

Serial 99  
Agents Licensing Amendment Bill 2002  
Dr Toyne

**A BILL  
for  
AN ACT**

to amend the *Agents Licensing Act*

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NORTHERN TERRITORY OF AUSTRALIA  
AGENTS LICENSING AMENDMENT ACT 2002

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No. of 2002

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# NORTHERN TERRITORY OF AUSTRALIA

No. of 2002

## AN ACT

to amend the *Agents Licensing Act*

[Assented to 2002]  
[Second reading 2002]

**The Legislative Assembly of the Northern Territory enacts as follows:**

**1. Short title**

This Act may be cited as the *Agents Licensing Amendment Act 2002*.

**2. Commencement**

The provisions of this Act come into operation on the date, or respective dates, 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. Interpretation**

Section 5 of the Principal Act is amended –

- (a) by inserting in the definition of "agent's representative" in subsection (1) "or herself" after "himself";
- (b) by omitting from subsection (1) the definition of "bank";
- (c) by omitting from subsection (1) the definition of "branch manager" and substituting the following:

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"'business manager' means a person, with substantive and effective control of one or more of the registered offices of the business operated under a licence, who is specified on the licence as a business manager in respect of the office or offices;"

- (d) by omitting from subsection (1) the definition of "Chairman" and substituting the following:

"'Chairperson' means the Chairperson of the Board appointed under section 9 and includes the Deputy Chairperson when acting as the Chairperson;"

- (e) by omitting from the definition of "departmental member" in subsection (1) "*Public Service Act*" and substituting "*Public Sector Employment and Management Act*";

- (f) by omitting from subsection (1) the definition of "Deputy Chairman" and substituting the following:

"'Deputy Chairperson' means the Deputy Chairperson of the Board elected under section 14(4)(b);

'firm' means a firm constituted by 2 or more persons and includes a partnership;"

- (g) by omitting from the definition of "member" in subsection (1) "Chairman or Deputy Chairman" and substituting "Chairperson or Deputy Chairperson";

- (h) by inserting after the definition of "registered company auditor" in subsection (1) the following:

"'registered office' means an office of which the Registrar has been notified under section 110(2)(a);"

- (i) by inserting after the definition of "regulations" in subsection (1) the following:

"'rules of conduct' means rules of conduct prescribed in accordance with section 64A(5);"

- (j) by omitting from subsection (2)(c) "in accordance with the requirements specified in Part 2 of the Schedule"; and

- (k) by omitting subsections (4), (5) and (6).

**5. Appointment of members and tenure**

Section 7 of the Principal Act is amended –

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- (a) by omitting subsection (1)(c) and substituting the following:
- "(c) 2 persons each of whom is either a licensed real estate agent or a licensed business agent";
- (b) by omitting from subsection (1A) all the words after "consist of" and substituting "the members appointed under subsection (1)(a), (b) and (d) and 2 licensed conveyancing agents appointed by the Minister for those purposes";
- (c) by omitting subsections (5), (6) and (7) and substituting the following:
- "(5) If there is or will be a vacancy in the office of a member referred to in subsection (1)(c), the Commissioner must place a notice in a newspaper circulating in the Territory inviting licensed real estate agents and licensed business agents to notify the Minister, within 30 days after the publication of the notice, that they are willing to be appointed to the Board.
- "(6) If there are or will be less than 2 licensed conveyancing agents for the purposes of subsection (1A), the Commissioner must place a notice in a newspaper circulating in the Territory inviting licensed conveyancing agents to notify the Minister, within 30 days after the publication of the notice, that they are willing to be appointed to the Board.
- "(7) The Minister may, after 30 days after the publication of a notice under subsection (5) or (6), with the approval of a person, appoint the person under subsection (2) (whether or not the person has notified the Minister under subsection (5) or (6)) to be the member for the purposes of subsection (1)(c) or (1A).";
- (d) by omitting from subsection (8) "his" and substituting "the member's"; and
- (e) by inserting in subsection (9) "or she" after "he".

**6. Vacation of office**

Section 12 of the Principal Act is amended –

- (a) by omitting from paragraph (a) "his" (all references) and substituting "the member's"; and
- (b) by omitting from paragraph (c) "he was appointed or, being a person referred to in section 7(1)(c) ceases to be a member of the Institute," and substituting "the member was appointed,".

**7. Repeal and substitution**

Section 17 of the Principal Act is repealed and the following substituted:

**"17. Unlicensed persons not to act as agents**

"(1) Subject to subsection (2), a person, company or firm must not carry on business, or by any means hold himself, herself or itself out, as a real estate agent, business agent or conveyancing agent unless he, she or it is licensed as such under this Act.

Penalty: If the offender is a natural person – 500 penalty units.

If the offender is a body corporate – 2 500 penalty units.

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

Penalty: If the offender is a natural person – 500 penalty units.

If the offender is a body corporate – 2 500 penalty units.

"(3) A person (not being a company or a firm) must not perform, or hold himself or herself out as licensed to perform, a service of a conveyancing agent specified in section 31A(1) unless the person's conveyancing agent's licence is endorsed under that section with a statement to the effect that the person is licensed to perform the service.

Penalty: 100 penalty units.

"(4) A person (being a company or a firm) must not perform, or hold itself out as licensed to perform, a service of a conveyancing agent specified in section 31A(1) unless the licence of each business manager in relation to the registered office of the company or firm at which the service is, or is to be, performed is endorsed under that section with a statement to the effect that the business manager of that office is licensed to perform the service.

Penalty: If the offender is a natural person – 500 penalty units.

If the offender is a body corporate – 2 500 penalty units."

**8. New section**

The Principal Act is amended by inserting before section 22 in Part III, Division 2 the following:

**"20. Meaning of fit and proper person**

"(1) A natural person is a fit and proper person for the purposes of section 22, 25 or 32 if the person –



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- (a) is not a disqualified person as determined in accordance with this section;
- (b) is a person whose general reputation in the community (which may include a place outside the Territory) is such that the Board is satisfied that the person will competently, conscientiously and honestly perform the duties of an agent in relation to the person's employees and clients; and
- (c) has completed the application for a licence frankly, comprehensively and honestly.

"(2) A person is a disqualified person for the purposes of subsection (1)(a) if the person –

- (a) has in the 10 years immediately before the person applied for the licence, been found guilty (whether or not in the Territory) of a prescribed offence or an offence that involves dishonesty or violence or is an offence against the *Misuse of Drugs Act*, the *Kava Management Act* or a corresponding law declared under subsection (8);
- (b) is mentally incapable of performing the duties of an agent;
- (c) is disqualified from holding a licence, certificate of registration or other authority under the *Consumer Affairs and Fair Trading Act* or a corresponding law declared under subsection (8) or is the holder of such a licence, certificate or authority that is suspended;
- (d) has, at the time of the application, failed to pay a monetary penalty payable by the person under this Act, the *Consumer Affairs and Fair Trading Act* or a corresponding law declared under subsection (8) or failed to comply with a direction given by the Board;
- (e) has failed to provide the Board with an auditor's report that the person is required to provide under this Act on the audit of the records and documents relating to money held in a trust account kept by the person under this Act; or
- (f) is at the time of the application in breach of a provision of this Act or the Regulations that is prescribed by regulation as a disqualifying breach.

"(3) The Board may determine that an offence referred to in subsection (2)(a) is not to be taken into account for the purposes of this section –

- (a) because of the time that has passed since the offence was committed; or

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(b) because the act or omission constituting the offence was trivial.

"(4) A person is a disqualified person for the purposes of subsection (1)(a) if the person –

(a) is an undischarged bankrupt or is a director or other person concerned in the management of a company that is the subject of a winding up order or for which a controller or administrator has been appointed;

(b) at any time in the 3 years immediately before the person applied for the licence –

(i) was an undischarged bankrupt;

(ii) applied to take the benefit of any law for the relief of bankrupt or insolvent debtors; or

(iii) compounded with the person's creditors or made an assignment of the person's remuneration for their benefit,

unless the Board is satisfied that the person took all reasonable steps to avoid bankruptcy;

(c) at any time in the 3 years immediately before the person applied for the licence, was concerned in the management of a company –

(i) while it was the subject of a winding-up order; or

(ii) while a controller or administrator was appointed,

unless the Board is satisfied that the person took all reasonable steps to avoid the liquidation or administration; or

(d) is a company that is the subject of a winding-up order or for which a controller or administrator has been appointed.

"(5) The Board may determine that a person is not a disqualified person under subsection (4) if the Board is satisfied that the relevant acts or omissions of the person for the purposes of that subsection do not indicate that the person is likely to default on his or her financial or other obligations under this Act.

"(6) A person ('the applicant') is a disqualified person for the purposes of subsection (1)(a) if the person is a partner of a person who is a disqualified person, unless the Board is satisfied that in the circumstances the applicant is unlikely to be influenced by the disqualified person.

"(7) The Board may only determine that it is not satisfied as to the matter referred to in subsection (1)(b) having regard to information that is provided both to the Board and to the applicant.

"(8) The Minister may, by notice in the *Gazette*, declare that a law of the Territory, the Commonwealth or a State or another Territory of the Commonwealth is a corresponding law for the purposes of subsection (2)(a), (c) or (d)."

## **9. Repeal and substitution**

Section 22 of the Principal Act is repealed and the following substituted:

### **"22. Eligibility for licence**

"(1) A person (not being a company or a firm) is eligible for the grant of a licence if the Board is satisfied that –

- (a) he or she has attained the age of 18 years;
- (b) he or she is a fit and proper person within the meaning of section 20;
- (c) he or she –
  - (i) has completed a course of competency-based training that is approved by the Board under section 22A for the class of licence that is the subject of the application;
  - (ii) holds the prescribed qualifications for the class of licence that is the subject of the application;
  - (iii) has other prescribed qualifications or prescribed experience; or
  - (iv) by reason of his or her qualifications and experience is competent to carry on business on his or her own account as a licensed agent; and
- (d) if the application is for a real estate agent's licence or a conveyancing agent's licence –
  - (i) the applicant will, for the whole period of the licence, be insured under an approved indemnity insurance policy within the meaning of section 108A in relation to the applicant or the applicant's employer; or
  - (ii) the applicant, or the applicant's employer, is exempt under a regulation from the requirement under section 108B to be

insured under an approved indemnity insurance policy within the meaning of section 108A.

"(2) If 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)(iii), the person's application under section 26 is to be accompanied by a certificate in the prescribed form."

**10. New section**

The Principal Act is amended by inserting after section 22 the following:

**"22A. Board may approve course of competency-based training**

"(1) The Board may, by notice in the *Gazette*, for the purposes of section 22(1)(c)(i), approve a course of competency-based training referred to in the notice.

"(2) In deciding whether to approve a course of competency-based training, the Board must consult with and consider the advice, if any, of –

- (a) the Northern Territory Education and Training Authority; and
- (b) an occupational association or body that represents the interests of the occupation to which the course relates.

"(3) The Board –

- (a) must approve a course of competency-based training if the Board is reasonably satisfied that an agent who satisfactorily completes the course will be competent to provide the services of an agent that are of the kind to which the course relates; and
- (b) must not refuse to approve a course of competency-based training on the ground that a person who satisfactorily completes the course may not have attained the standard of best practice in the relevant industry."

**11. Repeal**

Section 23 of the Principal Act is repealed.

**12. Repeal and substitution**

Section 23A of the Principal Act is repealed and the following substituted:

**"23A. Provisional licence on acquisition of business**

"If a person (not being a company or a firm) acquires from a licensed agent a business the carrying on of which requires a licence under this Act, the person is eligible for the grant of a provisional licence if –

- (a) he or she satisfies the requirements of section 22(1)(a), (b) and (d); and
- (b) he or she –
  - (i) undertakes in writing to obtain the qualifications referred to in section 22(1)(c)(i) or (ii) within the period specified by the Board; or
  - (ii) satisfies the Board that he or she is, by reason of his or her experience, competent to carry on business on his or her own account as a licensed agent and undertakes in writing to obtain the qualifications referred to in section 22(1)(c)(iii) within the period specified by the Board."

**13. Licence of company or firm**

Section 25 of the Principal Act is amended –

- (a) by adding at the end of paragraph (a)(ii) "within the meaning of section 20";
- (b) by omitting paragraph (b) and substituting the following:
  - "(b) each person who is nominated in a notice under section 27(b)(ii) as a person whom it is proposed to appoint as a business manager is a licensed agent;
  - "(ba) if the application is for a real estate agent's licence or a conveyancing agent's licence –
    - (i) the company or firm will, for the whole period of the licence, be insured under an approved indemnity insurance policy within the meaning of section 108A; or
    - (ii) the company or firm is exempt under a regulation from the requirement under section 108B to be insured under an approved indemnity insurance policy within the meaning of section 108A; and"; and
- (c) by adding at the end of paragraph (c) "within the meaning of section 20".

**14. New sections**

The Principal Act is amended by inserting after section 31 the following:

**"31A. Special endorsement for conveyancing agents**

"(1) The Registrar may, if authorised to do so by the Board, endorse a conveyancing agent's licence held by a person (not being a company or a firm) with a statement to the effect that the holder of the licence is permitted to provide one or more of the following services:

- (a) drawing, preparing and arranging the execution of leases;
- (b) drawing, preparing and arranging the execution of mortgages;
- (c) drawing, preparing and arranging the execution of encumbrances;
- (d) drawing, preparing and arranging the execution of restrictive covenants;
- (e) drawing, preparing and arranging the execution of contracts for the sale of businesses.

"(2) A person (not being a company or a firm) who applies for a conveyancing agent's licence or who is the holder of a conveyancing agent's licence may in writing request the Registrar to endorse the licence under subsection (1) in relation to a service specified in that subsection.

"(3) A person (not being a company or a firm) is entitled to have his or her conveyancing agent's licence endorsed under subsection (1) in relation to a service if the Board is satisfied that the person has completed a course of training approved under section 31B relating to the service.

"(4) If the Board is satisfied that an applicant for a conveyancing agent's licence or the holder of a conveyancing agent's licence who is seeking the renewal of the licence –

- (a) is entitled under subsection (3) to have his or her licence endorsed in relation to a service specified in subsection (1); or
- (b) is, by reason of his or her qualifications and experience, competent to provide a service specified in subsection (1),

the Board must authorise the endorsement of the licence under subsection (1) with a statement to the effect that the holder of the licence is permitted to provide the service.

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"(5) If the Board is satisfied that an applicant for a conveyancing agent's licence or the holder of a conveyancing agent's licence who is seeking the renewal of the licence –

- (a) is not entitled under subsection (3) to have his or her licence endorsed in relation to a service specified in subsection (1); or
- (b) is not competent to provide a service specified in subsection (1) because the applicant does not have sufficient experience in the provision of the service,

the Registrar must endorse the licence with a statement to the effect that the holder of the licence is not permitted to provide the service.

**"31B. Board may approve course of competency-based training**

"(1) The Board may for the purposes of section 31A, by notice in the *Gazette*, approve a course of competency-based training referred to in the notice.

"(2) In deciding whether to approve a course of competency-based training, the Board must consult with and consider the advice, if any, of –

- (a) the Northern Territory Education and Training Authority; and
- (b) an occupational association or body that represents the interests of conveyancing agents.

"(3) The Board –

- (a) must approve a course of competency-based training if the Board is reasonably satisfied that an agent who satisfactorily completes the course will be competent to provide a service of a conveyancing agent specified in section 31A to which the course relates; and
- (b) must not refuse to approve a course of competency-based training on the ground that a person who satisfactorily completes the course may not have attained the standard of best practice in the relevant industry in relation to a service of a conveyancing agent specified in section 31A to which the course relates."

**15. Duration and renewal**

Section 32 of the Principal Act is amended –

- (a) by omitting subsection (3A) and substituting the following:

"(3A) If the Registrar suspects that the holder of a licence who is seeking the renewal of the licence is not a fit and proper person within the meaning of section 20, the Registrar –

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- (a) must request the Board in writing to hold an inquiry to consider whether the holder of the licence is not a fit and proper person within the meaning of section 20;
- (b) must notify the holder of the licence of the request to the Board; and
- (c) must not renew the licence except with the approval of the Board.

"(3B) The Board must hold an inquiry if it receives a request under subsection (3A).

"(3C) The Board must give reasons for a decision not to approve the renewal of a licence and provide them to the holder of the licence."; and

- (b) by omitting from subsection (5)(a) and (b) "21(1)(b) or".

**16. Repeal**

Section 32A of the Principal Act is repealed.

**17. New section**

The Principal Act is amended by inserting before section 33 in Part IV the following:

**"32C. Part does not apply to conveyancing agents**

"This Part does not apply to or in relation to a licensed conveyancing agent."

**18. Provisions relating to ADI accounts**

Section 54 of the Principal Act is amended –

- (a) by omitting from subsection (1) "A bank, building society or credit union at which a trust account is maintained" and substituting "If a trust account is maintained at an ADI or the Territory Insurance Office, the ADI or the Territory Insurance Office, as the case may be,";
- (b) by omitting from subsection (2) "a bank, building society or credit union" and substituting "an ADI or the Territory Insurance Office";
- (c) by omitting from subsection (3) "bank, building society or credit union" (all references) and substituting "ADI or the Territory Insurance Office"; and
- (d) by omitting from subsection (4) "a bank, building society or credit union" and substituting "an ADI or the Territory Insurance Office".



**19. Auditor's report**

Section 62 of the Principal Act is amended –

- (a) by adding at the end of subsection (1) the following:  
"Penalty: 20 penalty units.";
- (b) by omitting from subsection (2) "his report" and substituting "his or her report";
- (c) by omitting from subsection (2)(a) "his" and "him" and substituting "the auditor's" and "the agent" respectively;
- (d) by omitting from subsection (2)(b) "his" and "he" and substituting "the auditor's" and "the auditor" respectively; and
- (e) by adding at the end of subsection (2) the following:  
"Penalty: 20 penalty units."

**20. Special report**

Section 63 of the Principal Act is amended –

- (a) by omitting from paragraph (a) "he" and substituting "he or she"; and
- (b) by adding at the end the following:  
"Penalty: 20 penalty units."

**21. New section**

The Principal Act is amended by inserting before section 65 in Part VI the following:

**"64A. Rules of conduct for agents**

"(1) If the Minister proposes to approve rules of conduct for real estate agents, business agents or conveyancing agents, he or she must direct the Registrar to –

- (a) arrange for consultation with, and invite submissions from, the Board, the Real Estate Institute of the Northern Territory and the prescribed persons and organisations, if any, about the proposed rules; and
- (b) give notice in a newspaper circulating in the Territory that rules of conduct for real estate agents, business agents or conveyancing agents, as the case may be, are proposed and that members of the

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public are invited to make written submissions to the Registrar about the proposed rules.

- "(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; and
  - (c) may make recommendations to the Minister in respect of the consultations, submissions and the matters to be specified in rules of conduct.

"(3) The Minister may, after receiving the information the Registrar is required to provide to him or her under subsection (2) in relation to proposed rules of conduct, approve the proposed rules of conduct for agents, as amended, if at all, by the Minister.

"(4) In determining whether to approve proposed rules of conduct for agents under subsection (3), the Minister must consider and take into account –

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

"(5) Regulations may prescribe rules of conduct for agents that have been approved by the Minister under subsection (3).

"(6) This section applies in relation to an amendment of the rules of conduct for agents as if a reference in this section to the rules of conduct for agents were a reference to an amendment of those rules.

"(7) Regulations made in respect of rules of conduct for agents approved under subsection (3) may incorporate or adopt by reference (with any necessary changes) rules, provisions, a code or another document relating to the professional conduct of agents."

**22. Breach of rules of conduct**

Section 65 of the Principal Act is amended –

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

"(1) A licensed agent breaches the rules of conduct for agents if –

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- (a) he or she breaches this Act or the Regulations (whether or not he or she is found guilty of an offence in respect of the breach); or
- (b) he or she contravenes or fails to comply with the rules of conduct.";
- (b) by omitting from subsection (2) "he is one" and substituting "the agent is a member";
- (c) by omitting from subsection (3) "shall be deemed to be" and substituting "is taken to be"; and
- (d) by omitting from subsection (4) "the company shall be deemed" and substituting "the company or firm, as the case may be, is taken".

**23. New section**

The Principal Act is amended by inserting after section 65D in Part VIA the following:

**"65E. Special provisions relating to conveyancing agents**

"(1) A conveyancing agent is not entitled to receive remuneration in respect of services provided in that capacity unless a valid appointment to act in that capacity has been signed, before the services are provided, by –

- (a) the party to the transaction for whom the services are to be provided; or
- (b) some other person –
  - (i) who is lawfully authorised to sign on behalf of the person for whom the services are to be provided; and
  - (ii) who is not a real estate agent or other commission agent or an employee or agent of a real estate agent or other commission agent who is acting for a party in the transaction.

"(2) A person may recover remuneration for services provided as a conveyancing agent although there is no valid appointment as required by subsection (1) if –

- (a) the party to the transaction for whom the services were provided has certified that the party was aware of the provisions of subsection (1) and has ratified in writing the appointment of the conveyancing agent; or

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- (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) If an appointment of a conveyancing agent is terminated before the transaction is completed, the agent is entitled to recover the proportion of the quoted remuneration that is reasonable in the circumstances.

"(4) A person for whom a conveyancing agent is acting may request the agent to supply to him or her a bona fide quote of the cost of the services of the agent in respect of the particular transaction to which the request relates.

"(5) A conveyancing agent must, within 14 days after a request is made under subsection (4) by a person, supply to the person the information requested under that section.

Penalty: If the offender is a natural person – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

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

**24. Grounds for disciplinary action**

Section 67 of the Principal Act is amended –

- (a) by omitting from subsection (1)(c) "referred to in section 65";
- (b) by omitting from subsection (1)(f) "branch manager" and substituting "business manager"; and
- (c) by omitting from subsection (1)(j) "office in the Territory" and substituting "office in Australia".

**25. Notice to ADI**

Section 73 of the Principal Act is amended –

- (a) by omitting from subsection (1)(a) "bank, building society or credit union" and "his" and substituting "branch of the ADI or Territory Insurance Office" and "the agent's" respectively; and
- (b) by omitting from subsection (2)(a) and (b) "bank, building society or credit union" and substituting "branch of the ADI or Territory Insurance Office".

**26. Repeal and substitution**

Section 92 of the Principal Act is repealed and the following substituted:

**'92. Application of money for educational schemes**

"(1) If the amount standing to the credit of the moneys of the Fund is greater than \$250 000 (or, if another amount is determined by the Administrator, that amount), the Minister may consent to the use by the Registrar of a specified amount or proportion of the Fund for the purposes specified in subsection (2).

"(2) The Registrar may use the amount or proportion of the Fund specified by the Minister under subsection (1) to enable the Board to establish and conduct a scheme for the payment of all or part of the costs or other expenses related to educational courses (except fees or other expenses of students attending or undertaking an educational course).

"(3) An amount of money may only be allocated to a person under subsection (2) for the provision of an educational course if –

- (a) the person is a registered training organisation; and
- (b) the educational course to be provided by the registered training organisation is approved under section 22A or is an accredited course or part of a Training Package.

"(4) The Board may determine the registered training organisation or registered training organisations to which the monies of the Fund are to be allocated for the purposes specified in subsection (2).

"(5) The Board must, within 30 days after the end of each financial year, give the Minister a written report on the Board's activities for the purposes of this section.

"(6) In this section –

'accredited course' has the same meaning as in the *Northern Territory Employment and Training Authority Act*;

'educational course' means a course relating to laws applying to and in relation to licensed agents and their business and the practices and procedures of licensed agents in their business, but does not include a course –

- (a) the purpose of which relates to the tactics or techniques of selling or advertising; or
- (b) that the Board declares not to be an educational course;

'registered training organisation' has the same meaning as in the *Northern Territory Employment and Training Authority Act*;

'Training Package' has the same meaning as in the *Northern Territory Employment and Training Authority Act*."

**27. Moneys of Fund**

Section 95B of the Principal Act is amended –

- (a) by omitting from subsection (2)(d) "such amounts, if any, as the Minister determines for the purpose referred to in section 92(3)" and substituting "the amount, if any, to which the Minister consents under section 92(3)"; and
- (b) by omitting subsection (2)(e).

**28. Payment of compensation**

Section 102 of the Principal Act is amended by omitting from subsection (2) all the words after "aggregate," and substituting "\$200 000 or, if another amount is determined by the Administrator by notice in the *Gazette*, that other amount".

**29. Repeal and substitution**

Part XIIA of the Principal Act is repealed and the following substituted:

**"PART XIIA – INDEMNITY INSURANCE**

**"108A. Definitions**

"In this Part, unless the contrary intention appears –

'approved indemnity insurance policy' means an indemnity insurance policy, or a type of indemnity insurance policy, that is approved under section 108C;

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

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

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

**"108B. Licensed agents required to hold approved indemnity insurance**

"(1) An agent must not carry on business as an agent unless the agent is insured under an approved indemnity insurance policy.

Penalty: If the offender is a natural person – 500 penalty units.

If the offender is a body corporate – 2 500 penalty units.

"(2) Subsection (1) does not apply in relation to a period during which the agent is exempt under a regulation from the requirement to be insured under an approved indemnity insurance policy.

**"108C. Board may approve indemnity insurance policy**

"(1) The Board may, by notice in the *Gazette*, approve an indemnity insurance policy or a type of indemnity insurance policy.

"(2) A notice under subsection (1) may provide that an indemnity insurance policy is an approved indemnity insurance policy if the policy –

- (a) complies with the conditions specified in the notice; or
- (b) is described in the notice by reference to the insurer and the number of the policy or is identified in the notice by other specified particulars,

or both.

"(3) An indemnity insurance policy ceases to be an approved indemnity insurance policy if it ceases to comply with conditions set out in a notice under subsection (1).

"(4) A notice under subsection (1) may –

- (a) apply generally or be limited in its application by reference to exceptions or factors specified in the notice; or
- (b) apply differently according to different exceptions or factors specified in the notice.

**"108D. Organisation representing agents may arrange for insurance**

"(1) An organisation representing the interests of real estate agents, business agents or conveyancing agents may arrange for an insurer to provide an approved indemnity insurance policy to real estate agents, business agents or conveyancing agents.

"(2) An organisation representing the interests of real estate agents, business agents or conveyancing agents that arranges for an insurer to provide an

approved indemnity insurance policy may require that a person may only be a member of the organisation if the person has entered into and maintains that policy with the insurer.

**"108E. Part does not affect claims against Fund**

"This Part does not derogate from Part XII, Division 3."

**30. New Part**

The Principal Act is amended by inserting before Part XIII the following:

**"PART XIIB – CONFLICTS OF INTEREST**

**"108F. Definitions**

"(1) In this Part, unless the contrary intention appears –

'business' includes a share in a business or an interest in a business;

'interested party' means –

- (a) a licensed real estate agent;
- (b) a licensed business agent;
- (c) a registered agent's representative;
- (d) an employee of a licensed real estate agent or licensed business agent; or
- (e) a person who holds himself or herself out to be a real estate agent or a business agent;

'land' includes an interest in land;

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

"(2) In this Part, a purchase or sale of land or a business in which an interested party who is a licensed real estate agent or licensed business agent is beneficially interested includes a purchase or sale that is or will be made by or on behalf of –

- (a) the spouse, parent, brother, sister or child of the agent;
- (b) a corporation, body, association of persons or firm 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;



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- (c) if the agent is a corporation – the corporation, a member of the corporation or the spouse, parent, brother, sister or child of a member of the corporation; or
- (d) if the agent carries on business as such as a member of a firm – a person who is a member of the firm or the spouse, parent, brother, sister or child of that person.

"(3) In this Part, a purchase or sale of land or a business in which an interested party who is a registered agent's representative or an employee is beneficially interested includes a purchase or sale that is or will be made by or on behalf of –

- (a) the spouse, parent, brother, sister or child of the representative or employee; or
- (b) a corporation, body, association of persons or firm carrying on business for profit or gain of which the representative or employee or the spouse, parent, brother, sister or child of the representative or employee is a member.

"(4) In this Part, an interested party acts as the agent for a principal wishing to purchase or sell land or a business from the time the principal first communicates (whether orally or in writing) to –

- (a) the interested party; or
- (b) a person specified in subsection (2) or (3),

the fact that the principal wishes to purchase or sell the land or business.

**"108G. Restriction on agent etc. purchasing or selling property in which the agent is interested**

"(1) Subject to subsection (6), an interested party must not purchase directly or indirectly, or be beneficially interested in the purchase of, land or a business from a person who is a principal for whom the interested party is acting as an agent.

Penalty: If the offender is a natural person – 500 penalty units.

If the offender is a body corporate – 2 500 penalty units.

"(2) Subject to subsection (6), an interested party must not directly or indirectly accept title to land or a business if he or she is in breach of subsection (1).

Penalty: If the offender is a natural person – 500 penalty units.

If the offender is a body corporate – 2 500 penalty units.

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"(3) Subject to subsection (6), an interested party must not sell directly or indirectly, or be beneficially interested in the sale of, land or a business to a person who is a principal for whom he or she is acting as an agent.

Penalty: If the offender is a natural person – 500 penalty units.

If the offender is a body corporate – 2 500 penalty units.

"(4) An interested party must not receive commission from a principal after he or she has been found guilty of an offence against subsection (1) or (3).

Penalty: If the offender is a natural person – 500 penalty units.

If the offender is a body corporate – 2 500 penalty units.

"(5) A person who is found guilty of an offence against this section –

- (a) must account for and repay to the principal all profits (including commission received) resulting from the purchase or sale and any subsequent dealing with the land or business; and
- (b) if the offence is an offence against subsection (2) – must, unless there is an agreement to the contrary with the principal, transfer to the principal the title to the land or business to which the offence relates.

"(6) This section does not apply if –

- (a) the land or business is purchased by a person who is a shareholder or creditor of a licensed agent that is –
  - (i) a corporation the shares of which are listed on a prescribed financial market (as defined in section 9 of the Corporations Act 2001); or
  - (ii) a prescribed corporation;
- (b) the interested party acted honestly and reasonably;
- (c) the principal is in substantially as good a position as if the interested party had no interest whatsoever in the purchase or sale; or
- (d) the interested party has complied with section 108H.

"(7) A person who has sold land may lodge a caveat with the Registrar-General in respect of the person's former interest in the land if –

- (a) the person believes that the person who acted as agent for him or her 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,

unless the land has, after the person sold it, been sold to a bona fide purchaser.

**"108H. Sale etc. by agent with interest in sale**

"(1) An interested party may purchase directly or indirectly, or be beneficially interested in the purchase of, land or a business from a person who is a principal for whom the interested party is acting as agent if the interested party makes a full disclosure of the interested party's intention to purchase or of the interested party's beneficial interest in the purchase.

"(2) An interested party may sell directly or indirectly, or be beneficially interested in the sale of, land or a business from a person who is a principal for whom the interested party is acting as agent if the interested party makes a full disclosure of the interested party's intention to sell or of the interested party's beneficial interest in the sale.

"(3) A disclosure under subsection (1) or (2) is to be in the prescribed form and subject to the prescribed conditions, if any.

"(4) A form prescribed for the purposes of subsection (3) is to –

- (a) provide that full details of the intention to purchase or sell or of the beneficial interest in the purchase or sale are to be set out in or attached to the form; and
- (b) contain a statement to the effect that, by virtue of the interested party's relationship with the principal, the interested party may have gained information in relation to the principal's circumstances and the proposed purchase or sale that may place the interested party in a position of advantage."

**31. Repeal and substitution**

Section 110 of the Principal Act is repealed and the following substituted:

**"110. Licensed agents to maintain registered office in Australia etc.**

"(1) A licensed agent must maintain an office in Australia at or from which the conduct of business under the licence is to occur.

Penalty: If the offender is a natural person – 100 penalty units.

If the offender is a body corporate – 500 penalty units.

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"(2) A licensed agent must not carry on business in the Territory under a licence at or from an office (whether or not the office is in the Territory) unless, before beginning to carry on the business –

- (a) the agent has notified the Registrar of the address of the office; and
- (b) if business is to be conducted at one or more offices – the agent has notified the Registrar of the office that is to be the principal office of the agent.

Penalty: If the offender is a natural person – 20 penalty units.

If the offender is a body corporate – 100 penalty units.

"(3) For the purposes of this Act, an office is taken to be the principal office of a licensed agent if the agent has notified the Registrar under subsection (2)(b) that the office is to be the principal office of the agent.

**"110A. Business managers**

"(1) Subject to section 111, a licensed agent must ensure that there is at all times in the agent's service a business manager, appointed by the agent, in respect of each office of the business carried on under the licence.

Penalty: If the offender is a natural person – 500 penalty units.

If the offender is a body corporate – 2 500 penalty units.

"(2) A person may be appointed under subsection (1) to be a business manager in respect of all of the offices of, or one or more offices of, the business carried on under a licence.

"(3) A licensed agent must ensure that there is not more than one business manager with substantive and effective control of an office of the business carried on under the licence.

Penalty: If the offender is a natural person – 500 penalty units.

If the offender is a body corporate – 2 500 penalty units.

"(4) A business manager –

- (a) must not act as a manager, or a business manager, on behalf of more than one licensed agent or firm; and
- (b) must not carry on business as an agent on his or her own account, unless he or she is the single agent who comprises the firm in relation to which he or she is a business manager.

Penalty: 500 penalty units.

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"(5) A business manager must ensure that he or she exercises substantive and effective control of the day-to-day operations of an office in relation to which he or she was appointed under subsection (1).

Penalty: If the offender is a natural person – 500 penalty units.

If the offender is a body corporate – 2 500 penalty units.

"(6) Rules of conduct may specify the duties, during a period while a business manager is not present at the office, of a licensed agent and a business manager in relation to an office of the business carried on under a licence."

**32. Repeal and substitution**

Sections 121A and 121B of the Principal Act are repealed and the following substituted:

**"121A. Contracts for sale of land to be in approved form**

"A real estate agent or a conveyancing agent must not arrange for the preparation and execution of a contract of sale of land, unless the contract is in a form –

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

Penalty: If the offender is a natural person – 100 penalty units.

If the offender is a body corporate – 500 penalty units."

**33. Offences committed by employees, partners or directors**

Section 126 of the Principal Act is amended –

- (a) by omitting from subsection (1) ", not being a licensed agent,"; and
- (b) by omitting from subsection (2) "he or it" and substituting "he or she or the firm or company.

**34. Regulations**

Section 127 of the Principal Act is amended –

- (a) by inserting after subsection (1)(d) the following:

"(da) the exemption by the Minister of natural persons, companies or firms, or members of a specified class of natural persons,

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companies or firms, from the requirement to be insured under an approved indemnity insurance policy;"

- (b) by omitting subsection (1)(e) and substituting the following:
  - "(e) the qualifications and experience required to be held by an applicant for a licence to carry on business as an agent;" and
- (c) by omitting from subsection (1)(h) "\$100" and substituting "100 penalty units".

**35. Schedule 1**

Schedule 1 to the Principal Act is amended –

- (a) by omitting the heading to Part 1;
- (b) by omitting from clause 1(c) in Part 1 all the words after "contracts of sale";
- (c) by omitting from clause 2 in Part 1 "may, in addition" and substituting "may, subject to section 31A, in addition";
- (d) by omitting from clause 2(a) in Part 1 "but not including leases, mortgages or encumbrances" and substituting ", leases, mortgages, encumbrances and restrictive covenants";
- (e) by inserting after subclause 2(a) in Part 1 the following:
  - "(aa) contracts for the sale of businesses;" and
- (f) by omitting Part 2.

**36. Further amendments**

The Principal Act is amended as set out in the Schedule.

**37. Transitionals**

(1) A reference on a licence document or in an application under this Act to a person being, or being intended to be, a branch manager is taken, on the commencement of section 31 of this Act, to be a reference to a business manager for the purposes of the Principal Act as amended by this Act.

(2) If, immediately before the day on which section 5 of this Act commences, the Board has not determined an application for a conveyancing agent's licence that is before it, the Board is to continue to hear and determine the application although the Board is not constituted in accordance with section 7(1A) of the Principal Act as amended by section 5 of this Act.

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(3) Section 22(1)(d)(i) of the Principal Act as amended by this Act does not apply in relation to an application made under Part III of the Principal Act before the day on which section 9 of this Act commences.

(4) A policy of indemnity insurance (within the meaning of the Principal Act as in force immediately before the day on which section 29 of this Act commences) that is in force immediately before that day is taken to comply with the requirements of Part XIIA of the Principal Act as amended by this Act but, if the policy is renewed or extended on or after that day, ceases to comply with those requirements.

(5) The person who was the Chairman immediately before the commencement of section 36 of this Act is the Chairperson until the expiry of the period for which he or she was appointed as Chairman, unless he or she otherwise ceases to hold that office during the period.

(6) A person who holds or held a licence under the Principal Act as in force before the commencement of section 8 of this Act is not taken to be other than a fit and proper person within the meaning of section 20 of the Principal Act as amended by this Act by reason only that he or she was found guilty of an offence referred to in that section before the commencement of section 8 of this Act.

**SCHEDULE**

Section 36

Provision	Amendment	
	omit	substitute
Section 4(1)(b)	the whole paragraph	(b) an ADI while exercising a right or power, or performing a duty or obligation, as a trustee; or
Section 4(1)(c)	his	his or her
Section 7A(1)	Chairman	Chairperson
Section 7A(2)	he	he or she
Section 7A(3)	their	his or her
Section 8(2) and (5)	he	the Minister
Section 9(1)	Chairman	Chairperson
Section 13	his office by writing under his hand	the member's office by notice in writing
Section 14(2)	Chairman	Chairperson
Section 14(4)(a)	Chairman	Chairperson
Section 14(4)(b)	the whole paragraph	(b) in the absence of the Chairperson or the alternate Chairperson (if any) appointed under section 7A, the members present and voting must elect a Deputy Chairperson and that person may



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		exercise the powers and perform the duties of the Chairperson for that meeting;
Section 15(1)	he his (all references)	the member the member's
Section 15(3)	Penalty: \$1,000 or imprisonment for 6 months.	Penalty: 100 penalty units.
Section 19	he	the applicant
Section 25A	him	the applicant
Section 26(b)	he (all references)  real estate agent or business agent,	the applicant  real estate agent, business agent or conveyancing agent,
	his (all references)	his or her
Section 27(b)(i)	real estate agent or business agent,	real estate agent, business agent or conveyancing agent,
Section 27(b)(ii)	branch manager (all references)	business manager
Section 28(1)	him	him or her
Section 28(2)	him  under his hand	the Registrar
Section 28(5)	he	the Registrar
Section 29(3)(b)	he	the applicant
Section 29(3)(d)	his	the applicant's
Section 29(4)(c)	him	the applicant
Section 31(1)	him	the applicant

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Section 31(2), (3) and (4)	the whole subsection	
Section 31(5)	branch manager or managers (all references)	business manager or business managers
Section 31(6)	branch manager or managers (all references)  him	business manager or business managers  the Registrar
Section 32B(3)	Penalty: \$200.	Penalty: If the offender is a natural person – 20 penalty units.  If the offender is a body corporate – 100 penalty units.
Section 33(1)	he (all references)	he or she
Section 33(2)	he  himself	he or she  himself or herself
Section 33(3)	himself  his  Penalty: \$500 or imprisonment for 3 months.	himself or herself  his or her  Penalty: 500 penalty units.
Section 34	he  Penalty: \$1,000 or imprisonment for 6 months.	he or she  Penalty: 500 penalty units.
Section 35	Penalty: \$500 or imprisonment for 3 months.	Penalty: If the offender is a natural person – 500 penalty units.  If the offender is a body corporate – 2 500 penalty units.

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Section 36(1)	himself he	himself or herself he or she
Section 36(2)	his	his or her
Section 36(3)	Penalty: \$500 or imprisonment for 3 months.	Penalty: If the offender is a natural person – 500 penalty units. If the offender is a body corporate – 2 500 penalty units.
Section 39(1)	he (first reference)	he or she
Section 39(1)(a), (b), (c) and (d)	he	he or she
Section 41(1)(b)	him	the applicant
Section 41A(1)	him	the applicant
Section 42(2)	under his hand	
Section 42(5)	he	the Registrar
Section 42(8)(a)	him	the applicant
Section 43(1)	his	his or her
Section 46	his	his or her
Section 47	Penalty: \$200.	Penalty: If the offender is a natural person – 20 penalty units. If the offender is a body corporate – 100 penalty units.
Section 48(1)	in his discretion his certificate	the agent's representative's certificate

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Section 48(2)	Penalty: \$200.	Penalty: If the offender is a natural person – 20 penalty units. If the offender is a body corporate – 100 penalty units.
Section 49	his he	the agent's the agent
Section 50(1)	him a bank, building society or credit union	the agent an ADI or the Territory Insurance Office
Section 50(1)(a)	he (all references)	the agent
Section 50(3)	a bank or banks, a building society or building societies or credit union or credit unions	an ADI or ADIs or the Territory Insurance Office
Section 50(4)	a bank, building society or credit union	an ADI or the Territory Insurance Office
Section 50(5)	the whole subsection	(5) If an ADI or the Territory Insurance Office holds an account of a class approved under subsection (4), it must, on a day or the days agreed with the Fund, pay to the Fund any interest accrued in respect of the account.
Section 51	he	he or she
Section 51(a)	bank, building society or credit union	ADI, or the branch of the Territory Insurance Office,

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Section 55(1)(a)	him he	the agent he or she
Section 55(1)(b)	him	the agent
Section 55(2)	Penalty: \$2,000 or imprisonment for 12 months.	Penalty: If the offender is a natural person – 100 penalty units or imprisonment for 12 months.  If the offender is a body corporate – 500 penalty units.
Section 57(1)(a) and (b)	him his	the agent the agent's
Section 57(1)(b)	him	the agent
Section 57(1)	Penalty: \$1,000 or imprisonment for 6 months.	Penalty: If the offender is a natural person – 100 penalty units or imprisonment for 6 months.  If the offender is a body corporate – 500 penalty units.
Section 57(2)(b)	of the law in force in a State or Territory	of the law of a State or Territory that most closely corresponds to this Act
Section 59(1)	his him	the agent's the agent
Section 60(1)	his (all references)	the agent's
Section 60(1)(e)	himself	himself or herself
Section 60(1)(h)	branch manager	business manager

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Section 60(1)	Penalty: \$500 or imprisonment for 3 months.	Penalty: If the offender is a natural person – 100 penalty units. If the offender is a body corporate – 500 penalty units.
Section 61	his (first reference)	the agent's
Section 61(a) and (b)	his	the agent's
Section 61	Penalty: \$500 or imprisonment for 3 months.	Penalty: If the offender is a natural person – 50 penalty units or imprisonment for 6 months. If the offender is a body corporate – 250 penalty units.
Section 64(1)(c)	him	the inspector
Section 64(2)	Penalty: \$500 or imprisonment for 3 months.	Penalty: If the offender is a natural person – 100 penalty units. If the offender is a body corporate – 500 penalty units.
Section 64(4)	such period as he	the period that the inspector
Section 66(3)	his	the agent's
Section 68(6)	he	the Registrar
Section 68A(2)	he	the agent
Section 69A(1)	his (all references) for agents set out or referred to in section 65(1),	his or her

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	he	the agent or person
	him	the agent or person
Section 72(1)(a)	his	his or her
	him	the receiver
Section 77(1) and (2)	Chairman	Chairperson
Section 77(7)	he	he or she
Section 78(1)	Chairman	Chairperson
	by writing under his hand	in writing
	his	the person's
	he	the person
Section 79(1)(b)	his	the person's
	he	the person
Section 79(1)	Penalty: \$200.	Penalty: If the offender is a natural person – 100 penalty units. If the offender is a body corporate – 500 penalty units.
Section 80(1)	him	the person
	Penalty: \$200.	Penalty: If the offender is a natural person – 100 penalty units. If the offender is a body corporate – 500 penalty units.
Section 81(4)	by writing under his hand,	in writing
Section 82	his	the member's
Section 95(1)(b)	Chairman or his	Chairperson or the Chairperson's
Section 95(6)	his	his or her

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Section 98(1)(b) and (2)(b)	his	his or her
Section 99(4)	him	the Registrar
Section 100(3) and (6)	he	he or she
Section 104(1)(a)	he	the Registrar
Section 104(1)(b)	\$50,000	\$200 000
Section 105(1)	he	he or she
Section 107(a)	himself	himself or herself
	him	him or her
Section 108(1)	he	the Registrar
Section 111(1)	he	the Registrar
	branch manager	business manager
Section 111(2)	Penalty: \$500 or imprisonment for 3 months.	Penalty: If the offender is a natural person – 20 penalty units.
		If the offender is a body corporate – 100 penalty units.
Section 112(1)	his	the agent's
	Penalty: \$500 or imprisonment for 3 months.	Penalty: If the offender is a natural person – 20 penalty units. If the offender is a body corporate – 100 penalty units.
Section 113	his	the agent's
	himself	himself or herself
	Penalty: \$500 or imprisonment for 3 months.	Penalty: If the offender is a natural person – 500 penalty units.



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		If the offender is a body corporate – 2 500 penalty units.
Section 114(1)	he	the person
Section 114(2)(a) and (b)	his	the person's
Section 114(2)	his (last reference) he  Penalty: \$500 or imprisonment for 3 months.	the person's the person  Penalty: If the offender is a natural person – 500 penalty units. If the offender is a body corporate – 2 500 penalty units.
Section 115	his  Penalty: \$500 or imprisonment for 3 months.	the agent's  Penalty: If the offender is a natural person – 100 penalty units or imprisonment for 6 months. If the offender is a body corporate – 500 penalty units.
Section 116	Penalty: \$200.	Penalty: If the offender is a natural person – 100 penalty units or imprisonment for 6 months. If the offender is a body corporate – 500 penalty units.
Section 117	Penalty: \$200.	Penalty: If the offender is a natural person – 20 penalty units. If the offender is a body corporate – 100 penalty units.

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Section 118	Penalty: \$200.	Penalty: If the offender is a natural person – 20 penalty units. If the offender is a body corporate – 100 penalty units.
Section 119	Penalty: \$200.	Penalty: If the offender is a natural person – 20 penalty units. If the offender is a body corporate – 100 penalty units.
Section 120(1)(a)(i)	his	the agent
Section 120(2)	Penalty: \$200.	Penalty: If the offender is a natural person – 20 penalty units. If the offender is a body corporate – 100 penalty units.
Section 123	Chairman	Chairperson
Section 125(1)	Penalty: \$500 or imprisonment for 3 months.	Penalty: If the offender is a natural person – 20 penalty units. If the offender is a body corporate – 100 penalty units.

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