

NORTHERN TERRITORY OF AUSTRALIA
AGENTS LICENSING AMENDMENT BILL 1997

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NORTHERN TERRITORY OF AUSTRALIA

A BILL for AN ACT

to amend the *Agents Licensing Act*

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 *Agents Licensing Amendment Act 1997*.

2. COMMENCEMENT

This Act comes into operation on the date fixed by the Administrator by notice in the *Gazette*.

3. PRINCIPAL ACT

The *Agents Licensing Act* is in this Act referred to as the Principal Act.

4. ELIGIBILITY FOR LICENCE

Section 22 of the Principal Act is amended –

- (a) by omitting from subsection(1)(c) "and" (last occurring);
- (b) by omitting from subsection (1)(d) "agent." and substituting "agent; and"; and

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(c) by adding at the end of subsection (1) the following:

"(e) he will, when licensed, be carrying on business as a licensed agent within the Territory."

5. GRANT OR REFUSAL OF LICENCES

Section 29 of the Principal Act is amended by inserting after subsection (3) the following:

"(3A) Notwithstanding subsection (3), the Board must refuse an application for the grant of a licence if the Board is not satisfied that the applicant will, when licensed, be carrying on business as a licensed agent within the Territory."

6. DURATION AND RENEWAL

Section 32 of the Principal Act is amended by inserting after subsection (3) the following:

"(3A) Notwithstanding subsection (3), a licence is not to be renewed unless the Registrar is satisfied that the applicant intends to continue to carry on business as a licensed agent within the Territory."

7. NEW SECTION

The Principal Act is amended by inserting after section 32A in Part III the following:

"32B. LICENSED AGENT WHEN NOT CARRYING ON BUSINESS

"(1) Where a licensed agent is not, or will not be, carrying on business within the Territory, the licensed agent is to give to the Registrar notice of the period during which the licensed agent is not or will not be carrying on business together with the prescribed particulars, if any.

"(2) Where the Registrar is notified under subsection (1) that a licensed agent is not or will not be carrying on business as a licensed agent within the Territory, the Board may suspend the licensed agent's licence until the licensed agent commences or recommences carrying on business as a licensed agent within the Territory.

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"(3) A licensed agent who is not or will not be carrying on business within the Territory must not fail to give notice under subsection (1).

Penalty: \$200."

8. QUALIFICATIONS

Section 39 of the Principal Act is amended —

(a) by omitting from subsection (1)(b) "and" (last occurring);

(b) by omitting from subsection (1)(c) "qualifications." and substituting "qualifications; and"; and

(c) by adding at the end of subsection (1) the following:

"(d) he will be employed by, or in the service of, a licensed agent as an agent's representative within the Territory."

9. CERTIFICATE OF REGISTRATION

Section 41 of the Principal Act is amended by adding at the end the following:

"(2) Notwithstanding subsection (1), the Board must not register an applicant for registration as an agent's representative unless the Board is satisfied that the applicant will, when registered, be employed by, or within the service of, a licensed agent as an agent's representative within the Territory."

10. ANNUAL FEE

Section 43A of the Principal Act is amended —

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

(b) by adding at the end the following:

"(2) Where an agent's representative does not pay the annual fee required to be paid by subsection (1) to the Registrar before the expiration of one month after the time referred to in that section, the registration of the agent's representative is, by force of this section, cancelled.

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"(3) Where the registration of an agent's representative is cancelled by operation of subsection (2), the person formerly registered as an agent's representative is not eligible to apply for registration as an agent's representative without the approval of the Board."

11. REPEAL AND SUBSTITUTION

Section 44 of the Principal Act is repealed and the following substituting:

"44. DISCIPLINARY ACTION

"(1) The Board may take disciplinary action against an agent's representative on one or more of the following grounds:

- (a) the registration of the agent's representative was improperly obtained;
- (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 or within or outside the Territory;
- (d) the agent's representative has acted in a manner that, had the agent's representative been a licensed agent, would have been in breach of the rules of conduct specified in section 65;
- (e) any other reasonable ground which, in the opinion of the Board, is sufficient to warrant the taking of disciplinary action against the agent's representative.

"(2) The Commissioner of Police may apply, by notice in writing lodged with the Registrar, for disciplinary action to be taken against 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 disciplinary action to be taken against an agent's representative on one or more of the grounds referred to in subsection (1).

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"(4) Any other person may apply, by notice in writing lodged with the Registrar, for disciplinary action to be taken against an agent's representative on one or more of the grounds referred to in subsection (1).

"(5) Subject to subsection (6), where —

- (a) an application for disciplinary action is made under this section; or
- (b) the Board considers that there may be grounds under subsection (1) for the taking of disciplinary action against an agent's representative,

the Board must hold an inquiry.

"(6) The Board may, without holding an inquiry, reject an application made under subsection (4) if —

- (a) in the opinion of the Board, the application is of a frivolous, irrelevant or malicious nature; or
- (b) the Board is satisfied that there are no grounds for holding, or insufficient evidence to hold, an inquiry.

"(7) Where an application for disciplinary action is made under this section, the Registrar must, as soon as is reasonably practicable, serve a copy of the application on the agent's representative in respect of whom the application was made.

"44A. BOARD MAY SUSPEND REGISTRATION PENDING INQUIRY

"(1) Where the Board is to hold an inquiry under section 44(5), it may suspend the registration of the agent's representative to whom the inquiry relates until the conclusion of the inquiry.

"(2) Where the Board suspends the registration of an agent's representative under subsection (1), the Registrar must, by written notice, inform the agent's representative of the suspension.

"44B. POWERS OF BOARD AFTER INQUIRY

"(1) Where, at the conclusion of an inquiry under section 44(5), the Board is satisfied that it is authorised to take disciplinary action against an agent's representative, the Board may —

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- (a) reprimand or caution the agent's representative;
- (b) by notice in writing, impose a fine not exceeding \$500 on the agent's representative;
- (c) by notice in writing, suspend the registration of the agent's representative until the expiration of the period, or the fulfilment of a condition, specified in the notice; or
- (d) by notice in writing, cancel the registration of the agent's representative and, if the Board thinks fit, specify a period that is to expire or impose a condition that is to be fulfilled before he or she may apply for registration as an agent's representative again.

"(2) A suspension or cancellation of registration under subsection (1) takes effect on -

- (a) where the Board specifies in the notice the date on which the suspension or cancellation takes effect - that date; or
- (b) in any other case - the date on which the agent's representative receives the notice of suspension or cancellation.

"(3) The Registrar must note in the register, in association with other entries made in respect of the agent's representative the subject of an inquiry under section 44(5), the fact of the holding of the inquiry and the outcome of the inquiry.

"(4) Where, under subsection (1)(c) or (d), the Board -

- (a) specifies a period; or
- (b) imposes a condition,

in relation to the suspension or cancellation of the registration of an agent's representative, the agent's representative may not be engaged as an agent's representative, or the person is not eligible to apply for registration as an agent's representative, until the period has expired or the condition has been fulfilled to the satisfaction of the Board, as the case may be.

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"(5) Where the Board cancels the registration of an agent's representative under subsection (1)(d) without specifying a period or imposing a condition, the person whose former registration as an agent's representative has been cancelled is not eligible to apply for registration as an agent's representative without the approval of the Board.

"44C. CANCELLATION IF BECOME LICENSED AS AGENT

"Where the Registrar issues a licence under section 31 to a person who is an agent's representative, the person's registration as an agent's representative is, on the issue of the licence, cancelled by force of this section."

12. INSPECTORS

Section 64 of the Principal Act is amended —

(a) by omitting subsection (1)(a) and substituting the following:

"(a) inspect all receipts, books, accounts, securities and any other documents and papers relating to the operation of the business of the licensed agent, including trust moneys received or paid by the licensed agent;"

(b) by omitting from subsection (1)(b) " and" (last occurring);

(c) by omitting from subsection (1)(c) "Part XIIA." and substituting "Part XIIA; and"; and

(d) by inserting at the end of subsection (1) the following:

"(d) require an explanation of a document or paper referred to in paragraph (c)."

13. NEW PART

The Principal Act is amended by inserting after Part VI the following:

"PART VIA — AGREEMENTS BETWEEN LICENSED
AGENTS AND CLIENTS

"65A. PRESCRIPTION OF TERMS, &c., OF AGREEMENT

"(1) Subject to section 65B, the Minister must, by notice in the Gazette, prescribe —

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- (a) the terms, conditions and provisions of an agreement between a licensed agent and a client or a class of client that the Minister considers necessary to be included in the agreement for the purpose of protecting the interests of the client or class of client; and
- (b) the circumstances when a licensed agent must enter into an agreement with a client or a class of client.

"(2) In addition to prescribing the matters under subsection (1), the Minister may, by notice in the *Gazette*, prescribe the form of an agreement which a licensed agent may choose to use when entering into an agreement with a client or a class of client.

"65B. CONSULTATION REGARDING AGREEMENTS

"(1) For the purpose of prescribing the matters under section 65A(1), the Minister must direct the Registrar to -

- (a) arrange for consultation with, and invite submissions from, the Board and the prescribed persons and organisations, if any; and
- (b) give notice in a newspaper circulating in the Territory inviting written submissions from members of the public,

with respect to those matters.

"(2) The Registrar -

- (a) must report in writing to the Minister on the outcome of each consultation under subsection (1);
- (b) must provide the Minister with a copy of each submission received under that subsection, if any; and
- (c) may make recommendations to the Minister in respect of the consultations, submissions and the matters to be prescribed under section 65A(1).

"(3) In prescribing the matters referred to in section 65A(1) the Minister is to consider and take into account -

- (a) the outcome of each consultation under subsection (1);

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- (b) the submissions received under that subsection, if any;
- (c) the recommendations made by the Registrar, if any; and
- (d) any other matter he or she thinks relevant.

"65C. FORM OF AGREEMENT

"An agreement between a licensed agent and a client that is entered into after the commencement of the *Agents Licensing Amendment Act 1997* is to be —

- (a) in writing; and
- (b) if the agreement is entered into in prescribed circumstances — read as incorporating and being subject to the terms, conditions and provisions prescribed under section 65A(1).

"65D. APPLICATION OF PRESCRIBED TERMS, &c.

"In the event of an inconsistency between a term, condition or provision of an agreement referred to in section 65C(b) and a term, condition or provision prescribed under section 65A(1), the prescribed term, condition or provision prevails, and the first-mentioned term, condition or provision is void and of no effect to the extent of the inconsistency."

14. APPLICATIONS FOR DISCIPLINARY ACTION

Section 68 of the Principal Act is amended —

- (a) by omitting from subsection (5)(a) " or" (last occurring);
- (b) by omitting from subsection (5)(b) "subsection." and substituting "subsection; and"; and
- (c) by adding at the end of subsection (5) the following:
 - "(c) the Board is satisfied that there are no grounds for holding, or there is insufficient evidence to hold, an inquiry."

15. POWERS OF BOARD AFTER INQUIRY

Section 69 of the Principal Act is amended —

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- (a) by omitting from subsection (1)(b) "impose a fine" and substituting "by notice in writing, impose a fine"; and
- (b) by omitting subsection (1)(c) and substituting the following:
- "(c) by notice in writing, suspend the licence of the agent until the expiration of the period, or the fulfilment of a condition, specified in the notice; or".

16. INQUIRIES

Section 77 of the Principal Act is amended by omitting subsection (4).

17. NEW SECTIONS

The Principal Act is amended by inserting after section 84 in Part IX the following:

"84A. PUBLICATION OF FINDINGS AND DETERMINATION

"(1) The Board must make available, at its offices during its business hours, a copy (which may include an electronic copy) of its findings and determination in respect of an inquiry under section 44 or 68 for inspection or purchase by a member of the public.

"(2) The Board may determine a fee for the inspection or purchase of a copy of its findings and determination referred to in subsection (1), and, where a fee is determined, a person may only inspect or purchase the copy on payment of the fee.

"(3) No criminal or civil proceeding lies against an officer or employee of the Board for or in relation to an action taken in good faith for the purpose of complying with subsection (1).

"84B. PROCEEDINGS TO BE OPEN TO PUBLIC

"An inquiry under section 44 or 68 is to be open to the public unless the Board determines that the inquiry, or part of the inquiry, is to be closed to the public."

18. NEW SECTION

The Principal Act is amended by inserting after section 125A the following:

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"125AA. INFRINGEMENT NOTICES

"Notwithstanding section 125A, the Regulations may provide for -

- (a) the payment, as an alternative to prosecution, of a prescribed amount in lieu of a penalty otherwise imposed for infringement of this Act or the Regulations; and
- (b) the service of notices on persons who appear to have infringed this Act or the Regulations and the particulars to be included in the notices."

19. SCHEDULE

The Schedule to the Principal Act is amended by omitting from clause 1(c)(i) in Part 1 "Registrar-General" and substituting "Registrar".

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