restoration of a licence
and an appeal is duly lodged against the Court's decision, the
application is dismissed when the appeal is dismissed or
withdrawn.

Property, Stock and Business Agents (Amendment) 1994

SCHEDULE 3—AMENDMENTS RELATING TO LICENCES—
continued

(3) Section 64A (Definitions):

After section 64A (2), insert:

- (3) For the purposes of the definition of “failure to account” in subsection (1), it does not matter that the failure to account occurred after the licensee ceased to be licensed if the money or other valuable property concerned was entrusted to the person (or the person’s employee or agent) before the person ceased to be licensed. 5
10

**SCHEDULE 4—SAVINGS AND TRANSITIONAL
AMENDMENTS**

(Sec. 3)

(1) Schedule 2:

Before clause 1, insert: 15

PART 1—GENERAL

Regulations

1A. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts: 20

the Auctioneers and Agents (Amendment) Act 1992;
the Property, Stock and Business Agents (Amendment) Act 1994.

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect as from the date of assent to the Act concerned or a later date. 25

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as: 30

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication;
or

Property, Stock and Business Agents (Amendment) 1994

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

- 5 (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

**PART 2—PROVISIONS CONSEQUENTIAL ON THE
AUCTIONEERS AND AGENTS (AMENDMENT)
ACT 1992**

- 10 (2) Schedule 2, clauses 1, 4 (3), 8, 9:
Omit "Schedule" wherever occurring, insert instead "Part".

- (3) Schedule 2, Part 3:
After clause 15, insert:

15 **PART 3—PROVISIONS CONSEQUENTIAL ON THE
PROPERTY, STOCK AND BUSINESS AGENTS
(AMENDMENT) ACT 1994**

Definition

16. In this Part, "amending Act" means the Property, Stock and Business Agents (Amendment) Act 1994.

20 **Money deposited with the Council to be returned to licensees**

17. (1) As soon as practicable after the repeal of section 36E, the Council must repay all money deposited with it under section 36D to the person or firm that deposited it.

25 (2) However, if the person or firm that deposited the money is no longer a licensee, the Council must pay the money to the Treasurer for payment to the Consolidated Fund.

30 (3) The Treasurer must, on application made to the Treasurer by any person entitled to money paid into the Consolidated Fund under subclause (2), pay the money to the person.

35 (4) Despite the repeal of section 36E, the money so deposited may, pending its repayment or payment under this clause, continue to be invested as provided by subsection (3) of that section.

(5) Section 36 applies to a person or firm to which money is repaid under subclause (1).

**SCHEDULE 4—SAVINGS AND TRANSITIONAL
AMENDMENTS—*continued*****Transfer of money held in the RESC Special Account**

18. As soon as practicable (and in any case not later than 3 months) after the requirements of clause 17 (1) and (2) have been complied with, the Council must close the Real Estate Services Council Special Account. 5

Investment of money held in the Statutory Interest Account

19. Any money in the Statutory Interest Account invested under section 63D (as in force immediately before the commencement of Schedule 2 (4) to the amending Act) is taken to have been invested under that section (as in force after that commencement). 10

Claims against the fund

20. Section 74 (as in force after the commencement of Schedule 2 (7) to the amending Act) does not apply to a claim that has been barred by section 74 (as in force immediately before that commencement). 15

Restoration of licences etc.

21. Subsections (1B) and (1C) of section 23C, and subsection (3) of section 64A, extend to a licence that expired before the commencement of those subsections. 20

**PROPERTY, STOCK AND BUSINESS AGENTS
(AMENDMENT) ACT 1994 No. 20**

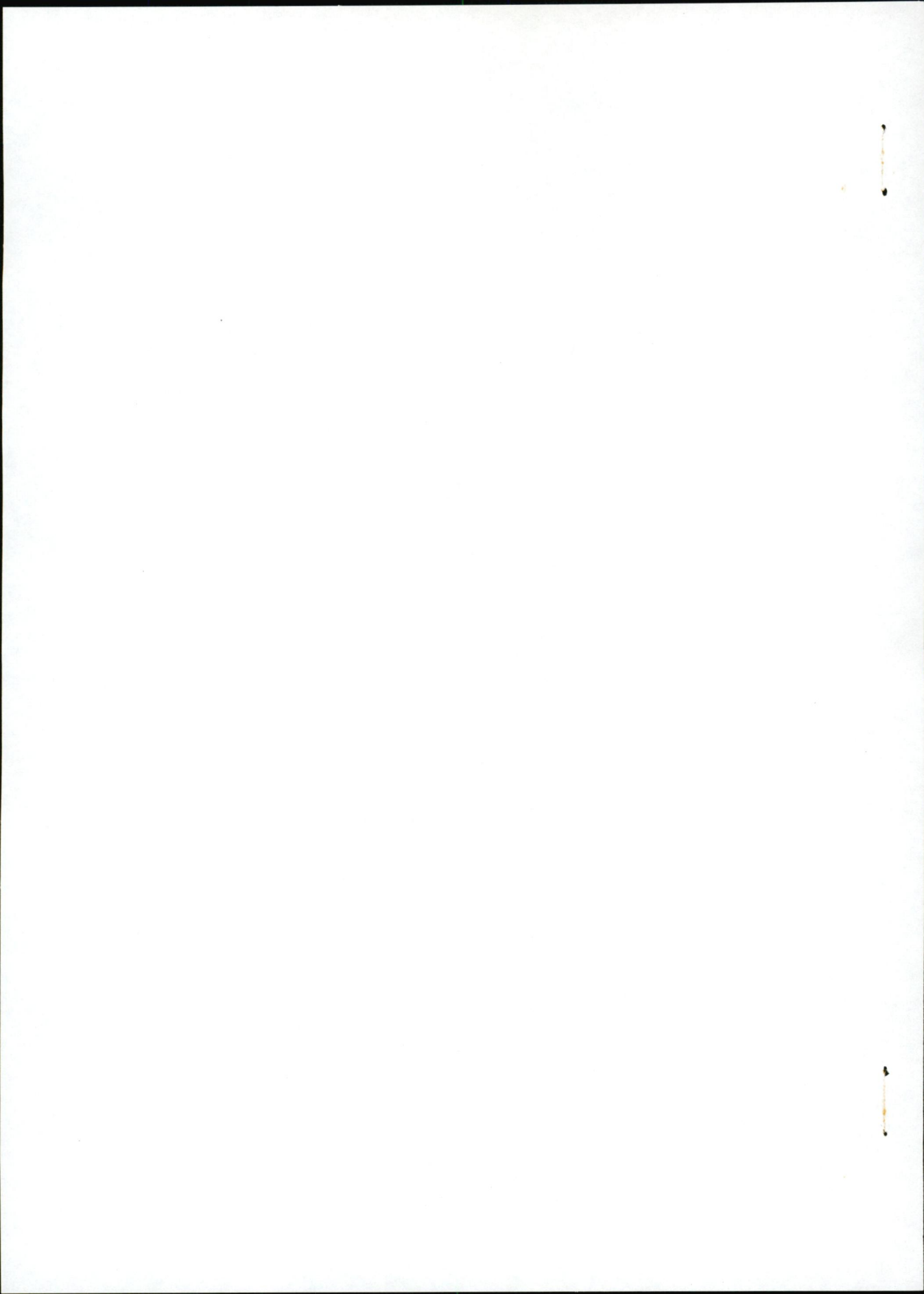
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SCHEDULE 4—SAVINGS AND TRANSITIONAL AMENDMENTS



**PROPERTY, STOCK AND BUSINESS AGENTS
(AMENDMENT) ACT 1994 No. 20**

NEW SOUTH WALES



Act No. 20, 1994

An Act to amend the Property, Stock and Business Agents Act 1941 with respect to money held in trust accounts maintained under that Act and the use of funds held in the Real Estate Services Council Statutory Interest Account; and for other purposes. [Assented to 16 May 1994]

Property, Stock and Business Agents (Amendment) Act 1994 No. 20

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Property, Stock and Business Agents (Amendment) Act 1994.

Commencement

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

Amendment of Property, Stock and Business Agents Act 1941 No. 28

3. The Property, Stock and Business Agents Act 1941 is amended as set out in Schedules 1-4.

Consequential amendment of Real Estate Services Council Act 1990 No. 14, s. 13 (Investment)

4. The Real Estate Services Council Act 1990 is amended by omitting section 13 (4).

**SCHEDULE 1—AMENDMENTS RELATING TO TRUST
ACCOUNTS ETC.**

(Sec. 3)

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

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

“Business day” means a day other than a Saturday, Sunday, public holiday or bank holiday in New South Wales.

“Prescribed financial institution” means:

- (a) a bank authorised to carry on the business of banking under a law of the Commonwealth or of a State or Territory; or
- (b) a building society, or credit union, authorised under the Trustee Act 1925 for the investment of trust funds.

“Statutory Interest Account” means the Real Estate Services Council Statutory Interest Account established under section 63B.

Property, Stock and Business Agents (Amendment) Act 1994 No. 20

SCHEDULE 1—AMENDMENTS RELATING TO TRUST
ACCOUNTS ETC.—*continued*

(2) Section 25 (**RESC Administration Account**):

From section 25 (4), omit “bank”, insert instead “prescribed financial institution operating”.

(3) Section 36 (**Money to be paid to trust account**):

(a) From section 36 (1), omit “bank”, insert instead “prescribed financial institution operating”.

(b) After section 36 (1), insert:

(1A) When opening a trust account at a prescribed financial institution for the purpose of complying with subsection (1), the licensee concerned must ensure that the institution is notified in writing that the account is a trust account required by this Act.

(1B) If money is held in a trust account in accordance with subsection (1) at the commencement of this subsection, the licensee concerned must, within 1 month after that commencement, ensure that the bank at which the account is kept is notified in writing that the account is a trust account required by this Act.

(c) From section 36 (3), omit “or section 36D”.

(d) After section 36 (3), insert:

(3A) A licensee must, within 14 days after closing a trust account, notify the Council in writing of the closure.

(3B) If at any time a trust account becomes overdrawn, the licensee concerned must, within 5 days after becoming aware of the overdrawn, notify the Council in writing of:

- (a) the name and number of the account; and
- (b) the amount by which the account is overdrawn; and
- (c) the reason for the account becoming overdrawn.

(e) From section 36 (4A), omit “bank”, insert instead “prescribed financial institution operating”.

(4) Sections 36AA, 36AB:

After section 36, insert:

Determination of trust account rate

36AA. (1) For the purposes of sections 36AB and 36AC, the Minister is required to determine from time to time, after

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consultation with the Treasurer, a trust account rate for each prescribed financial institution. The rate, which may be a fixed or variable one, is to be determined by reference to an interest rate that applies in the short term money market.

(2) As soon as practicable after determining a trust account rate for a prescribed financial institution, the Minister must:

- (a) inform the institution of the rate by notice in writing; and
- (b) publish a notice of the rate in the Gazette.

Prescribed percentage of trust account rate

36AB. (1) For the purposes of section 36AC, the prescribed percentage, in relation to money held in trust accounts kept with a prescribed financial institution under section 36 (whether opened before or after the commencement of this section), is:

- (a) during the period of 2 years beginning on the date of that commencement—25 per cent of the trust account rate relevant to the institution; and
- (b) during any subsequent period—25 per cent of that rate or such greater percentage of that rate as may be determined under subsection (2) and notified in the Gazette.

(2) For the purposes of subsection (1) (b), the Minister may, from time to time, determine a percentage greater than 25 after consultation with the Treasurer.

(5) Sections 36AC–36AF:

Before section 36A, insert:

Interest earned on trust accounts to be paid to Statutory Interest Account

36AC. (1) On the first business day after the end of each named month beginning after the commencement of this section, every prescribed financial institution must:

- (a) calculate interest on the daily balances of all money held during the month in trust accounts kept with the institution under section 36 (being trust accounts notified to the institution under that section as trust accounts required by this Act) by applying to those

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balances the prescribed percentage of the trust account rate applicable to the institution; and

(b) pay the amount of that interest to the Council for crediting to the Statutory Interest Account.

(2) A prescribed financial institution must not deduct transaction or other charges, other than statutory charges (such as bank account debits tax), from the balances referred to in subsection (1) or from an amount of interest calculated under that subsection.

(3) The Council may, by proceedings brought in a court of competent jurisdiction, recover as a debt an amount due and payable to it under this section.

Prescribed financial institutions to provide the Council with certain information

36AD. (1) Within 14 days after the end of each named month beginning after the commencement of this section, every prescribed financial institution must, by notice in writing, inform the Council of the following matters:

(a) the number of trust accounts opened with the institution during the month under section 36 (being trust accounts notified to the institution under that section as trust accounts required by this Act), the names of the licensees who opened those accounts, the names and numbers of those accounts and the addresses of the branches of that institution at which those accounts are kept;

(b) the total amount of interest that the institution paid for the month under section 36AC (1) (b).

(2) As soon as practicable (and in any case within 5 business days) after a prescribed financial institution becomes aware that a trust account kept with it under section 36 is overdrawn (being a trust account notified to the institution under that section as a trust account required by this Act), the institution must, by notice in writing, inform the Council of:

(a) the name and business address of the licensee concerned; and

(b) the name and number of the account; and

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SCHEDULE 1—AMENDMENTS RELATING TO TRUST
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(c) the amount by which the account is overdrawn.

(3) This section has effect irrespective of any other law or any rule of practice to the contrary.

Sections 36AC and 36AD not to apply to certain accounts

36AE. Sections 36AC and 36AD do not apply:

- (a) to a separate trust account kept on the instructions of a client of a licensee or a firm of licensees for the exclusive benefit of the client; or
- (b) to a trust account of a class of trust accounts prescribed by the regulations for the purposes of this section.

Offences by prescribed financial institutions

36AF. A prescribed financial institution that fails to comply with a provision of section 36AC or 36AD is guilty of an offence against this Act.

(6) Section 36C (**Disposal of unclaimed money in trust accounts**):

- (a) From section 36C (1) and (2) (a), omit “into the Consolidated Fund” wherever occurring, insert instead “to the Council”.
- (b) From section 36C (2) (b), omit “the Treasurer”, insert instead “the Council”.
- (c) After section 36C (2), insert:

(2A) The Council must pay any money received by it under subsection (2) into the fund.

(2B) Within 2 months after the end of each year, the Council must pay into the Consolidated Fund all money received by it and paid into the fund during that year. When the Council makes that payment, it must give the Treasurer a statement containing the following particulars:

- (a) the name and last known address of each person for whom or on whose behalf the money received by the Council was held;
- (b) the amount held in respect of each such person;
- (c) the date of gazettal of the notice under subsection (1)
 - (b) in respect of that money;

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- (d) the name and address of each licensee who furnished a statement to the Council under section 36A or 36B in respect of that money.
- (d) After section 36C (3), insert:
- (4) If an application for the payment of money to which a person is entitled is made while the money is held in the fund, the Council must pay the money to the person from the fund.
- (7) Section 36D (**Licensees to deposit part of trust account with the Council**), section 36E (**Moneys deposited by licensee or firm with Council to be invested etc.**):
- Omit the sections.
- (8) Section 36F (**Real Estate Services Council Special Account**):
- Omit the section.
- (9) Section 37:
- Omit the section, insert instead:
- Prescribed financial institutions to be relieved from liability in certain cases**
37. (1) A prescribed financial institution:
- (a) does not incur liability, and is not obliged to make inquiries, in relation to any transaction concerning an account of a licensee kept with the institution or with some other financial institution; and
- (b) is, in relation to any such transaction, taken not to have any knowledge of a right of any person to money credited to such an account,
- unless it would incur such a liability, be obliged to make such inquiries or be taken to have that knowledge in relation to an account kept with it in respect of a person absolutely entitled to the money held in that account. This subsection is subject to section 36AD.
- (2) Subsection (1) does not relieve a prescribed financial institution from any liability or obligation that it would have apart from this Act.
- (3) A prescribed financial institution at which a licensee keeps an account for clients' money does not, as regards any

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liability that the licensee has to the institution (not being a liability relating to that account), have a right to any of the money held in that account, whether by way of set-off, counterclaim, charge or otherwise.

(10) Section 38A (**Furnishing of particulars of trust account or transactions**):

From section 38A (1) (a), omit “bank”, insert instead “prescribed financial institution”.

(11) Section 38B (**Inspection of records**):

(a) From section 38B (2) (b), omit “bankers”, insert instead “financial institutions”.

(b) From section 38B (2AB) (b), omit “bankers”, insert instead “financial institutions”.

(c) From section 38B (2A), omit “a banker with whom”, insert instead “a prescribed financial institution with which”.

(d) From section 38B (2A) (a) (iii), omit “the banker in accordance with subsection (2)”, insert instead “the institution in accordance with subsection (2) or (2AB)”.

(e) From section 38B (2A) (b), omit “that banker”, insert instead “the institution”.

(f) From section 38B (2A) (b), omit “the bank”, insert instead “the institution”.

(12) Section 63B (**Statutory Interest Account**):

(a) From section 63B (1), omit “(which is in this Part referred to as ‘the Statutory Interest Account’)”.

(b) From section 63B (2), omit “bank”, insert instead “prescribed financial institution operating”.

(13) Section 63C:

Omit the section, insert instead:

Money in the Statutory Interest Account

63C. There is to be paid to the credit of the Statutory Interest Account any money that is required or permitted to be paid to the credit of that Account, whether by this Act or any other Act.

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**SCHEDULE 1—AMENDMENTS RELATING TO TRUST
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(14) Section 83A (**Definitions**):

From the definition of “Money”, omit “bank”, insert instead “financial institution”.

(15) Section 83F (**Receiver may forbid withdrawal of moneys from financial institution**):

(a) From section 83F (1), omit “bank account”, insert instead “account kept with a financial institution”.

(b) From section 83F (1), omit “the bank”, insert instead “the institution”.

(c) From section 83F (2) and (3), omit “bank” wherever occurring, insert instead “financial institution”.

**SCHEDULE 2—AMENDMENTS RELATING TO THE
STATUTORY INTEREST ACCOUNT AND THE
COMPENSATION FUND**

(Sec. 3)

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

In section 3 (1), before the definition of “Auctioneer”, insert:

“**Administration Account**” means the Real Estate Services Council Administration Account established under section 25.

(2) Section 25 (**RESC Administration Account**):

(a) At the end of section 25 (4) (c), insert:

; and

(d) money transferred to the account from the Statutory Interest Account.

(b) From section 25 (5), omit “Account”, insert instead “Administration Account”.

(c) Omit section 25 (6).

(3) Section 57 (**Procedure**):

From section 57 (10), omit “Real Estate Services Council”.

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SCHEDULE 2—AMENDMENTS RELATING TO THE
STATUTORY INTEREST ACCOUNT AND THE COMPENSATION
FUND—*continued*

(4) Section 63D:

Omit the section, insert instead:

Application of money in the Statutory Interest Account

63D. (1) The Council may apply money held in the Statutory Interest Account for all or any of the following purposes:

- (a) supplementing the fund by such amount as may be needed to enable the current liabilities of the fund to be met;
- (b) meeting costs incurred by persons or organisations in conducting courses of study the successful completion of which is a pre-requisite to persons becoming licensees or being registered as real estate salespersons, business salespersons, stock and station salespersons, trainee managing agents or practising, non-practising or associate real estate valuers;
- (c) meeting costs incurred by persons or organisations in providing professional development or other educational programs approved by the Council;
- (d) providing grants or loans to persons or organisations to enable them to carry out capital works so that those courses and educational programs can be provided;
- (e) meeting costs incurred in conducting lectures, seminars, courses of study and educational programs organised by or for the Council;
- (f) meeting the cost of evaluating courses of study and educational programs referred to in this subsection and of developing educational standards relating to the conduct of those courses and programs;
- (g) meeting the cost of providing the public information and guidance programs referred to in section 10 (1) (c) of the Real Estate Services Council Act 1990;
- (h) meeting costs involved in establishing a scheme under which the conduct or provision of real estate services in New South Wales can be jointly regulated by the Council, the Government and organisations representing licensees and registered valuers;

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SCHEDULE 2—AMENDMENTS RELATING TO THE
STATUTORY INTEREST ACCOUNT AND THE COMPENSATION
FUND—*continued*

- (i) meeting costs involved in establishing a disciplinary tribunal, or some other body, to deal with complaints concerning the conduct of licensees, registered real estate salespersons, registered business salespersons, registered stock and station salespersons, trainee managing agents or registered valuers;
- (j) meeting costs involved in establishing a scheme for resolving disputes arising between licensees, registered real estate salespersons, registered business salespersons, registered stock and station salespersons, trainee managing agents or registered valuers and their clients in connection with the provision of real estate services;
- (k) meeting any deficiency that has occurred in the Administration Account;
 - (l) meeting the cost of administering this Part.
 - (2) The Council may apply money under this section only with the consent of the Minister.
 - (3) The Council must:
 - (a) transfer to the fund money applied for the purpose specified in subsection (1) (a); and
 - (b) transfer to the Administration Account money applied for any of the purposes specified in subsection (1) (k) and (l).
 - (4) The Council may, in accordance with section 13 of the Real Estate Services Council Act 1990, invest money held in the Statutory Interest Account and not immediately required for the purposes of the Account.
 - (5) Nothing in this section limits the operation of sections 63E–63G.
- (5) Section 66 (**Fund moneys to be held in a separate account kept with a prescribed financial institution**):
Omit “bank”, insert instead “prescribed financial institution operating”.
- (6) Section 67 (**Composition of the fund**):
From section 67 (b1), omit “Real Estate Services Council”.

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SCHEDULE 2—AMENDMENTS RELATING TO THE
STATUTORY INTEREST ACCOUNT AND THE COMPENSATION
FUND—*continued*

(7) Section 74 (**Application of fund**):

- (a) From section 74 (2), omit “6”, insert instead “12”.
(b) After section 74 (2), insert:

(2A) Despite subsection (2), a claim caused by a failure of a licensee (or any employee or agent of a licensee) to lodge a rental bond with the Rental Bond Board may also be made at any time within 1 year after the termination of the tenancy agreement.

(8) Section 92 (**Regulations**):

Omit section 92 (2) (g) and (h).

SCHEDULE 3—AMENDMENTS RELATING TO LICENCES

(Sec. 3)

(1) Section 23A (**Restoration of licence by the General Manager**):

After section 23A (1), insert:

(1A) If the application for restoration of a licence is made less than 7 days after the expiration of the licence, the General Manager may waive the payment of the prescribed late fee.

(2) Section 23C (**Effect of decision on application for restoration of licence**):

After section 23C (1A), insert:

(1B) Anything done (other than the commission of an offence under section 20) between:

- (a) the expiration of a licence; and
(b) the dismissal of an application duly made for the restoration of the licence,

by the person whose licence had expired is taken to have been done while the person was the holder of the licence.

(1C) For the purposes of subsection (1B), if the Local Court dismisses an application for the restoration of a licence and an appeal is duly lodged against the Court’s decision, the application is dismissed when the appeal is dismissed or withdrawn.

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SCHEDULE 3—AMENDMENTS RELATING TO LICENCES—
continued

(3) Section 64A (**Definitions**):

After section 64A (2), insert:

(3) For the purposes of the definition of “failure to account” in subsection (1), it does not matter that the failure to account occurred after the licensee ceased to be licensed if the money or other valuable property concerned was entrusted to the person (or the person’s employee or agent) before the person ceased to be licensed.

**SCHEDULE 4—SAVINGS AND TRANSITIONAL
AMENDMENTS**

(Sec. 3)

(1) Schedule 2:

Before clause 1, insert:

PART 1—GENERAL

Regulations

1A. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

the Auctioneers and Agents (Amendment) Act 1992;
the Property, Stock and Business Agents (Amendment) Act 1994.

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect as from the date of assent to the Act concerned or a later date.

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication;
or

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SCHEDULE 4—SAVINGS AND TRANSITIONAL
AMENDMENTS—*continued*

- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

**PART 2—PROVISIONS CONSEQUENTIAL ON THE
AUCTIONEERS AND AGENTS (AMENDMENT)
ACT 1992**

- (2) Schedule 2, clauses 1, 4 (3), 8, 9:

Omit “Schedule” wherever occurring, insert instead “Part”.

- (3) Schedule 2, Part 3:

After clause 15, insert:

**PART 3—PROVISIONS CONSEQUENTIAL ON THE
PROPERTY, STOCK AND BUSINESS AGENTS
(AMENDMENT) ACT 1994**

Definition

16. In this Part, “**amending Act**” means the Property, Stock and Business Agents (Amendment) Act 1994.

Money deposited with the Council to be returned to licensees

17. (1) As soon as practicable after the repeal of section 36E, the Council must repay all money deposited with it under section 36D to the person or firm that deposited it.

(2) However, if the person or firm that deposited the money is no longer a licensee, the Council must pay the money to the Treasurer for payment to the Consolidated Fund.

(3) The Treasurer must, on application made to the Treasurer by any person entitled to money paid into the Consolidated Fund under subclause (2), pay the money to the person.

(4) Despite the repeal of section 36E, the money so deposited may, pending its repayment or payment under this clause, continue to be invested as provided by subsection (3) of that section.

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SCHEDULE 4—SAVINGS AND TRANSITIONAL
AMENDMENTS—*continued*

(5) Section 36 applies to a person or firm to which money is repaid under subclause (1).

Transfer of money held in the RESC Special Account

18. As soon as practicable (and in any case not later than 3 months) after the requirements of clause 17 (1) and (2) have been complied with, the Council must close the Real Estate Services Council Special Account.

Investment of money held in the Statutory Interest Account

19. Any money in the Statutory Interest Account invested under section 63D (as in force immediately before the commencement of Schedule 2 (4) to the amending Act) is taken to have been invested under that section (as in force after that commencement).

Claims against the fund

20. Section 74 (as in force after the commencement of Schedule 2 (7) to the amending Act) does not apply to a claim that has been barred by section 74 (as in force immediately before that commencement).

Restoration of licences etc.

21. Subsections (1B) and (1C) of section 23C, and subsection (3) of section 64A, extend to a licence that expired before the commencement of those subsections.

[*Minister's second reading speech made in—
Legislative Assembly on 17 March 1994
Legislative Council on 4 May 1994*]

