

2003

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Agents Bill 2003

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2003

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Agents Bill 2003

A Bill for

An Act to regulate agents, and for other purposes

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

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Agents Act 2003*.

4 **2 Commencement**

5 This Act commences on a day fixed by the Minister by written
6 notice.

7 *Note 1* The naming and commencement provisions automatically commence on
8 the notification day (see Legislation Act, s 75 (1)).

9 *Note 2* A single day or time may be fixed, or different days or times may be
10 fixed, for the commencement of different provisions (see Legislation
11 Act, s 77 (1)).

12 *Note 3* If a provision has not commenced within 6 months beginning on the
13 notification day, it automatically commences on the first day after that
14 period (see Legislation Act, s 79).

15 **3 Dictionary**

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

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

21 For example, the signpost definition '*executive officer*—see the
22 Corporations Act, section 9 (Dictionary).' means that the expression
23 'executive officer' is defined in that section and the definition applies to
24 this Act.

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

1 **4 Notes**

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

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

4 **5 Offences against Act—application of Criminal Code etc**

5 Other legislation applies in relation to offences against this Act.

6 *Note 1 Criminal Code*

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

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

13 *Note 2 Penalty units*

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

16 **6 Application of Act**

17 This Act does not apply to the following:

- 18 (a) an executor under a will or an administrator under letters of
19 administration;
- 20 (b) a trustee of a deceased estate;
- 21 (c) the public trustee;
- 22 (d) a trustee company under the *Trustee Companies Act 1947*
23 exercising functions under that Act;
- 24 (e) an administrator, a receiver or a liquidator under the
25 Corporations Act;
- 26 (f) a manager under the *Guardianship and Management of*
27 *Property Act 1991*;
- 28 (g) a bailiff;

Part 1 Preliminary

Section 6

- 1 (h) a sheriff;
- 2 (i) another court officer;
- 3 (j) a lawyer exercising the functions of a lawyer;
- 4 (k) a Minister;
- 5 (l) an entity prescribed under the regulations.

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

8 **9 Carrying on business as stock and station agent**

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

- 1 (ii) enter into, or make or accept an offer to enter into, a
2 contract to buy, sell, exchange or otherwise dispose of
3 livestock;
- 4 (g) providing agistment for livestock or collecting fees for the
5 agistment of livestock;
- 6 (h) any other service prescribed under the regulations for this
7 section.

8 **10 Carrying on business as business agent**

- 9 (1) A person *carries on business as a business agent* if the person
10 provides, or offers to provide, a business agent service for a
11 principal for reward.
- 12 (2) Each of the following is a *business agent service*:
- 13 (a) buying, selling, exchanging, disposing of, or otherwise dealing
14 with, a business or professional practice or a share or interest in
15 the goodwill or stock of a business or professional practice;
- 16 (b) negotiating for the purchase, sale, exchange, disposition of, or
17 other dealing with, a business or professional practice or any
18 share or interest in the goodwill or stock of a business or
19 professional practice;
- 20 (c) any other service prescribed under the regulations for this
21 section.
- 22 (3) To remove any doubt, a person does not carry on business as a
23 business agent only because the person carries on business as a
24 stock and station agent.

- 1 **11 Carrying on business as travel agent**
- 2 (1) A person *carries on business as a travel agent* if the person
- 3 provides, or offers to provide, a travel agent service for a principal
- 4 for reward.
- 5 (2) Each of the following is a *travel agent service*:
- 6 (a) selling, buying or arranging—
- 7 (i) a right to travel on a vehicle; or
- 8 (ii) a right to accommodation;
- 9 (b) buying for resale a right to travel on a vehicle or a right to
- 10 accommodation;
- 11 (c) negotiating for the purchase by, or sale to, someone else of—
- 12 (i) a right to travel on a vehicle; or
- 13 (ii) a right to accommodation;
- 14 (d) any other service prescribed under the regulations for this
- 15 section.
- 16 (3) However, a person does not carry on business as a travel agent only
- 17 because the person sells, buys or negotiates for the purchase or sale
- 18 by someone else of a right to travel on a vehicle if the vehicle is
- 19 used, or to be used, only to carry passengers to and from the same
- 20 place on the same day.
- 21 (4) Also, a person does not provide a travel agent service only because
- 22 the person provides a service in relation to travel or accommodation
- 23 provided by the person.
- 24 (5) In this section:
- 25 *accommodation* means accommodation anywhere in the world.
- 26 *travel* means travel to or from anywhere in the world.

1 **12 Carrying on business as employment agent**

2 (1) A person *carries on business as an employment agent* if the person
3 provides, or offers to provide, an employment agent service for a
4 principal for reward.

5 (2) Each of the following is an *employment agent service*:

6 (a) finding, or helping to find, a person to carry out work for a
7 principal;

8 (b) any other service prescribed under the regulations for this
9 section.

10 (3) For subsection (2), it does not matter whether the work or
11 employment—

12 (a) is to be carried out under a contract of employment or
13 otherwise; or

14 (b) is to be carried out in or outside the ACT.

15 **13 Employees not taken to carry on business as agents**

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

20 (a) a real estate agent service;

21 (b) a stock and station agent service;

22 (c) a business agent service;

23 (d) a travel agent service;

24 (e) an employment agent service.

1 **14 Silent partners not taken to carry on business as agents**

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

5 **15 Publishers of advertisements not agents**

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

9 (a) a business carried on, or to be carried on, by the other person;
10 or

11 (b) a service provided, or to be provided, by the other person.

1 **Part 3** **Licensing of agents**

2 **Division 3.1** **Agents to be licensed**

3 **16** **Application of div 3.1**

4 This division does not apply to an administrator.

5 **17** **Meaning of *licensed* for div 3.1**

6 In this division:

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

9 **18** **Real estate agents must be licensed**

10 (1) A person commits an offence if—

11 (a) the person is not a licensed real estate agent; and

12 (b) the person—

13 (i) carries on business as a real estate agent; or

14 (ii) pretends to be a licensed real estate agent.

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

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

18 (3) This section does not apply to the provision of a service by a person
19 if the person is otherwise licensed to provide the service.

1 **19 Stock and station agents must be licensed**

2 (1) A person commits an offence if—

3 (a) the person is not a licensed stock and station agent; and

4 (b) the person—

5 (i) carries on business as a stock and station agent; or

6 (ii) pretends to be a licensed stock and station agent.

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

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

10 (3) This section does not apply to the provision of a service by a person
11 if the person is otherwise licensed to provide the service.

12 **20 Business agents must be licensed**

13 (1) A person commits an offence if—

14 (a) the person is not a licensed business agent; and

15 (b) the person—

16 (i) carries on business as a business agent; or

17 (ii) pretends to be a licensed business agent.

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

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

21 (3) This section does not apply to the provision of a service by a person
22 if the person is otherwise licensed to provide the service.

1 **21 Travel agents must be licensed**

2 (1) A person commits an offence if—

3 (a) the person is not a licensed travel agent; and

4 (b) the person—

5 (i) carries on business as a travel agent; or

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

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

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

10 **22 Employment agents must be licensed**

11 (1) A person commits an offence if—

12 (a) the person is not a licensed employment agent; and

13 (b) the person—

14 (i) carries on business as an employment agent; or

15 (ii) pretends to be person is a licensed employment agent.

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

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

19 **23 Unlicensed agents cannot recover fees etc**

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

1 **Division 3.2** **Eligibility, qualifications and**
2 **disqualification for licences**

3 **24 Eligibility for licences**

4 (1) An individual is eligible to be licensed if the commissioner for fair
5 trading is satisfied that the individual—

6 (a) is an adult; and

7 (b) has the qualifications required under section 25 for the licence;
8 and

9 (c) is not disqualified under section 27 (People disqualified from
10 being licensed) or section 51 (People disqualified from being
11 registered); and

12 (d) for a travel agents licence—the person is eligible for a travel
13 agents licence under section 26 (Additional eligibility grounds
14 for travel agents).

15 (2) A person in a partnership is eligible to be licensed if the
16 commissioner for fair trading is satisfied that—

17 (a) the person is eligible to be licensed under subsection (1); and

18 (b) no person in the partnership is disqualified under section 27 or
19 51.

20 (3) A corporation is eligible to be licensed if—

21 (a) the commissioner for fair trading is satisfied that no director of
22 the corporation is disqualified from being licensed under
23 section 27; and

24 (b) at least 1 director of the corporation holds a licence of the same
25 kind.

26 (4) To remove any doubt, the regulations may provide that a person
27 may be issued with an agents licence with stated conditions if the
28 person does not have stated qualifications.

1 **25 Qualifications for licences**

2 The regulations may prescribe the qualifications required for a
3 licence.

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

- 5 1 by requiring the successful completion of a course of study
6 2 by requiring the successful completion of a period of training in a particular
7 activity
8 3 by requiring the achievement of a standard of competency in a particular
9 activity
10 4 by requiring professional development to be undertaken

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

14 **26 Additional eligibility grounds for travel agents**

15 A person is eligible for a travel agents licence only if the
16 commissioner for fair trading is satisfied that—

- 17 (a) the travel agents board of trustees has decided that the person
18 is eligible under the travel agents trust deed to be a
19 compensation scheme participant; and
20 (b) the person has paid any amount payable under the travel agents
21 trust deed as an initial contribution.

22 **27 People disqualified from being licensed**

23 (1) A person is disqualified from being licensed if the person—

- 24 (a) has been convicted, in the ACT or elsewhere, of an offence
25 involving dishonesty; or

26 *Note* A conviction does not include a spent conviction—see *Spent*
27 *Convictions Act 2000*, s 16 (c) (i).

28 (b) is an undischarged bankrupt or, at any time in the last
29 3 years—

- 30 (i) was an undischarged bankrupt; or

Part 3
Division 3.2

Licensing of agents
Eligibility, qualifications and disqualification for licences

Section 27

- 1 (ii) applied to take the benefit of a law for the relief of
2 bankrupt or insolvent debtors; or
- 3 (iii) compounded with creditors or made an assignment of
4 remuneration for their benefit; or
- 5 (c) at any time in the last 3 years was involved in the management
6 of a corporation when—
- 7 (i) the corporation became the subject of a winding-up
8 order; or
- 9 (ii) a controller or administrator was appointed; or
- 10 (d) has a mental incapacity that may affect the exercise of the
11 person's functions as licensee; or
- 12 (e) is licensed and has contravened, or is contravening, an order of
13 the consumer and trader tribunal;
- 14 (f) holds a licence that is suspended;
- 15 (g) is disqualified by the consumer and trader tribunal from being
16 licensed or registered; or
- 17 (h) is disqualified under a corresponding law from holding an
18 authority (however described) to be an agent or be an
19 employee of an agent; or
- 20 (i) holds an authority (however described) under a corresponding
21 law to be an agent or be an employee of an agent that is
22 suspended; or
- 23 (j) is in partnership with a person disqualified from being licensed
24 or registered; or
- 25 (k) is a corporation that is the subject of a winding-up order; or
- 26 (l) is a corporation for which a controller or administrator has
27 been appointed; or

- 1 (m) is a licensed agent who is applying for a licence or the renewal
2 of a licence and has contravened, or is contravening, a
3 condition of the person's licence; or
- 4 (n) has contravened, or is contravening, a provision of this Act
5 prescribed under the regulations as a disqualifying breach.
- 6 (2) However, a person is not disqualified from being licensed only
7 because subsection (1) (b) or (c) applies to the person if the
8 commissioner for fair trading is satisfied that the person took all
9 reasonable steps to avoid the bankruptcy, application, compounding,
10 winding-up or appointment mentioned in the paragraph.
- 11 (3) Also, a person is not disqualified from being licensed only because
12 the person has contravened, or is contravening, a licence condition if
13 the commissioner for fair trading decides that the contravention
14 should be disregarded for this section.

15 **Division 3.3 Licence procedures and details**

16 **28 Advertising intended licence applications**

- 17 (1) A person who intends to apply for a licence must publish a notice of
18 the person's intention to apply for the licence in a daily ACT
19 newspaper.
- 20 (2) The notice must state the kind of licence that is intended to be
21 applied for and include any other information prescribed under the
22 regulations.

23 **29 Licence applications**

- 24 (1) An application for a licence may be made to the commissioner for
25 fair trading only—
- 26 (a) by a person who has published a notice under section 28 in
27 relation to the application; and

- 1 (b) within 10 business days after the day the notice is published.
- 2 *Note 1* If a form is approved under s 177 (Approved forms) for an application,
3 the form must be used.
- 4 *Note 2* A fee may be determined under section 176 (Determination of fees) for
5 this section.
- 6 (2) An application must be accompanied by a statement setting out the
7 place that, if the licence is issued, will be the applicant's main place
8 of business.
- 9 (3) An applicant must give the commissioner for fair trading a consent
10 signed by the applicant, the applicant's partners, and, if the applicant
11 is a corporation, by all the directors, for a police officer to make
12 inquiries about any criminal record of any person who signs the
13 consent.

14 **30 Objections to licences**

- 15 (1) This section applies if a notice (the *public notice*) is published under
16 section 28 (1) (Advertising intended licence applications) in relation
17 to a licence application.
- 18 (2) A person may object to the issue of the licence by written notice (the
19 *objection*) given to the commissioner for fair trading within
20 10 business days after the day the public notice is published.
- 21 (3) The objection must set out the grounds on which it is claimed that
22 the applicant is not eligible for the licence.
- 23 *Note* For the grounds of eligibility, see s 24.
- 24 (4) The person making the objection must give a copy of the objection
25 to the applicant within 10 business days after the day the public
26 notice is published.
- 27 *Note* For how documents may be served, see Legislation Act, pt 19.5.
- 28 (5) The commissioner for fair trading may consider the objection only if
29 satisfied that subsection (4) has been complied with.

1 **31 Further information for licence applications**

2 (1) The commissioner for fair trading may, by written notice given to an
3 applicant for a licence, require the applicant to give the
4 commissioner further stated information, or a document, that the
5 commissioner reasonably needs to consider the application.

6 (2) If the applicant fails to comply with a requirement under
7 subsection (1), the commissioner may refuse to consider the
8 application until the requirement is complied with.

9 **32 Information about licence applications**

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

13 **33 Decisions on licence applications**

14 (1) This section applies if the commissioner for fair trading receives an
15 application for a licence under section 29 (Licence applications).

16 (2) Within 12 weeks after the day the commissioner for fair trading
17 receives the application, the commissioner must—

18 (a) issue the licence; or

19 (b) refuse to issue the licence.

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

23 (3) The commissioner for fair trading must issue the licence if satisfied
24 that the applicant is eligible to be licensed under section 24
25 (Eligibility for licences).

- 1 (4) If a requirement for information or a document relating to an
2 application is made under section 31 (Further information for
3 licence applications), the 12-week period mentioned in
4 subsection (2) is extended by the period beginning on the day when
5 the requirement is made and ending on the day when the
6 requirement is complied with.

7 **34 Licence conditions**

- 8 (1) A licence is subject to any conditions—

- 9 (a) prescribed under the regulations; or
10 (b) put on the licence under this section.

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

- 12 1 restrictions about the size or kind of business that may be operated
13 2 geographic limitations
14 3 requiring the licensee to obtain stated qualifications

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

- 18 (2) The commissioner for fair trading—

- 19 (a) may put a condition on a licence when the licence is issued or
20 at any other time; and
21 (b) may at any time amend or omit a condition that the
22 commissioner has put on a licence; and
23 (c) must put a condition on a licence, or amend or omit a
24 condition, if directed to do so by the consumer and trader
25 tribunal.

- 26 (3) The commissioner for fair trading may put a condition on a person's
27 licence, or amend a condition, under subsection (2) (a) or (b) only
28 if—

- 29 (a) the commissioner has given the person written notice of the
30 proposed condition or amendment; and

- 1 (b) the notice states that written comments on the proposal may be
2 made to the commissioner within a stated period of at least
3 10 business days after the day the notice is given to the person;
4 and
- 5 (c) the commissioner has considered any comments made within
6 the period.
- 7 (4) Subsection (3) does not apply if the person asked for, or agreed in
8 writing to, the proposed condition or amendment.

9 **35 Term of licences**

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

12 **36 Renewal of licences**

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

15 *Note 1* If a form is approved under s 177 (Approved forms) for an application,
16 the form must be used.

17 *Note 2* A fee may be determined under section 176 (Determination of fees) for
18 this section.

19 (2) Within 6 weeks after the day the commissioner for fair trading
20 receives an application, the commissioner must—

21 (a) renew the licence; or

22 (b) refuse to renew the licence.

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

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

7 **37 Continuation of existing licences until the renewal**
8 **applications decided**

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

1 **38 Licence certificates**

2 (1) If the commissioner for fair trading decides to issue a licence to a
3 person or renew a person's licence, the commissioner must give the
4 person a licence certificate.

5 (2) The commissioner for fair trading may issue a replacement licence
6 certificate to a licensed agent if satisfied that the certificate has been
7 lost, stolen, damaged or destroyed.

8 *Note 1* If a form is approved under s 177 (Approved forms) for an application,
9 the form must be used.

10 *Note 2* A fee may be determined under section 176 (Determination of fees) for
11 this section.

12 **39 Surrender of licence**

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

15 **Division 3.4 Disciplinary action against agents**

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

20 **40 Meaning of agent for div 3.4**

21 In this division:

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

23 **41 Grounds for disciplinary action—agents**

24 (1) Each of the following is a *ground for disciplinary action* in relation
25 to an agent:

26 (a) the agent has been convicted or found guilty of an offence
27 against the fair trading legislation;

- 1 (b) the agent has contravened, or is contravening, a rule of
2 conduct;
3 *Note* Rules of conduct—see s 171.
- 4 (c) the agent has contravened, or is contravening, a condition of
5 the agent’s licence;
- 6 (d) if the agent is a licensed agent—the agent has become
7 ineligible for a licence under section 24 (Eligibility for
8 licences) or for registration under section 49 (Eligibility for
9 registration);
- 10 (e) if the agent is a licensed travel agent—the agent is not a
11 compensation scheme participant;
- 12 (f) the agent has contravened, or is contravening, an order of the
13 consumer and trader tribunal;
- 14 (g) the agent’s licence was obtained by fraud or mistake;
- 15 (h) a ground prescribed under the regulations for this section.
- 16 (2) However, subsection (1) (a) to (e) applies to a former licensed agent
17 only in relation to anything that happened while the person was
18 licensed.

19 **42 Commissioner may refer matter to tribunal—agents**

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

24 **43 Disciplinary action tribunal may take—agents**

- 25 (1) On application by the commissioner for fair trading, the consumer
26 and trader tribunal may—
- 27 (a) in relation to a licensed agent—cancel or suspend the agent’s
28 licence; and
- 29 (b) in relation to any agent—take other disciplinary action.

- 1 (2) If the consumer and trader tribunal cancels a licensed agent's
2 licence, the tribunal may also disqualify the agent from being
3 licensed for a stated period or indefinitely.
- 4 (3) If the consumer and trader tribunal cancels or suspends an agent's
5 licence, the tribunal may also cancel or suspend any other licence
6 held by the agent.
- 7 (4) In this section:
- 8 *other disciplinary action* means disciplinary action, other than
9 cancellation or suspension of the agent's licence, that the consumer
10 and trader tribunal may take under the *Consumer and Trader*
11 *Tribunal Act 2003*.
- 12 *Note* A period of disqualification may be reviewed by the consumer and
13 trader tribunal under s 172.

1 **Part 4 Registration of salespeople**

2 **Division 4.1 Salespeople to be registered**

3 **44 Meaning of *registered* for div 4.1**

4 In this division:

5 *registered*—a person is not *registered* if the person’s registration is
6 suspended.

7 **45 Real estate salespeople must be registered**

8 (1) A person commits an offence if the person—

9 (a) is not a registered real estate salesperson; and

10 (b) pretends to be employed by a licensed real estate agent to
11 provide a real estate agent service.

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

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

15 **46 Stock and station salespeople must be registered**

16 (1) A person commits an offence if the person—

17 (a) is not a registered stock and station salesperson; and

18 (b) pretends to be employed by a licensed stock and station agent
19 to provide a stock and station agent service.

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

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

1 **47 Business salespeople must be registered**

- 2 (1) A person commits an offence if the person—
- 3 (a) is not a registered business salesperson; and
- 4 (b) pretends to be employed by a licensed business agent to
- 5 provide a business agent service.
- 6 Maximum penalty: 50 penalty units, imprisonment for 6 months or
- 7 both.
- 8 (2) An offence against this section is a strict liability offence.

9 **48 Salespeople must be registered to recover fees etc**

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

18 **Division 4.2 Eligibility, qualifications and**

19 **disqualification for registered**

20 **salespeople**

21 **49 Eligibility for registration**

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

1 (c) is not disqualified under section 27 (People disqualified from
2 being licensed) or section 51 (People disqualified from being
3 registered).

4 (2) To remove any doubt, the regulations may provide that a person
5 may be registered subject to stated conditions if the person does not
6 have stated qualifications.

7 **50 Qualifications for registration**

8 The regulations may prescribe the qualifications required for
9 registration.

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

- 11 1 by requiring the successful completion of a course of study
12 2 by requiring the successful completion of a period of training in a particular
13 activity
14 3 by requiring the achievement of a standard of competency in a particular
15 activity
16 4 by requiring professional development to be undertaken

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

20 **51 People disqualified from being registered**

21 (1) A person is disqualified from being registered if the person—

22 (a) has been convicted, in the ACT or elsewhere, of an offence
23 involving dishonesty; or

24 *Note* A conviction does not include a spent conviction—see *Spent*
25 *Convictions Act 2000*, s 16 (c) (i).

26 (b) is an undischarged bankrupt or, at any time in the last
27 3 years—

28 (i) was an undischarged bankrupt; or

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

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

1 **Division 4.3 Registration procedures and**
2 **details**

3 **52 Advertising intended registration applications**

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

10 **53 Registration applications**

- 11 (1) An application for registration may be made to the commissioner for
12 fair trading only—
- 13 (a) by a person who has published a notice under section 52 in
14 relation to the application; and
- 15 (b) within 10 business days after the day the notice is published.
- 16 *Note 1* If a form is approved under s 177 (Approved forms) for an application,
17 the form must be used.
- 18 *Note 2* A fee may be determined under section 176 (Determination of fees) for
19 this section.
- 20 (2) An applicant must give the commissioner for fair trading a consent
21 signed by the applicant for a police officer to make inquiries about
22 any criminal record of the applicant.

23 **54 Objections to registration**

- 24 (1) This section applies if a notice (the *public notice*) is published under
25 section 52 (1) (Advertising intended registration applications) in
26 relation to a registration application.
- 27 (2) A person may object to the registration by written notice (the
28 *objection*) given to the commissioner for fair trading within
29 10 business days after the day the public notice is published.

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

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

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

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

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

10 **55 Further information for registration applications**

- 11 (1) The commissioner for fair trading may, by written notice given to an
12 applicant for registration, require the applicant to give the
13 commissioner further stated information, or a document, that the
14 commissioner reasonably needs to consider the application.

- 15 (2) If the applicant fails to comply with a requirement under
16 subsection (1), the commissioner may refuse to consider the
17 application until the requirement is complied with.

18 **56 Information about registration applications**

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

22 **57 Decisions on registration applications**

- 23 (1) This section applies if the commissioner for fair trading receives an
24 application for registration under section 53 (Registration
25 applications).

- 26 (2) Within 12 weeks after the day the commissioner for fair trading
27 receives the application, the commissioner must—

- 28 (a) register the applicant; or

1 (b) refuse to register the applicant.

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

5 (3) The commissioner for fair trading must register the applicant if
6 satisfied that the applicant is eligible to be registered under
7 section 49 (Eligibility for registration).

8 (4) If a requirement for information or a document relating to an
9 application is made under section 55 (Further information for
10 registration applications), the 12-week period mentioned in
11 subsection (2) is extended by the period beginning on the day when
12 the requirement is made and ending on the day when the
13 requirement is complied with.

14 **58 Registration conditions**

15 (1) A registration is subject to any conditions—

16 (a) prescribed under the regulations; or

17 (b) put on the registration under this section.

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

19 that the registered person obtain a specified qualification

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

23 (2) The commissioner for fair trading—

24 (a) may put a condition on a registration when the person is
25 registered or at any other time; and

26 (b) may at any time amend or omit a condition that the
27 commissioner has put on a person's registration; and

28 (c) must put a condition on a registration, or amend or omit a
29 condition, if directed to do so by the consumer and trader
30 tribunal.

- 1 (3) The commissioner for fair trading may put a condition on a person's
2 registration, or amend a condition, under subsection (2) (a) or (b)
3 only if—
- 4 (a) the commissioner has given the person or registered
5 salesperson written notice of the proposed condition or
6 amendment; and
- 7 (b) the notice states that written comments on the proposal may be
8 made to the commissioner within a stated period of at least
9 10 business days after the day the notice is given to the person;
10 and
- 11 (c) the commissioner has considered any comments made within
12 the period.
- 13 (4) Subsection (3) does not apply if the person asked for, or agreed in
14 writing to, the proposed condition or amendment.

15 **59 Term of registration**

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

18 **60 Renewal of registrations**

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

21 *Note 1* If a form is approved under s 177 (Approved forms) for an application,
22 the form must be used.

23 *Note 2* A fee may be determined under section 176 (Determination of fees) for
24 this section.

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

1 (b) refuse to renew the registration.

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

5 (3) The commissioner for fair trading must renew the registration if
6 satisfied that—

7 (a) the applicant is eligible to be registered under section 49
8 (Eligibility for registration); and

9 (b) the applicant has complied with the requirements (if any)
10 prescribed under the regulations.

11 **61 Continuation of existing registrations until renewal**
12 **applications decided**

13 (1) If a registered salesperson applies to renew the registration under
14 section 60, the registration remains in force until the application is
15 decided.

16 (2) Subsection (1) applies even if it causes the existing registration to be
17 in force for longer than 1 year.

18 (3) If a person who has been a registered salesperson applies, within
19 3 months after the day the term of the registration ends (the *last*
20 *registration day*), to renew the registration—

21 (a) any service provided by the person after the last registration
22 day and before the day of the commissioner for fair trading's
23 decision about the renewal application (whether or not the
24 registration is renewed) is taken to have been provided by the
25 person as a registered salesperson; and

26 (b) if the registration is renewed, the term of the renewed
27 registration is backdated to the day after the last registration
28 day.

29 (4) Subsection (3) (a) does not prevent the person committing, being
30 prosecuted for, or being found guilty of, an offence against
31 division 4.1 (Salespeople to be registered).

1 **62 Registration certificates**

2 (1) If the commissioner for fair trading decides to register a person or
3 renew a person's registration, the commissioner must give the
4 person a registration certificate.

5 (2) The commissioner for fair trading may issue a replacement
6 registration certificate to a registered salesperson if satisfied that the
7 certificate has been lost, stolen, damaged or destroyed.

8 *Note 1* If a form is approved under s 177 (Approved forms) for an application,
9 the form must be used.

10 *Note 2* A fee may be determined under section 176 (Determination of fees) for
11 this section.

12 **63 Surrender of registration**

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

15 **Division 4.4 Disciplinary action against**
16 **registered salespeople**

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

21 **64 Meaning of *registered salesperson* for div 4.4**

22 In this division:

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

25 **65 Grounds for disciplinary action—salespeople**

26 (1) Each of the following is a *ground for disciplinary action* in relation
27 to a registered salesperson:

28 (a) the salesperson has been convicted or found guilty of an
29 offence against the fair trading legislation;

- 1 (b) the salesperson has contravened, or is contravening, a rule of
2 conduct;
3 *Note* Rules of conduct—see s 171.
- 4 (c) the salesperson has contravened, or is contravening, a
5 condition of the salesperson’s registration;
- 6 (d) the salesperson has become ineligible for registration under
7 section 49 (Eligibility for registration);
- 8 (e) the salesperson has contravened, or is contravening, an order of
9 the consumer and trader tribunal;
- 10 (f) the salesperson’s registration was obtained by fraud or mistake;
- 11 (g) a ground prescribed under the regulations for this section.
- 12 (2) However, subsection (1) (a) to (e) applies to a former registered
13 salesperson only in relation to anything that happened while the
14 person was registered.

15 **66 Commissioner may refer matter to tribunal—salespeople**

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

20 **67 Disciplinary action tribunal may take—salespeople**

- 21 (1) On application by the commissioner for fair trading, the consumer
22 and trader tribunal may—
- 23 (a) in relation to a registered salesperson—cancel or suspend the
24 salesperson’s registration; and
- 25 (b) in relation to any salesperson—take other disciplinary action.
- 26 (2) If the consumer and trader tribunal cancels a registered
27 salesperson’s registration, the tribunal may also disqualify the
28 salesperson from being registered for a stated period or indefinitely.

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

4 (4) In this section:

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

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

1 **Part 5** **Conduct of licensed agents**
2 **and registered salespeople**

3 **Division 5.1** **Licensed agent's main place of**
4 **business**

5 **68** **Main place of business**

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

10 *Note* Register—see s 160.

11 (2) A licensed agent must tell the commissioner for fair trading in
12 writing about any change in the agent's main place of business in
13 the ACT within the period prescribed under the regulations.

14 (3) The commissioner for fair trading must enter in the register any
15 change notified under subsection (2).

16 **Division 5.2** **Management of licensed agent's**
17 **business**

18 **69** **Each place of business to have licensed agent in charge**

19 (1) A licensed agent commits an offence if—

20 (a) the licensed agent is an individual; and

21 (b) the licensed agent carries on business at 2 or more places of
22 business; and

23 (c) the licensed agent does not employ, at each place of business
24 where the licensed agent is not responsible for the day-to-day
25 management of the business, an individual who—

- 1 (i) is a licensed agent; and
2 (ii) is responsible for the day-to-day management of the
3 place of business.
4 Maximum penalty: 100 penalty units.
- 5 (2) A licensed agent commits an offence if—
6 (a) the licensed agent is a corporation; and
7 (b) the licensed agent does not employ, at each place of business
8 where the licensed agent carries on business, an individual
9 who—
10 (i) is a licensed agent; and
11 (ii) is responsible for the day-to-day management of the
12 place of business.
13 Maximum penalty: 100 penalty units.
- 14 (3) An offence against this section is a strict liability offence.
- 15 (4) A person may be exempted from this section under section 71
16 (Licensed agent to be in charge of business—exemptions).

17 **70 Licensed agent to be in charge of 1 place of business**

- 18 (1) A licensed agent commits an offence if the licensed agent is
19 responsible for the day-to-day management of 2 or more places of
20 business.
21 Maximum penalty: 100 penalty units.
- 22 (2) A licensed agent commits an offence if the licensed agent—
23 (a) is employed to be responsible for the day-to-day management
24 of another licensed agent's place of business; and
25 (b) provides services for 2 or more licensed agents at the place;
26 and

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

3 Maximum penalty: 100 penalty units.

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

- 5 (4) This section does not apply to—

6 (a) a licensed travel agent; or

7 (b) a licensed employment agent.

- 8 (5) A person may be exempted from this section under section 71.

9 **71 Licensed agent to be in charge of business—exemptions**

- 10 (1) The commissioner for fair trading may, in writing, exempt a
11 licensed agent from section 69 (Each place of business to have
12 licensed agent in charge) or section 70 (Licensed agent to be in
13 charge of 1 place of business).

- 14 (2) The exemption may be conditional.

- 15 (3) The regulations may prescribe the matters to be considered by the
16 commissioner for fair trading in deciding whether to exempt a
17 licensed agent under subsection (1), or amend or revoke an
18 exemption.

- 19 (4) A condition under this section may be put or amended as if it were a
20 condition on a licence.

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

23 **72 Licensed agent must not share commission etc with**
24 **unlicensed person**

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

26 (a) the licensed agent—

- 27 (i) enters into an agreement or arrangement with an
28 unlicensed person; or

- 1 (ii) acts with an unlicensed person; and
- 2 (b) the unlicensed person is not a registered salesperson; and
- 3 (c) the unlicensed person would, apart from this section, be
- 4 entitled to a share of the commission, fee or reward payable to
- 5 the licensed agent for the provision of a service for which the
- 6 licensed agent is required to be licensed.
- 7 Maximum penalty: 50 penalty units.
- 8 (2) An offence against subsection (1) is a strict liability offence.
- 9 (3) This section does not apply in relation to an agreement, arrangement
- 10 or action by a licensed agent with a partner of the agent who does
- 11 not carry on business as an agent.
- 12 (4) An agreement or arrangement mentioned in subsection (1) is void so
- 13 far as it purports to provide an entitlement mentioned in
- 14 subsection (1) (c).
- 15 (5) A person is not entitled to bring a proceeding to recover a
- 16 commission, fee or reward for a service provided by the person if, in
- 17 providing the service, the person contravened subsection (1).
- 18 (6) Subsections (3) and (4) apply whether or not anyone has been
- 19 convicted of an offence against subsection (1).
- 20 (7) A provision in, or applying to, an agreement that purports to exclude
- 21 or change the operation of this section is void.
- 22 (8) In this section:
- 23 *unlicensed person* means a person who—
- 24 (a) is not licensed under this Act; and
- 25 (b) either—
- 26 (i) does not hold an authority (however described) under a
- 27 corresponding law to be an agent or an employee of an
- 28 agent; or

- 1 (ii) holds an authority mentioned in subparagraph (i) that is
2 suspended.

3 **73 Agreements between licensed agents to share**
4 **commission etc**

- 5 (1) An agreement between licensed agents to share a commission, fee or
6 reward for a service carried out as licensed agents is unenforceable
7 unless the agreement—
8 (a) is in writing; and
9 (b) is signed by each of the licensed agents; and
10 (c) contains the terms prescribed under the regulations for this
11 section.
12 (2) A provision in, or applying to, the agreement that purports to
13 exclude or change the operation of this section (including the terms
14 prescribed under the regulations for this section) is void.
15 (3) This section does not apply to—
16 (a) an agreement between licensed agents who are in partnership
17 together; or
18 (b) an agreement between licensed agents if one agent employs the
19 other; or
20 (c) an agreement, transaction, circumstance or kind of person
21 exempted from this section under the regulations; or
22 (d) an agreement for services in relation to land (other than rural
23 land), if the land is used or intended to be used only or mainly
24 for commercial, business or industrial purposes.
25 (4) A licensed agent commits an offence if the agent enters into an
26 agreement that is unenforceable because of subsection (1).
27 Maximum penalty: 50 penalty units.
28 (5) An offence against subsection (5) is a strict liability offence.

1 **74 Duty to notify failures to account**

- 2 (1) A licensed agent commits an offence if the agent—
- 3 (a) finds out that there has been a failure to account by an
- 4 employee; and
- 5 (b) does not tell the commissioner for fair trading about the failure
- 6 within 5 business days after the day the agent finds out about
- 7 it.

8 Maximum penalty: 50 penalty units.

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

10 (3) In this section:

11 *employee*, of a licensed agent, includes a person who performs

12 services for the agent on contract.

13 **Division 5.3 Employment of salespeople**

14 *Note* At common law, a licensed agent is responsible, in tort and contract, for

15 acts or omissions of the agent's employees within the scope of the

16 employee's authority or for the benefit, or purported or intended benefit,

17 of the agent or agent's business.

18 **75 Licensed agent may only employ licensed agent or**

19 **registered salesperson**

- 20 (1) This section applies to a licensed agent who is a licensed real estate
- 21 agent, licensed stock and station agent or licensed business agent.
- 22 (2) A licensed agent commits an offence if the agent—
- 23 (a) employs a person to provide a service, in relation to the agent's
- 24 business, that a person must be licensed or registered to
- 25 provide; and
- 26 (b) the person provides the service; and
- 27 (c) either—

1 (i) the person is not licensed or registered to provide the
2 service; or

3 (ii) the person is licensed or registered to provide the service
4 but the licence or registration is suspended.

5 Maximum penalty: 50 penalty units.

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

7 **76 Employee must tell employer about disqualification**

8 (1) An employee of a licensed agent commits an offence if the
9 employee—

10 (a) is disqualified under—

11 (i) section 27 (People disqualified from being licensed) from
12 being licensed; or

13 (ii) section 51 (People disqualified from being registered)
14 from being registered; and

15 (b) does not tell the licensed agent about the disqualification
16 within 5 business days after the day the employee finds out
17 about it.

18 Maximum penalty: 50 penalty units.

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

20 **Division 5.4 Conflicts of interest**

21 **77 Agents must not act for buyer and seller of land**

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

24 Maximum penalty: 100 penalty units.

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

1 **Division 5.5** **Advertisements and other**
2 **statements**

3 **78** **When is a statement *published*?**

4 A statement is *published* if it is—

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

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

19 **79** **False or misleading advertisements**

20 An agent commits an offence if—

- 21 (a) the agent publishes an advertisement; and
- 22 (b) the advertisement contains a statement about the agent's
23 business; and
- 24 (c) the agent publishes the advertisement knowing that, or being
25 reckless about whether, the statement—
- 26 (i) is false or misleading; or

1 (ii) omits anything without which the statement is
2 misleading.

3 Maximum penalty: 100 penalty units.

4 (2) Subsection (1) (c) (i) does not apply if the statement is not false or
5 misleading in a material particular.

6 (3) Subsection (1) (c) (ii) does not apply if the omission does not make
7 the statement misleading in a material particular.

8 **Division 5.6 Land—further provisions**

9 **80 Meaning of *benefit*, *estimate* and *selling price* for div 5.6**

10 In this division:

11 *benefit* means financial or other benefit.

12 *estimate* includes opinion and belief.

13 *selling price* includes selling price range.

14 **81 Meaning of *pre-contract information* for div 5.6**

15 In this division:

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

18 (a) any relationship, and the nature of the relationship (whether
19 personal or commercial), the agent has with anyone whom the
20 agent has referred, refers, or expects to refer, the seller or buyer
21 to for professional services in relation to the sale or purchase;
22 and

23 (b) whether the agent receives, or expects to receive, any benefit,
24 whether financial or otherwise, from a person whom the agent
25 has referred, refers, or expects to refer, the seller or buyer to
26 for professional services and, if so, the amount or value of the
27 benefit; and

- 1 (c) the amount, value or nature of any benefit anyone (other than
2 the buyer or seller) has received, receives, or expects to
3 receive, in relation to the sale or purchase, or for promoting the
4 sale or purchase, or for providing a service in relation to the
5 sale or purchase, of the land.

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

- 7 1 a family relationship
8 2 a business relationship
9 3 a fiduciary relationship
10 4 a relationship in which a person is accustomed, or obliged, to act in
11 accordance with the directions, instructions, or wishes of the other

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

- 13 1 seller
14 2 finance broker
15 3 financial adviser
16 4 financier
17 5 property valuer
18 6 lawyer
19 7 real estate agent

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

23 **82 Meaning of *beneficial interest* and *obtains a beneficial***
24 ***interest* for div 5.6**

25 In this division:

26 ***beneficial interest*** in land includes—

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

- 1 *obtains a beneficial interest*—a person (including an agent or
2 salesperson) *obtains a beneficial interest* in land if a beneficial
3 interest in the land is obtained by—
- 4 (a) the person; or
- 5 (b) a family member of the person; or
- 6 (c) a corporation with not more than 100 members that the person,
7 or a family member of the person, is a member of; or
- 8 (d) a subsidiary of a corporation mentioned in paragraph (c); or
- 9 (e) a corporation that the person, or a family member of the
10 person, is an executive officer of; or
- 11 (f) the trustee of a trust that the person, or a family member of the
12 person, is a beneficiary of, if the interest is obtained on behalf
13 of the trust; or
- 14 (g) a member of a firm or partnership that the person, or a family
15 member of the person, is a member of; or
- 16 (h) someone else carrying on a business if the person, or a family
17 member of the person, has a direct or indirect right to
18 participate in the profits of the business.

19 **83 Agents giving financial and investment advice**

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

1 **84 Agents must disclose certain information**

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

5 Maximum penalty: 200 penalty units.

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

10 *Note* If a form is approved under s 177 (Approved forms) for an
11 acknowledgement, the form must be used.

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

15 Maximum penalty: 200 penalty units.

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

20 *Note* If a form is approved under s 177 (Approved forms) for an
21 acknowledgement, the form must be used.

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

23 **85 Salespeople must disclose certain information**

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

28 Maximum penalty: 200 penalty units.

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

5 *Note* If a form is approved under s 177 (Approved forms) for an
6 acknowledgement, the form must be used.

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

12 Maximum penalty: 200 penalty units.

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

17 *Note* If a form is approved under s 177 (Approved forms) for an
18 acknowledgement, the form must be used.

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

20 **86 Agents must not obtain beneficial interest in land**

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

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

- 1 (2) Subsection (1) does not apply to an agent in relation to a beneficial
2 interest in land if—
- 3 (a) before the interest is obtained—
- 4 (i) the agent fully discloses to the seller the circumstances
5 surrounding the obtaining of the beneficial interest; and
- 6 (ii) the seller agrees in writing to the obtaining of the interest;
7 and
- 8 *Note* If a form is approved under s 177 (Approved forms) for an agreement,
9 the form must be used.
- 10 (b) the seller—
- 11 (i) does not pay to the agent any commission or reward for
12 the sale of the land; or
- 13 (ii) if the agent is a licensed agent—agrees in writing, before
14 entering into a contract for the sale of the land, to the
15 payment of a commission or reward to the agent for the
16 sale.
- 17 *Note* If a form is approved under s 177 (Approved forms) for an agreement,
18 the form must be used.
- 19 (3) An offence against this section is a strict liability offence.

20 **87 Salespeople must not obtain beneficial interest in land**

- 21 (1) A salesperson commits an offence if—
- 22 (a) the salesperson is employed by an agent; and
- 23 (b) the agent acts for a seller of land; and
- 24 (c) the salesperson intentionally—
- 25 (i) obtains a beneficial interest in the land; or

1 (ii) is in any way involved in someone else obtaining a
2 beneficial interest in the land.

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

5 (2) This section does not apply to a salesperson in relation to a
6 beneficial interest in land if—

7 (a) before the interest is obtained—

8 (i) the salesperson fully discloses to the seller the
9 circumstances surrounding the obtaining of the beneficial
10 interest; and

11 (ii) the seller agrees in writing to the obtaining of the interest;
12 and

13 *Note* If a form is approved under s 177 (Approved forms) for an agreement,
14 the form must be used.

15 (b) the seller—

16 (i) does not pay to the salesperson any commission or
17 reward for the sale of the land; or

18 (ii) if the salesperson is a registered salesperson—agrees in
19 writing before entering into a contract for the sale of the
20 land, to the payment of a commission or reward to the
21 salesperson for the sale.

22 *Note* If a form is approved under s 177 (Approved forms) for an agreement,
23 the form must be used.

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

25 **88 False representations to sellers or buyers**

26 (1) An agent commits an offence if the agent—

27 (a) acts for a seller of land; and

28 (b) makes a dishonest representation about the agent's estimate of
29 the selling price of the land—

- 1 (i) to the seller; or
2 (ii) to a buyer; or
3 (iii) in an advertisement or other publication.
4 Maximum penalty: 100 penalty units.
- 5 (2) A registered salesperson commits an offence if the salesperson—
6 (a) is employed by a licensed agent who is acting for a seller of
7 land; and
8 (b) makes a dishonest representation about the salesperson's
9 estimate of the selling price of the land—
10 (i) to the seller; or
11 (ii) to a buyer; or
12 (iii) in an advertisement or other publication.
13 Maximum penalty: 100 penalty units.
- 14 (3) For this section, a representation is *dishonest* if—
15 (a) the representation is dishonest according to the standards of
16 ordinary people; and
17 (b) the maker of the representation knows that the representation is
18 dishonest according to those standards.

19 **89 Requirement to substantiate selling price estimates**

- 20 (1) The commissioner for fair trading may, by written notice to a
21 licensed agent or registered salesperson, require the agent or
22 salesperson to give to the commissioner the evidence that the agent
23 or salesperson relied on in the making of any representation about
24 the agent's or salesperson's estimate of the selling price of land—
25 (a) to a seller of the land; or
26 (b) to a buyer of the land; or
27 (c) in an advertisement or other publication.

- 1 (2) The notice must state a reasonable period for complying with the
2 notice.
- 3 (3) A person commits an offence if the person fails to comply with a
4 notice given to the person under this section within the stated
5 period.
- 6 Maximum penalty: 100 penalty units.
- 7 (4) An offence against this section is a strict liability offence.

8 **Division 5.7 Travel agents—further provisions**

9 **90 Meaning of *compensation scheme* for div 5.7**

10 In this division:

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

13 *Note Compensation scheme participant, travel agents board of trustees and*
14 *travel agents trust deed* are defined in the dict.

15 **91 Participation in compensation scheme**

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

18 *Note* For grounds of eligibility for licences that are specific to travel agents,
19 see s 26 (Additional eligibility grounds for travel agents).

20 (2) If a licensed travel agent stops being a compensation scheme
21 participant, the agent's licence is automatically suspended under this
22 section, until the agent again becomes a compensation scheme
23 participant, or the licence is surrendered or cancelled, whichever
24 happens first.

25 (3) A travel agent is a *compensation scheme participant* only if the
26 agent complies with—

27 (a) the provisions of the travel agents trust deed applying to the
28 agent; and

- 1 (b) any requirement made of the agent by the travel agents board
2 of trustees under the travel agents trust deed.

3 **92 Powers of travel agents board of trustees**

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

7 **93 Legal action by travel agents board of trustees**

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

14 **94 Rights of travel agents board of trustees**

- 15 (1) If a payment is made to a person under the compensation scheme by
16 the travel agents board of trustees because of an act or omission of a
17 travel agent, the board is subrogated, to the extent of the payment, to
18 the person's rights in relation to the act or omission.
- 19 (2) If the travel agents board of trustees is subrogated to rights in
20 relation to the act or omission of an unlicensed travel agent, the
21 board may enforce the rights against the provider of the travel or
22 accommodation to which the act or omission relates as if the
23 provider had been in partnership with the unlicensed travel agent
24 when the act or omission took place.
- 25 (3) Any rights exercisable by the travel agents board of trustees against
26 a corporation under subsection (1) are enforceable jointly and
27 severally against the corporation and each person who was a
28 director or an executive officer of the corporation at the time of the
29 act or omission.

1 (4) However, the rights are not enforceable against a director or an
2 executive officer if the court is satisfied that the act or omission
3 happened without the director's or executive officer's knowledge
4 and consent.

5 (5) In this section:

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

8 *unlicensed travel agent* means—

9 (a) a person who does not hold a travel agents licence; or

10 (b) a licensed travel agent whose licence is suspended.

11 **95 Dealings with unlicensed travel agents**

12 A person (**A**) commits an offence if—

13 (a) A carries on a business; and

14 (b) in the course of the business A gives someone else (**B**)—

15 (i) goods or services for disposal; or

16 (ii) authority to dispose of goods or services; and

17 (c) if B disposed of the goods or services B would be carrying on
18 business as a travel agent; and

19 (d) A knows that B is not a licensed travel agent.

20 Maximum penalty: 100 penalty units.

21 **Division 5.8 Employment agents—further** 22 **provisions**

23 **96 Employment agents must only take fee from employer**

24 (1) A licensed employment agent commits an offence if—

25 (a) the agent asks for, or accepts, a benefit from a person for a
26 service; and

1 (b) the person is not—

2 (i) seeking to have work carried out; or

3 (ii) a model or performer.

4 Maximum penalty: 50 penalty units.

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

6 (3) In this section:

7 *model* includes a person employed—

8 (a) to pose for a photographer, painter, sculptor or other artist; or

9 (b) to wear and display clothes or other articles to potential
10 customers or the public.

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

13 **Division 5.9 Other offences**

14 **97 Lending licence certificate**

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

17 Maximum penalty: 100 penalty units.

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

20 Maximum penalty: 100 penalty units.

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

22 (4) If a court convicts a licensed agent of an offence against this section,
23 the agent's licence is cancelled under this section.

- 1 **98 Lending registration certificate**
- 2 (1) A registered salesperson commits an offence if the salesperson lets
3 out, hires or lends the salesperson's registration certificate to
4 someone else.
- 5 Maximum penalty: 100 penalty units.
- 6 (2) A registered salesperson commits an offence if the salesperson lets
7 someone else use the salesperson's registration certificate.
- 8 Maximum penalty: 100 penalty units.
- 9 (3) An offence against this section is a strict liability offence.
- 10 (4) If a court convicts a registered salesperson of an offence against this
11 section, the salesperson's registration is cancelled under this section.

1 **Part 6** **Agency agreements**

2 **99 Application of pt 6**

3 This part applies to services provided in relation to—

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

7 **100 No commission or expenses without agency agreement**

8 (1) A licensed agent is not entitled to commission or expenses from a

9 principal for services provided by the agent for the principal

10 unless—

- 11 (a) the services were carried out under a written agreement signed
- 12 by the principal and the agent (an *agency agreement*); and
- 13 (b) the agency agreement—
- 14 (i) identifies the rebates, discounts, commissions and
- 15 expenses that the agent may receive; and
- 16 (ii) estimates the amount of any rebates, discounts,
- 17 commissions and expenses; and
- 18 (c) the agency agreement complies with the regulations; and
- 19 (d) a copy of the agency agreement signed by the agent was given
- 20 to the principal within 48 hours after the agreement was signed
- 21 by the principal.

22 *Note* If a form is approved under s 177 (Approved forms) for an agreement,

23 the form must be used.

Part 6 Agency agreements

Section 100

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

1 **Part 7** **Trust accounts**

2 **Division 7.1** **Definitions for part 7**

3 **101** **Meaning of *licensed agent* for pt 7**

4 (1) In this section:

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

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

9 *licensed agent* includes the following:

10 (a) a person who is no longer a licensed agent but holds trust
11 money received while licensed;

12 (b) the personal representative of a licensed agent who died while
13 holding trust money, if the representative holds the trust
14 money;

15 (c) the liquidator of a corporation that went into liquidation while
16 being a licensed agent and holding trust money, if the
17 corporation holds the trust money.

18 **102** **What is trust money?**

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

20 (a) by a licensed agent in relation to the business for which the
21 agent is licensed on behalf of someone else; and

22 (b) on the basis that the money is to be paid to the other person or
23 as the other person directs.

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

1 **103 Trust account details**

2 In this part:

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

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

8 **Division 7.2 Trust money and trust accounts**

9 **104 Meaning of *ADI business day* for div 7.2**

10 In this division:

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

14 **105 Opening trust accounts**

- 15 (1) A licensed agent must keep an account (a *trust account*) at an
16 authorised deposit-taking institution in the ACT under a name that
17 includes—
18 (a) the name of the agent or, if the agent carries on business under
19 a business name or in partnership, the business name or the
20 name of the partnership; and
21 (b) the words ‘trust account’.
22 (2) A licensed agent may keep more than 1 trust account.
23 (3) When opening a trust account, a licensed agent must tell the
24 authorised deposit-taking institution, in writing, that the account is a
25 trust account for this Act.

- 1 (4) A licensed agent must give to the commissioner for fair trading, in
2 writing, the details of each trust account held by the agent and, if the
3 agent opens a new trust account, of each new trust account.
- 4 (5) The details must be given to the commissioner for fair trading
5 within 2 business days after the day the agent becomes a licensed
6 agent or the agent opens the new trust account.
- 7 (6) A licensed agent must ensure that the words 'trust account' appear
8 in every mention of a trust account in the records of the agent and
9 every cheque drawn on a trust account.

10 **106 Closing trust accounts**

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

16 Maximum penalty: 100 penalty units.

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

18 **107 Dealing with trust money**

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

22 Maximum penalty: 100 penalty units.

- 23 (2) A licensed agent commits an offence if the agent—
24 (a) receives trust money; and
25 (b) does not pay the money into a trust account kept by the agent
26 by the next ADI business day after the day the agent receives
27 the money.

28 Maximum penalty: 100 penalty units.

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

7 Maximum penalty: 100 penalty units.

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

- 9 (5) Trust money held by a licensed agent—
10 (a) is not available for payment of the debts of the agent; and
11 (b) must not be attached, or taken into execution, under a court
12 order or court process at the request of a creditor of the agent.
13 (6) An authorised deposit-taking institution with which a trust account
14 is kept must not enforce any liability that the licensed agent may
15 have towards the authorised deposit-taking institution against any
16 amount held in the account, whether by way of claim, set-off,
17 counterclaim, charge or otherwise.

18 **108 Agents to notify of overdrawn trust accounts**

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

28 Maximum penalty: 100 penalty units.

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

2 **109 Interest on trust accounts**

- 3 (1) On the 1st ADI business day in each month, the authorised deposit-
4 taking institution with which a trust account has been kept during
5 the previous month must—
- 6 (a) work out the interest at the specified rate on the daily balances,
7 during the previous month, of the amount held in each account
8 that the authorised deposit-taking institution has been notified
9 is a trust account; and
- 10 (b) pay to the Territory an amount equal to the total of the amounts
11 of interest worked out.
- 12 (2) For subsection (1) (a), the *specified rate*, for a particular day, is 70%
13 of the yield of authorised deposit-taking institution accepted bills
14 published by the Reserve Bank of Australia for the day.
- 15 (3) An authorised deposit-taking institution may deduct from an amount
16 payable under subsection (1) (b) an amount equal to any tax or
17 charge that the authorised deposit-taking institution is required,
18 under a Territory, Commonwealth or State law, to pay in relation to
19 the amount payable.
- 20 (4) This section does not apply in relation to a trust account exempted
21 under the regulations.

22 **Division 7.3 Periodic returns and quarterly**
23 **statements**

24 **110 Monthly returns by authorised deposit-taking institutions**

- 25 (1) An authorised deposit-taking institution commits an offence if—
- 26 (a) a trust account is kept with the institution at any time during a
27 month; and

- 1 (b) the institution does not give to the commissioner for fair
2 trading within 10 business days after the end of the month a
3 written report that sets out, for the month, details of—
- 4 (i) each trust account kept with the institution at any time
5 during the month; and
- 6 (ii) the interest worked out in relation to the trust accounts
7 and paid under section 109.

8 Maximum penalty: 100 penalty units.

9 *Note* If a form is approved under s 177 (Approved forms) (Approved forms)
10 for a report, the form must be used.

- 11 (2) An offence against this section is a strict liability offence.
- 12 (3) This section does not apply in relation to a trust account exempted
13 under the regulations.

14 **111 Quarterly statements by agents**

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

27 *Note* If a form is approved under s 177 (Approved forms) (Approved forms)
28 for a quarterly statement, the form must be used.

- 1 (4) In working out an amount for subsection (3) (d), a cheque drawn on
2 an account but not presented is taken to have been paid.
- 3 (5) The licensed agent must keep the quarterly statement for 5 years
4 after the end of the quarter to which the statement relates.
- 5 (6) The licensed agent must give the quarterly statement to the auditor
6 who audits the trust account records of the agent for the audit period
7 that includes the quarter to which the statement relates.
- 8 (7) In this section:
9 *quarter*, for a licensed agent, means the 3 months beginning on the
10 1st day of the audit period for the agent and each following period
11 of 3 months.

12 **Division 7.4** **Audit of trust accounts**

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

14 **112** **Meaning of *qualified auditor* for div 7.4**

15 In this division:

16 *qualified auditor* means a person who has the qualifications
17 determined under section 114 (Qualifications for auditors).

18 **113** **Audit period**

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

1 **114 Qualifications for auditors**

2 (1) The Minister may, in writing, determine the qualifications necessary
3 for auditors under this Act.

4 (2) A determination under subsection (1) is a disallowable instrument.

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

7 **115 Requirement for audit**

8 (1) A licensed agent must ensure that the records relating to any trust
9 money held by the agent during the agent's audit period are audited
10 by a qualified auditor within 3 months after the end of the audit
11 period or any longer period allowed by the commissioner for fair
12 trading.

13 (2) A person commits an offence if—

14 (a) the person is a former licensed agent or the personal
15 representative of a licensed agent; and

16 (b) the person held trust money during an audit period applying to
17 the agent; and

18 (c) within 3 months after the end of the audit period or any longer
19 period allowed by the commissioner for fair trading, the
20 person's records relating to the trust money have not been
21 audited by a qualified auditor.

22 Maximum penalty: 50 penalty units.

23 (3) An offence under subsection (2) is an offence of strict liability.

24 **116 If no trust money held during audit period**

25 (1) A licensed agent who held no trust money during an audit period
26 applying to the agent must give the commissioner for fair trading a
27 statutory declaration to that effect within 3 months after the end of
28 the audit period.

29 (2) In this section:

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

3 **117 Audit obligations of partners**

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

7 **118 Auditor reports**

8 (1) An auditor's report of a licensed agent's records must state whether,
9 in the auditor's opinion—

10 (a) the agent has kept the accounting and other records relating to
11 trust money in accordance with this part; and

12 (b) the records were available for the auditor's examination within
13 a reasonable time after the auditor asked for them; and

14 (c) the agent complied with the auditor's requirements within a
15 reasonable time; and

16 (d) there is any discrepancy relating to a trust account; and

17 (e) any records to which the audit relates are kept in a way that
18 does not allow them to be properly audited or are missing; and

19 (f) records that are necessary for the proper audit of other records
20 are missing; and

21 (g) there is anything else in relation to the records about which the
22 commissioner for fair trading or the agent should be informed.

23 (2) As soon as practicable after finishing the audit, the auditor must
24 prepare a report of the result of the audit and give the report to the
25 commissioner for fair trading and a copy to the licensed agent.

1 **Division 7.5 Unclaimed trust money**

2 **119 Unclaimed trust money held by licensed agents**

- 3 (1) This section applies if, on 1 July of a year, a licensed agent holds
4 trust money received by the agent more than 3 years before that day
5 (the *unclaimed money*).
- 6 (2) The licensed agent must give the commissioner for fair trading a
7 statement under section 122 (Content of statements), made up as at
8 1 July, about the unclaimed money by 31 July of the same year.
- 9 (3) The regulations may provide that subsection (2) does not apply in
10 relation to unclaimed money exempted under the regulations (the
11 *exempt unclaimed money*).
- 12 (4) The licensed agent must keep a written record of any exempt
13 unclaimed money held by the agent.

14 **120 Trust money held by former licensed agents**

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

1 **121 Trust money held by personal representatives of licensed**
2 **agents**

3 (1) This section applies to a person who is the personal representative of
4 a licensed agent who held trust money at the time of his or her
5 death.

6 (2) Within 3 months after the day the licensed agent died, the person
7 must give to the commissioner for fair trading a statement under
8 section 122 (Content of statements) about the trust money, made up
9 as at the day of the licensed agent's death.

10 **122 Content of statements**

11 A statement under this section must contain details of—

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

14 (b) the amount held for each person; and

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

18 *Note* If a form is approved under s 177 (Approved forms) for a statement, the
19 form must be used.

20 **123 Duties of commissioner in relation to unclaimed money in**
21 **trust accounts**

22 (1) Within 6 months after the day the commissioner for fair trading
23 receives a statement under section 122, the commissioner must
24 prepare a written notice—

25 (a) containing details of—

26 (i) the name and last-known address of each person on
27 whose behalf money is held; and

28 (ii) the amount of money held on behalf of the person; and

1 (b) stating that, if the money is not paid out of the trust account in
2 which it is held within 3 months after the day the notice is
3 notified under the Legislation Act, the person holding the
4 money will be required to pay it to the public trustee.

5 (2) The notice is a notifiable instrument.

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

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

10 **124 Payment of unclaimed money to public trustee**

11 (1) This section applies if—

12 (a) a notice under section 123 (2) is notified under the Legislation
13 Act; and

14 (b) the period of 3 months after the day the notice is notified has
15 ended.

16 (2) The commissioner for fair trading, by written notice to a person
17 holding money to which the notice relates, require the person,
18 within a stated period of at least 10 business days—

19 (a) to pay any of the money still being held by the person to the
20 public trustee; and

21 (b) to give the commissioner for fair trading a statement
22 containing details of any payments made out of the money
23 since the statement under section 122 (Content of statements)
24 relating to the money was given.

25 *Note* If a form is approved under s 177 (Approved forms) (Approved forms)
26 for a statement, the form must be used.

27 (3) A licensed agent who is given a notice under subsection (2) must
28 comply with the notice.

- 1 (4) A person commits an offence if—
- 2 (a) the person is a former licensed agent or the personal
- 3 representative of a licensed agent; and
- 4 (b) the commissioner for fair trading gives the person a notice
- 5 under subsection (2); and
- 6 (c) the person does not comply with the notice.
- 7 Maximum penalty: 20 penalty units.
- 8 (5) An offence against subsection (4) is a strict liability offence.

9 **125 Applications to recover money**

10 A person who claims to be entitled to money paid to the public

11 trustee under section 124 may apply to the commissioner for fair

12 trading for payment of the money.

13 *Note* If a form is approved under s 177 (Approved forms) for an application,

14 the form must be used.

15 **126 Decisions on recovery applications**

- 16 (1) If the commissioner for fair trading receives an application under
- 17 section 125, the commissioner must consider the application and
- 18 make the inquiries that are reasonable and appropriate.
- 19 (2) If the commissioner for fair trading is satisfied that the applicant is
- 20 entitled to an amount paid to the public trustee under section 124
- 21 (Payment of unclaimed money to public trustee)—decide the
- 22 amount to be paid to the applicant and direct the public trustee to
- 23 pay to the applicant the amount decided.
- 24 (3) If the commissioner for fair trading is not so satisfied—decide that
- 25 the applicant is not entitled to any amount.
- 26 (4) The public trustee must pay the applicant an amount that the public
- 27 trustee has been directed to pay under subsection (2).

1 **Part 8** **Records**

2 **Division 8.1** **Record keeping**

3 **127** **What records must be kept**

4 (1) A licensed agent must record the material details of every
5 transaction the agent conducts.

6 (2) The regulations may prescribe other records that a licensed agent
7 must make.

8 (3) A licensed agent must make the prescribed records.

9 (4) A licensed agent commits an offence if the agent fails to comply
10 with subsection (1) or (3).

11 Maximum penalty: 50 penalty units.

12 (5) A person commits an offence if the person—

13 (a) is a licensed agent or a former licensed agent; and

14 (b) has made a record under subsection (1) or the regulations; and

15 (c) does not keep the record for 5 years beginning on
16 30 September after the making of the record.

17 Maximum penalty: 30 penalty units.

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

19 **128** **Where records must be kept**

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

21 (a) keeps a record that the agent is required to keep under
22 section 127; and

23 (b) fails to keep the record at—

24 (i) the agent's main place of business; or

- 1 (ii) if the commissioner for fair trading has agreed in writing
2 that the record may be kept at another place—that place.

3 Maximum penalty: 50 penalty units.

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

5 **129 Presumption that records made by licensed agent**

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

10 **130 Receipts**

- 11 (1) If a licensed agent receives trust money (or, for a travel agent or an
12 employment agent, any money) as a licensed agent, the agent must
13 give a receipt for the money.

- 14 (2) The receipt must—

15 (a) be given to the person who gave the licensed agent the money;
16 and

17 (b) describe the subject matter or reason why the money was given
18 to the agent.

- 19 (3) A licensed agent must keep a copy of a receipt given by the agent
20 under this section.

- 21 (4) This section does not apply to money that is credited electronically
22 or paid directly to a licensed agent's account.

1 **Division 8.2 Freezing accounts**

2 **131 Definitions for div 8.2**

3 (1) In this division:

4 *account*, for an agent, means—

5 (a) a trust account; or

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

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

11 *stop direction* means a direction under section 132.

12 **132 Commissioner may freeze accounts**

13 (1) If it appears to the commissioner for fair trading that trust money
14 may have been stolen, misappropriated or misapplied, the
15 commissioner may, in writing, direct that—

16 (a) no amount be withdrawn from a stated account without the
17 commissioner's written approval; or

18 (b) a stated account be operated only in accordance with stated
19 conditions; or

20 (c) if a claim has been made against the compensation fund in
21 relation to the trust money—all or a stated part of the amount
22 to the credit of a stated account be paid to the commissioner
23 within a stated reasonable time.

24 (2) The direction must—

25 (a) identify each account to which it relates; and

26 (b) be given to—

27 (i) the holder of each account to which it relates; and

- 1 (ii) the authorised deposit-taking institution with which the
2 account is kept.

3 **133 Institutions to comply with directions**

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

11 Maximum penalty: 200 penalty units.

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

19 Maximum penalty: 200 penalty units.

- 20 (3) An authorised deposit-taking institution commits an offence if—
21 (a) an account is kept with the institution; and
22 (b) the commissioner for fair trading gives the institution a stop
23 direction under section 132 (1) (c) in relation to the account;
24 and
25 (c) the institution does not pay to the commissioner the amount
26 that the commissioner has directed be paid within the time
27 stated in the direction.

28 Maximum penalty: 200 penalty units.

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

2 **134 Accounts to be operated only in accordance with**
3 **directions**

4 (1) A person commits an offence if—

5 (a) the person keeps an account; and

6 (b) a stop direction is in force in relation to the account; and

7 (c) the person has been given a copy of the direction; and

8 (d) the person—

9 (i) writes a cheque on the account; or

10 (ii) withdraws money from the account; and

11 (e) the writing of the cheque or withdrawal of the money
12 contravenes the direction.

13 Maximum penalty: 100 penalty units.

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

15 **135 Commissioner may operate accounts**

16 (1) The commissioner for fair trading may operate an account in
17 relation to which a stop direction is in force if satisfied that—

18 (a) it is necessary that the account be operated; and

19 (b) the account holder is unable or unwilling to operate the
20 account.

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

1 **136 Notification of withdrawal of stop directions**

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

6 **137 No liability for complying with stop directions**

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

1 **Part 9 Appointment of administrators**

2 **138 Definitions for pt 9**

3 (1) In this part:

4 *administrator* means an administrator appointed under section 139.

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

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

8 **139 When administrators may be appointed**

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

12 **140 Agents not to be involved in business under
13 administration**

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

18 **141 Notice to authorised deposit-taking institutions**

19 (1) On the appointment of an administrator for an agent, the
20 commissioner for fair trading must give the person in charge of the
21 branch of the authorised deposit-taking institution with which the
22 agent maintains a trust account a written notice—

23 (a) telling the person about the appointment; and

24 (b) revoking the agent's authority to withdraw money from the
25 account.

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

20 **142 Functions of administrators**

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

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

6 **143 Remuneration of administrators**

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

1 **Part 10** **Consumer compensation fund**

2 **Division 10.1** **Establishment of compensation**
3 **fund**

4 **144 Consumer compensation fund**

5 (1) The chief executive must keep and administer a fund to be called the
6 consumer compensation fund.

7 (2) The assets of the compensation fund may only be used in
8 accordance with this Act.

9 (3) The chief executive must open and maintain under the *Financial*
10 *Management Act 1996*, section 51 (Departmental trust banking
11 accounts) a trust account with an authorised deposit-taking
12 institution (the *compensation fund account*) to be used only for the
13 fund.

14 (4) All money of the fund not immediately needed for payments under
15 section 151 (Claims for compensation) must be paid to the credit of
16 the fund account.

17 **145 Compensation fund money**

18 The compensation fund consists of—

19 (a) the amounts paid to the Territory under section 109 (1) (b)
20 (Interest on trust accounts); and

21 (b) any other amount that may be lawfully paid into the
22 compensation fund.

1 **146 Application of compensation fund money**

2 The compensation fund may be used only to pay—

- 3 (a) the amount of a claim under division 10.2, including costs,
4 allowed or proved against the compensation fund; and
5 (b) any other amount payable out of the compensation fund under
6 this Act.

7 **Division 10.2 Claims against the compensation**
8 **fund**

9 **147 Definitions for div 10.2**

10 In this division:

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

12 *licensed agent* means—

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

17 **148 Application of div 10.2**

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

22 **149 Entitlement to claim compensation**

- 23 (1) A person (the *claimant*) who suffers financial loss because of a
24 failure to account by a licensed agent is entitled to claim
25 compensation from the compensation fund for the loss.

- 1 (2) The amount that the claimant is entitled to claim is the amount of
2 the actual financial loss suffered by the claimant less any amount the
3 claimant has recovered or can recover in relation to the loss from a
4 source other than the compensation fund.
- 5 (3) Subsection (1) does not entitle an agent to claim compensation
6 against the compensation fund for a financial loss suffered by the
7 agent in the course of carrying on business as an agent.
- 8 (4) If a person who has begun a proceeding in accordance with a notice
9 under section 153 (Requirement to begin proceedings) is ordered to
10 pay costs to another party to the proceeding, the person is entitled to
11 claim compensation from the compensation fund for the amount of
12 the costs paid.
- 13 (5) This section does not apply to a failure to account for money or
14 other property that relates to dealing in land used or to be used
15 mainly for a commercial, business or industrial purpose.

16 **150 Notice inviting claims**

- 17 (1) The commissioner for fair trading may publish a notice inviting
18 people entitled to claim compensation under this division in relation
19 to a stated licensed agent to make claims within the period (the
20 *claim period*) stated in the notice.
- 21 (2) The notice must be published in a daily ACT newspaper—
22 (a) at least twice; and
23 (b) at intervals of at least 1 month between each publication.
- 24 (3) In addition to stating the name of the licensed agent, the notice
25 must—
26 (a) state the name under which, and the place where, the agent
27 carries or carried on business; and
28 (b) contain any other details the commissioner for fair trading
29 considers necessary to allow the agent to be clearly identified.

1 (4) The claim period must not end earlier than 6 months after the day
2 the notice is first published.

3 (5) A proceeding does not lie against the commissioner for fair trading
4 in relation to the honest publication of a notice under this section.

5 **151 Claims for compensation**

6 (1) A claim for compensation must—

7 (a) be in the form approved under s 177 (Approved forms) for this
8 section; and

9 (b) be given to the commissioner for fair trading within the
10 appropriate period; and

11 (c) be accompanied by a statutory declaration to the effect that the
12 details contained in the claim are true.

13 (2) For this section, the *appropriate period* is whichever of the
14 following periods ends earlier:

15 (a) the period of 1 year after the day the claimant becomes aware
16 of the failure to account to which the claim relates;

17 (b) the period of 2 years after the day the failure to account
18 happens.

19 (3) However, the *appropriate period* for the claim is the claim period
20 under section 150 (Notice inviting claims) if—

21 (a) notice is published under section 150 in relation to the agent to
22 whom the claim relates; and

23 (b) the appropriate period under subsection (2) for the claim had
24 not ended when the notice was published.

25 (4) In this section:

26 *claim period*—see section 150.

1 **152 Requirement to give information and produce documents**

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

7 *Note 1* For how documents may be given, see Legislation Act, pt 19.5.

8 *Note 2* A reference to an Act includes a reference to the statutory instruments
9 made or in force under the Act, including regulations (see Legislation
10 Act, s 104).

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

13 **Example**

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

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

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

- 20 (3) The commissioner for fair trading may—

- 21 (a) keep a document for as long as is necessary; and
22 (b) take copies of a document.

- 23 (4) If the commissioner for fair trading keeps a document under
24 subsection (3)—

- 25 (a) the commissioner must, as soon as practicable, give the person
26 otherwise entitled to possession of the document a copy
27 certified by the commissioner to be a true copy; and
28 (b) until the certified copy is given, the commissioner must, at the
29 times and places the commissioner considers appropriate,
30 allow the person otherwise entitled to possession of the

1 document, or a person authorised by that person, to inspect and
2 make copies of, or take extracts from, the document.

3 (5) In any proceeding in which a document kept by the commissioner
4 for fair trading under subsection (3) is admissible in evidence, a
5 copy of the document certified to be a true copy under
6 subsection (4) is admissible in evidence as if it were the original.

7 **153 Requirement to begin proceedings**

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

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

14 **154 Decision on claims**

15 (1) If the commissioner for fair trading is given a claim for
16 compensation under section 151 (Claims for compensation), the
17 commissioner must decide whether there is financial loss for which
18 compensation may be paid to the claimant under this division and, if
19 so, the amount of the loss.

20 (2) If the commissioner for fair trading gives a notice under section 152
21 (Requirement to give information and produce documents) or 153 in
22 relation to a claim, the commissioner need not take any further
23 action in relation to the claim until—

- 24 (a) the requirement in the notice is satisfied; and
25 (b) for a requirement under section 153—the relevant proceeding
26 is decided.

1 **155 Payment of compensation**

2 (1) This section applies if the commissioner for fair trading decides that
3 there is financial loss for which compensation may be paid to a
4 claimant under this division.

5 (2) The chief executive must pay the claimant, out of the compensation
6 fund, the amount of the financial loss decided by the commissioner
7 for fair trading.

8 (3) However, the chief executive must not pay the amount until—

9 (a) the commissioner for fair trading has decided all claims for
10 compensation made in relation to the licensed agent whose
11 failure to account is the subject of the claim; and

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

16 **156 Interim payment of compensation**

17 (1) This section applies if the commissioner for fair trading has decided
18 that there is a financial loss for which an amount may be payable to
19 a claimant under this division but payment of the amount cannot be
20 made because of section 155 (3).

21 (2) The chief executive may make an interim payment of compensation
22 out of the compensation fund of the amount the chief executive
23 considers reasonable, if satisfied that—

24 (a) the claimant is suffering hardship as a direct consequence of
25 the financial loss; or

26 (b) circumstances prescribed under the regulations exist.

27 (3) An amount paid to the claimant under subsection (2) must be set off
28 against the amount of compensation payable to the claimant under
29 this division.

1 **157 Insufficiency of compensation fund**

- 2 (1) If the amount in the compensation fund (the *available amount*) is
3 insufficient for the payment of all amounts that would, apart from
4 this subsection, be payable to claimants under section 155 (1)
5 (Payment of compensation)—
- 6 (a) the chief executive must divide the available amount among
7 the claimants in proportion to the amounts otherwise payable;
8 and
- 9 (b) pay each claimant the proportionate amount.
- 10 (2) The balance of the amount payable to claimants must be paid out of
11 future accumulations of the compensation fund.
- 12 (3) On making a payment under subsection (1) (b), the chief executive
13 must tell each claimant in writing the balance payable out of future
14 accumulations of the fund.

15 **158 Availability of compensation fund**

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

18 **159 Subrogation**

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

1 **Part 11 Administration**

2 **160 Register**

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

15 **161 Register information**

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

- 18 (a) each licence;
- 19 (b) each registration;
- 20 (c) conditions put on licences or registrations;
- 21 (d) each application for a licence that is refused;
- 22 (e) each application for registration that is refused;
- 23 (f) the main place of business of each licensed agent;
- 24 (g) any exemption under section 71 (Licensed agent to be in
25 charge of business—exemptions);

- 1 (h) an audit period for a licensed agent fixed by the commissioner
2 for fair trading under section 113 (1) (Audit period).
- 3 (i) each prosecution taken under this Act and the result of the
4 prosecution;
- 5 (j) each disciplinary action taken by the consumer and trader
6 tribunal;
- 7 (k) the appointment of an administrator under this Act;
- 8 (l) anything else prescribed under the regulations.

9 **162 Money received under Act**

- 10 (1) All money paid to the Territory under this Act, and all interest on
11 the money, (the *trust money*) is held on trust for payment under this
12 section.
- 13 (2) As soon as practicable after the beginning of a financial year, the
14 Minister must determine, in writing, the amount that, in the
15 Minister's opinion, is likely to be needed by the compensation fund
16 to meet the likely claims against the fund during the financial year.
- 17 (3) The determination of the Minister is a notifiable instrument.
- 18 *Note* A notifiable instrument must be notified under the Legislation Act.
- 19 (4) If the amount of trust money held when the Minister makes the
20 determination mentioned in subsection (2) is at least the amount
21 decided by the Minister, the amount decided by the Minister must
22 be paid from the trust money into the compensation fund.
- 23 (5) If the amount of trust money held when the Minister makes the
24 determination is less than the amount determined by the Minister, all
25 the trust money must be paid into the compensation fund.
- 26 (6) In this section:
- 27 *interest*—see the *Financial Management Act 1996*, dictionary.

1 **163 Use of excess trust money**

2 (1) Any trust money not paid into the compensation fund under
3 section 162 must be used for a purpose prescribed under the
4 regulations.

5 (2) The purposes that may be prescribed under the regulations include
6 the following:

7 (a) promoting education and understanding of this Act for licensed
8 agents, registered salespeople and the public;

9 (b) providing dispute resolution services for disputes involving
10 licensed agents or registered salespeople;

11 (c) additional payments to the compensation fund;

12 (d) researching issues of concern to licensed agents and people
13 using the services of licensed agents, whether or not the issues
14 arise under this Act;

15 (e) payment or reimbursement of costs incurred by the
16 commissioner for fair trading on behalf of the Territory in
17 proceedings under this Act;

18 (f) the payment of the reasonable costs and expenses incurred by
19 an administrator under section 143 (Remuneration
20 administrators);

21 (g) reimbursing the Territory for the cost of administering this Act
22 and the *Consumer and Trader Tribunal Act 2003*.

23 **164 Disclosure of information**

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

27 Maximum penalty: 50 penalty units.

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

- 1 (3) Subsection (1) does not apply in relation to a disclosure made—
2 (a) with the consent of the person who provided the information;
3 or
4 (b) as part of the exercise of a function under this Act; or
5 (c) for a legal proceeding arising out of this Act or a report of the
6 proceeding; or
7 (d) to a regulatory officer or law enforcement officer, to help the
8 officer in the exercise of the officer's functions; or
9 (e) as otherwise prescribed under the regulations; or
10 (f) under another Territory law or a Commonwealth law.
- 11 (4) This section does not apply to the disclosure by the commissioner
12 for fair trading to a person directly involved in a transaction with a
13 licensed agent, of information that relates to the transaction and
14 directly concerns the person.
- 15 (5) This section does not apply to the disclosure of information to the
16 commissioner for fair trading by a law enforcement officer or
17 regulatory officer helping the commissioner in the exercise of
18 functions under this Act if the commissioner has asked for
19 disclosure of the information.
- 20 (6) The commissioner for fair trading may enter into agreements and
21 other arrangements for the sharing or exchange of information
22 relating to the activities of agents and this section does not apply to
23 the disclosure of information under an agreement or arrangement
24 entered into under this subsection.

- 1 (7) In this section—
- 2 *information* means information that is not on the register.
- 3 *law enforcement officer* means—
- 4 (a) a police officer or a member of the police service or force of a
5 State; or
- 6 (b) the director of public prosecutions, or the director of public
7 prosecutions or prosecutor of the Commonwealth or a State; or
- 8 (c) a person, or an officer of an authority, responsible for the
9 investigation or prosecution of offences against a Territory
10 law, or the law of the Commonwealth or a State.
- 11 *regulatory officer* means an officer or employee of a government
12 agency (including the government of a jurisdiction outside the ACT
13 or outside Australia) exercising functions under a law about fair
14 trading or a law that provides for the issue of authorities (however
15 called) in relation to the undertaking of an activity regulated under
16 the law.
- 17 **165 Protection from liability**
- 18 (1) The commissioner for fair trading or an investigator does not incur
19 civil liability for an act or omission done honestly for this Act.
- 20 (2) A civil liability that would, apart from this section, attach to the
21 commissioner for fair trading or an investigator attaches instead to
22 the Territory.

1 **168 Review of reviewable decisions**

2 (1) The following people may apply to the consumer and trader tribunal
3 for a review of a reviewable decision:

4 (a) a person mentioned in schedule 1, column 4 in relation to the
5 decision;

6 (b) any other person whose interests are affected by the decision.

7 (2) An application for review of a reviewable decision may only be
8 made within 20 business days after the day the person is given
9 notice of the decision.

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 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 (Main place of business);
- (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 (Claims for compensation);

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

Section 170

- 1 (b) the person is reckless about whether the statement—
2 (i) is false or misleading; or
3 (ii) omits something without which the statement is
4 misleading; and
5 (c) the statement is made in, or in relation to, a relevant matter.
6 Maximum penalty: 50 penalty units, imprisonment for 6 months or
7 both.
8 (6) Subsections (2) (b) (i) and (5) (b) (i) do not apply if the statement is
9 not false or misleading in a material particular.
10 (7) Subsections (2) (b) (ii) and (5) (b) (ii) do not apply if the omission
11 does not make the statement misleading in a material particular.

12 170 Alternative verdict for offence against s 169

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

20 171 Rules of conduct

- 21 (1) The regulations may prescribe rules of conduct to be observed by
22 licensed agents or registered salespersons.
23 (2) A licensed agent must not contravene a rule of conduct applying to
24 the agent.
25 (3) A registered salesperson must not contravene a rule of conduct
26 applying to the salesperson.

1 **172 Review of disqualifications**

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

11 **173 Evidentiary certificates**

- 12 (1) In a proceeding under this Act, a certificate signed by the
13 commissioner for fair trading stating any of the following matters is
14 evidence of the matter so stated:
- 15 (a) that, on a stated day or during a stated period, a person was, or
16 was not, the holder of a stated licence;
- 17 (b) that, on a stated day or during a stated period, a person was, or
18 was not, registered as stated;
- 19 (c) that, on a stated day or during a stated period, a person's
20 licence or registration was, or was not, suspended;
- 21 (d) that a document mentioned in the certificate is a copy of—
- 22 (i) a part of the register mentioned in the certificate; or
23 (ii) a document held by the commissioner under this Act.
- 24 (2) A document purporting to be a certificate under subsection (1) is
25 taken, unless the contrary is proved, to be such a certificate and to
26 be evidence of the matters it states.

1 **174 What is a *corresponding law***

2 A *corresponding law* is—

- 3 (a) a law of a State corresponding, or substantially corresponding,
4 to this Act; or
- 5 (b) a law of a State that is declared under the regulations to be a
6 corresponding law, whether or not the law corresponds, or
7 substantially corresponds, to this Act.

8 **175 Displacement of Corporations legislation**

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

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

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

27 **176 Determination of fees**

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

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

1 (2) A determination is a disallowable instrument.

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

4 **177 Approved forms**

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

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

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

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

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

12 **178 Regulation-making power**

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

14 *Note* Regulations must be notified, and presented to the Legislative
15 Assembly, under the Legislation Act.

16 (2) The regulations may make provision in relation to—

17 (a) applications for licences or registrations; and

18 (b) renewals of licences and registrations; and

19 (c) the surrender of licences and registrations; and

20 (d) the keeping of accounts and other records by licensed agents
21 and registered salespeople; and

22 (e) the transfer of a licensed agent's business to another licensed
23 agent, including the transfer of trust money.

24 (3) The regulations may prescribe offences for contraventions of the
25 regulations and prescribe maximum penalties of not more than
26 20 penalty units for offences against the regulations.

1 **Part 14 Transitional provisions**

2 **Division 14.1 Definitions**

3 **179 Definitions for pt 14**

4 In this part:

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

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

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

9 **Division 14.2 Licensed agents under repealed**
10 **Act**

11 **180 Licensed agents under repealed Act generally**

12 (1) Despite the repeal of the repealed Act, a licence in force
13 immediately before the commencement day continues to be in force
14 during the temporary period.

15 (2) Section 34 (Licence conditions) applies to any condition on a
16 licence continued under this section.

17 (3) If, immediately before the commencement day, an agent had not
18 paid an annual licence fee that, under the repealed Act, section 54A
19 (Fees payable by licensed agents) the agent should have paid before
20 that day, this section does not apply to the agent's licence until the
21 fee is paid.

- 1 (4) In this section:
- 2 *temporary period*, for an agent taken to be licensed under this
3 section, means the period beginning on the commencement day and
4 ending—
- 5 (a) if the agent applies for a licence or registration within 6 months
6 after the commencement day—on the day the application is
7 decided; or
- 8 (b) in any other case—6 months after the commencement day.
- 9 **181 Suspended licensed agents under repealed Act**
- 10 (1) This section applies if, immediately before the commencement day,
11 a person was a licensed agent under the repealed Act whose licence
12 was suspended.
- 13 (2) The person is taken, for this Act, to be a licensed agent whose
14 licence is suspended until the earlier of—
- 15 (i) the end of the period of suspension under the repealed
16 Act; or
- 17 (ii) the end of the temporary period.
- 18 (3) The person is taken to be a disqualified person until the end of the
19 period of suspension under the repealed Act for—
- 20 (a) section 27 (People disqualified from being licensed); and
21 (b) section 51 (People disqualified from being registered).
- 22 (4) In this section:
- 23 *temporary period*—see section 180.

1 **182 People disqualified from holding licence under repealed**
2 **Act**

3 (1) If, immediately before the commencement day, a person was
4 disqualified by the board from holding an agents licence under the
5 repealed Act, the person is taken to be a *disqualified person* for the
6 duration of the disqualification under—

7 (a) section 27 (People disqualified from being licensed); and

8 (b) section 51 (People disqualified from being registered).

9 (2) For this Act and the *Consumer and Trader Tribunal Act 2003*, a
10 decision of the board about a person's disqualification or the period
11 of a person's disqualification is taken to be an order of the consumer
12 and trader tribunal.

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

15 **183 Former licensed agents**

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

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

21 **184 Registered agents under repealed Act generally**

22 (1) This section applies to a person who, immediately before the
23 commencement day, was registered, but not licensed, under the
24 repealed Act.

25 (2) During the temporary period—

26 (a) if the person was registered as a real estate agent—the person
27 is taken to be a licensed real estate agent; and

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

12 **185 Employees need not have qualifications for 2 years**

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

1 **Division 14.4 Other provisions about the**
2 **repealed Act**

3 **186 Register**

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

6 **187 Board property**

7 (1) All property of the board immediately before the commencement
8 day vests in the Territory under this section.

9 (2) This section has effect subject to section 191 (Administrative
10 accounts).

11 **188 Proceedings and evidence**

12 (1) In this section:

13 *relevant entity*, for a proceeding, means—

14 (a) for a proceeding under the repealed Act in relation to an
15 application for registration or a licence or a condition on a
16 licence—the commissioner for fair trading; or

17 (b) for a proceeding in relation to an inquiry by the board under
18 the repealed Act, part 8 (Proceedings for breaches of rules of
19 conduct for agents)—the consumer and trader tribunal; or

20 (c) for a proceeding arising out of a right to which the board is
21 subrogated under the repealed Act, section 71ZH
22 (Subrogation)—the Territory.

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

26 (2) For a proceeding begun before the commencement day, the relevant
27 entity is substituted for the board as a party to the proceeding.

- 1 (3) A proceeding that was not begun before the commencement day and
2 that apart from this Act could, after that day, be brought by or
3 against the board may be brought by or against the relevant entity.
- 4 (4) The *Limitation Act 1985*, part 3 (Postponement of bar) applies to the
5 beginning of a proceeding by or against a relevant entity as if the
6 cause of action had accrued by or against the relevant entity.
- 7 (5) A court, tribunal, commission or other entity in which a proceeding
8 may be or has been begun or continued under this section may give
9 directions in relation to the beginning or continuation of the
10 proceeding.
- 11 (6) Any evidence that, apart from this section, would have been
12 admissible for or against the board is admissible for or against the
13 relevant entity.
- 14 (7) An order made in a proceeding by or against the board before the
15 commencement day may, after that day, be enforced by or against
16 the relevant entity.

17 **189 Pending licence applications**

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

1 **190 Trust accounts**

- 2 (1) If under the repealed Act, part 6 (Trust moneys, trust accounts and
3 agents' records) a person was required to do something within a
4 period, and the period had not ended immediately before the
5 commencement day, the obligation continues, subject to this section,
6 and the period continues to run despite the repeal of the repealed
7 Act.
- 8 (2) If a person was, immediately before the commencement day, under
9 an obligation to give something (including information) to the
10 registrar or board, the thing must be given to the commissioner for
11 fair trading.

12 **191 Administrative accounts**

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

23 **192 Agents fidelity guarantee fund**

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

1 **193 Compensation claims—entitlement and beginning**

- 2 (1) A person who, immediately before the commencement day, was
3 entitled to claim compensation against the fidelity fund for an
4 amount is entitled to claim compensation for the same amount
5 against the compensation fund.
- 6 (2) If a notice has been published under the repealed Act, section 71Z
7 (Advertisement relating to claims)—
- 8 (a) section 150 (Notice inviting claims) applies to the notice; and
9 (b) for section 149 (Entitlement to claim compensation), the claim
10 period for the notice is the period mentioned in the notice.
- 11 (3) A claim for compensation given to the board is taken to be a claim
12 given to the commissioner for fair trading under section 151 (Claims
13 for compensation).

14 **194 Compensation claims—board**

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

1 **195 Compensation payments**

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

10 **196 Disciplinary proceedings**

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

23 **197 Surrender of licences**

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

1 **198 Administrators**

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

5 **Division 14.5 Auctioneers**

6 **199 Licensed auctioneers**

7 (1) A licence in force under the *Auctioneers Act 1959* immediately
8 before the commencement day is taken on that day to be a licence
9 under this Act and the person holding the licence is taken to be a
10 licensed real estate agent.

11 (2) A real estate agent licence under subsection (1)—

12 (a) is in force until 30 June 2004, but may be renewed under
13 section 36 (Renewal of licences); and

14 (b) is subject to the condition that the licensed agent may only
15 provide the service of selling land by auction.

16 (3) For section 34 (Licence conditions), the condition mentioned in
17 subsection (2) (b) is taken to be a condition put on the licence by the
18 commissioner for fair trading.

19 (4) The putting on a licence of the condition under subsection (2) (b) is
20 not a reviewable decision for part 12 (Notification and review of
21 decisions).

22 (5) If, on the commencement day, a person held a licence under the
23 *Auctioneers Act 1959* that was under suspension, this section does
24 not apply in relation to the person until the day the licence would
25 again be in force if the *Auctioneers Act 1959* had not been repealed.

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

2 **200 Regulations modifying pt 14**

3 The regulations may modify the operation of this part to make
4 provision in relation to any matter that is not, or is not in the
5 Executive's opinion adequately, dealt with in this part.

6 **201 Expiry**

7 Divisions 14.1 to 14.6 and the heading to division 14.7 expire
8 2 years after the day they commence.

9 **Division 14.7** **Agents' records**

10 **202 Keeping of agents' records**

11 A person who was a licensed agent under the *Agents Act 1959*
12 commits an offence if the person fails to preserve a record kept
13 under that Act for 3 years beginning on the 30 September after the
14 making of the record.

15 Maximum penalty: 30 penalty units.

16 **203 Expiry of pt 14**

17 This part expires 4 years after the day it commences.

1 **Part 15** **Repeals and consequential**
2 **amendments**

3 **204 Auctioneers Act 1959, s 16 relocation**

4 The *Auctioneers Act 1959*, section 16 (Bids by seller) is relocated to
5 the *Fair Trading Act 1992* as section 15A.

6 **205 Acts repealed**

7 The following Acts are repealed:

- 8 • *Agents Act 1968* No 26
- 9 • *Auctioneers Act 1959* No 2.

10 **206 Subordinate law repealed**

11 The *Agents Regulations 1985* No 6 are repealed.

12 **207 Instruments repealed—sch 2**

13 The instruments mentioned in schedule 2 are repealed.

14 **208 Acts amended—sch 3**

15 The Acts mentioned in schedule 3 are amended.

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
8	58 (2) (a)	put a registration condition	(a) if done on registration—applicant objectors (b) if done on existing registration—registered salesperson

column 1 item	column 2 section	column 3 decision	column 4 people to be notified
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
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

Schedule 1 Reviewable decisions

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

Schedule 2 Instruments repealed

(see s 207)

Part 2.1 Agents Act 1959— disallowable instruments—s 9

- *Agents Act 1968-Board Appointments 2002 (No 1)* DI2002 137
- *Agents Act 1968-Board Appointments 2002 (No 2)* DI2002 138
- *Agents Board Appointments 2002 (No 3)* DI2002-190
- *Agents Board Appointments 2002 (No 4)* DI2002-191

Part 2.2 Agents Act 1959—notifiable instrument—s 57D

- *Agents-Real Estate, Stock and Station and Business Agents-Unclaimed trust moneys held by licensed agents 2002* NI2002 374

Schedule 3 Consequential amendments

(see s 208)

Part 3.1 Fair Trading (Consumer Affairs) Act 1973

[3.1] Section 7 (1) (a)

substitute

- (a) receive complaints about fraudulent conduct or unfair practices in relation to the supply of goods or services or the acquisition of interests in land; and

[3.2] New section 7 (1) (ca)

insert

- (ca) inspect records and accounts that must be kept under fair trading legislation; and

[3.3] New section 7 (1) (da)

insert

- (da) exercise any other function given to the commissioner under a Territory law; and

[3.4] Section 7 (1)

renumber paragraphs when Act next republished under Legislation Act 2001

[3.5] New sections 7 (3) and (4)

insert

(3) A complaint mentioned in subsection (1) (a) may, but need not, relate to conduct or a practice to which fair trading legislation applies.

(4) For this section:

fair trading legislation—see section 8A.

[3.6] Section 8 (2)

omit

to a person

substitute

under the fair trading legislation to any person

[3.7] Section 8A, definition of *fair trading legislation*, new paragraph (d)

insert

(d) the *Agents Act 2003*.

[3.8] Section 9

omit

section 7 (1) (b) or (c)

substitute

section 7 (1) (b), (c) or (ca)

[3.9] New section 12DA

insert

12DA Inspection of records of agents

- (1) For this section, the following is a *relevant circumstance* in relation to a person:
 - (a) the person is a licensed agent who cannot be found;
 - (b) the person is a licensed agent who has left the ACT apparently permanently or for an extended period;
 - (c) the person has ceased to be a licensed agent;
 - (d) the person is a licensed agent who has contravened or appears to have contravened the *Agents Act 2003*, part 7 (Trust accounts).
- (2) This section applies if an investigator is satisfied that—
 - (a) a relevant circumstance has happened in relation to a person; and
 - (b) the person has deposited money in an account with an authorised deposit-taking institution; and
 - (c) it is necessary to inspect the records relating to the person kept by the institution.
- (3) The investigator may give to the authorised deposit-taking institution a written notice—
 - (a) setting out the relevant circumstance; and
 - (b) requiring the institution to produce for the investigator's inspection the records of the institution relating to the person.
- (4) An authorised deposit-taking institution must comply with the notice.

(5) In this section:

account—

- (a) means a trust account or another account, whether related to a person's business activities or not; and
- (b) includes an account kept jointly with someone else.

licensed agent—see the *Agents Act 2003*, dictionary.

trust account—see the *Agents Act 2003*, dictionary.

Part 3.2 Second-hand Dealers Act 1906

[3.10] New section 2A

insert

2A Carrying on business as second-hand dealer

- (1) A person *carries on business as a second-hand dealer* if the person, for reward or profit—
 - (a) deals in second-hand goods; or
 - (b) buys and sells second-hand goods; or
 - (c) sells someone else's second-hand goods as agent.
- (2) However, a person does not carry on business as a second-hand dealer only because the person hires out second-hand goods.
- (3) In this section:

selling includes selling on commission or by auction.

[3.11] Section 8 (1)

omit

(other than a licensed auctioneer)

[3.12] New section 19 (3)

insert

- (3) The regulations may provide—
- (a) that prescribed money received by a licensed second-hand dealer is trust money; and
 - (b) how trust money may be dealt with; and
 - (c) what records may be kept in relation to trust money.

[3.13] New section 20

insert

20 Transitional provisions—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 second-hand dealer.
- (2) A licence under subsection (1) is in force until 30 June 2004.
- (3) 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.
- (4) This section expires 2 years after the day it commences.

[3.14] Dictionary, new definition of *carrying on business as a second-hand dealer*

insert

carrying on business as a second-hand dealer—see section 2A.

[3.15] Dictionary—definition of *second-hand dealer*

substitute

second-hand dealer means a person who carries on business as a second-hand dealer.

Part 3.3 **Sale of Motor Vehicles Act**
1977

[3.16] Section 25A (5) (b)

substitute

(b) a motorcycle that is sold by auction; or

1 Dictionary

2 (see s 3)

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

5 *Note 2* In particular, the Legislation Act, dict, pt 1, defines the following terms:

- 6 • Act
- 7 • adult
- 8 • authorised deposit-taking institution
- 9 • business day
- 10 • commissioner for fair trading
- 11 • consumer and trader tribunal
- 12 • corporation
- 13 • Corporations Act
- 14 • entity
- 15 • financial year
- 16 • found guilty
- 17 • lawyer
- 18 • month
- 19 • State
- 20 • statutory declaration
- 21 • under.

22 *account*—see section 131.

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

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

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

- 1 **agent** means a person who carries on business as—
- 2 (a) a business agent; or
- 3 (b) an employment agent; or
- 4 (c) a real estate agent; or
- 5 (d) a stock and station agent; or
- 6 (e) a travel agent.
- 7 **agent**, for division 3.4 (Disciplinary action against agents)—see
- 8 section 40.
- 9 **agents licence** means—
- 10 (a) a business agents licence; or
- 11 (b) an employment agents licence.
- 12 (c) a real estate agents licence; or
- 13 (d) a stock and station agents licence; or
- 14 (e) a travel agents licence; or
- 15 **audit period**, for a licensed agent means the period fixed under
- 16 section 113 (Audit period) for the agent.
- 17 **beneficial interest**, in land, for division 5.6 (Land—further
- 18 provisions)—see section 82.
- 19 **benefit**, for division 5.6 (Land—further provisions)—see section 80.
- 20 **business agent service**—see section 10 (2).
- 21 **buyer** includes a prospective buyer.
- 22 **carries on business as**—
- 23 (a) **a business agent**—see section 10; or
- 24 (b) **an employment agent**—see section 12.
- 25 (c) **a real estate agent**—see section 8; or

- 1 (d) *a stock and station agent*—see section 9; or
- 2 (e) *a travel agent*—see section 11 ; or
- 3 *child*, of a person, means the son, daughter, grandson,
4 granddaughter, stepson or stepdaughter of the person, or someone in
5 relation to whom the person is acting in place of a parent.
- 6 *claimant*, for division 10.2 (Claims against the compensation fund)-
7 see section 147.
- 8 *compensation scheme*, for division 5.7 (Travel agents—further
9 provisions)—see section 90.
- 10 *compensation scheme participant*, for a travel agent—see
11 section 91 (Participation in compensation scheme).
- 12 *compensation fund* means the consumer compensation fund kept
13 under section 144 (Consumer compensation fund).
- 14 *corresponding law*—see section 174.
- 15 *daily ACT newspaper* means a daily newspaper printed and
16 published in the ACT.
- 17 *details*, of a trust account, for part 7 (Trust accounts)—see section
18 103 (Trust account details).
- 19 *employ* includes—
- 20 (a) engaging a person on a contract of service; and
- 21 (b) for a corporation, having a person as director or other member
22 of its governing body.
- 23 *employee*—
- 24 (a) means—
- 25 (i) any person employed, regardless of how remunerated;
26 and
- 27 (ii) a person engaged on a contract of service; and

- 1 (b) for a corporation, includes a director or other member of its
2 governing body.
- 3 ***employment agent service***—see section 12 (2).
- 4 ***estimate***, for division 5.6 (Land—further provisions)—see
5 section 80.
- 6 ***executive officer***—see the Corporations Act, section 9.
- 7 ***failure to account***, in relation to a licensed agent, means a failure by
8 the agent to account for money or other property entrusted to the
9 agent in the course of carrying on the agent’s business as a licensed
10 agent.
- 11 ***fair trading legislation***—see section 7.
- 12 ***family member***, of a person, means—
- 13 (a) the person’s domestic partner; or
- 14 (b) the person’s parent or child; or
- 15 (c) the person’s brother, sister, half-brother or half-sister; or
- 16 (d) the parent or child of the person’s domestic partner.
- 17 ***former licensed agent*** means a person who was, but is no longer a
18 licensed agent.
- 19 ***former registered salesperson*** means a person who was, but is no
20 longer a registered salesperson.
- 21 ***ground for disciplinary action***—
- 22 (a) for a licensed agent—see section 41;
- 23 (b) for a registered salesperson—see section 65.
- 24 ***investigator***—see the *Fair Trading (Consumer Affairs) Act 1973*,
25 section 2.

- 1 ***kind of licence*** means—
- 2 (a) a business agents licence; or
- 3 (b) an employment agents licence; or
- 4 (c) a real estate agents licence; or
- 5 (d) a stock and station agents licence; or
- 6 (e) a travel agents licence.
- 7 ***kind of registration*** means registration as—
- 8 (a) a business salesperson; or
- 9 (b) a real estate salesperson; or
- 10 (c) a stock and station salesperson.
- 11 ***land*** includes an interest in land.
- 12 ***lessee*** includes prospective lessee.
- 13 ***licence*** means a licence under this Act.
- 14 ***licensed***, for division 3.1 (Agents to be licensed)—see section 17.
- 15 ***licensed agent***, for part 7 (Trust accounts)—see section 101.
- 16 ***licensed business agent*** means a person who holds a licence as a
- 17 business agent.
- 18 ***licensed employment agent*** means a person who holds a licence as
- 19 an employment agent.
- 20 ***licensed real estate agent*** means a person who holds a licence as a
- 21 real estate agent.
- 22 ***licensed stock and station agent*** means a person who holds a
- 23 licence as a stock and station agent.
- 24 ***licensed travel agent*** means a person who holds a licence as a travel
- 25 agent.
- 26 ***livestock*** means animals raised or kept for profit.

- 1 ***main place of business***, for a licensed agent, means the place shown
2 in the register as the agent's main place of business.
- 3 ***obtains a beneficial interest***, in land, for division 5.6 (Land—
4 further provisions)—see section 82.
- 5 ***parent***, of a person, means the person's father, mother, grandfather,
6 grandmother, stepfather or stepmother, or someone acting in place
7 of the person's parent.
- 8 ***pre-contract information***, for division 5.6 (Land—further
9 provisions)—see section 81.
- 10 ***principal***, of a person, does not include the person's employer.
- 11 ***publish***—see section 78.
- 12 ***qualified auditor***, for division 7.4 (Audit of trust accounts)—see
13 section 112.
- 14 ***real estate agent service***—see section 8 (2).
- 15 ***records*** includes documents and information in electronic form.
- 16 ***register*** means the register under section 160.
- 17 ***registered***, for division 4.1 (Salespeople to be registered)—see
18 section 44.
- 19 ***registered business salesperson*** means a person registered under
20 section 57 as a business salesperson.
- 21 ***registered real estate salesperson*** means a person registered under
22 section 57 as a real estate salesperson.
- 23 ***registered salesperson*** means—
- 24 (a) a registered business salesperson; or
- 25 (b) a registered real estate salesperson; or
- 26 (c) a registered stock and station salesperson.
- 27 ***registered salesperson***, for division 4.4—see section 64.

- 1 **registered stock and station salesperson** means a person registered
2 under section 57 as a stock and station salesperson.
- 3 **registration** means registration under this Act.
- 4 **reviewable decision**, for part 12 (Notification and review of
5 decisions)—see section 166.
- 6 **rules of conduct**—means rules of conduct prescribed under
7 section 171.
- 8 **rural land** means land used mainly for—
9 (a) agricultural or pastoral purposes; or
10 (b) a purpose prescribed by the regulations.
- 11 **salesperson** means a person who, as an employee, provides—
12 (a) a business agent service; or
13 (b) a real estate agent service; or
14 (c) a stock and station agent service.
- 15 **seller** includes prospective seller.
- 16 **selling price**, for division 5.6 (Land—further provisions)—see
17 section 80.
- 18 **stock and station agent service**—see section 9.
- 19 **stop direction**, for division 8.2 (Freezing of accounts)—see
20 section 131
- 21 **travel agents board of trustees** means the board of trustees
22 established under the travel agents trust deed.
- 23 **travel agent service**—see section 11 (2).

- 1 ***travel agents trust deed*** means—
- 2 (a) the deed made on 12 December 1986 by the States of New
3 South Wales, Victoria and Western Australia providing for the
4 establishment and administration of a travel compensation fund
5 and a compensation scheme in relation to business carried on
6 by travel agents, as amended from time to time; or
- 7 (b) if the deed is replaced by another deed to a similar effect—the
8 other deed as amended from time to time.
- 9 ***trust account***—see section 105 (Opening trust accounts).
- 10 ***trust money***—see section 102.
- 11 ***vehicle*** includes a ship, train or aircraft.
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Endnote

Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.