

1992

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

AGENTS (AMENDMENT) BILL 1992

EXPLANATORY MEMORANDUM

Circulated by Authority of the Chief Minister
Rosemary Follett MLA

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AGENTS (AMENDMENT) BILL 1992

The Agents Act 1968 (the "Principal Act") provides for the licensing and regulation of Real Estate, Business and Stock and Station Agents (hereinafter called "licensed agents"). It was amended in 1988 to also incorporate provisions for the licensing and regulation of Travel Agents.

The Act is administered by the Agents Board of the ACT, a public statutory authority.

The main objective of the Agents (Amendment) Bill 1992 ("the Bill") is to establish a Fidelity Guarantee Fund to protect persons dealing with licensed agents. Persons dealing with Travel Agents are separately covered by a national compensation trust scheme.

The Fund will enable persons who suffer a pecuniary loss by reason of a failure to account by a licensed agent, to claim compensation from the Fund in respect of the loss. Failure to account in relation to a licensed agent means a failure to account, by an employee or agent of that licensed agent or a person who has apparent control or charge of the business or the business office of that licensed agent, for moneys or other property entrusted to the licensed agent.

Under the Principal Act licensed agents are required to maintain a trust account at a bank operating in the Territory. Moneys in these trust accounts do not earn interest.

The Bill provides that the Agents Board will be empowered to enter into arrangements with banks to pay interest on those accounts. The interest earned will be paid as income to the Fidelity Guarantee Fund.

The Bill also provides for the establishment of several accounts, namely: a Statutory Interest Account to which income is to be paid; an Administration Account to cover costs and expenses of the operation of the Fund and the administration of the Act; and an Agents' Fidelity Guarantee Account to meet compensation claims and related costs.

The Bill requires the Agents Board to undertake its accounting, banking and investment operations in accordance with the Audit Act 1989.

The new legislation will have a positive effect on the budget as the Fidelity Guarantee Fund will bear the cost of administering functions which are currently carried out by appropriation. The Fund will meet the full costs of administering the Agents Act in relation to the licensing and registration of real estate, business and stock and station agents.

Details of the Bill are set out in the Attachment.

ATTACHMENT

AGENTS (AMENDMENT) BILL 1992

Clause 1 cites the Bill, when enacted, as the Agents (Amendment) Act 1992.

Clause 2 provides that sections 14,15,19,20 and 28 (dealing with the payment of licence and registration fees on a common anniversary date) will commence on 1 July 1992.

The other material provisions of the Act will commence either on a day to be fixed by the Minister by notice in the Gazette or in the event that notification is not provided, the first day after the end of a 6 month period - the commencement date of that 6 month period being from the date this Act is notified in the Gazette.

Clause 3 provides that a reference to the "Principal Act" means the Agents Act 1968.

Clause 4 amends section 3 of the Principal Act and provides in new sub-section (1A) that the Act will apply to a personal representative of an agent in respect of the unclaimed moneys provisions of sections 57B, 57C, 57D and 57G.

Also, in sub-section (2) the reference to "notice" has been replaced with "instrument" so that the Minister may by instrument declare that the Act does not apply to a person or persons specified in the instrument.

Furthermore, Clause 4 also inserts new sub-section (2A) which provides that a declaration by the Minister under sub-section (2) may be expressed to be subject to specified conditions.

Clause 5 amends section 5 of the Principal Act which deals with interpretation. The clause amends the existing definition relating to "member" and "omits the definition of "public service member" in relation to the constitution of the Agents Board, inserts new definitions for "Administration Account", "determined fee", "Corporations Law", "failure to account", "Fund", "Interest Account" and "pecuniary loss", and deletes subsection (3) dealing with references to prescribed fees.

Clause 6 amends section 8 of the Principal Act by omitting paragraph (2)(c) and substituting a new paragraph which gives the Board power to acquire, hold and dispose of personal property and to sue and be sued in its corporate name.

Clause 7 amends section 9 of the Principal Act by among other things, deleting all references to public servant or public service member in relation to the constitution of the Agents Board.

Clause 8 removes a reference to departmental member by omitting subsection (1) in section 10 of the Principal Act, and substituting a new subsection which provides for the Minister to appoint a member (whether a public servant or not) as Chairman of the Board.

Clause 9 amends section 14 of the Principal Act by omitting a reference to a public service member.

Clause 10 amends section 15 of the Principal Act by providing that in relation to the appointment of acting members of the Board, appointments by the Minister shall be in writing, and appointees shall be paid such remuneration and allowances as are provided for in section 11 of the Principal Act.

Clause 11 repeals section 17A of the Principal Act and inserts a new provision declaring the Agents Board to be a public authority to which Divisions 1 and 2 of Part IX of the Audit Act 1989 applies; and defining references to "accounts", "moneys" and "transactions and affairs".

Clause 12 repeals sections 24, 25, 28, 29, 32 and 33 of the Principal Act. These sections were introduced in the Principal Act as bridging provisions to enable agents to qualify for registration if they had specific qualifications prior to the introduction of the Act. These sections are no longer relevant.

Clause 13 amends section 37 of the Principal Act by omitting subsection (3) which deals with the power of the Registrar of Agents to object to the grant of an application for registration and substituting a new subsection (3) that omits grounds that are no longer applicable.

Clause 14 amends section 41 of the Principal Act by redefining the fee payable by a newly registered agent under the new "common anniversary date" scheme. Under the scheme an agent's first registration fee (defined as the appropriate fee) will be payable on a pro-rata basis up to 30 June in the financial year the certificate of registration is issued (so that subsequent annual payments may be made on a common date i.e. 1 July).

Clause 15 inserts new section 41A in Division 2 of Part IV. This section provides for the payment of a registration (determined) fee by existing agents i.e. those registered as at 1 July 1992.

Under the "common anniversary date" scheme, agents paying registration fees will do so on a pro-rata basis to 30 June 1993. For the purpose of calculating the pro-rata fees a part of a month shall be treated as a whole and fractions of a dollar shall be disregarded.

Clause 16 amends section 48 of the Principal Act by omitting subsection (3) which is irrelevant to the section.

Clause 17 amends section 49 by inserting after paragraph (1)(g) a new paragraph (ga) which provides that a written statement (to accompany an application for an agent's licence on behalf of a company) shall contain a declaration by a director that a liquidator, receiver, official manager or receiver and manager has not been appointed in relation to the company, any of its assets or any part of its affairs or undertaking; that no compromise or arrangement of a kind specified in Part 5.1 of the Corporations Law of the Commonwealth has been entered into or is proposed and that the company is solvent.

Section 49 is also amended by the addition of subsection (3) which provides that for the purposes of the section, a "certificate of incorporation" in relation to a trade union, means the union's registration certificate.

Clause 18 amends section 50 of the Principal Act by omitting subsections (2) and (3) and substituting new subsections (2) and (3).

New subsection 50(2) provides that the Commissioner of Police may object to the grant of an agent's licence within 21 days after being served with a notice, on the ground that the applicant or, if the applicant is a company, a director of the company, is not a person of good fame and character.

New subsection 50(3) provides that a person other than the Registrar or Commissioner of Police may object to the grant of an application for a licence on the same ground as is referred to in subsection (2).

Clause 19 amends section 53 of the Principal Act by redefining the fee payable by a newly licensed agent under the "common anniversary date" scheme. Under the scheme an agent's first licence fee will be payable on a pro-rata basis up to 30 June in the financial year the licence is issued (so that subsequent annual payments may be made on a common date i.e. 1 July).

Clause 20 inserts new section 54A in Division 5 of Part V. This section provides for the payment of a licence fee by existing agents i.e. those licensed before 1 July 1992.

Under the "common anniversary date" scheme agents paying licence fees will do so on a pro-rata basis to 30 June 1993. For the purpose of calculating the pro-rata fees a part of a month shall be treated as a whole and fractions of a dollar shall be disregarded.

Clause 21 inserts new sections 57A - 57G after section 57 of the Principal Act.

New subsection 57A provides that where in a relevant month an agent holds moneys in a trust account maintained by the agent in any year and those moneys were received by the agent more than 6 years before that month, the agent is required during that month to provide the Board with a statement in respect of those moneys.

Subsection 57A(2) provides that the statement furnished under subsection (1) should contain the following information:

- . the name and last known address of each person for whom or on whose behalf the moneys are held;
- . the amount of moneys held for each of those persons on the day the statement is furnished; and
- . in respect of each person, the purposes for which the moneys were paid to the licensed agent.

New subsection 57(3) provides that subsection (1) does not apply to moneys specified in the Regulations or included in a class of moneys specified in the Regulations.

New subsection 57A(4) requires the agent to maintain a record of any moneys held by the agent of a kind referred to in subsection (3). That record is required to be in writing.

New subsection 57A(5) defines "relevant month" for the purposes of section 57A, as the month of July in each year.

New section 57B relates to unclaimed trust moneys held by a former licensed agent.

New Subsection 57B(1) provides that where a person ceases to be a licensed agent and at that time moneys were held in a trust account maintained by the person as a licensed agent, the person shall, within 3 months after ceasing to be a licensed agent provide the Board with a statement in respect of those moneys.

New subsection 57B(2) requires a personal representative of an agent who has died, to provide the Board with a statement of moneys held in a trust account previously maintained by that agent. The statement is to be provided within 3 months of the person becoming a personal representative.

New subsection 57B(3) details the requirements of the statement to be provided under subsections (1) or (2). These are:

- . the name and last known address of each person for whom or on whose behalf the moneys are held;
- . the amount of moneys held for each of those persons on the day on which the statement is provided; and
- . the purposes for which the moneys were paid to the person providing the statement or the licensed agent by whom the trust account was maintained.

New section 57C relates to the provision of an additional statement.

New subsection 57C(1) requires an additional statement to be furnished. A person who is required by virtue of section 57E to provide a statement to the Board (the first statement), shall, within 14 days after the period of 12 months has expired, which commenced on the last day available for providing the first statement, provide a further statement (the second statement) in respect of moneys to which the first statement related, containing certain particulars. These are:

- . the name and last known address of each person for whom or on whose behalf the moneys are held;
- . the amount of moneys held for each of those persons on the day the second statement was provided; and
- . any payments made since the first statement was provided out of the trust account in which the moneys are held.

Subsection 57C(2) provides that where the first statement is required to be provided and before the expiration of the period of 12 months referred to in subsection (1), the person ceases to hold unclaimed trust moneys, that person shall furnish to the Board a statement containing particulars of the disposal, within 14 days of that disposal.

New section 57D relates to the duties of the Board in relation to unclaimed moneys in a trust account.

New subsection 57D(1) provides that where the Board receives a statement under section 57A or 57C it shall within 6 months after receipt of the statement, cause to be published in the Gazette and in a newspaper printed and published in the Territory a notice which contains -

- . the name and last known address of those persons; and
- . the amount of moneys held for or on behalf of those persons.

The notice will also state that the person holding the moneys will be required to pay them to the Registrar of Unclaimed Moneys if within 3 months after the date of publication of the notice the moneys are not paid out of the trust accounts.

New subsection 57D(2) provides that the Board may, at any time after 3 months has elapsed after the date of publication of the notice referred to in subsection (2), by notice in writing on the person holding the money, require that person, in not less than 14 days to:

- . pay the Registrar of Unclaimed Moneys any of those moneys still held by the person; and
- . furnish a statement to the Board containing particulars of any payments made out of those moneys since the statement under section 57A or 57C was provided.

New subsection 57D(3) deals with interpretation for the purposes of section 57D in relation to "date of publication".

New section 57E deals with applications to recover unclaimed moneys.

New subsection 57E(1) provides that a person who claims to be entitled to any moneys paid to the Registrar of Unclaimed Moneys under subsection 57E(2) may apply to the Board for payment to him or her of those moneys.

New subsection 57E(2) outlines the requirements of an application under subsection (1). These are:

- . that it be in writing;
- . that it be lodged with the Board;
- . that it contain the full name and residential address of the applicant; and
- . that it contain full particulars of the claim.

New subsection 57E(3) provides that the Board may by notice in writing require an applicant to provide, either orally or in writing within a specified period, such further information relating to the application as the Board requires.

New section 57F deals with the determination of applications.

Subsection 57F(1) requires the Board to consider an application made in accordance with section 57E and to determine:

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

New subsection 57F(2) empowers the Board, where it determines that an applicant is entitled to moneys paid to the Registrar of Unclaimed Moneys, to direct the Registrar of Unclaimed Moneys to pay that amount to the applicant.

New subsection 57F(3) requires the Registrar of Unclaimed Moneys to comply with a direction given to him or her under subsection (2).

New subsection 57F(4) provides that where the Board requires an applicant to furnish information under subsection 57E(3) in relation to an application it is not required to take any further action in relation to the application until the requirement is satisfied.

New section 57G deals with offences.

Subsection 57G(1) provides that a person shall not, without reasonable excuse, fail to comply with subsection 57B(1), 57B(2) or section 57C.

New subsection 57G(2) provides that a person who is not a licensed agent shall not, without reasonable excuse, fail to comply with a requirement made under subsection 57D(2). The penalty in respect of this subsection and subsection (1) is \$1000 for a natural person and \$5000 for a body corporate.

New subsection 57G(3) provides that a person who is a licensed agent shall not, without reasonable excuse, fail to comply with a requirement made under subsection 57D(2).

Clause 22 inserts new section 59A in Division 2 of Part VI. This section allows the Board to enter into an arrangement with a bank in the Territory for payment by the bank to the Board of amounts in respect of moneys held in any trust account maintained by an agent at that bank.

Clause 23 amends section 71 of the Principal Act by making a number of technical changes and adding subsection (4) which provides that the manager or other principal officer in the Territory of a bank, shall on receiving written notice by the Registrar of Agents, make available at the principal place of business of the bank and permit the Registrar or an inspector to inspect and make copies of any or all accounts and related documents held by any branch of the bank and relating to any trust account held by a licensed agent or all licensed agents.

Clause 24 inserts after Part VIB of the Principal Act new Parts VIC and VID comprising sections 71N - 71ZH. Proposed Part VIC is titled "Administrative Accounts" and proposed Part VID is titled "Agents Fidelity Guarantee Fund".

In Part VIC, Division 1, titled Agents Statutory Interest Account, is established.

New subsection 71N(1) requires the Board to establish and maintain an account called the Agents Statutory Interest Account.

Subsection 71N(2) requires the Board to operate the Statutory Interest Account in such manner as it from time to time determines.

New section 71P deals with the payment of moneys into the Statutory Interest Account. It is required that there be paid to the credit of this account -

- (a) any fees paid under section 41, subsections 53(1), 93(6) or 93(11) or section 110;
- (b) interest received in respect of investments made by the Board of moneys standing to the credit of the Statutory Interest Account, Administration Account and the Fund which are available for investment purposes.
- (c) any amount paid to the Board pursuant to an arrangement of a kind referred to in section 59A;
- (d) any other moneys that may be lawfully paid into the Statutory Interest Account.

New section 71Q deals with the application of moneys in the Statutory Interest Account.

New subsection 71Q(1) provides that moneys standing to the credit of the Statutory Interest Account shall, at the end of each financial year, be applied for a number of purposes, during the next financial year. These are:

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

New subsection 71Q(2) provides that where a balance of moneys remains in the Statutory Interest Account after payments have been made under subsection (1), that balance shall be applied by the Board for the following purposes:

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

New subsection 71Q(3) provides that the Board shall not make a payment to the Fund under paragraph (1)(b) if the amount standing to the credit to the Fund exceeds the amount determined by the Minister by notice in the Gazette unless the amount in the Fund is not sufficient to meet the payments that are required to be made out of the moneys of the Fund.

New subsection 71Q(4) provides that the amount that may be applied for a purpose referred to in subsection (2) is such amount as the Board, with the approval of the Minister, from time to time determines.

In Part VIC, Division 2, titled Agents Administration Account, is established.

New section 71R provides for the establishment and operation of the Agents Administration Account.

New subsection 71R(1) provides that the Board shall establish and maintain an account to be called the Agents Administration Account.

New subsection 71R(2) provides that pending the investment or application in accordance with section 71T of moneys standing to the credit of the Administration Account, the Board is required to pay those moneys into an account with a bank in

the Territory.

New subsection 71R(3) provides that the Administration Account shall be operated in such a manner as the Board from time to time determines.

New section 71S provides for the payment of moneys into the Administration Account. An amount referred to in paragraph 71Q(1)(a) and any other moneys that may be lawfully paid into the Administration Account shall be paid to the credit of the Administration Account.

New section 71T provides that moneys in the Administration Account shall be applied by the Board for the following purposes:

- (a) the payment of the costs, charges and expenses incurred by the Board in connection with the administration of the Act; the Statutory Interest Account and the Fund;
- (b) the remuneration and allowances payable to members, and persons appointed under section 6 of the Principal Act;
- (c) the payment of legal expenses incurred by the Board in connection with claims made in specified circumstances;
- (d) the payment of costs and expenses in relation to proceedings under Part XII; and
- (e) the payment of costs associated with a compensation claim under section 71ZC.

In Part VID, Division I, titled Establishment of Agents Fidelity Guarantee Fund, is established.

New subsection 71U(1) provides for the establishment and operation of the Fund.

New subsection 71U(2) provides that the assets of the Fund are the property of the Board; are to be kept separate from all other property of the Board and shall be expended only in accordance with the Act.

New subsection 71U(3) provides that the Fund shall be administered by the Board.

New subsection 71U(4) provides that pending the investment or application of moneys belonging to the Fund in accordance with section 71W, the Board shall pay the moneys into a bank in the Territory to the credit of a separate account to be called the Agents Fidelity Guarantee Account.

New subsection 71U(5) provides that the Agents Fidelity Guarantee Account is to be operated by the Board in such manner as the Board from time to time determines.

New section 71V describes the moneys of the Fund. The Fund is to consist of amounts paid out of the Statutory Interest Account for the purposes of the Fund and any other moneys that may be lawfully paid into the Fund.

New section 71W provides that the amounts of all claims, including costs, allowed or established against the Fund and any other moneys payable out of the Fund in accordance with this Act are from time to time payable-out of the Fund.

In Part VID, Division 2, titled Claims against the Fund, is established.

New section 71X relates to the application of Division 2. It provides that Division 2 does not apply to travel agents.

New section 71Y provides that a person is entitled to claim for compensation.

New subsection 71Y(1) provides that where a person suffers pecuniary loss by reason of a failure to account by a licensed agent, that person is entitled to claim compensation from the Fund in respect of that loss.

New subsection 71Y(2) provides that the amount that a claimant is entitled to claim as compensation from the Fund is the amount of actual pecuniary loss suffered by the claimant, less any amount that the claimant has recovered or that is recoverable in respect of the loss from a source other than the Fund.

New subsection 71Y(3) provides that nothing in subsection (1) entitles an agent to claim any compensation against the Fund in respect of any pecuniary loss suffered by the agent in the course of carrying on business as an agent.

New section 71Z provides for the advertisement of claims.

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

New subsection 71Z(2) provides that a notice is to be published in a daily newspaper printed and published in the Territory, on at least 2 different occasions and at intervals of not less than 1 month between each publication.

New subsection 71Z(3) provides that a notice shall, as well as specifying the name of the licensed agent, specify the name under which and the place or places at which the agent carries or carried on business, and must also contain such other details as the Board considers necessary to enable the identity of the agent to be clearly established.

New subsection 71Z(4) provides that the period to be specified in a notice is a period of not less than 6 months after the notice was first published.

New subsection 71Z(5) provides that an action for damages does not lie against the Board in respect of the publication in good faith of a notice under this section.

New section 71ZA relates to the procedures to be adopted in relation to a claim for compensation.

New subsection 71ZA(1) provides that a claim for compensation shall:

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

New subsection 71ZA(2) provides for the time within which a claim for compensation is to be made. A claim is to be made either within 6 months after the claimant becomes aware of the failure to account in connection with which the claim arises or within 2 years after the failure to account occurs, whichever occurs first.

New subsection 71ZA(3) provides that where, before the period within which a claim for compensation has expired, a notice in connection with the making of a claim for compensation is published, then a claim is to be made before the expiration of the period specified in the notice.

New section 71ZB requires the provision by a claimant, of further information or production of documents to the Board in certain circumstances.

New subsection 71ZB(1) provides that the Board may, by notice in writing, require a claimant to furnish to it, either orally or in writing, within the period specified in the notice, such further information relating to the claim as the Board requires or to deliver to it, within the period specified in the notice, such documents in the custody or control of the claimant as are specified in the notice that may be of assistance to the Board in determining the claim or in exercising the rights vested in it against the licensed agent under section 71ZH.

New subsection 71ZB(2) provides that the Board may, for the purposes of determining a claim for compensation, inspect documents produced under subsection (1), make copies of, or take extracts from, such parts of the document as are relevant to a matter connected with the claim and to retain possession of the document for as long as is necessary for that purpose.

New subsection 71ZB(3) outlines the obligations of the Board where it retains possession of documents under subsection (2) and requires the Board to supply the person otherwise entitled to the possession of the document with a certified copy of it. That certified copy is to be regarded by a Court, as evidence as if it were the original.

The Board is also required, until the certified copy is supplied, to permit the person otherwise entitled to the possession of the document or a person authorised by that person, to inspect and make copies of or take extracts from the document.

New section 71ZC relates to the institution of proceedings. The Board may, if it considers the circumstances so warrant, by notice in writing, require a claimant for compensation to institute proceedings for the recovery of the money the subject of the claim against the licensed agent to whom the claim relates or any other person considered to be liable in respect of the loss suffered by the claimant.

New section 71ZD relates to the determination of claims.

New Subsection ZD(1) provides that the Board shall consider a claim for compensation made in accordance with Part VID and shall determine the amount of pecuniary loss in respect of which compensation may be paid to the claimant, or it may determine that there is no pecuniary loss in respect of which compensation may be so paid. Where the Board considers the circumstances so warrant, it may hold an inquiry into the matter.

New subsection 71ZD(2) provides that where the Board makes a requirement under subsection 71ZB(1) or section 71ZC in relation to a claim, it is not required to take further action in relation to the claim until the requirement has been satisfied and in a case in which section 71ZC applies, that the relevant proceedings are determined.

New subsection 71ZE(1) provides that where an amount has been determined under Part VID as the amount of pecuniary loss in respect of which compensation may be paid to a claimant for compensation, the Board shall pay the claimant out of the Fund an amount equal to the amount so determined.

New subsection 71ZE(2) provides that the Board shall not make a payment under subsection (1) until all claims for compensation have been determined; any inquiry has been completed and the Board has ascertained whether the amount in the Fund is sufficient for the payment of all amounts required to be to be paid under subsection (1).

New section 71ZF provides for the interim payment of compensation.

New subsection 71ZF(1) provides that the Board may, at the written request of a claimant and where the claimant is suffering financial hardship or in other prescribed circumstances, make an interim payment of compensation of such amount as it determines.

New subsection 71ZF(2) provides that an amount paid to a claimant under subsection (1) shall be set off against the amount of compensation required by section 71ZE to be paid to the claimant.

New section 71ZG deals with the insufficiency of the Fund.

New subsection 71ZG(1) provides that where the Fund is insufficient for the payment of all the amounts that are required to be paid to claimants for compensation under section 71ZE, the Board shall divide the amount in the Fund among the claimants in proportion to those amounts and the balance of those amounts shall be paid out of future accumulations of the Fund.

New subsection 71ZG(2) provides that where the Board makes a payment under subsection (1) it shall advise each claimant in writing of the extent of the insufficiency.

New subsection 71ZG(3) provides that the Fund is the only property of the Board available for the satisfaction of a claim for compensation.

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

Clause 25 of the Bill amends section 72 of the Principal Act which relates to the rules of conduct of licensed agents. It inserts a new paragraph (ba) the effect of which is to provide that if a licensed agent contravenes a condition applicable to him or her by virtue of a declaration in force under subsection 3(2) of the Principal Act, he or she will be guilty of a breach of the rules of conduct for agents.

Clause 26 amends section 73 of the Principal Act which relates to the rules of conduct of registered agents. It inserts a new paragraph (aa) the effect of which is to provide that if a registered agent contravenes a provision of the Act, not being a provision for a contravention of which a penalty is imposed, he or she will be guilty of a breach of the rules of conduct for agents.

Clause 27 makes a technical amendment of section 75 of the Principal Act to clarify its meaning.

Clause 28 amends section 77 of the Principal Act by omitting paragraph (1)(m) and substituting a new paragraph which provides that the Agents Board may revoke a registration or licence if fees are not paid under sections 41A or 54A, respectively.

Clause 29 amends section 88 of the Principal Act by inserting new paragraph (aa). It provides that notice of an inquiry shall be given, in the case of an inquiry in relation to a claim for compensation under Part VID, to the claimant and to the licensed agent in respect of whom the claim is made.

Clause 30 of the Bill amends section 98 of the Principal Act by inserting after paragraph 1(d) new paragraphs (da) and (db).

New paragraph (da) provides that a decision determining under subsection 57F(1) the amount of unclaimed moneys to which an applicant is entitled or that an applicant is not entitled to any unclaimed moneys is a reviewable decision.

New paragraph (db) also provides that a decision under subsection 71ZD(1) determining the amount of pecuniary loss in respect of which compensation may be paid to a claimant or that there is no pecuniary loss in respect of which compensation may be paid to a claimant is a reviewable decision.

Clause 31 amends section 105A of the Principal Act which creates an offence relating to the improper use of the title of "travel agent", by adding penalties of \$1000 in respect of a natural person - and \$5,000 in respect of a body corporate.

Clause 32 repeals section 116 of the Principal Act and substitutes new subsection 116.

New subsection 116(1) provides that a person other than the person referred to in subsection 3(1) is not entitled to bring an action to recover any commission, fee, gain or reward for acting as an agent for a principal in relation to a matter referred to in section 5A unless the person was a licensed real estate agent at the time the person was engaged to act as an agent and was such an agent at the time of acting as agent.

New subsection 116(2) is identical to subsection (1) with the exception that it relates to stock and station agents.

New subsection 116(3) is also identical to subsection (1) with the exception that it relates to licensed business agents.

Clause 33 repeals section 121 of the Principal Act, a transitional provision which is no longer relevant.

Clause 34 omits references to "prescribed" and substitutes "determined" in paragraph 47E(4)(b); subsections 93(6) and (11) and section 110.