

SOUTH AUSTRALIA

LAND AND BUSINESS (SALE AND CONVEYANCING) ACT 1994

This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at 3 February 1997.

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

SUMMARY OF PROVISIONS

**PART 1
PRELIMINARY**

1. Short title
2. Commencement
3. Interpretation
4. Meaning of small business

**PART 2
CONTRACTS FOR SALE OF LAND OR BUSINESSES**

5. Cooling-off
6. Abolition of instalment contracts
7. Particulars to be supplied to purchaser of land before settlement
8. Particulars to be supplied to purchaser of small business before settlement
9. Verification of vendor's statement
10. Variation of particulars
11. Auctioneer to make statements available
12. Councils and statutory authorities to provide information
13. False certificate
14. Offence
15. Remedies
16. Defences
17. Service of vendor's statement, etc.

**PART 3
SUBDIVIDED LAND**

18. Obligations and offences in relation to subdivided land
19. Inducement to buy subdivided land

**PART 4
AGENTS' OBLIGATIONS**

20. Copy of documents to be supplied
21. Authority to act
22. No agent's commission where contract avoided or rescinded
23. Agent and employees not to have interest in land or business that agent commissioned to sell
24. Agent not to pay commission except to employees or another agent

**PART 5
PREPARATION OF CONVEYANCING INSTRUMENTS**

25. Part 5 subject to transitional provisions
26. Interpretation of Part 5
27. Preparation of conveyancing instrument for fee or reward
28. Preparation of conveyancing instrument by agent or related person
29. Procuring or referring conveyancing business
30. Conveyancer not to act for both parties except as authorised by regulation
31. Effect of contravention

**PART 6
MISCELLANEOUS**

32. Exemptions
33. No exclusions, etc., of rights conferred or conditions implied by Act
34. Civil remedies unaffected
35. Misrepresentation
36. False representation
38. Liability for act or default of officer, employee or agent
39. Offences by bodies corporate
40. Prosecutions
41. Regulations

SCHEDULE

Transitional Provisions

APPENDIX 1

LEGISLATIVE HISTORY

APPENDIX 2

DIVISIONAL PENALTIES AND EXPIATION FEES

LAND AND BUSINESS (SALE AND CONVEYANCING) ACT 1994

being

Land and Business (Sale and Conveyancing) Act 1994 No. 85 of 1994
[Assented to 15 December 1994]¹

as amended by

Statutes Amendment (Sunday Auctions and Indemnity Fund) Act 1995 No. 96 of 1995 [Assented to 7 December 1995]²
Statutes Amendment and Repeal (Common Expiation Scheme) Act 1996 No. 34 of 1996 [Assented to 2 May 1996]³
Statutes Amendment (Community Titles) Act 1996 No. 38 of 1996 [Assented to 9 May 1996]⁴

¹ Came into operation 1 June 1995: *Gaz.* 25 May 1995, p. 2198.

² Came into operation 1 February 1996: *Gaz.* 1 February 1996, p. 1002.

³ **Came into operation 3 February 1997: *Gaz.* 19 December 1996, p. 1923.**

⁴ Came into operation 4 November 1996: *Gaz.* 31 October 1996, p. 1460.

NOTE:

- Asterisks indicate repeal or deletion of text.
- Entries appearing in bold type indicate the amendments incorporated since the last reprint.
- For the legislative history of the Act see Appendix 1.

An Act to regulate the sale of land and businesses and the preparation of conveyancing instruments; and for other purposes.

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Land and Business (Sale and Conveyancing) Act 1994*.

Commencement

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

Interpretation

3. In this Act, unless the contrary intention appears—

"**agent**" has the same meaning as in the *Land Agents Act 1994*;

"**allotment**" has the same meaning as in Part 19AB of the *Real Property Act 1886* and in addition includes a community lot (not being a strata lot) within the meaning of the *Community Titles Act 1996*;

"**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 body corporate;

"**business day**" means any day except a Saturday or a Sunday or other public holiday;

"**Commissioner**" means the Commissioner for Consumer Affairs;

"**conveyancing instrument**" means instrument as defined in the *Real Property Act 1886*;

"**date of settlement**", in relation to a contract for the sale of land or a business, means—

- (a) if a date is fixed by the contract for settlement—the date fixed by the contract or some other date agreed by the parties in substitution for that date;
- (b) in any other case—the date on which settlement takes place;

"**encumbrance**", in relation to land, includes—

- (a) an easement (other than a statutory easement not registered on the certificate of title to the land that relates only to the provision of electricity, gas, water, sewerage or telephone to the land); or
- (b) a right of way, restrictive covenant, writ, summons, warrant, caveat, lien, notice, order, requirement, declaration, claim or demand; or
- (c) any other factor (whether similar or dissimilar to those mentioned in paragraphs (a) and (b)) affecting, presently or prospectively, the title to, or the possession or enjoyment of, the land;

"**land**" includes—

- (a) an interest in land; and

Land and Business (Sale and Conveyancing) Act 1994

- (b) an exclusive right (whether deriving from the ownership of a share or interest in a body corporate or partnership or arising in some other way) to the separate occupation of land or a building or part of a building;

"legal practitioner" means a person admitted and enrolled as a practitioner of the Supreme Court of South Australia;

"mortgage" means a legal or equitable mortgage;

"purchaser" means the person or persons named in a contract as purchaser or purchasers or any one or more of them, and includes a prospective purchaser;

"qualified accountant" means—

- (a) a person who has qualifications in accountancy required by regulation; or
- (b) a person experienced in accountancy who is approved by the Commissioner as a suitable person to exercise the functions of a qualified accountant under Part 2;

"registered conveyancer" means a person registered as a conveyancer under the *Conveyancers Act 1994*;

"sale" includes auction and exchange and **"purchase"** has a corresponding meaning;

"small business"—*see section 4*;

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

- (a) approved under an Act; 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;

"vacant land" means land on which no house or building suitable for human occupation is built;

"vendor" means the person or persons named in a contract as vendor or vendors or any one or more of them, and includes a prospective vendor;

"vendor's statement" means the statement that the vendor of land or a small business is required to serve under Part 2, and includes all certificates that are required to be endorsed on or attached to the statement.

Note: For definition of divisional penalties (and divisional expiation fees) see Appendix 2.

Meaning of small business

4. (1) A business is a small business for the purposes of this Act if the business is, or is to be, sold for a total consideration not exceeding—

- (a) \$200 000; or

- (b) if some other amount is fixed by regulation—that amount.
- (2) For the purposes of subsection (1)—
 - (a) if land is, or is to be, sold in fee simple under the contract for the sale of a business, any component of the consideration attributable to the value of the land is to be disregarded in determining the total consideration for which the business is, or is to be, sold; and
 - (b) the value of land sold or to be sold in fee simple under the contract will be taken to be—
 - (i) the value agreed in writing between the vendor and purchaser; or
 - (ii) in the absence of such an agreement—the capital value determined under the *Valuation of Land Act 1971*.

Land and Business (Sale and Conveyancing) Act 1994

**PART 2
CONTRACTS FOR SALE OF LAND OR BUSINESSES**

Cooling-off

5. (1) Subject to this section, a purchaser under a contract for the sale of land or a small business may, by giving the vendor written notice before the prescribed time of the purchaser's intention not to be bound by the contract, rescind the contract.

(2) The notice may be given as follows:

(a) by giving it to the vendor personally; or

(b) —

(i) by giving it to the vendor's agent personally; or

(ii) by leaving it for the agent, with a person apparently responsible to the agent,

at the place the address of which has been last notified to the Commissioner as the agent's address for service under the *Land Agents Act 1994* or at an office nominated by the agent for the purpose of service of the notice; or

(c) by posting it by certified mail to the vendor at the vendor's last known address (in which case the notice is taken to have been given when the notice is posted); or

(d) by transmitting it by facsimile transmission to a facsimile number provided by the vendor or the vendor's agent (in which case the notice is taken to have been given at the time of transmission).

(3) If in any legal proceedings the question arises whether a notice has been given in accordance with this section, the onus of proving the giving of the notice lies on the purchaser.

(4) If a contract is rescinded under this section, the purchaser is entitled to the return of money paid under the contract, but the vendor may retain money paid by the purchaser—

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

(b) by way of deposit in respect of the sale if the deposit does not exceed—

(i) \$100; or

(ii) if a greater amount is fixed by regulation—that amount.

(5) A 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 land or a small business other than—

(a) money payable in consideration of an option to purchase the land or small business; or

(b) a deposit—

(i) in the case of the sale of land—of \$100 or such greater amount as may be fixed by regulation; or

- (ii) in the case of the sale of a small business—of an amount not exceeding 10% of the total consideration for the sale specified in the contract,

is guilty of an offence.

(6) In proceedings for an offence against subsection (5), if it is proved that the defendant received money from the purchaser, it will be presumed, in the absence of proof to the contrary, that the defendant demanded or required the payment of that money.

(7) This section does not apply in respect of a contract for the sale of land or a small business where—

- (a) in the case of a contract for the sale of land, the purchaser is a body corporate; or
- (b) the purchaser has, before entering into the contract, received independent advice from a legal practitioner and the legal practitioner has signed a certificate in the form approved by regulation as to the giving of that advice; or
- (c) the sale is by auction; or
- (d) the land or business is offered for sale, but not sold, by auction and a person by whom, or on whose behalf, a bid for the land or business was made at the auction enters into the contract on the same day as the auction; or
- (e) the sale is by tender and the contract is made—
 - (i) in the case of the sale of land—not less than five clear business days after the day fixed for the closing of tenders and not less than two clear business days after the vendor's statement is served on the purchaser; or
 - (ii) in the case of the sale of a small business—not less than five clear business days after the day fixed for the closing of tenders and not less than five clear business days after the vendor's statement is served on the purchaser; or
- (f) the contract is made by the exercise by the purchaser of an option to purchase the land or business subject to the sale and the option is exercised—
 - (i) in the case of the sale of land—not less than five clear business days after the grant of the option and not less than two clear business days after the vendor's statement is served on the purchaser; or
 - (ii) in the case of the sale of a small business—not less than five clear business days after the grant of the option and not less than five clear business days after the vendor's statement is served on the purchaser; or
- (g) in the case of a contract for the sale of a small business (including any such contract that also provides for the sale of land), the vendor's statement has been served on the purchaser not less than five clear business days before the making of the contract; or
- (h) in the case of a contract for the sale of land, the contract provides also for the sale of a business that is not a small business.

Land and Business (Sale and Conveyancing) Act 1994

(8) In this section—

"**prescribed time**" means—

(a) in relation to the sale of land—

- (i) where the vendor's statement is served on the prospective purchaser before the making of the contract—the end of the second clear business day after the day on which the contract was made; or
- (ii) where the vendor's statement is served on the purchaser after the making of the contract—the end of the second clear business day from the day on which the statement was served,

or the time settlement takes place (whichever is the earlier);

(b) in relation to the sale of a small business—

- (i) the end of the fifth clear business day after the day on which the vendor's statement is served on the purchaser; or
- (ii) the time settlement takes place,

whichever is the earlier.

Abolition of instalment contracts

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

(2) Money paid under a contract that is void under 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 relation to—

(a) a contract for the sale of land by the South Australian Housing Trust; and

(b) a contract for the sale of land by a body specified by regulation.

Particulars to be supplied to purchaser of land before settlement

7. (1) A vendor of land must, at least 10 clear days before the date of settlement, serve, or cause to be served, on the purchaser a statement in the form required by regulation (signed by or on behalf of the vendor) setting out—

(a) the rights of a purchaser under section 5; and

(b) the particulars required by regulation of—

- (i) all mortgages, charges and prescribed encumbrances affecting the land subject to the sale; and

(ii) where the vendor obtained title to the land within 12 months before the date of the contract of sale, all transactions involving transfer of title to the land occurring within that period; and

(iii) any prescribed matters.

(2) For the purposes of subsection (1)(b)(ii), 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 Land 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) The statement need not include reference to charges arising from the imposition of rates or taxes less than 12 months before the date of service of the statement.

(4) This section—

(a) applies only to the sale of land where the interest being sold is an estate in fee simple or leasehold interest granted by the Crown under an Act;

(b) does not apply where land is sold under a contract for the sale of a business.

Particulars to be supplied to purchaser of small business before settlement

8. (1) A vendor of a small business must, at least five clear business days before the date of settlement, serve, or cause to be served, on the purchaser a statement in the form required by regulation (signed by or on behalf of the vendor) setting out—

(a) the rights of a purchaser under section 5; and

(b) the prescribed particulars in relation to the business; and

(c) where land is sold under the contract for sale of the business—the particulars that would be required in a vendor's statement under section 7 if the land were sold separately.

(2) The statement must have endorsed on, or attached to, it a certificate in the form required by regulation (signed by or on behalf of a qualified accountant, not being the vendor) certifying—

(a) that the accountant or a person acting on behalf of the accountant has examined the accounts of the business; and

(b) that the financial particulars disclosed under subsection (1)(b) appear to be in conformity with the accounts.

Verification of vendor's statement

9. (1) Where a vendor's statement is required to contain particulars in relation to land, and an agent acts on behalf of the vendor—

(a) the agent or a person acting on behalf of the agent must make the prescribed inquiries into the matters as to which particulars are required in the statement; and

(b) the agent, or some person acting on the agent's behalf, must sign a certificate in the form required by regulation—

(i) that the responses to the inquiries confirm the completeness and accuracy of the particulars contained in the statement; or

Land and Business (Sale and Conveyancing) Act 1994

- (ii) that, subject to stated exceptions, the responses to the inquiries confirm the completeness and accuracy of those particulars; and
 - (c) the vendor must ensure that the certificate is endorsed on, or attached to, the vendor's statement at the time of service on the purchaser.
- (2) Where a vendor's statement is required to contain particulars in relation to land and no agent acts on behalf of the vendor but an agent acts on behalf of the purchaser—
- (a) the agent or a person acting on behalf of the agent must make the prescribed inquiries into the matters as to which particulars are required in the statement; and
 - (b) the agent, or some person acting on the agent's behalf, must sign a certificate in the form required by regulation—
 - (i) that the responses to the inquiries confirm the completeness and accuracy of the particulars contained in the statement; or
 - (ii) that, subject to stated exceptions, the responses to the inquiries confirm the completeness and accuracy of those particulars; and
 - (c) the agent must serve the certificate or cause it to be served on the purchaser—
 - (i) when the vendor's statement is required under section 7—at least ten clear days before the date of settlement;
 - (ii) when the vendor's statement is required under section 8—at least five clear business days before the date of settlement.

Variation of particulars

10. (1) A vendor's statement must be accurate as at the date of service on the purchaser.

(2) If after the service of a vendor's statement but before the purchaser signs the contract circumstances change so that if a fresh statement were to be prepared there would have to be some change in the particulars contained in the statement, then the vendor's statement will be regarded as defective until a notice of amendment is served and when such a notice is served it will be presumed that the vendor's statement was served, as amended by the notice, on the date of service of the notice.

Auctioneer to make statements available

11. Where an auctioneer proposes to offer land or a small business for sale by auction—

- (a) the auctioneer must make the vendor's statement available for perusal by members of the public—
 - (i) at the office of the auctioneer or agent acting for the vendor 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 required by regulation of the times and places at which the statement may be inspected.

Councils and statutory authorities to provide information

12. (1) A council must within eight clear business days after receiving a request for information under this section provide the applicant with information reasonably required as to—

- (a) any charge or prescribed encumbrance over land within the council's area of which the council has the benefit; or
- (b) insurance under Division 3 of Part 5 of the *Builders Licensing Act 1986*, in relation to a building on land within the council's area.

(2) A statutory authority must within eight clear business days after receiving a request for information under this section provide the applicant with information reasonably required as to—

- (a) any charge or prescribed encumbrance over land of which the statutory authority has the benefit; or
- (b) any other prescribed matter.

(3) An application under this section must be accompanied by the fee fixed by regulation and any documents that are, in accordance with the regulations, to accompany the application.

False certificate

13. A person who gives a certificate under this Part knowing it to be false in a material particular is guilty of an offence.

Offence

14. A person who contravenes or fails to comply with this Part (whether or not the contravention or non-compliance is declared to be an offence) is guilty of an offence.

Penalty: Division 7 fine.

Remedies

15. (1) Where a vendor's statement is not given or certified as required by this Part, or the statement given is defective, the purchaser may apply to a court of competent jurisdiction for an order under this section.

(2) On the hearing of an application under subsection (1) the Court may, if satisfied that the purchaser has been prejudiced by the failure to comply with this Part, exercise any one or more of the following powers:

- (a) avoid the contract and make such other orders as the Court thinks necessary or desirable to restore the parties to the contract to their respective positions before entering into the contract;
- (b) award such damages as may, in the opinion of the Court, be necessary to compensate loss arising from the non-compliance;
- (c) make such other orders as may be just in the circumstances.

(3) Damages may be awarded under subsection (2)(b) against—

- (a) the vendor;
- (b) if it appears that the purchaser has been prejudiced by a failure on the part of an agent to carry out duties imposed by this Part—the agent,

or both.

Land and Business (Sale and Conveyancing) Act 1994

Defences

16. It is a defence to a charge of an offence, or to civil proceedings, under this Part arising from an alleged contravention or non-compliance with a requirement of this Part if the defendant proves—

- (a) that the alleged contravention or non-compliance was unintentional and did not occur by reason of the defendant's negligence or the negligence of an officer, employee or agent of the defendant; or
- (b) that the alleged contravention or non-compliance was due to reliance on information provided by a person or body to which an inquiry to obtain the information is, in accordance with the regulations, required to be made; or
- (c) that—
 - (i) the purchaser received independent advice from a legal practitioner in relation to waiving compliance with that requirement; and
 - (ii) the legal practitioner signed a certificate in the form required by regulation as to the giving of that advice; and
 - (iii) the purchaser waived compliance with that requirement by signing an instrument of waiver in the form required by regulation.

Service of vendor's statement, etc.

17. A vendor's statement, a notice of amendment to a vendor's statement or a certificate of an agent acting on behalf of a purchaser may be served on a purchaser—

- (a) by delivering it to the person personally; or
- (b) by posting it by certified mail to the person at the person's last known address.

**PART 3
SUBDIVIDED LAND**

Obligations and offences in relation to subdivided land

18. (1) A person who, in order to induce another person (**the prospective purchaser**) to purchase subdivided land states—

- (a) that the person or some other person will buy at a profit to be received by the prospective purchaser other land or a chattel then owned by the prospective purchaser; or
- (b) that the person or some other person will at some future time obtain for the prospective purchaser a profit on the subdivided land or part of it,

is guilty of an offence.

Penalty: Division 6 fine or division 6 imprisonment.

(2) A contract for the sale of subdivided land or an 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.

(3) A purchaser will not be taken to have elected to affirm a contract that is voidable under this section by reason of a payment made under the contract.

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

Inducement to buy subdivided land

19. If a person is induced—

- (a) to enter into a contract to purchase subdivided land; or
- (b) to affirm a contract to purchase subdivided land that is voidable by that person,

by unreasonable or undue persuasion on the part of the vendor, or a 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.

Land and Business (Sale and Conveyancing) Act 1994

**PART 4
AGENTS' OBLIGATIONS**

Copy of documents to be supplied

20. Where a person signs an offer, contract or agreement, or a document intended to constitute an offer, contract or agreement, relating to a transaction that has been negotiated wholly or in part by an agent or an officer or employee of an agent, the agent must immediately give the person a copy of the offer, contract, agreement or document.

Penalty: Division 7 fine.

Expiation fee: Division 10 fee.

Authority to act

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

Penalty: Division 7 fine.

(2) An agent must give a copy of an instrument authorising the agent to act on behalf of a person to the person.

Penalty: Division 7 fine.

Expiation fee: Division 10 fee.

No agent's commission where contract avoided or rescinded

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

(2) Subsection (1) does not apply if—

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

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

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

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

Agent and employees not to have interest in land or business that agent commissioned to sell

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

Penalty: Division 7 fine or division 7 imprisonment.

(2) An officer or employee of an agent must not have a direct or indirect interest (except the interest that exists because of that office or employment) in the purchase of land or a business that the agent is commissioned to sell.

Penalty: Division 7 fine or division 7 imprisonment.

(3) The Minister may, on application by an officer or employee of an agent, exempt the person from the application of subsection (2) in relation to the purchase of specified land or a specified business.

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

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

Agent not to pay commission except to employees or another agent

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

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

Penalty: Division 6 fine.

(2) In this section—

"registered agent" means—

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

Land and Business (Sale and Conveyancing) Act 1994

**PART 5
PREPARATION OF CONVEYANCING INSTRUMENTS**

Part 5 subject to transitional provisions

25. This Part operates subject to the transitional provisions contained in the schedule.

Interpretation of Part 5

26. (1) For the purposes of this Part, a person stands in a prescribed relationship to an agent if the person—

- (a) is an employee of the agent; or
- (b) is a partner of the agent; or
- (c) is an employee of, or is remunerated by, a body corporate and—
 - (i) the agent is in a position to control the conduct of the affairs of the body corporate; or
 - (ii) the agent is a director of, or a shareholder in, the body corporate and the body corporate is not a public company as defined in the *Corporations Law*; or
 - (iii) the agent is also an employee of, or is also remunerated by, the body corporate.

(2) For the purposes of this Part, an application under the *Strata Titles Act 1988*, for the deposit of a strata plan, the amendment of a deposited strata plan, the amalgamation of deposited strata plans, or the cancellation of a deposited strata plan, is a conveyancing instrument.

Preparation of conveyancing instrument for fee or reward

27. A person other than a legal practitioner or registered conveyancer must not prepare a conveyancing instrument for fee or reward.

Penalty: Division 7 fine.

Preparation of conveyancing instrument by agent or related person

28. If a conveyancing instrument (other than one to give effect to a transaction in which the agent participates as a purchaser or mortgagee of 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: Division 7 fine.

Procuring or referring conveyancing business

29. (1) A legal practitioner or registered conveyancer must not pay or give a commission or fee or other consideration to a person for referring business involving the preparation of conveyancing instruments.

Penalty: Division 7 fine.

(2) An agent, or a person who stands in a prescribed relationship to an agent, must not demand or receive from a legal practitioner or registered conveyancer a commission or fee or other consideration for referring to the legal practitioner or registered conveyancer business involving the preparation of conveyancing instruments.

Penalty: Division 7 fine.

(3) An agent, or a person who stands in a prescribed relationship to an agent, must not procure or attempt to procure the execution of a document requiring or authorising the preparation of a conveyancing instrument by a particular person or person of a particular description.

Penalty: Division 7 fine.

(4) A clause included in, or appended to, an offer or contract for the sale of land or a business requiring or authorising the preparation of a conveyancing instrument by a particular person or person of a particular description is void.

Conveyancer not to act for both parties except as authorised by regulation

30. Except as authorised under the regulations, a conveyancer must not act for both the transferor and transferee, or the grantor and grantee, of property or rights under a transaction.

Penalty: Division 7 fine.

Effect of contravention

31. (1) A conveyancing instrument is not void or voidable because it is prepared in contravention of this Part.

(2) An officer of the Crown to whom a conveyancing instrument is presented for stamping or registration need not inquire whether the instrument has been prepared in contravention of this Part.

**PART 6
MISCELLANEOUS**

Exemptions

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

(2) An exemption is subject to the conditions (if any) imposed by the Minister.

(3) The Minister may, at his or her discretion, vary or revoke an exemption.

(4) The grant or a variation or revocation of an exemption must be notified in the *Gazette*.

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

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

Civil remedies unaffected

34. Nothing in this Act prejudices any civil remedy available apart from this Act.

Misrepresentation

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

False representation

36. (1) A person who, in connection with the sale of land or a business, or an interest in land or a business, makes a false representation for the purpose of inducing another person to purchase the land or business, or the interest, is guilty of an offence.

Penalty: Division 6 fine or division 6 imprisonment.

(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.

* * * * *

Liability for act or default of officer, employee or agent

38. For the purposes of this Act, an act or default of an officer, employee or agent of a person will be taken to be an act or default of that person unless it is proved that the officer, employee or agent acted outside the scope of his or her actual, usual and ostensible authority.

Offences by bodies corporate

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

Prosecutions

40. (1) Proceedings for an offence against this Act must be commenced within two years after the date on which the offence is alleged to have been committed or, with the authorisation of the Minister, at a later time within five years after that date.

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

- (a) the Commissioner; or
- (b) an authorised officer under the *Fair Trading Act 1987*; or
- (c) a person who has the consent of the Minister to commence the prosecution.

(3) In any proceedings, an apparently genuine document purporting to be a certificate of the Minister certifying authorisation of, or 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 authorisation or consent.

Regulations

41. (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.

(2) Without limiting the generality of subsection (1), the regulations may—

- (a) exempt (conditionally or unconditionally) classes of persons or activities from the application of this Act or specified provisions of this Act;
- (b) impose a penalty (not exceeding a division 7 fine) for contravention of, or non-compliance with, a regulation;
- (c) fix expiation fees, not exceeding a division 7 fee, for alleged offences against the regulations.

(3) Regulations under this Act—

- (a) may be of general application or limited application;
- (b) may make different provision according to the matters or circumstances to which they are expressed to apply;
- (c) may provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Commissioner or the Minister.

Land and Business (Sale and Conveyancing) Act 1994

SCHEDULE

Transitional Provisions

Preparation of conveyancing instruments

(1) Part 5 does not prevent a person who is a party to, or has acted as an agent in, a transaction in respect of which a conveyancing instrument has been, or is to be, prepared from charging a fee for the preparation of the instrument if—

- (a) the instrument is prepared by a legal practitioner or registered conveyancer in that person's employment; and
- (b) the legal practitioner or registered conveyancer has been continuously in that person's employment since 1 May 1973 or some earlier date.

(2) Part 5 does not prevent the preparation of a conveyancing instrument by a legal practitioner or registered conveyancer who stands in a prescribed relationship to an agent acting for a party to the transaction in respect of which the instrument is prepared if the legal practitioner or registered conveyancer—

- (a) has stood in that relationship continuously from 1 May 1973 or some earlier date; and
- (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 a conveyancer that is a body corporate—is not a director of the body corporate, or in a position to control the conduct of the affairs of the body corporate.

(3) An exemption granted under Part 7 Division 3 of the *Land Agents, Brokers and Valuers Act 1973* and in force immediately before the commencement of this Act continues in force according to its terms as an exemption from the corresponding provision of Part 5.

- (4) The Commissioner may, by notice in writing, vary or revoke an exemption referred to in subclause (3).

APPENDIX 1

LEGISLATIVE HISTORY

Transitional Provisions

(Transitional provision from Statutes Amendment and Repeal (Common Expiation Scheme) Act 1996, s. 5)

5. An Act repealed or amended by this Act will continue to apply (as in force immediately prior to the repeal or amendment coming into operation) to an expiation notice issued under the repealed or amended Act.

Legislative History

(entries in bold type indicate amendments incorporated since the last reprint)

Section 3:	definition of "allotment" inserted by 38, 1996, s. 8(a) definition of "subdivided land" amended by 38, 1996, s. 8(b)
Section 20:	amended by 34, 1996, s. 4 (Sched. cl. 21)
Section 21(2):	amended by 34, 1996, s. 4 (Sched. cl. 21)
Section 37:	repealed by 96, 1995, s. 6
Section 41(2):	amended by 34, 1996, s. 4 (Sched. cl. 21)

Land and Business (Sale and Conveyancing) Act 1994**APPENDIX 2****DIVISIONAL PENALTIES AND EXPIATION FEES**

At the date of publication of this reprint divisional penalties and expiation fees are, as provided by section 28A of the *Acts Interpretation Act 1915*, as follows:

Division	Maximum imprisonment	Maximum fine	Expiation fee
1	15 years	\$60 000	—
2	10 years	\$40 000	—
3	7 years	\$30 000	—
4	4 years	\$15 000	—
5	2 years	\$8 000	—
6	1 year	\$4 000	\$300
7	6 months	\$2 000	\$200
8	3 months	\$1 000	\$150
9	-	\$500	\$100
10	-	\$200	\$75
11	-	\$100	\$50
12	-	\$50	\$25

Note: This appendix is provided for convenience of reference only.