

NORTHERN TERRITORY OF AUSTRALIA
LAND AND BUSINESS AGENTS AMENDMENT ACT 1990

No. 44 of 1990

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NORTHERN TERRITORY OF AUSTRALIA

No. 44 of 1990

AN ACT

to amend the *Land and Business Agents Act*

[Assented to 20 September 1990]

BE it enacted by the Legislative Assembly of the Northern Territory of Australia; with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

1. SHORT TITLE

This Act may be cited as the *Land and Business Agents Amendment Act 1990*.

2. COMMENCEMENT

The provisions of this Act shall come into operation on such date or dates as is or are fixed by the Administrator by notice in the *Gazette*.

3. PRINCIPAL ACT

The *Land and Business Agents Act* is in this Act referred to as the Principal Act.

4. INTERPRETATION

Section 5 of the Principal Act is amended -

(a) by inserting in subsection (1), after the definition of "company", the following:

"'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;"; and

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- (b) by inserting in subsection (2)(a), after "Territory", the words ", and includes a corporation manager under the *Unit Titles Act*".

5. NEW SECTIONS

The Principal Act is amended by inserting, after section 5, the following:

"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."

6. NEW SECTION

The Principal Act is amended by inserting, after section 7, the following:

"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.

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"(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."

7. CHAIRMAN

Section 9(2) of the Principal Act is repealed.

8. MEETINGS

Section 14(4)(b) of the Principal Act is amended by inserting, after "Chairman" (first occurring), "or the alternate Chairman (if any) appointed pursuant to section 7A".

9. UNLICENSED PERSONS NOT TO ACT AS AGENTS

Section 17 of the Principal Act is amended -

(a) by omitting "A person" and substituting "(1) A person"; and

(b) by adding at the end the following:

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

10. NEW SECTION

The Principal Act is amended by inserting, after section 25, the following:

"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."

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11. ISSUE OF LICENCES

Section 31 of the Principal Act is amended -

- (a) by inserting in subsection (1), after "provisional licence", the words "or restricted licence", and, after "places", the words "or, in the case of a restricted licence, in accordance with the conditions"; and
- (b) by omitting from subsection (6) "subsection (2)" and substituting "subsection (5)".

12. NEW SECTION

The Principal Act is amended by inserting, after section 41, the following:

"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."

13. CANCELLATION OF REGISTRATION

Section 44(6) of the Principal Act is amended by omitting "objection" and substituting "application".

14. GROUNDS FOR DISCIPLINARY ACTION

Section 67 of the Principal Act is amended by omitting from subsection (1) the words "revoke the licence of" and substituting "take disciplinary action in accordance with this Part against".

15. APPLICATIONS FOR DISCIPLINARY ACTION

Section 68 of the Principal Act is amended by omitting "the revocation of the licence of" (wherever occurring) and substituting "disciplinary action to be taken against".

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16. POWERS OF BOARD AFTER INQUIRY

Section 69(1) of the Principal Act is amended -

- (a) by omitting "revoke the licence of" (first occurring) and substituting "take disciplinary action against"; and
- (b) by omitting "\$200" and substituting "\$5,000".

17. INQUIRIES

Section 77(10) of the Principal Act is amended by omitting paragraph (b) and substituting the following:

- "(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."

18. APPLICATION OF MONEY FOR EDUCATIONAL SCHEMES

Section 92 of the Principal Act is amended by adding at the end the following:

"(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 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."

19. APPLICATION OF MONEY

Section 95 of the Principal Act is amended -

- (a) by omitting "There shall from time to time be paid out of the Fund -" and substituting "The Committee shall, subject to any determination made under section 95B, pay out of the Fund -";

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- (b) by omitting from paragraph (b) "this Act," and substituting "this Act including those costs and expenses borne by the Institute, and also";
- (c) by omitting from paragraph (c) "section 92(3); and" and substituting "section 92(3);"; and
- (d) by inserting after paragraph (c) the following:
 - "(ca) such amounts, if any, used by the Institute in pursuance of section 92(4); and".

20. NEW PART

The Principal Act is amended by inserting, after section 108, the following:

"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,

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;
- (c) a company which carries on business as agents of which he is or formerly was a director; or
- (d) a trust of which he is or formerly was a trustee,

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

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"(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.

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"(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."

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21. REGULATIONS

Section 127 of the Principal Act is amended by adding at the end the following:

"(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 corporate manager under the *Unit Titles Act*."
