



ANNO TRICESIMO QUARTO

**ELIZABETHAE II REGINAE**

**A.D. 1985**

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**No. 4 of 1985**

**An Act to amend the Land and Business Agents Act, 1973.**

*[Assented to 7 March 1985]*

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

- Short title.** 1. (1) This Act may be cited as the "Land and Business Agents Act Amendment Act, 1985".
- (2) The Land and Business Agents Act, 1973, is in this Act referred to as "the principal Act".
- Commencement.** 2. (1) This Act shall come into operation on a day to be fixed by proclamation.
- (2) The Governor may, in a proclamation fixing a day for this Act to come into operation, suspend the operation of specified provisions of this Act until a subsequent day fixed in the proclamation, or a day to be fixed by subsequent proclamation.
- Amendment of long title.** 3. The long title to the principal Act is amended—
- (a) by inserting after the word "brokers" the passage "and land valuers";
- and
- (b) by inserting after the passage "Business Agents Act, 1938-1963;" the passage "to repeal the Land Valuers Licensing Act, 1969-1974;".
- Repeal of s. 1 and substitution of new section.** 4. Section 1 of the principal Act is repealed and the following section is substituted:
- Short title.** 1. This Act may be cited as the "Land Agents, Brokers and Valuers Act, 1973".
- Amendment of s. 3—Arrangement.** 5. Section 3 of the principal Act is amended—
- (a) by striking out the item:

## PART II—THE LAND AND BUSINESS AGENTS BOARD;

and

(b) by striking out the item:

## PART IX—INVESTIGATIONS, INQUIRIES AND APPEALS

and substituting the items:

## PART VIIIA—LAND VALUERS

## PART VIIIB—RENTAL ACCOMMODATION REFERRAL BUSINESSES

## PART IX—DISCIPLINARY POWERS.

6. Section 4 of the principal Act is amended by inserting after the item: Amendment of s. 4—  
Repeal.  
the Business Agents Act Amendment Act, 1963

the items:

the Land Valuers Licensing Act, 1969;

the Land Valuers Licensing Act Amendment Act, 1974.

7. Section 5 of the principal Act is amended—

(a) by striking out subsections (1) to (5) (inclusive) and substituting the following subsections: Amendment of s. 5—  
Transitional provisions.

(1) A licence in force under the repealed Land Valuers Licensing Act immediately before the commencement of the 1985 amending Act shall be deemed to be a licence granted and in force under Part VIIIA and shall, subject to this Act, continue in force.

(2) 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 shall be deemed to be a trustee security approved by the Commissioner under this Act as in force after that commencement.

(3) 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 shall be deemed to be a nomination lodged with the Registrar under this Act as in force after that commencement.

(4) 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 shall be deemed 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.

(5) A resolution of the Land and Business Agents Board under section 63a in force immediately before the commencement of the 1985 amending Act shall be deemed to be an order of the Tribunal under that section as in force after that commencement.

(5a) 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 moneys for or from that fund are upon the commencement of the 1985 amending Act transferred to and vested in the Commissioner.;

(b) by striking out subsections (7) to (12) (inclusive) and substituting the following subsections:

(7) Until such time as the Minister, on the recommendation of the Commissioner, determines that the amount of the consolidated interest fund is sufficient to cover any claims likely to be made under Part VIII, the amount of the initial fee or the annual fee payable for a licence or registration under Part III, IV, V or VII shall be deemed to be the sum of the amount that would have been payable apart from this subsection and the amount of twenty dollars.

(8) The additional moneys received by virtue of the operation of subsection (7) shall be credited to the consolidated interest fund.

(9) In this section—

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

8. Section 6 of the principal Act is amended—

(a) by striking out from the definition of “agent” in subsection (1) the passage “, whether or not he carries on any other business separately from, or in conjunction with, that business”;

(b) by striking out the definition of “business” in subsection (1) and substituting the following definitions:

“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 within the meaning of the Holidays Act, 1910.;

(c) by striking out from the definition of “date of settlement” in subsection (1) the passage “is required under the terms of the contract to transfer” and substituting the word “transfers”;

(d) by striking out from the definition of “interest-bearing trust security” in subsection (1) the word “Board” and substituting the word “Commissioner”;

(e) by inserting in subsection (1) after the definition of “land broker” the following definition:

“land valuer” means a person who carries on the business of valuing land on behalf of any other person.;

(f) by striking out from the definition of “licence” in subsection (1) the word “or”;

(g) by inserting after paragraph (b) of the definition of “licence” in subsection (1) the following word and paragraph:

or

- (c) in relation to a land valuer—a licence under Part VIIIA of this Act,;
- (h) by striking out from the definition of “nominated” in subsection (1) the word “secretary” and substituting the word “Registrar”;
- (i) by inserting in subsection (1) after the definition of “nominated” the following definitions:
- “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,;
- (j) by inserting in subsection (1) after the definition of “registered salesman” the following definitions:
- “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 for the provision of information relating to the availability of premises for occupation pursuant to residential tenancy agreements:
- “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,;
- (k) by striking out from subsection (1) the definition of “the Board” and substituting the following definitions:
- “the Commissioner” means the person for the time being holding or acting in the office of the Commissioner for Consumer Affairs under the Prices Act, 1948:
- “the Registrar” means the person for the time being holding or acting in the office of the Commercial Registrar under the Commercial Tribunal Act, 1982,;
- (l) by striking out from subsection (1) the definition of “secretary” and substituting the following definitions:
- “the repealed Land Valuers Licensing Act” means the Land Valuers Licensing Act, 1969-1974, repealed by this Act:

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

and

(m) by inserting after subsection (4) the following subsection:

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

Repeal of Part II and substitution of new sections.

9. Part II of the principal Act and the heading to the Part are repealed and the following sections are substituted:

Application.

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

(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 shall, upon the matter being referred to it by the Minister, inquire into and make a recommendation to the Minister upon an application for exemption under subsection (2).

Commissioner to be responsible for administration of Act.

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

Amendment of s. 13—  
Agent must be licensed.

10. Section 13 of the principal Act is amended by striking out from subsection (1) the passage “One thousand dollars” and substituting the passage “Five thousand dollars”.

Repeal of s. 14 and substitution of new section.

11. Section 14 of the principal Act is repealed and the following section is substituted:

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 shall—

(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 within which objections must be lodged.

(6) The Registrar shall 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 shall conduct a hearing of the application and the Registrar shall 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 of the application.

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

12. Section 15 of the principal Act is amended by striking out the word “Board”, wherever it occurs, and substituting, in each case, the word “Tribunal”.

Amendment of  
s. 15—  
Entitlement to be  
licensed.

13. Section 16 of the principal Act is amended—

(a) by striking out subsections (1), (2) and (3) and substituting the following subsections:

Amendment of  
s. 16—  
Entitlement of  
Corporation to  
licence.

(1) Subject to this Act, a corporation shall be entitled to hold a licence if it has proved to the satisfaction of the Tribunal that the prescribed officers of the corporation meet the requirements of subsection (2).

(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, unless exempted by the Tribunal pursuant to this section, be licensed or be registered as a manager.;

(b) by inserting after paragraph (c) of subsection (4) the following paragraph:

(ca) a corporation is a proprietary company with not more than two directors, one being a person who is licensed or registered as a manager under this Act and the other

being the spouse of that person and registered as a salesman under this Act, and the Tribunal is satisfied that no other prescribed officer of the corporation who is not licensed or registered as a manager under this Act will actively participate in the business conducted in pursuance of the licence;

(c) by inserting in subsection (4) after the passage "provisions of subsection (2)", wherever it occurs, in each case, the letter "(b)";

(d) by striking out from subsections (4) and (5) the word "Board", wherever it occurs, and substituting, in each case, the word "Tribunal";

(e) by striking out subsection (6) and substituting the following subsection:

(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.;

and

(f) by striking out from subsection (7) the word "Board", wherever it occurs, and substituting, in each case, the word "Tribunal".

Repeal of ss. 17 and 18 and substitution of new section.

14. Sections 17 and 18 of the principal Act are repealed and the following section is substituted:

Duration of licences.

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

(2) A licensed agent shall, 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 to the licensed agent, require him to make good his 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 fourteen days after service of the notice, his licence shall, by force of this subsection, be suspended until he complies with the notice.

(5) The Registrar shall 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 shall, by force of this subsection, be cancelled.

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

**15.** Section 19 of the principal Act is amended by striking out the word "Board", wherever it occurs, and substituting, in each case, the word "Tribunal".

Amendment of s. 19—  
Business may be carried on by unlicensed person.

**16.** Section 20 of the principal Act is repealed.

Repeal of s. 20.

**17.** Section 21 of the principal Act is amended by striking out the passage "Five hundred dollars" and substituting the passage "Two thousand dollars".

Amendment of s. 21—  
Salesmen must be registered.

**18.** Section 22 of the principal Act is amended—

Amendment of s. 22—  
Employment of salesmen.

(a) by striking out from subsection (1) the passage "Five hundred dollars" and substituting the passage "Two thousand dollars";

(b) by striking out from subsection (2) the passage "Board considers that special circumstances exist, and gives its consent in writing" and substituting the passage "Tribunal is satisfied that special circumstances exist and gives its consent";

(c) by striking out from subsection (2) the passage "Five hundred dollars" and substituting the passage "Two thousand dollars";

and

(d) by striking out paragraph (a) of subsection (3) and the word "or" immediately following that paragraph.

**19.** Section 23 of the principal Act is amended by striking out the passage "Two hundred dollars", wherever it occurs, and substituting, in each case, the passage "One thousand dollars".

Amendment of s. 23—  
Salesmen must be in service of one agent.

**20.** Section 24 of the principal Act is amended by striking out from the definition of "approved stock and station agent" in subsection (2) the word "Board" and substituting the word "Tribunal".

Amendment of s. 24—  
Stock and station agent.

**21.** Section 25 of the principal Act is repealed and the following section is substituted:

Repeal of s. 25 and substitution of new section.

**25.** (1) An application for registration as a salesman must—

Application for registration as salesman.

(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 shall—

(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 within which objections must be lodged.

(6) The Registrar shall 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 shall conduct a hearing of the application and the Registrar shall 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 of the application.

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

Amendment of  
s. 26—  
Qualification for  
registration.

22. Section 26 of the principal Act is amended—

(a) by striking out from subsection (1) the word “Board” and substituting the word “Tribunal”;

and

(b) by striking out subsection (2).

Repeal of s. 27  
and substitution  
of new section.

23. Section 27 of the principal Act is repealed and the following section is substituted:

Duration of  
registration.

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

(2) A registered salesman shall, 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 salesman fails to pay the annual registration fee or lodge the annual return in accordance with subsection (2), the Registrar may, by notice in writing to the registered salesman, require him to make good his default and, in addition, to pay to the Registrar the amount prescribed as a penalty for default.

(4) Where a registered salesman fails to comply with a notice under subsection (3) within fourteen days after service of the notice, his registration shall, by force of this subsection, be suspended until he complies with the notice.

(5) The Registrar shall 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 shall, by force of this subsection, be cancelled.

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

**24. Section 29 of the principal Act is amended—**

(a) by striking out subsection (1);

(b) by striking out from subsection (3) the word "Board" and substituting the word "Registrar";

and

(c) by striking out from subsection (3) the passage "Two hundred dollars" and substituting the passage "Five hundred dollars".

Amendment of  
s. 29—  
Registration  
suspended if  
salesman not in  
service of agent.

**25. Section 30 of the principal Act is amended—**

(a) by striking out from subsection (1) the passage "Two hundred dollars" and substituting the passage "One thousand dollars";

(b) by striking out from subsection (2) the passage "Five hundred dollars" and substituting the passage "Two thousand dollars";

(c) by striking out from subsection (3) the word "Board" and substituting the word "Tribunal";

(d) by striking out from subsection (5) the passage "Five hundred dollars" and substituting the passage "Two thousand dollars";

(e) by striking out from subsection (6) the passage "Board considers that special circumstances exist and gives its consent in writing" and substituting the passage "Tribunal is satisfied that special circumstances exist and gives its consent";

(f) by striking out from subsection (6) the passage "Five hundred dollars" and substituting the passage "Two thousand dollars";

and

(g) by striking out from subsection (7) the passage "Two hundred dollars" and substituting the passage "One thousand dollars".

Amendment of  
s. 30—  
Employment of  
registered  
managers.

Repeal of s. 31  
and substitution  
of new section.

**26.** Section 31 of the principal Act is repealed and the following section is substituted:

Application for  
registration as  
manager.

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.

(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 shall—

(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 within which objections must be lodged.

(6) The Registrar shall 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 shall conduct a hearing of the application and the Registrar shall 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 of the application.

(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 shall order that the applicant be granted the registration upon payment of the prescribed registration fee.

Amendment of  
s. 32—  
Entitlement to be  
registered.

**27.** Section 32 of the principal Act is amended by striking out the word “Board”, wherever it occurs, and substituting, in each case, the word “Tribunal”.

28. Sections 33 and 34 of the principal Act are repealed and the following section is substituted:

Repeal of ss. 33 and 34 and substitution of new section.

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 shall, 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 to the registered manager, require him to make good his 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 fourteen days after service of the notice, his registration shall, by force of this subsection, be suspended until he complies with the notice.

(5) The Registrar shall 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 shall, by force of this subsection, be cancelled.

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

29. Section 35 of the principal Act is amended—

Amendment of s. 35—

(a) by striking out subsection (1);

(b) by striking out from subsection (3) the word “Board” and substituting the word “Registrar”;

Registration suspended if manager not in service of agent.

and

(c) by striking out from subsection (3) the passage “Two hundred dollars” and substituting the passage “Five hundred dollars”.

30. Section 36 of the principal Act is amended—

Amendment of s. 36—

(a) by striking out the word “secretary” and substituting the word “Registrar”;

Notice to Registrar.

and

(b) by striking out the passage “Two hundred dollars” and substituting the passage “One thousand dollars”.

31. Section 37 of the principal Act is amended—

Amendment of s. 37—  
Registered office.

(a) by striking out from subsection (1) the passage “Two hundred dollars” and substituting the passage “One thousand dollars”;

(b) by striking out subsection (2);

and

(c) by striking out from subsection (3) the word “secretary”, wherever it occurs, and substituting, in each case, the word “Registrar”.

Amendment of  
s. 38—  
Branch office.

**32. Section 38 of the principal Act is amended—**

(a) by striking out from subsection (1) the word “secretary” and substituting the word “Registrar”;

(b) by striking out from subsection (1) the passage “Two hundred dollars” and substituting the passage “One thousand dollars”;

(c) by striking out from subsection (2) the passage “two hundred dollars” and substituting the passage “one thousand dollars”;

(d) by striking out subsection (2a);

and

(e) by striking out from subsection (4) the word “Board” and substituting the word “Tribunal”.

Amendment of  
s. 39—  
Notice to be  
exhibited.

**33. Section 39 of the principal Act is amended—**

(a) by striking out from subsection (1) the passage “Two hundred dollars” and substituting the passage “One thousand dollars”;

(b) by striking out from subsection (2) the word “secretary” and substituting the word “Registrar”;

and

(c) by striking out from subsection (2) the passage “Two hundred dollars” and substituting the passage “One thousand dollars”.

Repeal of s. 40.

**34. Section 40 of the principal Act is repealed.**

Amendment of  
s. 41—  
Advertisement.

**35. Section 41 of the principal Act is amended—**

(a) by striking out from subsection (1) the passage “Two hundred dollars” and substituting the passage “One thousand dollars”;

(b) by striking out from subsection (1a) the passage “description approved by the Board” and substituting the passage “prescribed description”;

(c) by striking out from subsection (2) the passage “Two hundred dollars” and substituting the passage “One thousand dollars”;

and

(d) by striking out from subsection (3) the passage “Two hundred dollars” and substituting the passage “One thousand dollars”.

Amendment of  
s. 42—  
Account to be  
rendered.

**36. Section 42 of the principal Act is amended by striking out from subsection (2) the passage “five hundred dollars” and substituting the passage “two thousand dollars”.**

Amendment of  
s. 43—  
False accounts.

**37. Section 43 of the principal Act is amended by striking out from subsection (1) the passage “two thousand dollars” and substituting the passage “five thousand dollars”.**

38. Section 44 of the principal Act is amended by striking out the passage "Five hundred dollars" and substituting the passage "Two thousand dollars".
- Amendment of s. 44—  
Copy of contract or agreement to be supplied.
39. Section 45 of the principal Act is amended—
- (a) by striking out from subsection (1) the passage "Five hundred dollars" and substituting the passage "Two thousand dollars";
- and
- (b) by striking out from subsection (2) the passage "Five hundred dollars" and substituting the passage "Two thousand dollars".
- Amendment of s. 45—  
Agent's authority to act and commission.
40. Section 46 of the principal Act is amended—
- (a) by striking out from subsection (2a) the word "Board" and substituting the word "Tribunal";
- and
- (b) by striking out from subsection (3) the passage "one thousand dollars" and substituting the passage "five thousand dollars".
- Amendment of s. 46—  
Agent, etc., not to have interest in land or business which he is commissioned to sell.
41. Section 47 of the principal Act is amended—
- (a) by striking out the passage "One thousand dollars" and substituting the passage "Five thousand dollars";
- and
- (b) by inserting after its present contents as amended by this section (now to be designated as subsection (1)) the following subsection:
- (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.
- Amendment of s. 47—  
Agent not to pay commission, etc., except to employees or another agent.
42. Section 48 of the principal Act is amended by striking out the definitions of "the Board" and "nominated member".
- Amendment of s. 48—  
Interpretation.
43. Sections 49 to 54 (inclusive) of the principal Act and the heading immediately preceding section 49 are repealed.
- Repeal of ss. 49 to 54 and heading.
44. Section 55 of the principal Act is amended by striking out from subsection (1) the passage "One thousand dollars" and substituting the passage "Five thousand dollars".
- Amendment of s. 55—  
Land broker must be licensed.
45. Section 56 of the principal Act is repealed and the following section is substituted:
- Repeal of s. 56 and substitution of new section.
56. (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.
- Application for a licence.

(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 shall—

(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 within which objections must be lodged.

(6) The Registrar shall 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 shall conduct a hearing of the application and the Registrar shall 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 of the application.

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

Amendment of s. 57—  
Entitlement to be licensed.

**46.** Section 57 of the principal Act is amended by striking out the word “Board” and substituting the word “Tribunal”.

Repeal of ss. 58, 59 and 60 and substitution of new section.

**47.** Sections 58, 59 and 60 of the principal Act are repealed and the following section is substituted:

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 shall, 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 to the licensed land broker, require him to make good his 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 fourteen days after service of the notice, his licence shall, by force of this subsection, be suspended until he complies with the notice.

(5) The Registrar shall 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 shall, by force of this subsection, be cancelled.

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

**48. Section 61 of the principal Act is amended—**

- (a) by striking out from subsection (1) the passage "Five hundred dollars" and substituting the passage "Two thousand dollars";
- (b) by striking out from subsection (2) the passage "two hundred dollars" and substituting the passage "two thousand dollars";
- (c) by striking out from subparagraph (ii) of paragraph (c) of subsection (3) the passage "Companies Act, 1962-1973" and substituting the passage "*Companies (South Australia) Code*";
- (d) by striking out from subsection (5) the word "Board", wherever it occurs, and substituting, in each case, the word "Tribunal";
- (e) by striking out from subsection (5) the passage "with the approval of the Minister" and substituting the passage "upon application";
- (f) by striking out subsection (6) and substituting the following subsection:

(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.;

- (g) by striking out from subsection (7) the passage "Five hundred dollars" and substituting the passage "Two thousand dollars";

Amendment of  
s. 61—  
Preparation of  
instruments.

(h) by striking out from subsection (8) the passage “Five hundred dollars” and substituting the passage “Two thousand dollars”;

and

(i) by striking out from subsection (9) the passage “Five hundred dollars” and substituting the passage “Two thousand dollars”.

Amendment of  
s. 63—  
Trust accounts.

**49.** Section 63 of the principal Act is amended by striking out from subsection (8) the passage “two thousand dollars” and substituting the passage “five thousand dollars”.

Amendment of  
s. 63a—  
Control over trust  
accounts.

**50.** Section 63a of the principal Act is amended—

(a) by striking out the word “Board”, wherever it occurs, and substituting, in each case, the word “Tribunal”;

(b) by striking out from subsection (1) the word “knows” and substituting the passage “upon application by the Commissioner, is satisfied”;

(c) by striking out the word “resolution”, wherever it occurs, and substituting, in each case, the word “order”;

(d) by striking out the word “passed”, wherever it occurs, and substituting, in each case, the word “made”;

(e) by striking out from subsection (6) the passage “one thousand dollars” and substituting the passage “five thousand dollars”;

(f) by striking out subsections (7) and (8);

(g) by inserting in subsection (9) after the passage “Supreme Court” the passage “on appeal against the making of the order”;

and

(h) by inserting in subsection (10) after the word “section” the passage “and section 64”.

Amendment of  
s. 66—  
Interest to be  
paid to  
Commissioner.

**51.** Section 66 of the principal Act is amended—

(a) by striking out the word “Board”, wherever it occurs, and substituting, in each case, the word “Commissioner”;

(b) by striking out from subsection (3) the word “it” and substituting the word “him”;

and

(c) by striking out from subsection (5) the word “it”, wherever it occurs, and substituting, in each case, the word “him”.

Amendment of  
s. 67—  
Exemption from  
liability.

**52.** Section 67 of the principal Act is amended by striking out from subsection (1) the word “Board” and substituting the passage “Tribunal, the Commissioner”.

Amendment of  
s. 68—  
Fiduciary  
defaults.

**53.** Section 68 of the principal Act is amended—

(a) by striking out from subsection (3) the word “Board”, wherever it occurs, and substituting, in each case, the word “Tribunal”;

and

- (b) by inserting in subsection (3) after the passage “in respect of that payment” the passage “and direct that the claim be settled by the Commissioner out of the consolidated interest fund”.

**54. Section 69 of the principal Act is amended—**

Amendment of  
s. 69—  
Notice and  
claims.

- (a) by striking out from subsection (1) the word “Board” and substituting the word “Commissioner”;
- (b) by striking out from subsection (2) the word “secretary” and substituting the word “Registrar”;
- (c) by striking out from subsection (3) the word “Board” and substituting the word “Tribunal”;

and

- (d) by striking out from subsection (4) the passage “Board, or any member, officer or servant of the Board” and substituting the passage “Commissioner, any person acting at the direction of the Commissioner”.

**55. Section 70 of the principal Act is amended—**

Amendment of  
s. 70—  
Claims to be dealt  
with.

- (a) by striking out the word “Board”, wherever it occurs, and substituting, in each case, the word “Tribunal”;
- (b) by inserting in subsection (1) after the word “and” the passage “direct the Commissioner to”;

and

- (c) by striking out from subsection (4) the word “secretary” and substituting the word “Registrar”.

**56. Section 71 of the principal Act is repealed.**

Repeal of s. 71.

**57. Section 72 of the principal Act is amended—**

Amendment of  
s. 72—  
Amount of claim.

- (a) by striking out from subsection (2) the word “secretary” and substituting the word “Registrar”;
- (b) by striking out from subsection (3) the passage “by the Board”;
- (c) by striking out from subsection (4) the word “Board” and substituting the word “Tribunal”;
- (d) by striking out subsections (5) and (6) and substituting the following subsections:

(5) Where a payment is made pursuant to this Part for the purpose of discharging a claim under this Part, the claim in respect of which the payment is made shall be discharged notwithstanding that it may not have been satisfied in full by the payment.

(6) The Tribunal may, with the approval of the Minister, order the Commissioner to make further subsequent payments to a person whose claim is not satisfied in full, or to make a payment to a person whose claim is barred, but a payment so made does not revive or reinstate a claim.

**58. Section 73 of the principal Act is amended by striking out the word “Board”, wherever it occurs, and substituting, in each case, the word “Commissioner”.**

Amendment of  
s. 73—  
Commissioner's  
right of  
subrogation.

Amendment of  
s. 74—  
Recovery by  
Commissioner.

**59.** Section 74 of the principal Act is amended—

(a) by striking out the word “Board”, wherever it occurs, and substituting, in each case, the word “Commissioner”;

and

(b) by striking out the word “it” and substituting the passage “the Commissioner”.

Amendment of  
s. 75—  
Moneys paid into  
and out of fund.

**60.** Section 75 of the principal Act is amended by striking out from subsection (2) the word “Board” and substituting the word “Commissioner”.

Amendment of  
s. 76—  
Accounts.

**61.** Section 76 of the principal Act is amended by striking out the word “Board”, wherever it occurs, and substituting, in each case, the word “Commissioner”.

Repeal of Part IX  
and substitution  
of new Parts.

**62.** Part IX of the principal Act and the heading to the Part are repealed and the following Parts and headings to the Parts are substituted:

### PART VIIIA

#### LAND VALUERS

Land valuer must  
be licensed.

77. A person shall not carry on business, or by any means whatsoever hold himself out, as a land valuer unless he is licensed under this Act.

Penalty: Five thousand dollars.

Application for a  
licence.

78. (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 shall—

(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 within which objections must be lodged.

(6) The Registrar shall 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 shall conduct a hearing of the application and the Registrar shall 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 of the application.

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

(9) Notwithstanding any other provision of this Part, an applicant for a licence shall not be granted the licence unless he first makes on oath or affirmation a declaration in the prescribed form that he will make every valuation impartially.

79. Subject to this Act, a person shall be entitled to hold a licence if he has proved to the satisfaction of the Tribunal that—

Entitlement to be licensed.

(a) he is of or above the age of eighteen years;

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

and

(c) he—

(i) has obtained such educational qualifications as may be prescribed and has had, in the opinion of the Tribunal, within the period of ten years immediately preceding the date of his application to be licensed under this Part, not less than four years satisfactory practical experience in the valuation of land;

or

(ii) has previously held a licence under this Part or under the repealed Land Valuers Licensing Act within the period of five years immediately preceding the date of this application to be licensed under this Part.

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.

Duration of licences.

(2) A licensed land valuer shall, 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 to the licensed land valuer, require him to make good his 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 fourteen days after service of the notice, his licence shall, by force of this subsection, be suspended until he complies with the notice.

(5) The Registrar shall 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 shall, by force of this subsection, be cancelled.

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

#### PART VIII B

##### RENTAL ACCOMMODATION REFERRAL BUSINESSES

Form of rental  
accommodation  
referral contracts.

81. (1) A rental accommodation referral contract shall be voidable at the option of the party other than the operator 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 party other than the operator;

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 shall forthwith upon a rental accommodation referral contract, or document intended to constitute a rental accommodation referral contract, being signed by the other party, furnish to the other party a copy of the contract or document together with a notice in the prescribed form.

Penalty: One thousand dollars.

(3) The party other than the operator shall not be deemed to have elected to affirm a rental accommodation referral contract that is voidable under subsection (1) by reason of any payment of moneys made by him pursuant to the contract.

(4) Where a contract that is voidable under this section is avoided by the party other than the operator, the party may recover all moneys paid by him in pursuance of the contract.

82. It shall be 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 to the other party.

Implied conditions of rental accommodation referral contracts.

## PART IX DISCIPLINARY POWERS

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

Application of this Part.

- (a) a licensed agent or former licensed agent;
- (b) a registered manager or former registered manager;
- (c) a registered salesman or former registered salesman;
- (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.

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 shall 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 shall, 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 shall give the person to whom the inquiry relates reasonable notice of the subject matter of the inquiry.

85. (1) The Tribunal may exercise one or more of the following powers if it is satisfied, after conducting an inquiry under this Part,

Disciplinary action.

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 five thousand dollars 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.

(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 shall not be 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) shall not contravene or fail to comply with the order or condition.

Penalty: Five thousand dollars.

85a. (1) There shall be proper cause for disciplinary action against a licensed agent or former licensed agent if—

- (a) the licence was improperly obtained;
- (b) he 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) he is an undischarged bankrupt, or is bound by a subsisting composition or deed or scheme of arrangement with or for the benefit of his creditors, or, being a corporation, has insufficient funds for the payment of its creditors;

or

(ii) he has ceased to be a fit and proper person to hold a licence, or, being a corporation, 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 shall be 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) he 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) he is an undischarged bankrupt, or is bound by a subsisting composition or deed or scheme of arrangement with or for the benefit of his creditors;

or

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

(3) There shall be 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 salesman if—

(a) the registration was improperly obtained;

(b) he has, in the course of performing functions 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 registered manager or registered salesman, he has ceased to be a fit and proper person to be registered as a manager or salesman.

(4) There shall be proper cause for disciplinary action against a licensed land broker or former licensed land broker if—

(a) the licence was improperly obtained;

(b) he 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 land broker, he has ceased to be a fit and proper person to hold a licence.

(5) There shall be proper cause for disciplinary action against a licensed land valuer or former licensed land valuer if—

(a) the licence was improperly obtained;

(b) he 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 land valuer, he has ceased to be a fit and proper person to hold a licence.

(6) There shall be proper cause for disciplinary action against an operator, or former operator, of a rental accommodation referral business if he 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 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 whether occurring before or after the commencement of this section.

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

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 name of the person and the disciplinary action taken.

63. Section 86 of the principal Act is amended by striking out subsection (7).

Amendment of s. 86—  
Obligations and offences in relation to subdivided land.

64. Section 87 of the principal Act is amended by striking out subsection (2).

Amendment of s. 87—  
Inducement to buy subdivided land.

65. Section 88 of the principal Act is amended—

Amendment of s. 88—  
Cooling-off period.

(a) by striking out from subsection (2) the passage “five hundred dollars” and substituting the passage “two thousand dollars”;

(b) by inserting after paragraph (ab) of subsection (4) the following paragraph:

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

(c) by inserting in paragraph (b) of subsection (4) after the word “practitioner” the passage “and the legal practitioner has signed a certificate in the prescribed form as to the giving of such advice”;

and

(d) by striking out from subsection (5) the definition of “business day”.

66. Section 90 of the principal Act is amended—

Amendment of s. 90—  
Information to be supplied to purchaser before date of settlement.

(a) by inserting in paragraph (a) of subsection (1) before the word “particulars” the word “prescribed”;

(b) by inserting in paragraph (b) of subsection (1) before the word “particulars” the word “prescribed”;

(c) by striking out from subsection (5) the passage “five hundred dollars” twice occurring and substituting, in each case, the passage “two thousand dollars”;

(d) by striking out subsection (6) and substituting the following subsection:

(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.;

(e) by striking out from subsection (9b) the passage "Five hundred dollars" and substituting the passage "Two thousand dollars";

(f) by striking out subsection (10);

and

(g) by inserting after subsection (13) the following subsection:

(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.

Amendment of  
s. 91—  
Sale of small  
businesses.

**67. Section 91 of the principal Act is amended—**

(a) by striking out subsections (1) and (2) and substituting the following subsections:

(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 his behalf not more than fourteen days 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) he shall 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 thirty minutes before the auction commences;

and

- (b) he shall 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: Two thousand dollars.

(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.;

- (b) by striking out subsections (4) and (5) and substituting the following subsections:

(4) It shall be 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 shall, upon application by any person who is required under this section to provide particulars of such 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 shall incur any civil or criminal liability nor shall any contract be 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.;

- (c) by inserting in subsection (7) after the word "land" the passage "comprising an estate in fee simple";

- (d) by inserting after subsection (7) the following subsection:

(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.

Insertion of new section.

**68.** The following section is inserted in Part X of the principal Act after section 91:

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 him, before the prescribed time, give notice to the vendor of his intention not to be bound by the contract and the contract shall be deemed 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 shall, upon rescission, be entitled to the return of any moneys paid by him under the contract.

(3) Where a contract is rescinded under subsection (1), the vendor shall be entitled to retain any moneys 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 moneys by a purchaser in respect of the sale of a small business other than—

(a) moneys 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 twenty-five per centum of the total consideration for the sale,

shall be guilty of an offence and liable to a penalty not exceeding two thousand dollars.

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

(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 date of settlement,

whichever first occurs:

“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.

**69.** Sections 92 to 95 (inclusive) of the principal Act are repealed and the following sections are substituted:

Repeal of ss. 92 to 95 and substitution of new sections.

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

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

**93.** The Commissioner or the Commissioner of Police shall, at the request of the Registrar, cause his officers to 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 doing so.

Repeal of s. 97.

70. Section 97 of the principal Act is repealed.

Repeal of ss. 99 and 100 and substitution of new sections.

71. Sections 99 and 100 of the principal Act are repealed and the following sections are substituted:

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 shall be deemed to be an act or omission of that person unless he proves that the employee or agent was not acting in the course of his 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 shall be guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless he proves that he 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) shall be 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 the amount equal to one-tenth of the maximum penalty prescribed for that offence;

and

(b) shall, if the act or omission continues after he is convicted, be 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 the amount equal to 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 shall, for the purposes of subsection (1), be deemed 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.

Amendment of s. 101—  
Proceedings for offences.

72. Section 101 of the principal Act is amended by striking out subsection (2) and substituting the following subsections:

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

(3) Proceedings for an offence against this Act shall not be commenced by a person other than the Commissioner or a person who is an authorized officer under the Prices Act, 1948, except with the consent of the Minister.

(4) An apparently genuine document purporting to be a certificate of the Minister certifying that he has consented to the commencement of proceedings for an offence against this Act shall be accepted, in the absence of proof to the contrary, as proof of the matter so certified.

73. Section 102 of the principal Act is repealed.

Repeal of s. 102.

74. Section 105 of the principal Act is repealed and the following sections are substituted:

Repeal of s. 105 and substitution of new sections.

105. Where a licence or registration granted to a person is suspended or cancelled under this Act, that person shall, 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: One thousand dollars.

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 shall be deemed to have been duly served if it has been—

Service of documents.

(a) served on the person personally;

(b) posted in an envelope addressed to the person at his last known address, or, in the case of a person licensed or registered under this Act, his address for service;

or

(c) in the case of a person licensed or registered under this Act, left for him at his address for service with a person apparently over the age of sixteen 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.

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

False or misleading information.

Penalty: One thousand dollars.

105c. (1) The Commissioner shall, 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.

Annual report.

(2) The report shall contain the audited statement of accounts of the consolidated interest fund for the period to which the report relates.

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

Amendment of  
s. 107—  
Regulations.

75. Section 107 of the principal Act is amended—

- (a) by striking out from paragraph *(da)* the word “Board” and substituting the word “Tribunal”;
  - (b) by striking out from paragraph *(i)* the word “Board” and substituting the word “Commissioner”;
  - (c) by striking out from paragraph *(k)* the word “Board” and substituting the word “Commissioner”;
  - (d) by striking out paragraph *(p)*;
  - (e) by striking out from paragraph *(q)* all the words occurring after the passage “this Act”;
  - (f) by inserting after paragraph *(q)* the following paragraphs:
    - (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;;
  - (g) by striking out from paragraph *(r)* the passage “two hundred dollars” and substituting the passage “one thousand dollars”;
- and
- (h) by inserting after the present contents as amended (now to be designated as subsection (1)) the following subsection:
    - (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.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

D. B. DUNSTAN, Governor