



Australian Capital Territory

# **Agents Act 2003**

**A2003-20**

**Republication No 7**

**Effective: 2 June 2005 – 1 November 2005**

Republication date: 2 June 2005

Last amendment made by A2005-20

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Agents Act 2003* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 2 June 2005. It also includes any amendment, repeal or expiry affecting the republished law to 2 June 2005.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

# Agents Act 2003

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Australian Capital Territory

# Agents Act 2003

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An Act to regulate agents, and for other purposes

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## Part 1 Preliminary

### 1 Name of Act

This Act is the *Agents Act 2003*.

### 3 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere in this Act or in other legislation.

For example, the signpost definition '*executive officer*—see the Corporations Act, section 9.' means that the term 'executive officer' is defined in that section and the definition applies to this Act.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

### 4 Notes

A note included in this Act is explanatory and is not part of this Act.

*Note* See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

### 5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

*Note 1* *Criminal Code*

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2 Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

## **6 Application of Act**

This Act does not apply to the following:

- (a) an executor under a will or an administrator under letters of administration;
- (b) a trustee of a deceased estate;
- (c) the public trustee;
- (d) a trustee company under the *Trustee Companies Act 1947* exercising functions under that Act;
- (e) an administrator, a receiver or a liquidator under the Corporations Act;
- (f) a manager under the *Guardianship and Management of Property Act 1991*;
- (g) a bailiff;
- (h) a sheriff;
- (i) another court officer;
- (j) a lawyer exercising the functions of a lawyer;
- (k) a Minister;
- (l) an entity prescribed by regulation.

## Part 2 Key concepts

### 7 Meaning of *fair trading legislation*

In this Act:

***fair trading legislation***—see the *Fair Trading (Consumer Affairs) Act 1973*, section 8A.

*Note* This Act forms part of the fair trading legislation. Other fair trading legislation includes the *Fair Trading Act 1992*, *Fair Trading (Consumer Affairs) Act 1973*, the *Security Industry Act 2003* and the *Consumer and Trader Tribunal Act 2003*. As part of the fair trading legislation, this Act is subject to various provisions of the *Fair Trading (Consumer Affairs) Act 1973* about the administration and enforcement of the fair trading legislation generally.

### 8 Carrying on business as real estate agent

- (1) A person ***carries on business as a real estate agent*** if the person provides, or offers to provide, a real estate agent service for a principal for reward.
- (2) Each of the following is a ***real estate agent service***:
  - (a) buying, selling, exchanging, leasing, assigning or otherwise disposing of land;
  - (b) negotiating with, or inducing or attempting to induce, a person to—
    - (i) buy, sell, exchange, lease, assign or otherwise dispose of land; or
    - (ii) enter into, or make or accept an offer to enter into, a contract to buy, sell, exchange, lease, assign or otherwise dispose of land;
  - (c) collecting payments under a lease;



- (d) collecting payments under a mortgage of land or payments under a terms contract for land;
  - (e) any other service prescribed by regulation for this section.
- (3) To remove any doubt, a person does not carry on business as a real estate agent only because the person carries on business as a stock and station agent.

## **9 Carrying on business as stock and station agent**

- (1) A person *carries on business as a stock and station agent* if the person provides, or offers to provide, a stock and station agent service for a principal for reward.
- (2) Each of the following is a *stock and station agent service*:
- (a) buying, selling, exchanging, leasing, assigning or otherwise disposing of rural land;
  - (b) negotiating with, or inducing or attempting to induce, a person to—
    - (i) buy, sell, exchange, lease, assign or otherwise dispose of rural land; or
    - (ii) enter into, or make or accept an offer to enter into, a contract to buy, sell, exchange, lease, assign or otherwise dispose of rural land;
  - (c) introducing a buyer or lessee of rural land to another licensed agent or to the owner, or an agent of the owner, of rural land;
  - (d) collecting payments under a lease of rural land;
  - (e) buying, selling or otherwise disposing of livestock;
  - (f) negotiating with, or inducing or attempting to induce, a person to—
    - (i) buy, sell, exchange or otherwise dispose of livestock;

- (ii) enter into, or make or accept an offer to enter into, a contract to buy, sell, exchange or otherwise dispose of livestock;
- (g) providing agistment for livestock or collecting fees for the agistment of livestock;
- (h) any other service prescribed by regulation for this section.

## 10 Carrying on business as business agent

- (1) A person *carries on business as a business agent* if the person provides, or offers to provide, a business agent service for a principal for reward.
- (2) Each of the following is a *business agent service*:
  - (a) buying, selling, exchanging, disposing of, or otherwise dealing with, a business or professional practice or a share or interest in the goodwill or stock of a business or professional practice;
  - (b) negotiating for the purchase, sale, exchange, disposition of, or other dealing with, a business or professional practice or any share or interest in the goodwill or stock of a business or professional practice;
  - (c) any other service prescribed by regulation for this section.
- (3) To remove any doubt, a person does not carry on business as a business agent only because the person carries on business as a stock and station agent.

## 11 Carrying on business as travel agent

- (1) A person *carries on business as a travel agent* if the person provides, or offers to provide, a travel agent service for a principal for reward.
- (2) Each of the following is a *travel agent service*:
  - (a) selling, buying or arranging—

- (i) a right to travel on a vehicle; or
    - (ii) a right to accommodation;
  - (b) buying for resale a right to travel on a vehicle or a right to accommodation;
  - (c) negotiating for the purchase by, or sale to, someone else of—
    - (i) a right to travel on a vehicle; or
    - (ii) a right to accommodation;
  - (d) any other service prescribed by regulation for this section.
- (3) However, a person does not carry on business as a travel agent only because the person sells, buys or negotiates for the purchase or sale by someone else of a right to travel on a vehicle if the vehicle is used, or to be used, only to carry passengers to and from the same place on the same day.
- (4) Also, a person does not provide a travel agent service only because the person provides a service in relation to travel or accommodation provided by the person.
- (5) In this section:

**accommodation** means accommodation anywhere in the world.

**travel** means travel to or from anywhere in the world.

## 12 Carrying on business as employment agent

- (1) A person *carries on business as an employment agent* if the person provides, or offers to provide, an employment agent service for a principal for reward.
- (2) Each of the following is an *employment agent service*:
- (a) finding, or helping to find, a person to carry out work for a principal;
  - (b) any other service prescribed by regulation for this section.

- (3) For subsection (2), it does not matter whether the work or employment—
- (a) is to be carried out under a contract of employment or otherwise; or
  - (b) is to be carried out in or outside the ACT.

**13 Employees not taken to carry on business as agents**

For this Act, a person who is an employee of somebody else does not carry on business as an agent only because the person, in the course of employment by the other person, performs any of the following services:

- (a) a real estate agent service;
- (b) a stock and station agent service;
- (c) a business agent service;
- (d) a travel agent service;
- (e) an employment agent service.

**14 Silent partners not taken to carry on business as agents**

For this Act, a person does not carry on business as an agent only because the person is a member of a partnership that carries on the business.

**15 Publishers of advertisements not agents**

For this Act, a person does not carry on business as an agent only because the person publishes, on behalf of somebody else, an advertisement about—

- (a) a business carried on, or to be carried on, by the other person;  
or
- (b) a service provided, or to be provided, by the other person.

## **Part 3                      Licensing of agents**

### **Division 3.1                Agents to be licensed**

#### **16                      Application of div 3.1**

This division does not apply to an administrator.

#### **17                      Meaning of *licensed* for div 3.1**

In this division:

*licensed*—a person is not *licensed* if the person's licence is suspended.

#### **18                      Real estate agents must be licensed**

- (1) A person commits an offence if—
  - (a) the person is not a licensed real estate agent; and
  - (b) the person—
    - (i) carries on business as a real estate agent; or
    - (ii) pretends to be a licensed real estate agent.

Maximum penalty: 100 penalty units, imprisonment for 12 months or both.

- (2) An offence against this section is a strict liability offence.
- (3) This section does not apply to the provision of a service by a person if the person is otherwise licensed to provide the service.

#### **19                      Stock and station agents must be licensed**

- (1) A person commits an offence if—
  - (a) the person is not a licensed stock and station agent; and
  - (b) the person—

- (i) carries on business as a stock and station agent; or
- (ii) pretends to be a licensed stock and station agent.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (2) An offence against this section is a strict liability offence.
- (3) This section does not apply to the provision of a service by a person if the person is otherwise licensed to provide the service.

## **20 Business agents must be licensed**

- (1) A person commits an offence if—
  - (a) the person is not a licensed business agent; and
  - (b) the person—
    - (i) carries on business as a business agent; or
    - (ii) pretends to be a licensed business agent.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (2) An offence against this section is a strict liability offence.
- (3) This section does not apply to the provision of a service by a person if the person is otherwise licensed to provide the service.

## **21 Travel agents must be licensed**

- (1) A person commits an offence if—
  - (a) the person is not a licensed travel agent; and
  - (b) the person—
    - (i) carries on business as a travel agent; or

- (ii) pretends to be a licensed travel agent.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (2) An offence against this section is a strict liability offence.

## **22 Employment agents must be licensed**

- (1) A person commits an offence if—

- (a) the person is not a licensed employment agent; and  
(b) the person—

- (i) carries on business as an employment agent; or  
(ii) pretends to be person is a licensed employment agent.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (2) An offence against this section is a strict liability offence.

## **23 Unlicensed agents cannot recover fees etc**

A person is not entitled to bring a proceeding to recover a commission, fee or reward for a service provided by the person as an agent if the person was not licensed to provide the service when the service was provided.

## **Division 3.2 Eligibility, qualifications and disqualification for licences**

### **24 Eligibility for licences**

- (1) An individual is eligible to be licensed if the commissioner for fair trading is satisfied that the individual—  
(a) is an adult; and

- (b) has the qualifications required under section 25 for the licence; and
  - (c) is not disqualified under section 27 (People disqualified from being licensed) or section 51 (People disqualified from being registered); and
  - (d) for a travel agents licence—the individual is eligible under section 26 (Additional eligibility grounds for travel agents).
- (2) A person in a partnership is eligible to be licensed if the commissioner for fair trading is satisfied that—
- (a) the person is eligible to be licensed under subsection (1); and
  - (b) no person in the partnership is disqualified under section 27 or section 51.
- (3) A corporation is eligible to be licensed if—
- (a) the commissioner for fair trading is satisfied that no director of the corporation is disqualified from being licensed under section 27; and
  - (b) at least 1 director of the corporation holds a licence of the same kind.
- (4) However, a corporation is eligible to be licensed as a travel agent if—
- (a) the commissioner for fair trading is satisfied that no director of the corporation is disqualified from being licensed under section 27; and
  - (b) at least 1 director of the corporation satisfies the eligibility requirements of section 24 (1) (a) to (c); and
  - (c) the corporation satisfies the additional eligibility requirements in section 26 (1) (Additional eligibility grounds for travel agents).



- (5) To remove any doubt, a regulation may provide that a person may be issued with an agents licence with stated conditions if the person does not have stated qualifications.

## **25 Qualifications for licences**

A regulation may prescribe the qualifications required for a licence.

### **Examples of how regulations may prescribe qualifications**

- 1 by requiring the successful completion of a course of study
- 2 by requiring the successful completion of a period of training in a particular activity
- 3 by requiring the achievement of a standard of competency in a particular activity
- 4 by requiring professional development to be undertaken

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

## **26 Additional eligibility grounds for travel agents**

- (1) A person is eligible for a travel agents licence only if the commissioner for fair trading is satisfied that—
- (a) the travel agents board of trustees has decided that the person is eligible under the travel agents trust deed to be a compensation scheme participant; and
  - (b) the person has paid any amount payable under the travel agents trust deed as an initial contribution.
- (2) This section does not apply to an individual applicant for a travel agents licence if the licence applied for is to be subject to a condition (an *employee condition*) that the person carry on business as a travel agent only as an employee of a licensed travel agent who holds a travel agents licence that is not subject to an employee condition.

## **27 People disqualified from being licensed**

- (1) A person is disqualified from being licensed if the person—
- (a) has been convicted, in the ACT or elsewhere, of an offence involving dishonesty; or
- Note* A conviction does not include a spent conviction (see *Spent Convictions Act 2000*, s 16 (c) (i)).
- (b) is an undischarged bankrupt or, at any time in the last 3 years—
    - (i) was an undischarged bankrupt; or
    - (ii) applied to take the benefit of a law for the relief of bankrupt or insolvent debtors; or
    - (iii) compounded with creditors or made an assignment of remuneration for their benefit; or
  - (c) at any time in the last 3 years was involved in the management of a corporation when—
    - (i) the corporation became the subject of a winding-up order; or
    - (ii) a controller or administrator was appointed; or
  - (d) has a mental incapacity that may affect the exercise of the person's functions as licensee; or
  - (e) is licensed and has contravened, or is contravening, an order of the consumer and trader tribunal;
  - (f) holds a licence that is suspended;
  - (g) is disqualified by the consumer and trader tribunal from being licensed or registered; or
  - (h) is disqualified under a corresponding law from holding an authority (however described) to be an agent or be an employee of an agent; or

- (i) holds an authority (however described) under a corresponding law to be an agent or be an employee of an agent that is suspended; or
  - (j) is in partnership with a person disqualified from being licensed or registered; or
  - (k) is a corporation that is the subject of a winding-up order; or
  - (l) is a corporation for which a controller or administrator has been appointed; or
  - (m) is a licensed agent who is applying for a licence or the renewal of a licence and has contravened, or is contravening, a condition of the person's licence; or
  - (n) has contravened, or is contravening, a provision of this Act prescribed by regulation as a disqualifying breach.
- (2) However, a person is not disqualified from being licensed only because subsection (1) (b) or (c) applies to the person if the commissioner for fair trading is satisfied that the person took all reasonable steps to avoid the bankruptcy, application, compounding, winding-up or appointment mentioned in the paragraph.
- (3) Also, a person is not disqualified from being licensed only because the person has contravened, or is contravening, a licence condition if the commissioner for fair trading decides that the contravention should be disregarded for this section.

## **Division 3.3                    Licence procedures and details**

### **28                    Advertising intended licence applications**

- (1) A person who intends to apply for a licence must publish a notice of the person's intention to apply for the licence in a daily ACT newspaper.

- (2) The notice must state the kind of licence that is intended to be applied for and include any other information prescribed by regulation.

## **29 Licence applications**

- (1) An application for a licence may be made to the commissioner for fair trading only—
- (a) by a person who has published a notice under section 28 in relation to the application; and
- (b) within 10 business days after the day the notice is published.

*Note 1* If a form is approved under s 177 for an application, the form must be used.

*Note 2* A fee may be determined under section 176 for this section.

- (2) An application must be accompanied by a statement setting out the place that, if the licence is issued, will be the applicant's main place of business.
- (3) An applicant must give the commissioner for fair trading a consent signed by the applicant, the applicant's partners, and, if the applicant is a corporation, by all the directors, for a police officer to make inquiries about any criminal record of any person who signs the consent.

## **30 Objections to licences**

- (1) This section applies if a notice (the *public notice*) is published under section 28 (1) (Advertising intended licence applications) in relation to a licence application.
- (2) A person may object to the issue of the licence by written notice (the *objection*) given to the commissioner for fair trading within 10 business days after the day the public notice is published.

- (3) The objection must set out the grounds on which it is claimed that the applicant is not eligible for the licence.

*Note* For the grounds of eligibility, see s 24.

- (4) The person making the objection must give a copy of the objection to the applicant within 10 business days after the day the public notice is published.

*Note* For how documents may be served, see the Legislation Act, pt 19.5.

- (5) The commissioner for fair trading may consider the objection only if satisfied that subsection (4) has been complied with.

### **31 Further information for licence applications**

- (1) The commissioner for fair trading may, by written notice given to an applicant for a licence, require the applicant to give the commissioner further stated information, or a document, that the commissioner reasonably needs to consider the application.
- (2) If the applicant fails to comply with a requirement under subsection (1), the commissioner may refuse to consider the application until the requirement is complied with.

### **32 Information about licence applications**

The commissioner for fair trading may seek information about a licence application or an applicant in any way the commissioner considers appropriate.

### **33 Decisions on licence applications**

- (1) This section applies if the commissioner for fair trading receives an application for a licence under section 29 (Licence applications).
- (2) Within 12 weeks after the day the commissioner for fair trading receives the application, the commissioner must—
- (a) issue the licence; or

(b) refuse to issue the licence.

*Note* Failure to do an act within the period set out is taken to be a decision not to do the act (see *Consumer and Trader Tribunal Act 2003*, s 16.)

- (3) The commissioner for fair trading must issue the licence if satisfied that the applicant is eligible to be licensed under section 24 (Eligibility for licences).
- (4) If a requirement for information or a document relating to an application is made under section 31 (Further information for licence applications), the 12-week period mentioned in subsection (2) is extended by the period beginning on the day when the requirement is made and ending on the day when the requirement is complied with.

### **34 Licence conditions**

- (1) A licence is subject to any conditions—
- (a) prescribed by regulation; or
- (b) put on the licence under this section.

#### **Examples of conditions that may be put on a licence**

- 1 restrictions about the size or kind of business that may be operated
- 2 geographic limitations
- 3 requiring the licensee to obtain stated qualifications

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) The commissioner for fair trading—
- (a) may put a condition on a licence when the licence is issued or at any other time; and
- (b) may at any time amend or omit a condition that the commissioner has put on a licence; and

- (c) must put a condition on a licence, or amend or omit a condition, if directed to do so by the consumer and trader tribunal.
- (3) The commissioner for fair trading may put a condition on a person's licence, or amend a condition, under subsection (2) (a) or (b) only if—
- (a) the commissioner has given the person written notice of the proposed condition or amendment; and
  - (b) the notice states that written comments on the proposal may be made to the commissioner within a stated period of at least 10 business days after the day the notice is given to the person; and
  - (c) the commissioner has considered any comments made within the period.
- (4) Subsection (3) does not apply if the person asked for, or agreed in writing to, the proposed condition or amendment.

### **35 Term of licences**

A licence is issued for the period of up to 1 year stated in the licence.

### **36 Renewal of licences**

- (1) A licensed agent may apply to the commissioner for fair trading to renew the licence.

*Note 1* If a form is approved under s 177 for an application, the form must be used.

*Note 2* A fee may be determined under section 176 for this section.

- (2) Within 6 weeks after the day the commissioner for fair trading receives an application, the commissioner must—
- (a) renew the licence; or

(b) refuse to renew the licence.

*Note* Failure to do an act within the period set out is taken to be a decision not to do the act (see *Consumer and Trader Tribunal Act 2003*, s 16).

- (3) The commissioner for fair trading must renew the licence if satisfied that the applicant—
- (a) is eligible to be licensed under section 24 (Eligibility for licences); and
  - (b) has complied with the requirements (if any) prescribed by regulation.

### **37 Continuation of existing licences until the renewal applications decided**

- (1) If a licensed agent applies to renew a licence under section 36, the licence remains in force until the application is decided.
- (2) Subsection (1) applies even if it causes the existing licence to be in force for longer than 1 year.
- (3) If a person who has been a licensed agent applies, within 3 months after the day the term of the licence ends (the *last licence day*), to renew the licence—
  - (a) any service provided by the person after the last licence day and before the day of the commissioner for fair trading's decision about the renewal application (whether or not the licence is renewed) is taken to have been provided by the person as a licensed agent; and
  - (b) if the licence is renewed, the term of the renewed licence is backdated to the day after the last licence day.
- (4) Subsection (3) (a) does not prevent the person committing, being prosecuted for, or being found guilty of, an offence against division 3.1 (Agents to be licensed).



**38 Licence certificates**

- (1) If the commissioner for fair trading decides to issue a licence to a person or renew a person's licence, the commissioner must give the person a licence certificate.
- (2) The commissioner for fair trading may issue a replacement licence certificate to a licensed agent if satisfied that the certificate has been lost, stolen, damaged or destroyed.

*Note 1* If a form is approved under s 177 for an application, the form must be used.

*Note 2* A fee may be determined under section 176 for this section.

**39 Surrender of licence**

A licensed agent may at any time surrender the licence by written notice given to the commissioner for fair trading.

**Division 3.4 Disciplinary action against agents**

*Note* Under the *Fair Trading (Consumer Affairs) Act 1973*, s 7, the commissioner for fair trading may receive and investigate complaints in relation to the supply of goods and services or the acquisition of interests in land.

**40 Meaning of agent for div 3.4**

In this division:

*agent* means a licensed agent or a former licensed agent.

**41 Grounds for disciplinary action—agents**

- (1) Each of the following is a *ground for disciplinary action* in relation to an agent:
  - (a) the agent has been convicted or found guilty of an offence against the fair trading legislation;

(b) the agent has contravened, or is contravening, a rule of conduct;

*Note* Rules of conduct—see s 171.

(c) the agent has contravened, or is contravening, a condition of the agent's licence;

(d) if the agent is a licensed agent—the agent has become ineligible for a licence under section 24 (Eligibility for licences) or for registration under section 49 (Eligibility for registration);

(e) if the agent is a licensed travel agent whose licence is not subject to an employee condition—the agent is not a compensation scheme participant;

(f) the agent has contravened, or is contravening, an order of the consumer and trader tribunal;

(g) the agent's licence was obtained by fraud or mistake;

(h) a ground prescribed by regulation for this section.

(2) However, subsection (1) (a) to (e) applies to a former licensed agent only in relation to anything that happened while the person was licensed.

#### **42 Commissioner may refer matter to tribunal—agents**

If the commissioner for fair trading considers that a ground for disciplinary action exists in relation to an agent, the commissioner may apply to the consumer and trader tribunal for the tribunal to take disciplinary action against the agent.

**43 Disciplinary action tribunal may take—agents**

- (1) On application by the commissioner for fair trading, the consumer and trader tribunal may—
  - (a) in relation to a licensed agent—cancel or suspend the agent’s licence; and
  - (b) in relation to any agent—take other disciplinary action.
- (2) If the consumer and trader tribunal cancels a licensed agent’s licence, the tribunal may also disqualify the agent from being licensed for a stated period or indefinitely.
- (3) If the consumer and trader tribunal cancels or suspends an agent’s licence, the tribunal may also cancel or suspend any other licence held by the agent.
- (4) In this section:

*other disciplinary action* means disciplinary action, other than cancellation or suspension of the agent’s licence, that the consumer and trader tribunal may take under the *Consumer and Trader Tribunal Act 2003*.

*Note* A period of disqualification may be reviewed by the consumer and trader tribunal under s 172.

## Part 4 Registration of salespeople

### Division 4.1 Salespeople to be registered

#### 44 Meaning of *registered* for div 4.1

In this division:

*registered*—a person is not *registered* if the person's registration is suspended.

#### 45 Real estate salespeople must be registered

- (1) A person commits an offence if the person—
  - (a) is not a registered real estate salesperson; and
  - (b) pretends to be employed by a licensed real estate agent to provide a real estate agent service.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) An offence against this section is a strict liability offence.

#### 46 Stock and station salespeople must be registered

- (1) A person commits an offence if the person—
  - (a) is not a registered stock and station salesperson; and
  - (b) pretends to be employed by a licensed stock and station agent to provide a stock and station agent service.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) An offence against this section is a strict liability offence.

**47 Business salespeople must be registered**

- (1) A person commits an offence if the person—
  - (a) is not a registered business salesperson; and
  - (b) pretends to be employed by a licensed business agent to provide a business agent service.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) An offence against this section is a strict liability offence.

**48 Salespeople must be registered to recover fees etc**

- (1) A person is not entitled to bring a proceeding to recover salary, or a commission, fee or reward, for a service provided by the person if, in providing the service, the person contravened section 45 (Real estate salespeople must be registered), section 46 (Stock and station salespeople must be registered) or section 47 (Business salespeople must be registered).
- (2) Subsection (1) applies whether or not anyone has been convicted of an offence against section 45, section 46 or section 47.

**Division 4.2 Eligibility, qualifications and disqualification for registered salespeople**

**49 Eligibility for registration**

- (1) An individual is eligible to be registered if the commissioner for fair trading is satisfied that the individual—
  - (a) is an adult; and
  - (b) has the qualifications required under section 50 for the registration; and

- (c) is not disqualified under section 27 (People disqualified from being licensed) or section 51 (People disqualified from being registered).
- (2) To remove any doubt, a regulation may provide that a person may be registered subject to stated conditions if the person does not have stated qualifications.

## **50 Qualifications for registration**

A regulation may prescribe the qualifications required for registration.

### **Examples of how regulation may prescribe qualifications**

- 1 by requiring the successful completion of a course of study
- 2 by requiring the successful completion of a period of training in a particular activity
- 3 by requiring the achievement of a standard of competency in a particular activity
- 4 by requiring professional development to be undertaken

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

## **51 People disqualified from being registered**

- (1) A person is disqualified from being registered if the person—
- (a) has been convicted, in the ACT or elsewhere, of an offence involving dishonesty; or
- Note* A conviction does not include a spent conviction (see *Spent Convictions Act 2000*, s 16 (c) (i)).
- (b) is an undischarged bankrupt or, at any time in the last 3 years—
- (i) was an undischarged bankrupt; or
  - (ii) applied to take the benefit of a law for the relief of bankrupt or insolvent debtors; or

- (iii) compounded with creditors or made an assignment of remuneration for their benefit; or
  - (c) has a mental incapacity that may affect the exercise of the person's functions as a registered salesperson; or
  - (d) is registered and has contravened, or is contravening, an order of the consumer and trader tribunal;
  - (e) holds a registration that is suspended;
  - (f) is disqualified by the consumer and trader tribunal from being licensed or registered; or
  - (g) is disqualified under a corresponding law from holding an authority (however described) to be an agent or an employee of an agent; or
  - (h) holds an authority (however described) under a corresponding law to be an agent or an the employee of an agent that is suspended; or
  - (i) is a registered salesperson who is applying for another kind of registration and has contravened, or is contravening, a condition of the person's registration; or
  - (j) has contravened, or is contravening, a provision of this Act prescribed by regulation as a disqualifying breach.
- (2) However, a person is not disqualified from being registered only because subsection (1) (b) applies to the person if the commissioner for fair trading is satisfied that the person took all reasonable steps to avoid the bankruptcy, application or compounding mentioned in the paragraph.
- (3) Also, a person is not disqualified from being registered only because the person has contravened, or is contravening, a registration condition if the commissioner for fair trading decides that the contravention should be disregarded for this section.

## Division 4.3 Registration procedures and details

### 52 Advertising intended registration applications

- (1) A person who intends to apply for registration must publish a notice of the person's intention to apply for registration in a daily ACT newspaper.
- (2) The notice must state the kind of registration that is intended to be applied for and include any other information prescribed by regulation.

### 53 Registration applications

- (1) An application for registration may be made to the commissioner for fair trading only—
  - (a) by a person who has published a notice under section 52 in relation to the application; and
  - (b) within 10 business days after the day the notice is published.

*Note 1* If a form is approved under s 177 for an application, the form must be used.

*Note 2* A fee may be determined under section 176 for this section.

- (2) An applicant must give the commissioner for fair trading a consent signed by the applicant for a police officer to make inquiries about any criminal record of the applicant.

### 54 Objections to registration

- (1) This section applies if a notice (the **public notice**) is published under section 52 (1) (Advertising intended registration applications) in relation to a registration application.
- (2) A person may object to the registration by written notice (the **objection**) given to the commissioner for fair trading within 10 business days after the day the public notice is published.



- (3) The objection must set out the grounds on which it is claimed that the applicant is not eligible for registration.

*Note* For the grounds of eligibility, see s 49.

- (4) The person making the objection must give a copy of the objection to the applicant within 10 business days after the day the public notice is published.

*Note* For how documents may be served, see the Legislation Act, pt 19.5.

- (5) The commissioner for fair trading may consider the objection only if satisfied that subsection (4) has been complied with.

## **55 Further information for registration applications**

- (1) The commissioner for fair trading may, by written notice given to an applicant for registration, require the applicant to give the commissioner further stated information, or a document, that the commissioner reasonably needs to consider the application.
- (2) If the applicant fails to comply with a requirement under subsection (1), the commissioner may refuse to consider the application until the requirement is complied with.

## **56 Information about registration applications**

The commissioner for fair trading may seek information about a registration application or an applicant in any way the commissioner considers appropriate.

## **57 Decisions on registration applications**

- (1) This section applies if the commissioner for fair trading receives an application for registration under section 53 (Registration applications).
- (2) Within 12 weeks after the day the commissioner for fair trading receives the application, the commissioner must—
- (a) register the applicant; or

(b) refuse to register the applicant.

*Note* Failure to do an act within the period set out is taken to be a decision not to do the act (see *Consumer and Trader Tribunal Act 2003*, s 16).

- (3) The commissioner for fair trading must register the applicant if satisfied that the applicant is eligible to be registered under section 49 (Eligibility for registration).
- (4) If a requirement for information or a document relating to an application is made under section 55 (Further information for registration applications), the 12-week period mentioned in subsection (2) is extended by the period beginning on the day when the requirement is made and ending on the day when the requirement is complied with.

## **58 Registration conditions**

- (1) A registration is subject to any conditions—
- (a) prescribed by regulation; or
- (b) put on the registration under this section.

### **Example of a condition that may be put on a registration**

that the registered person obtain a specified qualification

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see *Legislation Act*, s 126 and s 132).

- (2) The commissioner for fair trading—
- (a) may put a condition on a registration when the person is registered or at any other time; and
- (b) may at any time amend or omit a condition that the commissioner has put on a person's registration; and
- (c) must put a condition on a registration, or amend or omit a condition, if directed to do so by the consumer and trader tribunal.

- (3) The commissioner for fair trading may put a condition on a person's registration, or amend a condition, under subsection (2) (a) or (b) only if—
- (a) the commissioner has given the person or registered salesperson written notice of the proposed condition or amendment; and
  - (b) the notice states that written comments on the proposal may be made to the commissioner within a stated period of at least 10 business days after the day the notice is given to the person; and
  - (c) the commissioner has considered any comments made within the period.
- (4) Subsection (3) does not apply if the person asked for, or agreed in writing to, the proposed condition or amendment.

## **59 Term of registration**

A registration is for the period of up to 1 year stated in the registration certificate.

## **60 Renewal of registrations**

- (1) A registered salesperson may apply to the commissioner for fair trading to renew the registration.

*Note 1* If a form is approved under s 177 for an application, the form must be used.

*Note 2* A fee may be determined under section 176 for this section.

- (2) Within 6 weeks after the day the commissioner for fair trading receives the application, the commissioner must—
- (a) renew the registration; or

(b) refuse to renew the registration.

*Note* Failure to do an act within the period set out is taken to be a decision not to do the act (see *Consumer and Trader Tribunal Act 2003*, s 16).

- (3) The commissioner for fair trading must renew the registration if satisfied that—
- (a) the applicant is eligible to be registered under section 49 (Eligibility for registration); and
  - (b) the applicant has complied with the requirements (if any) prescribed by regulation.

**61 Continuation of existing registrations until renewal applications decided**

- (1) If a registered salesperson applies to renew the registration under section 60, the registration remains in force until the application is decided.
- (2) Subsection (1) applies even if it causes the existing registration to be in force for longer than 1 year.
- (3) If a person who has been a registered salesperson applies, within 3 months after the day the term of the registration ends (the *last registration day*), to renew the registration—
  - (a) any service provided by the person after the last registration day and before the day of the commissioner for fair trading's decision about the renewal application (whether or not the registration is renewed) is taken to have been provided by the person as a registered salesperson; and
  - (b) if the registration is renewed, the term of the renewed registration is backdated to the day after the last registration day.
- (4) Subsection (3) (a) does not prevent the person committing, being prosecuted for, or being found guilty of, an offence against division 4.1 (Salespeople to be registered).

**62 Registration certificates**

- (1) If the commissioner for fair trading decides to register a person or renew a person's registration, the commissioner must give the person a registration certificate.
- (2) The commissioner for fair trading may issue a replacement registration certificate to a registered salesperson if satisfied that the certificate has been lost, stolen, damaged or destroyed.

*Note 1* If a form is approved under s 177 for an application, the form must be used.

*Note 2* A fee may be determined under section 176 for this section.

**63 Surrender of registration**

A registered salesperson may at any time surrender the registration by written notice given to the commissioner for fair trading.

**Division 4.4 Disciplinary action against registered salespeople**

*Note* Under the *Fair Trading (Consumer Affairs) Act 1973*, s 7, the commissioner for fair trading may receive and investigate complaints in relation to the supply of goods and services or the acquisition of interests in land.

**64 Meaning of *registered salesperson* for div 4.4**

In this division:

*registered salesperson* means a registered salesperson or a former registered salesperson.

**65 Grounds for disciplinary action—salespeople**

- (1) Each of the following is a *ground for disciplinary action* in relation to a registered salesperson:
  - (a) the salesperson has been convicted or found guilty of an offence against the fair trading legislation;

(b) the salesperson has contravened, or is contravening, a rule of conduct;

*Note* Rules of conduct—see s 171.

(c) the salesperson has contravened, or is contravening, a condition of the salesperson's registration;

(d) the salesperson has become ineligible for registration under section 49 (Eligibility for registration);

(e) the salesperson has contravened, or is contravening, an order of the consumer and trader tribunal;

(f) the salesperson's registration was obtained by fraud or mistake;

(g) a ground prescribed by regulation for this section.

(2) However, subsection (1) (a) to (e) applies to a former registered salesperson only in relation to anything that happened while the person was registered.

#### **66 Commissioner may refer matter to tribunal—salespeople**

If the commissioner for fair trading considers that a ground for disciplinary action exists in relation to a registered salesperson, the commissioner may apply to the consumer and trader tribunal for the tribunal to take disciplinary action against the salesperson.

#### **67 Disciplinary action tribunal may take—salespeople**

(1) On application by the commissioner for fair trading, the consumer and trader tribunal may—

(a) in relation to a registered salesperson—cancel or suspend the salesperson's registration; and

(b) in relation to any salesperson—take other disciplinary action.

(2) If the consumer and trader tribunal cancels a registered salesperson's registration, the tribunal may also disqualify the salesperson from being registered for a stated period or indefinitely.

(3) If the consumer and trader tribunal cancels or suspends a salesperson's registration, the tribunal may also cancel or suspend any other registration held by the salesperson.

(4) In this section:

*other disciplinary action* means disciplinary action, other than cancellation or suspension of the salesperson's registration, that the consumer and trader tribunal may take under the *Consumer and Trader Tribunal Act 2003*.

*Note* A period of disqualification may be reviewed by the consumer and trader tribunal under s 172.

## **Part 5** Conduct of licensed agents and registered salespeople

### **Division 5.1** Licensed agent's main place of business

#### **68** Main place of business

- (1) On the issue of an agents licence, the commissioner for fair trading must enter in the register, as the agent's main place of business, the place shown in the statement under section 29 (2) (Licence applications).

*Note* **Register**—see s 160.

- (2) A licensed agent must tell the commissioner for fair trading in writing about any change in the agent's main place of business in the ACT within the period prescribed by regulation.
- (3) The commissioner for fair trading must enter in the register any change notified under subsection (2).

### **Division 5.2** Management of licensed agent's business

#### **69** Each place of business to have licensed agent in charge

- (1) A licensed agent commits an offence if—
  - (a) the licensed agent is an individual; and
  - (b) the licensed agent carries on business at 2 or more places of business; and
  - (c) the licensed agent does not employ, at each place of business where the licensed agent is not responsible for the day-to-day management of the business, an individual who—



- (i) is a licensed agent; and
- (ii) is responsible for the day-to-day management of the place of business.

Maximum penalty: 100 penalty units.

- (2) A licensed agent commits an offence if—
- (a) the licensed agent is a corporation; and
  - (b) the licensed agent does not employ, at each place of business where the licensed agent carries on business, an individual who—
    - (i) is a licensed agent; and
    - (ii) is responsible for the day-to-day management of the place of business.

Maximum penalty: 100 penalty units.

- (3) An offence against this section is a strict liability offence.
- (4) A person may be exempted from this section under section 71 (Licensed agent to be in charge of business—exemptions).

## **70 Licensed agent to be in charge of 1 place of business**

- (1) A licensed agent commits an offence if the licensed agent is responsible for the day-to-day management of 2 or more places of business.

Maximum penalty: 100 penalty units.

- (2) A licensed agent commits an offence if—
- (a) the licensed agent is employed to be responsible for the day-to-day management of another licensed agent's place of business; and
  - (b) the licensed agent provides services for 2 or more licensed agents at the place; and

- (c) the licensed agents to whom the services are provided are not in partnership with each other.

Maximum penalty: 100 penalty units.

- (3) An offence against this section is a strict liability offence.
- (4) This section does not apply to—
  - (a) a licensed travel agent; or
  - (b) a licensed employment agent.
- (5) A person may be exempted from this section under section 71.

## **71 Licensed agent to be in charge of business—exemptions**

- (1) The commissioner for fair trading may, in writing, exempt a licensed agent from section 69 (Each place of business to have licensed agent in charge) or section 70 (Licensed agent to be in charge of 1 place of business).
- (2) The exemption may be conditional.
- (3) A regulation may prescribe the matters to be considered by the commissioner for fair trading in deciding whether to exempt a licensed agent under subsection (1), or amend or revoke an exemption.
- (4) A condition under this section may be put or amended as if it were a condition on a licence.

*Note* The procedure for putting or amending licence conditions is dealt with in s 34 (2), (3) and (4).

## **72 Licensed agent must not share commission etc with unlicensed person**

- (1) A licensed agent commits an offence if—
  - (a) the licensed agent—

- (i) enters into an agreement or arrangement with an unlicensed person; or
- (ii) acts with an unlicensed person; and
- (b) the unlicensed person is not a registered salesperson; and
- (c) the unlicensed person would, apart from this section, be entitled to a share of the commission, fee or reward payable to the licensed agent for the provision of a service for which the licensed agent is required to be licensed.

Maximum penalty: 50 penalty units.

- (2) An offence against subsection (1) is a strict liability offence.
- (3) This section does not apply in relation to an agreement, arrangement or action by a licensed agent with a partner of the agent who does not carry on business as an agent.
- (4) An agreement or arrangement mentioned in subsection (1) is void so far as it purports to provide an entitlement mentioned in subsection (1) (c).
- (5) A person is not entitled to bring a proceeding to recover a commission, fee or reward for a service provided by the person if, in providing the service, the person contravened subsection (1).
- (6) Subsections (4) and (5) apply whether or not anyone has been convicted of an offence against subsection (1).
- (7) A provision in, or applying to, an agreement that purports to exclude or change the operation of this section is void.
- (8) In this section:

***unlicensed person*** means a person who—

- (a) is not licensed under this Act; and
- (b) either—

- (i) does not hold an authority (however described) under a corresponding law to be an agent or an employee of an agent; or
- (ii) holds an authority mentioned in subparagraph (i) that is suspended.

**73 Agreements between licensed agents to share commission etc**

- (1) An agreement between licensed agents to share a commission, fee or reward for a service carried out as licensed agents is unenforceable unless the agreement—
  - (a) is in writing; and
  - (b) is signed by each of the licensed agents; and
  - (c) contains the terms prescribed by regulation for this section.
- (2) A provision in, or applying to, the agreement that purports to exclude or change the operation of this section (including the terms prescribed by regulation for this section) is void.
- (3) This section does not apply to—
  - (a) an agreement between licensed agents who are in partnership together; or
  - (b) an agreement between licensed agents if one agent employs the other; or
  - (c) an agreement, transaction, circumstance or kind of person exempted from this section by regulation; or
  - (d) an agreement for services in relation to land (other than rural land), if the land is used or intended to be used only or mainly for commercial, business or industrial purposes.

- (4) A licensed agent commits an offence if the agent enters into an agreement that is unenforceable because of subsection (1).

Maximum penalty: 50 penalty units.

- (5) An offence against subsection (5) is a strict liability offence.

#### **74 Duty to notify failures to account**

- (1) A licensed agent commits an offence if the agent—

- (a) finds out that there has been a failure to account by an employee; and
- (b) does not tell the commissioner for fair trading about the failure within 5 business days after the day the agent finds out about it.

Maximum penalty: 50 penalty units.

- (2) An offence against this section is a strict liability offence.

- (3) In this section:

*employee*, of a licensed agent, includes a person who performs services for the agent on contract.

### **Division 5.3 Employment of salespeople**

*Note* At common law, a licensed agent is responsible, in tort and contract, for acts or omissions of the agent's employees within the scope of the employee's authority or for the benefit, or purported or intended benefit, of the agent or agent's business.

#### **75 Licensed agent may only employ licensed agent or registered salesperson**

- (1) This section applies to a licensed agent who is a licensed real estate agent, licensed stock and station agent or licensed business agent.
- (2) A licensed agent commits an offence if—

- (a) the agent employs a person to provide a service, in relation to the agent's business, that a person must be licensed or registered to provide; and
- (b) the person provides the service; and
- (c) either—
  - (i) the person is not licensed or registered to provide the service; or
  - (ii) the person is licensed or registered to provide the service but the licence or registration is suspended.

Maximum penalty: 50 penalty units.

- (3) An offence against subsection (2) is a strict liability offence.

## **76 Employee must tell employer about disqualification**

- (1) An employee of a licensed agent commits an offence if the employee—
  - (a) is disqualified under—
    - (i) section 27 (People disqualified from being licensed) from being licensed; or
    - (ii) section 51 (People disqualified from being registered) from being registered; and
  - (b) does not tell the licensed agent about the disqualification within 5 business days after the day the employee finds out about it.

Maximum penalty: 50 penalty units.

- (2) An offence against this section is a strict liability offence.

## **Division 5.4 Conflicts of interest**

### **77 Agents must not act for buyer and seller of land**

- (1) An agent commits an offence if the agent acts as agent for the buyer and seller of the same land at the same time.

Maximum penalty: 100 penalty units.

- (2) An offence against subsection (1) is a strict liability offence.

## **Division 5.5 Advertisements and other statements**

### **78 When is a statement *published*?**

A statement is *published* if it is—

- (a) included in a newspaper, periodical publication or other publication; or
- (b) publicly exhibited in, on, over or under a building, vehicle or place (whether or not a public place and whether on land or water), or in the air in view of people on a street or in a public place; or
- (c) contained in a document given to someone or left on premises where someone lives or works; or
- (d) broadcast by radio or television; or
- (e) electronically disseminated by other means (for example, by inclusion on a website).

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

**79 False or misleading advertisements**

- (1) An agent commits an offence if—
  - (a) the agent publishes an advertisement; and
  - (b) the advertisement contains a statement about the agent's business; and
  - (c) the agent publishes the advertisement knowing that, or being reckless about whether, the statement—
    - (i) is false or misleading; or
    - (ii) omits anything without which the statement is misleading.

Maximum penalty: 100 penalty units.

- (2) Subsection (1) (c) (i) does not apply if the statement is not false or misleading in a material particular.
- (3) Subsection (1) (c) (ii) does not apply if the omission does not make the statement misleading in a material particular.

**Division 5.6 Land—further provisions**

**80 Meaning of *benefit*, *estimate* and *selling price* for div 5.6**

In this division:

*benefit* means financial or other benefit.

*estimate* includes opinion and belief.

*selling price* includes selling price range.

**81 Meaning of *pre-contract information* for div 5.6**

In this division:

*pre-contract information*, for an agent acting for the buyer or seller of land, means information about—



- (a) any relationship, and the nature of the relationship (whether personal or commercial), the agent has with anyone whom the agent has referred, refers, or expects to refer, the seller or buyer to for professional services in relation to the sale or purchase; and
- (b) whether the agent receives, or expects to receive, any benefit, whether financial or otherwise, from a person whom the agent has referred, refers, or expects to refer, the seller or buyer to for professional services and, if so, the amount or value of the benefit; and
- (c) the amount, value or nature of any benefit anyone (other than the buyer or seller) has received, receives, or expects to receive, in relation to the sale or purchase, or for promoting the sale or purchase, or for providing a service in relation to the sale or purchase, of the land.

**Examples of relationships for par (a)**

- 1 a family relationship
- 2 a business relationship
- 3 a fiduciary relationship
- 4 a relationship in which a person is accustomed, or obliged, to act in accordance with the directions, instructions, or wishes of the other

**Examples of people who may receive a benefit for par (c)**

- 1 finance broker
- 2 financial adviser
- 3 financier
- 4 property valuer
- 5 lawyer
- 6 real estate agent

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

**82**      **Meaning of *beneficial interest* and *obtains a beneficial interest* for div 5.6**

In this division:

*beneficial interest* in land includes—

- (a) a lease of the land; and
- (b) an option for the purchase of the land or a lease of the land; and
- (c) a general power of appointment over the land.

*obtains a beneficial interest*—a person (including an agent or salesperson) *obtains a beneficial interest* in land if a beneficial interest in the land is obtained by—

- (a) the person; or
- (b) a family member of the person; or
- (c) a corporation with not more than 100 members that the person, or a family member of the person, is a member of; or
- (d) a subsidiary of a corporation mentioned in paragraph (c); or
- (e) a corporation that the person, or a family member of the person, is an executive officer of; or
- (f) the trustee of a trust that the person, or a family member of the person, is a beneficiary of, if the interest is obtained on behalf of the trust; or
- (g) a member of a firm or partnership that the person, or a family member of the person, is a member of; or
- (h) someone else carrying on a business if the person, or a family member of the person, has a direct or indirect right to participate in the profits of the business.

**83 Agents giving financial and investment advice**

- (1) A regulation may make provision in relation to information or warnings that an agent must give to a person if the agent provides financial or investment advice to the person about the sale or purchase of land.
- (2) Despite section 178 (3) (Regulation-making power), a regulation may prescribe maximum penalties of not more than 200 penalty units for offences for contravention of a regulation made for subsection (1).

**84 Agents must disclose certain information**

- (1) An agent who is acting for a buyer of land must disclose the pre-contract information to the buyer before the buyer enters into a contract for the purchase of the land.

Maximum penalty: 200 penalty units.

- (2) A written acknowledgement by a buyer of land that the pre-contract information was given to the buyer before the buyer entered into a contract in relation to the land is evidence that subsection (1) has been complied with in relation to the land.

*Note* If a form is approved under s 177 for an acknowledgement, the form must be used.

- (3) An agent who is acting for a seller of land must disclose the pre-contract information to the seller before the seller enters into a contract for the sale of the land.

Maximum penalty: 200 penalty units.

- (4) A written acknowledgement by a seller of land that the pre-contract information was given to the seller before the seller entered into a contract in relation to the land is evidence that subsection (3) has been complied with in relation to the land.

*Note* If a form is approved under s 177 for an acknowledgement, the form must be used.

- (5) An offence against this section is a strict liability offence.

**85 Salespeople must disclose certain information**

- (1) A salesperson commits an offence if the salesperson—
- (a) is employed by an agent who is acting for a buyer of land; and
  - (b) does not disclose to the buyer the pre-contract information before the buyer enters into a contract for the purchase of land.

Maximum penalty: 200 penalty units.

- (2) A written acknowledgement by a buyer of land that the pre-contract information was given to the buyer before the buyer entered into a contract in relation to the land is evidence that subsection (1) has been complied with in relation to the land.

*Note* If a form is approved under s 177 for an acknowledgement, the form must be used.

- (3) A salesperson commits an offence if the salesperson—
- (a) is employed by a licensed agent who is acting for a seller of land; and
  - (b) does not disclose to the seller the pre-contract information before the seller enters into a contract for the sale of the land.

Maximum penalty: 200 penalty units.

- (4) A written acknowledgement by a seller of land that the pre-contract information was given to the seller before the seller entered into a contract in relation to the land is evidence that subsection (3) has been complied with in relation to the land.

*Note* If a form is approved under s 177 for an acknowledgement, the form must be used.

- (5) An offence against this section is a strict liability offence.

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**86 Agents must not obtain beneficial interest in land**

- (1) An agent commits an offence if the agent—
- (a) acts for a seller of land; and
  - (b) intentionally—
    - (i) obtains a beneficial interest in the land; or
    - (ii) is in any way involved in someone else obtaining a beneficial interest in the land.

Maximum penalty: 200 penalty units, imprisonment for 2 years or both.

- (2) Subsection (1) does not apply to an agent in relation to a beneficial interest in land if—
- (a) before the interest is obtained—
    - (i) the agent fully discloses to the seller the circumstances surrounding the obtaining of the beneficial interest; and
    - (ii) the seller agrees in writing to the obtaining of the interest; and

*Note* If a form is approved under s 177 for an agreement, the form must be used.

- (b) the seller—
  - (i) does not pay to the agent any commission or reward for the sale of the land; or
  - (ii) if the agent is a licensed agent—agrees in writing, before entering into a contract for the sale of the land, to the payment of a commission or reward to the agent for the sale.

*Note* If a form is approved under s 177 for an agreement, the form must be used.

**87 Salespeople must not obtain beneficial interest in land**

- (1) A salesperson commits an offence if—
- (a) the salesperson is employed by an agent; and
  - (b) the agent acts for a seller of land; and
  - (c) the salesperson intentionally—
    - (i) obtains a beneficial interest in the land; or
    - (ii) is in any way involved in someone else obtaining a beneficial interest in the land.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (2) This section does not apply to a salesperson in relation to a beneficial interest in land if—
- (a) before the interest is obtained—
    - (i) the salesperson fully discloses to the seller the circumstances surrounding the obtaining of the beneficial interest; and
    - (ii) the seller agrees in writing to the obtaining of the interest; and

*Note* If a form is approved under s 177 for an agreement, the form must be used.

- (b) the seller—
  - (i) does not pay to the salesperson any commission or reward for the sale of the land; or
  - (ii) if the salesperson is a registered salesperson—agrees in writing before entering into a contract for the sale of the land, to the payment of a commission or reward to the salesperson for the sale.

*Note* If a form is approved under s 177 for an agreement, the form must be used.

**88 False representations to sellers or buyers**

- (1) An agent commits an offence if the agent—
- (a) acts for a seller of land; and
  - (b) makes a dishonest representation about the agent's estimate of the selling price of the land—
    - (i) to the seller; or
    - (ii) to a buyer; or
    - (iii) in an advertisement or other publication.

Maximum penalty: 100 penalty units.

- (2) A registered salesperson commits an offence if the salesperson—
- (a) is employed by a licensed agent who is acting for a seller of land; and
  - (b) makes a dishonest representation about the salesperson's estimate of the selling price of the land—
    - (i) to the seller; or
    - (ii) to a buyer; or
    - (iii) in an advertisement or other publication.

Maximum penalty: 100 penalty units.

- (3) For this section, a representation is *dishonest* if—
- (a) the representation is dishonest according to the standards of ordinary people; and
  - (b) the maker of the representation knows that the representation is dishonest according to those standards.

**89 Requirement to substantiate selling price estimates**

- (1) The commissioner for fair trading may, by written notice to a licensed agent or registered salesperson, require the agent or salesperson to give to the commissioner the evidence that the agent or salesperson relied on in the making of any representation about the agent's or salesperson's estimate of the selling price of land—
  - (a) to a seller of the land; or
  - (b) to a buyer of the land; or
  - (c) in an advertisement or other publication.
- (2) The notice must state a reasonable period for complying with the notice.
- (3) A person commits an offence if the person fails to comply with a notice given to the person under this section within the stated period.

Maximum penalty: 100 penalty units.

- (4) An offence against this section is a strict liability offence.

**89A Proposed contracts for sale of residential property**

- (1) An agent commits an offence if—
  - (a) the agent offers residential property for sale; and
  - (b) the required documents are not all available at the agent's place of business for inspection by a prospective buyer (or an agent for a prospective buyer) at all reasonable times when an offer to buy the property may be made to the agent.

Maximum penalty: 50 penalty units.

- (2) A salesperson commits an offence if—
  - (a) the salesperson is employed by an agent who is acting for a seller of residential property; and



- (b) the salesperson offers the residential property for sale; and
- (c) the required documents are not all available at the agent's place of business for inspection by a prospective buyer (or an agent for a prospective buyer) at all reasonable times when an offer to buy the property may be made to the salesperson.

Maximum penalty: 50 penalty units.

- (3) An agent or salesperson *offers residential property for sale* if the agent or salesperson, expressly or by implication—
  - (a) indicates that the property is for sale or is to be auctioned at any future time; or
  - (b) offers to sell the property; or
  - (c) invites an offer to buy the property; or
  - (d) indicates that someone may be willing to grant an option to buy the property.

**Examples for par (a)**

- 1 The agent or salesperson advertises or promotes the property in a way that, in the circumstances, may reasonably be taken to indicate that the property is or may be for sale.
- 2 The agent or salesperson places a sign on or near the property that, in the circumstances, may reasonably be taken to indicate that the property is or may be for sale.
- 3 The agent or salesperson advertises or in any way gives notice that the property is to be auctioned at a future time.
- 4 The agent places on display particulars or a description of, or a photograph, drawing or other representation of, the property in or on any premises, vehicle or place where the agent carries on business as a real estate agent.
- 5 The agent or salesperson shows the property to a prospective buyer or gives the address of the property to a prospective buyer.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (4) An offence against this section is a strict liability offence.

- (5) This section does not apply to—
- (a) anything done by an agent when acting for a prospective buyer of residential property; or
  - (b) a contract, or proposed contract, for the sale of residential property if the contract arises from the exercise of an option to buy the property and—
    - (i) the option was contained in a will or sublease; or
    - (ii) the period for exercise of the option was longer than 60 days.
- (6) A regulation may prescribe exceptions to this section.

- (7) In this section:

*prospective buyer*, in relation to residential property, includes a prospective grantee of an option to buy the property.

*required documents*—see the *Civil Law (Sale of Residential Property) Act 2003*, section 9.

*residential property*—see the *Civil Law (Sale of Residential Property) Act 2003*, section 8.

## **89B Contracts for sale of residential property**

- (1) An agent or salesperson may do any of the following:
- (a) insert into a proposed contract for the sale of residential property any of the following:
    - (i) the name and address of, and contact details for, the buyer;
    - (ii) the name and address of, and contact details for, the buyer's lawyer;
    - (iii) the purchase price;
    - (iv) the date of the contract;

- (b) insert in, or delete from, a proposed contract for the sale of residential property a description of any furnishings or goods to be included in the sale of the property;
  - (c) take part in an exchange of contracts or the making of a contract for the sale of residential property.
- (2) An agent or salesperson must not insert a special condition into a proposed contract for the sale of residential property.
- Maximum penalty: 10 penalty units.
- (3) An offence against subsection (2) is a strict liability offence.
- (4) If a prospective party to a proposed contract for the sale of residential property for whom an agent or salesperson acts tells the agent or salesperson, or it is apparent from the proposed contract, that a lawyer is or will be acting for the party, the agent or salesperson must not take part in the exchange of contracts or the making of the contract unless expressly authorised to do so by the party or the lawyer.
- (5) A contract is not invalid only because of the failure of an agent or salesperson to comply with subsection (4).
- (6) An agent or salesperson must not charge a fee for anything authorised to be done under this section.
- (7) In this section:

***residential property***—see the *Civil Law (Sale of Residential Property) Act 2003*, section 8.

## Division 5.7 Travel agents—further provisions

### 90 Meaning of *compensation scheme* for div 5.7

In this division:

*compensation scheme* means the compensation scheme established under the travel agents trust deed.

*Note* The following terms are defined in the dictionary:

- *compensation scheme participant*
- *employee condition* (see s 26 (2))
- *travel agents board of trustees*
- *travel agents trust deed*.

### 91 Participation in compensation scheme

- (1) A person may carry on business as a travel agent only if the person is a compensation scheme participant.

*Note* For grounds of eligibility for licences that are specific to travel agents, see s 26.

- (2) If a licensed travel agent stops being a compensation scheme participant, the agent's licence is automatically suspended under this section, until the agent again becomes a compensation scheme participant, or the licence is surrendered or cancelled, whichever happens first.
- (3) A travel agent is a *compensation scheme participant* only if the agent complies with—
- (a) the provisions of the travel agents trust deed applying to the agent; and
  - (b) any requirement made of the agent by the travel agents board of trustees under the travel agents trust deed.
- (4) This section does not apply to a licensed travel agent if the licence is subject to an employee condition.

**92 Powers of travel agents board of trustees**

The travel agents board of trustees has, by force of this section and not otherwise, the powers set out in the travel agents trust deed in relation to a licensed travel agent.

**93 Legal action by travel agents board of trustees**

- (1) The travel agents board of trustees may sue and be sued in the name Travel Compensation Fund.
- (2) In any proceeding brought by the travel agents board of trustees, a court must assume, unless the contrary is established, that anything required to be done by the board before the proceeding is brought has been done.

**94 Rights of travel agents board of trustees**

- (1) If a payment is made to a person under the compensation scheme by the travel agents board of trustees because of an act or omission of a travel agent, the board is subrogated, to the extent of the payment, to the person's rights in relation to the act or omission.
- (2) If the travel agents board of trustees is subrogated to rights in relation to the act or omission of an unlicensed travel agent, the board may enforce the rights against the provider of the travel or accommodation to which the act or omission relates as if the provider had been in partnership with the unlicensed travel agent when the act or omission took place.
- (3) Any rights exercisable by the travel agents board of trustees against a corporation under subsection (1) are enforceable jointly and severally against the corporation and each person who was a director or an executive officer of the corporation at the time of the act or omission.
- (4) However, the rights are not enforceable against a director or an executive officer if the court is satisfied that the act or omission

happened without the director's or executive officer's knowledge and consent.

(5) In this section:

*act or omission* means an act or omission in the course of carrying on business as a travel agent.

*unlicensed travel agent* means—

- (a) a person who does not hold a travel agents licence; or
- (b) a licensed travel agent whose licence is suspended.

## **95 Dealings with unlicensed travel agents**

A person (*A*) commits an offence if—

- (a) *A* carries on a business; and
- (b) in the course of the business *A* gives someone else (*B*)—
  - (i) goods or services for disposal; or
  - (ii) authority to dispose of goods or services; and
- (c) if *B* disposed of the goods or services *B* would be carrying on business as a travel agent; and
- (d) *A* knows that *B* is not a licensed travel agent.

Maximum penalty: 100 penalty units.

## **Division 5.8 Employment agents—further provisions**

### **96 Employment agents must only take fee from employer**

- (1) A licensed employment agent commits an offence if—
  - (a) the agent asks for, or accepts, a benefit from a person for a service; and
  - (b) the person is not—

- (i) seeking to have work carried out; or
- (ii) a model or performer.

Maximum penalty: 50 penalty units.

- (2) An offence against this section is a strict liability offence.
- (3) In this section:

*model* includes a person employed—

- (a) to pose for a photographer, painter, sculptor or other artist; or
- (b) to wear and display clothes or other articles to potential customers or the public.

*performer* means an actor, singer, dancer, musician, acrobat, disc jockey, compere, or any other kind of performer.

## **Division 5.9            Other offences**

### **97            Lending licence certificate**

- (1) A licensed agent commits an offence if the agent lets out, hires or lends the agent's licence certificate to someone else.

Maximum penalty: 100 penalty units.

- (2) A licensed agent commits an offence if the agent lets someone else use the agent's licence certificate.

Maximum penalty: 100 penalty units.

- (3) An offence against this section is a strict liability offence.
- (4) If a court convicts a licensed agent of an offence against this section, the agent's licence is cancelled under this section.

**98 Lending registration certificate**

- (1) A registered salesperson commits an offence if the salesperson lets out, hires or lends the salesperson's registration certificate to someone else.

Maximum penalty: 100 penalty units.

- (2) A registered salesperson commits an offence if the salesperson lets someone else use the salesperson's registration certificate.

Maximum penalty: 100 penalty units.

- (3) An offence against this section is a strict liability offence.

- (4) If a court convicts a registered salesperson of an offence against this section, the salesperson's registration is cancelled under this section.



## Part 6 Agency agreements

### 99 Application of pt 6

This part applies to services provided in relation to—

- (a) rural land; and
- (b) other land not used or intended to be used only or mainly for commercial, business or industrial purposes.

### 100 No commission or expenses without agency agreement

- (1) A licensed agent is not entitled to commission or expenses from a principal for services provided by the agent for the principal unless—
  - (a) the services were carried out under a written agreement signed by the principal and the agent (an *agency agreement*); and
  - (b) the agency agreement—
    - (i) identifies the rebates, discounts, commissions and expenses that the agent may receive; and
    - (ii) estimates the amount of any rebates, discounts, commissions and expenses; and
  - (c) the agency agreement complies with the regulations; and
  - (d) a copy of the agency agreement signed by the agent was given to the principal within 48 hours after the agreement was signed by the principal.

*Note* If a form is approved under s 177 for an agreement, the form must be used.

- (2) A court in which a proceeding is taken by the licensed agent to recover commission or expenses from the principal may order that the commission or expenses be completely or partly recovered even though the agent has failed to comply with subsection (1) (d).
- (3) However, the court may make the order only if satisfied that—
  - (a) the licensed agent's failure to give a copy of the agency agreement to the principal within the 48 hours was either inadvertent or caused by something beyond the agent's control; and
  - (b) the commission or expenses to be recovered if the order is made are fair and reasonable; and
  - (c) failure to make the order would be unjust.

## **Part 7**                      **Trust accounts**

### **Division 7.1**              **Definitions for pt 7**

#### **101**              **Meaning of *licensed agent* for pt 7**

- (1) In this section:

*agent* means a licensed real estate agent, stock and station agent or business agent.

- (2) In division 7.2 (Trust money and trust accounts) and division 7.3 (Periodic returns and quarterly statements):

*licensed agent* includes the following:

- (a) a person who is no longer a licensed agent but holds trust money received while licensed;
- (b) the personal representative of a licensed agent who died while holding trust money, if the representative holds the trust money;
- (c) the liquidator of a corporation that went into liquidation while being a licensed agent and holding trust money, if the corporation holds the trust money.

#### **102**              **What is trust money?**

- (1) For this Act, money is *trust money* if it is received—

- (a) by a licensed agent in relation to the business for which the agent is licensed on behalf of someone else; and
- (b) on the basis that the money is to be paid to the other person or as the other person directs.

- (2) However, money received by a licensed agent as bond under the *Leases (Commercial and Retail) Act 2001*, part 7 (Bonds and guarantees) is not trust money for this Act.

### 103 Trust account details

In this part:

*details*, of a trust account, means the following details:

- (a) the name and address of the authorised deposit-taking institution where the trust account is kept; and
- (b) the title of the account; and
- (c) the identifying number the institution has given the account.

## Division 7.2 Trust money and trust accounts

### 104 Meaning of *ADI business day* for div 7.2

In this division:

*ADI business day*, for a trust account, means a day when the branch of the authorised deposit-taking institution where the trust account is kept is open for business.

### 105 Opening trust accounts

- (1) A licensed agent must keep an account (a *trust account*) at an authorised deposit-taking institution in the ACT under a name that includes—
- (a) the name of the agent or, if the agent carries on business under a business name or in partnership, the business name or the name of the partnership; and
  - (b) the words ‘trust account’.
- (2) A licensed agent may keep more than 1 trust account.

- (3) When opening a trust account, a licensed agent must tell the authorised deposit-taking institution, in writing, that the account is a trust account for this Act.
- (4) A licensed agent must give to the commissioner for fair trading, in writing, the details of each trust account held by the agent and, if the agent opens a new trust account, of each new trust account.
- (5) The details must be given to the commissioner for fair trading within 2 business days after the day the agent becomes a licensed agent or the agent opens the new trust account.
- (6) A licensed agent must ensure that the words ‘trust account’ appear in every mention of a trust account in the records of the agent and every cheque drawn on a trust account.

#### **106 Closing trust accounts**

- (1) A licensed agent commits an offence if the agent—
  - (a) closes a trust account; and
  - (b) does not tell the commissioner for fair trading, in writing, of the closure within 10 business days after the day the account is closed.

Maximum penalty: 100 penalty units.

- (2) An offence against this section is a strict liability offence.

#### **107 Dealing with trust money**

- (1) A licensed agent commits an offence if the agent deals with trust money otherwise than as directed by the person for whom the money is held on trust.

Maximum penalty: 100 penalty units.

- (2) A licensed agent commits an offence if the agent—
  - (a) receives trust money; and

- (b) does not pay the money into a trust account kept by the agent by the next ADI business day after the day the agent receives the money.

Maximum penalty: 100 penalty units.

- (3) A licensed agent commits an offence if—
  - (a) trust money is paid by direct deposit or electronic funds transfer into another account kept by the agent; and
  - (b) the agent does not pay the money into a trust account on the next ADI business day after the day the agent becomes aware of the payment.

Maximum penalty: 100 penalty units.

- (4) A licensed agent commits an offence if the agent pays an amount out of a trust account maintained by the agent otherwise than—
  - (a) by electronic transfer; or
  - (b) by using a cheque that—
    - (i) is expressed to be payable to a person specified in the cheque; and
    - (ii) clearly bears across the front of the cheque the addition of 2 parallel transverse lines with the words ‘not negotiable’ between, or substantially between, the lines.

*Note* This cheque is a ‘crossed cheque’ (see *Cheques Act 1986* (Cwlth), s 53).

Maximum penalty: 100 penalty units.

- (5) An offence against this section is a strict liability offence.
- (6) Trust money held by a licensed agent—
  - (a) is not available for payment of the debts of the agent; and
  - (b) must not be attached, or taken in execution, under a court order or court process at the request of a creditor of the agent.

- (7) An authorised deposit-taking institution with which a trust account is kept must not enforce any liability that the licensed agent may have towards the authorised deposit-taking institution against any amount held in the account, whether by way of claim, set-off, counterclaim, charge or otherwise.

### **108 Agents to notify of overdrawn trust accounts**

- (1) A licensed agent commits an offence if the agent—
- (a) finds out that the agent's trust account has become overdrawn; and
  - (b) does not, within 5 business days after the day the agent finds out, tell the commissioner for fair trading in writing that the account has become overdrawn and provide—
    - (i) details of the overdrawn account; and
    - (ii) the amount by which the account is overdrawn; and
    - (iii) the reason for the account being overdrawn.

Maximum penalty: 100 penalty units.

- (2) An offence against this section is a strict liability offence.

### **109 Interest on trust accounts**

- (1) On the 10th ADI business day in each month, the authorised deposit-taking institution with which a trust account has been kept during the previous month must—
- (a) work out the interest at the specified rate on the daily balances, during the previous month, of the amount held in each account that the authorised deposit-taking institution has been notified is a trust account; and
  - (b) pay to the Territory an amount equal to the total of the amounts of interest worked out.

- (2) For subsection (1) (a), the *specified rate*, for a particular day, is 70% of the yield of authorised deposit-taking institution accepted bills published by the Reserve Bank of Australia for the day.
- (3) An authorised deposit-taking institution may deduct from an amount payable under subsection (1) (b) an amount equal to any tax or charge that the authorised deposit-taking institution is required, under a law of a Territory, Commonwealth or State, to pay in relation to the amount payable.
- (4) This section does not apply in relation to a trust account exempted by regulation.

### **Division 7.3 Periodic returns and quarterly statements**

#### **110 Monthly returns by authorised deposit-taking institutions**

- (1) An authorised deposit-taking institution commits an offence if—
  - (a) a trust account is kept with the institution at any time during a month; and
  - (b) the institution does not give to the commissioner for fair trading within 10 business days after the end of the month a written report that sets out, for the month, details of—
    - (i) each trust account kept with the institution at any time during the month; and
    - (ii) the interest worked out in relation to the trust accounts and paid under section 109.

Maximum penalty: 100 penalty units.

*Note* If a form is approved under s 177 for a report, the form must be used.

- (2) An offence against this section is a strict liability offence.
- (3) This section does not apply in relation to a trust account exempted by regulation.



**111 Quarterly statements by agents**

- (1) A licensed agent must, within 15 business days after the end of each quarter, prepare a quarterly statement for the quarter.
- (2) The quarterly statement must be made up as at the close of business on the last business day of the quarter to which the statement relates.
- (3) The quarterly statement must set out—
  - (a) the name of each person (the *person*) on whose behalf the licensed agent held trust money; and
  - (b) the amount of trust money held in the agent's trust accounts on behalf of the person; and
  - (c) the amount of trust money held in cash by the agent on behalf of the person; and
  - (d) the amount in each trust account kept by the agent.

*Note* If a form is approved under s 177 for a quarterly statement, the form must be used.

- (4) In working out an amount for subsection (3) (d), a cheque drawn on an account but not presented is taken to have been paid.
- (5) The licensed agent must keep the quarterly statement for 5 years after the end of the quarter to which the statement relates.
- (6) The licensed agent must give the quarterly statement to the auditor who audits the trust account records of the agent for the audit period that includes the quarter to which the statement relates.
- (7) In this section:

*quarter*, for a licensed agent, means the 3 months beginning on the 1st day of the audit period for the agent and each following period of 3 months.

## Division 7.4 Audit of trust accounts

*Note* Licensed agent has an extended meaning in this division (see s 101).

### 112 Meaning of *qualified auditor* for div 7.4

In this division:

*qualified auditor* means a person who has the qualifications determined under section 114.

### 113 Audit period

- (1) The commissioner for fair trading may, by written notice given to a licensed agent, fix a period as the agent's audit period.
- (2) The audit period for a licensed agent for whom no period is fixed under subsection (1) is each financial year.

### 114 Qualifications for auditors

- (1) The Minister may, in writing, determine the qualifications necessary for auditors under this Act.
- (2) A determination under subsection (1) is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

### 115 Requirement for audit

- (1) A licensed agent must ensure that the records relating to any trust money held by the agent during an audit period of the agent are audited by a qualified auditor within 3 months after the end of the audit period or any longer period allowed by the commissioner for fair trading.
- (2) A person commits an offence if—
  - (a) the person is a former licensed agent or the personal representative of a licensed agent; and

- (b) the person held trust money during an audit period applying to the agent; and
- (c) within 3 months after the end of the audit period or any longer period allowed by the commissioner for fair trading, the person's records relating to the trust money have not been audited by a qualified auditor.

Maximum penalty: 50 penalty units.

- (3) An offence against subsection (2) is a strict liability offence.

#### **116 If no trust money held during audit period**

- (1) A licensed agent who held no trust money during an audit period applying to the agent must give the commissioner for fair trading a statutory declaration to that effect within 3 months after the end of the audit period.
- (2) In this section:

*licensed agent* does not include a former licensed agent or the personal representative of a licensed agent.

#### **117 Audit obligations of partners**

If a provision of this division is complied with by a licensed agent in relation to the audit of records of a partnership, the provision is taken to have been complied with by each partner.

#### **118 Auditor reports**

- (1) An auditor's report of a licensed agent's records must state whether, in the auditor's opinion—
  - (a) the agent has kept the accounting and other records relating to trust money in accordance with this part; and
  - (b) the records were available for the auditor's examination within a reasonable time after the auditor asked for them; and

- (c) the agent complied with the auditor's requirements within a reasonable time; and
  - (d) there is any discrepancy relating to a trust account; and
  - (e) any records to which the audit relates are kept in a way that does not allow them to be properly audited or are missing; and
  - (f) records that are necessary for the proper audit of other records are missing; and
  - (g) there is anything else in relation to the records about which the commissioner for fair trading or the agent should be informed.
- (2) As soon as practicable after finishing the audit, the auditor must prepare a report of the result of the audit and give the report to the commissioner for fair trading and a copy to the licensed agent.

## Division 7.5 Unclaimed trust money

### 119 Unclaimed trust money held by licensed agents

- (1) This section applies if, on 1 July of a year, a licensed agent holds trust money received by the agent more than 3 years before that day (the *unclaimed money*).
- (2) The licensed agent must give the commissioner for fair trading a statement under section 122 (Content of statements), made up as at 1 July, about the unclaimed money by 31 July of the same year.
- (3) The regulations may provide that subsection (2) does not apply in relation to unclaimed money exempted by regulation (the *exempt unclaimed money*).
- (4) The licensed agent must keep a written record of any exempt unclaimed money held by the agent.

**120 Trust money held by former licensed agents**

- (1) This section applies if—
  - (a) a person ceases to be a licensed agent; and
  - (b) at the time the person ceases to be a licensed agent, the person holds trust money.
- (2) Within 3 months after the day the person ceases to be a licensed agent, the person must give to the commissioner for fair trading a statement under section 122 (Content of statements) about the trust money, made up as at the day the person ceased to be a licensed agent.

**121 Trust money held by personal representatives of licensed agents**

- (1) This section applies to a person who is the personal representative of a licensed agent who held trust money at the time of his or her death.
- (2) Within 3 months after the day the licensed agent died, the person must give to the commissioner for fair trading a statement under section 122 (Content of statements) about the trust money, made up as at the day of the licensed agent's death.

**122 Content of statements**

A statement under this section must contain details of—

- (a) the name and address of each person for whom or on whose behalf trust money is held; and
- (b) the amount held for each person; and

- (c) for each person—the purpose for which the money was paid to the person giving the statement or licensed agent by whom the trust account was kept.

*Note* If a form is approved under s 177 for a statement, the form must be used.

### **123 Duties of commissioner in relation to unclaimed money in trust accounts**

- (1) Within 6 months after the day the commissioner for fair trading receives a statement under section 122, the commissioner must prepare a written notice—
  - (a) containing details of—
    - (i) the name and last-known address of each person on whose behalf money is held; and
    - (ii) the amount of money held on behalf of the person; and
  - (b) stating that, if the money is not paid out of the trust account in which it is held within 3 months after the day the notice is notified under the Legislation Act, the person holding the money will be required to pay it to the public trustee.
- (2) The notice is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

- (3) The commissioner for fair trading must also publish the notice in a daily ACT newspaper as soon as practicable after preparing the notice.

### **124 Payment of unclaimed money to public trustee**

- (1) This section applies if—
  - (a) a notice under section 123 (2) is notified under the Legislation Act; and

- (b) the period of 3 months after the day the notice is notified has ended.
- (2) The commissioner for fair trading may, by written notice to a person holding money to which the notice relates, require the person, within a stated period of at least 10 business days—
- (a) to pay any of the money still being held by the person to the public trustee; and
  - (b) to give the commissioner for fair trading a statement containing details of any payments made out of the money since the statement under section 122 (Content of statements) relating to the money was given.

*Note* If a form is approved under s 177 for a statement, the form must be used.

- (3) A licensed agent who is given a notice under subsection (2) must comply with the notice.
- (4) A person commits an offence if—
- (a) the person is a former licensed agent or the personal representative of a licensed agent; and
  - (b) the commissioner for fair trading gives the person a notice under subsection (2); and
  - (c) the person does not comply with the notice.

Maximum penalty: 20 penalty units.

- (5) An offence against subsection (4) is a strict liability offence.

## **125 Applications to recover money**

A person who claims to be entitled to money paid to the public trustee under section 124 may apply to the commissioner for fair trading for payment of the money.

*Note* If a form is approved under s 177 for an application, the form must be used.

## **126 Decisions on recovery applications**

- (1) If the commissioner for fair trading receives an application under section 125, the commissioner must consider the application and make the inquiries that are reasonable and appropriate.
- (2) If the commissioner for fair trading is satisfied that the applicant is entitled to an amount paid to the public trustee under section 124 (Payment of unclaimed money to public trustee), the commissioner must decide the amount to be paid to the applicant and direct the public trustee to pay to the applicant the amount decided.
- (3) If the commissioner for fair trading is not so satisfied, the commissioner must reject the application.
- (4) The public trustee must pay the applicant an amount that the public trustee has been directed to pay under subsection (2).



## **Part 8**                      **Records**

### **Division 8.1**              **Record keeping**

#### **127**              **What records must be kept**

- (1) A licensed agent must record the material details of every transaction the agent conducts.
- (2) A regulation may prescribe other records that a licensed agent must make.
- (3) A licensed agent must make the prescribed records.
- (4) A licensed agent commits an offence if the agent fails to comply with subsection (1) or (3).

Maximum penalty: 50 penalty units.

- (5) A person commits an offence if the person—
  - (a) is a licensed agent or a former licensed agent; and
  - (b) has made a record under subsection (1) or the regulations; and
  - (c) does not keep the record for 5 years beginning on 30 September after the making of the record.

Maximum penalty: 30 penalty units.

- (6) An offence against this section is a strict liability offence.

#### **128**              **Where records must be kept**

- (1) A licensed agent commits an offence if the agent—
  - (a) keeps a record that the agent is required to keep under section 127; and
  - (b) fails to keep the record at—

- (i) the agent's main place of business; or
- (ii) if the commissioner for fair trading has agreed in writing that the record may be kept at another place—that place.

Maximum penalty: 50 penalty units.

- (2) An offence against this section is a strict liability offence.

### **129        Presumption that records made by licensed agent**

An entry in a record kept under section 127 (What records must be kept) and kept in accordance with section 128 is taken, unless the contrary is proved, to have been made by the agent or under the agent's authority.

### **130        Receipts**

- (1) If a licensed agent receives trust money (or, for a travel agent or an employment agent, any money) as a licensed agent, the agent must give a receipt for the money.
- (2) The receipt must—
  - (a) be given to the person who gave the licensed agent the money; and
  - (b) describe the subject matter or reason why the money was given to the agent.
- (3) A licensed agent must keep a copy of a receipt given by the agent under this section.
- (4) This section does not apply to money that is credited electronically or paid directly to a licensed agent's account.

## **Division 8.2                      Freezing accounts**

### **131                      Definitions for div 8.2**

In this division:

*account*, for an agent, means—

- (a) a trust account; or
- (b) any other account in which the agent has an interest, including an account that is not a trust account but in which trust money is held.

*agent* means a licensed agent, a former licensed agent or the personal representative of a licensed agent.

*stop direction* means a direction under section 132.

### **132                      Commissioner may freeze accounts**

- (1) If it appears to the commissioner for fair trading that trust money may have been stolen, misappropriated or misapplied, the commissioner may, in writing, direct that—
  - (a) no amount be withdrawn from a stated account without the commissioner's written approval; or
  - (b) a stated account be operated only in accordance with stated conditions; or
  - (c) if a claim has been made against the compensation fund in relation to the trust money—all or a stated part of the amount to the credit of a stated account be paid to the commissioner within a stated reasonable time.
- (2) The direction must—
  - (a) identify each account to which it relates; and
  - (b) be given to—

- (i) the holder of each account to which it relates; and
- (ii) the authorised deposit-taking institution with which the account is kept.

### **133       Institutions to comply with directions**

- (1) An authorised deposit-taking institution commits an offence if—
- (a) an account is kept with the institution; and
  - (b) the commissioner for fair trading gives the institution a stop direction under section 132 (1) (a) in relation to the account; and
  - (c) the institution allows an amount to be withdrawn from the account without the commissioner’s written approval.

Maximum penalty: 200 penalty units.

- (2) An authorised deposit-taking institution commits an offence if—
- (a) an account is kept with the institution; and
  - (b) the commissioner for fair trading gives the institution a stop direction under section 132 (1) (b) in relation to the account; and
  - (c) the institution allows the account to be operated otherwise than in accordance with the conditions in the direction.

Maximum penalty: 200 penalty units.

- (3) An authorised deposit-taking institution commits an offence if—
- (a) an account is kept with the institution; and
  - (b) the commissioner for fair trading gives the institution a stop direction under section 132 (1) (c) in relation to the account; and

- (c) the institution does not pay to the commissioner the amount that the commissioner has directed be paid within the time stated in the direction.

Maximum penalty: 200 penalty units.

- (4) An offence against this section is a strict liability offence.

**134 Accounts to be operated only in accordance with directions**

- (1) A person commits an offence if—
  - (a) the person keeps an account; and
  - (b) a stop direction is in force in relation to the account; and
  - (c) the person has been given a copy of the direction; and
  - (d) the person—
    - (i) writes a cheque on the account; or
    - (ii) withdraws money from the account; and
  - (e) the writing of the cheque or withdrawal of the money contravenes the direction.

Maximum penalty: 100 penalty units.

- (2) An offence against this section is a strict liability offence.

**135 Commissioner may operate accounts**

- (1) The commissioner for fair trading may operate an account in relation to which a stop direction is in force if satisfied that—
  - (a) it is necessary that the account be operated; and
  - (b) the account holder is unable or unwilling to operate the account.

- (2) Before operating an account under this section the commissioner for fair trading must give the authorised deposit-taking institution with which the account is kept a written notice to the effect that the operation of the account will be under this section.

**136           Notification of withdrawal of stop directions**

As soon as possible after withdrawing a stop direction the commissioner for fair trading must give written notice of the withdrawal to each entity that had been notified of the giving of the direction.

**137           No liability for complying with stop directions**

A person does not incur liability to anyone else because the person complies with a stop direction.

## Part 9 Appointment of administrators

### 138 Definitions for pt 9

- (1) In this part:

*administrator* means an administrator appointed under section 139.

- (2) In this part, other than section 139:

*agent* means a person for whose business an administrator has been appointed.

### 139 When administrators may be appointed

The commissioner for fair trading may, in writing, appoint a person to administer a licensed agent's or former licensed agent's business if the agent's licence has been suspended or cancelled.

### 140 Agents not to be involved in business under administration

While the appointment of an administrator is in force, the agent must not be involved in the direction, management or conduct of the agent's business unless the administrator otherwise directs in writing.

### 141 Notice to authorised deposit-taking institutions

- (1) On the appointment of an administrator for an agent, the commissioner for fair trading must give the person in charge of the branch of the authorised deposit-taking institution with which the agent maintains a trust account a written notice—
- (a) telling the person about the appointment; and
  - (b) revoking the agent's authority to withdraw money from the account.

- (2) The revocation of the agent's authority to withdraw money from a trust account has the effect that—
- (a) the agent may no longer withdraw money from the account; and
  - (b) any authority given by the agent to someone else to withdraw money from the account ceases to have effect; and
  - (c) only the administrator, or a person authorised by the administrator by written notice given to the authorised deposit-taking institution, is authorised to withdraw money from the account; and
  - (d) the authorised deposit-taking institution may not pay any money out of the account without the written authority of a person mentioned in paragraph (c).
- (3) The commissioner for fair trading must give a copy of a notice under subsection (1) to the agent, but a failure to comply with this subsection does not affect the validity of the notice.
- (4) In this section:
- withdraw money*, from a trust account, includes sign a cheque drawn on the account.

## 142 Functions of administrators

- (1) Anything done by an administrator appointed in relation to an agent is taken to have been done by the agent.
- (2) An administrator appointed in relation to an agent may carry on the agent's business and must carry out the agent's obligations under this Act.
- (3) An administrator is not civilly liable for anything done or omitted to be done honestly and without negligence in the exercise or purported exercise of a function as administrator.



- (4) The commissioner for fair trading and the Territory are not civilly liable for anything done or omitted to be done by an administrator in the exercise or purported exercise of a function as an administrator.
- (5) Subsection (4) applies whether or not the administrator is liable for the thing.

### **143 Remuneration of administrators**

- (1) An administrator who is not a public servant—
  - (a) is entitled to be paid by the Territory the remuneration that the commissioner for fair trading decides; and
  - (b) is entitled to reimbursement by the Territory of the expenses reasonably incurred in carrying out the administration.
- (2) An amount paid to an administrator by the Territory under subsection (1) is recoverable by the Territory as a debt from the agent in relation to whom the administrator is appointed.
- (3) If an administrator is a public servant, the commissioner for fair trading must certify an amount that represents the amount of remuneration and expenses of the administrator that is attributable to carrying out the administration.
- (4) An amount certified under subsection (3) is recoverable by the Territory as a debt from the agent in relation to whom the administrator is appointed.

## Part 10 Consumer compensation fund

### Division 10.1 Establishment of compensation fund

#### 144 Consumer compensation fund

- (1) The chief executive must keep and administer a fund to be called the consumer compensation fund.
- (2) The assets of the compensation fund may only be used in accordance with this Act.
- (3) The chief executive must open and maintain under the *Financial Management Act 1996*, section 51 (Departmental trust banking accounts) a trust account with an authorised deposit-taking institution (the *compensation fund account*) to be used only for the fund.
- (4) All money of the fund not immediately needed for payments under section 151 (Claims for compensation) must be paid to the credit of the fund account.

#### 145 Compensation fund money

The compensation fund consists of—

- (a) the amounts paid to the Territory under section 109 (1) (b) (Interest on trust accounts); and
- (b) any other amount that may be lawfully paid into the compensation fund.

#### 146 Application of compensation fund money

The compensation fund may be used only to pay—

- (a) the amount of a claim under division 10.2, including costs, allowed or proved against the compensation fund; and

- (b) any other amount payable out of the compensation fund under this Act.

## **Division 10.2            Claims against the compensation fund**

### **147            Definitions for div 10.2**

In this division:

*claimant*—see section 149 (Entitlement to claim compensation).

*licensed agent* means—

- (a) a licensed real estate agent, a licensed stock and station agent and a licensed business agent; or
- (b) a person who has been a licensed real estate agent, a licensed stock and station agent or a licensed business agent.

### **148            Application of div 10.2**

This division applies in relation to a person who has been a licensed real estate agent, a licensed stock and station agent or a licensed business agent only in relation to anything that happened while the person was licensed.

### **149            Entitlement to claim compensation**

- (1) A person (the *claimant*) who suffers financial loss because of a failure to account by a licensed agent is entitled to claim compensation from the compensation fund for the loss.
- (2) The amount that the claimant is entitled to claim is the amount of the actual financial loss suffered by the claimant less any amount the claimant has recovered or can recover in relation to the loss from a source other than the compensation fund.

- (3) Subsection (1) does not entitle an agent to claim compensation against the compensation fund for a financial loss suffered by the agent in the course of carrying on business as an agent.
- (4) If a person who has begun a proceeding in accordance with a notice under section 153 (Requirement to begin proceedings) is ordered to pay costs to another party to the proceeding, the person is entitled to claim compensation from the compensation fund for the amount of the costs paid.
- (5) This section does not apply to a failure to account for money or other property that relates to dealing in land used or to be used mainly for a commercial, business or industrial purpose.

**150 Notice inviting claims**

- (1) The commissioner for fair trading may publish a notice inviting people entitled to claim compensation under this division in relation to a stated licensed agent to make claims within the period (the *claim period*) stated in the notice.
- (2) The notice must be published in a daily ACT newspaper—
  - (a) at least twice; and
  - (b) at intervals of at least 1 month between each publication.
- (3) In addition to stating the name of the licensed agent, the notice must—
  - (a) state the name under which, and the place where, the agent carries or carried on business; and
  - (b) contain any other details the commissioner for fair trading considers necessary to allow the agent to be clearly identified.
- (4) The claim period must not end earlier than 6 months after the day the notice is first published.
- (5) A proceeding does not lie against the commissioner for fair trading in relation to the honest publication of a notice under this section.

## **151 Claims for compensation**

- (1) A claim for compensation must—
  - (a) be in the form approved under section 177 for this section; and
  - (b) be given to the commissioner for fair trading within the appropriate period; and
  - (c) be accompanied by a statutory declaration to the effect that the details contained in the claim are true.
- (2) For this section, the *appropriate period* is whichever of the following periods ends earlier:
  - (a) the period of 1 year after the day the claimant becomes aware of the failure to account to which the claim relates;
  - (b) the period of 2 years after the day the failure to account happens.
- (3) However, the *appropriate period* for the claim is the claim period under section 150 (Notice inviting claims) if—
  - (a) notice is published under section 150 in relation to the agent to whom the claim relates; and
  - (b) the appropriate period under subsection (2) for the claim had not ended when the notice was published.

## **152 Requirement to give information and produce documents**

- (1) The commissioner for fair trading may, by written notice given to a claimant, require the person to give the commissioner, within a reasonable time stated in the notice, stated information or documents that the commissioner for fair trading considers necessary to decide a claim.

*Note* For how documents may be given, see the Legislation Act, pt 19.5.

- (2) The notice may state in what form the information is to be given to the commissioner for fair trading.

**Example**

The notice may require that the information be verified by a statutory declaration.

*Note 1* The *Statutory Declarations Act 1959* (Cwlth) applies to the making of statutory declarations under ACT laws.

*Note 2* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) The commissioner for fair trading may—
- (a) keep a document for as long as is necessary; and
  - (b) take copies of a document.
- (4) If the commissioner for fair trading keeps a document under subsection (3)—
- (a) the commissioner must, as soon as practicable, give the person otherwise entitled to possession of the document a copy certified by the commissioner to be a true copy; and
  - (b) until the certified copy is given, the commissioner must, at the times and places the commissioner considers appropriate, allow the person otherwise entitled to possession of the document, or a person authorised by that person, to inspect and make copies of, or take extracts from, the document.
- (5) In any proceeding in which a document kept by the commissioner for fair trading under subsection (3) is admissible in evidence, a copy of the document certified to be a true copy under subsection (4) is admissible in evidence as if it were the original.

**153 Requirement to begin proceedings**

The commissioner for fair trading may, by written notice, require a claimant to begin a proceeding for the recovery of the money claimed against—

- (a) the licensed agent to whom the claim relates; or
- (b) anyone else the commissioner considers is liable in relation to the loss suffered by the claimant.

**154 Decision on claims**

- (1) If the commissioner for fair trading is given a claim for compensation under section 151 (Claims for compensation), the commissioner must decide whether there is financial loss for which compensation may be paid to the claimant under this division and, if so, the amount of the loss.
- (2) If the commissioner for fair trading gives a notice under section 152 (Requirement to give information and produce documents) or section 153 in relation to a claim, the commissioner need not take any further action in relation to the claim until—
  - (a) the requirement in the notice is satisfied; and
  - (b) for a requirement under section 153—the relevant proceeding is decided.

**155 Payment of compensation**

- (1) This section applies if the commissioner for fair trading decides that there is financial loss for which compensation may be paid to a claimant under this division.
- (2) The chief executive must pay the claimant, out of the compensation fund, the amount of the financial loss decided by the commissioner for fair trading.
- (3) However, the chief executive must not pay the amount until—
  - (a) the commissioner for fair trading has decided all claims for compensation made in relation to the licensed agent whose failure to account is the subject of the claim; and

- (b) the commissioner has found out whether the amount in the compensation fund is sufficient for the payment of all amounts payable to claimants under subsection (1) in relation to the licensed agent.

### **156 Interim payment of compensation**

- (1) This section applies if the commissioner for fair trading has decided that there is a financial loss for which an amount may be payable to a claimant under this division but payment of the amount cannot be made because of section 155 (3).
- (2) The chief executive may make an interim payment of compensation out of the compensation fund of the amount the chief executive considers reasonable, if satisfied that—
  - (a) the claimant is suffering hardship as a direct consequence of the financial loss; or
  - (b) circumstances prescribed by regulation exist.
- (3) An amount paid to the claimant under subsection (2) must be set off against the amount of compensation payable to the claimant under this division.

### **157 Insufficiency of compensation fund**

- (1) If the amount in the compensation fund (the *available amount*) is insufficient for the payment of all amounts that would, apart from this subsection, be payable to claimants under section 155 (1) (Payment of compensation)—
  - (a) the chief executive must divide the available amount among the claimants in proportion to the amounts otherwise payable; and
  - (b) pay each claimant the proportionate amount.
- (2) The balance of the amount payable to claimants must be paid out of future accumulations of the compensation fund.



- (3) On making a payment under subsection (1) (b), the chief executive must tell each claimant in writing the balance payable out of future accumulations of the fund.

**158 Availability of compensation fund**

The compensation fund is the only property available for the satisfaction of a claim for compensation under this division.

**159 Subrogation**

If compensation is paid to a person in relation to a claim, the Territory is subrogated to the rights of the person against the licensed agent in relation to whom the claim for compensation was made, to the extent of the payment.

## Part 11 Administration

### 160 Register

- (1) The commissioner for fair trading must maintain a register for this Act.
- (2) The register must be available for public inspection at reasonable times.
- (3) The register may be kept in the form of, or as part of, 1 or more computer databases or in any other form the commissioner for fair trading considers appropriate.
- (4) The commissioner for fair trading may correct a mistake or omission in the register, subject to any requirements of the regulations.
- (5) The commissioner for fair trading may change a detail included in the register to keep the register up-to-date.

### 161 Register information

The commissioner for fair trading must enter and keep in the register details about the following:

- (a) each licence;
- (b) each registration;
- (c) conditions put on licences or registrations;
- (d) each application for a licence that is refused;
- (e) each application for registration that is refused;
- (f) the main place of business of each licensed agent;

- (g) any exemption under section 71 (Licensed agent to be in charge of business—exemptions);
- (h) an audit period for a licensed agent fixed by the commissioner for fair trading under section 113 (1) (Audit period).
- (i) each prosecution taken under this Act and the result of the prosecution;
- (j) each disciplinary action taken by the consumer and trader tribunal;
- (k) the appointment of an administrator under this Act;
- (l) anything else prescribed by regulation.

## **162 Money received under Act**

- (1) All money paid to the Territory under this Act, and all interest on the money, (the *trust money*) is held on trust for payment under this section.
- (2) As soon as practicable after the beginning of a financial year, the Minister must determine, in writing, the amount that, in the Minister's opinion, is likely to be needed by the compensation fund to meet the likely claims against the fund during the financial year.
- (3) The determination of the Minister is a notifiable instrument.  
*Note* A notifiable instrument must be notified under the Legislation Act.
- (4) If the amount of trust money held when the Minister makes the determination mentioned in subsection (2) is at least the amount decided by the Minister, the amount decided by the Minister must be paid from the trust money into the compensation fund.
- (5) If the amount of trust money held when the Minister makes the determination is less than the amount determined by the Minister, all the trust money must be paid into the compensation fund.

(6) In this section:

*interest*—see the *Financial Management Act 1996*, dictionary.

**163 Use of excess trust money**

- (1) Any trust money not paid into the compensation fund under section 162 must be used for a purpose prescribed by regulation.
- (2) The purposes that may be prescribed by regulation include the following:
  - (a) promoting education and understanding of this Act for licensed agents, registered salespeople and the public;
  - (b) providing dispute resolution services for disputes involving licensed agents or registered salespeople;
  - (c) additional payments to the compensation fund;
  - (d) researching issues of concern to licensed agents and people using the services of licensed agents, whether or not the issues arise under this Act;
  - (e) payment or reimbursement of costs incurred by the commissioner for fair trading on behalf of the Territory in proceedings under this Act;
  - (f) the payment of the reasonable costs and expenses incurred by an administrator under section 143 (Remuneration of administrators);
  - (g) reimbursing the Territory for the cost of administering this Act and the *Consumer and Trader Tribunal Act 2003*.

**164 Disclosure of information**

- (1) A person commits an offence if the person discloses information obtained by the person in connection with the administration of this Act.

Maximum penalty: 50 penalty units.

- (2) An offence against this section is a strict liability offence.
- (3) Subsection (1) does not apply in relation to a disclosure made—
- (a) with the consent of the person who provided the information; or
  - (b) as part of the exercise of a function under this Act; or
  - (c) for a legal proceeding arising out of this Act or a report of the proceeding; or
  - (d) to a regulatory officer or law enforcement officer, to help the officer in the exercise of the officer's functions; or
  - (e) as otherwise prescribed by regulation; or
  - (f) under another territory law or a law of the Commonwealth.
- (4) This section does not apply to the disclosure by the commissioner for fair trading to a person directly involved in a transaction with a licensed agent, of information that relates to the transaction and directly concerns the person.
- (5) This section does not apply to the disclosure of information to the commissioner for fair trading by a law enforcement officer or regulatory officer helping the commissioner in the exercise of functions under this Act if the commissioner has asked for disclosure of the information.

(6) The commissioner for fair trading may enter into agreements and other arrangements for the sharing or exchange of information relating to the activities of agents and this section does not apply to the disclosure of information under an agreement or arrangement entered into under this subsection.

(7) In this section—

**information** means information that is not on the register.

**law enforcement officer** means—

- (a) a police officer or a member of the police service or force of a State; or
- (b) the director of public prosecutions, or the director of public prosecutions or prosecutor of the Commonwealth or a State; or
- (c) a person, or an officer of an authority, responsible for the investigation or prosecution of offences against a territory law, or the law of the Commonwealth or a State.

**regulatory officer** means an officer or employee of a government agency (including the government of a jurisdiction outside the ACT or outside Australia) exercising functions under a law about fair trading or a law that provides for the issue of authorities (however called) in relation to the undertaking of an activity regulated under the law.

## **165 Protection from liability**

- (1) The commissioner for fair trading or an investigator does not incur civil liability for an act or omission done honestly for this Act.
- (2) A civil liability that would, apart from this section, attach to the commissioner for fair trading or an investigator attaches instead to the Territory.

## Part 12 Notification and review of decisions

### 166 Definition of *reviewable decision* for pt 12

In this part:

*reviewable decision* means a decision mentioned in schedule 1, column 3 under a provision of this Act mentioned in schedule 1, column 2 in relation to the decision.

### 167 Notice of reviewable decisions

- (1) If a person makes a reviewable decision, the person must give written notice of the decision and the reasons for the decision to each person mentioned in schedule 1, column 4 in relation to the decision.
- (2) A notice about the putting or amendment of a condition on a licence or registration must include, or have attached to it, a copy of the condition put or as amended.
- (3) A notice must—
  - (a) be given within 5 business days after the day the decision is made; and
  - (b) state that the person to whom it is given has the right to apply to the consumer and trader tribunal for review of the decision; and
  - (c) state how to make the application; and
  - (d) state the options available under ACT laws to have a decision reviewed by a court or the ombudsman; and
  - (e) comply with the regulations.

- (4) Failure to comply with this section does not affect the validity of a reviewable decision.

**168 Review of reviewable decisions**

- (1) The following people may apply to the consumer and trader tribunal for a review of a reviewable decision of a relevant person:
- (a) a person mentioned in schedule 1, column 4 in relation to the decision;
  - (b) any other person whose interests are affected by the decision.

- (2) In this section:

*relevant person* means—

- (a) for a reviewable decision mentioned in schedule 1, column 3, items 1 to 17—the commissioner for fair trading; or
- (b) for a reviewable decision mentioned in schedule 1, column 3, item 18—the chief executive.



## Part 13                      Miscellaneous

*Note*      Regulations about infringement notices may be made under the *Magistrates Court Act 1930* for offences against this Act.

### 169            False or misleading statements

(1) In this section:

*relevant matter* means any of the following:

- (a) an application for a licence or registration;
- (b) the making of an objection to the issue of a licence or the granting of registration;
- (c) an application for the amendment or omission of a condition on a licence or registration;
- (d) an application for renewal of a licence or registration;
- (e) a response to a requirement made by the commissioner for fair trading about information or documents in relation to an application for a licence, registration or renewal of a licence or registration;
- (f) a notification of a change in a licensed agent's main place of business under section 68;
- (g) an application for an exemption under section 71 (Licensed agent to be in charge of business—exemptions);
- (h) information or a document required or permitted to be given under part 7 (Trust accounts);
- (i) a claim for compensation under section 151;

- (j) information or a document given to the commissioner for fair trading in relation to a claim for compensation, whether or not the information or document is given in response to a requirement under section 152 (Requirement to give information and produce documents).
- (2) A person commits an offence if—
- (a) the person makes a statement (whether orally, in a document or in any other way); and
  - (b) the person does so knowing that the statement—
    - (i) is false or misleading; or
    - (ii) omits something without which the statement is misleading; and
  - (c) the statement is made in, or in relation to, a relevant matter.
- Maximum penalty: 100 penalty units, imprisonment for 1 year or both.
- (3) Subsection (2) does not apply to a person who produces a document if the document is accompanied by a signed statement—
- (a) stating that the document is, to the signing person's knowledge, false or misleading in a material particular; and
  - (b) setting out, or referring to, the material particular in which the document is, to the signing person's knowledge, false or misleading.
- (4) The statement under subsection (3) must be signed by—
- (a) the person; or
  - (b) if the person who produces the document is a corporation—by an executive officer of the corporation.

- (5) A person commits an offence if—
- (a) the person makes a statement (whether orally, in a document or in any other way); and
  - (b) the person is reckless about whether the statement—
    - (i) is false or misleading; or
    - (ii) omits something without which the statement is misleading; and
  - (c) the statement is made in, or in relation to, a relevant matter.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (6) Subsections (2) (b) (i) and (5) (b) (i) do not apply if the statement is not false or misleading in a material particular.
- (7) Subsections (2) (b) (ii) and (5) (b) (ii) do not apply if the omission does not make the statement misleading in a material particular.

### **170 Alternative verdict for offence against s 169**

- (1) This section applies if, in a prosecution for an offence against section 169 (2), the trier of fact is not satisfied that the defendant is guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an offence against section 169 (5).
- (2) The trier of fact may find the defendant guilty of the offence against section 169 (5), but only if the defendant has been given procedural fairness in relation to that finding of guilt.

### **171 Rules of conduct**

- (1) A regulation may prescribe rules of conduct to be observed by licensed agents or registered salespeople.
- (2) A licensed agent must not contravene a rule of conduct applying to the agent.

- (3) A registered salesperson must not contravene a rule of conduct applying to the salesperson.

**172 Review of disqualifications**

- (1) The consumer and trader tribunal may review a decision to disqualify a person from being licensed or registered.
- (2) On review, the consumer and trader tribunal may—
- (a) for a disqualification for a period—set another period as the disqualification period; or
  - (b) for an indefinite disqualification—set a period as the disqualification period.
- (3) A review under this section may be undertaken on the application of the commissioner for fair trading or the disqualified person.

**173 Evidentiary certificates**

- (1) In a proceeding under this Act, a certificate signed by the commissioner for fair trading stating any of the following matters is evidence of the matter so stated:
- (a) that, on a stated day or during a stated period, a person was, or was not, the holder of a stated licence;
  - (b) that, on a stated day or during a stated period, a person was, or was not, registered as stated;
  - (c) that, on a stated day or during a stated period, a person's licence or registration was, or was not, suspended;
  - (d) that a document mentioned in the certificate is a copy of—
    - (i) a part of the register mentioned in the certificate; or
    - (ii) a document held by the commissioner under this Act.

- (2) A document purporting to be a certificate under subsection (1) is taken, unless the contrary is proved, to be such a certificate and to be evidence of the matters it states.

**174 What is a *corresponding law***

A *corresponding law* is—

- (a) a law of a State corresponding, or substantially corresponding, to this Act; or
- (b) a law of a State that is declared by regulation to be a corresponding law, whether or not the law corresponds, or substantially corresponds, to this Act.

**175 Displacement of Corporations legislation**

- (1) An administrator is declared to be an excluded matter for the purposes of the Corporations Act, section 5F in relation to the whole of the Corporations legislation to which the Corporations Act, part 1.1A (Interaction between Corporations legislation and State and Territory laws) applies.

*Note* This section ensures that neither the Corporations Act nor the *Australian Securities and Investment Commission Act 2001*, pt 3 (Investigations and information gathering) will apply in relation to an administrator. The Corporations Act, s 5F provides that, if a State or Territory law declares a matter to be an excluded matter in relation to all or part of the Corporations legislation to which the Corporations Act, pt 1.1A applies (see s 5D), that legislation does not apply, except to the extent specified, in relation to that matter in the State or Territory.

- (2) Part 9 (Appointment of administrators) is declared to be a Corporations legislation displacement provision for the purpose of the Corporations Act, section 5G (Avoiding direct inconsistency arising between the Corporations legislation and State and Territory laws).

**176 Determination of fees**

- (1) The Minister may, in writing, determine fees for this Act.

*Note* The Legislation Act contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).

- (2) A determination is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

**177 Approved forms**

- (1) The commissioner for fair trading may, in writing, approve forms for this Act.

- (2) If the commissioner for fair trading approves a form for a particular purpose, the approved form must be used for that purpose.

*Note* For other provisions about forms, see the Legislation Act, s 255.

- (3) An approved form is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

**178 Regulation-making power**

- (1) The Executive may make regulations for this Act.

*Note* A regulation must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (2) A regulation may make provision in relation to—

- (a) applications for licences or registrations; and
- (b) renewals of licences and registrations; and
- (c) the surrender of licences and registrations; and
- (d) the keeping of accounts and other records by licensed agents and registered salespeople; and

- (e) the transfer of a licensed agent's business to another licensed agent, including the transfer of trust money.
- (3) A regulation may prescribe offences for contraventions of a regulation and prescribe maximum penalties of not more than 20 penalty units for offences against a regulation.

## Part 14 Transitional provisions

### Division 14.1 Definitions

#### 179 Definitions for pt 14

In this part:

*board*—see the repealed Act, section 5 (1).

*commencement day* means the day section 6 (Application of Act) commences.

*repealed Act* means the *Agents Act 1968*.

### Division 14.2 Licensed agents under repealed Act

#### 180 Licensed agents under repealed Act generally

- (1) Despite the repeal of the repealed Act, a licence in force immediately before the commencement day continues to be in force during the temporary period.
- (2) Section 34 (Licence conditions) applies to any condition on a licence continued under this section.
- (3) If, immediately before the commencement day, an agent had not paid an annual licence fee that, under the repealed Act, section 54A (Fees payable by licensed agents) the agent should have paid before that day, this section does not apply to the agent's licence until the fee is paid.



(4) In this section:

*temporary period*, for an agent taken to be licensed under this section, means the period beginning on the commencement day and ending—

- (a) if the agent applies for a licence or registration within 6 months after the commencement day—on the day the application is decided; or
- (b) in any other case—6 months after the commencement day.

**181 Suspended licensed agents under repealed Act**

- (1) This section applies if, immediately before the commencement day, a person was a licensed agent under the repealed Act whose licence was suspended.
- (2) The person is taken, for this Act, to be a licensed agent whose licence is suspended until the earlier of—
  - (i) the end of the period of suspension under the repealed Act; or
  - (ii) the end of the temporary period.
- (3) The person is taken to be a disqualified person until the end of the period of suspension under the repealed Act for—
  - (a) section 27 (People disqualified from being licensed); and
  - (b) section 51 (People disqualified from being registered).
- (4) In this section:  
*temporary period*—see section 180.

**182 People disqualified from holding licence under repealed Act**

- (1) If, immediately before the commencement day, a person was disqualified by the board from holding an agents licence under the repealed Act, the person is taken to be a *disqualified person* for the duration of the disqualification under—
  - (a) section 27 (People disqualified from being licensed); and
  - (b) section 51 (People disqualified from being registered).
- (2) For this Act and the *Consumer and Trader Tribunal Act 2003*, a decision of the board about a person's disqualification or the period of a person's disqualification is taken to be an order of the consumer and trader tribunal.

*Note* A period of disqualification may be reviewed by the consumer and trader tribunal under s 172.

**183 Former licensed agents**

A person who has held a licence under the repealed Act but was not licensed under that Act immediately before the commencement day is taken to be a former licensed agent for this Act.

**Division 14.3 Registered agents under repealed Act and employees**

**184 Registered agents under repealed Act generally**

- (1) This section applies to a person who, immediately before the commencement day, was registered, but not licensed, under the repealed Act.
- (2) During the temporary period—
  - (a) if the person was registered as a real estate agent—the person is taken to be a licensed real estate agent; and

- (b) if the person was registered as a stock and station agent—the person is taken to be a licensed stock and station agent; and
  - (c) if the person was registered as a business agent—the person is taken to be a licensed business agent.
- (3) In this section:
- temporary period*, for a person to whom this section applies, means the period beginning on the commencement day and ending—
- (a) if the person applies for a licence or registration within 6 months after the commencement day—on the day the application is decided; or
  - (b) in any other case—6 months after the commencement day.

#### **185 Employees need not have qualifications for 2 years**

- (1) This section applies to a person (other than a registered agent) who, immediately before the commencement day, was employed by a licensed real estate, stock and station or business agent under the repealed Act (a *former employee*).
- (2) This Act does not apply to a former employee for 6 months after the commencement day.
- (3) Section 49 (1) (b) (Eligibility for registration) does not apply to a former employee for 2 years after the commencement day.

### **Division 14.4 Other provisions about the repealed Act**

#### **186 Register**

The registers under the repealed Act are taken to be part of the register.

**187 Board property**

- (1) All property of the board immediately before the commencement day vests in the Territory under this section.
- (2) This section has effect subject to section 191 (Administrative accounts).

**188 Proceedings and evidence**

- (1) In this section:

*relevant entity*, for a proceeding, means—

- (a) for a proceeding under the repealed Act in relation to an application for registration or a licence or a condition on a licence—the commissioner for fair trading; or
- (b) for a proceeding in relation to an inquiry by the board under the repealed Act, part 8 (Proceedings for breaches of rules of conduct for agents)—the consumer and trader tribunal; or
- (c) for a proceeding arising out of a right to which the board is subrogated under the repealed Act, section 71ZH (Subrogation)—the Territory.

*proceeding* means a civil or administrative proceeding to which the board is a party, and includes a right of appeal or review (including a right of review under the *Ombudsman Act 1989*).

- (2) For a proceeding begun before the commencement day, the relevant entity is substituted for the board as a party to the proceeding.
- (3) A proceeding that was not begun before the commencement day and that apart from this Act could, after that day, be brought by or against the board may be brought by or against the relevant entity.
- (4) The *Limitation Act 1985*, part 3 (Postponement of bar) applies to the beginning of a proceeding by or against a relevant entity as if the cause of action had accrued by or against the relevant entity.

- (5) A court, tribunal, commission or other entity in which a proceeding may be or has been begun or continued under this section may give directions in relation to the beginning or continuation of the proceeding.
- (6) Any evidence that, apart from this section, would have been admissible for or against the board is admissible for or against the relevant entity.
- (7) An order made in a proceeding by or against the board before the commencement day may, after that day, be enforced by or against the relevant entity.

## **189 Pending licence applications**

- (1) A notice published under the repealed Act, section 48 (1) (b) (i) (Applications for licences by individuals) within 10 business days before the commencement day is taken to have been published under this Act, section 28 (Advertising intended licence applications).
- (2) An application for a licence lodged with the registrar under the repealed Act, and not decided by the board immediately before the commencement day, is taken to be an application under section 29 (Licence applications).
- (3) If before the commencement day, the board had granted an application for an agents licence under the repealed Act, but no licence had been issued to the applicant before the commencement day, the commissioner for fair trading must issue to the applicant a licence certificate under this Act.

## **190 Trust accounts**

- (1) If under the repealed Act, part 6 (Trust moneys, trust accounts and agents' records) a person was required to do something within a period, and the period had not ended immediately before the commencement day, the obligation continues, subject to this section,

and the period continues to run despite the repeal of the repealed Act.

- (2) If a person was, immediately before the commencement day, under an obligation to give something (including information) to the registrar or board, the thing must be given to the commissioner for fair trading.

### **191 Administrative accounts**

- (1) Any money in the agents statutory interest account and the agents administration account (the *administrative accounts*) under the repealed Act immediately before the commencement day—
  - (a) is taken to be trust money held by the Territory to which the *Financial Management Act 1996*, part 7 (Trust money) applies; and
  - (b) must be transferred to a trust banking account maintained by the chief executive.
- (2) The chief executive may operate and close any account kept by the board for the purpose of an administrative account.

### **192 Agents fidelity guarantee fund**

- (1) Any amount in the agents fidelity guarantee fund (the *fidelity fund*) under the repealed Act immediately before the commencement day becomes, on that day, an asset of the compensation fund for section 144 (Consumer compensation fund).
- (2) The chief executive may operate and close any account kept by the board for the purpose of the fidelity fund.

### **193 Compensation claims—entitlement and beginning**

- (1) A person who, immediately before the commencement day, was entitled to claim compensation against the fidelity fund for an amount is entitled to claim compensation for the same amount against the compensation fund.

- (2) If a notice has been published under the repealed Act, section 71Z (Advertisement relating to claims)—
  - (a) section 150 (Notice inviting claims) applies to the notice; and
  - (b) for section 149 (Entitlement to claim compensation), the claim period for the notice is the period mentioned in the notice.
- (3) A claim for compensation given to the board is taken to be a claim given to the commissioner for fair trading under section 151 (Claims for compensation).

#### **194 Compensation claims—board**

- (1) A requirement made under the repealed Act, section 71ZB (Requirement to furnish information and produce documents) or section 71ZC (Requirement to institute proceedings) and not complied with by the commencement day is taken to have been made by the commissioner for fair trading under section 152 (Requirement to give information and produce documents) or section 153 (Requirement to begin proceedings).
- (2) A determination of the board under the repealed Act, section 71ZD (Determination of claims) is taken to be a decision of the commissioner for fair trading under section 154 (Decision on claims).

#### **195 Compensation payments**

- (1) An amount payable to a claimant out of the compensation fund must be reduced by any amount paid to the claimant under the repealed Act, section 71ZF (Interim payment of compensation) for the same claim.
- (2) If, immediately before the commencement day, a claim against the fidelity fund had not been satisfied because of the repealed Act, section 71ZG (Insufficiency of fund), the claim may be satisfied under section 157 (Insufficiency of compensation fund).

## **196 Disciplinary proceedings**

- (1) This section applies if, before the commencement day—
  - (a) the registrar had given a notice to—
    - (i) the chairperson of the board under the repealed Act, section 74 (1); or
    - (ii) an agent under the repealed Act, section 77 (2) (a); and
  - (b) the board had not completed an inquiry into the subject matter of the notice.
- (2) On the commencement day, the registrar's notice is taken to be an application for disciplinary action by the commissioner for fair trading under the *Consumer and Trader Tribunal Act 2003*, section 15 (b) (What applications may be made?) and may be dealt with by the consumer and trader tribunal under that Act.

## **197 Surrender of licences**

An application for the surrender of a licence made under the repealed Act, section 76 (Surrender of licences) and not decided immediately before the commencement day is taken to be a notice of surrender of a licence under this Act, section 39 (Surrender of licence).

## **198 Administrators**

A person appointed administrator under the repealed Act, part 10 and in office immediately before the commencement day continues in office under this Act, part 9.



## **Division 14.5          Auctioneers**

### **199          Licensed auctioneers**

- (1) A licence in force under the *Auctioneers Act 1959* immediately before the commencement day is taken on that day to be a licence under this Act and the person holding the licence is taken to be a licensed real estate agent.
- (2) A real estate agent licence under subsection (1)—
  - (a) is in force until 30 June 2004, but may be renewed under section 36 (Renewal of licences); and
  - (b) is subject to the condition that the licensed agent may only provide the service of selling land by auction.
- (3) For section 34 (Licence conditions), the condition mentioned in subsection (2) (b) is taken to be a condition put on the licence by the commissioner for fair trading.
- (4) The putting on a licence of the condition under subsection (2) (b) is not a reviewable decision for part 12 (Notification and review of decisions).
- (5) If, on the commencement day, a person held a licence under the *Auctioneers Act 1959* that was under suspension, this section does not apply in relation to the person until the day the licence would again be in force if the *Auctioneers Act 1959* had not been repealed.

## **Division 14.6          Modification and expiry of pt 14**

### **200          Regulations modifying pt 14**

A regulation may modify the operation of this part to make provision in relation to any matter that is not, or is not in the Executive's opinion adequately, dealt with in this part.

**201 Expiry**

Divisions 14.1 to 14.6 and the heading to division 14.7 expire 2 years after the day they commence.

**Division 14.7 Agents' records**

**202 Keeping of agents' records**

A person who was a licensed agent under the *Agents Act 1968* commits an offence if the person fails to preserve a record kept under that Act for 3 years beginning on the 30 September after the making of the record.

Maximum penalty: 30 penalty units.

**203 Expiry of pt 14**

This part expires 4 years after the day it commences.

## Schedule 1 Reviewable decisions

(see s 166)

### Reviewable decisions

column 1 item	column 2 section	column 3 decision	column 4 people to be notified
1	33 (2) (a)	issue licence	applicant objectors
2	33 (2) (b)	refuse to issue licence	applicant objectors
3	34 (2) (a)	put condition on a licence	(a) if done on issue of licence—applicant objectors  (b) if done on existing licence—licensed agent
4	34 (2) (b)	amend a licence condition	licensed agent
5	36 (3)	refuse to renew licence	licensed agent
6	57 (2) (a)	register an applicant	applicant objectors
7	57 (2) (b)	refuse to register an applicant	applicant objectors

**Schedule 1**

Reviewable decisions

<b>column 1 item</b>	<b>column 2 section</b>	<b>column 3 decision</b>	<b>column 4 people to be notified</b>
8	58 (2) (a)	put a registration condition	(a) if done on registration— applicant objectors  (b) if done on existing registration— registered salesperson
9	58 (2) (b)	amend a registration condition	registered salesperson
10	60 (2) (b)	refuse to renew registration	registered salesperson
11	71 (1)	refuse to exempt from having licensed agent in charge of business	licensed agent who owns business
12	71 (1)	refuse to exempt licensed agent from requirement to manage not more than 1 business	applicant for exemption owner of each business

column 1 item	column 2 section	column 3 decision	column 4 people to be notified
13	71 (1)	refuse to exempt licensed agent in charge of a business from requirement to not provide service to another agent.	applicant for exemption owner of each business
14	71 (2)	put condition on exemption from prohibition on managing, or providing services, to more than 1 business	licensed agent exempted owner of each business
15	71 (2)	amend a condition on exemption from prohibition on managing, or providing services, to more than 1 business	licensed agent exempted owner of each business

**Schedule 1**

## Reviewable decisions

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<b>column 1 item</b>	<b>column 2 section</b>	<b>column 3 decision</b>	<b>column 4 people to be notified</b>
16	153	require a claimant to begin proceeding	claimant
17	154	decide about financial loss	claimant
18	156 (2)	not make interim payment	claimant

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## Dictionary

(see s 3)

*Note 1* The Legislation Act contains definitions and other provisions relevant to this Act.

*Note 2* For example, the Legislation Act, dict, pt 1, defines the following terms:

- Act
- adult
- authorised deposit-taking institution
- business day
- commissioner for fair trading
- consumer and trader tribunal
- corporation
- Corporations Act
- entity
- financial year
- found guilty
- lawyer
- month
- State
- statutory declaration
- under.

***account***—see section 131.

***ADI business day***, for a trust account, for division 7.2 (Trust money and trust accounts)—see section 104.

***administrator***, for part 9 (Appointment of administrators)—see section 138.

***agency agreement***—see section 100 (No commission or expenses without agency agreement).

**agent** means a person who carries on business as—

- (a) a business agent; or
- (b) an employment agent; or
- (c) a real estate agent; or
- (d) a stock and station agent; or
- (e) a travel agent.

**agent**, for division 3.4 (Disciplinary action against agents)—see section 40.

**agents licence** means—

- (a) a business agents licence; or
- (b) an employment agents licence; or
- (c) a real estate agents licence; or
- (d) a stock and station agents licence; or
- (e) a travel agents licence.

**audit period**, for a licensed agent, means the period fixed under section 113 for the agent.

**beneficial interest**, in land, for division 5.6 (Land—further provisions)—see section 82.

**benefit**, for division 5.6 (Land—further provisions)—see section 80.

**business agent service**—see section 10 (2).

**buyer** includes a prospective buyer.

**carries on business as**—

- (a) **a business agent**—see section 10; or
- (b) **an employment agent**—see section 12; or
- (c) **a real estate agent**—see section 8; or
- (d) **a stock and station agent**—see section 9; or



(e) *a travel agent*—see section 11.

*child*, of a person, means the son, daughter, grandson, granddaughter, stepson or stepdaughter of the person, or someone in relation to whom the person is acting in place of a parent.

*claimant*, for division 10.2 (Claims against the compensation fund)—see section 147.

*compensation fund* means the consumer compensation fund kept under section 144.

*compensation scheme*, for division 5.7 (Travel agents—further provisions)—see section 90.

*compensation scheme participant*, for a travel agent—see section 91 (Participation in compensation scheme).

*corresponding law*—see section 174.

*daily ACT newspaper* means a daily newspaper printed and published in the ACT.

*details*, of a trust account, for part 7 (Trust accounts)—see section 103.

*employ* includes—

- (a) engaging a person on a contract of service; and
- (b) for a corporation, having a person as director or other member of its governing body.

*employee*—

- (a) means—
  - (i) any person employed, regardless of how remunerated; and
  - (ii) a person engaged on a contract of service; and
- (b) for a corporation, includes a director or other member of its governing body.

**employee condition**—see section 26 (2) (Additional eligibility grounds for travel agents).

**employment agent service**—see section 12 (2).

**estimate**, for division 5.6 (Land—further provisions)—see section 80.

**executive officer**—see the Corporations Act, section 9.

**failure to account**, in relation to a licensed agent, means a failure by the agent to account for money or other property entrusted to the agent in the course of carrying on the agent's business as a licensed agent.

**fair trading legislation**—see section 7.

**family member**, of a person, means—

- (a) the person's domestic partner; or
- (b) the person's parent or child; or
- (c) the person's brother, sister, half-brother or half-sister; or
- (d) the parent or child of the person's domestic partner.

**former licensed agent** means a person who was, but is no longer a licensed agent.

**former registered salesperson** means a person who was, but is no longer a registered salesperson.

**ground for disciplinary action**—

- (a) for a licensed agent—see section 41;
- (b) for a registered salesperson—see section 65.

**investigator**—see the *Fair Trading (Consumer Affairs) Act 1973*, section 2.

***kind of licence*** means—

- (a) a business agents licence; or
- (b) an employment agents licence; or
- (c) a real estate agents licence; or
- (d) a stock and station agents licence; or
- (e) a travel agents licence.

***kind of registration*** means registration as—

- (a) a business salesperson; or
- (b) a real estate salesperson; or
- (c) a stock and station salesperson.

***land*** includes an interest in land.

***lessee*** includes prospective lessee.

***licence*** means a licence under this Act.

***licensed***, for division 3.1 (Agents to be licensed)—see section 17.

***licensed agent***, for part 7 (Trust accounts)—see section 101.

***licensed business agent*** means a person who holds a licence as a business agent.

***licensed employment agent*** means a person who holds a licence as an employment agent.

***licensed real estate agent*** means a person who holds a licence as a real estate agent.

***licensed stock and station agent*** means a person who holds a licence as a stock and station agent.

***licensed travel agent*** means a person who holds a licence as a travel agent.

***livestock*** means animals raised or kept for profit.

**main place of business**, for a licensed agent, means the place shown in the register as the agent's main place of business.

**obtains a beneficial interest**, in land, for division 5.6 (Land—further provisions)—see section 82.

**parent**, of a person, means the person's father, mother, grandfather, grandmother, stepfather or stepmother, or someone acting in place of the person's parent.

**pre-contract information**, for division 5.6 (Land—further provisions)—see section 81.

**principal**, of a person, does not include the person's employer.

**publish**—see section 78.

**qualified auditor**, for division 7.4 (Audit of trust accounts)—see section 112.

**real estate agent service**—see section 8 (2).

**records** includes documents and information in electronic form.

**register** means the register under section 160.

**registered**, for division 4.1 (Salespeople to be registered)—see section 44.

**registered business salesperson** means a person registered under section 57 as a business salesperson.

**registered real estate salesperson** means a person registered under section 57 as a real estate salesperson.

**registered salesperson** means—

- (a) a registered business salesperson; or
- (b) a registered real estate salesperson; or
- (c) a registered stock and station salesperson.

**registered salesperson**, for division 4.4—see section 64.

**registered stock and station salesperson** means a person registered under section 57 as a stock and station salesperson.

**registration** means registration under this Act.

**reviewable decision**, for part 12 (Notification and review of decisions)—see section 166.

**rules of conduct** means rules of conduct prescribed under section 171.

**rural land** means land used mainly for—

- (a) agricultural or pastoral purposes; or
- (b) a purpose prescribed by regulation.

**salesperson** means a person who, as an employee, provides—

- (a) a business agent service; or
- (b) a real estate agent service; or
- (c) a stock and station agent service.

**seller** includes prospective seller.

**selling price**, for division 5.6 (Land—further provisions)—see section 80.

**stock and station agent service**—see section 9.

**stop direction**, for division 8.2 (Freezing accounts)—see section 131.

**travel agents board of trustees** means the board of trustees established under the travel agents trust deed.

**travel agent service**—see section 11 (2).

***travel agents trust deed*** means—

- (a) the deed made on 12 December 1986 by the States of New South Wales, Victoria and Western Australia providing for the establishment and administration of a travel compensation fund and a compensation scheme in relation to business carried on by travel agents, as amended from time to time; or
- (b) if the deed is replaced by another deed to a similar effect—the other deed as amended from time to time.

***trust account***—see section 105 (Opening trust accounts).

***trust money***—see section 102.

***vehicle*** includes a ship, train or aircraft.

## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	pt = part
exp = expires/expired	r = rule/subrule
Gaz = gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

## Endnotes

3 Legislation history

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### 3 Legislation history

#### **Agents Act 2003 A2003-20**

notified LR 19 May 2003

s 1, s 2 commenced 19 May 2003

remainder commenced 1 November 2003 (s 2 and CN2003-12)

as amended by

#### **Civil Law (Sale of Residential Property) Act 2003 A2003-40 sch 1 pt 1.1 (as am by Justice and Community Safety Legislation Amendment Act 2004 (No 2) A2004-32 s 55)**

notified LR 8 September 2003

s 1, s 2 commenced 8 September 2003 (LA s 75 (1))

sch 1 pt 1.1 commenced 1 July 2004 (s 2)

#### **Justice and Community Safety Legislation Amendment Act 2004 A2004-18 pt 2**

notified LR 6 April 2004

s 1, s 2 commenced 6 April 2004 (LA s 75 (1))

pt 2 commenced 20 April 2004 (s 2)

#### **Justice and Community Safety Legislation Amendment Act 2004 (No 2) A2004-32 pt 2, s 55**

notified LR 29 June 2004

s 1, s 2 commenced 29 June 2004 (LA s 75 (1))

pt 2 commenced 30 June 2004 (s 2 (1))

s 55 commenced 1 July 2004 (s 2 (2))

*Note* s 55 only amends Civil Law (Sale of Residential Property) Act 2003 A2003-40

#### **Justice and Community Safety Legislation Amendment Act 2005 A2005-5 pt 2**

notified LR 23 February 2005

s 1, s 2 commenced 23 February 2005 (LA s 75 (1))

pt 2 commenced 24 February 2005 (s 2 (2))

#### **Justice and Community Safety Legislation Amendment Act 2005 (No 2) A2005-11 pt 2**

notified LR 11 March 2005

s 1, s 2 commenced 11 March 2005 (LA s 75 (1))

pt 2 commenced 12 March 2005 (s 2)



**Statute Law Amendment Act 2005 A2005-20 sch 3 pt 3.1**

notified LR 12 May 2005

s 1, s 2 taken to have commenced 8 March 2005 (LA s 75 (2))

sch 3 pt 3.1 commenced 2 June 2005 (s 2 (1))

**4 Amendment history****Commencement**

s 2 om LA s 89 (4)

**Eligibility for licences**s 24 am A2004-32 s 4, s 5; ss renum R3 LA (see A2004-32 s 6);  
A2005-11 s 4**Additional eligibility grounds for travel agents**

s 26 am A2005-11 s 5, s 6

**Grounds for disciplinary action—agents**

s 41 am A2005-11 s 7

**Licensed agent must not share commission etc with unlicensed person**

s 72 am A2005-20 amdt 3.1

**Meaning of *pre-contract information* for div 5.6**

s 81 am A2005-20 amdt 3.2

**Agents must not obtain beneficial interest in land**

s 86 am A2004-18 s 4

**Salespeople must not obtain beneficial interest in land**

s 87 am A2004-18 s 5

**Proposed contracts for sale of residential property**

s 89A ins A2003-40 amdt 1.1 (as am A2004-32 s 55)

**Contracts for sale of residential property**

s 89B ins A2003-40 amdt 1.1

**Meaning of *compensation scheme* for div 5.7**

s 90 am A2005-11 s 8

**Participation in compensation scheme**

s 91 am A2005-11 s 9

**Dealing with trust money**

s 107 am A2004-32 s 7; ss renum R3 LA (see A2003-32 s 8)

**Interest on trust accounts**

s 109 am A2005-5 s 4

**Requirement for audit**

s 115 am A2005-20 amdt 3.3

## Endnotes

4 Amendment history

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**Payment of unclaimed money to public trustee**

s 124 am A2005-20 amdt 3.4

**Decisions on recovery applications**

s 126 am A2005-20 amdt 3.5, amdt 3.6

**Claims for compensation**

s 151 am A2005-20 amdt 3.7

**Review of reviewable decisions**

s 168 sub A2004-18 s 6

**False or misleading statements**

s 169 am A2005-20 amdt 3.8

**Transitional provisions**

pt 14 hdg [exp 1 November 2007 \(s 203\)](#)

**Definitions**

div 14.1 hdg [exp 1 November 2005 \(s 201\)](#)

**Definitions for pt 14**

s 179 [exp 1 November 2005 \(s 201\)](#)

**Licensed agents under repealed Act**

div 14.2 hdg [exp 1 November 2005 \(s 201\)](#)

**Licensed agents under repealed Act generally**

s 180 [exp 1 November 2005 \(s 201\)](#)

**Suspended licensed agents under repealed Act**

s 181 [exp 1 November 2005 \(s 201\)](#)

**People disqualified from holding licence under repealed Act**

s 182 [exp 1 November 2005 \(s 201\)](#)

**Former licensed agents**

s 183 [exp 1 November 2005 \(s 201\)](#)

**Registered agents under repealed Act and employees**

div 14.3 hdg [exp 1 November 2005 \(s 201\)](#)

**Registered agents under repealed Act generally**

s 184 [exp 1 November 2005 \(s 201\)](#)

**Employees need not have qualifications for 2 years**

s 185 [exp 1 November 2005 \(s 201\)](#)

**Other provisions about the repealed Act**

div 14.4 hdg [exp 1 November 2005 \(s 201\)](#)

**Register**

s 186 [exp 1 November 2005 \(s 201\)](#)

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<b>Board property</b>	
s 187	<u><a href="#">exp 1 November 2005 (s 201)</a></u>
<b>Proceedings and evidence</b>	
s 188	<u><a href="#">exp 1 November 2005 (s 201)</a></u>
<b>Pending licence applications</b>	
s 189	<u><a href="#">exp 1 November 2005 (s 201)</a></u>
<b>Trust accounts</b>	
s 190	<u><a href="#">exp 1 November 2005 (s 201)</a></u>
<b>Administrative accounts</b>	
s 191	<u><a href="#">exp 1 November 2005 (s 201)</a></u>
<b>Agents fidelity guarantee fund</b>	
s 192	<u><a href="#">exp 1 November 2005 (s 201)</a></u>
<b>Compensation claims—entitlement and beginning</b>	
s 193	<u><a href="#">exp 1 November 2005 (s 201)</a></u>
<b>Compensation claims—board</b>	
s 194	<u><a href="#">exp 1 November 2005 (s 201)</a></u>
<b>Compensation payments</b>	
s 195	<u><a href="#">exp 1 November 2005 (s 201)</a></u>
<b>Disciplinary proceedings</b>	
s 196	<u><a href="#">exp 1 November 2005 (s 201)</a></u>
<b>Surrender of licences</b>	
s 197	<u><a href="#">exp 1 November 2005 (s 201)</a></u>
<b>Administrators</b>	
s 198	<u><a href="#">exp 1 November 2005 (s 201)</a></u>
<b>Auctioneers</b>	
div 14.5 hdg	<u><a href="#">exp 1 November 2005 (s 201)</a></u>
<b>Licensed auctioneers</b>	
s 199	<u><a href="#">exp 1 November 2005 (s 201)</a></u>
<b>Modification and expiry of pt 14</b>	
div 14.6 hdg	<u><a href="#">exp 1 November 2005 (s 201)</a></u>
<b>Regulations modifying pt 14</b>	
s 200	<u><a href="#">exp 1 November 2005 (s 201)</a></u>
<b>Expiry</b>	
s 201	<u><a href="#">exp 1 November 2005 (s 201)</a></u>
<b>Agents' record</b>	
div 14.7 hdg	<u><a href="#">exp 1 November 2005 (s 201)</a></u>

## Endnotes

4 Amendment history

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### **Keeping of agents' records**

s 202 am A2004-18 s 7  
exp 1 November 2007 (s 203)

### **Expiry of pt 14**

s 203 exp 1 November 2007 (s 203)

### **Repeals and consequential amendments**

pt 15 hdg om R1 LA

### **Auctioneers Act 1959, s 16 relocation**

s 204 om LA s 89 (3)

### **Acts repealed**

s 205 om LA s 89 (3)

### **Subordinate law repealed**

s 206 om LA s 89 (3)

### **Instruments repealed—sch 2**

s 207 om LA s 89 (3)

### **Acts amended—sch 3**

s 208 om LA s 89 (3)

### **Instruments repealed**

sch 2 om LA s 89 (3)

### **Consequential amendments**

sch 3 om LA s 89 (3)

### **Dictionary**

dict def *employee condition* ins A2005-11 s 10

## 5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No and date	Effective	Last amendment made by	Republication for
R1 1 Nov 2003	1 Nov 2003- 19 Apr 2004	<u>A2003-40</u>	new Act
R2 20 Apr 2004	20 Apr 2004- 29 June 2004	A2004-18	amendments by A2004-18
R3 30 June 2004	30 June 2004- 30 June 2004	A2004-32	amendments by A2004-32
R4 1 July 2004	1 July 2004- 23 Feb 2005	A2004-32	amendments by A2003-40
R5 24 Feb 2005	24 Feb 2005- 11 Mar 2005	A2005-5	amendments by A2005-5
R6 12 Mar 2005	12 Mar 2005- 1 June 2005	A2005-11	amendments by A2005-11

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