



ANNO VICESIMO SECUNDO

ELIZABETHAE II REGINAE

A.D. 1973

No. 88 of 1973

An Act to consolidate and amend the law relating to certain kinds of agent ; to provide for the licensing and control of land brokers ; to repeal the Land Agents Act, 1955-1964, and the Business Agents Act, 1938-1963 ; and for other purposes.

[Assented to 13th December, 1973]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART I

PART I

PRELIMINARY

Short title. 1. This Act may be cited as the "Land and Business Agents Act, 1973".

Commencement. 2. This Act shall come into operation on a day to be fixed by proclamation.

Arrangement. 3. This Act is arranged as follows:—

PART I—PRELIMINARY

PART II—THE LAND AND BUSINESS AGENTS BOARD

PART III—LICENSING OF AGENTS

PART IV—REGISTRATION OF SALESMEN

PART V—NOMINATION AND REGISTRATION OF MANAGERS

PART VI—THE CONDUCT OF THE BUSINESS OF AN AGENT

PART VII—LAND BROKERS

PART VIII—TRUST ACCOUNTS AND THE CONSOLIDATED INTEREST FUND

PART IX—INVESTIGATIONS, INQUIRIES AND APPEALS

PART X—CONTRACTS FOR THE SALE OF LAND OR BUSINESSES

PART XI—MISCELLANEOUS PROVISIONS.

4. The following Acts and portion of an Act are repealed:—

Repeal.

the Land Agents Act, 1955;
 the Land Agents Act Amendment Act, 1959;
 the Land Agents Act Amendment Act, 1960;
 the Land Agents Act Amendment Act, 1964;
 the Business Agents Act, 1938;
 the Business Agents Act Amendment Act, 1949;
 the Business Agents Act Amendment Act, 1951;
 the Business Agents Act Amendment Act, 1954;
 so much of the second schedule to the Statute Law Revision Act, 1957, as relates to the Business Agents Act, 1938-1954;
 the Business Agents Act Amendment Act, 1963.

5. (1) A licence in force under the repealed Land Agents Act, immediately before the commencement of this Act, or a business agent's licence granted under the repealed Business Agents Act, before the first day of May, 1973, and in force immediately before the commencement of this Act, shall be deemed to be a licence in force under this Act and shall, subject to this Act, remain in force for the term for which it was granted or last renewed.

Transitional provisions.

(2) A certificate of exemption in force under the repealed Land Agents Act, immediately before the commencement of this Act shall, unless cancelled by the Board, exempt the holder of the certificate from the provisions of this Act, subject to the conditions under which it was granted, for the remainder of the term for which it was granted or last renewed.

PART I

(3) A person registered as a manager under the repealed Land Agents Act, immediately before the commencement of this Act shall be deemed to be registered as a manager under this Act and his registration shall, subject to this Act, continue in force for the term for which it was granted or last renewed.

(4) A person registered as a land salesman under the repealed Land Agents Act, or licensed as a business salesman under the repealed Business Agents Act, immediately before the commencement of this Act, shall be deemed to be registered as a salesman under this Act and his registration shall, subject to this Act, continue in force for the term for which the registration or licence was granted or last renewed.

(5) Where an agent gave notice of commencing to carry on business under the repealed Land Agents Act, and the business conducted under this Act is continuous with the business conducted under that Act, no new notice in respect of that business is required under this Act.

(6) An office that was a registered office or registered branch office under the repealed Land Agents Act, immediately before the commencement of this Act, shall, subject to this Act, continue as a registered office or registered branch office for the purposes of this Act.

(7) Any matter or proceeding commenced by or before The Land Agents Board constituted under the repealed Land Agents Act, may be continued and disposed of by the Board pursuant to the provisions of this Act in all respects as if this Act had been in force when the matter or proceeding was commenced.

(8) The members of The Land Agents Board holding office immediately before the commencement of this Act shall, subject to this Act, continue in office for the balance of their respective terms of appointment as members of the Board, and those members then holding office as chairman and secretary of that Board shall, subject to this Act, continue in office as the chairman and secretary of the Board for that period.

(9) Until such time as the Board determines that the amount of the consolidated interest fund is sufficient to meet any claims likely to be made under Part VIII of this Act, a person who is, or applies to be, licensed or registered under this Act shall pay to the Board for the credit of the consolidated interest fund the sum of twenty dollars on or before the last day of February in each year, or in the case of an applicant for a licence or registration, before the application is granted.

(10) The Governor may by regulation provide that the provisions of the repealed Lands Agents Act, relating to the fidelity bonds to be entered into by land agents, registered land salesmen and registered managers under that Act, shall *mutatis mutandis*, and with such alterations and variations as may be prescribed, continue in operation and apply to and in relation to licensed agents, registered salesmen and registered managers under this Act for a prescribed period not exceeding three years after the commencement of this Act.

(11) A person licensed as a land broker under the Real Property Act, 1886-1972, immediately before the commencement of this Act shall be deemed to be licensed as a land broker under this Act until the thirty-first day of March next ensuing after the commencement of this Act.

(12) A reference in any other Act or regulations under any such Act, or in any contract, agreement, instrument or document to the repealed Land Agents Act, or to the repealed Business Agents Act, or any provision of either of those Acts, shall, where the context admits, be read and construed as a reference to this Act or the corresponding provision (if any) of this Act.

6. (1) In this Act unless the contrary intention appears—

Interpretation.

“acquire” with reference to land includes purchase and take on lease and “acquisition” has a corresponding meaning:

“agent” means a person who carries on the business of—

(a) selling or buying (by auction or otherwise), exchanging, or otherwise dealing with or disposing of;

or

(b) negotiating for the sale, purchase, exchange, or any other dealing with or disposition of,

any land or business on behalf of any person, whether or not he carries on any other business separately from, or in conjunction with, that business and includes a person who carries on the business of selling or exchanging, or negotiating for the sale or exchange, of any land or business on his own behalf:

“bank” means a bank that has pursuant to section 5 of the Trustee Act, 1936-1967, been proclaimed by the Governor as a bank in which deposits may be made by trustees, and includes the Savings Bank of South Australia:

“banking account” means an account maintained at a bank:

“branch office” means any office from which a licensed agent conducts any business in pursuance of the licence except the registered office of the licensed agent:

PART I

“business” means any hotel business, boarding-house business, storekeeper’s business, manufacturing business, or any trading business whatsoever, and any share of, or interest in, any such business or the goodwill of any such business, but does not include any share in the capital of a corporation:

“corporation” includes any body corporate:

“date of settlement”, in relation to a contract for the sale of any land or business, means the day on which the vendor is required under the terms of the contract to transfer his estate or interest in the land or business to the purchaser:

“director” includes any member of the governing body of a corporation:

“dispose”, with reference to land, includes sell and demise and “disposal” has a corresponding meaning:

“interest-bearing trust security” means a banking account, or a trustee security approved by the Board, upon which interest is paid at a rate of not less than the prescribed rate:

“land” includes any interest in land and any exclusive right, whether deriving from the ownership of a share or interest in a company or partnership, or otherwise, to the occupation of a building, or part of a building, that is designed (whether originally so designed or not) to be separately occupied as a dwellinghouse or place of residence:

“land broker” means a person, other than a legal practitioner, who for fee or reward prepares any instrument as defined in the Real Property Act, 1886-1972, in relation to any dealing affecting land on behalf of any other person:

“legal practitioner” means a person admitted and enrolled as a practitioner of the Supreme Court of South Australia:

“licence” means—

(a) in relation to an agent—a licence under Part III of this Act;

or

(b) in relation to a land broker—a licence under Part VII of this Act,

and “licensed” has a corresponding meaning:

“moneys” includes any instrument for the payment of moneys that may be negotiated by a bank:

“nominated” in relation to a registered manager, means nominated by notice in writing lodged with the secretary:

“registered manager” means a person registered as a manager under Part V of this Act;

“registered salesman” means a person registered as a salesman under Part IV of this Act:

“salesman” means a person who, for or on behalf of an agent, induces or attempts to induce, or negotiates with a view to inducing, any person—

(a) to acquire or dispose of any land or business;

(b) to make an offer to acquire or dispose of any land or business;

(c) to accept an offer to acquire or dispose of any land or business;

or

(d) to enter into any contract for the acquisition or disposal of any land or business,

whether or not the agent is the owner of the land or business:

“the Board” means (except in Part VII and Part IX of this Act) the Land and Business Agents Board constituted under this Act:

“the repealed Business Agents Act” means the Business Agents Act, 1938-1963, repealed by this Act:

“the repealed Land Agents Act” means the Land Agents Act, 1955-1964, repealed by this Act:

“the secretary” means the secretary to the board:

“trust account” means an account maintained at a bank in which trust moneys are, or are to be, held pursuant to Part VIII of this Act and includes a trust account established and maintained under the provisions of the repealed Land Agents Act, or the repealed Business Agents Act:

“trust moneys” means moneys received by an agent or a land broker to which he is not wholly entitled both at law and in equity and which he is required to pay into a trust account pursuant to Part VIII of this Act.

(2) A legal practitioner who, in the course of his practice, acts for, or on behalf of, any person in respect of the acquisition or disposal of any land or business shall not by reason only of that fact be deemed to be an agent within the meaning of this Act.

(3) Where two or more persons carry on business in partnership and the business of the partnership, or part of that business, consists in the business of an agent, each of those persons shall be deemed to be carrying on business as an agent.

PART I

(4) Where a person carries on the business of buying or selling land or businesses and the transactions carried out in the course of that business are conducted by, or through the instrumentality of, an agent, that person shall not by reason only of that business be deemed to be acting as an agent.

PART II

PART II

THE LAND AND BUSINESS AGENTS BOARD

7. (1) There shall be a board entitled the "Land and Business Agents Board".

Constitution
of board.

(2) The board shall consist of four persons appointed by the Governor, of whom—

(a) one shall be appointed upon the nomination of the Real Estate Institute of South Australia Incorporated;

and

(b) three, of whom one shall be a legal practitioner of at least seven years' standing, shall be appointed upon the recommendation of the Attorney-General.

(3) The Governor may appoint a member of the Board to be chairman of the Board.

(4) The Governor may appoint a suitable person (who may be a member of the Board) to be secretary of the Board.

(5) The office of secretary of the Board may be held in conjunction with an office in the Public Service of the State.

Terms and
conditions of
office.

8. (1) Subject to this Act, a member of the Board shall be appointed for such term of office, not exceeding three years, as the Governor may determine and specifies in the instrument of his appointment, and, upon the expiration of his term of office, shall be eligible for re-appointment.

(2) If a member of the Board is unable, or fails, for any reason, to act in his capacity as a member of the Board, the Governor may appoint a suitable person to be a deputy of the member, and such a person, while so acting, shall be deemed to be a member of the Board, and shall have all the powers, authorities, duties and obligations of the member of whom he has been appointed a deputy.

(3) The Governor may remove a member of the Board from office for—

- (a) mental or physical incapacity;
- (b) neglect of duty;
- (c) dishonourable conduct;

or

- (d) any other cause deemed sufficient by the Governor.

(4) The office of a member of the Board shall become vacant if—

- (a) he dies;
- (b) his term of office expires;
- (c) he resigns by written notice addressed to the Minister;

or

- (d) he is removed from office by the Governor pursuant to subsection (3) of this section.

(5) Upon the office of a member of the Board becoming vacant, a person shall be appointed, in accordance with this Act, to the vacant office, but where the office of a member of the Board becomes vacant before the expiration of the term for which he was appointed, a person appointed in his place shall be appointed only for the balance of the term of his predecessor.

9. (1) Two members of the Board shall constitute a quorum of the Board, and no business shall be transacted at a meeting unless a quorum is present. Quorum, etc.

(2) A decision carried by a majority of the votes cast by the members present at a meeting of the Board, shall be a decision of the Board.

(3) The chairman shall preside at a meeting of the Board, and, in addition to a deliberative vote, shall, in the event of an equality of votes, have a second or casting vote.

(4) In the absence of the chairman from a meeting of the Board, the members present shall elect one of their number to be chairman for that meeting and a member so elected shall perform and discharge the functions and obligations of the chairman at that meeting.

(5) Subject to this Act, the business of the Board shall be conducted in such manner as the Board determines.

PART II

Validity of
acts of board
and immunity
of its members.

10. (1) An act or proceeding by the Board shall not be invalid by reason only of a vacancy in its membership, and, notwithstanding the subsequent discovery of a defect in the nomination or appointment of a member, any such act or proceeding shall be as valid and effectual as if the member had been duly nominated or appointed.

(2) No liability shall attach to a member of the Board for any act or omission by him, or by the Board, in good faith and in the exercise or purported exercise of his or its powers or functions, or in the discharge, or purported discharge of his or its duties under this Act.

(3) Neither the Board, nor any of its members, shall be debarred from the hearing and determination of any matter by reason of the fact that the Board, or that member, has authorized, or taken part in, an investigation relating to that matter.

Allowances
and expenses.

11. The members of the Board shall be entitled to receive such allowances and expenses as may be determined by the Governor.

Board may
employ legal
assistance.

12. With the approval of the Minister, the Board may employ legal practitioners and other persons to assist it in the performance and discharge of its functions and duties.

PART III

PART-III

LICENSING OF AGENTS

Agent must be
licensed.

13. (1) A person shall not carry on business, or by any means whatsoever hold himself out, as an agent unless he is licensed under this Act.

Penalty: Five hundred dollars.

(2) A person required to hold a licence under this Act shall not be entitled to receive any commission, reward or other valuable consideration in respect of his services in the acquisition or disposal of any land or business unless—

(a) he is a licensed agent when he renders the services;

and

- (b) his appointment to act as agent is in writing signed before receipt of the commission, reward or other valuable consideration (whether before or after the services are rendered) by the person to be charged therewith or some person lawfully authorized to sign the appointment on his behalf.

(3) Any commission, reward, or other valuable consideration received in contravention of subsection (2) of this section may be recoverable summarily.

14. (1) An application for a licence must be made in writing and in the prescribed manner and form and must contain the prescribed information. Application.

(2) The information contained in the application must be verified by a statutory declaration made by the applicant, or where the applicant is a corporation, by an officer of the corporation.

(3) The applicant must furnish the Board with such further information, verified if the Board so requires, by statutory declaration, as the Board may require.

15. (1) Subject to this Act, a person (not being a corporation) shall be entitled to hold a licence if he has proved to the satisfaction of the Board that— Entitlement
to be licensed

- (a) he is of or above the age of eighteen years;
- (b) he is a fit and proper person to be licensed;
- (c) he is not an undischarged bankrupt, and he is not subject to any subsisting composition, or deed or scheme of arrangement with, or for the benefit of, his creditors;

and

- (d) he is properly qualified to be licensed in accordance with subsection (2) of this section.

(2) A person shall be properly qualified to be licensed—

- (a) if he was, within the period of ten years immediately preceding the date of his application to be licensed under this Act, licensed, or registered as a manager, under the repealed Land Agents Act, or this Act, or he held a business agent's licence under the repealed Business Agents Act, on the first day of May, 1973;

or

PART III

(b) if—

(i) he has been at any time during the period of ten years immediately preceding the date of his application to be licensed under this Act, a licensed land broker;

or

(ii) he has passed such examination, or obtained such educational qualifications, as may be prescribed,

and, in addition to complying with subparagraph (i) or (ii)—

he has been employed full time as a registered land salesman or registered salesman for a continuous period of two years during the period of five years immediately preceding the date of his application to be licensed under this Act, in the business of one or more persons licensed under this Act, or the repealed Land Agents Act;

or

he had had, in the opinion of the Board, other adequate practical experience.

Entitlement of corporation to hold licence.

16. (1) Subject to this Act, a corporation shall be entitled to hold a licence if it has proved to the satisfaction of the Board that—

(a) the general manager or other principal officer of the corporation;

(b) the directors of the corporation;

and

(c) any other person who in the opinion of the Board substantially controls, or could substantially control, the affairs of the corporation,

are fit and proper persons to manage, direct or control the affairs of a corporation licensed under this Act.

(2) A corporation that did not hold a licence at the commencement of this Act shall not be entitled to be granted a licence unless it proves that the prescribed officers of the corporation are licensed or registered as managers under this Act, and a corporation that did then hold a licence shall not after the expiration of three years from the commencement of this Act be entitled to hold a licence under this Act unless those officers are so licensed or registered.

(3) In this section—

“the prescribed officers” in relation to a corporation means the persons who are required to be fit and proper persons to manage, direct or control the affairs of the corporation under subsection (1) of this section except such of those persons as have been exempted by the Board from the requirement to be licensed or registered.

(4) The Board may, by instrument in writing, exempt upon such conditions as it thinks fit and specifies in the instrument, a corporation from the provisions of subsection (2) of this section if—

- (a) the corporation is, in the opinion of the Board, carrying on business as a stock and station agent, or is listed upon a Stock Exchange in Australia or is the subsidiary of a corporation so listed and the person who is, or will be, in control of the business conducted, or to be conducted, in pursuance of the licence, is licensed or registered as a manager under this Act;
- (b) the Board is satisfied that the business conducted or to be conducted in pursuance of a licence forms an inconsiderable part of the whole of the business of the corporation and no director or other officer of the corporation who is not licensed or registered as a manager under this Act will actively participate in the business conducted in pursuance of the licence;
- (c) the corporation held a licence at the commencement of this Act and the directors were then, and are, husband and wife, one of whom is licensed or registered as a manager under this Act;

or

- (d) the corporation is entitled, in pursuance of the regulations, to be exempted from the provisions of that subsection.

17. (1) A licence shall, subject to this Act, remain in force until the thirty-first day of March next ensuing after the grant of the licence, and may from time to time be renewed for successive periods of one year expiring on the thirty-first day of March.

Renewal of
licence.

(2) An application for the renewal of a licence must be made in the prescribed form and must be accompanied by such statutory declarations and other documents as may be prescribed or as the Board may require.

(3) The application must be delivered to the secretary not earlier than the first day of January and not later than the last day of February preceding the expiry of the licence but the Board may, if it thinks fit, determine an application notwithstanding that it is delivered out of time.

18. A person who duly applies for the grant or renewal of a licence and who is entitled to hold a licence shall, upon payment of the prescribed fee, be granted a licence, or the renewal of a licence, by the Board.

Application to
be granted.

PART III

Business may be carried on by unlicensed person.

19. Where a person carrying on business in pursuance of a licence dies, an unlicensed person may, with the consent of the Board and subject to any conditions imposed by the Board, continue to carry on the business until the business is sold or the expiration of six months, whichever first occurs, and while the unlicensed person is carrying on business in accordance with the conditions imposed by the Board he shall for the purposes of this Act be deemed to be the holder of a licence.

Surrender of licence.

20. The holder of a licence under this Act may at any time, with the consent of the Board, surrender his licence and the licence shall thereupon cease to have any effect.

PART IV**PART IV****REGISTRATION OF SALESMEN**

Salesmen must be registered.

21. A person (not being registered as a manager under this Act) shall not—

- (a) be or remain in the service of any person as a salesman;
- (b) by any means whatsoever hold himself out as a salesman;
- or
- (c) act as a salesman,

unless he is registered as a salesman under this Act.

Penalty: Two hundred dollars.

Employment of salesmen.

22. (1) A person shall not employ any other person (other than a person registered as a manager under this Act) as a salesman unless that other person is registered as a salesman under this Act.

Penalty: Two hundred dollars.

(2) Subject to subsection (3) of this section, a person shall not, unless the Board considers that special circumstances exist, and gives its consent in writing, employ or continue to employ a salesman in the business conducted in pursuance of a licence except upon the basis that the salesman is employed full time in that business.

Penalty: Two hundred dollars.

- (3) This section shall not be construed as preventing—
- (a) an agent from employing a registered salesman on a part-time basis within a period of twelve months after the commencement of this Act;
- or
- (b) an agent from continuing to employ a registered salesman on a part-time basis where the salesman was so employed by the agent immediately before the commencement of this Act.

23. (1) A registered salesman shall not accept or undertake employment, or be or remain in the service of, or by any means whatsoever hold himself out as being in the service of, or act as a salesman for or on behalf of, any agent at any time when he is employed by, or in the service of, any other agent.

Salesmen must be in service of one agent.

Penalty: One hundred dollars.

(2) An agent shall not employ, or have in his service as a salesman, any person who is, to the knowledge of that agent, at that time employed by, or in the service of, any other agent.

Penalty: One hundred dollars.

(3) An agent shall not pay any remuneration whether by way of salary, wages, commission or otherwise to any salesman other than a salesman who is in his service as such.

Penalty: One hundred dollars.

24. (1) Notwithstanding the provisions of this Part, if the manager of a branch office of an approved stock and station agent is registered as a salesman or a manager under this Act, a person in the service of that stock and station agent and employed at that office, shall not by reason of that employment or anything done in the course of that employment, be required to be registered as a salesman under this Act.

Stock and station agent.

(2) In this section—

“approved stock and station agent” means a person carrying on business as a stock and station agent and approved by the Board for the purposes of this section:

“branch office” means an office, other than the head office for the State, of a stock and station agent.

PART IV**Application.**

25. (1) An application for registration as a salesman must be made in the prescribed manner and form and must contain the prescribed information.

(2) The particulars contained in the application must be verified by statutory declaration made by the applicant.

(3) The applicant must furnish the Board with such further information as it may require to decide the application, verified, if the Board so requires, by statutory declaration.

**Qualification
for registration.**

26. Subject to this Act, a person shall be entitled to be registered as a salesman under this Part if he has proved to the satisfaction of the Board that—

(a) he is a fit and proper person to be registered;

and

(b) he—

(i) was within the period of ten years immediately preceding the date of his application to be registered as a salesman under this Act, licensed or registered as a manager under the repealed Land Agents Act, or this Act, or he held a business agent's licence under the repealed Business Agents Act, on the first day of May, 1973;

(ii) was registered as a land salesman under the repealed Land Agents Act, or licensed as a business salesman under the repealed Business Agents Act, immediately before the commencement of this Act and his application to be registered as a salesman under this Act is made within five years after the commencement of this Act;

or

(iii) has passed such examinations or obtained such educational qualifications as may be prescribed.

**Renewal of
registration.**

27. (1) A registration under this Part shall, subject to this Act, remain in force until the thirty-first day of March next ensuing after the grant of the registration, and may, from time to time, be renewed for successive periods of one year expiring on the thirty-first day of March.

(2) An application for the renewal of a registration under this Part, must be made in the prescribed form and must be accompanied by such statutory declarations and other documents as may be prescribed or as the Board may require.

(3) The application must be delivered to the secretary not earlier than the first day of January and not later than the last day of February preceding the expiry of the registration but the Board may, if it thinks fit, determine an application notwithstanding that it is delivered out of time.

28. A person who duly applies for registration, or the renewal of registration, under this Part, and who is entitled to be registered as a salesman under this Part, shall, upon payment of the prescribed fee be granted that registration, or renewal of registration, by the Board.

Application to be granted.

29. (1) A registered salesman may at any time, with the consent of the Board, surrender his certificate of registration, and the registration shall thereupon cease to have any effect.

Surrender and suspension of registration.

(2) While a registered salesman is not in the service of an agent, his registration shall, by virtue of this subsection, be suspended, and his registration shall be of no force or effect.

(3) A registered salesman shall, within fourteen days after the commencement or termination of his employment with an agent, give the Board notice in writing of the commencement or termination of his employment, together with such particulars as may be prescribed.

Penalty: One hundred dollars.

PART V

PART V

NOMINATION AND REGISTRATION OF MANAGERS

30. (1) Subject to subsection (3) of this section, a licensed corporation shall have at all times in its service and in actual control of the business conducted in pursuance of the licence, a person registered and nominated as a manager under this Part whose usual place of residence is within the State.

Corporation must have registered manager.

Penalty: One hundred dollars.

(2) Subject to subsection (3) of this section, a licensed agent (not being a corporation) whose usual place of residence is outside the State, and who is not carrying on business in pursuance of the licence in partnership with a licensed agent whose usual place of residence is within the State, shall have at all times in his service and in actual control of the business conducted in pursuance of the licence, a person registered and nominated as a manager under this Part whose usual place of residence is within the State.

Penalty: Two hundred dollars.

(3) If a person nominated as a manager under this Act—

(a) dies;

(b) ceases to be in the service of the person by whom he was nominated;

(c) ceases to be registered as a manager;

or

(d) ceases to have his usual place of residence in the State,

it shall not be necessary to nominate a registered manager until the expiration of one month after the occurrence of that event or of such further period as may be allowed by the Board.

(4) In any proceedings for an offence against this section, an allegation in a complaint that a person, named therein, does not have his usual place of residence within the State shall, in the absence of contrary proof, be taken as proved.

(5) A licensed agent shall not pay any remuneration, whether by way of salary, wages or commission to a registered manager who is not in his service as a manager or salesman.

Penalty: Two hundred dollars.

(6) A person shall not, unless the Board considers that special circumstances exist and gives its consent in writing, employ or continue to employ a manager in the business conducted in pursuance of a licence except upon the basis that the manager is employed full time in that business.

Penalty: Two hundred dollars.

(7) A registered manager shall not accept or undertake employment, or be or remain in the service of, or by any means whatsoever hold himself out as being in the service of, or act as a salesman for or on behalf of, any agent at any time when he is employed by, or in the service of, any other agent.

Penalty: One hundred dollars.

31. (1) An application for registration as a manager must be made in the prescribed manner and form and must contain the prescribed information.

Application.

(2) The particulars contained in the application must be verified by statutory declaration made by the applicant.

(3) The applicant must furnish the Board with such further information as it may require to decide the application, verified, if the Board so requires, by statutory declaration.

32. (1) A person shall be entitled to be registered as a manager under this Part if he proves to the satisfaction of the Board that—

Entitlement to be registered.

- (a) he is of or above the age of eighteen years;
 - (b) he is a fit and proper person to be registered;
 - (c) he is not an undischarged bankrupt, and he is not subject to any subsisting composition, or deed or scheme of arrangement with, or for the benefit of his creditors;
- and
- (d) he is properly qualified to be registered as a manager in accordance with subsection (2) of this section.

(2) A person shall be properly qualified to be registered as a manager—

- (a) if he was, within the period of ten years immediately preceding the date of his application to be registered as a manager under this Act, licensed, or registered as a manager under the repealed Land Agents Act, or this Act, or he held a business agents licence under the repealed Business Agents Act, on the first day of May, 1973;

or

- (b) if—
 - (i) he has been at any time during the period of ten years immediately preceding the date of his application to be registered as a manager under this Act, a licensed land broker;

or

- (ii) he has passed such examinations or obtained such educational qualifications as may be prescribed;
- and in addition to complying with subparagraph (i) or (ii)—

PART V

he has been employed full time as a registered land salesman or registered salesman for a continuous period of two years during the period of five years immediately preceding the date of his application to be registered as a manager under this Act, in the business of one or more persons licensed under this Act, or the repealed Land Agents Act,

or

he has had, in the opinion of the Board, other adequate practical experience.

Renewal.

33. (1) A registration under this Part, shall, subject to this Act, remain in force until the thirty-first day of March next ensuing after the grant of the registration, and may from time to time, be renewed for successive periods of one year expiring on the thirty-first day of March.

(2) An application for the renewal of a registration under this Part must be made in the prescribed form and must be accompanied by such statutory declarations and other documents as may be prescribed or as the Board may require.

(3) The application must be delivered to the secretary not earlier than the first day of January and not later than the last day of February preceding the expiry of the registration, but the Board may, if it thinks fit, determine an application notwithstanding that it is delivered out of time.

Board shall grant or renew registration.

34. A person who duly applies for registration, or the renewal of registration, under this Part, and who is entitled to be registered under this Part, shall, upon payment of the prescribed fee be granted that registration or renewal of registration by the Board.

Surrender of certificate.

35. (1) A registered manager may, at any time, with the consent of the Board, surrender his certificate of registration and the registration shall thereupon cease to have any effect.

(2) While a registered manager is not in the service of an agent his registration shall, by virtue of this subsection, be suspended, and shall be of no force or effect.

(3) A registered manager shall within fourteen days after the commencement or termination of his employment with an agent give the Board notice in writing of the commencement or termination of his employment together with such particulars as may be prescribed.

Penalty: One hundred dollars.

PART VI

THE CONDUCT OF THE BUSINESS OF AN AGENT

36. A licensed agent shall, within fourteen days after commencing or ceasing to carry on business as an agent give to the secretary notice in writing of that fact. Notice to secretary.

Penalty: One hundred dollars.

37. (1) A person shall, on and after the day on which he commences to carry on business as an agent, for so long as he carries on that business, have a registered office in the State. Registered office.

Penalty: One hundred dollars.

(2) Any summons, notice, order or other document to be served upon an agent, may be served by leaving it at his registered office or by sending it by registered post addressed to the agent at that office.

(3) An office may be registered by giving written notice of the situation of the office to the secretary and a registration may be transferred from one office to another by written notice given to the secretary.

38. (1) A licensed agent may register a branch office of his business, and, after the expiration of twelve months from the commencement of this Act, shall register any branch office of his business, by giving written notice of the situation of the office to the secretary. Branch office.

Penalty: One hundred dollars.

(2) A licensed agent shall nominate, and have at all times in his service at a registered branch office, as manager of that office, a registered manager whose usual place of residence is within the State.

Penalty: One hundred dollars.

(3) The registered manager must not be a person nominated as registered manager by any other agent or in respect of any other office.

39. (1) A licensed agent shall exhibit, and keep exhibited, in a prominent place at his registered office, and at every branch office of his business, so as to be easily read from outside that office— Notice to be exhibited.

- (a) a notice of his name, and of the fact that he is a licensed agent, together with the name and style under which he carries on business as an agent, if that business is not carried on in his own name;

and

(b) in the case of a branch office, a notice of the address of the registered office of the agent.

Penalty: One hundred dollars.

(2) A licensed agent who alters the name or style under which he carries on business as an agent shall within fourteen days after the day on which he first uses that altered name or style in connection with his business give notice in writing to the secretary of the altered name or style.

Penalty: One hundred dollars.

Record to be kept.

40. (1) A licensed agent shall—

(a) make and keep, or cause to be made and kept, at his registered office a record in writing and in the prescribed form containing the prescribed particulars of, and in relation to, every officer and employee engaged in the business conducted in pursuance of the licence;

and

(b) upon the demand of a member of the Board, a person authorized in writing by the Board to demand the production of the record, or any member of the police force, produce that record for the inspection of that person.

(2) A person who fails in any particular to comply with subsection (1) of this section, or who makes a false entry in a record made and kept pursuant to that subsection with knowledge of its falsity, shall be guilty of an offence and liable to a penalty not exceeding two hundred dollars or imprisonment for three months.

Advertisement.

41. (1) A licensed agent shall not publish or cause or permit to be published any advertisement relating to, or in connection with, the acquisition or disposal of any land or business that does not state—

(a) the name of the licensed agent or the name under which he, or the partnership in which he is a partner, is registered under the Business Names Act, 1963, (but without including more than one of those names or any other name);

(b) the address of his registered office or registered branch office; and

(c) the fact that the person named is a licensed agent;

Penalty: One hundred dollars.

(2) A registered manager or salesman shall not publish, or cause or permit to be published, any advertisement relating to, or in connection with, the acquisition or disposal of any land or business except in the name, and on behalf, of the licensed agent by whom he is employed and except in conformity with subsection (1) of this section.

Penalty: One hundred dollars.

(3) A person shall not publish, or cause or permit to be published, any advertisement relating to, or in connection with, any intended transaction relating to the sale or disposal of land or a business or offer to sell any land or business without the prior consent in writing to the transaction of the owner of the land or business.

Penalty: One hundred dollars.

42. (1) An agent shall, forthwith upon the demand of a person for whom he has acted as agent, or within a period agreed upon with that person, or if no such demand has been made and no agreement exists, within two months after the receipt by him of any moneys in respect of any transaction conducted in his capacity as agent, render to that person an account in writing, setting out particulars of all such moneys and of the application thereof.

Account to be rendered.

(2) If an agent refuses, or for a period of seven days after demand neglects or fails to render an account as required under subsection (1) of this section, or in the absence of demand, fails to render an account as required under that subsection, he shall be guilty of an offence and liable to a penalty not exceeding two hundred dollars.

43. (1) A person who, in the course of his business as an agent renders to any person an account purporting to be an account of moneys received by him in his capacity as an agent, knowing the account to be false in any material particular, shall be guilty of an indictable offence and liable to a penalty not exceeding one thousand dollars or imprisonment for twelve months.

False accounts.

(2) This section does not derogate from, or affect the operation of the provisions of any other Act.

44. Where a person signs any offer, contract or agreement, or any document purporting to be an offer, contract or agreement, relating to any transaction that has been negotiated wholly or in part by an agent, or an officer or employee of an agent, the agent shall forthwith supply the person who has signed the offer, contract, agreement or document with a true copy thereof.

Copy of contract or agreement to be supplied.

Penalty: Two hundred dollars.

45. (1) An agent shall not act on behalf of any person in the sale of any land or business unless he has been authorized so to act by instrument in writing signed by, or on behalf of that person.

Agent not to act without written authority.

Penalty: Two hundred dollars.

PART VI

(2) Where a person, by instrument in writing authorizes an agent to act on his behalf, the agent shall furnish that person with a copy of that instrument.

Penalty: Two hundred dollars.

(3) An agent shall not demand, receive or retain any commission or other remuneration in respect of the acquisition or disposal or proposed acquisition or disposal of any land or business if the contract by which the transaction is to be effected is lawfully repudiated, rescinded or avoided.

(4) Any commission or other remuneration received or retained by an agent in contravention of subsection (3) of this section may be recovered, as a debt, from the agent by the person by whom it was paid.

Interest to be disclosed.

46. (1) An agent must not have (directly or indirectly) any interest (otherwise than in his capacity as agent) in the purchase of any land or business that he is commissioned to sell.

(2) A registered manager, registered salesman or other person in the employment of an agent must not have (directly or indirectly) any interest in the purchase of any land or business that the agent is commissioned to sell (other than an interest that exists by virtue only of his employment).

(3) A person who has an interest in the purchase of any land or business at the time of that purchase in contravention of this section shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars or imprisonment for six months and the court before which any such person is convicted may order that person to pay over to the principal any profit that that person has made, or is, in the opinion of the court, likely to make from the purchase or any other dealing with the land or business.

(4) An agent shall not be entitled to receive any commission in respect of a transaction in respect of which the agent or employee of the agent has an interest in contravention of this section.

Agent not to pay commission, etc., except to his employees or another agent.

47. An agent shall not, in connection with the acquisition or disposal of any land or business, pay to any person except to a registered manager or registered salesman in his employment, or to a licensed agent, the whole or any portion of any commission, fee, gain or reward, to which he is entitled in his capacity as agent under any contract or agreement relating to the acquisition or disposal of the land or business.

Penalty: Five hundred dollars.

PART VII

PART VII

LAND BROKERS

Preliminary

48. In this Part—

Interpretation.

“the Board” means the Land Brokers Licensing Board constituted under this Part:

“instrument”, in relation to any dealing affecting land, means any instrument as defined in the Real Property Act, 1886-1972:

“nominated member” of the Board means a member of the Board nominated for appointment as such by the Minister.

The Land Brokers Licensing Board

49. (1) There shall be a Board entitled the “Land Brokers Licensing Board”. *Constitution of Board.*

(2) The Board shall consist of five persons appointed by the Governor of whom—

(a) one shall be a legal practitioner of at least seven years standing nominated by the Minister;

(b) one shall be the Registrar-General or his nominee; and

(c) three (at least one of whom must be a licensed land broker) shall be persons nominated by the Minister.

(3) The Governor may appoint a member of the Board to be chairman of the Board.

(4) The Governor may appoint a suitable person (who may be a member of the Board) to be secretary of the Board.

(5) The office of secretary of the Board may be held in conjunction with an office in the Public Service of the State.

50. (1) Subject to this Part, a nominated member of the Board shall be appointed for such term of office, not exceeding three years, as the Governor may determine and specifies in the instrument of his appointment, and, upon the expiration of his term of office, shall be eligible for re-appointment. *Terms and conditions of office.*

(2) If a member of the Board is unable, or fails, for any reason, to act in his capacity as a member of the Board, the Governor may appoint a suitable person to be a deputy of the member, and such a person, while so acting, shall be deemed to be a member of the Board, and shall have all the powers, authorities, duties and obligations of the member of whom he has been appointed a deputy.

PART VII

(3) The Governor may remove a nominated member of the Board from office for—

(a) mental or physical incapacity;

(b) neglect of duty;

(c) dishonourable conduct;

or

(d) any other cause considered sufficient by the Governor.

(4) The office of a nominated member of the Board shall become vacant if—

(a) he dies;

(b) his term of office expires;

(c) he resigns by written notice addressed to the Minister;

or

(d) he is removed from office by the Governor pursuant to subsection (3) of this section.

(5) Upon the office of a nominated member of the Board becoming vacant, a person shall be appointed, in accordance with this Act, to the vacant office, but where the office of a nominated member of the Board becomes vacant before the expiration of the term for which he was appointed, a person appointed in his place shall be appointed only for the balance of the term of his predecessor.

Quorum, etc.

51. (1) Three members of the Board shall constitute a quorum of the Board, and no business shall be transacted at the meeting unless a quorum is present.

(2) A decision carried by the majority of the votes cast by the members present at a meeting of the Board, shall be a decision of the Board.

(3) The Chairman shall preside at a meeting of the Board, and, in addition to a deliberative vote, shall, in the event of an equality of votes, have a second or casting vote.

(4) In the absence of the Chairman from a meeting of the Board, the members present shall elect one of their number to be chairman for that meeting and a member so elected shall perform and discharge the functions and obligations of the Chairman at that meeting.

(5) Subject to this Act, the business of the Board shall be conducted in such manner as the Board determines.

PART VII

52. (1) An act or proceeding of the Board shall not be invalid by reason only of a vacancy in its membership, and, notwithstanding the subsequent discovery of a defect in the nomination or appointment of a member, any such act or proceeding shall be as valid and effectual as if the member had been duly nominated or appointed.

Validity of acts of Board and immunity of its members.

(2) No liability shall attach to a member of the Board for any act or omission by him, or by the Board, in good faith and in the exercise or purported exercise of his or its powers or functions, or in the discharge or purported discharge of his or its duties under this Act.

(3) Neither the Board, nor any of its members, shall be debarred from the hearing and determination of any matter by reason of the fact that the Board, or that member, has authorized, or taken part in, an investigation relating to that matter.

53. The members of the Board shall be entitled to receive such allowances and expenses as may be determined by the Governor.

Allowances and expenses.

54. With the approval of the Minister, the Board may employ legal practitioners and other persons to assist in the performance and discharge of its functions and duties.

Board may employ legal assistance.

Licensing of Land Brokers

55. (1) Subject to subsection (2) of this section, a person shall not carry on business, or by any means whatsoever hold himself out, as a land broker unless he is licensed as such under this Part.

Land broker must be licensed.

Penalty: Five hundred dollars.

(2) Subsection (1) of this section does not apply in respect of anything done by a legal practitioner in the practice of his profession.

56. (1) An application for a licence must be made in writing and in the prescribed manner and form and must contain the prescribed information.

Application.

(2) The information contained in the application must be verified by statutory declaration made by the applicant.

(3) The applicant must furnish the Board with such further information, verified, if the Board so requires, by statutory declaration, as the Board may require.

57. Subject to this Act, a person shall be entitled to hold a licence if he has proved to the satisfaction of the Board that—

Entitlement to be licensed.

(a) he is over the age of eighteen years;

(b) he is a fit and proper person to be licensed;

and

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(c) he—

(i) was licensed as a land broker under the Real Property Act, 1886-1972, immediately before the commencement of this Act;

or

(ii) holds prescribed qualifications.

Renewal of licence.

58. (1) A licence shall, subject to this Act, remain in force until the thirty-first day of March next ensuing after the grant of the licence, and may from time to time be renewed for successive periods for one year expiring on the thirty-first day of March.

(2) An application for the renewal of a licence must be made in the prescribed form and must be accompanied by such statutory declarations and other documents as may be prescribed, or as the Board may require.

(3) The application must be delivered to the secretary not earlier than the first day of January, and not later than the last day of February, preceding the expiry of the licence, but the Board may, if it thinks fit, determine an application notwithstanding that it is delivered out of time.

Grant of application.

59. A person who duly applies for the grant or renewal of a licence and who is entitled to hold a licence, shall, upon payment of the prescribed fee, be granted a licence, or the renewal of a licence, by the Board.

Surrender of licence.

60. A holder of a licence under this Part may at any time, with the consent of the Board, surrender his licence, and the licence shall thereupon cease to have any effect.

*Preparation of Instruments***Preparation of instruments.**

61. (1) A person shall not, for fee or reward, prepare a instrument relating to any dealing with land unless he is—

(a) a legal practitioner;

or

(b) a licensed land broker.

Penalty: Two hundred dollars.

(2) Subject to subsection (4) of this section where any instrument relating to a dealing in land (other than a dealing in which the agent participates as purchaser or mortgagor of the land) is prepared by an agent, or a person who stands in a prescribed relationship to an agent, the agent and the person by whom the instrument was prepared shall each be guilty of an offence and liable to a penalty not exceeding two hundred dollars.

(3) For the purposes of this section, a person stands in a prescribed relationship to an agent if—

- (a) he is an employee of the agent;
 - (b) he is a partner of the agent;
- or
- (c) he is an employee of, or is remunerated by, a corporation and—
 - (i) the agent is in a position to control the conduct of the affairs of the corporation;
 - (ii) the agent is a director of, or a shareholder in, the corporation and the corporation is not a public company, as defined in the Companies Act, 1962-1973;
- or
- (iii) the agent is also an employee of, or is also remunerated by, the corporation.

(4) Subsection (2) of this section does not apply to the preparation of an instrument by a legal practitioner or licensed land broker where—

- (a) he stands, at the time of the preparation of the instrument, in a prescribed relationship to an agent acting for a party to the transaction in respect of which the instrument was prepared, and that relationship has existed continuously from the first day of May, 1973, or some earlier date;
 - (b) he was licensed as a land broker, or admitted and enrolled as a practitioner of the Supreme Court of South Australia, or was qualified to be so licensed, or admitted and enrolled, on the first day of May, 1973;
- and
- (c) in the case of a person acting in the employment of an agent that is a corporation, he is not a director of the corporation, or in a position to control the conduct of the affairs of the corporation.

(5) The Board may, with the approval of the Minister, grant an exemption for such period or periods and subject to such conditions as the Board thinks fit, from the provisions of subsection (2) of this section in relation to a legal practitioner or licensed land broker—

- (a) where—
 - (i) he stands in a prescribed relationship to an agent solely by virtue of the fact that he is an employee of a corporation that is an agent;
- and

(ii) on the first day of May, 1973, he stood in a prescribed relationship to an agent who presently holds a controlling interest in the corporation by which he is employed;

or

(b) where—

(i) he was licensed as a land broker, or admitted and enrolled as a practitioner of the Supreme Court of South Australia, or was qualified to be so licensed, or admitted and enrolled, on the first day of May, 1973;

and

(ii) the Board is satisfied that it is desirable to grant the exemption in order that the local community in any part of the State may exercise, without undue inconvenience, an adequate choice between persons qualified and entitled to prepare instruments on their behalf.

(6) The Board may revoke any exemption granted under subsection (5) of this section.

(7) An agent, or a person who stands in a prescribed relationship to an agent, shall not demand or receive from any legal practitioner or licensed land broker any commission, fee or other consideration for referring to that legal practitioner or licensed land broker any business involving the preparation of instruments.

Penalty: Two hundred dollars.

(8) A legal practitioner or licensed land broker shall not pay or give any commission, fee or other consideration to any person for referring to him any business involving the preparation of instruments.

Penalty: Two hundred dollars.

(9) An agent, a person who stands in a prescribed relationship to an agent, or a salesman shall not procure or attempt to procure the execution of any document by which a person requests or authorizes the preparation by any person specifically named or generally described of any instrument.

Penalty: Two hundred dollars.

(10) A clause included in, or appended to, any offer or contract for the sale of any land or business by which any party to the contract requests or authorizes the preparation by any person specifically named or generally described of any instrument in connection with the transaction to which the contract relates is void.

(11) An instrument prepared in contravention of this section shall not by reason of that fact be void or voidable.

(12) An officer of the Crown to whom an instrument is presented for stamping or registration shall not be concerned to inquire whether the instrument has been prepared in contravention of this section.

PART VIII

PART VIII

TRUST ACCOUNTS AND THE CONSOLIDATED
INTEREST FUND

62. In this Part—

Interpretation.

“agent” includes a licensed land broker.

63. (1) An agent shall pay all moneys received by him in his capacity as an agent into an account maintained in the name of the agent at a bank (which account shall be, and be designated, a trust account) not later than the day next ensuing after the day on which the moneys are received upon which the bank at which the trust account is maintained is open for business.

Trust accounts.

(2) Any moneys collected or received by an agent as rent, interest, principal, deposit, instalments, or other moneys whatsoever payable under any lease, mortgage, or contract for the sale of any land or business, shall be deemed to be moneys received by an agent in his capacity as an agent.

(3) Moneys received by an agent otherwise than in his capacity as an agent shall not be paid into the trust account.

(4) An agent shall not withdraw moneys paid by him into a trust account except for the purpose of completing the transaction in the course of which the moneys were received, or as otherwise authorized by this Act.

(5) An agent shall pay moneys withdrawn for the purpose of completing a transaction in the course of which they were received to the person or persons lawfully entitled thereto.

(6) An agent shall—

(a) keep full and accurate accounts of all trust moneys received by him and of any payment of, or dealing with, any such moneys;

and

(b) keep those accounts separately and at all times properly written up and in such manner that they can be conveniently and properly audited at any time.

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(7) The trust moneys shall not be appropriated, attached or taken in execution to satisfy any debt of, or claim against, the agent (other than a claim of the person on whose behalf the moneys are held in trust).

(8) A person who contravenes any provision of this section shall be guilty of an offence and liable to a penalty not exceeding one thousand dollars.

Protection to banks.

64. A bank shall be deemed not to be affected with notice of any specific trust to which moneys deposited in a trust account are subject, and shall not be bound to satisfy itself of the due application of those moneys but this section does not relieve the bank of any liability for negligence or any liability arising otherwise at common law or by statute.

Interest-bearing account to be established.

65. (1) An agent shall, out of moneys paid into his trust account (whether so paid pursuant to this Act, the repealed Land Agents Act, or the repealed Business Agents Act,)—

(a) on or before the prescribed day, invest in an interest-bearing trust security a sum that is not less than the prescribed proportion of the lowest balance of the trust account during the period of twelve months last preceding the prescribed day;

and

(b) not later than the last day of each successive period of twelve months after the prescribed day, invest such further sums in an interest-bearing trust security as may be necessary in order that the total amount then so invested is not less than the prescribed proportion of the lowest aggregate of the balance of the amount invested and the balance of his trust account during that period.

(2) Where an agent maintains two or more trust accounts, those accounts shall, for the purposes of this section, be deemed to be a single trust account the balance of which is the aggregate of the respective balances of each of those trust accounts, but where an agent maintains, on the instructions of his principal, a separate trust account for the benefit of his principal, the balance of that account shall not be taken into account for the purposes of this section.

(3) If during the whole of the period of twelve months ending upon the thirtieth day of June in any year the balance of the trust account of an agent and the amount (if any) invested by him in any interest-bearing trust securities amount in aggregate to less than two thousand dollars, the agent shall during the succeeding period of twelve months, be exempt from the obligations of this section.

(4) If a trust account is maintained by a firm of agents, the trust account shall, for the purposes of this section, be deemed to be the trust account of each member of the firm, and the members of the firm shall each be liable to perform the obligations imposed by this section, but the discharge by one member of the firm of his obligations in relation to the trust account shall be taken as a discharge by all members of the firm of their obligations in relation to the trust account.

(5) An investment of moneys in the interest-bearing trust security must be made upon condition that the investment may be realized upon demand, but an agent shall not realize any such security unless the moneys in his trust account are insufficient to satisfy the claims upon the trust moneys held by him that he is for the time being required to satisfy.

(6) Where moneys are derived from the realization by an agent of any interest-bearing trust security, the agent shall pay them forthwith into his trust account.

(7) In this section—

“the prescribed day” in relation to an agent whose trust account was established before the commencement of this Act, means the first day of July, 1974, and in relation to an agent whose trust account was not established before the commencement of this Act, means the first day of July next ensuing after the establishment of that account:

“the prescribed proportion” means a proportion of one-half or such lesser proportion as may be prescribed.

66. (1) An agent shall pay to the Board on or before the last day of February in each year all interest and accretions that have accrued to an interest-bearing trust security during the period of twelve months expiring on the thirty-first day of December of the last preceding year.

Interest to be paid to Board.

(2) If for any reason an agent realizes any interest-bearing trust security, he shall pay forthwith to the Board all interest that has accrued thereupon up to the day on which it is realized.

(3) The Board shall pay all moneys paid to it under this section into a banking account entitled the “Consolidated Interest Fund” which shall be operated in a manner determined by the Board.

(4) The Board may invest any moneys constituting, or forming part of, the consolidated interest fund in any trustee investments and shall pay any interest or accretions derived from any such investment into the consolidated interest fund.

(5) The Board may recover any moneys payable to it under this Part as a debt due to it in any court of competent jurisdiction.

PART VIII**Exemption
from liability.**

67. (1) No action at law or in equity shall lie against the Board or an agent for any action done in compliance with this Part.

(2) This Part does not affect the interest or claim of any person beneficially entitled to trust moneys and any such interest or claim may be asserted and enforced as effectually as if this Part had not been enacted.

**Fiduciary
defaults.**

68. (1) In this Part "fiduciary default" means any defalcation, misappropriation or misapplication of trust moneys in the charge of an agent or firm of agents, whether committed by the agent or firm of agents, his or their employee, or any other person.

(2) Subject to the provisions of this Part, the consolidated interest fund shall be held and applied for the purpose of compensating persons who suffer pecuniary loss from a fiduciary default.

(3) Where all legal or equitable claims in respect of a fiduciary default have been fully satisfied and—

(a) the agent, being under a legal or equitable obligation to do so, has made payment to any person in compensation for pecuniary loss suffered by him in consequence of the fiduciary default;

and

(b) the Board is satisfied that the agent has acted honestly and reasonably in all the circumstances of the case,

the Board may, if it is satisfied that it is just and reasonable so to do, accept a claim from the agent in respect of that payment.

(4) The consolidated interest fund shall not be applied in respect of any fiduciary default occurring before the commencement of this Act.

**Notice and
claims.**

69. (1) The Board may by notice published in a newspaper circulating generally throughout the State, fix a day, not earlier than three months after the publication of the notice, on or before which claims in respect of the fiduciary default of, or in relation to, any agent must be made.

(2) A claim for compensation from the consolidated interest fund must be in writing and lodged with the secretary on or before the day fixed by notice under subsection (1) of this section.

(3) A claim that is not made within the time prescribed by subsection (2) of this section shall be barred unless the Board otherwise determines.

(4) No action shall lie against the Board, or any member, officer or servant of the Board, or a publisher, in respect of the contents of a notice *bona fide* published under this section.

**Claims to be
dealt with.**

70. (1) Subject to this Part, the Board may allow and settle out of the consolidated interest fund any proper claims for compensation under this Part.

(2) If any person suffers pecuniary loss in consequence of any fiduciary default, and the Board disallows his claim in whole or in part, he may take action in the Supreme Court against the Board by originating summons (in which summons the defendant shall be cited as the "Consolidated Interest Fund" and not as the Board) to establish the validity of his claim.

(3) If the claimant satisfies the Supreme Court that he has a valid unsatisfied claim against an agent in respect of a fiduciary default, and he has taken all reasonable steps to obtain satisfaction of his claim, the Supreme Court may declare the validity of the claim, and order the Board to deal with it pursuant to this Part.

(4) No proceedings shall be brought under this section without the consent of the Board after the expiration of three months from the day on which a notice is served by the secretary, personally or by post, upon the claimant notifying him of the disallowance, or partial disallowance, of his claim, and informing him of the effect of this subsection, or in the case of a claimant whose whereabouts is unknown to the Board, or who has died and has no personal representative known to the Board, after the expiration of three months from the day on which such a notice is published in the *Gazette*.

(5) In any proceedings under this section, evidence of, or relating to, any admission or confession made by any person shall be admissible in evidence to prove a fiduciary default notwithstanding that the person by whom the admission or confession was made is not a party to the proceedings.

(6) If in any proceedings under this section the court is satisfied, on the balance of probabilities, that a fiduciary default has been committed, it may declare the validity of a claim notwithstanding that the fiduciary default constitutes a criminal offence, and that the evidence would not be sufficient to establish the guilt of a person charged with that offence.

(7) Any three Judges of the Supreme Court may make Rules of Court as to the procedure in any proceedings under this section.

71. (1) The Board may, in considering any claim made pursuant to this Part, by notice in writing served personally or by post upon any person, require that person, within the time specified in the notice, to deliver up any document in his possession or power relevant to the determination of the claim.

Production of documents.

(2) A person shall not fail duly to comply with a notice served upon him pursuant to subsection (1) of this section.

Penalty: Two hundred dollars.

72. (1) The amount of a claim made pursuant to this Part shall not exceed the actual pecuniary loss suffered by the claimant in consequence of the fiduciary default less any amount that the

Amount of claim.

PART VIII

claimant has received, or may reasonably be expected to receive, otherwise than from the consolidated interest fund, in reduction of that loss.

(2) If a valid claim made pursuant to this Part has not been satisfied as provided by this Part at the expiration of twelve months from the day on which it was lodged with the secretary, it shall then, to the extent to which it has not been so satisfied, be increased by interest at the rate of five per centum per annum from the expiration of that period.

(3) Subject to this section, the amount that may be applied by the Board towards satisfaction of all claims made in respect of the fiduciary defaults of, or relating to, an agent committed prior to the day fixed by notice under section 69 of this Act, shall not exceed ten per centum, or such other proportion as may be prescribed, of the balance of the consolidated interest fund, calculated to the nearest amount of one thousand dollars, as disclosed in the accounts of the consolidated interest fund, last audited before the proposed application of moneys towards satisfaction of the claims.

(4) Where the amount available to satisfy claims made under this Part does not permit the full satisfaction of the claims, the Board shall, subject to subsection (5) of this section, apportion that amount between the various claimants in such manner as it thinks just.

(5) Where the Board makes a payment pursuant to this section for the purpose of discharging a claim under this section, the claim in respect of which the payment is made shall be discharged notwithstanding that it may not have been satisfied in full by the payment.

(6) The Board may, with the approval of the Minister, make further subsequent payments to any person whose claim is not satisfied in full; or may make a payment to a person whose claim is barred, but any payment so made does not revive or re-instate a claim.

Recovery by board.

73. Where the Board has made any payment in compensation for loss suffered by any person in consequence of a fiduciary default, the Board is subrogated to the extent of the amount of the payment to the rights of the person who has been so compensated against a person who is liable at law or in equity for the fiduciary default.

Recovery by board.

74. Where the Board has made any payment in compensation for loss suffered by any person in consequence of a fiduciary default, the Board may recover, in any court of competent jurisdiction, the amount of the payment, as a debt due to it, from the person who would be liable at law or in equity, for the fiduciary default.

Moneys to be paid into fund.

75. (1) The moneys required for the purposes of this Part shall be paid out of the consolidated interest fund.

(2) Any moneys paid to, or recovered by the Board in pursuance of any provision of this Part shall be paid into the consolidated interest fund.

76. (1) The Board shall keep proper accounts of all moneys received, disbursed, invested and otherwise dealt with under this Part. Accounts.

(2) The Board shall cause the consolidated interest fund to be audited at least once in every calendar year by the Auditor-General.

PART IX

PART IX

INVESTIGATIONS, INQUIRIES AND APPEALS

77. In this Part—

Interpretation.

“the Board” means—

(a) in respect of any matter affecting a licensed land broker as such—the Land Brokers Licensing Board;

or

(b) in respect of any other matter—the Land and Business Agents Board.

78. (1) The Board may, upon the application of any person made in the prescribed manner, or of its own motion, inquire into the conduct of any person licensed or registered under this Act. Inquiries.

(2) If after conducting an inquiry under subsection (1) of this section the Board is satisfied that proper cause exists for disciplinary action, the Board may do one or more of the following—

(a) reprimand the person in relation to whom the inquiry was held;

(b) impose a fine not exceeding one hundred dollars on that person;

and

(c) cancel the licence or registration and, in addition, disqualify the person who held the licence or registration either temporarily or permanently, or until the fulfilment of a condition imposed by the Board, or until the further order of the Board from holding a licence or registration under this Act.

(3) There shall be proper cause for disciplinary action in the case of a licensed agent if—

(a) the licence was improperly obtained;

(b) the licensed agent, partner of, or registered manager or registered salesman in the service of, the licensed agent, or if the licensed agent is a corporation, any director, officer or employee of the corporation—

(i) has been convicted, or guilty, whether before or after the commencement of this Act, of any offence against the repealed Land Agents Act, the repealed Business Agents Act, or this Act, or of any offence involving dishonesty;

or

(ii) has been guilty, whether before or after the commencement of this Act, of any dishonest or fraudulent conduct, any neglect of duty, or any discreditable conduct;

(c) the licensed agent is an undischarged bankrupt, or is bound by any subsisting composition or deed or scheme of arrangement with or for the benefit of his creditors or, in the case of a corporation, has insufficient funds for the payment of its creditors;

or

(d) any other ground exists (whether like or unlike those specifically referred to in this subsection) that the Board deems sufficient.

(4) There shall be proper cause for disciplinary action in the case of a registered manager who has been nominated as such in respect of the business of a licensed agent for the purposes of this Act if—

(a) the registration was improperly obtained;

(b) the registered manager or any registered salesman employed in the business managed by the registered manager—

(i) has been convicted, or guilty, whether before or after the commencement of this Act, of any offence against the repealed Land Agents Act, the repealed Business Agents Act, or this Act, or of any offence involving dishonesty;

or

(ii) has been guilty, whether before or after the commencement of this Act, of any dishonest or fraudulent conduct, any neglect of duty, or any discreditable conduct;

(c) he is an undischarged bankrupt, is bound by any subsisting composition, or deed or scheme of arrangement with or for the benefit of his creditors;

or

(d) any other ground exists (whether like or unlike those specifically referred to in this subsection) that the Board deems sufficient.

(5) There shall be proper cause for disciplinary action in the case of a registered manager (other than a registered manager referred to in subsection (4) of this section) or a registered salesman if—

- (a) the registration was improperly obtained;
- (b) he has been convicted, or guilty, whether before or after the commencement of this Act, of any offence against the repealed Land Agents Act, the repealed Business Agents Act, or this Act, or of any offence involving dishonesty;
- (c) he has been guilty whether before or after the commencement of this Act of any dishonest or fraudulent conduct, any neglect of duty or any discreditable conduct;

or

- (d) any other ground exists (whether like or unlike those specifically referred to in this subsection) that the Board deems sufficient.

(6) There shall be proper cause for disciplinary action in the case of a licensed land broker if—

- (a) the licence was improperly obtained;
- (b) the licensed land broker or a person in the employment of the licensed land broker—
 - (i) has been convicted, or guilty, whether before or after the commencement of this Act of any offence against this Act, or the Real Property Act, 1886-1972, or of any offence involving dishonesty;

or

- (ii) has been guilty, whether before or after the commencement of this Act, of any dishonest or fraudulent conduct, or any neglect of duty, or any discreditable conduct;

or

- (c) any other ground exists (whether like or unlike those specifically referred to in this subsection) that the Board considers sufficient.

79. (1) The Board shall give to the person licensed or registered under this Act who is affected by an inquiry under this Part, and to any person upon whose application an inquiry is to be held, not less than seven days' notice of the time and place at which it intends to conduct the inquiry and shall afford any such person a reasonable opportunity to call or give evidence, to examine or cross-examine witnesses and to make submissions to the Board.

Procedure in relation to inquiry.

(2) If a person to whom notice has been given pursuant to subsection (1) of this section does not attend at the time and place fixed by the notice, the Board may hold the inquiry in his absence.

(3) The procedure at an inquiry shall be determined by the Board.

PART IX**Powers of
board.**

80. (1) For the purposes of an inquiry under this Part, the Board may—

- (a) by summons signed on behalf of the Board by a member of the Board, require the attendance before the Board of any person whom the Board thinks fit to call before it;
- (b) by summons signed on behalf of the Board by a member of the Board, require the production of any books, papers or documents;
- (c) inspect any books, papers or documents produced before it, and retain them for such reasonable period as it thinks fit, and make copies of any of them or of any of their contents;
- (d) require any person to make an oath or affirmation that he will truly answer all questions put to him by the Board relevant to any matter being inquired into by the Board, which oath or affirmation may be administered by any member of the Board;

or

- (e) require any person appearing before the Board (whether he has been summoned to appear or not) to answer any relevant questions put to him by any member of the Board or by any other person appearing before the Board.

(2) Subject to subsection (3) of this section, if any person—

- (a) who has been served with a summons to attend before the Board neglects or fails to attend in obedience to the summons;
- (b) who has been served with a summons to produce any books, papers or documents, neglects or fails to comply with the summons;
- (c) misbehaves himself before the Board, wilfully insults the Board or any member thereof, or interrupts the proceedings of the Board;

or

- (d) refuses to be sworn or to affirm, or to answer any relevant question, when required to do so by the Board,

he shall be guilty of an offence and liable to a penalty not exceeding two hundred dollars.

(3) A person shall not be obliged to answer a question put to him by the Board if the answer to that question would tend to incriminate him or to produce any books, papers or documents if their contents would tend to incriminate him.

(4) In the course of an inquiry, the Board may—

- (a) receive in evidence any transcript of evidence in proceedings before a court and draw any conclusions of fact therefrom that it considers proper;

or

- (b) adopt, as in its discretion it considers proper, any findings, decision or judgment of a court that may be relevant to the proceedings.

81. (1) The Board may, upon the determination of an inquiry **Costs.** under this Part, make such orders as to costs as the Board thinks just and reasonable.

(2) Where the Board makes an order for the payment of a fine or costs against a person licensed or registered under this Act and the fine or costs is or are not paid within the time fixed by the Board, the Board may suspend the licence or registration of that person until the fine or costs is or are paid, or for such period as the Board thinks fit.

(3) Where the Board has ordered the payment of a fine or costs, the fine or costs shall be recoverable summarily.

82. (1) A right of appeal to the Supreme Court shall lie against **Appeal.** any decision or order of the Board made in the exercise or purported exercise of any of its powers or functions under this Act.

(2) The appeal must be instituted within one month of the making of the decision or order appealed against but the Supreme Court may, if it is satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that the appeal should be so instituted.

(3) The Supreme Court may, on the hearing of the appeal, do one or more of the following, according to the nature of the case—

- (a) affirm, vary or quash the decision or order appealed against, or substitute, or make in addition, any decision or order that should have been made in the first instance;
- (b) remit the subject matter of the appeal to the Board for further hearing or consideration or for re-hearing;
- (c) make any further or other order as to costs or any other matter that the case requires.

(4) The Judges of the Supreme Court may, subject to and in accordance with the Supreme Court Act, 1935-1972, make Rules of Court regulating the practice and procedure on such appeals and any Rules of Court regulating the practice and procedure upon appeals under the repealed Land Agents Act, shall *mutatis mutandis* and until superseded by later rules apply to and in relation to appeals under this section.

(5) The Board shall, if so required by any person affected by a decision or order made by it, state in writing the reasons for its decision or order.

(6) If the reasons of the Board are not given in writing at the time of making a decision or order and the appellant then requested the Board to state its reasons in writing, the time for instituting the appeal shall run from the time when the appellant receives the written statement of those reasons.

PART IX

Operation of
order may be
suspended.

83. (1) Where an order has been made by the Board and the Board or the Supreme Court is satisfied that an appeal against the order has been instituted, or is intended, it may suspend the operation of the order until the determination of the appeal.

(2) Where the Board has suspended the operation of an order under subsection (1) of this section the Board may terminate the suspension, and where the Supreme Court has done so, the Supreme Court may terminate the suspension.

Investigations.

84. (1) The Commissioner of Police shall at the request of the secretary cause his officers to make any investigations and reports relevant to any matter being investigated by the secretary or the Board.

(2) The reports shall be forwarded to the secretary.

Inspection.

85. (1) A person authorized in writing by the Board may at any time during ordinary business hours—

(a) inspect any books, accounts, documents or writings in the custody or control of an agent or licensed land broker or any officer or servant of an agent or licensed land broker that relate to any trust moneys, trust account, or interest bearing trust security, or that otherwise relate to the conduct of the business of an agent or licensed land broker;

and

(b) make notes, copies or extracts of or from any such book, account, document or writing.

(2) A person who—

(a) wilfully delays or obstructs a person acting in the exercise of a power conferred by subsection (1) of this section;

or

(b) being an agent or a licensed land broker, or an officer or servant of the agent or licensed land broker, refuses, without reasonable excuse, to produce any book, account, document or writing, for the inspection of that person,

he shall be guilty of an offence and liable to a penalty not exceeding two hundred dollars.

PART X

CONTRACTS FOR THE SALE OF LAND OR
BUSINESSES*Contracts for the Sales of Subdivided Land*

86. (1) In this Part, "subdivided land" means any one or more vacant allotments of land shown on a plan of subdivision or plan of re-subdivision as defined in section 5 of the Planning and Development Act, 1966-1967, which plan has been—

Obligations and offences in relation to subdivided land.

(a) approved under the Town Planning Act, 1929-1963, or approved or submitted for approval under the Planning and Development Act, 1966-1967;

and

(b) deposited in the Lands Titles Registration Office, or the General Registry Office at Adelaide,

or any part of such allotments, but does not include allotments intended wholly or mainly for use for agricultural, pastoral, horticultural or viticultural purposes.

(2) Land shall be deemed to be vacant for the purposes of this section if no house or building suitable for human occupation is built thereon.

(3) A person who, in order to induce any other person (in this subsection referred to as "the prospective purchaser") to purchase subdivided land states—

(a) that he or any other person will buy at a profit to be received by the prospective purchaser any other land or chattel then owned by the prospective purchaser;

or

(b) that he or some other person will at some future time obtain for the prospective purchaser a profit on the subdivided land or any part thereof,

shall be guilty of an offence and liable to a penalty not exceeding one thousand dollars or imprisonment for twelve months.

(4) A contract for the sale of any subdivided land or any interest therein shall (except where the sale is by public auction) be voidable at the option of the purchaser at any time within six months after the making thereof unless the contract—

(a) is in writing;

and

(b) contains the following particulars—

(i) the name, address and description of the vendor;

- (ii) the name, address and description of the person who is, at the time when the contract is made, the owner of the land or interest;
- (iii) the allotment number of the land and the name (if any) of the subdivision, or other information sufficient to enable the land to be readily identified;
- (iv) the name, address and description of some person to whom all moneys falling due under the contract may be paid towards satisfaction of the contractual liability.

(5) A purchaser shall not be deemed to have elected to affirm a contract that is voidable under subsection (3) of this section by reason of any payments of moneys made by him pursuant to the contract.

(6) Where a contract that is voidable under this section is avoided by the purchaser, he may recover all moneys paid by him in pursuance of the contract.

(7) It shall not be competent for any person to waive his rights under this section.

Inducement to
buy sub-
divided land.

87. (1) If a person is induced—

(a) to enter into a contract to purchase subdivided land;

or

(b) to affirm any such contract, being voidable by that person, by any unreasonable or undue persuasion on the part of the vendor, or any person acting or appearing to act on behalf of the vendor, then, according to the nature of the case—

(c) the contract shall be deemed to have been induced by undue influence and shall be voidable at the option of the person induced to enter it;

or

(d) the affirmation shall be void and of no effect.

(2) It shall not be competent for any person to waive his rights under this section.

Provisions Applicable to Contracts Generally

Cooling off
period.

88. (1) Subject to this section, a purchaser under a contract for the sale of land may, by instrument in writing signed by the purchaser and served personally upon the vendor, or posted by registered or certified mail addressed to him, within two clear business days after the prescribed day give notice to the vendor of his intention not to be bound by the contract and the contract shall be deemed to have been rescinded at the time the notice is served or posted in accordance with this subsection and the purchaser shall thereupon be entitled to the return of any moneys paid by him under the contract.

(2) For the purposes of subsection (1) of this section—

“the prescribed day” means—

(a) where the vendor or some person acting on behalf of the vendor serves upon the purchaser personally, or by registered or certified mail, before the date of settlement, a notice in the prescribed form setting forth the rights of the purchaser under this section—

(i) the day on which the notice is so served;

(ii) the day on which the contract is executed by the vendor;

or

(iii) the day on which the contract is executed by the purchaser,

whichever last occurs;

or

(b) in any other case, the date of settlement.

(3) Where the vendor, a person acting on behalf of the vendor or a stakeholder receives moneys, exceeding twenty-five dollars, from a purchaser in respect of the sale (other than moneys payable by the purchaser in consideration of an option to purchase the land granted by the vendor) before the expiration of the period referred to in subsection (1) of this section, the person so receiving the moneys shall be guilty of an offence and liable to a penalty not exceeding two hundred dollars.

(4) This section does not apply in respect of a contract for the sale of any land—

(a) where the purchaser is—

(i) a body corporate;

(ii) an agent;

(iii) a registered manager;

(iv) a registered salesman;

(v) a licensed land broker;

or

(vi) a legal practitioner;

(b) where the purchaser has before executing the contract sought and received independent advice from a legal practitioner;

or

(c) where the sale is by auction.

(5) In this section—

“business day” means any day except a Saturday or a public holiday within the meaning of the Holidays Act, 1910-1959.

PART X

Abolition of instalment contracts.

89. (1) A contract for the sale of any land or business that provides for the payment of any part of the purchase price of the land or business (except a deposit) before the date of settlement is void.

(2) Any moneys paid under a contract that is void by reason of subsection (1) of this section may be recovered by action in any court of competent jurisdiction.

(3) In this section—

“deposit” means an amount paid by a purchaser in a lump sum, or in not more than two instalments, towards the purchase price of land or a business before the date of settlement.

(4) This section does not apply in respect of a contract made before the commencement of this Act.

Information to be supplied to purchaser before execution of contract.

90. (1) Subject to subsection (2) of this section, before a document that is intended to constitute a contract or part thereof for the sale of any land or business is executed by the purchaser, the vendor shall annex or cause to be annexed, to the document a statement signed by or on behalf of the vendor containing—

(a) particulars of all mortgages, charges and prescribed encumbrances affecting the land or business subject to the sale;

(b) particulars of all mortgages, charges and prescribed encumbrances that are not to be discharged or satisfied on or before the date of settlement;

and

(c) where the vendor obtained his title to the land or business within the twelve months preceding the date of the contract of sale, prescribed particulars of all transactions involving transfer of the title to the land or business occurring within that period including particulars of the consideration for which the title was transferred in pursuance of each of those transactions.

(2) Where any circumstances arise in which it is impracticable for the vendor to comply with subsection (1) of this section, the vendor shall serve the statement, or cause it to be served, personally or by registered or certified mail upon the purchaser at least twenty-four hours before the contract is executed so as to become binding on the purchaser.

(3) Where an agent acts on behalf of the vendor or purchaser of any land or business, the agent or some person on behalf of the agent shall, before presenting to the purchaser for execution by the purchaser, any document that is intended to constitute a contract or part thereof for the sale of the land or business, make prescribed inquiries, and such other inquiries as may be reasonable in the circumstances to obtain particulars of the mortgages, charges and prescribed encumbrances to which the land or business is subject.

(4) Where an agent acts on behalf of the vendor or purchaser of any land or business the agent or some person on behalf of the agent shall, before presenting to the purchaser any document that is intended to constitute a contract or part thereof for the sale of any land or business for execution by the purchaser, deliver to the purchaser a statement signed by or on behalf of the agent setting forth the particulars obtained upon the inquiries made pursuant to subsection (3) of this section and certifying that the particulars disclose all such mortgages, charges and prescribed encumbrances affecting the land or business the subject of the proposed sale as have been ascertained upon those inquiries.

(5) Where—

- (a) the agent or some person on his behalf fails to comply with subsection (3) or (4) of this section the agent shall be guilty of an offence and liable to a penalty not exceeding two hundred dollars;
- (b) an agent or some other person knowingly gives a certificate required by subsection (3) that is false in any material particular the agent or that other person as the case may be, shall be guilty of an offence and liable to a penalty not exceeding two hundred dollars.

(6) Where a purchaser suffers loss by reason of the fact that the provisions of this section have not been complied with, he may apply to any court of competent jurisdiction for an order under this section.

(7) The court may, upon the hearing of an application under subsection (6) of this section—

- (a) award such damages against any person in default under this section as may, in the opinion of the court, be necessary to compensate loss arising from his default;
- or
- (b) avoid the contract, and make such orders as the court thinks necessary or desirable to restore the parties to the contract to their respective positions before entering into the contract.

(8) It shall be a defence to proceedings under subsection (7) of this section that the failure to comply with this section arose notwithstanding that the person alleged to be in default exercised reasonable diligence to ensure that the requirements of this section were duly complied with.

(9) In this section—

“encumbrance” in relation to any land or business, includes—

- (a) any easement, right of way, restrictive covenant, writ, warrant, caveat, lien, notice, order, requirement, declaration, claim or demand;

PART X

or

(b) any other factor (whether similar or dissimilar to those mentioned in paragraph (a) of this definition),

affecting, presently or prospectively, the title to, or the possession or enjoyment of, the land or business but does not include any interest in, or affecting, land that exists by virtue of an instrument registrable under the Real Property Act, 1886-1972.

(10) It shall not be competent for a person to waive his rights under this section.

(11) The provisions of this section are in addition to, and do not derogate from, the provisions of any other Act or law.

Sale of small businesses.

91. (1) A person who desires to sell a small business shall before a contract or agreement for the sale of the business is signed, or a deposit in connection with the sale is paid (whichever is the earlier), give to the intending purchaser a statement in the prescribed form, signed by that person and by any agent acting on his behalf, containing prescribed particulars in relation to the business.

(2) If a statement is not given in accordance with subsection (1) of this section, or if a statement so given is false or inaccurate in any material particular, or omits any material particular, any contract or agreement for the sale of the business shall be voidable at the option of the purchaser for a period extending until the expiration of one month after the purchaser obtains possession of the business.

(3) Where a contract that is voidable under this section is avoided, any moneys paid under the contract shall be recoverable in any court of competent jurisdiction.

(4) This section shall not be construed as derogating from any right or cause of action existing apart from this section.

(5) It shall not be competent for any person to waive compliance with this section or any right or privilege arising from this section.

(6) In this section "small business" means any business that is, or is to be, sold for a total consideration of less than thirty thousand dollars or such other amount as may be prescribed.

PART XI

MISCELLANEOUS PROVISIONS

92. (1) The secretary shall keep the following registers:— Registers.
- (a) a register of licensed agents;
 - (b) a register of licensed land brokers;
 - (c) a register of registered salesmen;
- and
- (d) a register of registered managers.
- (2) The secretary shall record in the registers any prescribed particulars.
- (3) The secretary shall cause to be removed from the registers the name of every licensed agent, licensed land broker, registered manager or registered salesman who dies or ceases for any reason to hold a licence or registration under this Act.
- (4) The secretary shall, upon receipt of the prescribed fee from a person desiring to inspect the registers, make them available for the inspection of that person.
93. (1) A list of the names and descriptions of all persons holding licences on a date therein specified together with such of the particulars appearing in the register as the secretary thinks fit, shall be published in the *Gazette* in the month of May in each year. Lists and certificates.
- (2) A list of the names and descriptions of all persons registered as salesmen or managers on a date therein specified, together with such of the particulars appearing in the registers as the secretary thinks fit shall be published in the *Gazette* during the month of June in each year.
- (3) The secretary may cause supplementary lists to be published in the *Gazette*.
- (4) A certificate under the hand of the secretary that any person is or is not, or was or was not licensed or registered on the date of, or a date referred to, in the certificate, or as to any other matter contained in a register, shall, in the absence of proof to the contrary, be taken as proof of the matter so certified.
- (5) A document purporting to be a certificate under subsection (4) of this section and purporting to be signed by the secretary shall, in the absence of proof to the contrary, be accepted as such in any judicial proceedings.

PART XI

(6) The secretary shall, upon receipt of a request in writing by any person, and payment of the prescribed fee, issue a certificate as to any of the contents of the register.

Proceedings by
or against
board.

94. (1) Legal proceedings may be taken by or against the Land and Business Agents Board in that name, without specifying the individual members of that Board.

(2) Legal proceedings may be taken by or against the Land Brokers Licensing Board in that name, without specifying the individual members of that Board.

Evidence.

95. (1) In any legal proceedings an apparently genuine document purporting to be a licence or certificate of registration under this Act shall be accepted as evidence that the person named in the licence or certificate was licensed or registered during the term of the licence or registration.

(2) In any proceedings for an offence against this Act an allegation in the complaint that a person named therein was or was not licensed at a time mentioned therein shall, in the absence of proof to the contrary, be taken as proved.

Persons not to
be simultane-
ously licensed
and registered.

96. A person shall not be entitled to be simultaneously licensed and registered as a salesman or a manager under this Act, or to be simultaneously registered both as a salesman and a manager under this Act.

Court may
cancel or
reprimand.

97. Where—

(a) a licensed agent, a licensed land broker, or a director or manager of a body corporate that is a licensed agent;

or

(b) a registered salesman or registered manager,

is convicted of an offence involving dishonesty or of an offence against this Act, the court before which he is convicted may of its own motion and without further notice to any person make an order for the cancellation of the licence or registration, or reprimanding the convicted person.

False
representation.

98. (1) A person who in connection with the disposal of any land or business or any interest therein makes a false representation, with knowledge of its falsity, for the purpose of inducing another person to acquire the land or business, or the interest therein, shall be guilty of an indictable offence and liable to a penalty not exceeding one thousand dollars or imprisonment for twelve months.

(2) In any proceedings for an offence against subsection (1) of this section, if it is proved that the defendant made a false representation, he shall be deemed to have made the representation with knowledge of its falsity unless he satisfies the court that he had reasonable ground to believe and did believe it to be true.

99. (1) A corporation shall for the purposes of this Act be capable of incurring liability for an offence against this Act and for the purpose of determining the liability of a corporation for an offence the intention or knowledge of any officer or servant of the corporation shall be imputed to the corporation.

Liability of corporation and its officers.

(2) Where a corporation is guilty of an offence against this Act, each director of, and other person in control of the affairs of, the corporation shall also be guilty of that offence unless he proves that he did not consent to, or have prior knowledge of, the commission of the offence.

100. Where two or more agents carry on business in partnership and an offence against this Act is committed by any member of the partnership, each other member of the partnership shall also be guilty of the offence unless he proves that he did not consent to, or have prior knowledge of, the commission of the offence.

Liability of partner.

101. (1) Proceedings in respect of offences against this Act (except indictable offences) shall be disposed of summarily.

Proceedings.

(2) Proceedings in respect of an offence against this Act shall not be commenced after the expiration of two years from the time of the commission of the offence.

102. Where a person who is licensed or registered under this Act has been reprimanded within a period of five years three times (whether under this Act or the repealed Land Agents Act) his licence or registration shall by virtue of this section be cancelled.

Cancellation where person reprimanded.

103. Nothing in this Act shall prejudice any civil remedy available to any person apart from this Act.

Civil remedies unaffected.

104. No term or provision of any agreement, whether made before or after the commencement of this Act, for the sale and purchase of any land or business shall prevent any party thereto from claiming or being awarded damages or any other relief in respect of misrepresentation in connection with the sale or purchase of the land or business.

Misrepresentation.

105. Any document to be delivered or any notice to be given to any person under this Act may be delivered or given by registered post.

Service of documents and notices.

PART XI**Financial
provision.**

106. The moneys required for the purposes of this Act shall (except in so far as specific provision is made for the payment of those moneys out of the consolidated interest fund) be paid out of moneys provided by Parliament for those purposes.

Regulations.

107. The Governor may make all such regulations as are contemplated by this Act, or as he deems necessary or expedient for the purposes of this Act, and without limiting the generality of the foregoing, those regulations may—

- (a) prescribe any form for the purposes of this Act;
- (b) prescribe examinations and educational standards, qualifications and requirements for the purposes of this Act;
- (c) prescribe, and provide for the payment of, fees by candidates for examination;
- (d) prescribe any other fee for the purposes of this Act;
- (e) prescribe the manner in which any fact relevant to any matter arising under this Act may be proved in any court;
- (f) provide for applications for a licence or registration under this Act to be advertised and provide for objections to be made to such application, and prescribe the manner in which, and the grounds upon which, such objections may be made;
- (g) provide for the nomination of registered managers and the manner in which they are to be nominated;
- (h) prescribe the name and manner in which trust accounts are to be kept and operated;
- (i) require that the trust accounts of agents and land brokers be audited annually, prescribe the class of persons by whom the trust accounts are to be audited, regulate the manner in which the audit is to be conducted, and provide that reports of the audit are to be made to the Board;
- (j) require the production to the auditor of books, papers and accounts;
- (k) prescribe the persons, in addition to the Board, to whom the reports of the auditor shall be sent for inspection, information or record;

- (l) prescribe the scale of fees to be paid to auditors and the manner of payment;
 - (m) prescribe all such matters and things as may be necessary or expedient to ensure that all trust accounts are duly kept and audited;
 - (n) prescribe various maximum rates of commission and other charges that may be charged or made by licensed agents for services of various kinds defined in the regulation;
 - (o) prescribe any matter or thing that may be necessary or expedient in connection with charges, payments and reimbursements made by or to an agent in connection with his services as an agent;
 - (p) regulate the conduct of inquiries by the Board;
 - (q) prescribe a code of conduct to be observed and obeyed by persons licensed or registered under this Act, and provide that any breach, or non-observance, of the code shall constitute conduct discreditable to any such person;
- and
- (r) prescribe the penalties (recoverable summarily) not exceeding two hundred dollars for breach of, or non-compliance with, any regulation.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

M. L. OLIPHANT, Governor