

Legislative Council—No 92

As received from the House of Assembly and read a first time, 13 March 2007

South Australia

Statutes Amendment (Real Estate Industry Reform) Bill 2006

A BILL FOR

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

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Amendment provisions

Part 2—Amendment of *Conveyancers Act 1994*

- 4 Amendment of section 7—Entitlement to be registered
- 5 Amendment of section 14—Interpretation of Part 4
- 6 Amendment of section 31—Indemnity fund
- 7 Amendment of section 32—Claims on indemnity fund
- 8 Amendment of section 34—Establishment and determination of claims
- 9 Amendment of section 45—Cause for disciplinary action

Part 3—Amendment of *Land Agents Act 1994*

- 10 Amendment of section 3—Interpretation
- 11 Amendment of section 6—Agents to be registered
- 12 Insertion of sections 6A and 6B
 - 6A Sales representatives to be registered
 - 6B Auctioneers to be registered
- 13 Amendment of section 7—Application for registration
- 14 Amendment of section 8—Entitlement to be registered as agent
- 15 Substitution of section 8A
 - 8A Entitlement to be registered as sales representative
 - 8B Entitlement to be registered as sales representative subject to conditions relating to training and supervision
 - 8C Entitlement to be registered as auctioneer
 - 8D Appeals
 - 8E Power of Commissioner to require photograph and information
- 16 Amendment of section 9—Duration of registration and annual fee and return
- 17 Substitution of section 11
 - 11 Each of agent's places of business to be properly managed and supervised
 - 11A Regulations relating to proper management and supervision
 - 11B Registration card to be carried or displayed
- 18 Amendment of section 12—Interpretation of Part 3
- 19 Amendment of section 22—Audit of trust accounts
- 20 Amendment of section 29—Indemnity fund
- 21 Amendment of section 30—Claims on indemnity fund
- 22 Amendment of section 32—Establishment and determination of claims
- 23 Amendment of section 42—Interpretation of Part 4
- 24 Substitution of section 43
 - 43 Cause for disciplinary action against agents or sales representatives
- 25 Amendment of section 47—Disciplinary action
- 26 Insertion of section 48A
 - 48A Advertisements to include registration number of agent
- 27 Amendment of section 52—Register
- 28 Amendment of section 62—Evidence
- 29 Amendment of section 63—Service of documents
- 30 Amendment of section 65—Regulations

Part 4—Amendment of *Land and Business (Sale and Conveyancing) Act 1994*

- 31 Amendment of section 3—Interpretation
- 32 Amendment of section 4—Meaning of small business
- 33 Amendment of section 5—Cooling-off
- 34 Amendment of section 6—Abolition of instalment purchase or rental purchase arrangements
- 35 Amendment of section 7—Particulars to be supplied to purchaser of land before settlement
- 36 Amendment of section 8—Particulars to be supplied to purchaser of small business before settlement
- 37 Amendment of section 9—Verification of vendor's statement
- 38 Amendment of section 13—False certificate
- 39 Insertion of section 13A
 - 13A Prescribed notice to be given to purchaser
- 40 Amendment of section 14—Offence to contravene Part
- 41 Amendment of section 17—Service of vendor's statement etc
- 42 Amendment of section 19—Inducement to buy subdivided land
- 43 Substitution of Part 4

Part 4—Special requirements relating to agents and sales representatives

- 20 Authority to act as agent
- 21 Requirements relating to offers to purchase residential land
- 22 Person signing document to be given copy
- 23 Agent not to receive commission if contract avoided or rescinded
- 24 Agent not to lodge caveat for sums owing by client
- 24A Representations as to likely selling price in marketing residential land
- 24B Financial and investment advice
- 24C Agent to disclose certain benefits connected with sale or purchase
- 24D Agent not to retain benefits in respect of services associated with sale or purchase of residential land
- 24E Agent not to act for both purchaser and vendor of land or business
- 24F Restriction on obtaining beneficial interest where agent authorised to sell or appraises property
- 24G Agent not to pay commission except to officers or employees or another agent

Part 4A—Auctions

- 24H Standard conditions for auctions of residential land
- 24I Preliminary actions and records required for auctions of residential land
- 24J Registered bidders only at auctions of residential land
- 24K Collusive practices at auctions of land or businesses
- 24L Dummy bidding prohibited at auctions of land or businesses
- 24M When vendor bid by auctioneer permitted
- 24N Last vendor bid must be identified if property passed in
- 44 Amendment of section 26—Interpretation of Part 5
- 45 Amendment of section 27—Preparation of conveyancing instrument for fee or reward
- 46 Amendment of section 28—Preparation of conveyancing instrument by agent or related person
- 47 Amendment of section 29—Procuring or referring conveyancing business
- 48 Amendment of section 30—Conveyancer not to act for both parties unless authorised by regulations
- 49 Amendment of section 33—No exclusion etc of rights conferred or conditions implied or applied by Act
- 50 Amendment of section 36—False or misleading representation
- 51 Insertion of sections 37, 37A and 37B
 - 37 Signing on behalf of agent
 - 37A Keeping of records
 - 37B General defence

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Statutes Amendment (Real Estate Industry Reform) Act 2006*.

5 **2—Commencement**

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

3—Amendment provisions

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

10 **Part 2—Amendment of *Conveyancers Act 1994***

4—Amendment of section 7—Entitlement to be registered

(1) Section 7(1)—after paragraph (e) insert:

and

(f) is a fit and proper person to be registered as a conveyancer.

15 (2) Section 7(2)—after paragraph (b) insert:

and

(c) each director of the company is a fit and proper person to be the director of a company that is registered as a conveyancer.

5—Amendment of section 14—Interpretation of Part 4

20 Section 14(1), definition of *auditor*—delete "*Corporations Law*" and substitute:

Corporations Act 2001 of the Commonwealth;

6—Amendment of section 31—Indemnity fund

(1) Section 31(1)(b)—delete "from a conveyancer in relation to the conveyancer's default" and substitute:

25 in relation to a fiduciary default

(2) Section 31(2)(a)—delete paragraph (a) and substitute:

(a) the costs of investigating compliance with this Act or possible misconduct of conveyancers;

30 (ab) the costs of conciliating disputes relating to the activities of conveyancers;

(ac) the costs of disciplinary proceedings under Part 5;

7—Amendment of section 32—Claims on indemnity fund

Section 32(1) and (2)—delete subsections (1) and (2) and substitute:

(1) A person who has suffered a pecuniary loss as a result of a fiduciary default may make a claim for compensation to the Commissioner.

(2) The amount of the claim cannot exceed the sum of—

(a) the actual pecuniary loss suffered by the claimant in consequence of the fiduciary default; and

(b) any reasonable legal expenses incurred in taking action to recover the loss or in making the claim to the Commissioner,

less any amount that the claimant has received or may reasonably be expected to recover (apart from this Division) in reduction of the loss.

8—Amendment of section 34—Establishment and determination of claims

(1) Section 34(1)—after "Commissioner" insert:

in a manner and form determined by the Commissioner

(2) Section 34(1)—after subsection (1) insert:

(1a) The Commissioner may require a person making a claim—

(a) to furnish further information specified by the Commissioner;

(b) to verify, by statutory declaration, information furnished for the purposes of making or establishing a claim.

(3) Section 34(2)(a)—delete paragraph (a) and substitute:

(a) give the claimant and the conveyancer or former conveyancer concerned notice of the claim in accordance with the regulations; and

(4) Section 34(3)—delete subsection (3) and substitute:

(3) The Commissioner may do any 1 or more of the following in response to the claim:

(a) require the claimant to take specified action to recover the loss (and postpone determination of the claim);

(b) determine the claim and, if appropriate, make a payment to the claimant from the indemnity fund;

(c) require the claimant to make contractual undertakings as to the assistance that the claimant must give the Commissioner in any action taken by the Commissioner to recover the loss.

5 (4) In deciding whether to require the claimant to take action to recover the loss, and in deciding what action the claimant should be required to take to recover the loss, the Commissioner is to consider the size of the claim, the complexity of the case, the claimant's financial circumstances, the claimant's mental or physical health or capacity and any other factors that the Commissioner considers relevant.

(5) The Commissioner must—

10 (a) keep the claimant informed of the progress of the claim in accordance with the regulations; and

(b) on making a determination on a claim, give the claimant and the conveyancer or former conveyancer written notice of the determination.

9—Amendment of section 45—Cause for disciplinary action

Section 45(1)(d)—delete paragraph (d) and substitute:

15 (d) events have occurred such that the conveyancer would not be entitled to be registered as a conveyancer if the conveyancer were to apply for registration.

Part 3—Amendment of *Land Agents Act 1994*

10—Amendment of section 3—Interpretation

20 (1) Section 3—after the definition of *agent* insert:

authorised officer means an authorised officer under the *Fair Trading Act 1987*;

(2) Section 3, definition of *sales representative*—delete the definition and substitute:

25 *registered agent* includes a person registered as an agent and additionally registered as an auctioneer;

registered sales representative includes a person registered as a sales representative and additionally registered as an auctioneer;

sales representative means a person who, for or on behalf of an agent—

30 (a) acquires or disposes of land or a business (including by conducting an auction); or

(b) induces or attempts to induce, or makes representations or negotiates with a view to inducing, a person—

(i) to acquire or dispose of land or a business; or

(ii) to make an offer to acquire or dispose of land or a business;
or

35 (iii) to accept an offer to acquire or dispose of land or a business;
or

(iv) to enter into a contract for the acquisition or disposal of land or a business; or

- (c) performs a function of a kind prescribed by regulation for the purposes of this paragraph,

whether or not the agent is the owner of the land or business, but does not include a person only because—

- (d) the person does anything referred to in any of the preceding paragraphs in relation to a lease of land that is not to be used for the purposes of a business; or
- (e) the person performs a function of a kind prescribed by regulation for the purposes of this paragraph;

11—Amendment of section 6—Agents to be registered

Section 6(1)—after "registered" insert:

as an agent

12—Insertion of sections 6A and 6B

After section 6 insert:

6A—Sales representatives to be registered

- (1) A person must not act as a sales representative for an agent unless the person—
 - (a) is registered as an agent under this Act; or
 - (b) is registered as a sales representative under this Act and is acting as an employee engaged by the agent under a contract of service.

Maximum penalty: \$5 000.

- (2) For the purposes of subsection (1), a person acts as a sales representative for an agent if the person—
 - (a) is or remains in the service of the agent as a sales representative; or
 - (b) holds himself or herself out as a sales representative for the agent; or
 - (c) performs any of the functions of a sales representative on behalf of the agent.

- (3) An agent must not engage another person to perform any of the functions of a sales representative in the course of the agent's business unless the other person—
 - (a) is registered as an agent under this Act; or
 - (b) is registered as a sales representative under this Act and is engaged by the agent as an employee under a contract of service.

Maximum penalty: \$20 000.

6B—Auctioneers to be registered

(1) A person must not conduct an auction in the course of that person's or some other person's business as an agent, or hold himself or herself out as being authorised to conduct such an auction, unless—

5 (a) the person is registered under this Act as an agent and is additionally registered as an auctioneer or is registered as a sales representative and is additionally registered as an auctioneer; or

10 (b) the auction is conducted through the instrumentality of a person who is registered under this Act as an agent and is additionally registered as an auctioneer or is registered as a sales representative and is additionally registered as an auctioneer.

Maximum penalty: \$5 000.

15 (2) An agent must not engage another person to conduct an auction in the course of the agent's business unless the other person—

(a) is registered under this Act as an agent and is additionally registered as an auctioneer; or

20 (b) is registered under this Act as a sales representative and is additionally registered as an auctioneer and is engaged by the agent as an employee under a contract of service.

Maximum penalty: \$20 000.

13—Amendment of section 7—Application for registration

Section 7—after subsection (2) insert:

25 (2a) Proof of registration granted to a natural person will include a registration card that bears a photograph of the person and has been issued to the person by the Commissioner; consequently the Commissioner may require an applicant for registration who is a natural person—

30 (a) to attend at a specified place for the purpose of having the applicant's photograph taken; or

(b) to supply the Commissioner with 1 or more photographs of the applicant as specified by the Commissioner.

14—Amendment of section 8—Entitlement to be registered as agent

35 (1) Section 8(1)—after paragraph (e) insert:

and

(f) is a fit and proper person to be registered as an agent.

(2) Section 8(2)—after paragraph (b) insert:

and

40 (c) each director of the body corporate is a fit and proper person to be the director of a body that is registered as an agent.

15—Substitution of section 8A

Section 8A—delete the section and substitute:

8A—Entitlement to be registered as sales representative

A natural person is entitled to be registered as a sales representative if the person—

- (a) has—
 - (i) the qualifications required by regulation; or
 - (ii) subject to the regulations, the qualifications that the Commissioner considers appropriate; and
- (b) has not—
 - (i) been convicted of an indictable offence of dishonesty; or
 - (ii) during the period of 10 years preceding the application for registration, been convicted of a summary offence of dishonesty; and
- (c) is not suspended or disqualified from practising or carrying on an occupation, trade or business under a law of this State, the Commonwealth, another State or a Territory of the Commonwealth; and
- (d) is a fit and proper person to be registered as a sales representative.

8B—Entitlement to be registered as sales representative subject to conditions relating to training and supervision

- (1) Despite section 8A, a natural person who does not have the qualifications required by that section, but would otherwise be entitled to be registered as a sales representative, is entitled to be registered as a sales representative if—
 - (a) the registration is made subject to conditions considered appropriate by the Commissioner relating to training to be undertaken by the person for the purpose of qualifying for unconditional registration as a sales representative; and
 - (b) the Commissioner does not consider that such registration should be refused because of previous failure by the applicant to comply with a condition referred to in paragraph (a).
- (2) The Commissioner may, on application by the person and payment of the prescribed fee, or on the Commissioner's own initiative, by written notice, vary or revoke conditions of a person's registration under this section.

- (3) An agent who employs as a sales representative a person registered under this section must ensure that the person is properly supervised in that employment.

Maximum penalty: \$5 000.

- (4) Without limiting the effect of subsection (3), the regulations may provide that a sales representative will not be taken to be properly supervised for the purposes of that subsection unless certain practices specified in the regulations are followed.

- (5) The Commissioner may, by written notice, cancel the registration of a person registered under this section if the Commissioner is satisfied that the person has, without reasonable excuse, failed to comply with a condition of the registration.

8C—Entitlement to be registered as auctioneer

A natural person is entitled to be registered as an auctioneer if the person—

- (a) is registered as an agent or sales representative under this Act; and
- (b) has—
 - (i) the qualifications required by regulation; or
 - (ii) subject to the regulations, the qualifications that the Commissioner considers appropriate.

8D—Appeals

- (1) An applicant for registration may appeal to the Court against a decision of the Commissioner refusing the application.
- (2) Subject to subsection (4), an appeal must be instituted within 1 month of the making of the decision appealed against.
- (3) The Commissioner must, if so required by the applicant, state in writing the reasons for the Commissioner's decision to refuse the application.
- (4) If the reasons of the Commissioner are not given in writing at the time of making the decision and the applicant (within 1 month of the making of the decision) requires the Commissioner to state the reasons in writing, the time for instituting an appeal runs from the time at which the applicant receives the written statement of those reasons.

8E—Power of Commissioner to require photograph and information

The Commissioner may, by notice in writing, require a natural person who is registered under this Act, within a time fixed by the notice (which may not be less than 28 days after service of the notice)—

- (a) at least once in every 10 years—

(i) to attend at a specified place for the purpose of having the person's photograph taken; or

(ii) to supply the Commissioner with 1 or more photographs of the person as specified by the Commissioner; and

(b) not more than once in each year—to provide the Commissioner with such evidence as the Commissioner thinks appropriate as to the identity, age and address of the person.

16—Amendment of section 9—Duration of registration and annual fee and return

(1) Section 9(1)—delete "Registration remains" and substitute:

A person's registration remains

(2) Section 9(1)(b)—delete "registered agent dies or, in the case of a registered" and substitute:

person dies or, in the case of a

(3) Section 9(2)—delete "agent" and substitute:

person

(4) Section 9(3)—delete "registered agent" and substitute:

person

(5) Section 9(3)—delete "the agent" and substitute:

the person

(6) Section 9(4)—delete "agent" and substitute:

person

(7) Section 9(4)—delete "agent's" and substitute:

person's

(8) Section 9(5)—delete "agent" and substitute:

person

(9) Section 9(5)—delete "agent's" and substitute:

person's

(10) Section 9(6)—delete "agent" and substitute:

person

(11) Section 9(7), definition of *registered agent*—delete the definition and substitute:

registered person includes a person whose registration has been suspended.

17—Substitution of section 11

Section 11—delete the section and substitute:

11—Each of agent's places of business to be properly managed and supervised

5 A registered agent must ensure that each place of business of the agent is properly managed and supervised by a registered agent who is a natural person.

Maximum penalty: \$20 000.

11A—Regulations relating to proper management and supervision

10 Without limiting the effect of section 10 or 11, the regulations may provide that a registered agent will not be taken to properly manage and supervise a business or place of business for the purposes of section 10 or 11 unless the agent follows practices specified in the regulations.

11B—Registration card to be carried or displayed

15 A natural person who is registered under this Act must, at all times when performing functions as an agent or sales representative, carry the registration card issued to him or her by the Commissioner and produce it forthwith if requested to do so by—

- 20
- (a) an authorised officer; or
 - (b) a person with whom the person has dealings as an agent or sales representative.

Maximum penalty: \$1 250.

25 Expiation fee: \$160.

18—Amendment of section 12—Interpretation of Part 3

Section 12(1), definition of *auditor*—delete the definition and substitute:

auditor means—

- 30
- (a) a registered company auditor within the meaning of the *Corporations Act 2001* of the Commonwealth; or
 - (b) a person who meets the requirements prescribed by regulation for the purposes of this definition;

19—Amendment of section 22—Audit of trust accounts

Section 22(1)(a)—delete paragraph (a) and substitute:

- 35
- (a) ensure that the accounts and records kept under this Division are audited by an auditor in respect of each audit period specified by regulation in accordance with the requirements prescribed by regulation; and

20—Amendment of section 29—Indemnity fund

- (1) Section 29(3)(c)—delete "from an agent in relation to the agent's default" and substitute:

in relation to a fiduciary default

- (2) Section 29(4)(a)—delete paragraph (a) and substitute:

- (a) the costs of investigating compliance with this Act or possible misconduct of agents or sales representatives;
- (ab) the costs of conciliating disputes relating to the activities of agents or sales representatives;
- (ac) the costs of disciplinary proceedings under Part 4;

21—Amendment of section 30—Claims on indemnity fund

Section 30(1) and (2)—delete subsections (1) and (2) and substitute:

- (1) A person who has suffered a pecuniary loss as a result of a fiduciary default may make a claim for compensation to the Commissioner.

- (2) The amount of the claim cannot exceed the sum of—

- (a) the actual pecuniary loss suffered by the claimant in consequence of the fiduciary default; and
- (b) any reasonable legal expenses incurred in taking action to recover the loss or in making the claim to the Commissioner,

less any amount that the claimant has received or may reasonably be expected to recover (apart from this Division) in reduction of the loss.

22—Amendment of section 32—Establishment and determination of claims

- (1) Section 32(1)—after "Commissioner" insert:

in a manner and form determined by the Commissioner

- (2) Section 32(1)—after subsection (1) insert:

- (1a) The Commissioner may require a person making a claim—

- (a) to furnish further information specified by the Commissioner;
- (b) to verify, by statutory declaration, information furnished for the purposes of making or establishing a claim.

- (3) Section 32(2)(a)—delete paragraph (a) and substitute:

- (a) give the claimant and the agent or former agent concerned notice of the claim in accordance with the regulations; and

(4) Section 32(3)—delete subsection (3) and substitute:

(3) The Commissioner may do any 1 or more of the following in response to the claim:

- (a) require the claimant to take specified action to recover the loss (and postpone determination of the claim);
- (b) determine the claim and, if appropriate, make a payment to the claimant from the indemnity fund;
- (c) require the claimant to make contractual undertakings as to the assistance that the claimant must give the Commissioner in any action taken by the Commissioner to recover the loss.

(4) In deciding whether to require the claimant to take action to recover the loss, and in deciding what action the claimant should be required to take to recover the loss, the Commissioner is to consider the size of the claim, the complexity of the case, the claimant's financial circumstances, the claimant's mental or physical health or capacity and any other factors that the Commissioner considers relevant.

(5) The Commissioner must—

- (a) keep the claimant informed of the progress of the claim in accordance with the regulations; and
- (b) on making a determination on a claim, give the claimant and the agent or former agent written notice of the determination.

23—Amendment of section 42—Interpretation of Part 4

(1) Section 42, definition of *agent*—delete the definition and substitute:

agent has the meaning assigned to the term by section 4 and includes—

- (a) a former agent; and
- (b) a registered agent, whether or not carrying on business as such, and a former registered agent;

(2) Section 42, definition of *sales representative*—delete the definition and substitute:

sales representative has the meaning assigned to the term by section 3 and includes—

- (a) a former sales representative; and
- (b) a registered sales representative, whether or not in employment as such, and a former registered sales representative.

24—Substitution of section 43

Section 43—delete the section and substitute:

43—Cause for disciplinary action against agents or sales representatives

- 5 (1) There is proper cause for disciplinary action against an agent or sales representative if—
- (a) any registration of the person under this Act was improperly obtained; or
- 10 (b) the person has acted contrary to an assurance accepted by the Commissioner under the *Fair Trading Act 1987*; or
- (c) the person has acted contrary to this Act or the *Land and Business (Sale and Conveyancing) Act 1994* or otherwise unlawfully, improperly, negligently or unfairly; or
- 15 (d) in the case of an agent who has been employed or engaged to manage and supervise an incorporated agent's business or an agent's place of business, the agent or any other person has acted unlawfully, improperly, negligently or unfairly in the course of managing or supervising, or being employed or otherwise engaged in or at that business or place of business;
- 20 or
- (e) events have occurred such that the person would not be entitled to be registered as an agent or sales representative if the person were to apply for registration.
- 25 (2) Disciplinary action may be taken against each director of a body corporate that is an agent if there is proper cause for disciplinary action against the body corporate.
- (3) Disciplinary action may not be taken against a person in relation to the act or default of another if that person could not reasonably be expected to have prevented the act or default.
- 30 (4) This section applies in relation to conduct occurring before or after the commencement of this Act.

25—Amendment of section 47—Disciplinary action

Section 47(1)(c)—delete paragraph (c) and substitute:

- (c) either—
- 35 (i) suspend any registration of the person for a specified period or until the fulfilment of stipulated conditions or until further order; or
- (ii) cancel any registration of the person;

26—Insertion of section 48A

Before section 49 insert:

48A—Advertisements to include registration number of agent

5 An agent must not publish, or cause to be published, an advertisement relating to the sale of land or a business unless the advertisement specifies, alongside the agent's name or contact details, the agent's registration number preceded by the letters "RLA".

Maximum penalty: \$2 500.

10 Expiation fee: \$210.

27—Amendment of section 52—Register

(1) Section 52(1)—delete "as agents"

(2) Section 52(2)(b)—delete "registered agent" and substitute:

person registered under this Act

15 28—Amendment of section 62—Evidence

Section 62(a)—after "agent" insert:

, sales representative or auctioneer

29—Amendment of section 63—Service of documents

20 (1) Section 63(1)—delete "a registered agent" wherever occurring and substitute in each case:

registered under this Act

(2) Section 63(2)—delete subsection (2) and substitute:

(2) For the purposes of subsection (1), a person's address for service is the address of which the Commissioner has been last notified in writing by the person as the person's address for service.

30—Amendment of section 65—Regulations

(1) Section 65(2)(a)—delete "agents or sales representatives" and substitute:

persons

(2) Section 65(2)(b)—delete "registered"

30 (3) Section 65(2)(c)—delete "a registered" and substitute:

an

Part 4—Amendment of *Land and Business (Sale and Conveyancing) Act 1994*

31—Amendment of section 3—Interpretation

- (1) Section 3—after the definition of *allotment* insert:

5 *auction record*—see section 24I;

authorised officer means an authorised officer under the *Fair Trading Act 1987*;

bidders register—see section 24I;

- (2) Section 3—after the definition of *business day* insert:

10 *commission* includes any consideration (other than reimbursement of expenses) to which an agent is entitled for services as an agent;

- (3) Section 3—after the definition of *mortgage* insert:

15 *offer*, in relation to the purchase of land or a business, includes a statement of the price that the purchaser is willing to pay for the land or business including such a statement made in a tender process, request for expressions of interest or other similar process, but does not include a bid in an auction;

place of residence means a building or part of a building used, or currently designed for use, as a single dwelling, and includes outbuildings or other appurtenances incidental to such a use;

- 20* (4) Section 3, definition of *purchaser*—after "prospective purchaser" insert:

and a person authorised to act on behalf of a purchaser or prospective purchaser

- (5) Section 3—after the definition of *registered conveyancer* insert:

residential land means—

25 (a) land on which a single place of residence or 2 places of residence are situated, or in the course of construction, and on which there are no other improvements; or

(b) vacant land on which it is lawful to construct a place of residence; or

30 (c) a community lot or unit under the *Community Titles Act 1996* or the *Strata Titles Act 1988* comprising a single place of residence, whether constructed or in the course of construction, including a place used or designed for use for a purpose ancillary to the place of residence; or

35 (d) an exclusive right (whether deriving from the ownership of a share or interest in a body corporate or partnership or arising in some other way) to the separate occupation of a single place of residence, whether constructed or in the course of construction, including a place used or designed for use for a purpose ancillary to the place of residence,

40 but does not include—

- (e) land or a community lot or unit that is used wholly for non-residential purposes; or
- (f) land that is more than 2.5 hectares in area (or such other area as may be prescribed); or
- (g) an exclusive right to the separate occupation of land referred to in paragraph (e) or (f);

(6) Section 3—after the definition of *sale* insert:

sales agency agreement—see section 20;

sales representative has the same meaning as in the *Land Agents Act 1994*;

(7) Section 3, definition of *vendor*—after "prospective vendor" insert:

and a person authorised to act on behalf of a vendor or prospective vendor

32—Amendment of section 4—Meaning of small business

Section 4(2)—after paragraph (b) insert:

and

- (c) if stock-in-trade is, or is to be, sold under the contract for the sale of a business, any component of the consideration attributable to the value of the stock-in-trade, determined according to the usual selling price of the stock, is to be disregarded in determining the total consideration for which the business is, or is to be, sold.

33—Amendment of section 5—Cooling-off

(1) Section 5(2)(c)—delete paragraph (c) and substitute:

(c) by posting it by registered post to—

- (i) the vendor at the vendor's last known address; or
- (ii) the vendor's agent at the address last notified to the Commissioner as the agent's address for service under the *Land Agents Act 1994* or at an office nominated by the agent for the purpose of service of the notice,

in which case the notice is taken to have been given when the notice is posted; or

(2) Section 5(5)—delete ", person acting on behalf of a vendor"

(3) Section 5(8), definition of *prescribed time*, (a)(i)—delete "prospective"

34—Amendment of section 6—Abolition of instalment purchase or rental purchase arrangements

(1) Section 6—after subsection (2) insert:

(2a) A contract under which a person has—

- (a) a right or obligation to purchase land; but

- (b) an obligation to pay rent in respect of a period of occupation of the land of more than 6 months before the right is exercised or the purchase completed,

is voidable at any time at the option of that person.

5 (2b) A person will not be taken to have elected to affirm a contract that is voidable under subsection (2a) by reason of a payment made under the contract.

10 (2c) If a person avoids a contract that is voidable under subsection (2a), the person may, by action in any court of competent jurisdiction, recover any amount paid under the contract in excess of what would have been fair market rent for any period for which the person has occupied the land under the contract.

- (2) Section 6(3)—after the definition of *deposit* insert:

rent includes any amounts payable in respect of a right to occupy land.

15 **35—Amendment of section 7—Particulars to be supplied to purchaser of land before settlement**

- (1) Section 7(1)—delete "or on behalf of"

- (2) Section 7(1)(b)(ii)—delete subparagraph (ii) and substitute:

20 (ii) if the vendor acquired a relevant interest in the land within 12 months before the date of the contract of sale—all transactions relating to the acquisition of the interest occurring within that period; and

- (3) Section 7—after subsection (4) insert:

- (5) In this section—

25 *acquired a relevant interest in the land* means—

- (a) obtained title to the land; or
- (b) obtained an option to purchase the land; or
- (c) entered into a contract to purchase the land (whether on the vendor's own behalf or on behalf of another); or
- 30 (d) obtained an interest in the land of a category prescribed by regulation for the purposes of this definition.

36—Amendment of section 8—Particulars to be supplied to purchaser of small business before settlement

Section 8(1)—delete "or on behalf of"

35 **37—Amendment of section 9—Verification of vendor's statement**

- (1) Section 9(1)(a)—delete "or a person acting on behalf of the agent must make the prescribed inquiries" and substitute:

must ensure that the prescribed inquiries are made

- (2) Section 9(1)(b)—delete ", or some person acting on the agent's behalf,"

(3) Section 9(1)—after paragraph (b) insert:

(ba) the agent must ensure that a copy of the certificate is given to the vendor immediately after the signing of the certificate; and

(4) Section 9(2)(a)—delete "or a person acting on behalf of the agent must make the prescribed inquiries" and substitute:

must ensure that the prescribed inquiries are made

(5) Section 9(2)(b)—delete ", or some person acting on the agent's behalf,"

(6) Section 9(2)—after paragraph (b) insert:

(ba) the agent must ensure that a copy of the certificate is given to the vendor immediately after the signing of the certificate; and

38—Amendment of section 13—False certificate

Section 13—after its present contents insert:

Maximum penalty: \$20 000 or imprisonment for 1 year.

39—Insertion of section 13A

After section 13 insert:

13A—Prescribed notice to be given to purchaser

(1) A vendor of residential land must take all reasonable steps to deliver the prescribed notice to a purchaser when the purchaser is present on the land at the invitation of the vendor in order to inspect the land prior to its sale.

(2) A vendor of land will be taken to have complied with subsection (1) in relation to a purchaser who is present on the land if the vendor—

(a) incorporates the prescribed notice with promotional material that the vendor delivers to the person; or

(b) offers to deliver the notice, or promotional material incorporating the notice, to the person but the person refuses to take it; or

(c) has delivered the notice, or promotional material incorporating the notice, to the person when the person has been present on the land on a previous occasion.

(3) A vendor of residential land must ensure that the prescribed notice is attached to a vendor's statement when the vendor's statement is served on a purchaser under this Part.

(4) An auctioneer who proposes to offer residential land for sale by auction must ensure that the prescribed notice is attached to a vendor's statement when the vendor's statement is made available for perusal by members of the public before the auction.

(5) If an agent is acting on behalf of a vendor of residential land in connection with sale of the land, this section applies as if the obligations imposed by this section on the vendor were instead imposed on the agent.

(6) In this section—

prescribed notice means a notice, in the form prescribed by regulation, containing information of the kind required by regulation relating to matters concerning land that might adversely affect—

- 5
- (a) a purchaser's enjoyment of the land; or
 - (b) the safety of persons on the land; or
 - (c) the value of the land.

40—Amendment of section 14—Offence to contravene Part

(1) Section 14—delete "this Part" and substitute:

10 a provision of this Part other than section 13

(2) Section 14—delete "\$2 500" and substitute:

\$10 000

41—Amendment of section 17—Service of vendor's statement etc

Section 17(b)—delete "certified mail" and substitute:

15 registered post

42—Amendment of section 19—Inducement to buy subdivided land

Section 19—delete "acting or"

43—Substitution of Part 4

Part 4—delete the Part and substitute:

Part 4—Special requirements relating to agents and sales representatives

20—Authority to act as agent

(1) An agent must not act on behalf of a vendor in the sale of residential land unless the agent has been authorised to so act by an agreement (a *sales agency agreement*) that—

- 25
- (a) specifies the agent's genuine estimate of the selling price expressed without any qualifying words—
 - (i) as a single figure; or
 - (ii) as a price range in figures with an upper limit that does not exceed 110 per cent of the lower limit; and
 - (b) specifies the selling price sought by, or acceptable to, the vendor expressed without any qualifying words as a single figure; and
 - (c) specifies—
 - (i) the manner of sale (for example, by auction, private treaty or tender); and
- 30
- 35

- (ii) the duration of the agreement (not exceeding the prescribed number of days); and
- (iii) the rights of the vendor to terminate the agreement; and
- (iv) the services, including advertising and marketing, to be provided for the vendor by the agent or a third person that will be separately charged for by the agent, the amounts to be charged for the services and the time for payment of the amounts; and
- (v) the nature and source and, if known, the amount or value of any rebate, discount, refund or other benefit expected to be received by the agent from a third person in relation to services referred to in subparagraph (iv); and
- (vi) whether the agreement is a sole agency agreement; and
- (vii) whether the agent has authority to accept an offer for the land on behalf of the vendor; and

(d) is dated and signed by the vendor and the agent; and

(e) complies with the regulations.

Maximum penalty: \$5 000.

- (2) An agent must not make a sales agency agreement unless the agent has first given the vendor a written guide that explains the vendor's rights and obligations under such an agreement and is in the form approved by the Commissioner for the purposes of this section.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (3) An agent must not act on behalf of—

(a) a vendor in the sale of land (other than residential land) or a business; or

(b) a purchaser in the sale of land or a business,

unless the agent has been authorised to so act by instrument in writing signed by the vendor or the purchaser.

Maximum penalty: \$5 000.

- (4) An agent who has been authorised to act on behalf of a vendor or purchaser under this section must ensure that the vendor or purchaser is given a copy of the signed agreement or instrument immediately after the agreement or instrument has been signed by the vendor or purchaser and delivered to the agent.

Maximum penalty: \$5 000.

Expiation fee: \$315.

(5) The matters specified or agreed in a sales agency agreement may not be varied unless the variation is in writing and dated and signed by the parties to the agreement.

5 (6) An agent who has been authorised to act on behalf of a vendor or purchaser under this section must ensure that a copy of any variation of the sales agency agreement or instrument is given to the vendor or purchaser immediately after the variation has been signed by the vendor or purchaser and delivered to the agent.

Maximum penalty: \$5 000.

10 Expiation fee: \$315.

(7) An agent must not demand, receive or retain commission or expenses in respect of the sale or purchase of land or a business if the agent has contravened or failed to comply with a requirement of this section in acting on behalf of the vendor or purchaser.

15 Maximum penalty: \$5 000.

(8) Commission or expenses received or retained by an agent in contravention of this section may be recovered, as a debt, from the agent by the person by whom it was paid.

(9) An agent must keep a copy of—

- 20 (a) each sales agency agreement, and any variation of the sales agency agreement, to which the agent has become party; and
- (b) each instrument by which the agent has been authorised to act on behalf of a vendor or purchaser as referred to in subsection (3).

25 **21—Requirements relating to offers to purchase residential land**

(1) If a person communicates to an agent an offer for residential land that the agent is authorised to sell on behalf of a vendor, the agent must ensure that the following requirements are satisfied:

- 30 (a) all reasonable steps must be taken to have the offer recorded in writing, in a form containing the details required by the regulations, and signed by the offeror;
- (b) subject to subsection (5), the offer must not be passed on to the vendor unless it is so recorded and signed;
- 35 (c) the offeror must, if the regulations so require, be given a notice in writing containing the information prescribed by the regulations before signing the offer;
- (d) a copy of the signed offer must be given to the vendor within 48 hours or at a later time agreed with the vendor;
- 40 (e) details of the offer must not be disclosed to a person other than the vendor or, on request, an authorised officer;

(f) a copy of the signed offer must be kept by the agent.

Maximum penalty: \$5 000.

Expiation fee: \$315.

5 (2) If a person communicates to a sales representative employed by an agent an offer for residential land that the agent is authorised to sell on behalf of a vendor, the sales representative must—

(a) take all reasonable steps to have the offer recorded in writing, in a form containing the details required by the regulations, and signed by the offeror; and

10 (b) subject to subsection (5), the offer must not be passed on to the vendor unless it is so recorded and signed;

(c) if the regulations so require, give the offeror a notice in writing containing the information prescribed by the regulations before the offeror signs the offer; and

15 (d) give a copy of the signed offer to the vendor within 48 hours or at a later time agreed with the vendor; and

(e) not disclose any details of the offer to a person other than the vendor or, on request, an authorised officer; and

20 (f) enable a copy of the signed offer to be kept as part of the agent's records.

Maximum penalty: \$5 000.

Expiation fee: \$315.

25 (3) Nothing in this section prevents details of an offer received by an agent (or a sales representative employed by the agent) from being communicated between persons engaged in the business of the agent as reasonably required for the purposes of the business.

(4) The vendor must, at the request of an agent or sales representative, as soon as practicable after receiving a copy of a signed offer, give the agent a notice in writing acknowledging its receipt.

30 Maximum penalty: \$1 250.

(5) An agent authorised to sell residential land on behalf of a vendor, and any sales representative employed by the agent, must, before taking any step on behalf of the vendor directed towards acceptance of an offer for the land—

35 (a) ensure that the vendor has been given copies of all written offers for the land that have been received by the agent; and

40 (b) if a person has communicated to the agent or sales representative an offer for the land and there has been insufficient time to have the offer recorded in writing in accordance with subsection (1) or (2), ensure that the vendor has notice of the proposed offer.

Maximum penalty: \$5 000.

(6) This section applies with modifications prescribed by the regulations in a case where the agent has authority to accept an offer for the land on behalf of the vendor.

(7) A contravention of this section does not affect the validity of an offer or a contract for the sale of the land.

22—Person signing document to be given copy

(1) If a person signs an offer, contract or agreement, or a document intended to constitute an offer, contract or agreement, relating to a transaction that has been negotiated wholly or in part by an agent, the agent must ensure that the person is given a copy of the signed offer, contract, agreement or document immediately after the document has been signed by the person and delivered to the agent.

Maximum penalty: \$5 000.

Expiation fee: \$315.

(2) If a person signs an offer, contract or agreement, or a document intended to constitute an offer, contract or agreement, relating to a transaction that has been negotiated wholly or in part by a sales representative, the sales representative must give the person a copy of the signed offer, contract, agreement or document immediately after the document has been signed by the person and delivered to the sales representative.

Maximum penalty: \$5 000.

Expiation fee: \$315.

23—Agent not to receive commission if contract avoided or rescinded

(1) An agent must not demand, receive or retain commission in respect of the sale or purchase of land or a business if the contract by which the transaction is to be effected is rescinded or avoided under this Act.

Maximum penalty: \$5 000.

(2) Subsection (1) does not apply if—

(a) the contract is rescinded under Part 2; and

(b) the parties to the contract subsequently enter into another contract for the sale or purchase of the land or business; and

(c) commission would, apart from this section, have been payable to the agent in respect of the subsequent contract.

(3) Commission received or retained by an agent in contravention of this section may be recovered, as a debt, from the agent by the person by whom it was paid.

24—Agent not to lodge caveat for sums owing by client

An agent who has been authorised to act on behalf of a vendor in the sale of residential land must not lodge a caveat over the land in order to secure payment of a debt owing to the agent by the vendor in connection with the sale of the land.

Maximum penalty: \$5 000.

24A—Representations as to likely selling price in marketing residential land

(1) For the purposes of this section—

- (a) a representation is made in marketing land if—
- (i) it is made in an advertisement for the sale of the land that is published, or caused to be published, by the agent; or
 - (ii) it is made (whether orally or in writing) to a purchaser who has not commenced negotiations for the purchase of the land; and
- (b) information in an advertisement is a representation as to a likely price or likely price range for the sale of land if it could be reasonably taken to be such; and
- (c) a statement as to the price actually sought by, or acceptable to, the vendor of land is not a representation as to a likely price or likely price range for the sale of the land provided that the amount stated as the price is the same as the selling price sought by, or acceptable to, the vendor as expressed in the sales agency agreement at the time of the statement; and
- (d) *prescribed minimum advertising price*, in relation to a representation, is the amount that is the greater of—
- (i) the agent's estimate of the selling price as expressed in the sales agency agreement as a single figure at the time of the representation, or, if that estimate is expressed in the agreement at that time as a price range, the lower limit of that range; or
 - (ii) the selling price sought by, or acceptable to, the vendor as expressed in the sales agency agreement at the time of the representation.

(2) In marketing residential land that an agent is authorised to sell on behalf of a vendor, the agent or a sales representative employed by the agent must not—

- (a) make a representation as to a likely price for the sale of the land that is less than the prescribed minimum advertising price; or
- (b) make a representation as to a likely price range for the sale of the land specifying—

- (i) as the lower limit of the range an amount less than the prescribed minimum advertising price; or
- (ii) as the upper limit of the range an amount exceeding 110 per cent of the lower limit.

5 Maximum penalty: \$10 000.

24B—Financial and investment advice

- (1) The regulations may make provision for or with respect to requiring an agent or sales representative who provides financial or investment advice to a person in connection with the sale or purchase of land or a business to provide to the person specified information or warnings.
- (2) An agent or sales representative who fails to comply with a requirement of the regulations under this section is guilty of an offence.

15 Maximum penalty: \$10 000.

24C—Agent to disclose certain benefits connected with sale or purchase

- (1) This section applies in relation to the sale or purchase of land or a business.
- (2) An agent must disclose the following matters to the client:
 - (a) the nature, source and amount (or estimated amount or value) of any benefit the agent receives or expects to receive from a third person to whom the agent has referred the client, or with whom the agent has contracted, for the provision of services associated with the sale or purchase;
 - (b) the nature, source and amount (or estimated amount or value) of any other benefit any person receives or expects to receive in connection with the sale or purchase.

25 Maximum penalty: \$20 000.

- (3) This section does not require an agent to make a disclosure of—
 - (a) a benefit disclosed in a sales agency agreement with the client; or
 - (b) a benefit received or expected to be received by the agent from the client; or
 - (c) a benefit received or expected to be received by the vendor or purchaser; or
 - (d) a benefit related to the provision of services to the client that have been contracted for by the agent unless the agent has made, or is to make, a separate charge to the client in respect of the cost of the services; or

40

(e) a benefit while the agent remains unaware of the benefit (but in any proceedings against the agent, the burden will lie on the agent to prove that the agent was not, at the material time, aware of the benefit); or

(f) a benefit that the agent or another person receives if the agent has disclosed, in accordance with this section, that the agent or other person expected to receive the benefit.

(4) Disclosure to a person is effective for the purposes of subsection (2) only if it is given to the person immediately and in the form approved by the Commissioner for the purposes of this section.

(5) For the purposes of this section—

(a) the value of a non-monetary benefit is to be determined on the basis of a reasonable estimate in dollars of the value of the benefit to the agent; and

(b) if an agent receives a benefit in relation to multiple transactions (whether involving the same or different clients of the agent), the amount or value of the benefit in respect of any 1 of the transactions is to be determined by apportionment between the transactions according to the proportions that the amounts charged to the client or clients in respect of each transaction for the services provided by the third person bear to each other.

(6) In this section—

agent means a purchaser's or vendor's agent;

benefit includes a rebate, discount and refund;

client means the person for whom the agent is or has been acting;

purchaser's agent means—

(a) an agent who is or has been authorised to act on behalf of a purchaser in the purchase of land or a business; or

(b) a sales representative who is or has been acting for that agent;

vendor's agent means—

(a) an agent who is or has been authorised to act on behalf of a vendor in the sale of land or a business; or

(b) a sales representative who is or has been acting for that agent.

24D—Agent not to retain benefits in respect of services associated with sale or purchase of residential land

(1) This section applies in relation to the sale or purchase of residential land.

- (2) An agent must not seek to obtain from the client an amount for expenses that is more than the amount paid or payable for those expenses by the agent.

Maximum penalty: \$20 000.

- (3) In determining the amount paid or payable by the agent for expenses, the amount or value of any benefit received or receivable by the agent in respect of the expenses (other than a benefit that is contingent on the happening of an event that has not yet occurred) must be taken into account.

- (4) If it is not reasonably possible to determine the amount paid or payable by the agent at the time the agent seeks payment for those expenses from the client, the agent may make an estimate of the amount.

- (5) If the client has paid the agent an amount for expenses based on an estimate under subsection (4) and the agent becomes aware that the amount exceeds the actual amount paid or payable for the expenses by the agent, the agent must immediately pay the client the amount of the excess.

Maximum penalty: \$20 000.

- (6) If—

(a) an agent—

(i) refers the client to a third person for the provision of services associated with the sale or purchase of the residential land; or

(ii) contracts with a third person for the provision of services associated with the sale or purchase of the residential land that will be separately charged for by the agent; and

(b) the agent receives a benefit from the third person as a result of referring the client to the third person or contracting with the third person,

the agent must immediately pay the amount or value of the benefit to the client, except to the extent that the agent has accounted for or paid the amount or value of the benefit in accordance with the preceding provisions of this section.

Maximum penalty: \$20 000.

- (7) If an agent fails to pay an amount as required under subsection (5) or (6), the client may recover the amount as a debt due to the person by the agent.

- (8) For the purposes of this section—

(a) the value of a non-monetary benefit is to be determined on the basis of a reasonable estimate in dollars of the value of the benefit to the agent; and

(b) if an agent receives a benefit in relation to multiple transactions (whether involving the same or different clients of the agent), the amount or value of the benefit in respect of any 1 of the transactions is to be determined by apportionment between the transactions according to the proportions that the amounts charged to the client or clients in respect of each transaction for the services provided by the third person bear to each other.

(9) In this section—

agent means a purchaser's or vendor's agent;

benefit includes a rebate, discount and refund;

client means the person for whom the agent is or has been acting;

expenses means outgoings or proposed outgoings;

purchaser's agent means—

(a) an agent who is or has been authorised to act on behalf of a purchaser in the purchase of the residential land; or

(b) a sales representative who is or has been acting for that agent;

vendor's agent means—

(a) an agent who is or has been authorised to act on behalf of a vendor in the sale of the residential land; or

(b) a sales representative who is or has been acting for that agent.

24E—Agent not to act for both purchaser and vendor of land or business

(1) A person must not act as an agent on behalf of both the vendor and purchaser of the same land or business at the same time.

Maximum penalty: \$20 000.

(2) A person must not enter into agreements to act as an agent in the sale or purchase of land or a business if the performance of services by the person under the agreements will or can result in the person acting as an agent on behalf of both the vendor and the purchaser of the same land or business at the same time.

Maximum penalty: \$20 000.

(3) For the purposes of this section, without limiting the circumstances in which a person acts as an agent on behalf of both the vendor and purchaser of the same land or business at the same time, a person will be taken to so act if—

(a) the sale of land or a business is negotiated by the agent on behalf of a person; and

(b) the purchase of the land or business is made subject to the sale of some other land or business by the purchaser; and

- (c) the agent acts on behalf of the purchaser in the sale of the other land or business.
- (4) Despite the preceding provisions of this section, an agent may act on behalf of the purchaser in the circumstances referred to in subsection (3) if, before the purchaser authorises the agent to do so—
- (a) the agent gives the purchaser a warning notice in the form approved by the Commissioner for the purposes of this section; and
- (b) its receipt is acknowledged by the purchaser in writing on a copy of the form.

24F—Restriction on obtaining beneficial interest where agent authorised to sell or appraises property

- (1) An agent who is authorised by a person (the *vendor*) to sell land or a business must not obtain, or be in any way concerned in obtaining, a beneficial interest in the land or business.
Maximum penalty: \$20 000 or imprisonment for 1 year.
- (2) A sales representative employed by an agent must not obtain, or be in any way concerned in obtaining, a beneficial interest in land or a business that the agent is authorised to sell for a person (the *vendor*).
Maximum penalty: \$20 000 or imprisonment for 1 year.
- (3) An agent or sales representative who appraises land or a business for a person (the *vendor*) must not obtain, or be in any way concerned in obtaining, a beneficial interest in the land or business.
Maximum penalty: \$20 000 or imprisonment for 1 year.
- (4) A person does not contravene subsection (3) by obtaining a beneficial interest in land or a business if an agent is acting on behalf of the vendor in the sale of the land or business.
- (5) A person does not contravene this section by obtaining a beneficial interest in land or a business if, before the person obtains the interest, the Commissioner approves such action in accordance with the regulations.
- (6) Without limiting this section, a person is considered to obtain a beneficial interest in land or a business if the person or an associate of the person obtains a beneficial interest in the land or business.
- (7) Without limiting this section, each of the following is considered to constitute the obtaining of a beneficial interest in land or a business:
- (a) purchasing land or a business;
- (b) obtaining an option to purchase land or a business;
- (c) being granted a general power of appointment in respect of land or a business.

(8) The court by which a person is convicted of an offence against this section may order the person to pay to the vendor any profit that the person has made, or is, in the opinion of the court, likely to make, from a dealing with the land or business to which the offence relates.

5 (9) If an agent obtains a beneficial interest in land or a business that the agent is authorised to sell, the agent must not demand, receive or retain commission or expenses in respect of the sale or purchase of the land or business unless—

10 (a) the Commissioner has approved the agent obtaining the benefit under subsection (5); and

(b) the Commissioner has, when giving that approval, also approved the receipt of the commission or expenses.

Maximum penalty: \$5 000.

15 (10) Commission or expenses received or retained by an agent in contravention of this section may be recovered, as a debt, from the agent by the person by whom it was paid.

(11) In this section—

20 **appraise**—an agent or sales representative appraises land or a business if the agent or sales representative provides advice, whether or not at the request of the vendor, as to the value of the land or business in circumstances where it may be reasonably assumed that the vendor may rely on the advice of the agent or sales representative;

associate of a person means—

25 (a) a relative of the person or of the person's spouse or domestic partner; or

30 (b) a body corporate where the person or a relative of the person or of the person's spouse or domestic partner has, or 2 or more such persons together have, a relevant interest or relevant interests in shares in the body corporate the nominal value of which is not less than 10 per cent of the nominal value of the issued share capital of the body corporate; or

35 (c) a trustee of a trust of which the person, a relative of the person or of the person's spouse or domestic partner or a body corporate referred to in paragraph (b) is a beneficiary; or

(d) an employee, employer or partner of the person; or

40 (e) 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;

beneficiary of a trust includes an object of a discretionary trust;

domestic partner means a person who is a domestic partner within the meaning of the *Family Relationships Act 1975*, whether declared as such under that Act or not;

relative of a person means the spouse, domestic partner, parent or remoter linear ancestor, son, daughter or remoter issue or brother or sister of the person;

relevant interest has the same meaning as in the *Corporations Act 2001* of the Commonwealth;

spouse—a person is the spouse of another if they are legally married.

24G—Agent not to pay commission except to officers or employees or another agent

(1) An agent must not pay the whole or part of the commission to which the agent is entitled for services as an agent to a person other than—

- (a) an officer or employee of the agent; or
- (b) a registered agent.

Maximum penalty: \$5 000.

(2) In this section—

registered agent means—

- (a) registered agent within the meaning of the *Land Agents Act 1994*; or
- (b) a person who usually resides in a place outside the State and who is authorised under the law of that place to carry on business as an agent in that place.

Part 4A—Auctions

24H—Standard conditions for auctions of residential land

The standard conditions prescribed for auctions by the regulations apply as contractual conditions to any auction conducted by an agent for the sale of residential land.

24I—Preliminary actions and records required for auctions of residential land

(1) The responsible agent must ensure that the following requirements are satisfied in relation to an auction for the sale of residential land (in addition to other requirements under this Act):

- (a) the standard conditions of auction must be made available for perusal by members of the public at the place at which the auction is to be conducted for at least 30 minutes before the auction is due to commence;

- (b) the standard conditions of auction must be audibly announced as required by the regulations by the auctioneer to the members of the public attending the auction immediately before the auction commences;
- 5 (c) a written record (an *auction record*) must be made and kept by the agent, consisting of the following which must be made before the commencement of the auction:
- 10 (i) a record of the reserve price for the land and any changes in the reserve price made before the commencement of the auction;
- (ii) a register (a *bidders register*) of the persons intending to bid at the auction, containing the details relating to the intending bidders required by the regulations;
- 15 (iii) other records containing details relating to the auction required by the regulations;
- (d) if a bid is to be allowed by a person who was not registered in the bidders register as an intending bidder before the commencement of the auction, the auction must be interrupted and the person's details entered in the bidders register;
- 20 (e) before details of an intending bidder are entered in the bidders register, the identity of the intending bidder must be established in accordance with the regulations, and if the intending bidder is to bid on behalf of another person, the person's authority to so act must be established in accordance with the regulations and proof must be obtained in accordance with the regulations of the other person's identity;
- 25 (f) each person registered in the bidders register must, when the person's details are being taken for entry in the register, be supplied with a written guide relating to the sale of residential land by auction in the form approved by the Commissioner for the purposes of this section;
- 30 (g) any change in the reserve price made during the auction must be entered in the auction record;
- (h) an entry must be made in the auction record recording the amount of each bid and (except in the case of a bid referred to in paragraph (i)) the identifying number allocated to the person who made the bid;
- 35 (i) if the auctioneer makes a bid on behalf of the vendor (see section 24M), an entry must be made in the auction record recording the amount of the bid and that the bid was a vendor bid;
- 40

(j) other details relating to bidding or subsequent events must be entered in the auction record in accordance with the regulations;

5 (k) any entry to be made in the auction record must be made immediately on the happening of the event to be recorded in the entry.

Maximum penalty: \$10 000.

10 (2) A person must not enter details in an auction record, or furnish details for entry in an auction record, that the person knows, or has reason to believe, are false in a material particular.

Maximum penalty: \$10 000.

15 (3) A person who has made an auction record or had access to the record must not disclose or make any use of information in the record except—

(a) as authorised under this Part; or

(b) as required by an authorised officer.

Maximum penalty: \$10 000.

(4) A contravention of this section does not affect the validity of a bid or a contract for the sale of the land.

20 (5) In this section—

responsible agent in relation to an auction for the sale of land means the agent who has entered into a sales agency agreement with the vendor for the sale of the land, whether or not the agent is to conduct the auction through the instrumentality of another agent.

25 **24J—Registered bidders only at auctions of residential land**

(1) An auctioneer at a sale by auction of residential land—

(a) must not take a bid from a person unless—

30 (i) the person has been registered in the bidders register for the auction and the auctioneer is in possession of that register when the bid is taken; and

35 (ii) the person is identified at the auction by the person displaying an identifying number allocated to the person for the purposes of the auction and recorded in the bidders register as the identifying number allocated to the person; and

(b) must, when taking the bid, audibly announce the bid as having been taken from a bidder with that person's identifying number.

40 Maximum penalty: \$10 000.

- 5
- (2) An auctioneer who refuses to take a bid from a person because of subsection (1) does not incur a liability to any person as a result of that refusal.
 - (3) The taking of a bid in contravention of this section does not affect the validity of the bid or a contract for the sale of the land.

24K—Collusive practices at auctions of land or businesses

- 10
- (1) A person must not, by a collusive practice relating to the sale by auction of land or a business, induce or attempt to induce any other person—
 - (a) to abstain from bidding, or limit his or her bidding, at the auction; or
 - (b) to do any other act or thing that might in any way prevent or tend to prevent free and open competition at the auction.

Maximum penalty: \$20 000.

- 15
- (2) A person must not, as a result of a collusive practice relating to a sale by auction of land or a business—
 - (a) abstain from bidding, or limit his or her bidding, or agree to abstain from bidding, or to limit his or her bidding, at the auction; or
 - (b) do any other act or thing that might in any way prevent or tend to prevent free and open competition at the auction.

Maximum penalty: \$20 000.

- 20
- (3) An auctioneer must not sell land or a business by auction unless notice is given prior to the auction, in such manner and in such terms as may be prescribed by the regulations, of the material parts of this section.

Maximum penalty: \$5 000.

- 25
- (4) In this section—

30

collusive practice includes an agreement, arrangement or understanding under which 1 person will, on being the successful bidder at an auction of land or a business (and whether or not subject to other conditions), allow another person to take over as purchaser of the land or business through the auctioneer at the auction price.

24L—Dummy bidding prohibited at auctions of land or businesses

- 35
- (1) This section applies subject to section 24M.
 - (2) A vendor of land or a business must not make a bid at an auction of the land or business.
 - (3) A person must not make a bid at an auction of land or a business knowing that the bid is being made on behalf of a vendor of the land or business.
- 40

(4) For the purposes of subsection (3), a bid may be found to have been made on behalf of a vendor even though it is not made at the request of, or with the knowledge of, the vendor.

5

(5) A person must not procure another person to make a bid at an auction of land or a business that is contrary to this section.

(6) An auctioneer must not take a bid at an auction of land or a business if he or she knows that the bid was made by, or on behalf of, a vendor of the land or business.

10

(7) An auctioneer must not purport to take a bid at an auction of land or a business when in fact no bid is being made.

(8) A person who contravenes this section is guilty of an offence.
Maximum penalty: \$20 000.

(9) In this section—

15

vendor of land or a business has the meaning assigned by section 3 and includes—

(a) a mortgagee or other holder of a security interest in respect of the land or business; and

(b) a person of a class prescribed by regulation.

24M—When vendor bid by auctioneer permitted

20

(1) Despite section 24L and any other law, an auctioneer may make a single bid at an auction of residential land on behalf of the vendor of the land, or 1 or more bids at an auction of land (other than residential land) or a business on behalf of the vendor of the land or business, if—

25

(a) the conditions under which the auction is conducted permit the making of such a bid or bids; and

(b) before any bidding starts, the auctioneer audibly announces to the members of the public attending the auction that the conditions permit the making of such a bid or bids; and

30

(c) immediately before, or in the process of making such a bid, the auctioneer audibly announces that the bid is a "vendor bid"; and

(d) the amount of any such bid is less than the reserve price for the land or business.

35

(2) In this section—

vendor has the meaning assigned by section 24L.

24N—Last vendor bid must be identified if property passed in

40

(1) This section applies if, at an auction of land or a business, the land or business is not sold and the last bid made before the auction stopped was a bid made by the auctioneer on behalf of the vendor of the land or business.

- (2) In making any statement while marketing the land or business, a person must not state the amount of the last bid without also stating that the bid was a bid made on behalf of the vendor of the land or business.

5 Maximum penalty: \$10 000.

- (3) For the purposes of subsection (2), a statement is made while marketing land or a business if—
- 10 (a) it is made in an advertisement in respect of the land or business that is published, or caused to be published, by the person; or
- (b) it is made (whether orally or in writing) to a person as a purchaser of the land or business.

- (4) A person who advises another person of the amount of the last bid to enable that amount to be published must not knowingly fail to disclose to the other person that the bid was a bid made on behalf of the vendor of the land or business.

15 Maximum penalty: \$10 000.

- (5) A person who is a publisher of results of auctions must not publish the fact that the land or business was passed in for the amount of the last bid without also stating that the bid was made on behalf of the vendor of the land or business.

20 Maximum penalty: \$10 000.

- (6) It is a defence to a charge against subsection (2) or (5) if the person making the statement, or publishing the amount—

- 25 (a) was not present at the auction; and
- (b) relied on a statement made by a person who purported to know what happened at the auction.

- (7) It is sufficient compliance with subsection (2) or (5) if the amount is described as a "vendor bid".

- 30 (8) In this section—

vendor has the meaning assigned by section 24L.

44—Amendment of section 26—Interpretation of Part 5

Section 26(1)(c)(ii)—delete "*Corporations Law*" and substitute:

Corporations Act 2001 of the Commonwealth

45—Amendment of section 27—Preparation of conveyancing instrument for fee or reward

35 Section 27—delete "\$2 500" and substitute:

\$5 000

46—Amendment of section 28—Preparation of conveyancing instrument by agent or related person

Section 28—delete "\$2 500" and substitute:

\$5 000

5 **47—Amendment of section 29—Procuring or referring conveyancing business**

Section 29—delete "\$2 500" wherever occurring and substitute in each case:

\$5 000

48—Amendment of section 30—Conveyancer not to act for both parties unless authorised by regulations

10 Section 30—delete "\$2 500" and substitute:

\$5 000

49—Amendment of section 33—No exclusion etc of rights conferred or conditions implied or applied by Act

Section 33—after "implied" insert:

15 or applied

50—Amendment of section 36—False or misleading representation

(1) Section 36(1)—delete subsection (1) and substitute:

(1) A person who makes a false or misleading representation for the purpose of inducing another person to—

- 20
- (a) sell or purchase land or a business; or
 - (b) engage the first mentioned person or a third person to act as an agent in the sale or purchase of land or a business; or
 - (c) enter into any contract or arrangement in connection with the sale or purchase of land or a business,

25 is guilty of an offence.

Maximum penalty: \$20 000 or imprisonment for 1 year.

(2) Section 36(2)—after "false" insert:

or misleading

51—Insertion of sections 37, 37A and 37B

30 After section 36 insert:

37—Signing on behalf of agent

If a document is required or authorised by this Act to be signed by an agent, the document may be signed by a person authorised to act on behalf of the agent.

37A—Keeping of records

- (1) An agent who is required under Part 4 or 4A to keep a document or record must—
- (a) keep the document or record at a place of business of the agent in the State for 5 years from the day on which the document or record was received or made; and
- (b) have the document or record readily available for inspection at all reasonable times by an authorised officer.

Maximum penalty: \$5 000.

- (2) For the purposes of this section, a document or record may, subject to the regulations, be kept in electronic form.
- (3) In this section—
record includes a register.

37B—General defence

It is a defence to a charge of an offence against this Act, other than an offence against Part 2, if the defendant proves that the offence was not committed intentionally and did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence.

52—Amendment of section 41—Regulations

- (1) Section 41(2)—before paragraph (a) insert:
- (aa) make provision for a method of service (which may include electronic transmission) of a notice or other document required or authorised to be served or given by this Act, which may include a method in addition to, or as an alternative to, a method of service provided for by this Act;
- (2) Section 41(2)—after paragraph (a) insert:
- (ab) impose fees in respect of any matter under this Act, and make provision relating to their payment, recovery or waiver;
- (3) Section 41(2)(b)—delete "\$2 500" and substitute:
\$5 000
- (4) Section 41(2)(c)—delete "\$210" and substitute:
\$315