

# **NORTHERN TERRITORY OF AUSTRALIA**

## **AGENTS LICENSING ACT**

As in force at 1 July 1996

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 1 July 1996

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## AGENTS LICENSING ACT

An Act to provide for the licensing of certain agents, the registration of representatives of those licensed agents and for related purposes

### **Part I                      Preliminary**

#### **1                      Short title**

This Act may be cited as the *Agents Licensing Act*.

#### **2                      Commencement**

The several Parts and sections of this Act shall commence on such dates as are respectively fixed by the Administrator by notice in the *Gazette*.

#### **3                      Repeal**

The *Land and Business Agents Ordinance 1974* is repealed.

#### **4                      Application**

(1) This Act does not apply in relation to:

- (a) an executor, administrator, liquidator or receiver other than a receiver appointed under this Act, the committee of the estate of a person appointed under a law relating to mental health or a manager of the estate of a person appointed under a law relating to the property of protected persons, or any other trustee or a bank or savings bank in the exercise of rights and powers, or the performance of duties and obligations, as such;
- (c) a person practising in the Territory as a legal practitioner in the exercise of rights and powers or the performance of duties and obligations in his professional capacity.

(2) This Act does not bind the Crown or its officers or servants.

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## 5 Interpretation

(1) In this Act, unless the contrary intention appears:

**accounting records**, in relation to a person, includes such working papers and other documents as are necessary to explain the methods and calculations by which accounts of the person are made up.

**agent** means a real estate agent, business agent or conveyancing agent.

**agent's representative** means a person who, in the service of, and on behalf of, a licensed agent negotiates or holds himself out as being prepared to negotiate any transaction of a description referred to in subsection (2)(a) or (b).

**approved building society** means a building society or foreign building society registered under the Financial Institutions (NT) Code.

**Board** means the Agents Licensing Board of the Northern Territory constituted under Part II.

**branch manager** means a person of a description referred to in section 25(b).

**Chairman** means the Chairman of the Board appointed under section 9 and includes a Deputy Chairman elected under section 14(4)(b).

**company** means a corporation within the meaning of the Corporations Law.

**corporation manager under the Unit Titles Act** means a person who for reward (whether monetary or otherwise), and whether or not the person carries on any other business, exercises a power or performs a function on behalf of a corporation or members of a corporation under that Act.

**departmental member** means the member who is an employee within the meaning of the Public Service Act appointed under section 7.

**Deputy Chairman** means the Deputy Chairman of the Board elected under section 14(4)(b).

**Fund** means the Agents Licensing Fidelity Guarantee Fund of the Northern Territory established by section 94.

***inquiry*** means a meeting of the Board to conduct an inquiry in pursuance of Part IX.

***inspector*** means an inspector appointed under section 8.

***Institute*** means the Real Estate Institute of the Northern Territory Incorporated.

***lease*** includes a sub-lease.

***legal practitioner*** means a person whose name is entered on the Roll of Legal Practitioners kept in pursuance of the *Legal Practitioners Act*.

***licence*** means a licence that is in force under this Act.

***licensed agent*** means an agent licensed to carry on business as an agent.

***member*** means a member of the Board (including the Chairman or Deputy Chairman) and includes an acting appointment.

***register*** means the appropriate register kept under section 109.

***registered agents representative*** means a person registered under Part IV as an agent's representative.

***registered company auditor*** means a registered company auditor within the meaning of the Corporations Law.

***Registrar*** means the Registrar of Land and Business Agents appointed under section 8.

***regulations*** means regulations made under this Act.

***Stipendiary Magistrate*** means a Stipendiary Magistrate within the meaning ascribed to that term in the *Magistrates Act*.

***trust account*** means an account referred to in section 50.

***trust money*** means money of a description referred to in section 49.

(2) For the purposes of this Act, but subject to section 4:

(a) **real estate agent** means a person whose business either alone or as part of or in connection with any other business, is to act as agent for consideration in money or money's worth as commission, reward or remuneration, in respect of:

(i) the sale, purchase, exchange, leasing, letting or other dealings with, or the disposition of; or

(ii) negotiations for the sale, purchase, exchange, leasing, letting or other dealings with, or the disposition of,

land, whether within or outside the Territory, and includes a corporation manager under the *Unit Titles Act*; and

(b) **business agent** means a person whose business either alone or as part of or in connection with any other business, is to act as agent for consideration in money or money's worth as commission, reward or remuneration, in respect of:

(i) the sale, purchase, exchange, leasing or letting or other dealings with, or the disposition of; or

(ii) negotiations for the sale, purchase, exchange, leasing, letting or other dealings with, or the disposition of,

a business or any share or interest in a business, or the goodwill in, or stock-in-trade of, a business, but does not include the sale, purchase, exchange or other dealings with, or the disposition of a share in the capital of a body corporate carrying on a business; and

(c) **conveyancing agent** means a person whose business either alone or as part of or in connection with any other business, is to act as agent for consideration in money or money's worth as commission, reward or remuneration (whether or not paid directly or indirectly for the service provided), in respect of a matter set out in Part 1 of the Schedule in accordance with the requirements specified in Part 2 of the Schedule.

(3) In this Act, a reference to a person being licensed or registered as a real estate agent, business agent or conveyancing agent under a law of a State or Territory providing for the licensing or registration of real estate agents, business agents or conveyancing agents, as the case may be, includes a reference to a person being licensed or registered in that State or Territory (not being the Northern Territory) to carry on an activity that, if carried on in the Northern Territory, would be an activity of a kind referred to in subsection (2)(a), (b) or (c), as the case may be.

- (4) Part IV does not apply to or in relation to a licensed conveyancing agent.
- (5) For the purposes of sections 121A and 121B:
  - (a) a purchase or sale of land or a business in which a licensed agent, a registered agent's representative or an employee of a licensed agent is beneficially interested includes a purchase or sale that is or will be made by or on behalf of:
    - (i) in the case of an agent:
      - (A) the spouse, parent, brother, sister or child of that agent;
      - (B) a corporation, body, association of persons, firm or partnership carrying on business for profit or gain of which the agent or the spouse, parent, brother, sister or child of the agent is a member;
      - (C) where the agent is a corporation, that corporation or a member or the spouse, parent, brother, sister or child of a member of the corporation; or
      - (D) where the agent carries on business as such as a member of a firm or partnership, a person who is a member of that firm or partnership, or the spouse, parent, brother, sister or child of that person;
    - (ii) in the case of a registered agent's representative or an employee:
      - (A) the spouse, parent, brother, sister or child of the registered agent's representative or employee; or
      - (B) a corporation, body, association of persons, firm or partnership carrying on business for profit or gain of which the registered agent's representative or employee or the spouse, parent, brother, sister or child of the registered agent's representative or employee is a member; and
  - (b) a person (being a licensed agent, a registered agent's representative, an employee of a licensed agent or a person who holds himself out to be an agent) acts as the agent for a principal wishing to purchase or sell land or a business from the time the principal first communicates to that person or a person specified in paragraph (a) in respect of that person, whether orally or in writing, the fact that he wishes to purchase or sell the land or

business.

- (6) For the purposes of sections 121A and 121B:

**agent** means a real estate agent or a business agent.

**business** includes a share or an interest in a business.

**land** includes an interest in land.

**spouse** includes a de facto partner within the meaning of the *De Facto Relationships Act*.

## **5A Exemptions**

The Board may, subject to any regulations made in that behalf, exempt any person or class of persons from compliance with all or any of the provisions of this Act and, if it thinks fit, make an exemption subject to the imposition of conditions.

## **5B Exemption for trust money of corporation manager**

A licensed agent:

- (a) who receives trust money in the course of business carried on as a corporation manager under the *Unit Titles Act*; and
- (b) who holds and deals with the trust money in accordance with a scheme prescribed under section 127(2),

shall, notwithstanding anything to the contrary in this Act, the *Unit Titles Act* or any other Act, be deemed not to have committed any breach of the provisions of this Act or those Acts which would otherwise apply to such trust money.

# **Part II Agents Licensing Board**

## **6 The Board**

- (1) For the purposes of this Act, there shall be a Board, to be known as the Agents Licensing Board of the Northern Territory.
- (2) The Board shall be a body corporate with perpetual succession and a common seal and shall be capable of suing and being sued in its corporate name.
- (3) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Board affixed to a document and shall presume that it was duly affixed.

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**7 Appointment of members and tenure**

- (1) Subject to subsection (1A), the Board shall consist of:
  - (a) a departmental member, being a person who is an employee within the meaning of the *Public Service Act*;
  - (b) a legal practitioner;
  - (c) subject to subsections (5), (6) and (7), 2 persons who are members of the Real Estate Institute of the Northern Territory Incorporated nominated for appointment by the Institute; and
  - (d) a person who, in the opinion of the Minister, is suitable to represent the interests of consumers of the services offered by agents.
- (1A) For the purposes of considering an application for a licence as a conveyancing agent or any other matter relating to conveyancing agents, the Board shall consist of the Registrar and the members appointed under subsection (1)(b) and (d) and, if the Minister thinks fit, 2 licensed conveyancing agents appointed by the Minister for that purpose.
- (2) Subject to this section, the Minister shall appoint the members of the Board.
- (3) The departmental member shall hold office during the pleasure of the Minister.
- (4) Subject to this Act, a member, other than the departmental member, shall hold office for a period of 3 years.
- (5) Prior to the first occasion on which an appointment is to be made to the office of a member referred to in subsection (1)(c), the Minister shall, in writing, request the Institute to nominate to him in writing the names of 4 members of the Institute who are willing to act as members of the Board.
- (6) Where the office of a member referred to in subsection (1)(c) becomes vacant or will become vacant the Minister shall, in writing, request the Institute to nominate to him in writing the names of 2 members of the Institute who are willing to act as members of the Board.
- (7) Where a request has been made pursuant to subsection (5) or (6) the Minister may, if nomination is not made pursuant to that subsection within 21 days of the request being made, appoint to the office such member or members of the Institute, as the case requires, as the Minister thinks fit.

- (8) Where the office of a member referred to in subsection (1)(b) or (d) becomes vacant before the expiration of his term of office, the Minister may appoint:
- (a) a legal practitioner; or
  - (b) a person of a description referred to in subsection (1)(d),
- as the case requires, to hold that office for a period of 3 years.
- (9) A person who has attained the age of 65 years shall not be appointed or re-appointed as a member and a person shall not be appointed or re-appointed as a member for a period that extends beyond the date on which he will attain the age of 65 years.
- (10) Subject to this section, a member shall be eligible for re-appointment.
- (11) The exercise of a power or the performance of a function of the Board is not affected by reason only of there being a vacancy or vacancies in the membership of the Board.

#### **7A Alternate members**

- (1) The Minister may, either concurrently with the appointment of a member to the Board or at any time thereafter, appoint a person to act as the alternate of that member while the member is prevented by illness, absence, the operation of section 15, or other cause considered sufficient by the Chairman, from performing the duties of office.
- (2) An alternate member appointed under subsection (1) holds office during the period the member for which he is appointed alternate holds office, or for such shorter period as may be specified by the Minister.
- (3) The Minister shall not appoint an alternate member under subsection (1) unless that person would be qualified in their own right to be appointed as a member.

#### **8 Registrar, Deputy Registrars and inspectors**

- (1) The Minister may appoint a person to be the Registrar of Land, Business and Conveyancing Agents.
- (2) The Minister may appoint such persons as he thinks fit to be Deputy Registrars of Land, Business and Conveyancing Agents.
- (3) Subject to Division 2A of Part XII, the Registrar and Deputy Registrar are subject to the directions, if any, of the Board.

- (4) Subject to this section and to the directions of the Registrar, a Deputy Registrar may exercise any power, or perform any function, of the Registrar.
- (5) The Minister may appoint such persons as he thinks fit to be Inspectors of Land, Business and Conveyancing Agents.
- (6) Inspectors shall be subject to any directions of the Registrar.
- (7) The Registrar and each Deputy Registrar is an inspector for the purposes of this Act.

## **9 Chairman**

- (1) There shall be a Chairman of the Board who shall be the member appointed under section 7(1)(b).

## **11 Removal of member**

The Minister may terminate the appointment of a member for inability, inefficiency, misbehaviour or physical or mental incapacity.

## **12 Vacation of office**

Where a member:

- (a) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors or compounds with his creditors or makes an assignment of his remuneration for their benefit;
- (b) is absent, except on leave granted by the Board, from 3 consecutive meetings of the Board; or
- (c) ceases to have the qualification by reference to which he was appointed or, being a person referred to in section 7(1)(c) ceases to be a member of the Institute,

the Minister shall terminate the appointment of that member.

## **13 Resignation**

A member may resign his office by writing under his hand delivered to the Minister.

## **14 Meetings**

- (1) The Board shall meet when necessary for the exercise of its powers and the performance of its functions, but so that a period not exceeding 6 months elapses between any 2 meetings of the Board.

- (2) The Chairman shall, by notice in writing to other members, convene a meeting of the Board.
- (3) A meeting of the Board shall be held at the time and place specified in the notice referred to in subsection (2).
- (4) At a meeting of the Board:
  - (a) the Chairman, when present, shall preside;
  - (b) in the absence of the Chairman or the alternate Chairman (if any) appointed pursuant to section 7A, the members present and voting shall elect a Deputy Chairman, and that person may exercise the powers and perform the duties of the Chairman for that meeting;
  - (c) 3 members constitute a quorum;
  - (d) all questions arising shall be decided by a majority vote of the members present and voting;
  - (e) the member presiding shall have a deliberative vote and, in the event of an equality of votes, shall also have a casting vote;
  - (f) the Board shall keep a record of its proceedings; and
  - (g) subject to this Act, the Board shall determine its own procedure.

## **15 Member not to act where interested**

- (1) A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Board, otherwise than as a member of, and in common with the other members of, a company consisting of not less than 25 persons and of which he is not a director, shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Board.
- (2) A disclosure under subsection (1) shall be recorded in the minutes of the Board.
- (3) Where:
  - (a) a member has an interest of a description referred to in subsection (1); or

- (b) an application by a member for the grant of a licence or for registration as an agent's representative is being considered or about to be considered by the Board,

that member shall not take part in any deliberation or decision of the Board in relation to the matter which is the subject of the member's interest or in relation to the application, as the case may be, and shall be disregarded for the purpose of constituting a quorum of the Board in relation to that matter or application.

Penalty: \$1,000 or imprisonment for 6 months.

## **16 Delegation**

- (1) The Board may, either generally or in relation to a matter or class of matters, by instrument under its common seal, delegate to:

- (a) a member;
- (b) a committee consisting of members;
- (c) the Registrar; or
- (d) a Deputy Registrar,

all or any of its powers or functions under this Act other than:

- (e) a power to conduct an inquiry under this Act;
  - (f) a power or function where, prior to the exercise of that power or function, the Board is required to conduct an inquiry under this Act; or
  - (g) this power of delegation.
- (2) A power delegated in accordance with subsection (1) may be exercised by the delegate in accordance with the instrument of delegation.
  - (3) A delegation under this section is revocable at will and does not prevent the exercise of a power so delegated by the Board.

## **Part III            Licence to carry on business as agent**

### **Division 1        General**

#### **17            Unlicensed persons not to act as agents**

- (1) Subject to subsection (1A), a person, company or firm shall not carry on business, or by any means hold himself or itself out, as a real estate agent, business agent or conveyancing agent unless he or it is licensed as such under this Act.

Penalty:        \$50,000.

- (1A) A licensed real estate agent may arrange for the preparation and execution of a contract of sale of land, but only where the contract is in a form:

- (a) approved by the Registrar for the purposes of this Act; or
- (b) approved by the Law Society of the Northern Territory for use by persons who are not legal practitioners.

- (2) A person, company or firm, being the holder of a restricted licence under section 25A, shall not carry on business, or by any means hold himself or itself out, as a real estate agent or business agent other than in accordance with the conditions of the restricted licence.

Penalty:        \$5,000.

#### **18            Certain person ineligible to apply for licence without leave of board**

- (1) This section applies to:
- (a) a person who, having held a licence or been registered under a law of a State or Territory providing for the licensing or registration of agents, is no longer the holder of such a licence or so registered by reason of the revocation of the licence or registration; or
  - (b) a person whose application for a licence or registration under such a law has been refused.
- (2) A person to whom this section applies is ineligible to apply for a licence unless the Board has, on an application made by the person under this section, granted special leave to that person to apply for a licence.

- (3) Where, after an application for a licence has been made, the Board is satisfied that the applicant is a person to whom this section applies, the application for a licence shall, unless the Board grants special leave under this section, be deemed to have been withdrawn.

## **19            Leave not to affect other requirements**

The grant under section 18 of special leave to apply for a licence does not affect the onus placed on an applicant for a licence under this Part to establish that he has the specified qualifications for the licence which is the subject of the application.

## **Division 2                  Qualifications for licence as agent**

### **22            Eligibility for licence**

- (1) A person, not being a company or firm, is eligible for the grant of a licence where the Board is satisfied that:
- (a) he has attained the age of 18 years;
  - (b) he is a fit and proper person;
  - (c) he holds the prescribed educational qualifications for the class of licence which is the subject of the application or has other prescribed qualifications or experience; and
  - (d) by reason of his qualifications and experience he is competent to carry on business on his own account as a licensed agent.
- (2) In subsection (1)(c) ***other prescribed qualifications or experience*** includes, in the case of an applicant for a conveyancing agent's licence, experience gained for the prescribed period in the employ of:
- (a) a person (however described) authorised to act as a legal practitioner under the law of a State or Territory of the Commonwealth and who was during the period of that employment engaged from time to time in the sale and transfer of real property;
  - (b) a conveyancing agent licensed under this Act;
  - (c) a person authorised under the law of the State of South Australia to act as a land broker;
  - (d) a person authorised under the law of the State of Western Australia to act as a settlement agent; or

(e) such other person or body as may be prescribed.

- (3) Where a person applies for a licence under section 26 on the basis that the person holds other prescribed qualifications or experience referred to in subsection (1)(c), the person's application under section 26 shall be accompanied by a certificate in the prescribed form.

## **23                      Board may waive educational qualifications**

The Board may waive in whole or in part the prescribed educational qualifications where the Board is satisfied that the applicant for a licence holds educational qualifications equivalent in whole or in part to the prescribed educational qualifications or where, by reason of his experience as an agent, the Board considers that the applicant should be exempted in whole or in part from a requirement to hold the pre-scribed educational qualifications.

## **23A                    Provisional licence on acquisition of business**

Where a person, not being a company or firm, acquires from a licensed agent a business, the carrying on of which requires a licence under this Act, that person is eligible for the grant of a provisional licence where:

- (a) he satisfies the requirements specified in section 22(1)(a), (b) and (d); and
- (b) he undertakes in writing to obtain the educational qualifications referred to in section 22(1)(c) within such period as is specified by the Board.

## **24                      Persons licensed or registered as agents elsewhere**

- (1) Notwithstanding section 22, a person, not being a company or firm, who is licensed or registered as an agent under a law of a State or another Territory of the Commonwealth providing for the licensing or registration of agents, is eligible for the grant of a licence of a like kind by the Board.
- (2) Where a licence is granted to a person by virtue of subsection (1), the licence shall be:
  - (a) subject to the conditions as nearly as practicable the same as those to which the licence or registration granted under the law of the State or Territory is subject; and

- (b) revoked immediately upon the revocation or suspension of the licence or registration granted under the law of the State or Territory, except where the revocation or suspension under the law of the State or Territory is for the non-payment of a fee.
- (3) The revocation of a licence under subsection (2)(b) shall be deemed to be a revocation by the Board pursuant to section 69(1)(d).

## **25 Licence of company or firm**

A company or firm constituted by 2 or more persons is eligible for the grant of a licence where the Board is satisfied that:

- (a) in the case of a company:
  - (i) the company is, by its memorandum of association, authorized to carry on business as an agent; and
  - (ii) all of the directors of the company and all of the persons concerned in the management or control of the company are fit and proper persons;
- (b) each person in effective and substantial control of the business to be operated under the licence sought at an office of the company or firm is a licensed agent; and
- (c) in the case of a firm, all of the persons by whom the firm is constituted and all of the persons concerned in the management or control of the firm are fit and proper persons.

## **25A Restricted licence**

- (1) Where it appears to the Board that an applicant for a licence is not qualified or not entitled to obtain a grant of a licence but the applicant, pursuant to section 5A, may be exempted from complying with the provisions of this Act that may disentitle or disqualify him, the Board may, if it thinks it appropriate or expedient, exempt the applicant accordingly and authorize under section 29 the issue of a restricted licence.
- (2) A restricted licence under subsection (1) entitles the holder to perform only the functions of an agent specified in the licence, and may be subject to such conditions on performance as may be specified.

### **Division 3            Applications, objections and determination of applications for licences**

#### **26            Applications by persons other than companies or firms**

An application for the grant of a licence by a person, not being a company or firm, shall be:

- (a) in writing in a form approved by the Board;
- (aa) accompanied by the prescribed fee; and
- (b) lodged with the Registrar not earlier than 7 days after, and not later than 14 days after, the applicant has:
  - (i) caused to be published in a newspaper or newspapers nominated by the Board notice of the fact that he intends to apply for the grant of a licence to carry on business as a real estate agent or business agent, as the case may be, and stating his full name and residential address; and
  - (ii) served on the Commissioner of Police notice of the fact that the applicant in-tends to apply for the grant of such a licence and setting out his full name, the date and place of his birth, his present residential address and any other addresses at which he has resided during the 3 years immediately preceding the date on which the notice is given to the Commissioner of Police.

#### **27            Applications by companies or firms**

An application by a company or firm for the grant of a licence shall be:

- (a) in writing and signed by one of the directors of the company or one of the persons by whom the firm is constituted, as the case may be, in a form approved by the Board;
- (aa) accompanied by the prescribed fee; and
- (b) lodged with the Registrar not earlier than 7 days after, and not later than 14 days after, the company or firm has:
  - (i) caused to be published in a newspaper or newspapers nominated by the Board notice of the fact that the company or firm in-tends to apply for the grant of a licence to carry on business as a real estate agent or business agent, as the case may be; and

(ii) served on the Commissioner of Police notice of the fact that the company or firm intends to apply for the grant of such a licence and setting out the full name, the date and place of birth and present residential address of:

(A) in the case of a company – each of the present directors of the company and of each of the persons whom it is pro-posed to appoint as a branch manager of the company; or

(B) in the case of a firm – each of the persons by whom the firm is constituted and of each of the persons whom it is proposed to appoint as a branch manager of the firm,

and any other residential addresses at which each of those directors and persons has resided during the 3 years immediately preceding the date on which the notice is given to the Commissioner of Police.

## **28        Objections**

- (1) The Commissioner of Police may, within 21 days after the date on which a notice under this Division is served on him, object by notice in writing lodged with the Registrar to the grant of the application.
- (2) The Registrar may, within 14 days after an application by a person, company or firm for a licence is lodged with him, object by notice in writing under his hand to the grant of the application.
- (3) Any person may, within 14 days after the publication of a notice referred to in section 26(b)(i) or 27(b)(i) object, by notice in writing lodged with the Registrar, to the grant of the application.
- (4) A notice of objection shall include particulars of the ground or grounds of objection.
- (5) Where a notice of objection is lodged with the Registrar in accordance with this section, he shall, as soon as is reasonably practicable, serve a copy of that notice on the applicant for a licence.

## **29        Grant or refusal of licences**

- (1) The Board shall consider an application for the grant of a licence and:
  - (a) shall grant the application and authorize the issue of the licence; or

- (b) may, subject to this Division, refuse the application.
- (2) The Board may, whether or not an objection to the grant of an application for a licence has been lodged, require any person to attend before the Board and to furnish to the Board, such documents and such information, either orally or in writing, as it requires.
- (3) The Board shall not refuse an application for the grant of a licence unless:
  - (a) any person refuses or otherwise fails to attend before the Board or to furnish the documents or information required by the Board in accordance with subsection (2);
  - (b) the applicant for the grant of a licence fails to establish that he is eligible for the grant of the licence;
  - (c) the application does not comply with the requirements of section 26 or 27, as the case requires; or
  - (d) in the case of an application by a person other than a company or firm, the applicant is a bankrupt, is a person who is, for the time being, taking the benefit of a law for the relief of bankrupt or insolvent debtors or is a person whose remuneration is, for the time being, assigned for the benefit of his creditors.
- (4) Where the Board refuses to grant an application for the grant of a licence, the Board shall:
  - (a) record the reasons for its decision;
  - (b) serve on the applicant, within 7 days after so deciding, notice of its decision; and
  - (c) if the applicant so requests, supply him with a copy of the reasons recorded under paragraph (a).

### **30 Board to hold inquiry before refusal**

- (1) Where:
  - (a) subject to subsection (2), a notice of objection is lodged in accordance with section 28; or
  - (b) the Board considers that there may be grounds for refusing an application for the grant of a licence,

the Board shall hold an inquiry before considering in accordance with section 29 whether to grant the application for a licence.

- (2) The Board may, without holding an inquiry, reject an objection made under section 28(3) if, in the opinion of the Board, the objection is of a frivolous, irrelevant or malicious nature.

### **31 Issue of licences**

- (1) Where:

- (a) the Board grants an application for a licence; or
- (b) a Stipendiary Magistrate orders, on the hearing of an appeal under Part X, that an application for a licence be granted,

the Registrar shall issue to him a licence or provisional licence or restricted licence, as the case may be, in the prescribed form to carry on business at the place or places or, in the case of a restricted licence, in accordance with the conditions specified in the licence.

- (2) Where a licence issued under subsection (1) is a provisional licence, the Registrar shall record in the register particulars of the period fixed under section 21(1)(b) in relation to the holder of that provisional licence.
- (3) Where the Registrar is satisfied that a person who is the holder of a provisional licence has obtained the prescribed educational qualifications before the expiration of the period fixed under section 21(1)(b) in relation to that person, he shall, on the surrender to him of that provisional licence, issue a licence to that person.
- (4) A licence issued under subsection (3) shall take effect on and from the date upon which the licence is issued and shall continue in force for the period that the provisional licence referred to in that subsection would have continued in force but for the surrender effected under that subsection.
- (5) A licence issued to a company or firm shall specify the name or names of the branch manager or managers of the company or firm and the approval in writing of the Board shall be necessary before any substitution for, or addition to, the branch manager or managers so specified will be recognized for the purposes of this Act.
- (6) Where, under subsection (5), the Board approves a substitution for, or addition to, the branch manager or managers of a company or firm, the Registrar shall, on the surrender to him of the licence previously issued to the company or firm, issue a new licence to the

company or firm specifying the name of the branch manager or managers, for the time being, of the company or firm.

- (7) A licence issued under subsection (6) shall take effect from the date upon which the licence is issued and shall continue in force for the period that the licence would have continued in force but for the substitution or addition effected under subsection (5).

## **32 Duration and renewal**

- (1) A licence shall take effect from the date upon which the licence is, or is deemed to have been, granted and shall, subject to this Act, continue in force to and including 30 November immediately following the grant of the licence.
- (2) An application for the renewal of a licence shall be lodged with the Registrar in a form approved by the Board and accompanied by the prescribed fee.
- (3) Subject to this Act, the Registrar shall renew a licence where an application is lodged in accordance with subsection (2).
- (4) Subject to subsection (5), where the Registrar renews a licence, the licence as renewed shall continue in force for a period of 12 months commencing on the date which, but for the renewal, the licence would have expired.
- (5) Unless the Board otherwise determines:
- (a) a provisional licence shall not continue in force for a period longer than the period fixed under section 21(1)(b) or 23A(b) in relation to the holder of that provisional licence; and
  - (b) the Registrar shall not renew a provisional licence for a period that extends beyond the date on which that period fixed under section 21(1)(b) or 23A(b) will expire.

## **32A Licensee to maintain office in Territory**

It shall be a condition of a licence issued to a person whose principal place of business is outside the Territory that the licensee maintains an office within the Territory and complies with section 110 in respect of that office.

## **Part IV                      Registration of agent's representatives**

### **33                      Agent's representatives to be registered**

- (1) A person other than a licensed agent shall not act as, or carry out any of the functions of, an agent's representative unless he is a registered agent's representative and he acts or carries out those functions for and on behalf of a licensed agent.
- (2) A person other than a licensed agent shall not, unless he is a registered agent's representative, hold himself out by any means as an agent's representative or as being in the employment of, or as acting for or on behalf of an agent as an agent's representative.
- (3) A registered agent's representative shall not hold himself out by any means as being in the employment of, or as acting for or on behalf of an agent, unless that agent is his employer, principal or partner.

Penalty:            \$500 or imprisonment for 3 months.

### **34                      Directors, managers, &c., of licensed agent**

A person other than a licensed agent:

- (a) shall not, as a member, manager or employee of a firm that is a licensed agent; or
- (b) shall not, as a director, manager or employee of a company that is a licensed agent,

act as or carry out any of the functions of an agent's representative unless he is a registered agent's representative.

Penalty:            \$1,000 or imprisonment for 6 months.

### **35                      Licensed agents not to employ unregistered representatives**

A licensed agent shall not engage as an agent's representative, or permit to carry out in the business of the agent any of the functions of an agent's representative, any person, other than a licensed agent, unless that other person is a registered agent's representative.

Penalty:            \$500 or imprisonment for 3 months.

**36 Prohibition of employment by 2 agents**

- (1) A registered agent's representative shall not accept or undertake employment, or be or remain in the service of, or by any means hold himself out as being in the service of, or act as, an agent's representative for or on behalf of, any person who is an agent at any time when he is employed by, or in the service of, any other person who is an agent.
- (2) A licensed agent shall not employ, or have in his service as an agent's representative, a person who is, to the knowledge of that licensed agent, at that time employed by, or in the service of, any other agent.
- (3) A licensed agent shall not, whether directly or indirectly, give any commission, reward or other valuable consideration to any other person, other than a licensed agent, for acting as, or performing any of the functions of, an agent's representative unless the other person is a registered agent's representative in the service of the licensed agent as an agent's representative.

Penalty: \$500 or imprisonment for 3 months.

**37 Application for registration**

An application for the registration of a person as an agent's representative shall be:

- (a) in a form approved by the Board; and
- (b) lodged with the Registrar.

**38 Furnishing of information**

The applicant shall furnish to the Board such documents and such information as the Board requires to enable it to consider the application.

**39 Qualifications**

- (1) Where an application is made in accordance with this Part, the applicant is entitled to be registered as an agent's representative where he proves to the satisfaction of the Board that:
  - (a) he has attained the age of 18 years;
  - (b) he is a fit and proper person; and
  - (c) he holds the prescribed educational qualifications.

- (2) The Board may waive the prescribed educational qualifications where in the opinion of the Board the applicant:
  - (a) holds educational qualifications that the Board considers to be equivalent to the prescribed educational qualifications; and
  - (b) by reason of the applicant's experience, is competent to act as a registered agent's representative.
- (3) The experience referred to in subsection (2)(b) may have been gained before or after the commencement of this Act and either within or outside the Territory.

#### **41 Certificate of registration**

- (1) Subject to this Part, on being satisfied that the applicant satisfies the requirements of section 39 and on receiving payment of the prescribed fee, the Board shall direct the Registrar:
  - (a) to register the applicant as an agent's representative; and
  - (b) to issue to him a certificate of registration in the prescribed form.

#### **41A Restricted registration**

- (1) Where it appears to the Board that an applicant for registration as an agent's representative is not entitled to be registered but the applicant, pursuant to section 5A, may be exempted from complying with the provisions of this Act that disentitle him, the Board may, if it thinks it appropriate or expedient, exempt the applicant from the relevant provision, and direct the Registrar to issue under section 41, a certificate of restricted registration.
- (2) A certificate of restricted registration under subsection (1) entitles the holder to perform only those functions of an agent's representative specified in the certificate, subject to such conditions as may be so specified.

#### **42 Objections**

- (1) The Commissioner of Police may object by notice in writing lodged with the Registrar to the grant of an application for registration as an agent's representative.
- (2) The Registrar may object by notice in writing under his hand to the grant of an application for registration as an agent's representative.

- (3) Any person may object by notice in writing lodged with the Registrar to the grant of an application for registration as an agent's representative.
- (4) A notice of objection shall include particulars of the ground or grounds of objection.
- (5) Where a notice of objection is lodged with the Registrar in accordance with this section, he shall, as soon as is reasonably practicable, serve a copy of that notice on the applicant for registration as an agent's representative.
- (6) Where:
  - (a) subject to subsection (7), a notice of objection is lodged in accordance with this section; or
  - (b) the Board considers that there may be grounds for refusing an application for registration,the Board shall hold an inquiry.
- (7) The Board may, without holding an inquiry, reject an objection made under subsection (3) if, in the opinion of the Board, the objection is of a frivolous, irrelevant or malicious nature.
- (8) Where the Board has held an inquiry pursuant to subsection (6), the Board shall, after that hearing:
  - (a) register the applicant as an agent's representative and issue to him a certificate of registration in the prescribed form; or
  - (b) refuse to register the applicant and direct the Registrar to forward notice of refusal together with a statement of reasons for refusal to the applicant.

#### **43 Surrender of certificate**

- (1) Subject to the consent of the Board, a registered agent's representative may, at any time, surrender to the Board his certificate of registration.
- (2) Upon a surrender in accordance with subsection (1), the registration ceases to have effect.

#### **43A Annual fee**

A registered agent's representative shall pay to the Registrar the prescribed annual fee on or before 1 May of each year.

**44 Cancellation of registration**

- (1) The Board may, after an inquiry, by notice in writing, cancel the registration of an agent's representative and may, in addition, disqualify him from being registered, either temporarily or permanently or until the fulfilment of a condition imposed by the Board, on one or more of the following grounds:
  - (a) the registration of the agent's representative was improperly obtained;
  - (aa) the registered agent's representative did not, within the time referred to in section 43A, pay to the Registrar the annual fee required by that section to be paid;
  - (b) the agent's representative has been found guilty of an offence against this Act;
  - (c) the agent's representative has been found guilty of an offence against any other law that involves dishonesty, whether the finding of guilt took place before or after the commencement of this Act and either within or outside the Territory;
  - (d) any other reasonable ground which, in the opinion of the Board, is sufficient to warrant cancellation of the registration of the agent's representative.
- (2) The Commissioner of Police may apply, by notice in writing lodged with the Registrar, for the cancellation of the registration of an agent's representative on one or more of the grounds referred to in subsection (1).
- (3) The Registrar may apply, by notice in writing under his hand, for the cancellation of the registration of an agent's representative on one or more of the grounds referred to in subsection (1).
- (4) Any person may apply, by notice in writing lodged with the Registrar, for the cancellation of the registration of an agent's representative on one or more of the grounds referred to in subsection (1).
- (5) Where:
  - (a) subject to subsection (6), an application for the cancellation of registration as an agent's representative is lodged in accordance with this section; or
  - (b) the Board considers that there may be grounds under subsection (1) for the cancellation of the registration of an agent's representative,

the Board shall hold an inquiry.

- (6) The Board may, without holding an inquiry, reject an application for the cancellation of the registration of an agent's representative made under subsection (4) if, in the opinion of the Board, the application is of a frivolous, irrelevant or malicious nature.
- (7) Where a notice of application for cancellation of registration as an agent's representative is lodged with the Registrar in accordance with this section, he shall, as soon as is reasonably practicable, serve a copy of that notice on the agent's representative in respect of whom the application is made.
- (8) A cancellation of the registration of an agent's representative under subsection (1) shall have effect on and from:
  - (a) the date on which the agent's representative receives the notice referred to in that sub-section; or
  - (b) such other date as the Board may specify in the notice.
- (9) Where, under subsection (1), the Board:
  - (a) specifies a period that shall elapse; or
  - (b) imposes a condition that shall be fulfilled,before the person formerly registered as an agent's representative may apply again for registration, that person is not eligible to apply for registration as an agent's representative until the expiration of that period or the fulfilment of that condition to the satisfaction of the Board, as the case may be.
- (10) Where the Board cancels the registration of an agent's representative under subsection (1) and does not specify a period that shall elapse or impose a condition that shall be fulfilled under that subsection, the person formerly registered as an agent's representative is not, without the approval of the Board, eligible to apply for registration as an agent's representative.
- (11) Where the registration of an agent's representative is cancelled under subsection (1), the Registrar shall note in the register the fact of revocation and the period, if any, specified by the Board that is to elapse or any condition that is to be fulfilled, before the person formerly registered as an agent's representative may apply for registration.

**45 Employer to be notified of suspension or cancellation of agent's registration**

Where the Board cancels, under section 44, the registration of an agent's representative, the Registrar shall accordingly in writing inform the licensed agent who employs that agent's representative.

**46 Unemployed representative**

While a registered agent's representative is not in the employ of a licensed agent, his registration shall be deemed to be suspended and to have no effect.

**47 Notice of employment**

Not later than 14 days after the commencement of or termination of the employment of a registered agent's representative by a licensed agent, the agent's representative and the agent shall each give the Registrar notice in writing of that commencement or termination together with the prescribed particulars, if any.

Penalty: \$200.

**48 Registrar may direct surrender may direct surrender**

- (1) Where the Registrar is notified under section 47 of the termination of the employment of an agent's representative, the Registrar may, in his discretion, direct the agent's representative to surrender to the Board his certificate of registration.
- (2) An agent's representative shall not fail to comply with a direction under subsection (1) within 14 days after the date on which the direction is given.

Penalty: \$200.

**Part V Trust moneys, trust accounts and agent's records**

**Division 1 Trust moneys and accounts**

**49 Trust moneys**

All moneys received by a licensed agent in his capacity as an agent and in the course of the business that he is licensed to carry on and all moneys received by a licensed agent as a stakeholder shall, for all purposes, be held in trust by the agent.

## **50 Opening of account**

- (1) A licensed agent shall, within 7 days after the licence is granted to him, open an account at a bank in the Territory or at an approved building society, being an account under a title that includes:
  - (a) the name of the agent or, if he carries on the business under a business name registered under the *Business Names Act* the name under which he carries on the business;
  - (b) the words "Trust Account"; and
  - (c) if it is an account in which only security deposits, within the meaning of the *Tenancy Act*, and interest on such deposits, are held, the additional words "Security Deposits".
- (2) A licensed agent shall maintain an account so opened.
- (3) Subsections (1) and (2) do not prevent a licensed agent from opening and maintaining 2 or more trust accounts at a bank or banks or at an approved building society or societies under titles that include the matters referred to in subsection (1)(a) and (b).
- (4) In this section **account** means an account of a particular class or classes (being an account that carries interest at a rate considered satisfactory by the Fund) that has been agreed between the Fund and a bank or approved building society to be a class of account approved for the purposes of this section.
- (5) A bank or approved building society which holds an account of a class approved pursuant to subsection (4) shall, on such day or days as may be agreed with the Fund pay to the Fund any interest accrued in respect of the account.
- (6) Subsections (4) and (5) do not apply to or in relation to an account indicated in accordance with subsection (1)(c) as a security deposit account.

## **51 Notification of account**

A licensed agent shall, within 7 days after he opens an account in pursuance of section 50, notify the Registrar in writing of:

- (a) the name and address of the bank or approved building society at which the trust account is maintained; and
- (b) the title of the account.

Penalty: \$500.

## **52                      Operation of trust account**

- (1) When a licensed agent receives trust moneys, he shall pay those moneys into a trust account maintained by him.
- (2) A payment under subsection (1) shall be made as soon as is reasonably practicable after the licensed agent receives the trust moneys.
- (3) A licensed agent shall not pay money out of a trust account maintained by him except by means of a cheque made payable to a specified person, being a cheque that is crossed and marked "not negotiable".
- (4) A licensed agent shall not withdraw money from a trust account maintained by him except for the purpose of:
  - (a) payment of his commission under contract;
  - (b) payment to, or disbursement according to the directions in writing of, the person for whom, or on whose behalf, the money was received; or
  - (c) repaying a debt lawfully required to be repaid from trust moneys.

## **53                      Protection of trust moneys**

- (1) Subject to subsection (2), moneys standing to the credit of a trust account maintained by a licensed agent are not:
  - (a) available for the payment of debts of the licensed agent; or
  - (b) liable to be attached or taken in execution for the purpose of satisfying a judgment against the agent.
- (2) Nothing in subsection (1) prevents trust moneys held in trust for the person for whom, or on whose behalf, the moneys were received from being available for the discharge of the liability of the licensed agent to that person.

## **54                      Provisions applicable to banks or building societies**

- (1) A bank or approved building society at which a trust account is maintained is not under an obligation to control or supervise transactions in relation to the trust account or to verify the application by the agent of moneys drawn out of the account.

- (2) Nothing in subsection (1) authorizes a bank or approved building society to pay money out of a trust account except by the means referred to in section 52(3).
- (3) With respect to any liability of the agent to the bank or approved building society at which the agent maintains a trust account, the bank or approved building society does not have and shall not have and shall not obtain, a recourse or right, whether by way of settlement, counter-claim, charge or otherwise, against moneys standing to the credit of the trust account.
- (4) This section does not relieve a bank or approved building society from a liability or obligation to which it is subject apart from this Act.

## **Division 2            Agents' records**

### **55            Accounting records**

- (1) A licensed agent shall keep such account-ing records as disclose particulars of:
  - (a) all trust moneys received from day to day by him on behalf of each principal for whom he acts; and
  - (b) all payments made by him from day to day out of the trust moneys so received.
- (2) A licensed agent shall:
  - (a) keep the accounting records referred to in subsection (1):
    - (i) in written or printed form in the English language; or
    - (ii) so as to enable them to be readily accessible and readily convertible into written or printed form in the English language;
  - (b) cause those records to be kept in such a manner that they can be conveniently and properly audited; and
  - (c) retain those records for a period of not less than 6 years after the date on which the last entry in those records was made.

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

**56            Receipt for trust moneys**

- (1) A licensed agent shall give to a person from whom the agent receives trust moneys a receipt clearly marked with the words "Trust Account" and adequately specifying the subject-matter or purpose in respect of which the money was received.
- (2) A licensed agent shall keep a legible carbon duplicate of a receipt given in accordance with subsection (1).
- (3) A receipt relating to trust moneys shall be taken from a book that bears a number or mark identifying the book and contains not less than 50 receipt forms so arranged that a carbon duplicate of each receipt remains in the book.
- (4) A receipt and the carbon duplicate shall bear the same number or mark, being such number or mark as enables the receipt to be identified by reference to that number or mark.
- (5) Subsections (2), (3) and (4) do not apply in relation to a licensed agent who, in accordance with an authority given by the Board for the purpose of this subsection, issues receipts in a manner specified in the authority.

Penalty:        \$500.

**57            Business moneys other than trust moneys**

- (1) Subject to subsection (2), a licensed agent shall keep such accounting records as disclose particulars of:
    - (a) all moneys, other than trust moneys, received by him in the course of his business as a licensed agent; and
    - (b) all payments out of those moneys made by him.
- Penalty:        \$1,000 or imprisonment for 6 months.
- (2) Subsection (1) does not apply to a licensed agent that:
    - (a) is a company carrying on business as an agent within and outside the Territory; and
    - (b) keeps accounting records, which include accounting records of a description referred to in subsection (1), in accordance with the requirements of the law in force in a State or Territory, not being the Northern Territory, relating to the keeping and audit of accounting records of companies.

## **Division 3 Audit and inspection of trust accounts**

### **58 Prescribed period**

In this Division, ***prescribed period*** means:

- (a) the period of 12 months ending on 30 June in each year; or
- (b) the period of 12 months ending on such other date as the licensed agent specifies, by notice in writing lodged with the Registrar, to be the date in each year for the purpose of this Part.

### **59 Audit**

- (1) A licensed agent shall ensure that his accounting records relating to trust moneys received and paid by him during the prescribed period are audited within 3 months after the expiration of each prescribed period.
- (1A) It is a defence to a prosecution for an offence against subsection (1) if the licensed agent charged with the offence proves that:
  - (a) the licensed agent engaged an auditor to carry out the audit at a time when the auditor would reasonably be expected to complete the audit within the period specified in that subsection, but the auditor had failed to do so; and
  - (b) a written statement was forwarded to the Registrar by the auditor or the licensed agent before the expiration of the period specified in that subsection setting out the reasons for the auditor's failure to complete the audit and specifying the period within which the audit will be completed.

### **60 Qualifications of auditor**

- (1) A licensed agent shall not engage as his auditor, or permit the audit of his accounting records relating to trust moneys to be made by, a person who:
  - (a) is not a registered company auditor;
  - (b) is an employee of, or is a partner of, or is a relation of, the licensed agent;
  - (c) is an employee of any other licensed agent;
  - (d) is engaged in keeping and entering those records or has those records in his custody or control;

- (e) is himself a licensed agent;
- (f) is a director, officer or employee of a company that is a licensed agent;
- (g) is a person by whom a firm is constituted that is a licensed agent; or
- (h) is an employee of, or is a partner of, or is a relation of, a branch manager of a company or firm that is a licensed agent.

Penalty: \$500 or imprisonment for 3 months.

(2) For the purposes of this section, **relation** means:

- (a) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of that person or of his or her spouse; or
- (b) the spouse or de facto spouse of that person or of any other person specified in paragraph (a).

## **61 Furnishing of documents, information, &c.**

Where an auditor requires a licensed agent for the purpose of an audit of his accounting records relating to trust moneys, the licensed agent shall:

- (a) produce to the auditor all receipt and other books, accounts, securities and other documents and papers in his possession relating in any way to trust moneys received or paid by the agent or relating to the transactions in respect of which such moneys were received or paid during the prescribed period to which the audit relates; and
- (b) furnish to the auditor such information and answer such questions relating to those receipt and other books, accounts, securities and other documents and papers and in relation to transactions by the agent in the course of his business as a licensed agent, as the auditor requires.

Penalty: \$500 or imprisonment for 3 months.

## **62 Auditor's report**

- (1) As soon as is reasonably practicable after the completion of an audit pursuant to section 59, the auditor shall:
  - (a) prepare a report of the result of the audit; and

- (b) deliver the report to the licensed agent and a copy of the report to the Board.
- (2) An auditor shall state in his report:
  - (a) whether, in his opinion, the licensed agent had kept the accounting records relating to all trust moneys received and paid by him in accordance with this Act;
  - (b) whether those records were ready, within a reasonable time, for his examination after he had required their production;
  - (c) whether the agent had complied with the auditor's other requirements and so complied within a reasonable time; and
  - (d) anything in relation to those records of which the agent or the Board should, in the opinion of the auditor, be informed.

### **63 Special report**

Where, in the course of an audit, an auditor considers:

- (a) that the accounting records relating to trust moneys have been so kept that he has not been able to audit them properly;
- (b) that there is a loss or deficiency of trust moneys or a failure to pay or account for trust moneys; or
- (c) that there has been a failure to comply with a provision of this Part,

the auditor shall forthwith report accordingly, in writing, to the agent and, at the same time, forward a copy of the report to the Board.

## **Division 4 Inspections**

### **64 Inspectors**

- (1) An inspector may, at any reasonable time:
  - (a) inspect all receipt and other books, accounts, securities and other documents and papers relating in any way to trust moneys received or paid by a licensed agent or relating to the transactions in respect of which such moneys were received or paid;
  - (aa) inspect all documents or certificates relating to indemnity insurance referred to in Part XIA of a licensed agent or former licensed agent;

- (b) inspect all accounting records of a description referred to in section 57 kept by a licensed agent; and
  - (c) for the purposes of paragraph (a), (aa) or (b), require a licensed agent or any other person in whose custody or control those receipts or other books, accounts, securities, documents, papers or accounting records, or those documents or certificates relating to indemnity insurance referred to in Part XIIA, are, to produce and to hand over to him those receipts or other books, accounts, securities, documents, papers or accounting records or those documents or certificates relating to indemnity insurance referred to in Part XIIA.
- (2) A person to whom a requirement under subsection (1) is made, shall not refuse or fail to comply with that requirement.

Penalty:       \$500 or imprisonment for 3 months.
- (3) An inspector may make notes, copies of extracts from or copies of, any books, accounts, securities, documents, papers or accounting records or a document or certificate relating to indemnity insurance referred to in subsection (1).
- (4) For the purposes of subsection (3), an inspector may retain, for such period as he considers necessary, any book, account, security, document, paper or accounting record or a document or certificate relating to indemnity insurance referred to in subsection (1).

## **Part VI               Rules of conduct for agents**

### **65           Rules of conduct**

- (1) A licensed agent who:
  - (a) breaches this Act or the regulations, whether or not the licensed agent is found guilty of an offence in respect of the breach;
  - (b) without the consent of the principal on whose behalf he acts, or has acted, makes use in a manner prejudicial to the interests of the principal of any material or information acquired by the agent in the course of so acting;
  - (c) fails to perform his duties to his principal or to carry out the lawful instructions of his principal;

- (d) fails to exercise due skill, care or diligence in carrying out his duties on behalf of his principal;
- (da) fails to exercise due skill, care or diligence when dealing with any person whomsoever in the course of conducting business as an agent;
- (e) having an interest in, or being likely to obtain an interest in, a transaction entered into on behalf of his principal, fails to disclose to his principal the exact nature of his interest or of the interest that he is likely to obtain;
- (f) fails to make to his principal a full disclosure of all material facts and circumstances and of everything known to the licensed agent regarding the matter in respect of which he is authorized to act as agent;
- (g) fails to inform his principal that, in the opinion of the licensed agent, a price or other consideration that the principal is prepared to accept on the sale of any property may be less than the fair market value of the property;
- (h) without the consent of the principal on whose behalf he acts or has acted, discloses, except where required to do so in pursuance of a law of the Territory, information relating to the affairs of the principal obtained by the licensed agent while so acting;
- (i) publishes, or causes to be published an advertisement or other statement that he is authorized to sell, or otherwise deal with, property which he is not authorized to so sell or deal with, by instrument in writing under the hand of the owner;
- (j) publishes, or causes to be published an advertisement or other statement that is false, misleading or likely to deceive a person;
- (k) accepts or demands a fee or other payment from a person other than his principal in respect of a service performed or to be performed by the licensed agent, being a service in respect of which he has received payment, or is entitled to receive payment from his principal;
- (m) without the consent in writing of the principal on whose behalf he acts, publishes, or causes to be published an advertisement or other statement that he is authorized to sell property at a price higher than or lower than the price authorized by the principal; or

- (n) contravenes or fails to comply with a rule prescribed by the Regulations for the purposes of this section,

is guilty of a breach of the rules of conduct for agents.

- (2) A licensed agent who attempts to do an act the doing of which would be a breach of the rules of conduct for agents, or agents of a class of which he is one, is guilty of a breach of the rules of conduct for agents.
- (3) Where a licensed agent who carries on business as a member of a firm contravenes or fails to comply with a provision of Part V, each licensed agent who is a member of the firm shall be deemed to be guilty of the contravention of, or failure to comply with, that provision.
- (4) Where:
  - (a) a company or firm is a licensed agent acting on behalf of a principal; and
  - (b) a director or employee of the company or firm does an act, or fails to do an act, or attempts to do an act, the doing of, or the failure to do, which would, if the director or employee were a licensed agent, make the director or employee guilty of a breach of the rules of conduct for agents,

the company shall be deemed to be guilty of a breach of the rules of conduct for agents.

## **Part VII                      Surrender and revocation of licences**

### **66                      Surrender**

- (1) A licensed agent may, by notice in writing delivered to the Registrar, apply to the Board for permission to surrender the licence of the agent commencing on a date that is a date not earlier than one month after the date on which the notice is delivered to the Registrar.
- (2) The Board is not required to grant permission to a licensed agent to surrender the licence of the agent where:
  - (a) the Board has, before the date of delivery by a licensed agent of a notice under subsection (1), resolved or resolves, within the period of one month referred to in that subsection, to hold an inquiry under section 68(1); or

- (b) the Registrar has, before the date of delivery by a licensed agent of a notice under sub-section (1), delivered or delivers, within the period of one month referred to in that subsection, a statement under section 68(2).
- (3) Where the Board holds an inquiry pursuant to section 68 and does not revoke the licence of a licensed agent, the Board may, after that inquiry, grant permission to the licensed agent to surrender his licence.

## **67 Grounds for disciplinary action**

- (1) Subject to this Part, the Board may take disciplinary action in accordance with this Part against a licensed agent on one or more of the following grounds:
  - (a) the licence was obtained by means of misrepresentation, a false or misleading statement;
  - (b) in the case of a licensed agent not being a company or firm, the agent has been found guilty of an offence that involves dishonesty, whether the finding of guilt took place before or after the commencement of this Act and either within or outside the Territory;
  - (c) the licensed agent has been guilty of a breach of the rules of conduct for agents referred to in section 65;
  - (d) the licensed agent has contravened or failed to comply with a direction of the Board under section 69(2);
  - (e) a licence under a law of a State or Territory providing for the licensing of real estate agents or of business agents or of conveyancing agents (by whatever name called) granted to the licensed agent has, under that law, been cancelled or revoked or a renewal of such licence has been refused;
  - (f) subject to section 111, in the case of a licensed agent being a company or firm, the company or firm has carried on business as a licensed agent for a period during which a branch manager of the company or firm was not a licensed real estate agent, business agent or conveyancing agent as the case requires;
  - (g) the licensed agent has contravened or failed to comply with a provision of Part XII with respect to licensed agents;
  - (h) the licensed agent has not paid within the prescribed time the prescribed annual fee payable by the agent;

- (j) the licensed agent has ceased to carry on business in the Territory as a licensed agent or has failed to maintain an office in the Territory;
  - (ja) the licensed agent has failed to take out or to maintain indemnity insurance referred to in Part XIIA as required by or under this Act;
  - (k) the licensed agent does not meet the conditions of eligibility, specified in Division 2 of Part III, which relate to the licence of the licensed agent, other than such conditions which the Board has, under this Act, waived; or
  - (m) any other reasonable ground which, in the opinion of the Board, is sufficient to warrant revocation of the licence of the agent.
- (2) For the purposes of this Part, the revocation by the Board of a licence is deemed to include a direction by the Board to the Registrar not to renew a licence.

## **68 Applications for disciplinary action**

- (1) The Commissioner of Police may apply, by notice in writing lodged with the Registrar, for disciplinary action to be taken against a licensed agent on one or more of the grounds referred to in section 67.
- (2) The Registrar may apply, by notice in writing under his hand, for disciplinary action to be taken against a licensed agent on one or more of the grounds referred to in section 67.
- (3) Any person may apply, by notice in writing lodged with the Registrar, for disciplinary action to be taken against a licensed agent on one or more of the grounds referred to in section 67.
- (4) Where:
- (a) subject to subsection (5), an application for disciplinary action to be taken against a licensed agent is lodged in accordance with this section; or
  - (b) the Board considers that there may be grounds under section 67 for disciplinary action to be taken against a licensed agent,

the Board shall hold an inquiry.

- (5) The Board may, without holding an inquiry, reject an application for disciplinary action to be taken against a licensed agent where:
  - (a) the application was made under subsection (3) and is, in the opinion of the Board, of a frivolous, irrelevant or malicious nature; or
  - (b) the application was made (by virtue of section 67(1)(c)) in respect of a breach of section 59(1) and the Board is satisfied that the licensed agent has, or would have, a defence to a prosecution for an offence against that subsection.
- (6) Where a notice of application for disciplinary action to be taken against a licensed agent is lodged with the Registrar in accordance with this section, he shall, as soon as is reasonably practicable, serve a copy of that notice on the licensed agent in respect of whom the application is made.

**68A Board may suspend licence pending inquiry**

- (1) Subject to this section, where the Board is to hold an inquiry referred to in section 68(4), it may, as it thinks fit, suspend the licence of the licensed agent to which the inquiry relates until the conclusion of that inquiry.
- (2) Where, under subsection (1), the Board suspends the licence of a licensed agent, the Registrar shall accordingly, by notice, inform the licensed agent and where he is:
  - (a) an employee or director of a company which is a licensed agent – the company; or
  - (b) an employee of a firm which is a licensed agent or a person by whom such a firm is constituted – the firm.
- (3) A suspension under subsection (1) does not take effect until the day immediately after the date on which the notice, under subsection (2), is given to the licensed agents.

**69 Powers of board after inquiry**

- (1) Where, at the conclusion of an inquiry conducted pursuant to section 68(4), the Board is satisfied that it is authorized to take disciplinary action against a licensed agent, the Board may:
  - (a) reprimand or caution the agent;
  - (b) impose a fine not exceeding \$5,000 on the agent;

- (c) by notice in writing, suspend the licence of the agent for such period as the Board shall in that notice specify; or
  - (d) by notice in writing, revoke the licence of the agent.
- (1A) The Board shall, for the purposes of taking action of a kind specified in subsection (1)(a), (b), (c) or (d), take into account a period of suspension, if any, imposed under section 68A(1) on the licensed agent in respect of whom it proposes to take that action.
- (2) Where the Board decides to take action of a kind specified in subsection (1)(a), (b), (c) or (d), the Registrar shall accordingly in writing inform:
  - (a) in the case of a licensed agent or former licensed agent, as the case may be, who is an employee of, or a director of, a company which is a licensed agent – that company; or
  - (b) in the case of a licensed agent or former licensed agent, as the case may be, who is an employee of a firm which is a licensed agent or a person by whom such a firm is constituted – that firm,as the case requires.
- (3) Where the Board decides to take action of a kind specified in subsection (1)(a), (b) or (c), the Board may, by notice in writing, direct the licensed agent to take, or to refrain from taking, a specified action within such time as the Board shall in that notice specify.
- (4) The Board may, if it thinks fit, either before or after the expiration of a period fixed under subsection (1)(c) or (3), extend that period.
- (5) Where the Board revokes a licence under subsection (1)(d), the Board may, in the notice referred to in that subsection, specify a period that shall elapse or impose a condition that shall be fulfilled before the person formerly licensed may apply again for a licence.
- (6) Where a period is specified or a condition imposed under subsection (5), the person formerly licensed is not eligible to apply for a licence until the expiration of that period or the fulfilment of that condition to the satisfaction of the Board, as the case may be.
- (7) Where the Board revokes a licence under subsection (1)(d) and does not specify a period that shall elapse or impose a condition that shall be fulfilled under subsection (5), the person formerly licensed is not, without the approval of the Board, eligible to apply for a licence.

- (8) Where the Board decides to take action of a kind specified in subsection (1), the Board shall record the reasons for its decision and shall direct the Registrar to furnish a copy of those reasons to the licensed agent or person formerly licensed.

#### **69A Profits to be repaid**

- (1) Where the Board has, at the conclusion of an inquiry, taken action under section 69(1), and is satisfied that the licensed agent or person mentioned in section 65(4)(b) has by means of his breach of the rules of conduct for agents set out or referred to in section 65(1), made a profit which he would not, but for his breach of those rules, have made, the Board may require him to pay over to the person at whose expense, or in relation to whose affairs, the profit has been made, the amount of that profit or such amount of money as, in the opinion of the Board, is equivalent to that profit.
- (2) An amount ordered by the Board to be paid to a person under subsection (1) may be sued for and recovered at the suit of the Board.

#### **70 Effect of suspension or revocation**

- (1) A licence that is suspended under section 69(1)(c) or revoked under section 69(1)(d) ceases to have effect on and from:
- (a) the day on which the licence is suspended or revoked, as the case may be; or
  - (b) such other date as the Board may specify in the notice referred to in section 69(1)(c) or (d), as the case may be.
- (2) A licence that is suspended under section 69(1)(c) shall, unless the Board otherwise determines, have no effect until the expiration of the period specified in the notice referred to in that subsection.
- (3) Where a licence is suspended under section 69(1)(c) or revoked under section 69(1)(d), the Registrar shall note in the register:
- (a) the fact of suspension and the period specified in the notice referred to in section 69(1)(c); or
  - (b) the fact of revocation and the period, if any, specified in the notice referred to in section 69(1)(d) that is to elapse or any condition that is to be fulfilled, before the person formerly licensed may apply for a licence,
- as the case requires.

## **Part VIII            Receivers**

### **71            Appointment**

- (1) The Board may apply to the Supreme Court to appoint a registered company auditor to be receiver of the trust moneys of a licensed agent in the following circumstances:
  - (a) where the Board is required to hold an inquiry under section 68(3);
  - (b) where an agent has, through physical or mental illness, become incapable of carrying on business as an agent;
  - (c) on the death of an agent; or
  - (d) or any other ground that the Board thinks fit, and the Supreme Court may appoint the registered company auditor accordingly.
- (2) The Board may apply to the Supreme Court for the appointment of a registered company auditor as the receiver of moneys received by a person who, although not licensed under this Act, appears to the Board to be carrying on business as a real estate agent, business agent or conveyancing agent, and the Supreme Court may, if satisfied that the person is holding moneys in that capacity, appoint the registered company auditor accordingly.

### **72            Responsibility**

- (1) A receiver appointed under this Part:
  - (a) is responsible to the Supreme Court for his acts and for the performance of transactions entered into by him; and
  - (b) shall report to the Board as often as required by the Supreme Court.
- (2) The Supreme Court may replace a receiver appointed under this Part with another registered company auditor to be receiver of the trust moneys of the agent.

### **73            Notice to bank**

- (1) A receiver appointed under this Part may:
  - (a) by instrument in writing, give to the manager or other officer in charge of the bank or approved building society at which the agent maintains or has maintained his trust account, notice of the appointment of the receiver; and

- (b) by the same or a subsequent instruction in writing, withdraw the authority, or purported authority, of the agent, and of any other persons authorized, or purported to be authorized, by the agent, to sign cheques or other authorities for the payment of moneys out of the trust account.
- (2) Where, by a notice given under subsection (1), the receiver has withdrawn the authority, or purported authority, of the agent, and of any other persons authorized, or purported to be authorized, by the agent, to sign cheques or other authorities for the payment of moneys out of the trust account:
  - (a) the bank or approved building society shall not, except with the approval of the receiver, pay any moneys out of the trust account on cheques or other authorities signed by the agent or any other person authorized, or purported to be authorized, by the agent; and
  - (b) only the receiver and a person authorized by the receiver by notice in writing delivered to the bank or approved building society are authorized to sign cheques or other authorities for the payment of moneys out of the account.
- (3) A purported payment of moneys out of an account in contravention of subsection (2) is of no effect.
- (4) The receiver shall cause a copy of an instrument given under this section to be served on the agent either:
  - (a) personally; or
  - (b) by leaving it at the last-known place of residence of the agent.

### **73A Access to books, &c.**

For the purposes of this Act, a receiver appointed under section 71:

- (a) shall have full and free access at all reasonable times to all books, documents and other papers kept by or on behalf of an agent; and
- (b) may, for those purposes, take extracts from, and make copies of, any books, documents or papers kept by or on behalf of an agent.

### **74 Powers of receiver**

- (1) A receiver appointed under this Part may do all things and shall perform all functions that a licensed agent is permitted to do, or required to perform, by this Act.

- (2) An agent shall not be personally liable for any default of the receiver appointed for the agent unless the agent is a party to the default.

## **75         Remuneration**

- (1) A receiver appointed under this Part:
- (a) shall be paid such fees and allowances and at such rates as the Supreme Court may determine; and
  - (b) is entitled to reimbursement of the expenses necessarily incurred by him in carrying out his receivership.
- (1A) The Board may pay to the receiver from the moneys of the Fund the fees and allowances and expenses referred to in subsection (1).
- (2) The receiver or, if it has exercised its powers under subsection (1A), the Board may recover from the agent for whom the receiver is appointed or (not being a company or firm) if dead, his estate:
- (a) an amount of fees and allowances paid or payable to the receiver; and
  - (b) the amount of the reimbursement of expenses paid or payable to the receiver.

## **76         Interpretation**

In this Part, unless the contrary intention appears:

**agent** includes a person referred to in section 71(2).

**trust account** includes an account into which moneys referred to in section 71(2) have been paid.

**trust moneys** include moneys referred to in section 71(2).

## **Part IX                 Inquiries by Board**

### **77         Inquiries**

- (1) Where, by this Act, the Board may or is required to hold an inquiry, the Chairman shall fix a time and place for the holding of the inquiry.

- (2) The Chairman shall cause notice of the matter to be inquired into and of the time and place fixed for the holding of the inquiry to be given to the parties not less than 7 days before the date fixed for the hearing.
- (3) The Board may adjourn the holding of an inquiry from time to time and from place to place.
- (4) An inquiry shall not be open to the public.
- (5) At an inquiry, the Board may take unsworn evidence or take evidence on oath or affirmation and, for that purpose, a member may administer an oath or affirmation.
- (6) Subject to this Act, the procedure at an inquiry is at the discretion of the Board.
- (7) A party may be represented by a legal practitioner, or by another person, who may examine witnesses and address the Board on behalf of the person for whom he appears.
- (8) At an inquiry the Board may be assisted by a legal practitioner or by another person, who may examine witnesses and address the Board.
- (9) In conducting an inquiry the Board is not bound by rules of evidence but may inform itself in such manner as it thinks fit.
- (10) In this section, **party** means:
  - (a) at an inquiry in relation to the grant of a licence or the registration of a person as an agent's representative – the applicant for the grant of a licence or registration and a person who has lodged an objection to the grant of a licence or registration; and
  - (b) at any other inquiry – the agent or agent's representative concerned in the subject matter of the inquiry and a person who has made an application under section 44 for the cancellation of a registration or under section 68 for the revocation of a licence,

and includes the Registrar and the Commissioner of Police.

**78 Power to summon witness**

- (1) The Chairman may, by writing under his hand, summon a person to attend an inquiry at a time and place specified in the summons and then and there to give evidence and produce such books and other documents in his custody or control as he is required by the summons to produce.
- (2) A summons under subsection (1) may be served:
  - (a) personally;
  - (b) by sending it to the person's last-known place of residence or business; or
  - (c) by leaving it at that place of business or residence with a person apparently having attained the age of 16 years.

**79 Failure to attend or produce documents**

- (1) A person served with a summons to attend an inquiry shall not refuse or fail, without reasonable excuse:
  - (a) to attend the inquiry; or
  - (b) subject to subsection (2), to produce at the inquiry the books or other documents in his custody or control that he is required by the summons to produce.

Penalty: \$200.

- (2) It is a defence to a charge in respect of a refusal or failure, without reasonable excuse, to produce at an inquiry a book or other document if the accused proves that the book or other document was not relevant to the subject-matter of the inquiry.

**80 Refusal to be sworn or give evidence**

- (1) A person appearing as a witness at an inquiry shall not refuse to be sworn or to make an affirmation or to answer a question relevant to the proceedings put to him by a member.

Penalty: \$200.

- (2) A statement or disclosure made before the Board by a witness is not, except in proceedings for giving false testimony at an inquiry, admissible in evidence in civil or criminal proceedings.

**81 Record of evidence of witnesses**

- (1) A record of the evidence of a witness at an inquiry shall be made in the manner specified by the Board.
- (2) The Registrar shall have the custody of a record of evidence made in accordance with subsection (1).
- (3) The Registrar may give directions that a transcript of the record of any evidence made in accordance with subsection (1) be prepared.
- (4) Where a transcript of a record is prepared in accordance with the directions of the Registrar given under subsection (3), the person who prepared the transcript, or under whose supervision the transcript was prepared, shall certify on the transcript by writing under his hand, that the transcript is a true transcript of a record produced out of the custody of the Registrar.
- (5) Where a record that purports to be a record made in accordance with subsection (1) of the evidence of a witness at an inquiry is produced out of the custody of the Registrar, the record is, unless the contrary is proved, evidence that the person gave that evidence at that inquiry.
- (6) Where:
  - (a) a document purports to be a transcript, or a copy of a transcript, of a record, made in accordance with subsection (1), of evidence given by a witness at an inquiry; and
  - (b) the document bears a certificate that purports to be a certificate made in accordance with subsection (4),the document is, unless the contrary is proved, evidence that the witness gave at that inquiry the evidence of which the document purports to be a transcript.
- (7) On an application made to the Registrar by:
  - (a) a person represented at an inquiry; or
  - (b) a person who satisfies the Registrar that the person has good reason for requiring a copy of a transcript or of any evidence recorded in accordance with this section,the Registrar may, upon payment by the applicant of the prescribed fee, supply to the applicant a copy of the transcript or of the evidence so recorded.

**82 Protection of members**

An action or proceeding, civil or criminal, does not lie against the Board or a member in respect of anything done in good faith by the Board or a member in its or his capacity as the Board or as a member.

**83 Protection of persons appearing before board**

- (1) A legal practitioner or other person appearing before the Board has the same protection and immunity as a legal practitioner has in appearing for a party in proceedings in the Supreme Court.
- (2) A witness summoned to attend or appear before the Board has the same protection as a witness in proceedings in the Supreme Court.

**84 Board may inspect books, &c.**

- (1) A member may inspect books or other documents or writings produced at an inquiry and shall return them as soon as practicable after the completion of the inquiry.
- (2) A member may make a copy of, or copies of such portions of, those books or other documents as are relevant to a matter before the Board.

**Part X Appeals to Stipendiary Magistrate****85 Appeals**

- (1) A person aggrieved by a decision of the Board may, within 21 days after the decision was given, appeal to the Local Court against the decision of the Board on one or more of the following grounds:
  - (a) the decision was wrong in law;
  - (b) the decision was against the weight of the evidence;
  - (c) the Board had improperly exercised its discretion or otherwise acted unlawfully;
  - (d) the Board had not acted in good faith; or
  - (e) the Board had acted contrary to the principles of natural justice.
- (2) Jurisdiction to hear and determine appeals under this section is vested in the Local Court.

- (3) The Board shall supply to the Local Court in relation to an appeal under this section:
  - (a) a record of any proceedings before the Board;
  - (b) a statement of the reasons for the decision appealed against; and
  - (c) any information or thing in connection with the decision that is in the possession or control of the Board and that the Court requires.
- (4) The Board is the respondent to an appeal under this section.
- (5) The Local Court may:
  - (a) affirm, set aside or vary a decision of the Board;
  - (b) give such judgment which to the Court seems proper; and
  - (c) make such other order as justice requires.
- (6) When the Local Court sets aside or varies a decision of the Board, it shall set out in its decision the reasons for the decision.
- (7) All appeals under this section shall be in accordance with the Rules of Procedure of the Local Court.

## **Part XII      Fidelity fund**

### **Division 1      Educational schemes**

#### **92      Application of money for educational schemes**

- (3) Where, at any time the amount standing to the credit of the moneys of the Fund is greater than \$250,000, or such other amount as the Administrator may determine, the Registrar may, with the consent of the Minister use:
  - (b) such moneys which may be made available for the purpose under section 95B(2)(d),

for the establishment and conduct by the Board of a scheme for the payment of the whole or part of the costs or other expenses in connection with educational courses of the Board for licensed agents or registered agents' representatives, other than fees or other expenses of students attending or undertaking such a course.

- (4) The Institute may, in accordance with regulations made in that behalf, expend in each financial year such percentage or fixed amount, whichever is the less, as may be prescribed from the income of the moneys of the Fund (being the amounts paid in under section 94(3)) in the immediately preceding financial year on such educational purposes as are prescribed.
- (5) The Institute shall, within 30 days after the expiry of each financial year, give the Minister a written report on its activities carried out pursuant to subsection (4) and, at the same time, give a copy of the report to the Board.
- (6) The Board may, within 30 days after receiving a copy of a report under subsection (5), make submissions to the Minister on the content of the report.

## **Division 2            Agents Licensing Fidelity Guarantee Fund of the Northern Territory**

### **94            Establishment of Fund**

- (1) There is established by this section the Agents Licensing Fidelity Guarantee Fund of the Northern Territory.
- (2) The Fund:
  - (a) is a body corporate with perpetual succession;
  - (b) shall have a common seal; and
  - (c) is capable, in its corporate name, of acquiring, holding and disposing of real (including leasehold) and personal property and of suing and being sued.
- (3) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Fund affixed to a document and shall assume that it was duly fixed.
- (4) The functions of the Fund are to maintain and operate the moneys of the Fund.
- (5) Subject to this Act, the Fund has power to do all things that are necessary or convenient to be done for or in relation to or incidental to the performance of its functions.
- (6) The Minister may, by instrument in writing, determine the manner in which the Fund shall maintain and operate the moneys of the Fund, including the investment of moneys surplus to its immediate requirements and the acquisition, holding or disposal of real or personal property, and the Fund shall act in accordance with the

determinations of the Minister, if any.

- (7) Subject to the determinations, if any, made by the Minister under subsection (6), the Fund shall:
- (a) keep separate records of all transactions concerning the moneys of the Fund;
  - (b) provide copies of the records to the Board upon demand but, in any case, not less than once in each period of 3 months; and
  - (c) ensure that each cheque of the Fund is signed by the Registrar and another member of the Fund or, in the absence of the Registrar, by the 2 other members of the Fund.
- (8) The exercise of the powers and functions of the Fund shall not be affected by reason only of there being a vacancy in the office of a member of the Fund.

## **95 Members of Fund**

- (1) The Fund shall consist of:
- (a) the Registrar;
  - (b) the Chairman or his nominee; and
  - (c) the appointed member.
- (2) The Minister shall, by instrument in writing, appoint a person, being a person who, in the opinion of the Minister, has expertise and experience in finance and investment, to be the appointed member of the Fund referred to in subsection (1)(c).
- (3) Subject to subsections (4) and (5), the appointed member:
- (a) holds office for a period of 2 years; and
  - (b) is eligible for re-appointment.
- (4) The appointed member may resign office by writing signed by or with the authority of the member and delivered to the Minister.
- (5) The Minister may terminate the appointment of the appointed member.
- (6) Where the appointed member is or is expected to be absent from the Territory or is unable to perform the duties of his office, or there is a vacancy in the office of the appointed member, the Minister may appoint a person temporarily to act in the place of the

appointed member for a period not exceeding 3 months.

#### **95A Meetings of Fund**

- (1) The Registrar shall call such meetings of the Fund as are necessary for the exercise of its powers and the performance of its functions, but the interval between one meeting and the next shall not exceed 3 months.
- (2) Subject to subsections (3) and (4), the Fund shall determine the procedure to be followed at or in relation to its meetings.
- (3) The Registrar shall preside at the meetings of the Fund.
- (4) The Fund shall keep records of its meetings.

#### **95B Moneys of Fund**

- (1) The moneys of the Fund shall comprise:
  - (a) contributions and levies paid under this Act;
  - (b) fees paid to the Board with respect to licences or registrations;
  - (c) fines imposed by the Board under section 69(1)(b);
  - (d) interest from time to time accruing from the investment of the moneys of the Fund; and
  - (e) any other money which may be lawfully paid to the Fund.
- (2) Subject to this Division, the Fund shall pay out of the moneys of the Fund:
  - (a) the amount of all claims, including costs allowed or established against the moneys of the Fund in accordance with Division 3;
  - (b) the costs and expenses of the administration of this Act;
  - (c) the amount of remuneration, allowances and expenses payable under the *Remuneration (Statutory Bodies) Act* to a member;
  - (d) where the amount of the moneys of the Fund is greater than \$250,000, or such other amount as the Administrator may determine, such amounts, if any, as the Minister determines for the purpose referred to in section 92(3);
  - (e) such amounts, if any, used by the Institute in pursuance of section 92(4);

- (ea) such amounts as may be paid out of the moneys of the Fund in maintaining and operating the moneys of the Fund in accordance with the determinations of the Minister, if any, under section 94(6); and
- (f) such other amounts as may lawfully be paid out of the moneys of the Fund.

## **Division 3      Claims against Fund**

### **96      Persons who may apply**

- (1) Subject to this Part, after the date fixed for the purpose of this section by the Board by notice published in the *Gazette*, a person who suffers pecuniary loss arising out of a defalcation of trust moneys or misappropriation of other property by:
  - (a) a licensed agent or a partner of a licensed agent;
  - (b) a person constituting, or an officer or employee of, a firm or company licensed under this Act; or
  - (c) any other person carrying on business as an agent,may apply to the Registrar for compensation under this Part in respect of that loss.
- (1A) Nothing in subsection (1) shall be construed as permitting a person to apply to the Registrar for compensation in respect of a pecuniary loss arising out of a defalcation of trust moneys or a misappropriation of other property by a person referred to in subsection (1)(c) which occurred before the commencement of the *Land and Business Agents Amendment Act 1992*.
- (2) Subject to this Part, the pecuniary loss in respect of which compensation may be paid to an applicant under this Part is the amount of the pecuniary loss suffered by the applicant less any amount that the applicant has recovered from any person in respect of the loss.

### **97      Registrar may invite claims**

- (1) The Registrar may cause to be published in the *Gazette* and a newspaper or newspapers nominated by the Minister a notice inviting persons entitled to apply for compensation under this Part in respect of losses arising out of a defalcation or misappropriation committed by an agent, a person in the employ of an agent, a partner of an agent, a person by whom an agent firm is constituted or a director of an agent company named in the notice to make an

application within the period specified in the notice.

- (2) Subject to subsection (3), the period to be specified in a notice published under this section shall be not less than 3 months commencing on the date of publication of the notice in the *Gazette*, newspaper or newspapers, whichever is the latest.
- (3) An action for damage does not lie against the Registrar in respect of the publication in good faith of a notice under this section.

## **98 Times for making applications**

- (1) Subject to subsection (2), an application for compensation under this Part shall not be accepted unless it is made in writing:
  - (a) within the period of 6 months after the applicant becomes aware of the defalcation or misappropriation; or
  - (b) within such further period, not exceeding 2 years, as the Registrar, in his discretion and either before or after the expiration of the period referred to in paragraph (a), allows.
- (2) Where a notice is published under section 97, an application for compensation under this Part in respect of a defalcation or misappropriation committed before the publication of the notice shall be made:
  - (a) before the expiration of the period specified in the notice; or
  - (b) within such further period, not exceeding 2 years, as the Registrar, in his discretion and either before or after the expiration of that period, allows.

## **99 Manner of applications**

- (1) An application for compensation under this Part shall be made by the delivery to the Registrar, in writing, of full particulars of the claim supported by a statutory declaration by the applicant.
- (2) The Registrar shall, within one week after receiving an application for compensation under this Part, post to the applicant a letter acknowledging receipt of the application.
- (3) The Registrar may, by notice in writing delivered to an applicant for compensation under this Part, require the applicant to:
  - (a) give to the Registrar information in the possession or control of the applicant with regard to a matter relating to the application; or

- (b) deliver to the Registrar any documents in the possession or control of the applicant that tend to establish the fact of the defalcation or misappropriation and the amount of the loss to which the application relates.
- (4) The Registrar may retain a document delivered to him in accordance with a requirement under subsection (3) for as long as the Registrar considers necessary for the purposes of this Part, but the person by whom the document was produced is entitled to be supplied, as soon as practicable, with a copy of the document certified by the Registrar to be a true copy.
- (5) A copy certified under subsection (4) shall be received in all courts as if it were the original.
- (6) Where the Registrar makes a requirement under subsection (3), the Registrar need not take any further steps in relation to the application until the requirement is satisfied.

#### **100 Registrar to consider applications**

- (1) Subject to section 99(6), the Registrar shall consider an application made in accordance with this Part and shall determine:
  - (a) the amount of the pecuniary loss in respect of which compensation may be paid to the applicant under this Part; or
  - (b) that there is no pecuniary loss in respect of which compensation may be so paid.
- (2) Subsection (1) does not require the Registrar to be satisfied:
  - (a) that a person has been found guilty of an offence arising out of a defalcation or misappropriation; or
  - (b) that there is evidence upon which a person might be found guilty of such an offence.
- (3) Before making a determination under subsection (1), the Registrar may, if he is of the opinion that the circumstances so warrant, require the applicant to institute against the agent, employee, partner, person by whom an agent firm is constituted or director to whose defalcation or misappropriation the claim relates, or any other person considered to be liable in respect of the loss, or both, proceedings for the recovery of the money the subject of the defalcation or the property the subject of the misappropriation, including proceedings to follow assets and any property into which the money or other property may have been converted.

- (4) Where the Registrar requires a person to institute proceedings under subsection (3), the Registrar is liable to pay out of the moneys of the Fund the costs and other expenses necessarily incurred by the person by reason of the institution of the proceedings.
- (5) The Registrar shall give to an applicant for compensation under this Part notice in writing stating:
  - (a) the amount that the Registrar has determined is the pecuniary loss in respect of which compensation may be paid to the applicant under this Part; or
  - (b) that the Registrar has determined that there is no pecuniary loss in respect of which compensation may be so paid.
- (6) In a notice given under this section, the Registrar shall state the grounds on which he has made the determination referred to in the notice.

#### **101      Review of registrar's determinations**

- (1) An applicant for compensation under this Part to whom the Registrar gives notice under section 100(5) may, within 21 days after the date on which notice is so given, make application to the Local Court for an order under this section.
- (2) The Local Court, on application under this section may, if it thinks fit, by order affirm, set aside or vary a determination of the Registrar made under section 102(1).

#### **102      Payment of compensation**

- (1) Subject to this section, where an amount has been determined under this Part as the amount of pecuniary loss in respect of which compensation may be paid to an applicant under this Part, the Registrar shall pay to the applicant an amount equal to the amount so determined.
- (2) The amounts paid under subsection (1) to applicants for compensation in respect of defalcations or misappropriations by the same person shall not exceed, in the aggregate, \$50,000 or such other amount as the Administrator may determine by notice published in the *Gazette*.
- (3) Where the aggregate of the amounts that the Registrar would, but for this subsection, be required by subsection (1) to pay to applicants for compensation in respect of defalcations or misappropriations by the same person, exceeds the amount available under subsection (2), the Registrar shall divide the

amount available under that subsection among those applicants in proportion to the amounts payable to them.

- (4) Where, at any time, the amount of the moneys of the Fund is insufficient for the payment of all amounts that the Registrar would, but for this subsection, be required by this section to pay, the Registrar shall divide the amount of the moneys of the Fund among the persons to whom it would be required to pay those amounts in proportion to those amounts.

### **103 Subrogation**

Where the Registrar has paid compensation to a person under this Part, the Registrar is, to the extent of the payment, subrogated to the rights of that person against any other person in relation to the occurrence that gave rise to the claim for compensation.

### **104 Agents may claim in certain circumstances**

- (1) Where:
- (a) the Registrar has paid the amounts of compensation that he is required to pay in respect of defalcations or misappropriations committed by a person; and
  - (b) the sum of those amounts is less than \$50,000, or such other amount as the Administrator has determined under section 102(2),

an agent who was, at the time at which any of those defalcations or misappropriations were committed, a partner of or employer of the person referred to in paragraph (a) and has made a payment to a person in respect of pecuniary loss suffered by that person as a result of any of those defalcations or misappropriations, may apply to the Registrar for compensation under this Part in respect of that payment.

- (2) Section 98 does not apply in relation to an application under this section.
- (3) Where:
- (a) an application is made under this section; and
  - (b) the Registrar is satisfied that:
    - (i) the agent by whom the application is made is entitled to make an application under this section; and

- (ii) in relation to the defalcation or misappropriation to which the claim relates, the agent acted in good faith,

the Registrar may pay compensation out of the moneys of the Fund to that agent.

- (4) The amount to be paid under subsection (3) is such amount, not exceeding the difference between \$50,000 or such other amount as the Administrator has determined under section 102(2) and the sum of the amounts referred to in subsection (1)(a), as the Registrar thinks fit.

#### **105 Interim payments**

- (1) Where, in relation to an application made under this Part, other than an application under section 104, the Registrar has determined the amount of pecuniary loss in respect of which compensation may be paid to the applicant, the Registrar may, if he thinks fit, make an interim payment of compensation to the applicant.
- (2) An amount paid to a person under this section shall be set off against the compensation that the Registrar is required by section 102 to pay to the person.

### **Division 4 Contributions and levies to Fund**

#### **106 Annual contributions**

- (1) A licensed agent shall pay to the Registrar annually a contribution to the Fund of such amount and at such time as may be determined by the Board.
- (2) A licensed agent shall, in addition to the amount payable under subsection (1), pay to the Registrar annually a contribution to the Fund of such amount and at such time as may be determined by the Board in respect of each agent's representative employed by that agent.

#### **107 Contributions not payable in certain circumstances**

Notwithstanding section 106(1) and (2), a licensed agent:

- (a) who has contributed to the Fund not less than 4 annual contributions in respect of himself and in respect of each agent's representative employed by him; and
- (b) in respect of whom or in respect of a person in the employ of that agent or a partner of that agent no claim has been made and sustained or is pending against the moneys of the Fund,

is not liable to pay any further annual contributions under section 106(1) or (2) at any time while the amount standing to the credit of the moneys of the Fund, including any investments of the moneys of the Fund, and after deducting the amount of all unpaid claims and other liabilities outstanding against the moneys of the Fund, exceeds \$250,000 or such other amount as the Administrator may determine.

## **108 Levies**

- (1) Where, at any time the Registrar considers that the moneys of the Fund are not sufficient to satisfy the liabilities of the Registrar in relation to the moneys of the Fund, the Registrar may, with the approval of the Administrator, impose a levy of such amount, not exceeding \$20 a year, as he thinks fit for payment to the Fund.
- (2) Subject to this section:
  - (a) a levy imposed under subsection (1) is payable on the date fixed, for the purpose of this section, by the Registrar by notice published in the *Gazette*; and
  - (b) a levy so imposed is payable by each agent who, on that date, holds a licence and is payable also by such an agent in respect of each agent's representative employed by that agent.
- (3) The Registrar may, if he thinks that the circumstances so warrant, extend the time for payment of a levy by an agent and, in such a case, the levy is payable by that agent on the date fixed by the Registrar under this subsection.
- (4) Where an agent does not pay a levy in accordance with this section the Registrar shall record the fact in the register and so long as the levy remains unpaid, the agent shall be deemed to be unlicensed.

## **Part XIIA Indemnity insurance**

### **108A Interpretation**

- (1) In this Part, unless the contrary intention appears:

**authorized insurer** means a person who carries on insurance business and is for the time being approved:

  - (a) in relation to agents who are members of the Institute, by the Institute; and
  - (b) in relation to other agents, by the Registrar,

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for the purposes of this Part.

***indemnity insurance*** means insurance against loss arising from claims in respect of any description of civil liability (other than a prescribed description of civil liability) incurred by an agent or former agent in connection with:

- (a) his business as an agent;
- (b) the business of a firm of agents of which he is or formerly was a member; or
- (c) a company which carries on business as agents of which he is or formerly was a director,

or by an employee or former employee of that agent, firm or company.

- (2) Nothing in this Part shall derogate from Division 3 of Part XII.

#### **108B Indemnity insurance**

- (1) The Institute or, as the case may be, the Registrar and an authorized insurer may enter into an arrangement for or with respect to the provision by the authorized insurer to agents or former agents who are members of a class prescribed for the purposes of this Part, of indemnity insurance.
- (2) Where an arrangement is made under subsection (1), the Institute or, as the case may be, Registrar and the authorized insurer may:
  - (a) do anything necessary or convenient for carrying out or giving effect to the arrangement; and
  - (b) by subsequent arrangement, rescind or vary the arrangement.
- (3) An arrangement under subsection (1) or (2) may include provisions with respect to:
  - (a) the terms and conditions to which the provision of indemnity insurance is to be subject;
  - (b) the amount of insurance cover to be provided;
  - (c) the amount payable by way of premiums;
  - (d) the circumstances in which insurance cover is to be limited or denied;
  - (e) the period during which the indemnity insurance is to be provided;

- (f) the issue of certificates to persons covered by indemnity insurance and the form of those certificates;
  - (g) the payment by or on behalf of the authorized insurer to the Institute or, as the case may be, Registrar for their own benefit of an amount by way of brokerage or profit commission;
  - (h) the payment by or on behalf of the authorized insurer to the Institute or, as the case may be, Registrar of an amount by way of reimbursement for expenses incurred by either of them in connection with the arrangement; and
  - (j) other matters in connection with indemnity insurance agreed between the Institute or, as the case may be, Registrar and the authorized insurer.
- (4) Without limiting the generality of section 127, the Administrator may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Part to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Part, and in particular prescribing matters for or in relation to:
- (a) requiring agents and former agents, or persons who are members of a specified class of agents or former agents, to take out and maintain with an authorized insurer indemnity insurance on the terms and conditions specified in and in accordance with an arrangement under subsection (1) or (2);
  - (b) the issue of certificates in relation to indemnity insurance and the form of those certificates;
  - (c) empowering the Minister:
    - (i) to exempt from compliance with the Regulations agents or former agents or persons who are members of a specified class of agents or former agents;
    - (ii) to grant an exemption referred to in subparagraph (i) indefinitely or for a specified period or subject to any other conditions determined by the Minister; and
    - (iii) to revoke an exemption granted by the Minister or vary conditions referred to in subparagraph (ii);
  - (d) making provisions that, in consequence of a substantial change in the nature of the practice of an agent are necessary;

- (e) providing for the making of such declarations by agents or former agents as may be necessary to determine premiums in relation to indemnity insurance;
- (f) exempting arbitration agreements that are related to the arbitration of disputes between agents and insurers in relation to indemnity insurance from a statutory provision that would, apart from the exemption, have the effect of invalidating such an agreement or a provision of such an agreement; and
- (g) prescribing penalties, not exceeding \$5,000, for breach of, or noncompliance with, a regulation made in pursuance of this Part.

### **108C      Conveyancing agents to insure**

A conveyancing agent shall, before commencing to carry on business, take out and maintain with an authorised insurer indemnity insurance in the sum of \$500,000, or the maximum sum agreed under the arrangements entered into under section 108B with the authorised insurer, whichever is the lesser.

Penalty:      \$5,000.

## **Part XIII              Miscellaneous**

### **109              Registers**

- (1) The Registrar shall keep the following registers:
  - (a) a Register of Licensed Real Estate Agents;
  - (b) a Register of Licensed Business Agents;
  - (c) a Register of Agents' Representatives who are entitled to be registered; and
  - (d) a Register of Conveyancing Agents.
- (2) The Registrar shall record in the registers:
  - (a) the name of each licensed agent or registered agent's representative, as the case may be;
  - (b) in the case of a register other than the register specified in subsection (1)(c), the address of each office in the Territory at which each licensed agent carries on business and, if there is more than one such office, a statement as to which is the principal office;

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- (c) the prescribed particulars; and
  - (d) such other particulars as the Board determines or as are required to be recorded under this Act.
- (3) A register so kept shall, without fee, be open to inspection during ordinary business hours by a person desiring to inspect the register.

**110 Requirements with respect to registered offices**

- (1) A licensed agent shall register any office at which the agent carries on business under his licence by giving notice of the address of the office to the Registrar on or before the day on which he commences to carry on business at that office.
- (2) Where, pursuant to subsection (1), a licensed agent registers more than one office, he shall specify in the notice referred to in that subsection, which of the offices is to be his principal office.
- (3) Subject to subsection (3A) and section 111, a licensed agent shall nominate and have at all times in his service at a registered office, as manager of that office, a branch manager who is a licensed agent.
- (3A) A licensed agent shall not, at a registered office referred to in subsection (3), have under that subsection more than one branch manager.
- (4) A branch manager shall not be a licensed agent nominated as manager by any other licensed agent or in respect of any other office and shall not carry on business as an agent on his own account.

Penalty: \$500 or imprisonment for 3 months.

**111 Registrar may approve operation of registered office without licensed branch manager**

- (1) Upon an application by a licensed agent, the Registrar may, subject to such conditions that he may consider necessary or desirable, grant approval, in writing, to the licensed agent to carry on business as a licensed agent for a period, not exceeding 60 days, during which the branch manager of a registered office of the licensed agent is not a licensed agent.
- (2) A licensed agent shall not contravene or fail to comply with a condition specified in an approval granted under subsection (1).

Penalty: \$500 or imprisonment for 3 months.

**112 Agent not to share commission**

- (1) Except as may be prescribed, a licensed agent shall not share with another person, other than a licensed agent, or partner of, or registered agent's representative employed by, the first-mentioned agent, a fee, commission or other gain or reward payable to the first-mentioned agent in respect of a transaction in his capacity as agent.

Penalty: \$500 or imprisonment for 3 months.

- (2) In subsection (1), a reference to a licensed agent includes a reference to a person licensed under a law of a State or Territory providing for the licensing of real estate agents, business agents or conveyancing agents (by whatever name called).

**113 Improper use of licence**

A licensed agent shall not permit any other person to have possession of his licence with the intent that the other person shall represent himself as the person to whom the licence was granted.

Penalty: \$500 or imprisonment for 3 months.

**114 Improper use of title of agent**

- (1) A person, other than a licensed agent, shall not use, in an advertisement or any other mode of public notification, words that would reasonably lead to the belief that he is a licensed agent.
- (2) Without limiting the effect of subsection (1), a person other than a licensed agent or a registered agent's representative shall not:

(a) place, or suffer or permit to be placed, on the building in which his office is situated; or

(b) place, on a document, as a description of his business,

the words "real estate agent", "estate agent", "land agent", "property agent", "business agent", "conveyancing agent" or words implying that, in the course of his business, he acts, or is prepared to act, as agent for principals in connection with any of the matters referred to in section 5(2).

Penalty: \$500 or imprisonment for 3 months.

**115 False or misleading advertisements**

A licensed agent shall not, in an advertisement or any other mode of public notification published in connection with his business as a licensed agent, make a statement or any representation that is false, misleading or is intended to deceive.

Penalty: \$500 or imprisonment for 3 months.

**116 Obstruction of registrar, inspector, &c.**

A person shall not obstruct, threaten or intimidate another person in the exercise of a power conferred, or the performance of a duty imposed by or under this Act on that other person.

Penalty: \$200.

**117 Production of licence**

A licensed agent shall not fail, without reasonable excuse, upon demand of the Registrar or an inspector, to produce the licence of the agent for inspection.

Penalty: \$200.

**118 Withholding of deposit**

Where an agent is authorized to retain in a trust account money received as a deposit in respect of a transaction in the capacity of agent and the money is to be withheld or not repaid, the agent shall, within a period of 14 days from the completion of the transaction, inform in writing all persons involved, including his principal, of the reason for withholding or not repaying the money.

Penalty: \$200.

**119 Requirements of advertisements**

A licensed agent shall not publish an advertisement in connection with his business as agent unless it is stated in the advertisement:

- (a) that the agent is licensed; and
- (b) the address of the place or, where the agent carries on business at more than one place, one of the places at which the agent carries on business as an agent.

Penalty: \$200.

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**120 Display of notices**

- (1) A licensed agent shall exhibit and keep exhibited in a prominent position at the place, or each place specified in the licence of the agent as a place at which the agent is authorized to carry on business as a licensed agent, and so as to be easily read from outside that place of business:
- (a) a notice of:
- (i) the name of the agent and the fact of his being licensed as an agent; and
  - (ii) if the business is carried on in a name other than the name of the agent – the name under which the agent carries on business; and
- (b) the licence, or a photographic copy of the licence, issued to the agent.
- (2) Where a licensed agent ceases to carry on business at the place specified in the licence of the agent, the agent shall forthwith remove from that place a notice, photograph or licence exhibited under subsection (1).

Penalty: \$200.

**121 No recovery of commission unless licensed**

A person is not entitled to bring an action to recover a fee, commission or other gain or reward for acting as an agent for a principal in relation to a matter referred to in section 5(2) or to work which, under this Act, a conveyancing agent may perform unless:

- (a) at the time the person was engaged to act as an agent, the person was a licensed agent and was such an agent at the time of acting as agent; or
- (b) the person was engaged to act as an agent before the expiration of the period of one month after the commencement of this Act and, at the time of acting as agent, was a person to whom section 17 did not apply by reason of section 128.

**121A Restriction on agent, &c., purchasing or selling property in which interested**

- (1) Subject to subsection (6), a licensed agent, a registered agent's representative, an employee of a licensed agent or a person who holds himself out to be an agent shall not purchase, whether directly or indirectly, or be beneficially interested in the purchase of

land or a business, as the case may be, where he is acting as an agent for a principal.

Penalty: \$20,000.

- (2) Subject to subsection (6), a licensed agent, a registered agent's representative, an employee of a licensed agent or a person who holds himself out to be an agent shall not, whether directly or indirectly, accept title to land or a business where he is in breach of subsection (1).

Penalty: \$20,000.

- (3) Subject to subsection (6), a licensed agent, a registered agent's representative, an employee of a licensed agent or a person who holds himself out to be an agent shall not sell, whether directly or indirectly, land or a business that he owns or is beneficially interested in to a person who is a principal for whom he is acting as an agent.

Penalty: \$20,000.

- (4) A licensed agent or a person who holds himself out to be an agent shall not receive commission from a principal in any case where he has been found guilty of an offence against subsection (1) or (3).

Penalty: \$10,000.

- (5) A person who is found guilty of an offence against this section shall:

- (a) account for and repay to the principal all profits (including commission received) resulting from the purchase or sale and any subsequent dealings with the land or business;
- (b) subject to an agreement with the principal, in the case of a finding of guilt against subsection (2), transfer title to the land or business to the principal.

- (6) This section does not apply where:

- (a) the land or business is purchased by a person who is a shareholder or creditor of a licensed agent which is a corporation the shares of which are listed on the Australian Stock Exchange or a prescribed corporation;
- (b) the licensed agent, the registered agent's representative or employee acted honestly and reasonably;

- (c) the principal is in substantially as good a position as if the licensed agent, agent's representative or employee had no interest whatsoever in the purchase or sale; or
  - (d) the licensed agent, registered agent's representative or employee has complied with section 121B.
- (7) A person who has sold land may lodge a caveat with the Registrar-General in respect of his former interest in the land, except where the land has been sold to a bona fide purchaser, where:
- (a) he believes that the person who acted as agent for him for the purposes of the sale of the land was beneficially interested in the purchase of the land at the time of the transaction; and
  - (b) the sale of the land is or will be the subject of an action brought under this section.

**121B      Where agent, &c., may purchase or sell**

- (1) A licensed agent, a registered agent's representative or an employee of a licensed agent may purchase or sell, whether directly or indirectly, or be beneficially interested in the purchase or sale of land or a business which the person for whom he is acting as agent wishes to purchase or sell, as the case may be, where the agent, agent's representative or employee makes a full disclosure of his intention to purchase or sell or of his interest in the purchase or sale.
- (2) A disclosure under subsection (1) shall be in the prescribed form and subject to the prescribed conditions, if any.
- (3) A form prescribed for the purposes of subsection (1), shall:
  - (a) provide that full details of the intention to purchase or sell or of the beneficial interest in the purchase or sale shall be set out in or attached to the form; and
  - (b) contain a statement to the effect that the agent, agent's representative or employee may have gained information in relation to the principal's circumstances and the proposed purchase or sale by virtue of his relationship with the principal that may place him in a position of advantage.

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**122 Service of documents**

- (1) Subject to this Act, a document required by this Act to be given to, or served on, a licensed agent may be given or served by:
  - (a) leaving the document at the place specified in the licence as the place or principal place at which the business of the agent is carried on; or
  - (b) sending the document by post to the address of the place specified in the licence as the place or principal place at which the business of the agent is carried on.
- (2) A document required by this Act to be given to, or served on, an applicant for a licence or for registration as an agent's representative may be given or served by sending it by post to the applicant at the last-known place of residence of the applicant.

**123 Evidence of licensing or registration**

A document purporting to be a certificate under the hand of the Chairman or Registrar and stating that a person was, or was not, on a date or dates or during a period mentioned in the document, the holder of a real estate agent's licence or business agent's licence or a registered agent's representative is, in all courts and before all persons and other bodies authorized to receive evidence, prima facie evidence of the matter so stated.

**124 Requirement by registrar or inspector**

Where the Registrar or an inspector is empowered by this Act to require a person to do any thing, the Registrar or inspector may make the requirement orally or in writing served on that person.

**125 Cancelled registration and revoked licences**

- (1) Where:
  - (a) the Board cancels the registration of an agent's representative; or
  - (b) the Board revokes the licence of an agent,the agent's representative or the holder of the licence, as the case may be, shall deliver the certificate of registration or licence, as the case may be, to the Registrar as directed by the Registrar.

Penalty: \$500 or imprisonment for 3 months.

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- (2) Where the cancellation of the registration of an agent's representative or the revocation of a licence is set aside by a Stipendiary Magistrate under section 85 the Registrar shall return the certificate of registration or the licence, as the case may be, to the agent's representative or the agent.

**125A Offences punishable summarily**

All offences against this Act, other than offences expressed to be indictable, shall be punishable on a summary finding of guilt.

**125B Regulatory offences**

An offence of contravening or failing to comply with section 47, 51, 56, 59, 60, 61, 80(1), 111(2), 118, 119, 120 or 125(1) is a regulatory offence.

**126 Offences committed by employees, partners, or directors**

- (1) Subject to subsection (2), a licensed agent may be prosecuted for an offence committed against this Act by a person who, not being a licensed agent, is an employee of, a partner of or, where the licensed agent is a company, a director of the licensed agent.
- (2) A licensed agent shall not be liable under subsection (1) where the licensed agent proves that he or it had given such directions to the employee, partner or director and had exercised or caused to have been exercised such supervision of the employee, partner or director as were reasonably necessary to ensure that the employee, partner or director did not commit an offence against this Act.

**127 Regulations**

- (1) The Administrator may make regulations, not inconsistent with this Act, prescribing all matters that this Act requires or permits to be prescribed or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, as to:
- (a) the fees to be paid for the grant or renewal of a licence or for the grant of registration of an agent's representative;
  - (b) the annual fees to be paid by the holder of a licence or a registered agent's representative;
  - (c) applications for renewal or restoration of licences or of registration and the circumstances in which applications may be granted;

- (d) the maximum commission, or rate of commission, that agents may receive in respect of services or transactions generally or in respect of specified areas or transactions or classes of transactions;
  - (e) the educational qualifications required to be held by an applicant for a licence to carry on business as a real estate agent or business agent;
  - (f) the educational qualifications required to be held by an applicant for registration as an agent's representative;
  - (g) the procedures and forms to be followed or used under this Act;
  - (h) penalties not exceeding a fine of \$100 for an offence against the regulations;
  - (j) rules of conduct;
  - (k) the type of services relating to the sale and transfer of land that a licensed conveyancing agent may and the regulation and limits of those services perform; and
  - (m) the regulation of licensed agents in respect of professional service or agency activities they may provide or in which they may engage in association with their activities as licensed agents.
- (2) The Regulations may prescribe a scheme for holding and dealing with trust money received by a licensed agent in the course of business carried on as a corporation manager under the *Unit Titles Act*.

## **Schedule**

### **Part 1**

section 5(2)(c)

#### **Functions of conveyancing agent**

1. A licensed conveyancing agent may perform the following functions in respect of the sale and transfer of real property:
  - (a) search land titles and dealings thereon and search for caveats against such dealings;
  - (b) search and inquire at Government offices and at the offices of statutory authorities and municipalities, and obtain certificates therefrom, in respect of records, plans and policies and make inquiries with respect to adjustment of rates, taxes and other outgoings of a periodical nature in respect of the real estate the subject of the transaction involved;
  - (c) arrange for the preparation and execution of contracts of sale, but only where the contract is in a form:
    - (i) approved by the Registrar-General for the purposes of this Act; or
    - (ii) approved by the Law Society of the Northern Territory for use by persons who are not legal practitioners;
  - (d) arrange and attend on settlement, including the exchange of documents and the receipt of money;
  - (e) lodge documents at the Registry Office or other Government offices or the offices of statutory authorities for registration, and uplift such documents;
  - (f) complete powers of attorney in such form and subject to such conditions as are prescribed;
  - (g) draw or prepare, and arrange the execution of, the documents referred to in clause 2; and
  - (h) report progress to the agent's client.

2. A licensed conveyancing agent may, in addition to any document required for the purposes of the performance of a function referred to in clause 1, draw or prepare the following documents:
  - (a) instruments (including caveats but not including leases, mortgages or encumbrances) and memoranda relating to the sale and transfer of real property for lodgement or registration under the *Real Property Act*, the *Unit Titles Act*, the *Crown Lands Act* or any other Act dealing with the grant of title to Crown land;
  - (b) statutory declarations to support documents mentioned in paragraph (a);
  - (c) declarations of non-revocation of powers of attorney; and
  - (d) such other documents with the approval of the Board.

## **Part 2**

### **Requirements relating to conveyancing agents**

#### **1. Remuneration**

- (1) A conveyancing agent is not entitled to receive any reward in respect of services in that capacity unless a valid appointment to act in that capacity has been signed, before the services are rendered, by the party to the transaction for whom the services are to be rendered or by some other person lawfully authorized to sign on behalf of the person for whom the services are to be rendered (not being a real estate agent or other commission agent or an employee or agent thereof, acting for a party in the transaction).
- (2) A person may recover remuneration for services rendered as a licensed conveyancing agent notwithstanding that there is no valid appointment as required by subclause (1) if:
  - (a) the party to the transaction for whom the services were rendered has certified that the party was aware of the provisions of subclause (1) and has ratified in writing the appointment of the conveyancing agent; or
  - (b) a court before which the claim for remuneration is heard is satisfied that in all the circumstances it would be unjust to deprive the agent of all or a part of the remuneration.
- (3) Where an appointment of a conveyancing agent is terminated before the transaction is completed, the agent shall be entitled to recover such proportion of the quoted remuneration as is reasonable in the circumstances.

**2. Quotes for services**

A conveyancing agent shall supply to a person for whom the agent is acting or who may wish to engage the agent to act, upon request by that person, a bona fide quote of the cost of the services of the agent in respect of the particular transaction to which the request relates.

**3. Possessory liens**

A conveyancing agent is not entitled to claim a possessory or other lien over documents for the agent's fees or otherwise.

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## ENDNOTES

### 1 KEY

Key to abbreviations

<b>amd</b> = amended	<b>od</b> = order
<b>app</b> = appendix	<b>om</b> = omitted
<b>bl</b> = by-law	<b>pt</b> = Part
<b>ch</b> = Chapter	<b>r</b> = regulation/rule
<b>cl</b> = clause	<b>rem</b> = remainder
<b>div</b> = Division	<b>renum</b> = renumbered
<b>exp</b> = expires/expired	<b>rep</b> = repealed
<b>f</b> = forms	<b>s</b> = section
<b>Gaz</b> = <i>Gazette</i>	<b>sch</b> = Schedule
<b>hdg</b> = heading	<b>sdiv</b> = Subdivision
<b>ins</b> = inserted	<b>SL</b> = Subordinate Legislation
<b>lt</b> = long title	<b>sub</b> = substituted
<b>nc</b> = not commenced	

### 2 LIST OF LEGISLATION

***Land and Business Agents Act 1979 (Act No. 57, 1979)***

Assent date	18 May 1979
Commenced	9 November 1979 ( <i>Gaz</i> G45, 9 November 1979, p 2)

***Remuneration (Statutory Bodies) Act 1979 (Act No. 9, 1980)***

Assent date	14 January 1980
Commenced	8 February 1980 ( <i>Gaz</i> G6, 8 February 1980, p 6)

***Land and Business Agents Act 1980 (Act No. 34, 1980)***

Assent date	19 March 1980
Commenced	19 March 1980

***Land and Business Agents Amendment Act 1981 (Act No. 95, 1981)***

Assent date	8 December 1981
Commenced	9 December 1981 ( <i>Gaz</i> S25, 9 December 1981)

***Land and Business Agents Amendment Act 1982 (Act No. 87, 1982)***

Assent date	14 December 1982
Commenced	14 December 1982

***Criminal Law (Regulatory Offences) Act 1983 (Act No. 68, 1983)***

Assent date	28 November 1983
Commenced	1 January 1984 (s 2 s 2 <i>Criminal Code Act 1983</i> (Act No. 47, 1983), <i>Gaz</i> G46, 18 November 1983, p 11 and <i>Gaz</i> G8, 26 February 1986, p 5)

***Land and Business Agents Amendment Act 1985 (Act No. 66, 1985)***

Assent date	24 December 1985
Commenced	1 February 1986 ( <i>Gaz</i> G3, 22 January 1986, p 8)

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***Land and Business Agents Amendment Act 1986 (Act No. 2, 1986)***

Assent date 1 April 1986  
Commenced 15 July 1985 (s 2)

***Statute Law Revision Act 1986 (Act No. 64, 1986)***

Assent date 19 December 1986  
Commenced 19 December 1986

***Statute Law Revision Act (No. 2) 1987 (Act No. 59, 1987)***

Assent date 31 December 1987  
Commenced s 2: 1 July 1986; rem: 31 December 1987 (s 2)

***Local Court (Consequential Amendments) Act 1989 (Act No. 14, 1989)***

Assent date 5 June 1989  
Commenced s 6: 5 June 1989; rem: 1 January 1991 (s 2, s 2 *Small Claims Amendment Act 1988* (Act No. 43, 1988), Gaz G17, 3 May 1989, p 2, s 2 *Local Court Act 1989* (Act No. 31, 1989) and Gaz G49, 12 December 1990, p 2)

***Land and Business Agents Amendment Act 1989 (Act No. 74, 1989)***

Assent date 12 December 1989  
Commenced 1 February 1990 (Gaz G4, 31 January 1990, p 3)

***Land and Business Agents Amendment Act 1990 (Act No. 44, 1990)***

Assent date 20 September 1990  
Commenced ss 4, 18 to 20: 1 January 1992 (Gaz G44, 6 November 1991, p 3); rem: 21 November 1990 (Gaz G46, 21 November 1990, p 3)

***Corporations (Consequential Amendments) Act 1990 (Act No. 59, 1990)***

Assent date 14 December 1990  
Commenced 1 January 1991 (s 2, s 2 *Corporations (NT) Act 1990* (Act No. 56, 1990) and Gaz S76, 21 December 1990)

***Statute Law Revision Act 1991 (Act No. 31, 1991)***

Assent date 25 June 1991  
Commenced 25 June 1991

***Land and Business Agents Amendment Act 1991 (Act No. 79, 1991)***

Assent date 17 December 1991  
Commenced 10 August 1992 (Gaz S43, 4 August 1992)

***Financial Institutions (NT) (Consequential Amendments) Act 1992 (Act No. 23, 1992)***

Assent date 2 June 1992  
Commenced 1 July 1992 (s 2, s 2 *Financial Institutions (NT) Act 1992* (Act No. 22, 1992) and Gaz S35, 30 June 1992)

***Land and Business Agents Amendment Act 1992 (Act No. 33, 1992)***

Assent date 25 June 1992  
Commenced ss 4(d), 7, 11, and 19: 1 January 1993 (Gaz G49, 9 December 1992, p 7); rem: 10 August 1992 (Gaz S43, 5 August 1992)

***Statute Law Revision Act 1994 (Act No. 50, 1994)***

Assent date 20 September 1994  
Commenced 20 September 1994

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***Agents Licensing Amendment Act 1995 (Act No. 20, 1995)***

Assent date 26 June 1995  
Commenced 19 July 1995 (*Gaz* G29, 19 July 1995, p 2)

***Trustee (Consequential Amendments) Act 1996 (Act No. 8, 1996)***

Assent date 20 March 1996  
Commenced 26 February 1996 (s 2, s 2 *Trustee Amendment Act (No. 2) 1995* (Act No. 60, 1995) and *Gaz* G7, 14 February 1996, p 2)

***Sentencing (Consequential Amendments) Act 1996 (Act No. 17, 1996)***

Assent date 19 April 1996  
Commenced s 7: 19 April 1996; rem: 1 July 1996 (s 2, s 2 *Sentencing Act 1995* (Act No. 39, 1995) and *Gaz* S15, 13 June 1996)

### 3 SAVINGS AND TRANSITIONAL PROVISIONS

s 16 *Land and Business Agents Amendment Act 1985* (Act No. 66, 1985)  
s 5(3) *Land and Business Agents Amendment Act 1989* (Act No. 74, 1989)  
s 23 *Land and Business Agents Amendment Act 1992* (Act No. 33, 1992)

Part XI ceased to operate on 1 March 1990, *Gaz* G8, 28 February 1990, p 6

### 4 LIST OF AMENDMENTS

s 1 amd No. 58, 1978, s 4; No. 79, 1991, s 4  
s 4 amd No. 95, 1981, s 4  
s 5 amd No. 34, 1980, s 3; No. 66, 1985, s 4; No. 2, 1986, s 3; No. 64, 1986, s2; No. 59, 1987, s 2; No. 74, 1989, s 4; No. 44, 1990, s 4; No. 59, 1990, s 4; No. 31, 1991, s 14; No. 79, 1991, s 5; No. 23, 1992, s 4; No. 33, 1992, s 4; No. 8, 1996, s3  
ss 5A – 5B ins No. 44, 1990, s 5  
s 7 amd No. 79, 1991, s 6, No. 50, 1994, s 16  
s 7A ins No. 44, 1990, s 6  
s 8 amd No. 79, 1991, ss 5 and 19; No. 66, 1985, s 5  
s 9 amd No. 44, 1990, s 7  
s 10 rep No. 9, 1980, s 6  
s 14 amd No. 44, 1990, s 8  
s 17 amd No. 44, 1990, s 9; No. 79, 1991, s 7; No. 33, 1992, s 5  
ss 20 – 21 rep No. 79, 1991, s 19  
s 22 sub No. 79, 1991, s 8  
s 23A ins No. 95, 1981, s 5  
amd No. 79, 1991, s 19  
s 24 amd No. 79, 1991, s 9  
subNo. 33, 1992, s 6  
s 25 sub No. 66, 1985, s 6  
s 25A ins No. 44, 1990, s 10  
s26 amd No. 95, 1981, s 6  
s 27 amd No. 95, 1981, s 7  
s 31 amd No. 95, 1981, s 8; No. 44, 1990, s 11  
s 32 amd No. 95, 1981, s 9; No. 33, 1992, s 7  
s 32A ins No. 95, 1981, s 10  
s 40 rep No. 33, 1992, s 8  
s 41 amd No. 33, 1992, s 9  
s 41A ins No. 44, 1990, s 12  
s 42 amd No. 33, 1992, s 10

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s 43A	ins No. 34, 1980, s 4 sub by No. 33, 1992, s 11
s 44	amd No. 34, 1980 s 5; No. 44, 1990, s 13; No. 17, 1996, s 6
s 49	amd No. 95, 1981, s 11
s 50	amd No. 74, 1989, s 5; No. 33, 1992, s 22
s 51	amd No. 33, 1992, s 12
s 56	amd No. 33, 1992, s 13
s 59	sub No. 33, 1992, s 14
s 62	amd No. 33, 1992, s 22
s 64	amd No. 79, 1991, s 10
s 65	amd No. 66, 1985, s 7; No. 79, 1991, s 11; No. 33, 1992, s 15; No. 17, 1996, s 6
s 67	amd No. 95, 1981, s 12; No. 66, 1985, s 8; No. 44, 1990, s 14; No. 79, 1991, s 12; No. 17, 1996, s 6
s 68	amd No. 44, 1990, s 15 sub No. 33, 1992, s 16
s 68A	ins No. 66, 1985, s 9
s 69	amd No. 66, 1985, s 10; No. 44, 1990, s 16
s 69A	ins No. 95, 1981, s 13 amd No. 79, 1991, s 19
s 71	amd No. 95, 1981, s 14; No. 79, 1991, s 19
s 73A	ins No. 95, 1981, s 15
s 75	ins No. 95, 1981, s 16 amd No. 33, 1992, s 22
s 77	amd No. 44, 1990, s 17
s 85	amd No. 14, 1989, s 7
pt XI hdg	rep No. 31, 1991, s 14
s 86	sub No. 95, 1981, s 17 rep No. 31, 1991, s 14
ss 87 - 89	rep No. 31, 1991, s 14
pt XII hdg	amd No. 74, 1989, s 6
pt XII	
div 1 hdg	amd No. 74, 1989, s 6
s 90	rep No. 74, 1989, s 6 amd No. 66, 1985, s 11
s 91	rep No. 74, 1989, s 6
s 92	amd No. 66, 1985, s 12; No 74, 1989, s 6; No. 44, 1990, s 18; No. 33, 1992, s 22; No. 20, 1995, s 3
s 93	rep No. 74, 1989, s 6
s 93	amd No. 95, 1981, s 18; No. 87, 1982, s 2
pt XII	
div 2 hdg	sub No. 33, 1992, s 17
s 94	amd No. 66, 1985, s 13; No. 74, 1989, s 6; No. 79, 1991, s 19 sub No. 33, 1992, s 17 amd No. 20, 1995, s 4
s 95	amd No. 34, 1980, s 6; No. 74, 1989, s 6; No. 44, 1990, s 19 sub No. 33, 1992, s 17
pt XII	
div 2A hdg	ins No. 66, 1985, s 14 rep No. 33, 1992, s 17
s 95A	ins No. 66, 1985, s 14 sub No. 33, 1992, s 17
s 95B	ins No. 66, 1985, s 14 sub No. 33, 1992, s 17 amd No. 74, 1989, s 6; No. 20, 1995, s 5
ss 95C – 95D	ins No. 66, 1985, s 14 rep No. 33, 1992, s 17

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s 96	amd No. 95, 1981, s 19; No. 33, 1992, s 18 ins No. 33, 1992, s 18
s 100	amd No. 33, 1992, s 22; No. 17, 1996, s 6
s 101	amd No. 14, 1989, s 7
s 102	amd No. 33, 1992, s 22
s 104	amd No. 33, 1992, s 22
ss 107 – 108	amd No. 33, 1992, s 22
pt XIA hdg	ins No. 44, 1990, s 20
s 108A	ins No. 44, 1990, s 20 amd No. 79, 1991, s 13
s 108B	ins No. 44, 1990, s 20
s 108C	ins No. 44, 1991, s 14
s 109	amd No. 79, 1991, s 15
s 110	amd No. 66, 1985, s 15
s 111	amd No. 95, 1981, s 20
s 112	amd No. 79, 1991, s 19
s 114	amd No. 79, 1991, s 19
s 121	amd No. 79, 1991, s 16
s 121A	ins No. 33, 1992, s 19 amd No. 17, 1996, s 6
s 121B	ins No. 33, 1992, s 19
s 122	sub No. 33, 1992, s 20
s 125A	ins No. 95, 1981, s 21 amd No. 17, 1996, s 6
s 125B	ins No. 68, 1983, s 116 amd No. 33, 1992, s 21
s 127	amd No. 79, 1991, s 17; No. 44, 1990, s 21; No. 31, 1991, s 14
s 128	rep No. 79, 1991, s 19
sch	ins No. 79, 1991, s 18