

SOUTH AUSTRALIA

LAND AGENTS, BROKERS AND VALUERS ACT, 1973

This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 28 March 1988.

The Commissioner of Statute Revision is authorized by the Acts Republication Act, 1967, to make textual alterations of various kinds to an Act in preparing it for reprint. These alterations do not affect the substantive law. A report has been prepared containing a comprehensive list of textual alterations made under the Acts Republication Act, 1967, in the preparation of this reprint. Copies of the report are available, on request, from the office of the Commissioner of Statute Revision, 11th Floor, S.G.I.C. Building, Victoria Square, Adelaide.

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SCHEDULE

LAND AGENTS, BROKERS AND VALUERS ACT, 1973

being

Land and Business Agents Act, 1973, No. 88 of 1973 [Assented to 13 December 1973]¹

as amended by

Land and Business Agents Act Amendment Act, 1974, No. 129 of 1974 [Assented to 12 December 1974]²;
Land and Business Agents Act Amendment Act, 1975, No. 38 of 1975 [Assented to 3 April 1975];
Land and Business Agents Act Amendment Act (No. 2), 1975, No. 72 of 1975 [Assented to 16 October 1975];
Land and Business Agents Act Amendment Act, 1977, No. 38 of 1977 [Assented to 8 December 1977]³;
Land and Business Agents Act Amendment Act, 1979, No. 1 of 1979 [Assented to 15 February 1979];
Land and Business Agents Act Amendment Act, 1982, No. 25 of 1982 [Assented to 25 March 1982]⁴;
Statutes Amendment (Planning) Act, 1982, No. 62 of 1982 [Assented to 1 July 1982]⁵;
Land and Business Agents Act Amendment Act, 1985, No. 4 of 1985 [Assented to 7 March 1985]⁶;
Land and Business Agents Act Amendment Act (No. 2), 1985, No. 45 of 1985 [Assented to 2 May 1985]⁷;
Land Agents, Brokers and Valuers Act Amendment Act, 1986, No. 128 of 1986 [Assented to 24 December 1986]⁸;
Statutes Amendment (Fair Trading) Act, 1987, No. 43 of 1987 [Assented to 30 April 1987]⁹;
Land Agents, Brokers and Valuers Act Amendment Act, 1987, No. 97 of 1987 [Assented to 17 December 1987]¹⁰;
Land Agents, Brokers and Valuers Act Amendment Act (No. 2), 1987, No. 98 of 1987 [Assented to 17 December 1987]¹¹.

NOTE: Asterisks indicate repeal or deletion of text. For further explanation see Appendix.

**An Act to consolidate and amend the law relating to certain kinds of agent;
to provide for the licensing and control of land brokers and land valuers;
and for other purposes.**

The Parliament of South Australia enacts as follows:

PART I PRELIMINARY

1. This Act may be cited as the "Land Agents, Brokers and Valuers Act, 1973". Short title.

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¹ Came into operation 24 June 1974: *Gaz.* 16 May 1974, p. 1775.

² Came into operation 1 April 1975: *Gaz.* 27 February 1975, p. 665.

³ Came into operation 24 June 1974: s. 2.

⁴ Came into operation 1 April 1982: *Gaz.* 1 April 1982, p. 949.

⁵ Came into operation 4 November 1982: *Gaz.* 4 November 1982, p. 1304.

⁶ Came into operation 10 November 1986: *Gaz.* 25 September 1986, p. 1082.

⁷ Came into operation 1 July 1985: *Gaz.* 27 June 1985, p. 2244.

⁸ Came into operation (except ss. 3-12, 14-16, Schedule) 5 March 1987: *Gaz.* 5 March 1987, p. 546; remainder of Act came into operation 18 February 1988: *Gaz.* 18 February 1988, p. 398.

⁹ Came into operation 26 October 1987: *Gaz.* 24 September 1987, p. 940.

¹⁰ Came into operation 18 February 1988: *Gaz.* 18 February 1988, p. 398.

¹¹ Came into operation 18 February 1988: *Gaz.* 18 February 1988, p. 398.

Interpretation.

6. (1) In this Act, unless the contrary intention appears—

“acquire” with reference to land includes purchase and take on lease and “acquisition” has a corresponding meaning:

“agent” means a person who carries on the business of—

(a) selling or buying (by auction or otherwise), exchanging, or otherwise dealing with or disposing of land or businesses on behalf of others;

or

(b) negotiating for the sale, purchase, exchange, or any other dealing with or disposition of land or businesses on behalf of others,

and includes a person who carries on the business of selling or exchanging, or negotiating for the sale or exchange, of land or businesses on his or her own behalf:

“bank” means a body corporate that is authorized under the *Banking Act 1959* of the Commonwealth to carry on the business of banking and includes the State Bank of South Australia:

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“branch office” means any office from which a licensed agent conducts business in pursuance of the licence except the agent’s registered office:

“business” includes a share of, or interest in, a business or the goodwill of a business but does not include a share in the capital of a corporation:

“business day” means any day except a Saturday or a public holiday:

“the Commissioner” means the Commissioner for Consumer Affairs:

“corporation” includes any body corporate:

“date of settlement” in relation to a contract for the sale of land or a business means the day fixed by the contract for settlement or, if a day is not fixed by the contract for settlement, the day on which settlement takes place:

“director” includes any member of the governing body of a corporation:

“dispose”, with reference to land, includes sell and demise and “disposal” has a corresponding meaning:

“hotel broker” means a person who acts as an agent in relation to the sale, purchase or exchange or any other dealing with or disposition of premises in respect of which a hotel licence is in force under the *Liquor Licensing Act, 1985*:

* * * * *

“land” includes any interest in land and any exclusive right (whether deriving from the ownership of a share or interest in a company

or partnership or arising in some other way) to the occupation of a building, or part of a building, that is designed (or adapted) for separate occupation as a dwelling house or place of residence:

“land broker” means a person, other than a legal practitioner, who for fee or reward prepares any instrument as defined in the Real Property Act, 1886, in relation to any dealing affecting land:

“land valuer” means a person who carries on the business of valuing land:

“legal practitioner” means a person admitted and enrolled as a practitioner of the Supreme Court of South Australia:

“licence” means—

(a) in relation to an agent—a licence under Part III;

(b) in relation to a land broker—a licence under Part VII;

or

(c) in relation to a land valuer—a licence under Part VIIIA, and “licensed” has a corresponding meaning:

“money” includes an instrument for the payment of money that may be negotiated by a bank:

“nominated” means nominated by notice in writing lodged with the Registrar:

“operator”, in relation to a rental accommodation referral business, means the person who carries on the rental accommodation referral business:

“prescribed officer”, in relation to a corporation, means—

(a) the general manager or other principal officer of the corporation;

(b) a director of the corporation;

or

(c) any other person (whether or not the holder of an office) who substantially controls, or could substantially control, the affairs of the corporation:

“registered manager” means a person registered as a manager under Part V:

“registered sales representative” means a person registered as a sales representative under Part IV:

“the Registrar” means the Commercial Registrar under the Commercial Tribunal Act, 1982:

“rental accommodation referral business” means the business of providing for fee or reward information relating to the availability of premises for occupation pursuant to residential tenancy agreements, but does not include the business of publishing advertisements on behalf of other persons or any business of a prescribed kind:

“rental accommodation referral contract” means a contract entered into by the operator of a rental accommodation referral business

Land Agents, Brokers and Valuers Act, 1973

for the provision of information relating to the availability of premises for occupation pursuant to residential tenancy agreements:

“the repealed Business Agents Act” means the Business Agents Act, 1938, repealed by this Act:

“the repealed Land Agents Act” means the Land Agents Act, 1955, repealed by this Act:

“the repealed Land Valuers Licensing Act” means the Land Valuers Licensing Act, 1969, repealed by this Act:

“residential tenancy agreement” means a residential tenancy agreement as defined in section 5 of the Residential Tenancies Act, 1978, and includes any other agreement or arrangement of a prescribed kind:

“sales representative” means a person who, for or on behalf of an agent, induces or attempts to induce, or negotiates with a view to inducing, any person—

- (a) to acquire or dispose of any land or business;
 - (b) to make an offer to acquire or dispose of any land or business;
 - (c) to accept an offer to acquire or dispose of any land or business;
- or
- (d) to enter into any contract for the acquisition or disposal of any land or business,

whether or not the agent is the owner of the land or business, but does not include a person who so acts only in relation to a lease of land that is not to be used for the purposes of a business:

* * * * *

“the Tribunal” means the Commercial Tribunal established under the Commercial Tribunal Act, 1982.

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(2) A legal practitioner who, in the course of legal practice, acts for, or on behalf of, any person in respect of the acquisition or disposal of any land or business is not by reason of that fact an agent within the meaning of this Act.

(3) Where two or more persons carry on business in partnership and the business of the partnership, or part of that business, consists in the business of an agent, each of those persons will be taken to be carrying on business as an agent.

(4) Where a person carries on the business of buying or selling land or businesses and the transactions carried out in the course of that business are conducted by, or through the instrumentality of, an agent, that person will not by reason of that business be taken to be acting as an agent.

(5) In this Act, a reference to carrying on a business of a particular kind extends to carrying on that business as part of, or in conjunction with, some other business.

7. (1) The Governor may, by regulation, exempt—

Application.

(a) a specified person or class of persons;

or

(b) a specified transaction or class of transactions,

from compliance with this Act or a specified provision of this Act either unconditionally or subject to conditions.

(2) The Minister may, upon application by a person, exempt the person from compliance with a specified provision of this Act.

(3) The Tribunal will, at the request of the Minister, inquire into and make a recommendation to the Minister upon an application for exemption under subsection (2).

8. The Commissioner is responsible, subject to the control and directions of the Minister, for the administration of this Act.

Commissioner to be responsible for administration of Act.

PART III

LICENSING OF AGENTS

13. (1) A person must not carry on business, or hold himself or herself out, as an agent unless licensed as an agent under this Act.

Agent must be licensed.

Penalty: \$5 000.

(2) A person required by this Act to be licensed as an agent is not entitled to any commission or other consideration in respect of services related to the acquisition or disposal of any land or business unless that person—

(a) is, at the time of rendering the services, licensed as an agent;

and

(b) is authorized, in writing, to act as an agent by the person for whom the services are rendered or some person authorized to act on behalf of that person.

(3) Any commission or other consideration paid or given to a person who is, by virtue of subsection (2), not entitled to it may be recovered from that person as a debt.

13a. A person must not act, or hold himself or herself out, as a hotel broker unless—

Agent not to act as hotel broker unless licence endorsed.

(a) that person is licensed as an agent;

and

- (b) the licence bears an endorsement, made in accordance with the regulations, authorizing that person to act as a hotel broker.

Penalty: \$5 000.

Application for a licence.

14. (1) An application for a licence must—

- (a) be made to the Tribunal;
 (b) be in writing in the prescribed form;
 and
 (c) be accompanied by the prescribed application fee.

(2) An applicant for a licence must furnish the Tribunal with such information (verified, if the Tribunal so requires, by statutory declaration) as the Tribunal may require.

(3) Where an application is made for a licence, the Registrar must—

- (a) cause the application to be advertised in the prescribed manner and form;
 and
 (b) cause a copy of the application to be served on the Commissioner.

(4) Any person (including the Commissioner) may, within ten days from the date on which an application is last advertised pursuant to subsection (3), lodge with the Registrar a written objection to the application setting out the grounds of the objection.

(5) The Tribunal may, on the application of any interested person, and subject to such terms as it thinks fit, extend the period for lodging objections.

(6) The Registrar must cause a copy of an objection lodged under subsection (4) to be served on the applicant and, except where the Commissioner lodged the objection, the Commissioner.

(7) Where—

- (a) an objection to an application is lodged under subsection (4);
 or
 (b) the Tribunal does not propose to grant an application upon the basis of documentary material alone,

the Tribunal will conduct a hearing of the application and the Registrar must give to the applicant, the Commissioner and any person who has lodged an objection at least seven days notice of the date for the hearing.

(8) Where, upon an application under this section, the Tribunal is satisfied that the applicant is entitled to be licensed as an agent, the Tribunal will order that the applicant be granted the licence upon payment of the prescribed licence fee.

Entitlement to be licensed.

15. (1) Subject to this Act, a person (not being a corporation) is entitled to be licensed as an agent if the Tribunal is satisfied that that person—

- (a) is of or above the age of 18 years;
 (b) is a fit and proper person to be licensed;
 (c) is neither bankrupt nor insolvent;
 and

(d) is qualified to be licensed as an agent in accordance with subsection (2).

(2) A person is qualified to be licensed as an agent if that person—

(a) has been licensed as an agent or registered as a manager under this Act within ten years before the date of the application to be licensed;

or

(b) (i) has, at some time within ten years before the date of the application, been a licensed land broker;

or

(ii) has educational qualifications accepted by the Tribunal as adequate for the purpose of licensing as an agent,

and, in addition to complying with subparagraph (i) or (ii) has been employed as a registered sales representative for a continuous period of two years within the five years preceding the date of the application or has had, in the opinion of the Tribunal, other adequate practical experience.

16. (1) Subject to this Act, a corporation is entitled to be licensed as an agent if the Tribunal is satisfied that the prescribed officers of the corporation meet the requirements of subsection (2). Entitlement of corporation to licence.

(2) Each prescribed officer of the corporation—

(a) must be a fit and proper person to be a prescribed officer of a corporation licensed under this Act;

and

(b) must (subject to the terms of any exemption granted to the corporation under this section) be a licensed agent or registered manager.

* * * * *

(4) If—

(a) a corporation is, in the opinion of the Tribunal, carrying on business as a stock and station agent, or is listed upon a Stock Exchange in Australia or is the subsidiary of a corporation so listed and the person who is, or will be, in control of the business conducted, or to be conducted, in pursuance of the licence, is licensed as an agent or registered as a manager under this Act;

(b) the Tribunal is satisfied that the business conducted or to be conducted in pursuance of a licence forms an inconsiderable part of the whole of the business of a corporation and no director or other prescribed officer of the corporation who is not licensed as an agent or registered as a manager under this Act will actively participate in the business conducted in pursuance of the licence;

(c) (i) a corporation is a proprietary company with two directors, one being a person who is licensed as an agent or registered as a manager;

and

- (ii) the Tribunal is satisfied that no prescribed officer of the corporation who is not licensed as an agent or registered as a manager will actively participate (except in a clerical or secretarial capacity) in the business conducted in pursuance of the licence;
- (ca) (i) a corporation is a proprietary company with two directors, one being a person who is licensed as an agent or registered as a manager and the other being the spouse of that person and registered as a sales representative;

and

- (ii) the Tribunal is satisfied that no other prescribed officer of the corporation who is not licensed as an agent or registered as a manager will actively participate in the business conducted in pursuance of the licence;
- (d) a corporation held a licence at the commencement of this Act and the directors were then, and are, husband and wife, one of whom is licensed as an agent or registered as a manager under this Act;

or

- (e) a corporation is entitled, in pursuance of the regulations, to an exemption from subsection (2)(b),

then, subject to subsection (7), the Tribunal will, upon application by the corporation, grant an exemption from subsection (2)(b).

(5) An exemption under subsection (4)—

- (a) may be unconditional or subject to such conditions as the Tribunal thinks fit;
- (b) may be granted to a corporation that is not immediately entitled to the exemption in anticipation of the corporation subsequently becoming entitled to it (but in that event the exemption will be subject to a condition requiring specified changes in the board of directors, or the management, of the corporation and will not take effect until the condition has been complied with).

(6) The Tribunal may, upon the application of the Commissioner or any other person—

- (a) vary or revoke a condition of an exemption under subsection (4) or impose a further condition of the exemption;

or

- (b) revoke an exemption under subsection (4) for breach of a condition of the exemption or other proper cause.

(7) Where an exemption under subsection (4) is revoked and the corporation reapplies to the Tribunal for an exemption, the Tribunal may (but is not obliged to) grant an exemption upon that application.

Duration of
licences.

17. (1) A licence remains in force (except for any period for which it is suspended) until the licensed agent dies or, in the case of a body corporate, is dissolved or the licence is surrendered or cancelled.

(2) A licensed agent must, not later than the prescribed date in each year—

(a) pay to the Registrar the prescribed annual licence fee;
and

(b) lodge with the Registrar an annual return containing the prescribed information.

(3) Where a licensed agent fails to pay the annual licence fee or lodge the annual return in accordance with subsection (2), the Registrar may, by notice in writing, require the agent to make good the default and, in addition, to pay to the Registrar the amount prescribed as a penalty for default.

(4) Where a licensed agent fails to comply with a notice under subsection (3) within 14 days after service of the notice, the licence is, by force of this subsection, suspended until the agent complies with the notice.

(5) The Registrar will cause notice of a suspension under subsection (4) (being notice in the prescribed form) to be published in a newspaper circulating throughout the State.

(6) Where a licence has been suspended by virtue of subsection (4) for a continuous period of six months, the licence is, by force of this subsection, cancelled.

(7) A licensed agent may, with the consent of the Tribunal, surrender the licence.

* * * * *

19. Where a person carrying on business in pursuance of a licence dies, an unlicensed person may, with the consent of the Tribunal and subject to any conditions imposed by the Tribunal, continue to carry on the business until the business is sold or the expiration of six months, whichever first occurs, and the unlicensed person, while carrying on business in accordance with the conditions imposed by the Tribunal, will for the purposes of this Act be regarded as the holder of a licence.

Business may be carried on by unlicensed person.

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PART IV

REGISTRATION OF SALES REPRESENTATIVES

21. A person (other than a registered manager) must not—

Sales representatives must be registered.

(a) be or remain in the service of any person as a sales representative;

(b) hold himself or herself out as a sales representative;

or

(c) act as a sales representative,

unless registered as a sales representative under this Act.

Penalty: \$2 000.

22. (1) A person must not employ any other person (other than a registered manager) as a sales representative unless that other person is registered as a sales representative under this Act.

Employment of sales representatives.

Penalty: \$2 000.

(2) Subject to subsection (3), a person must not, unless the Tribunal is satisfied that special circumstances exist and gives its consent, employ or

continue to employ a sales representative in the business conducted in pursuance of a licence except upon the basis of full-time employment in that business.

Penalty: \$2 000.

(3) This section does not prevent an agent from continuing to employ a registered sales representative on a part-time basis where the sales representative was so employed by the agent immediately before the commencement of this Act.

Sales
representatives
must be in
service of one
agent.

23. (1) A registered sales representative must not, while employed by an agent, be in the employment, or hold himself or herself out as being in the employment, of another agent.

Penalty: \$1 000.

(2) An agent must not employ as a sales representative any person who is, to the knowledge of that agent, at that time employed by, or in the service of, any other agent.

Penalty: \$1 000.

(3) An agent must not pay any salary, wages, commission or other remuneration to any sales representative except a sales representative who is in the agent's service as such.

Penalty: \$1 000.

Stock and station
agent.

24. (1) Notwithstanding any other provision of this Part, if the manager of a branch office of an approved stock and station agent is registered as a manager or a sales representative under this Act, a person employed by the stock and station agent to work from that branch office is not, by reason of anything done in the course of that employment, required to be registered as a sales representative under this Act.

(2) In this section—

“approved stock and station agent” means a person carrying on business as a stock and station agent and approved by the Tribunal for the purposes of this section:

“branch office” means an office, other than the head office for the State, of a stock and station agent.

Application for
registration as
sales
representative.

25. (1) An application for registration as a sales representative must—

(a) be made to the Tribunal;

(b) be in writing in the prescribed form;

and

(c) be accompanied by the prescribed application fee.

(2) An applicant for registration must furnish the Tribunal with such information (verified, if the Tribunal so requires, by statutory declaration) as the Tribunal may require.

(3) Where an application is made under this section, the Registrar must—

(a) cause the application to be advertised in the prescribed manner and form;

and

(b) cause a copy of the application to be served on the Commissioner.

(4) Any person (including the Commissioner) may, within ten days from the date on which an application is last advertised pursuant to subsection (3), lodge with the Registrar a written objection to the application setting out the grounds of the objection.

(5) The Tribunal may, on the application of any interested person, and subject to such terms as it thinks fit, extend the period for lodging objections.

(6) The Registrar must cause a copy of an objection lodged under subsection (4) to be served on the applicant and, except where the Commissioner lodged the objection, the Commissioner.

(7) Where—

(a) an objection to an application is lodged under subsection (4);

or

(b) the Tribunal does not propose to grant an application upon the basis of documentary material alone,

the Tribunal will conduct a hearing of the application and the Registrar must give to the applicant, the Commissioner and any person who has lodged an objection at least seven days notice of the date for the hearing.

(8) Where, upon an application under this section, the Tribunal is satisfied that the applicant is entitled to be registered as a sales representative under this Part, the Tribunal will order that the applicant be granted the registration upon payment of the prescribed registration fee.

26. Subject to this Act, a person is entitled to be registered as a sales representative if the Tribunal is satisfied that that person—

Qualifications for registration.

(a) is a fit and proper person to be so registered;

and

(b) (i) was, within ten years before the date of the application for registration, registered as a sales representative under this Act;

or

(ii) has educational qualifications accepted by the Tribunal as adequate for the purpose of registration as a sales representative.

27. (1) Registration under this Part remains in force (except for any period for which it is suspended) until the registered sales representative dies or the registration is surrendered or cancelled.

Duration of registration.

(2) A registered sales representative must, not later than the prescribed date in each year—

(a) pay to the Registrar the prescribed annual registration fee;

and

(b) lodge with the Registrar an annual return containing the prescribed information.

(3) Where a registered sales representative fails to pay the annual registration fee or lodge the annual return in accordance with subsection (2), the Registrar may, by notice in writing, require the registered sales repre-

sentative to make good the default and, in addition, to pay to the Registrar the amount prescribed as a penalty for default.

(4) Where a registered sales representative fails to comply with a notice under subsection (3) within 14 days after service of the notice, the registration is, by force of this subsection, suspended until the sales representative complies with the notice.

(5) The Registrar will cause notice of a suspension under subsection (4) (being notice in the prescribed form) to be published in a newspaper circulating throughout the State.

(6) Where registration has been suspended by virtue of subsection (4) for a continuous period of six months, the registration is, by force of this subsection, cancelled.

(7) A registered sales representative may, with the consent of the Tribunal, surrender the registration.

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Employment of
registered sales
representative.

29. (1) While a registered sales representative is not in the employment of an agent, the registration is of no force or effect.

(2) A registered sales representative must, within 14 days after commencing or ceasing to be employed by an agent, give to the Registrar notice in writing of the commencement or cessation of the employment together with the prescribed particulars.

Penalty: \$500.

PART V

NOMINATION AND REGISTRATION OF MANAGERS

Employment of
registered
managers.

30. (1) Subject to subsection (3), a licensed corporation must have at all times in its service and in actual control of the business conducted in pursuance of the licence, a person registered and nominated as a manager under this Part whose usual place of residence is within the State.

Penalty: \$1 000.

(2) Subject to subsection (3), a licensed agent (not being a corporation) whose usual place of residence is outside the State, and who is not carrying on business in pursuance of the licence in partnership with a licensed agent whose usual place of residence is within the State, must have at all times in the agent's service and in actual control of the business conducted in pursuance of the licence, a person registered and nominated as a manager under this Part whose usual place of residence is within the State.

Penalty: \$2 000.

(3) If a person nominated as a manager under this Act—

(a) dies;

(b) ceases to be in the service of the person by whom the manager was nominated;

(c) ceases to be registered as a manager;

or

(d) ceases to have a usual place of residence in the State,

it is not necessary to nominate a registered manager until the expiration of one month after the occurrence of that event or such further period as may be allowed by the Tribunal.

(4) In any proceedings for an offence against this section, an allegation in a complaint that a person named in the complaint does not have a usual place of residence within the State will, in the absence of contrary proof, be taken as proved.

(5) A licensed agent must not pay any remuneration (whether by way of salary, wages or commission) to a registered manager who is not in the agent's service as a manager or sales representative.

Penalty: \$2 000.

(6) A person must not, unless the Tribunal is satisfied that special circumstances exist and gives its consent, employ or continue to employ a manager in the business conducted in pursuance of a licence except upon the basis of full-time employment in that business.

Penalty: \$2 000.

(7) A registered manager must not, while employed by an agent, be in the employment, or hold himself or herself out as being in the employment, or act as a sales representative on behalf, of another agent.

Penalty: \$1 000.

31. (1) An application for registration as a manager must—

- (a) be made to the Tribunal;
- (b) be in writing in the prescribed form;
- and
- (c) be accompanied by the prescribed application fee.

Application for registration as manager.

(2) An applicant for registration must furnish the Tribunal with such information (verified, if the Tribunal so requires, by statutory declaration) as the Tribunal may require.

(3) Where an application is made under this section, the Registrar must—

- (a) cause the application to be advertised in the prescribed manner and form;
- and
- (b) cause a copy of the application to be served on the Commissioner.

(4) Any person (including the Commissioner) may, within ten days from the date on which an application is last advertised pursuant to subsection (3), lodge with the Registrar a written objection to the application setting out the grounds of the objection.

(5) The Tribunal may, on the application of any interested person, and subject to such terms as it thinks fit, extend the period for lodging objections.

(6) The Registrar must cause a copy of an objection lodged under subsection (4) to be served on the applicant and, except where the Commissioner lodged the objection, the Commissioner.

(7) Where—

- (a) an objection to an application is lodged under subsection (4);

or

- (b) the Tribunal does not propose to grant an application upon the basis of documentary material alone,

the Tribunal will conduct a hearing of the application and the Registrar must give to the applicant, the Commissioner, the Commissioner of Police and any person who has lodged an objection at least seven days notice of the date for the hearing.

(8) Where, upon an application under this section, the Tribunal is satisfied that the applicant is entitled to be registered as a manager under this Part, the Tribunal will order that the applicant be granted the registration upon payment of the prescribed registration fee.

Entitlement to be registered.

32. (1) A person is entitled to be registered as a manager if the Tribunal is satisfied that that person—

- (a) is of or above the age of 18 years;
 (b) is a fit and proper person to be registered;
 (c) is neither bankrupt nor insolvent;
 and
 (d) is qualified to be registered as a manager in accordance with subsection (2).

(2) A person is qualified to be registered as a manager if that person—

- (a) has been licensed as an agent or registered as a manager under this Act within ten years before the date of the application to be registered;

or

- (b) (i) has, at some time within ten years before the date of the application, been a licensed land broker;

or

- (ii) has educational qualifications accepted by the Tribunal as adequate for the purpose of registration as a manager,

and, in addition to complying with subparagraph (i) or (ii), has been employed as a registered sales representative for a continuous period of two years within the five years preceding the date of the application or has had, in the opinion of the Tribunal, other adequate practical experience.

Duration of registration.

33. (1) Registration under this Part remains in force (except for any period for which it is suspended) until the registered manager dies or the registration is surrendered or cancelled.

(2) A registered manager must, not later than the prescribed date in each year—

- (a) pay to the Registrar the prescribed annual registration fee;
 and
 (b) lodge with the Registrar an annual return containing the prescribed information.

(3) Where a registered manager fails to pay the annual registration fee or lodge the annual return in accordance with subsection (2), the Registrar

may, by notice in writing, require the manager to make good the default and, in addition, to pay to the Registrar the amount prescribed as a penalty for default.

(4) Where a registered manager fails to comply with a notice under subsection (3) within 14 days after service of the notice, the registration is, by force of this subsection, suspended until the manager complies with the notice.

(5) The Registrar will cause notice of a suspension under subsection (4) (being notice in the prescribed form) to be published in a newspaper circulating throughout the State.

(6) Where registration has been suspended by virtue of subsection (4) for a continuous period of six months, the registration is, by force of this subsection, cancelled.

(7) A registered manager may, with the consent of the Tribunal, surrender the registration.

* * * * *

35. (1) While a registered manager is not in the employment of an agent, the registration is of no force or effect.

Registration of manager to lapse when unemployed.

(2) A registered manager must, within 14 days after commencing or ceasing to be employed by an agent, give to the Registrar notice of the commencement or cessation of employment together with the prescribed particulars.

Penalty: \$500.

PART VI

THE CONDUCT OF THE BUSINESS OF AN AGENT

36. A licensed agent must, within 14 days after commencing or ceasing to carry on business as an agent, give to the Registrar notice in writing of that fact.

Notice to Registrar.

Penalty: \$1 000.

37. (1) A licensed agent must not carry on business as such unless the agent has a registered office in the State.

Registered office.

Penalty: \$1 000.

* * * * *

(3) An office may be registered by giving written notice of the address of the office to the Registrar and a registration may be transferred from one office to another by written notice given to the Registrar.

38. (1) A licensed agent must not carry on business from a branch office unless the office is registered.

Branch offices.

Penalty: \$1 000.

(2) A licensed agent may register a branch office by giving written notice of the address of the office to the Registrar.

(3) A licensed agent may cancel the registration of a branch office by giving written notice of cancellation to the Registrar.

Management of
registered office
and branch
offices.

38a. (1) The registered office and all branch offices from which the business of an agent is carried on must be managed by a licensed agent or a registered manager who has been nominated by the agent, by written notice to the Registrar, as the manager of that office.

(2) Subject to subsection (4), if subsection (1) is not complied with, the agent is guilty of an offence.

Penalty: \$1 000.

(3) The same person may not be nominated as the manager of more than one office.

(4) If the manager of an office—

- (a) dies;
 - (b) ceases to be qualified to act as a manager;
 - (c) becomes unable to act as manager in consequence of illness or for any other reason;
- or
- (d) leaves the employment of the agent,

the manager must be replaced within one month or such longer period as may be allowed by the Tribunal and the agent is not guilty of an offence under subsection (2) by reason of not having a nominated manager of the office for that period.

Notice to be
exhibited.

39. (1) A licensed agent must exhibit, and keep exhibited, at the registered office and at every registered branch office of the agent's business, in a prominent position so as to be easily read from outside the office, a notice stating—

- (a) the agent's name;
 - (b) the fact that the person named is a licensed agent;
 - (c) if the business is not carried on in the agent's name—the name in which it is carried on;
- and
- (d) in the case of a notice exhibited at a branch office—the address of the registered office.

Penalty: \$1 000.

(2) If there is any change in the name in which an agent's business is carried on, the agent must, within 14 days after the new name is first used in connection with the business, give notice in writing to the Registrar of the change.

Penalty: \$1 000.

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Advertisement.

41. (1) An advertisement published by or on behalf of a licensed agent relating to the acquisition or disposal of land or a business must contain—

- (a) the name in which the agent carries on business;
- (b) a description of the agent as follows:
 - (i) "licensed agent";

- (ii) "licensed land and business agent";
- (iii) "licensed land agent";
- (iv) "licensed business agent";
- (v) "licensed real estate agent";
- (vi) "licensed real estate and business agent";
- or
- (vii) any other description authorized by regulation;

and

- (c) the address of the registered office, or a registered branch office, of the agent's business,

and if such an advertisement does not contain those particulars, the agent is guilty of an offence.

Penalty: \$1 000.

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(2) A registered manager or sales representative must not publish, or cause or permit to be published, an advertisement relating to the acquisition or disposal of land or a business except in the name, and on behalf, of the licensed agent by whom he or she is employed.

Penalty: \$1 000.

(3) A person must not publish, or cause or permit to be published, any advertisement relating to, or in connection with, any intended transaction relating to the sale or disposal of land or a business or offer to sell any land or business without the prior consent in writing to the transaction of the person by, or upon whose authority, the land or business is to be sold or disposed of.

Penalty: \$1 000.

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44. Where a person signs any offer, contract or agreement, or any document purporting to be an offer, contract or agreement, relating to any transaction that has been negotiated wholly or in part by an agent, or an officer or employee of an agent, the agent must forthwith supply the person who has signed the offer, contract, agreement or document with a true copy of it.

Copy of contract or agreement to be supplied.

Penalty: \$2 000.

45. (1) An agent must not act on behalf of any person in the sale of any land or business unless the agent has been authorized so to act by instrument in writing signed by, or on behalf of, that person.

Agent's authority to act and commission.

Penalty: \$2 000.

(2) Where a person, by instrument in writing, authorizes an agent to act, the agent must furnish that person with a copy of that instrument.

Penalty: \$2 000.

(3) An agent must not demand, receive or retain any commission in respect of the acquisition or disposal, or proposed acquisition or disposal, of any land or business if the contract by which the transaction is to be effected is rescinded or avoided under any provision of this Act.

(3a) Subsection (3) does not apply where—

(a) the contract is rescinded under section 88;

(b) the parties to the contract subsequently enter into another contract for the acquisition or disposal of the land or business;

and

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

(4) Any commission received or retained by an agent in contravention of subsection (3) may be recovered, as a debt, from the agent by the person by whom it was paid.

Agent, etc., not to have interest in land or business which the agent is commissioned to sell.

46. (1) An agent must not have a direct or indirect interest (except in the agent's capacity as such) in the purchase of any land or business that the agent is commissioned to sell.

(2) Subject to subsection (2a), a registered manager, registered sales representative or other person in the employment of an agent must not have a direct or indirect interest (other than an interest that exists by virtue only of employment) in the purchase of any land or business that the agent is commissioned to sell.

(2a) The Tribunal may, if it thinks fit, upon application by any person (not being a registered manager or a registered sales representative) in the employment of an agent, exempt the person from the application of subsection (2) in relation to the purchase of any specified land or business.

(3) A person who has an interest in the purchase of any land or business in contravention of this section is guilty of an offence.

Penalty: \$5 000 or imprisonment for 6 months.

(3a) The court by which a person is convicted of an offence against subsection (3) may order the convicted person to pay to the principal any profit that the convicted person has made or is, in the opinion of the court, likely to make from any dealing with the land or business to which the offence relates.

(4) An agent is not entitled to receive any commission in respect of a transaction in respect of which the agent or an employee of the agent has an interest in contravention of this section.

Agent not to pay commission, etc., except to employees or another agent.

47. (1) An agent must not, in connection with the acquisition or disposal of any land or business, pay the whole or any proportion of the commission or other consideration to which the agent is entitled in relation to the transaction to any person except—

(a) a registered manager or sales representative in the agent's employment;

or

(b) a licensed agent.

Penalty: \$5 000.

(2) In this section—

“licensed agent” includes a person who usually resides in a place outside the State and who is licensed or otherwise authorized under the law of that place to carry on business as an agent in that place.

PART VII
LAND BROKERS

DIVISION I—PRELIMINARY

48. In this Part—

Interpretation.

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“instrument”, in relation to any dealing affecting land, means instrument as defined in the Real Property Act, 1886.

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DIVISION II—LICENSING OF LAND BROKERS

55. (1) Subject to subsection (2), a person must not carry on business or hold himself or herself out as a land broker unless licensed under this Part.

Land broker must be licensed.

Penalty: \$5 000.

(2) Subsection (1) does not apply in respect of anything done by a legal practitioner in the course of legal practice.

56. (1) An application for a licence must—

Application for a licence.

(a) be made to the Tribunal;

(b) be in writing in the prescribed form;

and

(c) be accompanied by the prescribed application fee.

(2) An applicant for a licence must furnish the Tribunal with such information (verified, if the Tribunal so requires, by statutory declaration) as the Tribunal may require.

(3) Where an application is made for a licence, the Registrar must—

(a) cause the application to be advertised in the prescribed manner and form;

and

(b) cause a copy of the application to be served on the Commissioner.

(4) Any person (including the Commissioner) may, within ten days from the date on which an application is last advertised pursuant to subsection

(3), lodge with the Registrar a written objection to the application setting out the grounds of the objection.

(5) The Tribunal may, on the application of any interested person, and subject to such terms as it thinks fit, extend the period for lodging objections.

(6) The Registrar must cause a copy of an objection lodged under subsection (4) to be served on the applicant and, except where the Commissioner lodged the objection, the Commissioner.

(7) Where—

(a) an objection to an application is lodged under subsection (4);

or

(b) the Tribunal does not propose to grant an application upon the basis of documentary material alone,

the Tribunal will conduct a hearing of the application and the Registrar must give to the applicant, the Commissioner and any person who has lodged an objection at least seven days notice of the date for the hearing.

(8) Where, upon an application under this section, the Tribunal is satisfied that the applicant is entitled to be licensed as a land broker, the Tribunal will order that the applicant be granted the licence upon payment of the prescribed licence fee.

Entitlement to be licensed.

57. Subject to this Act, a person is entitled to be licensed as a land broker if the Tribunal is satisfied that that person—

(a) is over the age of 18 years;

(b) is a fit and proper person to be licensed;

(ba) is neither bankrupt nor insolvent;

and

(c) has educational qualifications accepted by the Tribunal as adequate for the purpose of licensing as a land broker.

Duration of licences.

58. (1) A licence remains in force (except for any period for which it is suspended) until the licensed land broker dies or the licence is surrendered or cancelled.

(2) A licensed land broker must, not later than the prescribed date in each year—

(a) pay to the Registrar the prescribed annual licence fee;

and

(b) lodge with the Registrar an annual return containing the prescribed information.

(3) Where a licensed land broker fails to pay the annual licence fee or lodge the annual return in accordance with subsection (2), the Registrar may, by notice in writing, require the licensed land broker to make good the default and, in addition, to pay to the Registrar the amount prescribed as a penalty for default.

(4) Where a licensed land broker fails to comply with a notice under subsection (3) within 14 days after service of the notice, the licence is, by force of this subsection, suspended until the licensed land broker complies with the notice.

(5) The Registrar will cause notice of a suspension under subsection (4) (being notice in the prescribed form) to be published in a newspaper circulating throughout the State.

(6) Where a licence has been suspended by virtue of subsection (4) for a continuous period of six months, the licence is, by force of this subsection, cancelled.

(7) A licensed land broker may, with the consent of the Tribunal, surrender the licence.

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DIVISION III—PREPARATION OF INSTRUMENTS

61. (1) Subject to subsection (1a), no person except a legal practitioner or a licensed land broker shall prepare, for fee or reward, an instrument relating to a dealing in land. Preparation of instruments.

Penalty: \$2 000.

(1a) A person who is a party to, or has acted as an agent in, any transaction in respect of which an instrument has been, or is to be, prepared is, subject to the following provisions of this section, entitled to charge a fee for the preparation of an instrument if—

(a) the instrument is prepared by a legal practitioner or licensed land broker in that person's employment;

and

(b) the legal practitioner or licensed land broker has been continuously in that person's employment since 1 May, 1973, or some earlier date.

(2) Subject to subsection (4), where an instrument relating to a dealing in land (other than a dealing in which the agent participates as purchaser or mortgagee of the land) is prepared by an agent, or a person who stands in a prescribed relationship to an agent, the agent and the person by whom the instrument is prepared are each guilty of an offence.

Penalty: \$2 000.

(3) For the purposes of this section, a person stands in a prescribed relationship to an agent if that person—

(a) is an employee of the agent;

(b) is a partner of the agent;

or

(c) is an employee of, or is remunerated by, a corporation and—

(i) the agent is in a position to control the conduct of the affairs of the corporation;

(ii) the agent is a director of, or a shareholder in, the corporation and the corporation is not a public company, as defined in the *Companies (South Australia) Code*;

or

(iii) the agent is also an employee of, or is also remunerated by, the corporation.

(4) Subsection (2) does not apply to the preparation of an instrument by a legal practitioner or licensed land broker where the legal practitioner or licensed land broker—

(a) stands, at the time of the preparation of the instrument, in a prescribed relationship to an agent acting for a party to the transaction in respect of which the instrument was prepared, and that relationship has existed continuously from 1 May, 1973, or some earlier date;

(b) was licensed as a land broker, or admitted and enrolled as a practitioner of the Supreme Court of South Australia, or was qualified to be so licensed, or admitted and enrolled, on 1 May, 1973;

and

(c) in the case of a person acting in the employment of an agent that is a corporation, is not a director of the corporation, or in a position to control the conduct of the affairs of the corporation.

(5) The Tribunal may, on application by a legal practitioner or licensed land broker, exempt the applicant for such period and subject to such conditions as the Tribunal thinks fit from the provisions of subsection (2)—

(a) where—

(i) the applicant stands in a prescribed relationship to an agent solely by virtue of being an employee of a corporation that is an agent;

and

(ii) the applicant stood, on 1 May, 1973, in a prescribed relationship to an agent who presently holds a controlling interest in the corporation by which the applicant is employed;

or

(b) where—

(i) the applicant was licensed as a land broker or admitted and enrolled as a practitioner of the Supreme Court, or was qualified to be so licensed or admitted, on 1 May, 1973;

and

(ii) the Tribunal is satisfied that it is desirable to grant the exemption in order that the local community in any part of the State may exercise, without undue inconvenience, an adequate choice between persons qualified and entitled to prepare instruments on their behalf.

(6) The Tribunal may, upon the application of the Commissioner or any other person—

(a) vary the period of an exemption under subsection (5);

(b) vary or revoke a condition of an exemption under subsection (5) or impose a further condition of the exemption;

or

(c) revoke an exemption under subsection (5) for breach of a condition of the exemption or other proper cause.

(7) An agent, or a person who stands in a prescribed relationship to an agent, must not demand or receive from any legal practitioner or licensed land broker any commission, fee or other consideration for referring to that legal practitioner or licensed land broker any business involving the preparation of instruments.

Penalty: \$2 000.

(8) A legal practitioner or licensed land broker must not pay or give any commission, fee or other consideration to any person for referring any business involving the preparation of instruments.

Penalty: \$2 000.

(9) An agent, a person who stands in a prescribed relationship to an agent, or a sales representative must not procure or attempt to procure the execution of any document by which a person requests or authorizes the preparation by any person specifically named or generally described of any instrument.

Penalty: \$2 000.

(10) A clause included in, or appended to, any offer or contract for the sale of any land or business by which any party to the contract requests or authorizes the preparation by any person specifically named or generally described of any instrument in connection with the transaction to which the contract relates is void.

(11) An instrument prepared in contravention of this section is not by reason of that fact void or voidable.

(12) An officer of the Crown to whom an instrument is presented for stamping or registration need not inquire whether the instrument has been prepared in contravention of this section.

PART VIII

TRUST ACCOUNTS AND THE AGENTS' INDEMNITY FUND

DIVISION I—PRELIMINARY

62. (1) In this Part, unless the contrary intention appears—

Interpretation.

“administrator” means a person appointed under this Part to administer a trust account:

“agent” includes—

- (a) a land broker;
- (b) a financier that is an associate of an agent or a land broker;
- (c) a person who carries on a business of a prescribed class:

“associate”—see subsection (2):

“auditor” means a person registered as an auditor under the *Companies (South Australia) Code*:

“fiduciary default” means a defalcation, misappropriation or misapplication of trust money occurring while the money is in the possession or control of—

(a) an agent;

or

(b) a firm of which an agent is a member:

“financial business” means the business of providing (as principal or agent) loans secured by mortgage over land:

“financier” means a person by whom a financial business is carried on:

“the fund” means the Agents’ Indemnity Fund established under Division III:

“record” includes a record made by an electronic, electromagnetic, photographic or optical process:

“trust account” means an account in which trust money is deposited by an agent in pursuance of this Part:

“trust money” means money in the possession or control of a person who is not wholly entitled to it both at law and in equity.

(2) A person is an associate of another if—

(a) they are partners;

(b) one is a spouse, parent or child of the other;

(c) they are both trustees or beneficiaries of the same trust, or one is a trustee and the other is a beneficiary of the same trust;

(d) one is a body corporate and the other is a director of the body corporate;

(e) one is a body corporate and the other is a person who has a legal or equitable interest in five per cent or more of the share capital of the body corporate;

(f) a chain of relationships can be traced between them under any one or more of the above paragraphs.

DIVISION II—TRUST ACCOUNTS

Trust money to
be deposited in
trust account.

63. (1) An agent must, as soon as practicable after receiving trust money, deposit that money in an account (in the name of the agent) approved by the Commissioner, at a bank or other prescribed financial institution.

Penalty: \$5 000.

(2) An agent must not pay any other money into the agents’ trust account.

Penalty: \$5 000.

(3) An agent must not withdraw, or permit another person to withdraw, money from a trust account except in accordance with this Part.

Penalty: \$5 000.

(4) The Commissioner may, by notice to a bank or other prescribed financial institution—

(a) approve accounts of a particular class (being accounts that carry interest at a rate considered satisfactory by the Commissioner) for the purposes of this section;

or

(b) vary or revoke any such approval.

64. An agent may withdraw money from a trust account—

Withdrawal of
money from trust
account.

(a) for payment to the person entitled to the money or for payment in accordance with the directions of that person;

(b) in satisfaction of a claim for commission, fees, costs or disbursements that the agent has against the person on behalf of whom the money is held;

(c) to satisfy the order of a court of competent jurisdiction against the person on behalf of whom the agent is holding the money;

(d) for payment into a court before which proceedings have been instituted in relation to the money;

(e) for the purpose of dealing with the money in accordance with the Unclaimed Moneys Act, 1891;

or

(f) for making any other payment authorized by law.

65. Interest that a bank or other financial institution is liable to pay in respect of trust money held in a trust account must be paid by the bank or financial institution to the Commissioner on the prescribed days.

Payment of
interest on trust
accounts to the
Commissioner.

66. (1) If the Tribunal is satisfied that an agent—

Appointment of
administrator of
trust account.

(a) is bankrupt or insolvent or has taken the benefit (as a debtor) of any law relating to bankrupt or insolvent debtors;

(b) has misappropriated or misapplied trust money or is guilty of a defalcation in relation to trust money;

(c) has operated on the trust account in such an irregular manner as to require immediate supervision;

(d) in the case of a natural person, is suffering from mental or physical incapacity preventing the agent from properly attending to the agent's affairs;

(e) has conducted business in an incompetent manner;

(f) has contravened or failed to comply with this Act;

(g) is not licensed as required by law;

(h) is dead, cannot be found or has ceased to carry on business as an agent;

or

(i) in the case of a body corporate—is being wound up, is under official management or is in receivership,

the Tribunal may, by order, appoint a person to administer the agent's trust account.

(2) The Tribunal may make an order under subsection (1) on the application of the Commissioner or a prescribed person or a person of a prescribed class.

(3) The applicant must, as soon as practicable after the Tribunal has made an order under subsection (1), serve a copy of the order on—

- (a) the agent;
 - (b) all persons who are entitled (whether solely or jointly) to withdraw money from, or deal with money in, the account;
- and
- (c) the bank or other financial institution at which the account is held.

(4) A person who has been served with a copy of an order under subsection (3)(a) or (b) or who knows that an administrator has been appointed under subsection (1) must not withdraw money from, or deal with money in, the trust account while the order is in force.

Penalty: \$5 000.

(5) A bank or other financial institution on which a copy of an order has been served under subsection (3) must not, while the order is in force, accept any withdrawal of, or dealing with, money in the trust account unless the withdrawal or dealing is at the direction, or with the written approval, of the administrator.

Penalty: \$5 000.

(6) An order under this section remains in force for 12 months from the making of the order unless sooner terminated by the Tribunal or the Supreme Court and, subject to an order of the Supreme Court to the contrary, the Tribunal may, by subsequent order under this section, renew an order previously made or renewed under this section from the expiration of the previous order.

(7) An administrator—

(a) may require any person in a position to do so—

- (i) to produce all books, papers, securities and other documents relating to the trust account;
- (ii) to provide the administrator with information relevant to the operation of the trust account;

and

- (iii) to furnish all authorities and orders to bankers, financial institutions and others that may be reasonably required for the operation of the trust account;

and

(b) may exercise such other powers as the Tribunal sets out in the order of appointment.

67. (1) An agent must keep detailed records of all trust money received by the agent and of any disbursement of, or other dealing with, that money and must compile detailed accounts of those receipts and disbursements that—

- (a) accurately disclose the state of the trust account maintained by the agent;
- (b) enable the receipt and disposition of trust money to be conveniently and properly audited;

and

(c) comply with all other prescribed requirements.

Penalty: \$5 000.

(2) In particular, the agent must, in respect of the receipt of trust money—

(a) make available to the person making payment a receipt that sets out prescribed information in the prescribed form;

and

(b) make and retain a copy of the receipt as part of the agents' records.

Penalty: \$5 000.

(3) An agent must, at the request of a person who has an interest in trust money, provide that person with a statement setting out details of dealings by the agent with the money.

Penalty: \$5 000.

(4) An agent must keep the accounts and records referred to in this section for at least five years.

Penalty: \$5 000.

68. (1) An agent who maintains a trust account must—

Audit of trust accounts.

(a) have the accounts and records kept under this Division audited by an auditor in respect of each audit period prescribed by regulation;

and

(b) lodge a copy of the auditor's report with the Registrar.

(2) An agent, who did not maintain a trust account during a particular audit period, must make and lodge with the Registrar a declaration, in the prescribed form, setting out the reasons for not maintaining a trust account during that period.

(3) An agent who—

(a) fails to have accounts and records audited as required by this section;

or

(b) fails to lodge the auditor's report, or the declaration required by subsection (2), within the time allowed by or under the regulations,

is guilty of an offence.

Penalty: \$5 000.

(4) Where an agent fails to lodge the auditor's report, or the declaration required by subsection (2), within the time allowed by or under the regulations, the Registrar may, by notice in writing, require the agent to make good the default and, in addition, to pay to the Registrar the amount prescribed by the regulations as a civil penalty for the default.

(5) Where an agent fails to comply with a notice under subsection (4) within 14 days after service of the notice, the agent's licence is, by force of this subsection, suspended until the agent complies with the notice.

(6) The Registrar will cause notice of a suspension under subsection (5) to be published in a newspaper circulating throughout the State.

(7) Where a licence has been suspended by virtue of subsection (5) for a continuous period of six months, the licence is by force of this subsection, cancelled.

(8) An agent is not liable to both a civil penalty and a criminal penalty in respect of the same default under this section; hence, payment of the civil penalty exonerates the agent from liability to a criminal penalty and payment of a criminal penalty exonerates the agent from liability to the civil penalty.

Appointment of
examiner.

69. (1) The Commissioner may, at any time, appoint a person—

(a) to examine, either generally or in a particular case, the accounts and records kept pursuant to this Division (or a previous corresponding enactment) by an agent;

(b) to examine, either generally or in a particular case, the audit programme, working papers and other documents used or prepared by an auditor in the course of auditing the trust accounts of an agent;

and

(c) to confer with an auditor in relation to audits of the trust accounts of an agent.

(2) An examiner may, and must if required by the Commissioner to do so, furnish the Commissioner with a confidential report as to the state of any accounts or records subject to examination by the examiner.

(3) The Commissioner must, as soon as practicable, cause a copy of any report furnished by an examiner under subsection (2) to be given or sent by post to the agent.

(4) In this section—

“agent” includes a former agent.

Obtaining
information for
purposes of audit
or examination.

70. (1) An auditor employed by an agent to make an audit of the trust accounts of the agent, or an examiner appointed under this Division, may require the agent or any other person in a position to do so—

(a) to produce all the accounts (including accounts that are not trust accounts) relating to the business of the agent and all books, papers, securities and other documents relating to those accounts;

and

(b) to provide any relevant information relating to the operation of the accounts.

(2) The manager or other principal officer of any bank or other financial institution with which an agent has deposited any money, whether in his or her own account or in any general or separate trust account, must, upon being required to do so by an auditor or examiner employed or appointed to make an audit or examination under this Division, disclose every such account (including all deposit slips, cancelled cheques and other documents relating to the operation of the account) to the auditor or examiner.

Penalty: \$5 000.

(3) A person who is required by this section to produce documents to an auditor or examiner must permit the auditor or examiner to make a copy of the whole, or any part, of those documents.

Penalty: \$5 000.

(4) In this section—

“account” includes any record required to be kept under this Division in relation to the receipt and disposition of trust money:

“agent” includes a former agent.

71. A bank or other financial institution with which a trust account has been established must report any deficiency in that account to the Commissioner. Banks, etc., to report deficiencies in trust accounts.

Penalty: \$1 000.

72. (1) An administrator, auditor or examiner must not divulge any information that comes to his or her knowledge in the course of the administration of a trust account or the audit or examination of any accounts or records under this Act except— Confidentiality.

(a) to the agent;

(b) to the Commissioner;

or

(c) as otherwise required by law.

Penalty: \$2 000.

(2) A person engaged in the administration of this Act, must not divulge any information disclosed in a report furnished under this Part except—

(a) for the purpose of confidential consideration of the report by the Commissioner;

(b) as is otherwise necessary for the proper administration of this Act;

or

(c) as is otherwise permitted or required by law.

Penalty: \$2 000.

73. (1) Subject to subsection (2), a bank or other financial institution is not affected by notice of any specific trust to which money deposited in a trust account is subject, and is not bound to satisfy itself of the due application of that money. Banks, etc., not affected by notice of trust.

(2) This section does not relieve a bank or other financial institution of liability for negligence.

74. A person must not—

(a) refuse or fail to comply forthwith with a requirement of an administrator, auditor or examiner under this Division;

(b) hinder, delay or obstruct the administration of a trust account or an audit or examination under this Division by altering or destroying relevant documents or by any other means. Failing to comply with requirement of administrators, etc.

Penalty: \$5 000.

DIVISION III—THE AGENTS' INDEMNITY FUND

75. (1) The Commissioner will establish a fund to be entitled the “Agents’ Indemnity Fund”. The Agents’ Indemnity Fund.

(2) The Commissioner may invest money constituting, or forming part of, the fund in a manner prescribed by regulation.

(3) The fund comprises—

- (a) the money standing to the credit of the Consolidated Interest Fund at the commencement of the Land Agents, Brokers and Valuers Act Amendment Act, 1986;
- (b) interest paid by banks and other financial institutions to the Commissioner on trust accounts;
- (c) money recovered by the Commissioner from an agent in relation to the agent's default;
- (d) fines recovered as a result of disciplinary proceedings under Part IX;
- (e) interest accruing from investment of the fund.

(4) Money standing to the credit of the fund will be applied as follows:

- (a) in payment of the costs of administering the fund;
- (b) in satisfaction of orders of the Tribunal to reimburse persons who have suffered loss by reason of the fiduciary default of an agent;
- (c) in payment of insurance premiums under this Division;
- (d) in payment to prescribed persons or bodies for prescribed education programmes conducted for the benefit of agents or members of the public;
- (e) for any other purpose prescribed by this Act.

(5) Payments made under subsection (4)(d) must not exceed the prescribed limit.

Claims on the Fund.

76. (1) Subject to this Division, a person who—

- (a) suffers pecuniary loss as a result of a fiduciary default;
- and
- (b) has no reasonable prospect of recovering the full amount of that loss (except under this Division),

may, by application in the prescribed form to the Tribunal, claim compensation under this Division.

(2) The amount of a claim cannot exceed—

- (a) the actual pecuniary loss suffered by the claimant in consequence of the fiduciary default;
- less
- (b) any amount that the claimant has received or may reasonably be expected to recover (apart from this Division) in reduction of that loss.

(3) A person is not entitled to make a claim under this Division where—

- (a) the agent by whom the fiduciary default was committed, or to whom the fiduciary default relates, was required to be licensed under this Act;

and

(b) in the opinion of the Tribunal, that person knew, or ought to have known, at the time of appointing or instructing the agent, that the agent was not licensed under this Act.

(4) If a valid claim has not been satisfied as provided by this Division at the expiration of 12 months from the day on which it was lodged with the Tribunal, it will then, to the extent to which it has not been satisfied, be increased by interest at the prescribed rate calculated from the expiration of that period.

76a. (1) The Commissioner may, by notice published in a newspaper circulating generally throughout the State, fix a day (not earlier than three months after the publication of the notice) on or before which claims in respect of a fiduciary default, or a series of fiduciary defaults, referred to in the notice, must be made.

Limitation of claims.

(2) Where a notice is published under subsection (1), a claim that is not made within the time fixed by the notice is barred unless the Tribunal otherwise determines.

(3) No action in defamation lies in respect of the publication, in good faith, of a notice under this section.

76b. (1) Where a claim is made under this Division, the Tribunal will, by order, determine—

Establishment of validity of claims.

(a) whether the claim is a valid claim;

and

(b) the amount payable under this Division in, or towards, satisfaction of the claim.

(2) The Tribunal will, by notice in writing, inform the claimant of any determination made by it under subsection (1).

(3) A notice under subsection (2) must be served—

(a) personally or by post on the claimant or the claimant's personal representative;

or

(b) where the claimant is dead and has not left a personal representative known to the Tribunal, or where the whereabouts of the claimant is unknown—by publication in the *Gazette*.

(4) A claimant, or the personal representative of a claimant, who is aggrieved by a determination of the Tribunal under this section may appeal to the Supreme Court against the determination.

(5) Upon an appeal under subsection (4), the Supreme Court may reverse or vary the determination of the Tribunal and may make such further orders as it considers just in the circumstances.

(6) An appeal against a determination of the Tribunal under this section must be instituted within three months after the day on which notice of the determination is served under this section but the Court may, if satisfied that proper cause to do so exists, dispense with the requirement that the appeal be so instituted.

(7) In any proceedings under this section, evidence of an admission or confession is admissible to prove a fiduciary default, notwithstanding that the person by whom the admission or confession was made is not a party to the proceedings.

(8) A determination or order of the Tribunal or the Court under this section must be made on the balance of probabilities.

Rights of the
Commissioner.

76c. (1) Subject to this section, where the Commissioner makes a payment to a claimant under this Division, the Commissioner is, to the extent of the payment, subrogated to the rights of the claimant against any person liable at law or in equity for the fiduciary default in respect of which the payment was made.

(2) This section does not confer upon the Commissioner any right to recover money from a person whose liability in respect of a fiduciary default does not arise from a wrongful or negligent act or omission on that person's part.

Claims by agents.

76d. Where all legal or equitable claims in respect of a fiduciary default committed by a partner or employee of an agent have been fully satisfied and—

(a) the agent has paid compensation to a person for pecuniary loss suffered in consequence of the fiduciary default;

and

(b) the Tribunal is satisfied that the agent has acted honestly and reasonably in all the circumstances of the case,

the Tribunal may, if satisfied that it is just and reasonable so to do, accept a claim under this Division from the agent in respect of that payment.

Insurance in
respect of claims
against fund.

76e. (1) The Commissioner may insure the fund to such extent as the Commissioner thinks fit against claims under this Division.

(2) The cost of the insurance will be paid from the fund.

Insufficiency of
fund.

76f. (1) Where the fund is insufficient to pay all outstanding amounts determined by the Tribunal to be payable from the fund, there will be a proportionate reduction in the amounts to be paid out on the claims.

(2) The Commissioner may vary the proportions in which claims are to be paid out if, in the Commissioner's opinion, it is desirable to do so in order to avert or reduce hardship.

(3) Claims in respect of which payments are made under this section are discharged notwithstanding that they may not have been satisfied in full.

(4) The Commissioner may, with the approval of the Minister, make further payments to any person—

(a) whose claim has not been satisfied in full by reason of the operation of subsection (1), or for any other reason;

or

(b) whose claim is barred,

but any payment so made does not revive or reinstate a claim.

(5) The Commissioner may delay payment of a claim for any period (not exceeding 12 months) in order to allow time for other claims to be made, before the apportionment of payments under this section.

Accounts and
audit.

76g. (1) The Commissioner must keep proper accounts of all money received, disbursed, invested and otherwise dealt with under this Division.

(2) The Auditor-General may at any time, and must at least once in every calendar year, audit the accounts referred to in subsection (1).

PART VIIIA
LAND VALUERS

77. A person must not carry on business, or hold himself or herself out, as a land valuer unless licensed as a land valuer under this Act. Land valuer must be licensed.

Penalty: \$5 000.

78. (1) An application for a licence must—

Application for a licence.

- (a) be made to the Tribunal;
- (b) be in writing in the prescribed form;
- and
- (c) be accompanied by the prescribed application fee.

(2) An applicant for a licence must furnish the Tribunal with such information (verified, if the Tribunal so requires, by statutory declaration) as the Tribunal may require.

(3) Where an application is made for a licence, the Registrar must—

- (a) cause the application to be advertised in the prescribed manner and form;
- and
- (b) cause a copy of the application to be served on the Commissioner.

(4) Any person (including the Commissioner) may, within ten days from the date on which an application is last advertised pursuant to subsection (3), lodge with the Registrar a written objection to the application setting out the grounds of the objection.

(5) The Tribunal may, on the application of any interested person, and subject to such terms as it thinks fit, extend the period for lodging objections.

(6) The Registrar must cause a copy of an objection lodged under subsection (4) to be served on the applicant and, except where the Commissioner lodged the objection, the Commissioner.

(7) Where—

- (a) an objection to an application is lodged under subsection (4);
- or
- (b) the Tribunal does not propose to grant an application upon the basis of documentary material alone,

the Tribunal will conduct a hearing of the application and the Registrar must give to the applicant, the Commissioner and any person who has lodged an objection at least seven days notice of the date for the hearing.

(8) Where, upon an application under this section, the Tribunal is satisfied that the applicant is entitled to be licensed as a land valuer, the Tribunal will order that the applicant be granted the licence on making a declaration of impartiality in the prescribed form and paying the prescribed licence fee.

* * * * *

79. Subject to this Act, a person is entitled to be licensed as a land valuer if the Tribunal is satisfied that that person— Entitlement to be licensed as land valuer.

- (a) is of or above the age of 18 years;
 - (b) is a fit and proper person to be licensed;
- and
- (c) (i) has been licensed as a land valuer under this Part or the repealed Land Valuers Licensing Act within the five years immediately preceding the date of the application;
- or
- (ii) has the educational qualifications accepted by the Tribunal as adequate for the purpose of licensing as a land valuer and has had within the ten years immediately preceding the date of the application not less than four years satisfactory experience in the valuation of land.

Duration of licences.

80. (1) A licence remains in force (except for any period for which it is suspended) until the licensed land valuer dies or the licence is surrendered or cancelled.

(2) A licensed land valuer must, not later than the prescribed date in each year—

- (a) pay to the Registrar the prescribed annual licence fee;
- and
- (b) lodge with the Registrar an annual return containing the prescribed information.

(3) Where a licensed land valuer fails to pay the annual licence fee or lodge the annual return in accordance with subsection (2), the Registrar may, by notice in writing, require the licensed land valuer to make good the default and, in addition, to pay to the Registrar the amount prescribed as a penalty for default.

(4) Where a licensed land valuer fails to comply with a notice under subsection (3) within 14 days after service of the notice, the licence is, by force of this subsection, suspended until the licensed land valuer complies with the notice.

(5) The Registrar will cause notice of a suspension under subsection (4) (being notice in the prescribed form) to be published in a newspaper circulating throughout the State.

(6) Where a licence has been suspended by virtue of subsection (4) for a continuous period of six months, the licence is, by force of this subsection, cancelled.

(7) A licensed land valuer may, with the consent of the Tribunal, surrender the licence.

PART VIII B

RENTAL ACCOMMODATION REFERRAL BUSINESSES

Form of rental accommodation referral contracts.

81. (1) A rental accommodation referral contract is voidable at the option of the party other than the operator ("the client") unless—

- (a) the contract is in writing that is clear and legible and is signed by the parties;

and

(b) the contract document contains all the terms and conditions binding upon the parties and, in particular, states—

(i) the fee paid or payable by the client;

and

(ii) the period for which, the frequency with which and the means by which information is to be provided relating to the availability of premises for occupation pursuant to residential tenancy agreements.

(2) The operator must forthwith upon a rental accommodation referral contract, or document intended to constitute a rental accommodation referral contract being signed by the client, furnish the client with a copy of the contract or document together with a notice in the prescribed form.

Penalty: \$1 000.

(3) The client will not be taken to have elected to affirm a rental accommodation referral contract that is voidable under subsection (1) by reason of any payment made pursuant to the contract.

(4) Where a contract that is voidable under this section is avoided by the client, the client may recover money paid in pursuance of the contract.

82. It is an implied condition of every rental accommodation referral contract that the operator will exercise due care and skill in providing information relating to the availability of premises for occupation pursuant to residential tenancy agreements, and, in particular, to ensure that the information is accurate and relates to premises that are available for such occupation at the time the information is provided.

Implied conditions of rental accommodation referral contracts.

PART IX

DISCIPLINARY POWERS

83. (1) This Part applies in relation to—

(a) a licensed agent or former licensed agent;

(b) a registered manager or former registered manager;

(c) a registered sales representative or former registered sales representative;

(d) a licensed land broker or former licensed land broker;

(e) a licensed land valuer or former licensed land valuer;

(f) an operator, or former operator, of a rental accommodation referral business.

(2) In this Part—

“operator”, in relation to a rental accommodation referral business, includes any person who—

(a) has a legal or equitable interest in the business;

or

(b) has, or participates in, the control or management of the business.

Application of this Part.

84. (1) The Tribunal may hold an inquiry for the purposes of determining whether proper cause exists for disciplinary action against a person to whom this Part applies.

Inquiries.

(2) An inquiry will not be held under this section except in relation to matters alleged in a complaint lodged pursuant to subsection (3) or matters disclosed by investigations conducted pursuant to subsection (4).

(3) Any person (including the Commissioner) may lodge with the Tribunal a complaint in the prescribed form setting out matters that are alleged to constitute grounds for disciplinary action against a person to whom this Part applies.

(4) Where a complaint has been lodged with the Tribunal pursuant to subsection (3), the Commissioner must, at the request of the Registrar, investigate or further investigate any matters to which the complaint relates and report to the Tribunal on the results of the investigations.

(5) Where the Tribunal decides to hold an inquiry under this section, the Tribunal must give the person to whom the inquiry relates reasonable notice of the subject matter of the inquiry.

Disciplinary
action.

85. (1) The Tribunal may exercise one or more of the following powers if it is satisfied, after conducting an inquiry under this Part, that there is proper cause for taking disciplinary action against the person to whom the inquiry relates:

- (a) it may reprimand the person;
- (b) it may impose a fine not exceeding \$5 000 on the person;
- (c) in the case of a person who is licensed or registered under this Act, it may—
 - (i) suspend the licence or registration for a specified period or until the fulfilment of stipulated conditions or until further order;
 - or
 - (ii) cancel the licence or registration;
- (d) it may disqualify the person permanently, for a specified period, until the fulfilment of stipulated conditions, or until further order, from holding a licence or registration under this Act;
- (e) in the case of an operator, or former operator, of a rental accommodation referral business, it may prohibit the person from being an operator of such a business permanently, for a specified period, until the fulfilment of stipulated conditions, or until further order.

(1a) A fine imposed under subsection (1) is payable to the Commissioner for the credit of the Agents' Indemnity Fund.

(2) If a person has been convicted of an offence and the circumstances of the offence form, in whole or in part, the subject matter of an inquiry under this section, the convicted person is not liable to a fine under this section in respect of conduct giving rise to the offence.

(3) Where the Tribunal makes an order cancelling a licence to carry on a business or prohibiting a person from being an operator of a business, the Tribunal may stipulate that the order is to have effect at a future time specified by the Tribunal and impose conditions as to the operation of the business until that time.

(4) A person in relation to whom an order is made or condition imposed by the Tribunal under subsection (1)(e) or (3) must not contravene or fail to comply with the order or condition.

Penalty: \$5 000.

85a. (1) There is proper cause for disciplinary action against a person who is or has been a licensed agent if—

Cause for disciplinary action.

- (a) the licence was improperly obtained;
 - (b) that person or any other person has, in the course of conducting or being employed or otherwise engaged in the business carried on in pursuance of the licence—
 - (i) been guilty of conduct that constituted a breach of this Act or any other Act or law;
- or
- (ii) acted negligently, fraudulently or unfairly;

or

- (c) in the case of a licensed agent—
 - (i) the agent is an undischarged bankrupt, or is bound by a subsisting composition or deed or scheme of arrangement with or for the benefit of creditors, or, being a corporation, has insufficient funds for the payment of creditors;
- or
- (ii) the agent has ceased to be a fit and proper person to hold a licence, or the agent is a corporation and a person who is or has become a prescribed officer of the corporation—
 - (A) has ceased to be or is not a fit and proper person to be a prescribed officer of a corporation that holds a licence;
- or
- (B) has ceased to be or is not licensed or registered as a manager as required by section 16.

(2) There is proper cause for disciplinary action against a person who is or has been a registered manager nominated as registered manager in respect of the business of a licensed agent if—

- (a) the registration was improperly obtained;
 - (b) that person or any other person has, in the course of being employed in the business managed by the registered manager—
 - (i) been guilty of conduct that constituted a breach of this Act or any other Act or law;
- or
- (ii) acted negligently, fraudulently or unfairly;

or

- (c) in the case of a person who is a registered manager—
 - (i) that person is an undischarged bankrupt, or is bound by a subsisting composition or deed or scheme of arrangement with or for the benefit of creditors;
- or

(ii) that person has ceased to be a fit and proper person to be registered as a manager.

(3) There is proper cause for disciplinary action against a person who is or has been a registered manager (other than a registered manager referred to in subsection (2)) or a registered sales representative if—

(a) the registration was improperly obtained;

(b) that person has, in the course of performing functions in pursuance of the registration—

(i) been guilty of conduct that constituted a breach of this Act or any other Act or law;

or

(ii) acted negligently, fraudulently or unfairly;

or

(c) in the case of a person who is a registered manager or a registered sales representative—that person has ceased to be a fit and proper person to be so registered.

(4) There is proper cause for disciplinary action against a person who is or has been a licensed land broker if—

(a) the licence was improperly obtained;

(b) that person or any other person has, in the course of conducting or being employed or otherwise engaged in the business carried on in pursuance of the licence—

(i) been guilty of conduct that constituted a breach of this Act or any other Act or law;

or

(ii) acted negligently, fraudulently or unfairly;

(ba) that person is an undischarged bankrupt or is bound by a subsisting composition or deed or scheme of arrangement with or for the benefit of creditors;

or

(c) in the case of a person who is a licensed land broker—that person has ceased to be a fit and proper person to hold a licence.

(5) There is proper cause for disciplinary action against a person who is or has been a licensed land valuer if—

(a) the licence was improperly obtained;

(b) that person or any other person has, in the course of conducting or being employed or otherwise engaged in the business carried on in pursuance of the licence—

(i) been guilty of conduct that constituted a breach of this Act or any other Act or law;

or

(ii) acted negligently, fraudulently or unfairly;

or

(c) in the case of a person who is a licensed land valuer—that person has ceased to be a fit and proper person to hold a licence.

(6) There is proper cause for disciplinary action against a person who is or has been an operator, of a rental accommodation referral business if that person or any other person has, in the course of conducting or being employed or otherwise engaged in the business—

(a) been guilty of conduct that constituted a breach of this Act or any other Act or law;

or

(b) acted negligently, fraudulently or unfairly.

(7) This section (other than subsection (6)) applies in relation to conduct occurring before or after the commencement of this section.

(8) Notwithstanding any other provision of this section, the Tribunal will not take disciplinary action against a person in relation to the act or default of another if that person could not reasonably be expected to have prevented that act or default.

85b. Where the Tribunal takes disciplinary action against a person under this Part, the Registrar will—

Record of disciplinary action to be kept.

(a) make an entry recording the disciplinary action taken—

(i) on the relevant register established under the Commercial Tribunal Act, 1982;

or

(ii) in the case of an operator or former operator of a rental accommodation business—on a record kept for that purpose by the Registrar in relation to such persons;

and

(b) by notice in writing advise the Commissioner of the disciplinary action and the name of the person against whom it was taken.

PART X

CONTRACTS FOR THE SALE OF LAND OR BUSINESSES

DIVISION I—CONTRACTS FOR THE SALES OF SUBDIVIDED LAND

86. (1) In this Part—

“subdivided land” means any one or more vacant allotments of land shown on a plan of division that has been—

Obligations and offences in relation to subdivided land.

(a) approved pursuant to statute;

and

(b) deposited in the Lands Titles Registration Office, or the General Registry Office at Adelaide,

but does not include allotments intended wholly or mainly for use for agricultural, pastoral, horticultural or viticultural purposes.

(2) Land is vacant for the purposes of this section if no house or building suitable for human occupation is built on it.

(3) A person who, in order to induce any other person (in this subsection referred to as "the prospective purchaser") to purchase subdivided land states—

(a) that that person or some other person will buy at a profit to be received by the prospective purchaser any other land or chattel then owned by the prospective purchaser;

or

(b) that that person or some other person will at some future time obtain for the prospective purchaser a profit on the subdivided land or any part of it,

is guilty of an offence.

Penalty: \$2 000 or imprisonment for 12 months.

(4) A contract for the sale of subdivided land or any interest in subdivided land is (except where the sale is by public auction) voidable at the option of the purchaser at any time within six months after the making of the contract unless the contract—

(a) is in writing;

and

(b) contains the following particulars:

(i) the name, address and description of the vendor;

(ii) the name, address and description of the person who is, at the time when the contract is made, the owner of the land or interest;

(iii) the allotment number of the land and the name (if any) of the subdivision, or other information sufficient to enable the land to be readily identified;

(iv) the name, address and description of some person to whom all money falling due under the contract may be paid towards satisfaction of the contractual liability.

(5) A purchaser will not be taken to have elected to affirm a contract that is voidable under subsection (4) by reason of any payment made in pursuance of the contract.

(6) Where a contract that is voidable under this section is avoided, the purchaser may recover the money paid in pursuance of the contract.

* * * * *

Inducement to
buy subdivided
land.

87. If a person is induced—

(a) to enter into a contract to purchase subdivided land;

or

(b) to affirm any such contract, being voidable by that person,

by any unreasonable or undue persuasion on the part of the vendor, or any person acting or appearing to act on behalf of the vendor, then, according to the nature of the case—

(c) the contract will be taken to have been induced by undue influence and will be voidable at the option of the person induced to enter it;

or

(d) the affirmation will be void and of no effect.

* * * * *

DIVISION II—PROVISIONS APPLICABLE TO CONTRACTS GENERALLY

88. (1) Subject to this section, a purchaser under a contract for the sale of land may, by instrument in writing signed by the purchaser and served personally upon the vendor, or posted by registered or certified mail addressed to the vendor, before the prescribed time give notice to the vendor of an intention not to be bound by the contract and the contract will be taken to have been rescinded at the time the notice is served or posted in accordance with this subsection. Cooling off period.

(1a) If a contract is rescinded under subsection (1), then subject to subsection (1b), the purchaser is, on rescission, entitled to the return of money paid under the contract.

(1b) Where a contract is rescinded under subsection (1), the vendor is entitled to retain money paid by the purchaser—

(a) in consideration of an option to purchase the land subject to the sale;

or

(b) by way of deposit in respect of the sale if the amount paid does not exceed \$50 or such greater amount as may be prescribed.

(2) Any vendor, person acting on behalf of a vendor or stakeholder who before the prescribed time demands or requires the payment of money in respect of the sale that the vendor would not be entitled to retain pursuant to subsection (1b) if the contract of sale were rescinded under subsection (1) is guilty of an offence.

Penalty: \$2 000.

(3) In any proceedings for an offence against subsection (2), where it is proved that the defendant received money of the kind referred to in that subsection, it will be presumed, in the absence of proof to the contrary, that the defendant demanded or required the payment of that money.

(4) This section does not apply in respect of a contract for the sale of any land—

(a) where the contract is made by the exercise by the purchaser of an option to purchase the land subject to the sale, if the option is exercised not less than seven days after the grant of the option and not less than two clear business days after section 90 statements are served personally or by registered or certified mail on the purchaser;

(ab) where the purchaser is a body corporate;

(ac) where the land is sold as part of the sale of a business;

(b) where the purchaser has before executing the contract sought and received independent advice from a legal practitioner and the

legal practitioner has signed a certificate in the prescribed form as to the giving of such advice;

(c) where the sale is by auction;

or

(d) where the land is offered for sale, but not sold, by auction and a person by whom, or on whose behalf, a bid for the land was made at the auction enters into the contract of sale on the same day as the auction for a price not exceeding the amount of that bid.

(5) In this section—

* * * * *

“the prescribed time” means—

(a) where section 90 statements are served personally or by registered or certified mail upon the prospective purchaser before the making of the contract, the expiry of two clear business days after the day on which the contract is made;

(b) where (in the case of a contract that fixes a day for settlement of the sale) section 90 statements are served personally or by registered or certified mail upon the purchaser after the making of the contract and before the time before which the statements are required to be served under section 90, the expiry of two clear business days after the day on which the statements are served;

or

(c) in any other case—the time at which settlement takes place:

“purchaser” means the person or persons named as purchaser or purchasers in the contract or any one or more of them:

“section 90 statements” means—

(a) the statement or statements required to be served by or on behalf of the vendor or prospective vendor under section 90;

and

(b) where an agent acts for the vendor or purchaser or prospective vendor or purchaser, the statement or statements required to be served by or on behalf of the agent under section 90:

“vendor” means the person or persons named as vendor or vendors in the contract or any one or more of them.

89. (1) A contract for the sale of any land or business that provides for the payment of any part of the purchase price of the land or business (except a deposit) before the date of settlement is void.

(2) Any money paid under a contract that is void by reason of subsection (1) may be recovered by action in any court of competent jurisdiction.

(3) In this section—

“deposit” means an amount paid by a purchaser in a lump sum, or in not more than three instalments, towards the purchase price of land or a business before the date of settlement.

(4) This section does not apply in respect of a contract made before the commencement of this Act.

(5) This section—

(a) does not apply and never has applied in respect of a contract for the sale of land by the South Australian Housing Trust;

and

(b) does not apply in respect of a contract for the sale of land by a prescribed body.

90. (1) A vendor, or prospective vendor, of any land must serve, or cause to be served, at least ten days before the date of settlement, personally or by registered or certified mail upon the purchaser or prospective purchaser a statement signed by or on behalf of the vendor setting forth in the prescribed form the rights of a purchaser under section 88 and containing—

Information to be supplied to purchaser before date of settlement.

(a) prescribed particulars of all mortgages, charges and prescribed encumbrances affecting the land subject to the sale;

(b) prescribed particulars of all mortgages, charges and prescribed encumbrances that are not to be discharged or satisfied on or before the date of settlement;

(c) where the vendor obtained title to the land within the 12 months preceding the date of the contract of sale, prescribed particulars of all transactions involving transfer of the title to the land occurring within that period including particulars of the consideration for which the title was transferred in pursuance of each of those transactions;

(d) in the case of a sale or proposed sale of a unit within the meaning of section 223m of the Real Property Act, 1886, the prescribed information;

and

(e) prescribed information as to insurance under Division III of Part V of the Builders Licensing Act, 1986, in relation to a building on the land.

(2) A statement complies with subsection (1) if—

(a) it was prepared by the vendor or some person acting on the vendor's behalf not more than two months before service on the purchaser, and was accurate at the time it was prepared;

and

(b) where, before the statement is served on the purchaser or prospective purchaser, any variation in the particulars set out in the statement has come to the knowledge of the vendor, the statement is accompanied by a further statement signed by the vendor or some person acting on the vendor's behalf giving particulars of the variation.

(2aa) Where a statement is served under subsection (1) before the time at which the document that is to constitute the contract is delivered to the

prospective purchaser for execution and any variation or further variation in the particulars set out in the statement has come to the knowledge of the prospective vendor before that time, the prospective vendor must, at or before that time, serve or cause to be served personally or by registered or certified mail upon the prospective purchaser a further statement signed by the prospective vendor or some person acting on the prospective vendor's behalf giving particulars of the variation or further variation.

(2a) For the purposes of subsection (1)(c), where a person enters into a transaction for the purpose of obtaining title to land and an instrument of transfer, conveyance or other instrument relating to the transaction is lodged at the Lands Titles Registration Office or the General Registry Office, the person will be taken to have obtained title to the land not later than the day on which the instrument of transfer, conveyance or other instrument is so lodged.

(3) Where an agent acts on behalf of the vendor or purchaser or prospective vendor or purchaser of any land, the agent or some person on behalf of the agent must make prescribed inquiries, and such other inquiries as may be reasonable in the circumstances to obtain prescribed particulars of the mortgages, charges and prescribed encumbrances to which the land is subject.

(4) Where an agent acts on behalf of the vendor or purchaser or prospective vendor or purchaser of any land the agent or some person on behalf of the agent must, at least ten days before the date of settlement serve personally or by registered or certified mail upon the purchaser a statement signed by or on behalf of the agent setting forth in the prescribed form the rights of a purchaser under section 88 and the particulars obtained upon the inquiries made pursuant to subsection (3) and certifying that the particulars disclose all such mortgages, charges and prescribed encumbrances affecting the land the subject of the proposed sale as have been ascertained upon those inquiries.

(4a) A statement complies with subsection (4) if—

(a) it was prepared by the agent or some person acting on the agent's behalf not more than two months before service on the purchaser or prospective purchaser and was accurate at the time it was prepared;

and

(b) where, before the statement is served on the purchaser or prospective purchaser any variation in the particulars set out in the statement has come to the knowledge of the agent, the statement is accompanied by a further statement signed by the agent or some person acting on the agent's behalf giving particulars of that variation.

(4b) Where a statement is served under subsection (4) before the time at which the document that is to constitute the contract is delivered to the prospective purchaser for execution and any variation or further variation in the particulars set out in the statement has come to the knowledge of the agent before that time, the agent must, at or before that time, serve or cause to be served personally or by registered or certified mail upon the prospective purchaser a further statement signed by the agent or some person acting on the agent's behalf giving particulars of that variation or further variation.

(5) Where a requirement of this section is not complied with by an agent or some person acting on the agent's behalf, the agent is guilty of an offence.

Penalty: \$2 000.

(5a) If an agent or some other person gives a certificate required by this section which is to the knowledge of the agent or other person false in a material particular, the agent or other person is guilty of an offence.

Penalty: \$2 000.

(6) Where the provisions of this section are not complied with, a purchaser of land affected by the non-compliance may apply to a court of competent jurisdiction for an order under this section.

(7) The court may, upon the hearing of an application under subsection (6)—

(a) award such damages against any person in default under this section as may, in the opinion of the court, be necessary to compensate loss arising from the default;

or

(b) avoid the contract, and make such orders as the court thinks necessary or desirable to restore the parties to the contract to their respective positions before entering into the contract.

(8) It is a defence to proceedings under subsection (7) that the failure to comply with this section arose notwithstanding that the person alleged to be in default exercised reasonable diligence to ensure that the requirements of this section were duly complied with.

(9) Subject to subsection (9a), in this section—

“encumbrance” in relation to land includes—

(a) any easement, right of way, restrictive covenant, writ, warrant, caveat, lien, notice, order, requirement, declaration, claim or demand;

or

(b) any other factor (whether similar or dissimilar to those mentioned in paragraph (a)),

affecting, presently or prospectively, the title to, or the possession or enjoyment of, the land:

“purchaser” means the person or persons named in the contract as purchaser or purchasers or any one or more of them:

“vendor” means the person or persons named in the contract as vendor or vendors, or any one or more of them.

(9a) A reference to a “charge” or an “encumbrance” in this section does not extend to a charge or encumbrance arising from a rate or tax imposed less than 12 months before the date on which the contract is, or is to be, executed by or on behalf of the purchaser.

(9b) Where an auctioneer proposes to offer land for sale by auction—

(a) the auctioneer must make the statements required by this section in relation to the sale available for perusal by members of the public—

(i) at the office of the auctioneer for at least three consecutive business days preceding the auction;

and

(ii) at the place at which the auction is to be conducted, for at least 30 minutes before the auction commences;

and

(b) the auctioneer must cause public advertisement to be given in the manner and form prescribed of the times and places at which the statements may be inspected.

Penalty: \$2 000.

* * * * *
* * * * *

(11) Any council or other statutory authority that has imposed or placed, or has the benefit of, any charge or encumbrance over land must, upon application by any person who is required under this section to provide prescribed particulars of the charge or encumbrance and upon payment of the prescribed fee, provide that person with such information as is reasonably required by that person in order to comply with that requirement.

(12) Except as expressly provided in this Act, no person incurs any civil or criminal liability and no contract is void or liable to be avoided by reason of any omission, misstatement or variation in any particulars or information given under this section or any failure to comply with the provisions of this section.

(13) Subject to subsection (12), the provisions of this section are in addition to, and do not derogate from, the provisions of any other Act or law.

(14) This section does not apply in relation to the sale or proposed sale of land where the land is sold or is to be sold as part of the sale of a business.

Sale of small business.

91. (1) A vendor, or prospective vendor, of a small business must serve, or cause to be served, at least five clear business days before the date of settlement, personally or by registered or certified mail, upon the purchaser or prospective purchaser, a statement signed by the vendor and any agent acting on behalf of the vendor setting forth in the prescribed form the rights of a purchaser under section 91a and containing the prescribed particulars in relation to the business and any land sold or to be sold as part of the sale of the business.

(1a) A statement complies with subsection (1) if—

(a) it was prepared by the vendor or some person acting on the vendor's behalf not more than one month before the making of the contract for the sale of the business, and was accurate at the time it was prepared;

and

(b) where, before the statement is served on the purchaser or prospective purchaser, any variation in the particulars set out in the statement (being particulars of a kind prescribed for the

purposes of this paragraph) has come to the knowledge of the vendor, the statement is accompanied by a further statement signed by the vendor and any agent acting on behalf of the vendor giving particulars of the variation.

(1b) Where an auctioneer proposes to offer a small business for sale by auction—

(a) the auctioneer must make the statement required by subsection (1) in relation to the sale available for perusal by members of the public—

(i) at the office of the auctioneer for at least three consecutive business days preceding the auction;

and

(ii) at the place at which the auction is to be conducted for at least 30 minutes before the auction commences;

and

(b) the auctioneer must cause public advertisement to be given in the manner and form prescribed of the times and places at which the statements may be inspected.

Penalty: \$2 000.

(2) Where the provisions of this section are not complied with, a purchaser of a small business affected by the non-compliance may apply to a court of competent jurisdiction for an order under this section.

(3) The Court may, upon the hearing of an application under subsection (2)—

(a) award such damages against the person in default as may, in the opinion of the Court, be necessary to compensate loss arising from the default;

or

(b) avoid the contract, and make such orders as the Court thinks necessary or desirable to restore the parties to the contract to their respective positions before entering into the contract.

(4) It is a defence to proceedings under subsection (3) that the failure to comply with this section arose notwithstanding that the person alleged to be in default exercised reasonable diligence to ensure that the requirements of this section were duly complied with.

(5) Any council or other statutory authority that has imposed or placed, or has the benefit of, any charge or encumbrance over land must, upon application by any person who is required under this section to provide particulars of the charge or encumbrance and upon payment of the prescribed fee, provide that person with such information as is reasonably required by that person in order to comply with that requirement.

(5a) Except as expressly provided in this Act, no person incurs any civil or criminal liability and no contract is void or liable to be avoided by reason of any omission, misstatement or variation in any particulars or information given under this section or any failure to comply with the provisions of this section.

(5b) Subject to subsection (5a), the provisions of this section are in addition to, and do not derogate from, the provisions of any other Act or law.

(5c) In subsection (1), the reference to the prescribed particulars in relation to land sold or to be sold as part of the sale of the business is a reference to the prescribed particulars and prescribed information relating to the land that would be required to be included in a statement served under section 90 (1) in relation to the land.

(6) In this section—

“small business” means any business that is, or is to be, sold for a total consideration of less than \$70 000 or such other amount as may be prescribed.

(7) In determining for the purposes of subsection (6) the amount of the total consideration for the sale or prospective sale of a business, the value of any land comprising an estate in fee simple sold or to be sold as part of the business will be disregarded.

(8) In this section, a reference to a purchaser or vendor is—

- (a) where the contract is in writing—a reference to the person or persons named in the contract as purchasers or vendors;
- (b) where there is more than one purchaser or vendor—a reference to any one or more of the purchasers or vendors.

Cooling off
period for sale of
small business.

91a. (1) Subject to this section, a purchaser under a contract for the sale of a small business may, by instrument in writing signed by the purchaser and served personally upon the vendor, or posted by registered or certified mail addressed to the vendor, before the prescribed time, give notice to the vendor of an intention not to be bound by the contract and the contract will be taken to have been rescinded at the time the notice is served or posted in accordance with this subsection.

(2) If a contract is rescinded under subsection (1), then, subject to subsection (3), the purchaser is, upon rescission, entitled to the return of money paid under the contract.

(3) Where a contract is rescinded under subsection (1), the vendor is entitled to retain any money paid by the purchaser in consideration of an option to purchase the business subject to the sale.

(4) Any vendor, person acting on behalf of a vendor or stakeholder who before the prescribed time demands or requires the payment of money by a purchaser in respect of the sale of a small business other than—

- (a) money payable in consideration of an option to purchase the business;
- or
- (b) a deposit in the respect of the sale of an amount not exceeding ten per cent of the total consideration for the sale,

is guilty of an offence.

Penalty: \$2 000.

(5) In any proceedings for an offence against subsection (4), where it is proved that the defendant received money other than money referred to in paragraph (a) or (b) of that subsection, it will be presumed, in the absence of proof to the contrary, that the defendant demanded or required the payment of that money.

(6) This section does not apply in respect of a contract for the sale of a small business—

- (a) where section 91 statements have been served personally or by registered or certified mail upon the purchaser not less than five clear business days before the making of the contract;
 - (b) where the purchaser has before entering into the contract sought and received independent advice from a legal practitioner and the legal practitioner has signed a certificate in the prescribed form as to the giving of such advice;
 - (c) where the sale is by auction;
- or
- (d) where the business is offered for sale, but not sold, by auction and a person by whom, or on whose behalf, a bid for the business was made at the auction enters into the contract of sale on the same day as the auction for a price not exceeding the amount of that bid.

(7) In this section—

“the prescribed time” means—

- (a) the expiry of five clear business days after the day on which section 91 statements are served personally or by registered or certified mail upon the purchaser or prospective purchaser;

or

- (b) the time at which settlement takes place,

whichever is the earlier:

“section 91 statements” means the statement or statements required to be served by or on behalf of the vendor or prospective vendor under section 91:

“small business” means a small business within the meaning of section 91.

(8) In this section, a reference to a purchaser or vendor is—

- (a) where the contract is in writing—a reference to the person or persons named in the contract as purchasers or vendors;
- (b) where there is more than one purchaser or vendor—a reference to any one or more of the purchasers or vendors.

PART XI

MISCELLANEOUS PROVISIONS

92. Any purported exclusion, limitation, modification or waiver of a right conferred, or contractual condition implied, by this Act is void.

No exclusions,
etc., of rights
conferred or
conditions
implied by Act.

93. The Commissioner or the Commissioner of Police must, at the request of the Registrar, investigate and report upon any matter relevant to the determination of—

Investigations.

- (a) any application or other matter before the Tribunal;
- or
- (b) any matter that might constitute proper cause for disciplinary action under this Act.

Consent or approval of Tribunal.

94. A consent or approval of the Tribunal for which provision is made under this Act—

(a) may be granted by the Tribunal upon the application of a person seeking the consent or approval;

and

(b) may be revoked by the Tribunal upon application by the Commissioner or any other person if the Tribunal is satisfied that proper cause exists for revocation.

* * * * *

Prohibition against holding simultaneous authorities.

96. A person is not entitled to be simultaneously licensed as an agent and registered as a manager or a sales representative or to be simultaneously registered both as a manager and as a sales representative.

Common rule as to acceptable educational qualifications.

97. (1) The Tribunal may, in accordance with any procedures prescribed by regulation—

(a) make a common rule as to the educational qualifications acceptable to it for the purpose of a particular form of licensing or registration under this Act;

and

(b) vary or revoke any such common rule.

(2) The existence of any such common rule does not prevent the Tribunal from making an exception to it in a particular case if, in the Tribunal's opinion, the exception is justified in the circumstances of the case.

False representation.

98. (1) A person who, in connection with the disposal of any land or business, or any interest in land or a business, makes a false representation for the purpose of inducing another person to acquire the land or business, or the interest, is guilty of an indictable offence.

Penalty: \$10 000 or imprisonment for 12 months.

(2) In proceedings for an offence against subsection (1) it is not necessary for the prosecution to establish that the defendant knew the representation to be false but it is a defence for the defendant to prove that he or she had reasonable ground to believe, and did believe, the representation to be true.

Prohibition of auction sales on Sundays.

98a. A person must not conduct an auction for the sale of any land or business on a Sunday.

Penalty: \$500.

Liability for acts or omissions of employees or agents.

99. For the purposes of this Act, an act or omission of an employee or agent of a person carrying on a business will be taken to be an act or omission of that person unless it is proved that the employee or agent was not acting in the course of the employment or agency.

Offences by bodies corporate.

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

Continuing offences.

100a. (1) A person convicted of an offence against any provision of this Act in respect of a continuing act or omission—

(a) is liable, in addition to the penalty otherwise applicable to the offence, to a penalty for each day during which the act or omission continued of not more than one-tenth of the maximum penalty prescribed for that offence;

and

(b) is, if the act or omission continues after the conviction, guilty of a further offence against the provision and liable, in addition to the penalty otherwise applicable to the further offence, to a penalty for each day during which the act or omission continued after the conviction of not more than one-tenth of the maximum penalty prescribed for the offence.

(2) Where an offence against a provision of this Act consists of an omission to do something that is required to be done, the omission will, for the purposes of subsection (1), be taken to continue for as long as the thing required to be done remains undone after the expiration of the period for compliance with the requirement.

101. (1) Offences against this Act (except those designated as indictable offences) are summary offences. Summary procedure.

(2) Proceedings for an offence against this Act must be commenced within 12 months after the date on which the offence is alleged to have been committed.

(3) A prosecution for an offence against this Act cannot be commenced except by—

(a) the Commissioner;

(b) an authorized officer under the Fair Trading Act, 1987;

or

(c) a person who has the consent of the Minister to commence the prosecution.

(4) An apparently genuine document purporting to be a certificate of the Minister certifying consent to a prosecution for an offence against this Act will be accepted, in the absence of proof to the contrary, as proof of the consent.

* * * * *

103. Nothing in this Act prejudices any civil remedy available apart from this Act. Civil remedies unaffected.

104. No term or provision of any agreement for the sale and purchase of any land or business prevents any party from claiming or being awarded damages or any other relief in respect of misrepresentation in connection with the sale or purchase of the land or business. Misrepresentation.

105. Where a licence or registration granted to a person is suspended or cancelled under this Act, that person must, at the direction of the Tribunal or the Registrar, return the licence or certificate of registration to the Registrar. Return of licences, etc., suspended or cancelled.

Penalty: \$1 000.

105a. (1) Any notice or document required or authorized by this Act or the Commercial Tribunal Act, 1982, to be given to or served on any person is duly served if it is— Service of documents.

- (a) served on the person personally;
- (b) posted in an envelope addressed to the person—
 - (i) at the person's last known address;
 - or
 - (ii) where the person is licensed or registered under this Act—
at the person's address for service;
- or
- (c) where the person is licensed or registered under this Act—left for the person at the address for service with someone apparently over the age of 16 years.

(2) The address for service of a person licensed or registered under this Act is the last address for service of that person of which notice has been given in accordance with the regulations.

False or misleading information.

105b. A person must not, in furnishing information required under this Act, make a statement that is false or misleading in a material particular.

Penalty: \$1 000.

Annual report.

105c. (1) The Commissioner must, on or before the thirty-first day of October in each year, submit to the Minister a report upon the administration of this Act during the period of twelve months ending on the preceding thirtieth day of June.

(2) The report must contain the audited statement of accounts of the Agents' Indemnity Fund for the period to which the report relates.

(3) The Minister must, as soon as practicable after receipt of the report, cause a copy of the report to be laid before each House of Parliament.

* * * * *

Regulations.

107. (1) The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act, and without limiting the generality of the foregoing, those regulations may—

(a) prescribe any form for the purposes of this Act;

* * * * *

- (d) prescribe any fee for the purposes of this Act;
- (da) provide for the refund of fees in circumstances prescribed or at the discretion of the Tribunal;
- (e) prescribe the manner in which any fact relevant to a matter arising under this Act may be proved in any court;
- (f) provide for applications for a licence or registration under this Act to be advertised and provide for objections to be made to such an application, and prescribe the manner in which, and the grounds upon which, such objections may be made;
- (g) provide for the nomination of registered managers and the manner in which they are to be nominated;
- (h) make provision in relation to the granting or removal of a licence endorsement authorizing an agent to act as a hotel broker;

* * * * *

- (l) prescribe the scale of fees to be paid to auditors and the manner of payment;
- (m) prescribe all such matters and things as may be necessary or expedient to ensure that trust accounts are duly kept and audited;
- (n) prescribe various maximum rates of commission and other charges that may be charged or made by licensed agents for services of various kinds defined in the regulation;
- (o) prescribe any matter or thing that may be necessary or expedient in connection with charges, payments and reimbursements made by or to an agent in connection with services rendered as an agent;

* * * * *

- (q) prescribe a code of conduct to be observed and obeyed by persons licensed or registered under this Act;
- (qa) prescribe various maximum rates of charges that may be made by licensed land valuers for services of various kinds defined in the regulation;
- (qb) prescribe a code of conduct to be observed and obeyed by operators of rental accommodation referral businesses;
- (qc) prescribe various maximum fees and other charges that may be charged or made by operators of rental accommodation referral businesses for services of various kinds defined in the regulation;

and

- (r) prescribe the penalties (recoverable summarily) not exceeding \$1 000 for breach of, or non-compliance with, any regulation.

(2) Any regulations made under this Act may be of a general or limited application and may vary according to the persons or classes of persons, the times, the places or the circumstances to which they are expressed to apply.

SCHEDULE

Transitional Provisions

1. In this schedule—

“the 1985 amending Act” means the Land and Business Agents Act Amendment Act, 1985:

“the 1986 amending Act” means the Land Agents, Brokers and Valuers Act Amendment Act, 1986.

2. A licence in force under the repealed Land Valuers Licensing Act immediately before the commencement of the 1985 amending Act will be taken to be a licence granted and in force under Part VIIIA and will, subject to this Act, continue in force.

3. A trustee security that was immediately before the commencement of the 1985 amending Act a trustee security approved by the Land and Business Agents Board will be taken to be a trustee security approved by the Commissioner under this Act as in force after that commencement.

4. A nomination lodged with the secretary to the Land and Business Agents Board and in force immediately before the commencement of the 1985 amending Act will be taken to be a nomination lodged with the Registrar under this Act as in force after that commencement.

5. An exemption, consent or approval granted, or a condition imposed, by the Land and Business Agents Board or the Land Brokers Licensing Board and in force immediately before the commencement of the 1985 amending Act will be taken to be an exemption, consent or approval granted, or condition imposed, by the Tribunal under the provisions of this Act as in force after that commencement.

6. A resolution of the Land and Business Agents Board under section 63a in force immediately before the commencement of the 1985 amending Act will be taken to be an order of the Tribunal under that section as in force after that commencement.

7. All the rights and liabilities of the Land and Business Agents Board in relation to the Consolidated Interest Fund and the recovery or payment of money for or from that fund are upon the commencement of the 1985 amending Act transferred to and vested in the Commissioner.

8. An office that was a registered office or registered branch office under the repealed Land Agents Act, immediately before the commencement of this Act, will, subject to this Act, continue as a registered office or registered branch office for the purposes of this Act.

9. A person registered as a salesman immediately before the commencement of this schedule will, on that commencement, be taken to have been registered as a sales representative.

10. Any period for which a person was registered as a salesman under this Act, as in force before the commencement of this schedule, will be taken to be a period of registration as a sales representative.

11. If, at the commencement of the 1986 amending Act, an agent holds trust money that is not in an account that complies with section 63(1), the agent must—

(a) transfer the money to an account that does comply with that section within six months after that commencement or within such longer period as is permitted by the Commissioner;

and

- (b) pay the interest accruing during that period in respect of that money to the Commissioner for payment into the Agents' Indemnity Fund.

Penalty: \$5 000.

12. The provisions of Part VIII of the principal Act replaced by the 1986 amending Act will remain in force after the commencement of that Act—

- (a) in relation to the administration of trust money by a person appointed under section 63a of those provisions;
- (b) in relation to claims against the Consolidated Interest Fund made before the commencement of that Act;

and

- (c) as to the subrogation of the Commissioner to the rights of a person compensated under those provisions.

13. Money payable from the Consolidated Interest Fund is, after the commencement of the 1986 amending Act, payable from the Agents' Indemnity Fund.

APPENDIX

Legislative History

The Land Agents, Brokers and Valuers Act, 1973, repealed the following Acts:

Land Agents Act, 1955
 Land Agents Act Amendment Act, 1959
 Land Agents Act Amendment Act, 1960
 Land Agents Act Amendment Act, 1964
 Business Agents Act, 1938
 Business Agents Act Amendment Act, 1949
 Business Agents Act Amendment Act, 1951
 Business Agents Act Amendment Act, 1954
 so much of the second schedule to the Statute Law Revision Act, 1957, as relates to the Business Agents Act, 1938
 Business Agents Act Amendment Act, 1963
 Land Valuers Licensing Act, 1969
 Land Valuers Licensing Act Amendment Act, 1974.

Legislative history prior to 3 February 1976 appears in marginal notes and footnotes included in the consolidation of this Act contained in Volume 5 of The Public General Acts of South Australia 1837-1975 at page 478.

Long title:	amended by 4, 1985, s. 3
Section 1:	substituted by 4, 1985, s. 4
Section 2:	deleted in pursuance of the Acts Republication Act, 1967, as its function is now exhausted
Section 3:	amended by 4, 1985, s. 5; repealed by 128, 1986, Sched.
Section 4:	amended by 4, 1985, s. 6; repealed by 128, 1986, Sched.
Section 5:	amended by 4, 1985, s. 7; repealed by 128, 1986, Sched.
Section 6(1):	definition of "agent" amended by 4, 1985, s. 8(a); 128, 1986, Sched. definition of "bank" substituted by 128, 1986, s. 3(a) definition of "banking account" deleted in pursuance of the Acts Republication Act, 1967 definition of "the Board" repealed by 4, 1985, s. 8(k) definition "business" substituted by 4, 1985, s. 8(b) definition of "business day" inserted by 4, 1985, s. 8(b); amended by 128, 1986, Sched. definition of "the Commissioner" inserted by 4, 1985, s. 8(k); amended by 128, 1986, Sched. definition of "date of settlement" amended by 4, 1985, s. 8(c); substituted by 128, 1986, s. 3(b) definition of "hotel broker" inserted by 45, 1985, s. 3 definition of "interest-bearing trust security" amended by 4, 1985, s. 8(d); repealed by 128, 1986, s. 3(c) definition of "land valuer" inserted by 4, 1985, s. 8(e) definition of "licence" amended by 4, 1985, s. 8(f), (g); 128, 1986, Sched. definition of "moneys" repealed and definition of "money" inserted in its place by 128, 1986, Sched. definition of "nominated" amended by 4, 1985, s. 8(h) definition of "operator" inserted by 4, 1985, s. 8(i) definition of "prescribed officer" inserted by 4, 1985, s. 8(i) definition of "registered manager" amended by 128, 1986, Sched. definition of "registered salesman" repealed and definition of "registered sales representative" inserted in its place by 128, 1986, Sched. definition of "the Registrar" inserted by 4, 1985, s. 8(k) definition of "rental accommodation referral business" inserted by 4, 1985, s. 8(j) definition of "rental accommodation referral contract" inserted by 4, 1985, s. 8(j) definition of "the repealed Land Valuers Licensing Act" inserted by 4, 1985, s. 8(l) definition of "residential tenancy agreement" inserted by 4, 1985, s. 8(j) definition of "salesman" amended by 25, 1982, s. 3; redefined as "sales representative" by 128, 1986, Sched. definition of "the secretary" repealed by 4, 1985, s. 8(l) definition of "the Tribunal" inserted by 4, 1985, s. 8(l) definition of "trust account" repealed by 128, 1986, s. 3(c) definition of "trust moneys" repealed by 128, 1986, s. 3(c)
Section 6(2):	amended by 128, 1986, Sched.

Section 6(5):	inserted by 4, 1985, s. 8(m) Part II comprising ss. 7 - 12 and heading amended by 25, 1982, ss. 4-6; repealed and ss. 7 and 8 inserted in its place by 4, 1985, s. 9
Section 7(3):	amended by 128, 1986, Sched.
Section 8:	amended by 128, 1986, Sched.
Section 13:	amended by 25, 1982, s. 26 (Sched.); 4, 1985, s. 10; substituted by 128, 1986, Sched.
Section 13a:	inserted by 45, 1985, s. 4; substituted by 128, 1986, Sched.
Section 14:	substituted by 4, 1985, s. 11
Section 14(5):	amended by 128, 1986, Sched.
Section 15:	amended by 4, 1985, s. 12; substituted by 128, 1986, Sched.
Section 15(2):	amended by 97, 1987, s. 3
Section 16(1):	substituted by 4, 1985, s. 13(a); amended by 128, 1986, Sched.
Section 16(2):	substituted by 4, 1985, s. 13(a); amended by 128, 1986, Sched.; 97, 1987, s. 4(a)
Section 16(3):	repealed by 4, 1985, s. 13(a)
Section 16(4):	substituted by 25, 1982, s. 7; amended by 4, 1985, s. 13(b)-(d); 128, 1986, Sched.
Section 16(5):	inserted by 25, 1982, s. 7; amended by 4, 1985, s. 13(d); substituted by 97, 1987, s. 4(b)
Section 16(6):	inserted by 25, 1982, s. 7; substituted by 4, 1985, s. 13(e)
Section 16(7):	inserted by 25, 1982, s. 7; amended by 4, 1985, s. 13(f)
Section 17:	substituted by 25, 1982, s. 8; 4, 1985, s. 14
Section 17(3), (4) and (7):	amended by 128, 1986, Sched.
Section 18:	substituted by 25, 1982, s. 8; repealed by 4, 1985, s. 14
Section 19:	amended by 4, 1985, s. 15; 128, 1986, Sched.
Section 20:	repealed by 4, 1985, s. 16
Heading preceding section 21:	amended by 128, 1986, Sched.
Section 21:	amended by 25, 1982, s. 26 (Sched.); 4, 1985, s. 17; 128, 1986, Sched.
Section 22(1):	amended by 25, 1982, s. 26 (Sched.); 4, 1985, s. 18(a); 128, 1986, Sched.
Section 22(2):	amended by 25, 1982, s. 26 (Sched.); 4, 1985, s. 18(b), (c); 128, 1986, Sched.
Section 22(3):	amended by 4, 1985, s. 18(d); 128, 1986, Sched.
Section 23(1):	amended by 25, 1982, s. 26 (Sched.); 4, 1985, s. 19; substituted by 128, 1986, Sched.
Section 23(2) and (3):	amended by 25, 1982, s. 26 (Sched.); 4, 1985, s. 19; 128, 1986, Sched.
Section 24(1):	substituted by 128, 1986, Sched.
Section 24(2):	definition of "approved stock and station agent" amended by 4, 1985, s. 20
Section 25:	substituted by 4, 1985, s. 21
Section 25(1) and (5):	amended by 128, 1986, Sched.
Section 26:	amended by 38, 1977, s. 3; 4, 1985, s. 22; substituted by 128, 1986, Sched.; amended by 97, 1987, s. 5
Section 27:	amended by 38, 1977, s. 4; substituted by 25, 1982, s. 9; 4, 1985, s. 23
Section 27(1) - (4) and (7):	amended by 128, 1986, Sched.
Section 28:	repealed by 38, 1977, s. 5
Section 29:	amended by 25, 1982, s. 26 (Sched.); 4, 1985, s. 24; substituted by 128, 1986, Sched.
Section 30(1):	amended by 25, 1982, s. 26 (Sched.); 4, 1985, s. 25(a); 128, 1986, Sched.
Section 30(2):	amended by 25, 1982, s. 26 (Sched.); 4, 1985, s. 25(b); 128, 1986, Sched.
Section 30(3):	amended by 4, 1985, s. 25(c); 128, 1986, Sched.
Section 30(4):	amended by 128, 1986, Sched.
Section 30(5):	amended by 25, 1982, s. 26 (Sched.); 4, 1985, s. 25(d); 128, 1986, Sched.
Section 30(6):	amended by 25, 1982, s. 26 (Sched.); 4, 1985, s. 25(e), (f)
Section 30(7):	amended by 25, 1982, s. 26 (Sched.); 4, 1985, s. 25(g); substituted by 128, 1986, Sched.
Section 31:	substituted by 4, 1985, s. 26
Section 31(5):	amended by 128, 1986, Sched.
Section 32:	amended by 4, 1985, s. 27; substituted by 128, 1986, Sched.
Section 32(2):	amended by 97, 1987, s. 6
Section 33:	substituted by 25, 1982, s. 10; 4, 1985, s. 28
Section 33(3), (4) and (7):	amended by 128, 1986, Sched.
Section 34:	substituted by 25, 1982, s. 10; repealed by 4, 1985, s. 28
Section 35:	amended by 25, 1982, s. 26 (Sched.); 4, 1985, s. 29; substituted by 128, 1986, Sched.
Section 36:	amended by 25, 1982, s. 26 (Sched.); 4, 1985, s. 30
Section 37(1):	amended by 25, 1982, s. 26 (Sched.); 4, 1985, s. 31(a); substituted by 128, 1986, Sched.

Section 37(2):	repealed by 4, 1985, s. 31(b)
Section 37(3):	amended by 4, 1985, s. 31(c); 128, 1986, Sched.
Section 38:	amended by 25, 1982, s. 26 (Sched.); 4, 1985, s. 32; substituted by 128, 1986, s. 4
Section 38a:	inserted by 128, 1986, s. 4
Section 39(1):	amended by 25, 1982, s. 26 (Sched.); 4, 1985, s. 33(a); substituted by 128, 1986, Sched.
Section 39(2):	amended by 25, 1982, s. 26 (Sched.); 4, 1985, s. 33(b), (c); substituted by 128, 1986, Sched.
Section 40:	amended by 25, 1982, s. 26 (Sched.); repealed by 4, 1985, s. 34
Section 41(1):	amended by 25, 1982, s. 26 (Sched.); 4, 1985, s. 35(a); substituted by 128, 1986, Sched.
Section 41(1a):	inserted by 25, 1982, s. 11; amended by 4, 1984, s. 35(b); repealed by 128, 1986, Sched.
Section 41(2):	amended by 25, 1982, s. 26 (Sched.); 4, 1985, s. 35(c); substituted by 128, 1986, Sched.
Section 41(3):	amended by 25, 1982, s. 26 (Sched.); 4, 1985, s. 35(d)
Section 42:	amended by 25, 1982, s. 26 (Sched.); 4, 1985, s. 36; repealed by 128, 1986, s. 5
Section 43:	amended by 25, 1982, s. 26 (Sched.); 4, 1985, s. 37; repealed by 128, 1986, s. 5
Section 44:	amended by 25, 1982, s. 26 (Sched.); 4, 1985, s. 38; 128, 1986, Sched.
Section 45(1):	amended by 25, 1982, s. 26 (Sched.); 4, 1985, s. 39(a); 128, 1986, Sched.
Section 45(2):	amended by 25, 1982, s. 26 (Sched.); 4, 1985, s. 39(b); 128, 1986, Sched.
Section 45(3):	substituted by 25, 1982, s. 12(a);
Section 45(3a):	inserted by 25, 1982, s. 12(a)
Section 45(4):	amended by 25, 1982, s. 12(b); 128, 1986, Sched.
Section 46(1):	substituted by 128, 1986, Sched.
Section 46(2):	amended by 25, 1982, s. 13(a); substituted by 128, 1986, Sched.
Section 46(2a):	inserted by 25, 1982, s. 13(b); amended by 4, 1985, s. 40(a); 128, 1986, Sched.
Section 46(3):	amended by 25, 1982, s. 26 (Sched.); 4, 1985, s. 40(b); substituted by 128, 1986, Sched.
Section 46(3a):	inserted by 128, 1986, Sched.
Section 46(4):	amended by 128, 1986, Sched.
Section 47(1):	amended by 25, 1982, s. 26 (Sched.); 4, 1985, s. 41; substituted by 128, 1986, Sched.
Section 47(2):	inserted by 4, 1985, s. 41(b)
Section 48:	definition of "the Board" repealed by 4, 1985, s. 42 definition of "nominated member" repealed by 4, 1985, s. 42
Heading preceding section 49:	repealed by 4, 1985, s. 43
Section 49:	repealed by 4, 1985, s. 43
Section 50:	amended by 25, 1982, s. 14; repealed by 4, 1985, s. 43
Sections 51 - 54:	repealed by 4, 1985, s. 43
Section 55(1):	amended by 25, 1982, s. 26 (Sched.); 4, 1985, s. 44; substituted by 128, 1986, Sched.
Section 55(2):	amended by 128, 1986, Sched.
Section 56:	substituted by 4, 1985, s. 45
Section 56(5):	amended by 128, 1986, Sched.
Section 57:	amended by 4, 1985, s. 46; substituted by 128, 1986, Sched.; amended by 97, 1987, s. 7; 98, 1987, s. 3
Section 58:	substituted by 25, 1982, s. 15; 4, 1985, s. 47
Section 58(3), (4) and 7:	amended by 128, 1986, Sched.
Section 59:	substituted by 25, 1982, s. 15; repealed by 4, 1985, s. 47
Section 60:	repealed by 4, 1985, s. 47
Section 61(1):	amended by 25, 1982, s. 26 (Sched.); 4, 1985, s. 48(a); substituted by 128, 1986, Sched.
Section 61(1a):	amended by 128, 1986, Sched.
Section 61(2):	amended by 4, 1985, s. 48(b); substituted by 128, 1986, Sched.
Section 61(3):	amended by 4, 1985, s. 48(c); 128, 1986, Sched.
Section 61(4):	amended by 128, 1986, Sched.
Section 61(5):	amended by 4, 1985, s. 48(d), (e); substituted by 128, 1986, Sched.
Section 61(6):	substituted by 4, 1985, s. 48(f)
Section 61(7):	amended by 25, 1982, s. 26 (Sched.); 4, 1985, s. 48(g)
Section 61(8):	amended by 25, 1982, s. 26 (Sched.); 4, 1985, s. 48(h); 128, 1986, Sched.
Section 61(9):	amended by 25, 1982, s. 26 (Sched.); 4, 1985, s. 48(i); 128, 1986, Sched.

Part VIII comprising ss. 62 - 76 and heading amended by 25, 1982, ss. 16, 17, 26 (Sched.); 4, 1985, ss. 49-61; repealed and ss. 62 - 76 and headings inserted in its place by 128, 1986, s. 6

Section 62:	definition of "agent" substituted by 98, 1987, s. 4(a) definition of "associate" inserted by 98, 1987, s. 4(a) definition of "fiduciary default" substituted by 98, 1987, s. 4(b) definition of "financial business" inserted by 98, 1987, s. 4(b) definition of "financier" inserted by 98, 1987, s. 4(b) definition of "trust money" substituted by 98, 1987, s. 4(c) redesignated as s. 62(1) by 98, 1987, s. 4(d)
Section 62(2):	inserted by 98, 1987, s. 4(d)
Section 63(1):	amended by 97, 1987, s. 8(a)
Section 63(4):	inserted by 97, 1987, s. 8(b)
Section 68:	substituted by 98, 1987, s. 5
Section 76(1):	amended by 98, 1987, s. 6(a)
Section 76(3):	amended by 98, 1987, s. 6(b)
	Part VIIIA comprising ss. 77 - 80 and heading inserted by 4, 1985, s. 62
Section 77:	substituted by 128, 1986, Sched.
Section 78(5), (8):	amended by 128, 1986, Sched.
Section 78(9):	repealed by 128, 1986, Sched.
Section 79:	substituted by 128, 1986, Sched.; amended by 97, 1987, s. 9
Section 80:	amended by 25, 1982, s. 26 (Sched.); substituted by 4, 1985, s. 62
Section 80(3), (4) and (7):	amended by 128, 1986, Sched.
	Part VIIIB comprising ss. 81 - 82 and heading inserted by 4, 1985, s. 62
Section 81(3) and (4):	amended by 128, 1986, Sched.
Section 82:	amended by 128, 1986, Sched.
	Part IX comprising ss. 77 - 85 and heading amended by 25, 1982, ss. 18, 19, 26 (Sched.); repealed and ss. 83 - 85b and heading inserted in its place by 4, 1985, s. 62
Section 85(1a):	inserted by 128, 1986, s. 7
Section 85a(1) - (3):	amended by 128, 1986, Sched.
Section 85a(4):	amended by 128, 1986, Sched.; 98, 1987, s. 7
Section 85a(5) and (6):	amended by 128, 1986, Sched.
Section 85a(8):	inserted by 128, 1986, s. 8
Section 86(1):	substituted by 62, 1982, s. 3(6) (Sched. Pt VI)
Section 86(2):	substituted by 128, 1986, Sched.
Section 86(3):	amended by 25, 1982, s. 26 (Sched.); 128, 1986, Sched.
Section 86(4):	amended by 128, 1986, Sched.
Section 86(5) and (6):	substituted by 128, 1986, Sched.
Section 86(7):	repealed by 4, 1985, s. 63
Section 87(2):	repealed by 4, 1985, s. 64
Section 88(1):	amended by 25, 1982, s. 20(a); 128, 1986, Sched.
Section 88(1a):	substituted by 128, 1986, Sched.
Section 88(1b):	substituted by 25, 1982, s. 20(b); amended by 128, 1986, Sched.
Section 88(2):	inserted by 25, 1982, s. 20(b); amended by 4, 1985, s. 65(a); 128, 1986, Sched.
Section 88(3):	substituted by 25, 1982, s. 20(b); amended by 128, 1986, Sched.
Section 88(4):	amended by 25, 1982, s. 20(c); 4, 1985, s. 65(b), (c)
Section 88(5):	definition of "business day" repealed by 4, 1985, s. 65(d) definition of "the prescribed day" repealed and definition of "the prescribed time" inserted in its place by 25, 1982, s. 20(d); amended by 128, 1986, s. 9 definition of "section 90 statements" substituted by 25, 1982, s. 20(e)
Section 89(2):	amended by 128, 1986, Sched.
Section 89(3):	amended by 25, 1982, s. 21
Section 89(5):	inserted by 1, 1979, s. 2;
Section 90(1):	amended by 25, 1982, s. 22(a)-(d); 4, 1985, s. 66(a), (b); 128, 1986, s. 10(a), Sched.
Section 90(2):	amended by 128, 1986, Sched.
Section 90(2aa):	inserted by 25, 1982, s. 22(e); amended by 128, 1986, Sched.
Section 90(2a):	amended by 25, 1982, s. 22(f), (g); 128, 1986, Sched.
Section 90(3):	amended by 25, 1982, s. 22(h), (i); 128, 1986, s. 10(b)
Section 90(4):	amended by 25, 1982, s. 22(j)-(l); 128, 1986, Sched.
Section 90(4a):	amended by 128, 1986, Sched.
Section 90(4b):	inserted by 25, 1982, s. 22(m); amended by 128, 1986, Sched.
Section 90(5):	amended by 25, 1982, ss. 22(n), 26 (Sched.); 4, 1985, s. 66(c); sub- stituted by 128, 1986, Sched.
Section 90(5a):	inserted by 128, 1986, Sched.
Section 90(6):	substituted by 4, 1985, s. 66(d)
Section 90(7) and (8):	amended by 128, 1986, Sched.
Section 90(9):	amended by 25, 1982, s. 22(o), (p); 128, 1986, Sched.

Section 90(9b):	amended by 25, 1982, ss. 22(q), 26(Sched.); 4, 1985, s. 66(e); 128, 1986, Sched.
Section 90(9c):	repealed by 25, 1982, s. 22(r)
Section 90(10):	repealed by 4, 1985, s. 66(f)
Section 90(11):	substituted by 25, 1982, s. 22(s); amended by 128, 1986, s. 10(c), Sched.
Section 90(12) and (13):	inserted by 25, 1982, s. 22(s)
Section 90(14):	inserted by 4, 1985, s. 66(g)
Section 91(1):	substituted by 4, 1985, s. 67(a)
Section 91(1a):	inserted by 4, 1985, s. 67(a); amended by 128, 1986, s. 11, Sched.
Section 91(1b):	inserted by 4, 1985, s. 67(a); amended by 128, 1986, Sched.
Section 91(2):	substituted by 4, 1985, s. 67(a)
Section 91(3):	amended by 128, 1986, Sched.
Section 91(4) and (5):	substituted by 4, 1985, s. 67(b); amended by 128, 1986, Sched.
Section 91(5a) - (5c):	inserted by 4, 1985, s. 67(b)
Section 91(6):	amended by 25, 1982, s. 23(a)
Section 91(7):	inserted by 25, 1982, s. 23(b); amended by 4, 1985, s. 67(c)
Section 91(8):	inserted by 4, 1985, s. 67(d)
Section 91a:	inserted by 4, 1985, s. 68
Section 91a(1) - (3):	amended by 128, 1986, Sched.
Section 91a(4):	amended by 128, 1986, s. 12(a), Sched.
Section 91a(5):	amended by 128, 1986, Sched.
Section 91a(7):	definition of "the prescribed time" amended by 128, 1986, s. 12(b)
Sections 92 - 94:	substituted by 4, 1985, s. 69; amended by 128, 1986, Sched.
Section 95:	repealed by 4, 1985, s. 69
Section 96:	substituted by 128, 1986, Sched.
Section 97:	repealed by 4, 1985, s. 70; inserted by 128, 1986, s. 13; substituted by 97, 1987, s. 10
Section 98(1):	amended by 25, 1982, s. 26 (Sched.); substituted by 128, 1986, Sched.
Section 98(2):	substituted by 128, 1986, Sched.
Section 98a:	inserted by 25, 1982, s. 24
Sections 99 and 100:	substituted by 4, 1985, s. 71; amended by 128, 1986, Sched.
Section 100a:	inserted by 4, 1985, s. 71
Section 100a(1):	amended by 128, 1986, Sched.
Section 101(2):	substituted by 4, 1985, s. 72
Section 101(3):	inserted by 4, 1985, s. 72; substituted by 128, 1986, Sched.; amended by 43, 1987, s. 17
Section 101(4):	inserted by 4, 1985, s. 72; amended by 128, 1986, Sched.
Section 102:	repealed by 4, 1985, s. 73
Sections 103 and 104:	amended by 128, 1986, Sched.
Section 105:	substituted by 4, 1985, s. 74
Section 105a:	inserted by 4, 1985, s. 74
Section 105a(1):	amended by 128, 1986, Sched.
Sections 105b and 105c:	inserted by 4, 1985, s. 74
Section 105c(2):	amended by 128, 1986, s. 14
Section 105c(3):	amended by 128, 1986, Sched.
Section 106:	repealed by 128, 1986, Sched.
Section 107(1):	amended by 25, 1982, s. 25; amended and redesignated as s. 107(1) by 4, 1985, s. 75; amended by 45, 1985, s. 5; 128, 1986, Sched.; 97, 1987 s. 11(b)
Section 107(1)(b) and (c):	repealed by 97, 1987, 11(a)
Section 107(1)(i) - (k):	repealed by 128, 1986, s. 15
Section 107(1)(p):	repealed by 4, 1985, s. 75(d)
Section 107(2):	inserted by 4, 1985, s. 75(h)
Schedule:	inserted by 128, 1986, s. 16