

**Legislative Council—No 203A**

As reported with an amendment, report adopted, Standing Orders suspended and passed remaining stages, 3 August 2017

South Australia

**Land and Business (Sale and Conveyancing)  
(Beneficial Interest) Amendment Bill 2017**

A BILL FOR

An Act to amend the *Land and Business (Sale and Conveyancing) Act 1994*.

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**The Parliament of South Australia enacts as follows:**

### Part 1—Preliminary

#### 1—Short title

- 5 This Act may be cited as the *Land and Business (Sale and Conveyancing) (Beneficial Interest) Amendment Act 2017*.

#### 2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

#### 3—Amendment provisions

- 10 In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

### Part 2—Amendment of *Land and Business (Sale and Conveyancing) Act 1994*

#### 4—Amendment of section 24G—Restriction on obtaining beneficial interest in selling or appraising property

- 15 (1) Section 24G(1), (2), penalty provisions—delete the penalty provisions and substitute in each case:
  - Maximum penalty:
    - 20 (a) in the case of an aggravated offence—\$100 000 or imprisonment for 2 years;
    - (b) in any other case—\$50 000 or imprisonment for 1 year.

(2) Section 24G—after subsection (2) insert:

(2a) If an agent is authorised by a person (the *vendor*) to sell land or a business, the following persons must not obtain, or be in any way concerned in obtaining, a beneficial interest in the land or business:

- 5                   (a) a natural person who is responsible for managing or supervising the agent's business (including, but not limited to, a natural person referred to in section 10 of the *Land Agents Act 1994*, in relation to that business);
- 10                   (b) a natural person who is responsible for managing or supervising 1 or more places of business of the agent at which any of the negotiations, administration or other functions relating to the sale are conducted by employees of the agent or persons otherwise engaged by the agent (including, but not limited to, a natural person referred to in
- 15                   section 11 of the *Land Agents Act 1994*, in relation to that place of business);
- (c) in the case of an agent that is a body corporate—a director of the body corporate (within the meaning of the *Land Agents Act 1994*).

20                   Maximum penalty:

- (a) in the case of an aggravated offence—\$100 000 or imprisonment for 2 years;
- (b) in any other case—\$50 000 or imprisonment for 1 year.

(3) Section 24G(3), penalty provision—delete the penalty provision and substitute:

25                   Maximum penalty:

- (a) in the case of an aggravated offence—\$100 000 or imprisonment for 2 years;
- (b) in any other case—\$50 000 or imprisonment for 1 year.

(4) Section 24G(4)—delete "A person" and substitute:

30                   Subject to subsection (10a), a person

(5) Section 24G(6)—after "person" first occurring insert:

(being an agent, sales representative, natural person, or director of a body corporate, to whom a preceding subsection applies)

(6) Section 24G(9), penalty provision—delete the penalty provision and substitute:

35                   Maximum penalty:

- (a) in the case of an aggravated offence—\$20 000;
- (b) in any other case—\$10 000.

(7) Section 24G—after subsection (10) insert:

(10a) In this section, an offence relating to the obtaining of a beneficial interest is an **aggravated offence** if it is proved that, at the time the beneficial interest was obtained, the vendor or any of the vendors were—

- (a) 70 years of age or over; or
- (b) protected persons within the meaning of the *Guardianship and Administration Act 1993*; or
- (c) suffering from a mental incapacity,

(regardless of whether they were represented by another person during any of the negotiations giving rise to the obtaining of the beneficial interest).

(10b) In proceedings, a certificate in the form prescribed by regulation signed by a medical practitioner stating that, in the opinion of the medical practitioner, a specified person was or was not suffering from a mental incapacity at a specified time, will, in the absence of proof to the contrary, be evidence of the facts so stated.

(8) Section 24G(11), definition of **associate**—delete the definition and substitute:

**associate**, of a person, means—

- (a) —
  - (i) a relative of the person or of the person's spouse or domestic partner; or
  - (ii) an employee, employer or partner of the person; or
  - (iii) a relative of an employee of the person; or
  - (iv) a body corporate if any of the following persons:
    - (A) the person;
    - (B) a relative of the person or of the person's spouse or domestic partner;
    - (C) an employee of the person;
    - (D) 2 or more of the above persons together,have a relevant interest or relevant interests in shares in the body corporate the nominal value of which is 10% or more of the nominal value of the issued share capital of the body corporate; or
  - (v) a body corporate if a director of the body corporate is—
    - (A) a relative of the person or of the person's spouse or domestic partner; or
    - (B) an employee of the person; or
  - (vi) the trustee of a trust if any of the following are beneficiaries of the trust:

- (A) the person;
- (B) a relative of the person or of the person's spouse or domestic partner;
- (C) an employee of the person;
- (D) a body corporate referred to in subparagraph (iv) or (v); or

(vii) a person who has a relationship with the person (whether or not similar to the relationships referred to in the preceding paragraphs) of a kind prescribed by the regulations for the purposes of this section; or

(b) in addition—

- (i) in the case of a natural person referred to in subsection (2a)(a)—a relative of an employee of the relevant agent; or
- (ii) in the case of a natural person referred to in subsection (2a)(b)—a relative of a person employed at the relevant place or places of business of the agent;

(9) Section 24G(11)—after the definition of *domestic partner* insert:

*medical practitioner* means a person registered under the *Health Practitioner Regulation National Law* to practise in the medical profession (other than as a student);

(10) Section 24G(11), definition of *relative*—delete the definition and substitute:

*relative* of a person means—

- (a) the spouse or domestic partner of the person; or
- (b) a parent (including a step-parent), grandparent (including a step-grandparent) or remoter linear ancestor of the person; or
- (c) a child (including a step-child) or remoter issue of the person; or
- (d) a sibling (including a step-sibling or half-sibling) of the person;

## 5—Insertion of section 39

After section 38 insert:

### 39—Offences by bodies corporate

Where a body corporate is guilty of an offence against this Act, each director of the body corporate is guilty of an offence and liable to the same penalty as is imposed for the principal offence unless it is proved that the director could not by the exercise of reasonable diligence have prevented the commission of that offence.

## **6—Amendment of section 40—Prosecutions**

Section 40(1)(b)—delete paragraph (b) and substitute:

- (b) in any other case—within 5 years of the date on which the offence is alleged to have been committed or, with the authorisation of the Minister, at a later time within 7 years of that date.

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