

1992
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Chief Minister)

Agents (Amendment) Bill 1992

TABLE OF PROVISIONS

Section	
1.	Short title
2.	Commencement
3.	Principal Act
4.	Application of Act
5.	Interpretation
6.	The Agents Board
7.	Constitution of the Board
8.	Chairman and Deputy Chairman of the Board
9.	Resignation of members
10.	Acting appointments
11.	Substitution
	17A. Application of Audit Act
12.	Repeal
13.	Objections to registration
14.	Registration certificates
15.	Insertion
	<i>Division 7—Periodic fees</i>
	41A. Fees payable by registered agents
16.	Applications for licences by individuals

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TABLE OF PROVISIONS—continued

Section

17. Applications for licences by companies
18. Objections to grant of licence
19. Issue of licences
20. Insertion
- Division 5—Periodic fees*
21. Insertion
- 54A. Fees payable by licensed agents
- 57A. Unclaimed trust moneys held by licensed agent
- 57B. Trust moneys held by former licensed agent
- 57C. Additional statement to be furnished
- 57D. Duties of Board in relation to unclaimed moneys in trust account
- 57E. Application to recover moneys
- 57F. Determination of applications
- 57G. Offences etc.
22. Insertion
- 59A. Arrangement relating to trust bank account
23. Inspection of bank accounts
24. Insertion
- PART VIC—ADMINISTRATIVE ACCOUNTS**
- Division 1—Agents Statutory Interest Account*
- 71N. Establishment and operation of Interest Account
- 71P. Payment of moneys into Interest Account
- 71Q. Application of moneys in Interest Account
- Division 2—Agents Administration Account*
- 71R. Establishment and operation of Administration Account
- 71S. Payment of moneys into Administration Account
- 71T. Application of moneys in Administration Account
- PART VID—AGENTS FIDELITY
GUARANTEE FUND**
- Division 1—Establishment of Agents Fidelity
Guarantee Fund*
- 71U. Establishment and operation of fund
- 71V. Moneys of Fund
- 71W. Application of moneys of Fund
- Division 2—Claims against the Fund*
- 71X. Application of Division
- 71Y. Entitlement of person to claim compensation
- 71Z. Advertisement relating to claims
- 71ZA. Claims
- 71ZB. Requirement to furnish information and produce documents
- 71ZC. Requirement to institute proceedings

TABLE OF PROVISIONS—continued

Section	
	71ZD. Determination of claims
	71ZE. Payment of compensation
	71ZF. Interim payment of compensation
	71ZG. Insufficiency of Fund
	71ZH. Subrogation
25.	Rules of conduct—licensed agents
26.	Rules of conduct—registered agents
27.	Inquiry by Board
28.	Revocation of registration or licence
29.	Inquiries
30.	Review of decisions
31.	Improper use of title of travel agent
32.	Substitution
	116. Actions for commission
33.	Repeal
34.	Formal amendments

1992
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(As presented)

(Chief Minister)

Agents (Amendment) Bill 1992

**A BILL
FOR**

An Act to amend the *Agents Act 1968*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Short title

1. This Act may be cited as the *Agents (Amendment) Act 1992*.

5 Commencement

2. (1) Sections 1, 2 and 3 commence on the day on which this Act is notified in the *Gazette*.

(2) Sections 14, 15, 19, 20 and 28 commence on 1 July 1992.

10 (3) The remaining provisions commence on a day fixed by the Minister by notice in the *Gazette*.

(4) If a provision referred to in subsection (3) has not commenced before the end of the period of 6 months commencing on the day on which

this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

Principal Act

3. In this Act, "Principal Act" means the *Agents Act 1968*.¹

5 Application of Act

4. Section 3 of the Principal Act is amended—

- (a) by omitting from subsection (1) "This" and substituting "Subject to subsection (1A), this";
- (b) by inserting after subsection (1) the following subsection:

10 “(1A) Sections 57B, 57C, 57D and 57G apply in relation to the personal representative of a licensed agent to whom Division 2 of Part VI applies.”;
- (c) by omitting from subsection (2) "notice" and substituting "instrument"; and
- 15 (d) by inserting after subsection (2) the following subsection:

 “(2A) A declaration under subsection (2) may be expressed to be subject to specified conditions.”.

Interpretation

5. Section 5 of the Principal Act is amended—

- 20 (a) by omitting "or an acting Chairman" from the definition of "member" in subsection (1);
- (b) by omitting the definition of "public service member" from subsection (1);
- (c) by inserting in subsection (1) the following definitions:

25 “ ‘Administration Account’ means the Agents Administration Account established under section 71R;

 “ ‘Corporations Law’ means the Corporations Law set out in section 82 of the *Corporations Act 1989* of the Commonwealth;

30 “ ‘determined fee’ means the fee determined by the Minister under section 120A for the purposes of the provision in which the expression occurs;

 “ ‘failure to account’, in relation to a licensed agent, means a failure by—

- 5
- (a) the licensed agent;
 - (b) an employee or agent of the licensed agent; or
 - (c) a person who has the apparent control or charge for the time being of the business of the licensed agent or of an office at which that business is carried on;

to account for money or other property entrusted, in the course of the conduct of the business of the licensed agent, to that licensed agent or that employee, agent or person;

10 'Fund' means the Agents Fidelity Guarantee Fund established under section 71U;

'Interest Account' means the Agents Statutory Interest Account established under section 71N;

'pecuniary loss', in relation to a failure to account, includes—

- 15
- (a) costs (including legal costs and disbursements of making and proving a claim for compensation in respect of the failure to account), charges and expenses incurred by a person as a direct consequence of the failure to account; and
 - 20 (b) interest, in respect of the money or other property in relation to which the failure to account occurred to and including the date on which the entitlement of a claimant for compensation to the money or other property is established in accordance with this Act;"; and
 - 25

(d) by omitting subsection (3).

The Agents Board

6. Section 8 of the Principal Act is amended—

- (a) by omitting from paragraph (2) (b) "and"; and
- 30 (b) by omitting paragraph (2) (c) and substituting the following paragraphs:

"(c) may acquire, hold and dispose of personal property; and

(d) may sue and be sued in its corporate name."

Constitution of the Board

35 7. Section 9 of the Principal Act is amended—

- (a) by omitting paragraph (1) (a);
- (b) by omitting from subsection (3) "other than the public service member";
- (c) by omitting subsection (4); and
- 5 (d) by omitting from subsection (5) "other than the public service member".

Chairman and Deputy Chairman of the Board

8. Section 10 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

- 10 "(1) The Minister shall in writing appoint a member to be Chairman of the Board."

Resignation of members

9. Section 14 of the Principal Act is amended by omitting "(other than the public service member)".

15 Acting appointments

10. Section 15 of the Principal Act is amended—

- (a) by omitting from subsection (1) "subject to this section" and substituting "in writing"; and
- 20 (b) by omitting subsections (2) and (3) and substituting the following subsection:

"(2) A person appointed under this section shall be paid such remuneration and allowances as are payable to a member under section 11."

Substitution

- 25 11. Section 17A of the Principal Act is repealed and the following section substituted:

Application of Audit Act

- 30 "17A. (1) For the purposes of subsection 87 (2) of the *Audit Act 1989*, the Board is declared to be a public authority to which Divisions 1 and 2 of Part IX of that Act apply.

"(2) For the purposes of the application of Division 2 of Part IX of the *Audit Act 1989* in relation to the Board, in that Division—

- (a) a reference to an account shall be read as including a reference to an account required to be kept by the Board under this Act;

- (b) a reference to moneys shall be read as including a reference to trust moneys; and
- (c) a reference to transactions and affairs shall be read as including a reference to transactions and affairs relating to trust moneys.”.

5 Repeal

12. Sections 24, 25, 28, 29, 32 and 33 of the Principal Act are repealed.

Objections to registration

10 13. Section 37 of the Principal Act is amended by omitting subsection (3) and substituting the following subsection:

“(3) The Registrar may, within 14 days after the lodgment of an application for registration, object by notice in writing signed by him or her to the grant of the application on the ground that the applicant does not have the required qualifications for registration as an agent.”.

15 Registration certificates

14. Section 41 of the Principal Act is amended—

- (a) by omitting “prescribed” and substituting “appropriate”; and
- (b) by adding at the end the following subsections:

20 “(2) For the purposes of subsection (1) the amount of the appropriate fee is an amount that bears the same proportion to the fee determined for the purposes of subsection 41A (1) as the number of months in the period commencing on the day of issue of the certificate and ending on the next ensuing 30 June bears to the period of 12 months.

25 “(3) In calculating the amount of the appropriate fee—

- (a) a part of a month shall be treated as a month; and
- (b) a fraction of a dollar shall be disregarded.”.

Insertion

30 15. After section 41 of the Principal Act the following Division is inserted in Part IV:

“Division 7—Periodic fees

Fees payable by registered agents

“41A. (1) A registered agent shall pay to the Registrar before the commencement of a financial year the determined fee.

“(2) An agent who was a registered agent immediately before the commencement of this section shall pay to the Registrar, before the first anniversary of his or her registration that occurs after that commencement, the appropriate fee.

5 “(3) For the purposes of subsection (2) the amount of the appropriate fee is an amount that bears the same proportion to the fee determined for the purposes of subsection (1) as the number of months in the period commencing on the anniversary of registration and ending on 30 June 1993 bears to the period of 12 months.

10 “(4) In calculating the amount of the appropriate fee—

- (a) a part of a month shall be treated as a month; and
- (b) a fraction of a dollar shall be disregarded.”.

Applications for licences by individuals

15 16. Section 48 of the Principal Act is amended by omitting subsection (3).

Applications for licences by companies

17. Section 49 of the Principal Act is amended—

(a) by inserting after paragraph (1) (g) the following paragraph:

20 “(ga) shall be accompanied by a written statement signed on behalf of the company by a director that—

- (i) a liquidator, receiver, official manager or receiver and manager has not been appointed in relation to the company, any of its assets or any part of its affairs or undertaking;
- 25 (ii) no compromise or arrangement of a kind specified in Part 5.1 of the Corporations Law has been entered into or is proposed; and
- (iii) the company is solvent;”;

(b) by adding at the end the following subsection:

30 “(3) In this section—

‘certificate of incorporation’, in relation to a trade union, means the registration certificate of the trade union.”.

Objections to grant of licence

35 18. Section 50 of the Principal Act is amended by omitting subsections (2) and (3) and substituting the following subsection:

5 “(2) The Commissioner of Police may, within 21 days after being served with the notice referred to in subparagraph 48 (1) (b) (ii) or 49 (1) (e) (ii), as the case may be, object by notice in writing delivered to the Registrar to the grant of the application to which the notice relates on the ground that—

- (a) the applicant; or
- (b) where the applicant is a company—a director of the company; is not a person of good fame and character.”

Issue of licences

10 19. Section 53 of the Principal Act is amended—

- (a) by omitting from subsection (1) “prescribed” and substituting “appropriate”; and
- (b) by adding at the end the following subsections:

15 “(4) For the purposes of subsection (1) the amount of the appropriate fee is an amount that bears the same proportion to the fee determined for the purposes of subsection 54A (1) as the number of months in the period commencing on the day of issue of the licence and ending on the next ensuing 30 June bears to the period of 12 months.

20 “(5) In calculating the amount of the appropriate fee—

- (a) a part of a month shall be treated as a month; and
- (b) a fraction of a dollar shall be disregarded.”

Insertion

25 20. After section 54 of the Principal Act the following Division is inserted in Part V:

“Division 5—Periodic fees

Fees payable by licensed agents

“54A. (1) A licensed agent shall pay to the Registrar before the commencement of a financial year the determined fee.

30 “(2) An agent who was a licensed agent immediately before the commencement of this section shall pay to the Registrar, before the first anniversary of the issue of his or her licence that occurs after that commencement, the appropriate fee.

35 “(3) For the purposes of subsection (2) the amount of the appropriate fee is an amount that bears the same proportion to the fee determined for the

purposes of subsection (1) as the number of months in the period commencing on the anniversary of the issue of the licence and ending on 30 June 1993 bears to the period of 12 months.

“(4) In calculating the amount of the appropriate fee—

- 5 (a) a part of a month shall be treated as a month; and
 (b) a fraction of a dollar shall be disregarded.”

Insertion

21. After section 57 of the Principal Act the following sections are inserted:

10 Unclaimed trust moneys held by licensed agent

“57A. (1) Where, in a relevant month—

- (a) a licensed agent holds moneys in a trust account maintained by the agent; and
 15 (b) those moneys were received by the agent more than 6 years before that month;

the agent shall, during that month, furnish to the Board a statement in respect of those moneys.

“(2) A statement under subsection (1) in respect of moneys to which that subsection applies shall contain particulars of—

- 20 (a) the name and last known address of each person for whom or on whose behalf the moneys are held;
 (b) the amount of money held for each of those persons on the day on which the statement is furnished; and
 25 (c) in respect of each of those persons—the purposes for which the moneys were paid to the licensed agent.

“(3) Subsection (1) does not apply to moneys specified in the regulations or included in a class of moneys specified in the regulations.

“(4) A licensed agent shall maintain, in writing, a record of any moneys held by the agent that are of a kind referred to in subsection (3).

30 “(5) In this section—

‘relevant month’ means the month of July in each year.

Trust moneys held by former licensed agent

“57B. (1) Where—

- (a) a person ceases to be a licensed agent; and
 - (b) at the time the person ceased to be a licensed agent moneys were held in a trust account maintained by the person as a licensed agent;
- 5 the person shall, within 3 months after ceasing to be a licensed agent, furnish to the Board a statement in respect of those moneys.

“(2) Where—

- (a) a licensed agent dies; and
 - (b) at the time the agent died moneys were held in a trust account maintained by the agent;
- 10 the personal representative of the agent shall, within 3 months after becoming the personal representative, furnish to the Board a statement in respect of those moneys.

“(3) A statement under subsection (1) or (2) in respect of moneys to which the subsection applies shall contain particulars of—

- (a) the name and last known address of each person for whom or on whose behalf the moneys are held;
 - (b) the amount of moneys held for each of those persons on the day on which the statement is furnished; and
 - (c) in respect of each of those persons—the purposes for which the moneys were paid to the person furnishing the statement or licensed agent by whom the trust account was maintained.
- 15
20

Additional statement to be furnished

“57C. (1) Where—

- (a) a person is required by section 57B to furnish to the Board a statement (in this section called ‘the first statement’); and
 - (b) at the expiration of the period of 12 months commencing at the expiration of the last day available for furnishing the first statement that person still holds moneys to which the first statement related;
- 25
30 he or she shall within 14 days furnish to the Board a further statement containing particulars of—
- (c) the name and last known address of each person for whom or on whose behalf the moneys are held;
 - (d) the amount of moneys held for each of those persons at the expiration of the period referred to in paragraph (b); and
- 35

- (e) any payments made out of the trust account in which the moneys are held since the first statement was prepared.

“(2) Where—

- (a) paragraph (1) (a) applies; and
 5 (b) before the expiration of the period referred to in paragraph (1) (b) the person ceases to hold moneys to which the first statement related;

he or she shall, within 14 days of ceasing to hold those moneys, furnish to the Board a statement containing particulars of their disposal.

10 Duties of Board in relation to unclaimed moneys in trust account

“57D. (1) Where the Board receives a statement under section 57A or 57C it shall, within 6 months after receipt of the statement, cause to be published in the *Gazette* and in a daily newspaper printed and published in
 15 the Territory a notice—

- (a) containing particulars of—
 (i) the name and last known address of each person on whose behalf moneys are held; and
 (ii) the amount of money held for or on behalf of that person;
 20 and
 (b) stating that, if the moneys are not paid out of the trust account in which they are held within 3 months after the date of publication of the notice, the person holding the moneys will be required to pay them to the Registrar of Unclaimed Moneys.

25 “(2) The Board may, at any time after the expiration of the period of 3 months after the date of publication of a notice referred to in subsection (1), by notice in writing served on the person holding the moneys to which that first-mentioned notice related, require him or her, within such period of not less than 14 days as is specified in the notice—

- 30 (a) to pay to the Registrar of Unclaimed Moneys any of those moneys still being held by the person; and
 (b) to furnish to the Board a statement containing particulars of any payments made out of those moneys since the statement under section 57A or 57C, as the case requires, was furnished.

35 “(3) In this section—

‘date of publication’, in relation to a notice referred to in subsection (2), means—

- (a) the date on which the notice is published in the *Gazette* and in a newspaper printed and published in the Territory; or
- (b) where the notice is published in the *Gazette* and newspaper on different dates—the later of those dates.

5 Application to recover moneys

“57E. (1) A person who claims to be entitled to moneys paid to the Registrar of Unclaimed Moneys under subsection 57D (2) may apply to the Board for payment of those moneys.

“(2) An application under subsection (1)—

- 10 (a) shall be in writing;
- (b) shall be lodged with the Board;
- (c) shall state the full name and residential address of the applicant; and
- (d) shall contain full particulars of the claim.

15 “(3) The Board may, by notice in writing, require an applicant to furnish to it, either orally or in writing, within the period specified in the notice, such further information relating to the application as the Board requires.

Determination of applications

20 “57F. (1) The Board shall consider an application under section 57E and shall determine—

- (a) the amount of the moneys paid to the Registrar of Unclaimed Moneys under subsection 57D (2) to which the applicant is entitled; or
- 25 (b) that the applicant is not entitled to any of those moneys.

“(2) Where the Board determines that an applicant is entitled to moneys paid to the Registrar of Unclaimed Moneys under subsection 57D (2), the Board shall direct the Registrar of Unclaimed Moneys to pay to the applicant an amount equal to the amount that he or she is entitled to.

30 “(3) The Registrar of Unclaimed Moneys shall comply with a direction under subsection (2).

“(4) Where the Board makes a requirement under subsection 57E (3) in relation to an application, it is not required to take any further action in relation to the application until the requirement is satisfied.

Offences etc.

“57G. (1) A person shall not, without reasonable excuse, fail to comply with subsection 57B (1) or (2) or section 57C.

Penalty:

- 5 (a) if the offender is a natural person—\$1,000;
(b) if the offender is a body corporate—\$5,000.

“(2) A person who is not a licensed agent shall not, without reasonable excuse, fail to comply with a requirement made of him or her under subsection 57D (2).

10 **Penalty:**

- (a) if the offender is a natural person—\$1,000;
(b) if the offender is a body corporate—\$5,000.

15 “(3) A person who is a licensed agent shall not, without reasonable excuse, fail to comply with a requirement made of him or her under subsection 57D (2).”

Insertion

22. After section 59 of the Principal Act the following section is inserted in Division 2 of Part VI:

Arrangement relating to trust bank account

20 “59A. The Board may enter into an arrangement with a bank in the Territory for payment by the bank to the Board of amounts in respect of moneys held in any trust account maintained by an agent at the bank.”

Inspection of bank accounts

23. Section 71 of the Principal Act is amended—

- 25 (a) by omitting from subsection (1) “of a bank” and substituting “of a branch of a bank”;
- (b) by adding at the end of subsection (1) “at that branch”;
- (c) by omitting from subsection (2) “of the bank” and substituting “of the branch of the bank”;
- 30 (d) by omitting from paragraph (2) (a) “bank” and substituting “branch”;
- (e) by omitting from paragraph (3) (a) “bank” and substituting “branch”; and

(f) by adding at the end the following subsection:

“(4) The manager or other principal officer in the Territory of a bank shall, on personal delivery to him or her of a written notice signed by the Registrar—

- 5 (a) make available at the principal place of business of the bank in the Territory to the Registrar or an inspector specified in the notice; and
- (b) permit the Registrar or inspector to inspect and make copies of;
- 10 all the accounts and any related documents or records held by any branch of the bank relating to—
- (c) any trust account held by a licensed agent (other than a travel agent) named in the notice; or
- 15 (d) if the notice so specifies, all trust accounts held by all licensed agents (other than travel agents).”.

Insertion

24. After Part VIB of the Principal Act the following Parts are inserted:

“PART VIC—ADMINISTRATIVE ACCOUNTS

“Division 1—Agents Statutory Interest Account

20 **Establishment and operation of Interest Account**

“71N. (1) The Board shall establish and maintain an account to be called the Agents Statutory Interest Account.

“ (2) The Interest Account shall be operated by the Board in such manner as the Board from time to time determines.

25 **Payment of moneys into Interest Account**

“71P. There shall be paid to the credit of the Interest Account—

- (a) any fees paid under section 41, subsection 53 (1), 93 (6) or (11) or section 110;
- (b) interest received in respect of investments made by the Board of—
- 30 (i) an amount standing to the credit of the Interest Account that is not immediately required to be applied in accordance with section 71Q;

- (ii) an amount standing to the credit of the Administration Account that is not immediately required to be applied in accordance with section 71T; and
- 5 (iii) an amount standing to the credit of the Fund and not immediately required to be applied in accordance with section 71W;
- (c) any amount paid to the Board pursuant to an arrangement of a kind referred to in section 59A; and
- 10 (d) any other moneys that may lawfully be paid into the Interest Account.

Application of moneys in Interest Account

“71Q. (1) Moneys standing to the credit of the Interest Account at the end of each financial year shall, during the next following financial year, be applied by the Board towards—

- 15 (a) the payment to the credit of the Administration Account of such amount as is estimated by the Board to be the aggregate of the amounts that, during that financial year, will be required to be withdrawn from the Administration Account under section 71T; and
- 20 (b) the supplementation of the Fund by such amount as the Board, with the approval of the Minister, determines.

“2) Where, after payment of the amounts referred to in subsection (1), there remains in the Interest Account a balance of the moneys standing to its credit at the end of the previous financial year, that balance shall be applied by the Board towards—

- 25 (a) the promotion of, and the provision of assistance for, educational programs relating to real estate matters for agents and members of the public; and
- 30 (b) the provision of financial assistance (whether by way of grant or loan) or of other assistance under a program established for the purpose of enabling or assisting persons to acquire or rent dwellings in which they intend to reside.

“3) The Board shall not make a payment to the Fund under paragraph (1) (b) if the amount standing to the credit of the Fund exceeds the amount determined by the Minister by notice in the *Gazette* unless the amount in the Fund is not sufficient to meet the payments that are required to be made out of the moneys of the Fund.

“(4) The amount that may be applied for a purpose referred to in subsection (2) is such amount as the Board, with the approval of the Minister, from time to time, determines.

“Division 2—Agents Administration Account

5 Establishment and operation of Administration Account

“71R. (1) The Board shall establish and maintain an account to be called the Agents Administration Account.

“(2) Pending the investment or application in accordance with section 71T of moneys standing to the credit of the Administration Account, the Board shall pay the moneys into an account with a bank in the Territory.

“(3) The Administration Account shall be operated by the Board in such manner as the Board from time to time determines.

Payment of moneys into Administration Account

“71S. There shall be paid to the credit of the Administration Account—

- 15 (a) the amount referred to in paragraph 71Q (1) (a); and
- (b) any other moneys that may lawfully be paid into the Administration Account.

Application of moneys in Administration Account

“71T. (1) Moneys standing to the credit of the Administration Account shall be applied by the Board for the following purposes:

- 20 (a) the payment of the costs, charges and expenses incurred by the Board in connection with the administration of—
 - (i) this Act;
 - (ii) the Interest Account; and
 - 25 (iii) the Fund;
- (b) the remuneration and allowances payable to—
 - (i) members; and
 - (ii) persons appointed under section 6;
- (c) the payment of legal expenses—
 - 30 (i) incurred by the Board in connection with claims made against the Fund and applications to review decisions of the Board in respect of the Fund; or
 - (ii) otherwise incurred in relation to the Fund;

- (d) the payment of costs and expenses in relation to proceedings under Part XII;
- (e) where proceedings are instituted by a claimant for compensation in accordance with a requirement under section 71ZC—the payment of the costs and expenses necessarily incurred by the claimant in connection with the proceedings.

“(2) In calculating an amount for the purposes of subsection (1) the Board shall not take into account the costs, charges or expenses involved in the administration of this Act or in proceedings in relation to—

- (a) travel agents (whether or not licensed or registered); or
- (b) an activity that under section 5D is to be taken as the carrying on of business as a travel agent.

“PART VID—AGENTS FIDELITY GUARANTEE FUND

“Division 1—Establishment of Agents Fidelity Guarantee Fund

15 Establishment and operation of fund

“71U. (1) The Board shall establish and maintain a Fund to be called the Agents Fidelity Guarantee Fund.

“(2) The assets of the Fund—

- (a) are the property of the Board;
- (b) shall be kept separate from all other property of the Board; and
- (c) shall be expended only for the purposes set out in this Act.

“(3) The Fund shall be administered by the Board.

“(4) Pending the investment or application in accordance with section 71W of moneys belonging to the Fund, the Board shall pay the moneys into a bank in the Territory to the credit of a separate account to be called the ‘Agents Fidelity Guarantee Account’.

“(5) The Agents Fidelity Guarantee Account shall be operated by the Board in such manner as the Board from time to time determines.

Moneys of Fund

30 “71V. The Fund shall consist of—

- (a) the amounts paid out of the Interest Account for the purposes of the Fund; and
- (b) any other moneys that may be lawfully paid into the Fund.

Application of moneys of Fund

“71W. There shall from time to time be paid out of the Fund—

- (a) the amount of all claims, including costs, allowed or established against the Fund; and
- 5 (b) any other moneys payable out of the Fund in accordance with this Act.

“Division 2—Claims against the Fund

Application of Division

“71X. This Division does not apply in relation to a travel agent.

10 **Entitlement of person to claim compensation**

“71Y. (1) A person who, after the commencement of this section, suffers pecuniary loss by reason of a failure to account by a licensed agent is entitled to claim compensation from the Fund in respect of the loss.

- 15 “(2) The amount that a claimant is entitled to claim as compensation from the Fund is the amount of the actual pecuniary loss suffered by the claimant less any amount that the claimant has recovered or that is recoverable in respect of the loss from a source other than the Fund.

- 20 “(3) Nothing in subsection (1) entitles an agent to claim compensation against the Fund in respect of any pecuniary loss suffered by the agent in the course of carrying on business as an agent.

Advertisement relating to claims

- 25 “71Z. (1) The Board may cause to be published in accordance with this section a notice inviting persons entitled to make a claim for compensation under this Part in relation to any act or omission of a specified licensed agent to make their claims within such period as is specified in the notice.

“(2) A notice shall be published—

- (a) in a daily newspaper printed and published in the Territory;
- (b) on at least 2 different occasions; and
- 30 (c) at intervals of not less than 1 month between each publication.

“(3) A notice shall, in addition to specifying the name of the licensed agent—

- (a) specify the name under which, and the place or places at which, the agent carries or carried on business; and

- (b) contain such other details as the Board considers necessary to enable the identity of the agent to be clearly established.

“(4) The period to be specified in a notice is a period of not less than 6 months after the notice was first published.

- 5 “(5) An action for damages does not lie against the Board in respect of the publication in good faith of a notice under this section.

Claims

“71ZA. (1) A claim for compensation—

- (a) shall be in writing;
- 10 (b) shall be lodged with the Board;
- (c) shall state the full name and residential address of the claimant;
- (d) shall contain full particulars of the claim; and
- (e) shall be accompanied by a statutory declaration to the effect that the particulars contained in the claim are true.

- 15 “(2) Subject to subsection (3), a claim for compensation shall be made—

- (a) within 6 months after the claimant becomes aware of the failure to account in connection with which the claim arises; or
 - (b) within 2 years after the failure to account occurs;
- 20 whichever period first expires.

- “ (3) Where, before the expiration of the period within which a claim for compensation would, but for this subsection, be required to be made, a notice in connection with the making of the claim is published in accordance with section 71Z, the claim for compensation shall be made before the expiration of the period specified in the notice.
- 25

Requirement to furnish information and produce documents

“71ZB. (1) The Board may, by notice in writing, require a claimant—

- (a) to furnish to it, either orally or in writing, within the period specified in the notice, such further information relating to the claim as the Board requires; or
- 30 (b) to deliver to it, within the period specified in the notice, such documents in the custody or control of the claimant as are specified in the notice that may be of assistance to the Board—
 - (i) in determining the claim; or

- (ii) in exercising against a licensed agent the rights vested in the Board pursuant to section 71ZH.

“(2) The Board may, for the purpose of determining a claim for compensation—

- 5 (a) inspect a document produced under subsection (1);
- (b) make copies of, or take extracts from, such parts of the document as are relevant to a matter connected with the claim; and
- (c) retain possession of the document for as long as is necessary for those purposes.

10 “(3) Where the Board retains possession of a document under subsection (2)—

- (a) the Board shall, as soon as practicable, supply the person otherwise entitled to possession of the document with a copy certified by the Board to be a true copy;
- 15 (b) the certified copy shall be received in all courts as evidence as if it were the original; and
- (c) until the certified copy is so supplied, the Board shall, at such times and places as it thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by that person, to inspect and make copies of, or take
- 20 extracts from, the document.

Requirement to institute proceedings

“71ZC. The Board may, if it considers the circumstances so warrant, by notice in writing require a claimant for compensation to institute

25 proceedings for the recovery of the money that is the subject of the claim against—

- (a) the licensed agent to whom the claim relates; or
- (b) any other person considered by the Board to be liable in respect of the loss suffered by the claimant.

30 **Determination of claims**

“71ZD. (1) The Board shall consider a claim for compensation made in accordance with this Part and—

- (a) shall determine—
- 35 (i) the amount of the pecuniary loss in respect of which compensation may be paid to the claimant under this Part; or

- (ii) that there is no pecuniary loss in respect of which compensation may be so paid; or
 - (b) where the Board considers the circumstances so warrant—hold an inquiry into the matter.
- 5 “(2) Where the Board makes a requirement under subsection 71ZB (1) or section 71ZC in relation to a claim, it is not required to take any further action in relation to the claim until—
- (a) the requirement is satisfied; and
 - (b) in a case in which section 71ZC applies—the relevant proceedings are determined.
- 10

Payment of compensation

“71ZE. (1) Where an amount has been determined under this Part as the amount of pecuniary loss in respect of which compensation may be paid to a claimant, the Board shall, subject to this section, pay to the claimant out of the Fund an amount equal to the amount so determined.

15

- “(2) The Board shall not make a payment under subsection (1) until—
- (a) all claims for compensation made in respect of a licensed agent have been determined;
 - (b) any inquiry under paragraph 71ZD (1) (b) has been completed; and
 - (c) the Board has ascertained whether the amount standing to the credit of the Fund is sufficient for the payment of all amounts required by subsection (1) to be paid to claimants.
- 20

Interim payment of compensation

“71ZF. (1) Where an amount has been determined under this Part as the amount of pecuniary loss in respect of which compensation may be paid to a claimant, the Board may, upon the written request of the claimant, if it is satisfied that—

25

- (a) as a direct consequence of the pecuniary loss the claimant is suffering financial hardship; or
 - (b) prescribed circumstances exist;
- 30

make an interim payment of compensation to the claimant out of the Fund of such amount as the Board determines.

“(2) An amount paid to a claimant under subsection (1) shall be set off against the amount of compensation required by section 71ZE to be paid to the claimant.

35

Insufficiency of Fund

5 “71ZG. (1) Where, at any time, the amount standing to the credit of the Fund is insufficient for the payment of all amounts that would, but for this subsection, be required by section 71ZE to be paid to claimants for compensation—

- (a) the Board shall, for the purpose of making payments to the claimants, divide the amount in the Fund among the claimants in proportion to those amounts; and
- 10 (b) the balance of those amounts shall be paid out of future accumulations of the Fund.

“(2) Where the Board makes a payment under paragraph (1) (a) it shall advise in writing each claimant of the extent of the insufficiency.

“(3) The Fund is the only property of the Board available for the satisfaction of a claim for compensation under this Part.

15 **Subrogation**

“71ZH. Where compensation is paid to a person in respect of a claim, the Board is, to the extent of the payment, subrogated to the rights of that person against the licensed agent in respect of whom the claim for compensation was made.”.

20 **Rules of conduct—licensed agents**

25. Section 72 of the Principal Act is amended by inserting after paragraph (1) (b) the following paragraph:

- “(ba) contravenes a condition applicable to him or her by virtue of a declaration in force under subsection 3 (2);”.

25 **Rules of conduct—registered agents**

26. Section 73 of the Principal Act is amended by inserting before paragraph (2) (a) the following paragraph:

- “(aa) contravenes a provision of this Act, not being a provision for a contravention of which a penalty is imposed;”.

30 **Inquiry by Board**

27. Section 75 of the Principal Act is amended—

- (a) by omitting from subsection (1) “rules of conduct for agents—” and substituting “rules of conduct for agents, take any one or more of the following forms of action:”; and
- 35 (b) by omitting from paragraph (1) (e) “or”.

Revocation of registration or licence

28. Section 77 of the Principal Act is amended by omitting paragraph (1) (m) and substituting the following paragraph:

“(m) the agent has failed to comply with section 41A or 54A; or”.

5 Inquiries

29. Section 88 of the Principal Act is amended—

(a) by inserting after paragraph (2) (a) the following paragraph:

“(aa) in the case of an inquiry in relation to a claim for compensation under Part VID—

- 10 (i) to the claimant; and
 (ii) to the licensed agent in respect of whom the claim is made;”;

(b) by inserting in subsection (7) “, claimant” after “applicant”; and

15 (c) by omitting from subsection (7) “subparagraph (2) (a) (i) or (ii)” and substituting “subparagraph (2) (a) (i) or (ii), (aa) (i) or (ii)”.

Review of decisions

30. Section 98 of the Principal Act is amended by inserting after paragraph (1) (d) the following paragraph:

“(da) determining, under subsection 57F (1)—

- 20 (i) the amount of moneys to which an applicant is entitled; or
 (ii) that an applicant is not entitled to any moneys;

(db) determining, under subsection 71ZD (1)—

- (i) the amount of pecuniary loss in respect of which compensation may be paid to a claimant; or
 25 (ii) that there is no pecuniary loss in respect of which compensation may be paid to a claimant;”.

Improper use of title of travel agent

31. Section 105A of the Principal Act is amended by adding at the foot of subsection (1) the following penalty:

30 “Penalty:

- (a) if the offender is a natural person—\$1,000;
 (b) if the offender is a body corporate—\$5,000.”.

Substitution

32. Section 116 of the Principal Act is repealed and the following section substituted:

Actions for commission

5 "116. (1) A person, other than a person referred to in subsection 3 (1), is not entitled to bring an action to recover any commission, fee, gain or reward for acting as an agent for a principal in relation to a matter referred to in section 5A unless the person—

- 10 (a) was a licensed real estate agent at the time that he or she was engaged to act as an agent; and
(b) was such an agent at the time of acting as agent.

15 "(2) A person, other than a person referred to in subsection 3 (1), is not entitled to bring an action to recover any commission, fee, gain or reward for acting as an agent for a principal in relation to a matter referred to in section 5B unless the person—

- (a) was a licensed stock and station agent at the time that he or she was engaged to act as an agent; and
(b) was such an agent at the time of acting as agent.

20 "(3) A person, other than a person referred to in subsection 3 (1), is not entitled to bring an action to recover any commission, fee, gain or reward for acting as an agent for a principal in relation to a matter referred to in section 5C unless the person—

- (a) was a licensed business agent at the time that he or she was engaged to act as an agent; and
25 (b) was such an agent at the time of acting as agent."

Repeal

33. Section 121 of the Principal Act is repealed.

Formal amendments

30 34. The following provisions of the Principal Act are amended by omitting "prescribed" and substituting "determined":

Paragraph 47E (4) (b); subsections 93 (6) (wherever occurring) and (11); section 110.

NOTE

1. Ordinance No. 26, 1968 as amended to date. For previous amendments see the tables in Note 1 to the *Agents Act 1968* (as reprinted as at 30 June 1991).