



TASMANIA

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**AUCTIONEERS AND REAL ESTATE AGENTS ACT 1991**

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**No. 37 of 1991**

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**AUCTIONEERS AND REAL ESTATE AGENTS ACT  
1991**

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**No. 37 of 1991**

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**AN ACT to regulate auctioneers and real estate agents, and  
to repeal the *Auctioneers and Estate Agents Act 1959***

**[Royal Assent 27 November 1991]**

**B**E it enacted by His Excellency the Governor of Tasmania,  
by and with the advice and consent of the Legislative  
Council and House of Assembly, in Parliament assembled, as  
follows:—

**PART 1**

**PRELIMINARY**

***Division 1—General***

**Short title**

**1—**This Act may be cited as the *Auctioneers and Real Estate Agents Act 1991*.

**Commencement**

**2—**The provisions of this Act commence on a day to be proclaimed.

## Application

3—(1) This Act does not bind the Crown.

(2) The provisions of this Act that prohibit a person who does not hold a licence granted under this Act from carrying out activities authorized by such a licence do not apply to—

- (a) a liquidator or receiver; or
- (b) the committee of the estate of a person appointed under a law relating to mental health; or
- (c) a trustee company within the meaning of the *Trustee Companies Act 1953*; or
- (d) a legal practitioner in respect of whom a practising certificate is in force—

exercising rights and powers or performing duties and obligations in that capacity.

## Division 2—Definitions

### Interpretation

4—In this Act, unless the contrary intention appears—

“**auditor**” means a person registered as an auditor, or deemed to be registered as an auditor, under the *Companies (Tasmania) Code*;

“**business**” means a hotel business, boarding house business, storekeepers business, manufacturing business, professional business or any trading business whatsoever, and any share in any such business or the goodwill of any such business, but does not include any share in the capital of a corporation;

“**commencing day**” means the day of commencement of this Act;

“**Council**” means the Auctioneers and Real Estate Agents Council of Tasmania;

“**document**” includes any record of information;

“**engaged**” includes employed;

“**Guarantee Fund**” or “**Fund**” means the Auctioneers and Real Estate Agents Guarantee Fund;

“**licence**” means a licence granted by the Council under this Act that is in force and valid;

“**licensee**” means a person who is the holder of a licence;



**“owner”**, when used in respect of property offered for sale, includes any person at whose request or on whose instructions the property is offered for sale;

**“principal auctioneer”** means a person who holds a real estate auctioneers licence or a general auctioneers licence;

**“real estate agent”** or **“agent”** means a person who carries on the business of—

- (a) selling, buying, exchanging, leasing or otherwise dealing with, or disposing of, real estate or businesses; or
- (b) negotiating the sale, purchase, exchange, lease or any other dealing with, or the disposition of, real estate or businesses; or
- (c) collecting rents for real estate or businesses; or
- (d) managing real estate let or leased—

pursuant to instructions received from other people, and includes a person who, by publishing information or reports, represents himself or herself as carrying on that business;

**“real estate manager”** means a person engaged by a real estate agent to manage a place where the agent is authorized to carry on the business of a real estate agent;

**“real estate sales consultant”** means a person who, acting for a real estate agent—

- (a) induces or attempts to induce, or negotiates with a view to inducing, people—
  - (i) to acquire, dispose of or lease real estate or businesses; or
  - (ii) to make an offer to acquire, dispose of or lease real estate or businesses; or
  - (iii) to enter into contracts for the acquisition, disposal or leasing of real estate or businesses; or
- (b) collects rents for real estate or businesses; or
- (c) manages real estate let or leased;

**“repealed Act”** means the *Auctioneers and Estate Agents Act 1959*;

**“Trust”** means the Auctioneers and Real Estate Agents Trust;

“**trust account**” has the meaning assigned to that term by section 72 (1);

“**trust money**” has the meaning assigned to that term by section 70.

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## **PART 2**

### **AUCTIONEERS AND REAL ESTATE AGENTS COUNCIL OF TASMANIA**

#### **The Auctioneers and Real Estate Agents Council of Tasmania**

5—(1) The body corporate that was, immediately before the commencing day, in existence by virtue of section 4 of the repealed Act under the name Auctioneers and Estate Agents Council of Tasmania continues in existence by force of this subsection as a body corporate, under and subject to the provisions of this Act, under the name Auctioneers and Real Estate Agents Council of Tasmania.

(2) Schedule 1 applies to the Council and its members.

(3) The Council—

(a) shall have a seal; and

(b) may sue and be sued.

(4) A court, or a person or body acting judicially shall take judicial notice of the imprint of the seal of the Council on a document and shall presume that the document was duly sealed by the Council.

#### **Functions of the Council**

6—The functions of the Council are—

(a) to administer the granting and renewal of licences under this Act to ensure that only people who have the necessary experience and qualifications to do so, and are not otherwise unfit to do so—

(i) carry on the business of an auctioneer or real estate agent; or

(ii) engage in certain activities connected with the business of an auctioneer or real estate agent; and

- (b) to ensure that people licensed under this Act comply with the requirements of this Act relating to their conduct in carrying on their businesses or in carrying out their activities, and, where they fail to do so, to take such disciplinary action as is appropriate to protect the interests of the public, and to discourage that conduct; and
- (c) to ensure that money held in trust by people licensed under this Act is not used otherwise than for the purposes intended; and
- (d) to ensure that people who are not licensed under this Act to do so do not carry on the business of an auctioneer or a real estate agent; and
- (e) to ensure that people who are not licensed under this Act to engage in certain activities connected with the business of an auctioneer or a real estate agent do not carry on those activities; and
- (f) to encourage education and research in the business of auctioneers and real estate agents with a view to improving the services provided to the public by people engaged in those businesses.

### **General powers of the Council**

7—Subject to this Act, the Council has power to do all things necessary or convenient to be done for or in connection with the performance of its functions, and, in particular, has power—

- (a) to enter into contracts; and
- (b) to acquire, hold and dispose of property; and
- (c) to engage people to perform services for the Council; and
- (d) to take proceedings for any offence committed or alleged to have been committed under this Act and for any offence committed or alleged to have been committed in connection with any auctioneering business or real estate business; and
- (e) to support education and research in the business of auctioneers and real estate agents; and
- (f) to do anything incidental to any of its powers.

**Accounts of the Council**

**8—**(1) Money received by the Council shall be paid into its general fund.

(2) Money in the general fund of the Council shall be used—

- (a) to pay the fees, allowances and expenses of members of the Council; and
- (b) to pay the remuneration of people engaged by the Council; and
- (c) to pay other administrative expenses, including auditors' fees; and
- (d) to pay any other expenses incurred by the Council in the exercise of its functions; and
- (e) as provided by section 89 (2) (use of surplus money in Guarantee Fund).

(3) The Council may invest money in its general fund in any manner in which a trustee is authorized by law to invest trust funds.

(4) A payment shall not be made from the general fund of the Council except in accordance with an order of the Council.

(5) An order under subsection (4) may relate to a single payment, several payments or a series of payments.

(6) The Council shall keep accounts of all money received or expended by it.

(7) The Council shall have its accounts audited at least once a year by an auditor.

(8) The Council shall send a copy of its accounts to the Minister when they have been audited in accordance with subsection (7).

**Protection of Council members**

**9—**An action or proceeding, civil or criminal, does not lie against a member of the Council or an officer of the Council, acting as such, for anything done in good faith.

**PART 3****AUCTIONS*****Division 1—Auctions to be conducted by holders of auctioneers licences*****Auctioneer business to be carried on by principal auctioneer**

**10—(1)** A person shall not carry on the business of an auctioneer unless that person is a principal auctioneer.

Penalty: Fine not exceeding 50 penalty units and a daily fine not exceeding 5 penalty units.

(2) A person shall not carry on business as a real estate auctioneer unless that person is the holder of a real estate auctioneers licence.

Penalty: Fine not exceeding 50 penalty units.

(3) Except as provided by subsection (7), a person shall not conduct an auction unless that person is the holder of a real estate auctioneers licence, a general auctioneers licence, an employed auctioneers licence, a probationary auctioneers licence or a temporary auctioneers licence.

Penalty: Fine not exceeding 50 penalty units.

(4) The holder of an employed auctioneers licence shall not conduct an auction under subsection (3) except on behalf of the principal auctioneer by whom he or she is engaged.

(5) The holder of a probationary auctioneers licence shall not conduct an auction under subsection (3) except under the supervision of—

(a) the principal auctioneer by whom he or she is employed; or

(b) a person who holds—

(i) a real estate auctioneers licence; or

(ii) a general auctioneers licence; or

(iii) an employed auctioneers licence—

and who is also engaged by that principal auctioneer.

(6) The holder of a temporary auctioneers licence shall not conduct an auction under subsection (3) except—

(a) on behalf of the principal auctioneer who applied for the temporary licence; and

(b) in accordance with any conditions endorsed on that licence.

(7) Subsection (3) does not apply to—

- (a) an auction authorized by an Act being conducted by a person specified in the Act; or
- (b) an auction under a writ or process issued by or out of a court; or
- (c) an auction of property distrained for rent or arrears of rent; or
- (d) an auction, the gross proceeds of which are to be used for a charitable purpose.

### *Division 2—Conduct of auctions*

#### **Misrepresentation as to quality, &c., of property, sold at auction**

**11—**(1) The owner of property offered for sale by auction shall not knowingly misrepresent, or cause or allow to be misrepresented, the value, composition, structure, character, quality, origin or manufacture of the property.

Penalty: Fine not exceeding 50 penalty units.

(2) An auctioneer offering property for sale by auction shall not knowingly misrepresent the value, composition, structure, character, quality, origin or manufacture of the property.

Penalty: Fine not exceeding 50 penalty units.

#### **Bids by owner at auction**

**12—**Unless immediately before property is offered for sale by auction—

- (a) it is clearly stated to the people assembled for the auction that the owner or a person acting for the owner may bid for the property; and
- (b) the owner or the person acting for the owner is specifically identified to the people assembled for the auction—

the owner shall not bid or cause a person to bid on the owner's behalf and—

- (c) a person shall not bid on behalf of the owner; and

- (d) the auctioneer shall not accept a bid from a person the auctioneer knows is bidding in contravention of this section.

Penalty: Fine not exceeding 50 penalty units.

### **Certain bidding agreements unlawful**

**13—(1)** In this section “dealer” means a person who in the normal course of business attends auctions for the purpose of purchasing property with a view to resale.

- (2) A dealer shall not—

- (a) give; or
- (b) agree to give; or
- (c) offer—

a gift or consideration to a person as an inducement or reward for abstaining or having abstained from bidding at an auction.

Penalty: Fine not exceeding 50 penalty units.

- (3) A person shall not—

- (a) accept; or
- (b) agree to accept; or
- (c) attempt to obtain—

from a dealer a gift or consideration for abstaining or having abstained from bidding at an auction.

Penalty: Fine not exceeding 50 penalty units.

- (4) If, before an auction, a dealer—

- (a) enters into an agreement with a person to purchase property at the auction bona fide on a joint account; and
- (b) has deposited a copy of the agreement with the auctioneer—

that agreement is not a contravention of subsections (2) and (3).

**Collusive practices at auctions**

**14—(1)** In this section “**unlawful promise**” means a promise, expressed or implied, made by a person that if that person is the successful bidder in respect of property sold at an auction—

- (a) the person to whom the promise was made will have the right to elect to take over as purchaser through the auctioneer the property, or any part of it, at the auction price; or
- (b) the ownership of the property, or any part of it, will be decided by a specified method.

(2) A person shall not, by means of an unlawful promise made to a person at an auction, induce or attempt to induce that person—

- (a) to abstain from bidding, either generally or for any particular lot; or
- (b) not to bid, except to a limited extent; or
- (c) to do any act or thing which may in any way prevent or tend to prevent free and open competition.

Penalty: Fine not exceeding 50 penalty units.

(3) A person at an auction shall not, as a result of an unlawful promise made to that person—

- (a) abstain or agree to abstain from bidding, either generally or for any particular lot; or
- (b) not bid, except to a limited extent; or
- (c) do or agree to do any other act or thing which may in any way prevent or tend to prevent free and open competition.

Penalty: Fine not exceeding 50 penalty units.

**Successful bidder to supply information to auctioneer**

**15—(1)** A person who makes the successful bid at an auction shall give to the auctioneer, as soon as practicable after the acceptance of that bid—

- (a) if that person bid on his or her own behalf—his or her name and address; or
- (b) if that person bid on behalf of another person—the name and address of that other person.

Penalty: Fine not exceeding 20 penalty units.



(2) Subsection (1) does not apply if the person making the successful bid gave the information referred to in subsection (1) (a) or (b) to the auctioneer before the auction.

### **Certain notices to be given at auction**

**16**—An auctioneer shall not conduct an auction until notice has been given, in any prescribed manner and form, of the material parts of sections 13, 14 and 15.

Penalty: Fine not exceeding 20 penalty units.

### **Times of auction**

**17**—(1) Regulations made under this Act may prescribe times when auctions shall not be held.

(2) Regulations made for the purposes of subsection (1) may, in particular—

- (a) prescribe different times for different types of property; and
- (b) prescribe conditions which must be complied with before an auction of a specified type of property may be conducted at a prescribed time.

### ***Division 3—Principal auctioneers' remuneration***

#### **Appointment of auctioneer to be in writing**

**18**—(1) Except by leave of the court, a principal auctioneer is not entitled to sue for, or recover, or retain any valuable consideration for services provided to a person by the auctioneer in the capacity of an auctioneer unless the auctioneer has a valid appointment to act for that person in that capacity that is—

- (a) in writing; and
- (b) signed by that person or by a person authorized to sign on behalf of that person.

(2) An appointment is not valid for the purposes of subsection (1) unless it is contained in a document that—

- (a) generally sets out the services to be rendered by the auctioneer; and

- (b) if a specific property is the subject of those services—clearly identifies the property; and
  - (c) clearly indicates how any valuable consideration the auctioneer may receive is to be calculated; and
  - (d) clearly indicates the nature and extent of the expenses the auctioneer may incur on behalf of the client, and how those expenses are to be recouped.
- (3) An appointment is not valid for the purposes of subsection (1) unless the person obtaining the signature to the document of appointment gives a copy of it to the signatory as soon as possible after it is signed.
- (4) The onus of proof that subsection (3) was complied with is on the person who obtained the signature.
- (5) An auctioneer shall not demand any valuable consideration in contravention of subsection (1).
- (6) Any valuable consideration received by an auctioneer in contravention of subsection (1) is recoverable as a debt.

### **Remuneration of principal auctioneers**

**19—**(1) Notwithstanding any term of an agreement between a principal auctioneer and an owner of property to the contrary, a principal auctioneer is not entitled to receive any valuable consideration for any service provided by the auctioneer that exceeds in value any maximum commission prescribed in respect of the provision of that service.

- (2) A principal auctioneer shall not—
- (a) demand; or
  - (b) receive; or
  - (c) hold—

any consideration in contravention of subsection (1).

(3) Any consideration received or held by a principal auctioneer in contravention of subsection (1) is recoverable as a debt.

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**PART 4****REAL ESTATE AGENTS*****Division 1—Real estate agent's business*****Real estate agents to hold licences**

**20—**(1) A person shall not carry on the business, or hold himself or herself out as prepared to carry on the business, of a real estate agent unless that person is the holder of a real estate agents licence.

Penalty: Fine not exceeding 50 penalty units and a daily fine not exceeding 5 penalty units.

(2) A real estate agent shall not carry on the business of a real estate agent except at or from a place that—

- (a) is specified in the agent's licence as a place where that business may be carried on; and
- (b) is managed by a person authorized by this Act to manage a place where the business of a real estate agent may be carried on.

**Real estate business to be managed by authorized person**

**21—**(1) A person shall not manage a place where the business of a real estate agent is carried on unless that person is the holder of—

- (a) a real estate agents licence; or
- (b) a real estate managers licence; or
- (c) a real estate sales consultants licence and is authorized in accordance with subsection (3).

(2) A real estate manager shall not manage a place where the business of a real estate agent is carried on unless that place is the place specified in the manager's licence as the place that manager may manage.

(3) The Council may, on the written request of a real estate agent and on payment of any prescribed fee, authorize a real estate sales consultant engaged by the agent to manage, for a total period not exceeding 6 weeks in any period of 12 months, premises where the agent is authorized to carry on the business of a real estate agent.

(4) The Council shall not give its consent under subsection (3) unless the Council is satisfied that the real estate sales consultant has had at least 2 years full time experience as a sales consultant.

(5) A real estate agent shall not engage a person to manage a place where the agent carries on his or her real estate business unless that person is the holder of—

- (a) a real estate agents licence; or
- (b) a real estate managers licence; or
- (c) a real estate sales consultants<sup>15</sup> licence and is authorized in accordance with subsection (3).

Penalty: Fine not exceeding 50 penalty units and a daily fine not exceeding 5 penalty units.

### **Real estate sales consultants**

22—(1) A person shall not—

- (a) carry out; or
- (b) hold himself or herself out as authorized or prepared to carry out—

any of the functions of a real estate sales consultant unless he or she—

- (c) is the holder of a real estate agents licence; or
- (d) is the holder of—<sup>15</sup>

- (i) a real estate managers licence; or
- (ii) a real estate sales consultants licence—

and is acting for the real estate agent by whom the manager or consultant is engaged.

Penalty: Fine not exceeding 50 penalty units and a daily fine not exceeding 5 penalty units.

(2) A real estate manager or a real estate sales consultant shall not, by any means, hold himself or herself out as being engaged by a real estate agent unless—

- (a) the manager or consultant is engaged by that agent; and
- (b) the agent is named in the managers or consultants licence as the agent by whom that person is engaged.

(3) A real estate agent shall not engage a person to carry out any of the functions of a real estate sales consultant unless that person is the holder of—

- (a) a real estate agents licence; or
- (b) a real estate managers licence; or
- (c) a real estate sales consultants licence.

**Manager or sales consultant not to be engaged by more than one agent**

**23—**(1) A real estate manager or a real estate sales consultant shall not be engaged by more than one real estate agent at any time.

(2) A real estate agent shall not engage a person who is, to the knowledge of that agent, engaged by another real estate agent.

***Division 2—Real estate agents' remuneration***

**Appointment of real estate agents to be in writing**

**24—**(1) Except by leave of the court, a real estate agent is not entitled to sue for, or recover, or retain any valuable consideration for services provided to a person by the agent in the capacity of a real estate agent unless the agent has a valid appointment to act for that person in that capacity that is—

- (a) in writing; and
- (b) signed by that person or by a person authorized to sign on behalf of that person.

(2) An appointment is not valid for the purposes of subsection (1) unless it is contained in a document that—

- (a) generally sets out the services to be rendered by the agent; and
- (b) if a specific property is the subject of those services—clearly identifies the property; and
- (c) clearly indicates how any valuable consideration the agent may receive is to be calculated; and
- (d) clearly indicates the nature and extent of the expenses the agent may incur on behalf of the client, and how those expenses are to be recouped.

(3) An appointment is not valid for the purposes of subsection (1) unless the person obtaining the signature to the document of appointment gives a copy of it to the signatory as soon as possible after it is signed.

(4) The onus of proof that subsection (3) was complied with is on the person who obtained the signature.

(5) A real estate agent shall not demand any valuable consideration in contravention of subsection (1).

(6) Any valuable consideration received by a real estate agent in contravention of subsection (1) is recoverable as a debt.

### **Remuneration of real estate agents**

**25—**(1) Notwithstanding any term of an appointment of a real estate agent to the contrary, a real estate agent is not entitled to receive any valuable consideration for any service provided by the agent that exceeds in value any maximum amount prescribed in respect of that service.

(2) A real estate agent shall not—

- (a) demand; or
- (b) receive; or
- (c) hold—

any valuable consideration in contravention of subsection (1).

(3) Any valuable consideration received or held by a real estate agent in contravention of subsection (1) is recoverable as a debt.

### **Agent not to share commission, &c.**

**26—**(1) A real estate agent shall not—

- (a) directly or indirectly, give any valuable consideration to another person for acting as, or performing any of the functions of, a real estate sales consultant; or
- (b) share with another person any valuable consideration payable to that agent for services provided by the agent—

unless that other person—

- (c) is a real estate agent; or
- (d) is—
  - (i) a real estate manager; or

(ii) a real estate sales consultant—  
engaged by the real estate agent giving or sharing the consideration.

(2) In subsection (1) (c), the reference to a real estate agent includes a person authorized under the law of another State or Territory of Australia to carry on the business of a real estate agent in that State or Territory.

### **No recovery of fees by real estate agent in certain circumstances**

27—(1) A person is not entitled to bring an action to recover any valuable consideration for services provided by that person in the capacity of a real estate agent unless, both at the time that person—

- (a) was engaged to act as an agent; and
- (b) acted as an agent—

he or she was the holder of a real estate agents licence.

(2) A real estate agent is not entitled to bring an action to recover any valuable consideration for services performed by the agent in the course of any real estate business carried out by the agent unless the agent has furnished to the person against whom the action is to be brought a written statement setting out details of those services and the amount claimed in respect of each service.

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## **PART 5**

### **LICENCES**

#### ***Division 1—Types of licences and required qualifications***

#### **Types of licences**

28—(1) The Council may grant the following licences in respect of auctioneers:—

- (a) real estate auctioneers licence;
- (b) general auctioneers licence;
- (c) employed auctioneers licence;
- (d) probationary auctioneers licence;
- (e) temporary auctioneers licence.

(2) The Council may grant the following licences in respect of real estate agents:—

- (a) real estate agents licence;
- (b) real estate managers licence;
- (c) real estate sales consultants licence.

**To whom licences may be granted, &c.**

**29—**(1) A licence may be granted—

- (a) to a natural person; or
- (b) in the case of—
  - (i) a real estate auctioneers licence; or
  - (ii) a general auctioneers licence; or
  - (iii) a real estate agents licence—  
to a body corporate.

(2) A person who is a principal auctioneer or the holder of a real estate agents licence may carry on the business of an auctioneer or real estate agent in partnership with a person who is a principal auctioneer or the holder of a real estate agents licence but shall not carry on either of those businesses in partnership with any person who is not a principal auctioneer or the holder of a real estate agents licence.

**Qualifications for real estate auctioneers licence**

**30—**A real estate auctioneers licence may—

- (a) in the case of a natural person—be granted to a person who—
  - (i) is the holder of a real estate agents licence; and
  - (ii) satisfies the Council, on examination or inquiry, that he or she has sufficient knowledge of the business of auctioneering to be able to carry on the business of a real estate auctioneer; or
- (b) in the case of a body corporate—be granted to a body corporate that—
  - (i) is the holder of a real estate agents licence; and



- (ii) has in charge of its auctioneering business an employee of the body corporate who holds an auctioneers licence and is able to satisfy the Council, on examination or inquiry, that he or she has sufficient knowledge of the business of auctioneering to be able to carry on the business of a real estate auctioneer.

### **Qualifications for general auctioneers licence**

**31**—A general auctioneers licence may—

- (a) in the case of a natural person—be granted to a person who satisfies the Council, on examination or inquiry, that he or she has a sufficient knowledge of the business of auctioneering to be able to carry on the business of a general auctioneer; or
- (b) in the case of a body corporate—be granted to a body corporate that has in charge of its auctioneering business an employee of the body corporate who holds an auctioneers licence and is able to satisfy the Council, on examination or inquiry, that he or she has a sufficient knowledge of the business of auctioneering to be able to carry on the businesses of a general auctioneer.

### **Qualifications for an employed auctioneers licence**

**32**—An employed auctioneers licence may be granted to a person who—

- (a) is engaged by a principal auctioneer; and
- (b) satisfies the Council, on examination or inquiry, that he or she has sufficient knowledge of auctioneering to be able to carry out the functions of an auctioneer.

### **Qualifications for a probationary auctioneers licence**

**33**—A probationary auctioneers licence may be granted to a person who—

- (a) is employed by a principal auctioneer; and
- (b) satisfies the Council, on examination or inquiry, that he or she has sufficient knowledge of auctioneering to be able to carry out the functions of a probationary auctioneer.

**Qualifications for a temporary auctioneers licence**

**34**—A temporary auctioneers licence may be granted to a person who—

- (a) is engaged by a principal auctioneer; and
- (b) is authorized under the law of another State or Territory of Australia to conduct auctions in that State or Territory.

**Qualifications for a real estate agents licence**

**35**—(1) A real estate agents licence may, in the case of a natural person, be granted to a person who—

(a) has—

- (i) the prescribed educational qualifications; and
- (ii) been engaged full time as a real estate sales consultant for a total period of at least 2 years during the 5 years immediately preceding the application for the licence; or

(b) has held a real estate agents licence or a real estate managers licence at any time during the 5 years immediately preceding the application for the licence; or

(c) has—

- (i) at any time during the 5 years immediately preceding the application, been authorized under the law of another State or Territory of Australia to carry on the business of a real estate agent in that State or Territory; and
- (ii) been engaged full time as a real estate agent in another State or Territory of Australia for a total period of at least 2 years during the 5 years immediately preceding the application for the licence; and
- (iii) satisfied the Council, on examination or inquiry, that he or she has sufficient knowledge and experience of the real estate agency business to be granted a real estate agents licence.

(2) A real estate agents licence may, in the case of a body corporate, be granted to a body corporate if at least half its directors, or people holding a similar position in the body corporate, hold either—

- (a) real estate agents licences; or
- (b) real estate managers licences.

**Qualifications for real estate managers licence**

**36**—A real estate managers licence may be granted to a person who—

(a) has—

- (i) the prescribed educational qualifications; and
- (ii) been engaged full time as a real estate sales consultant for a total period of at least 2 years during the 5 years immediately preceding the application for the licence; or

(b) has held—

- (i) a real estate agents licence; or
- (ii) a real estate managers licence—

at any time during the 5 years immediately preceding the application for the licence; or

(c) has—

- (i) at any time during the 5 years preceding the application, been authorized under the law of another State or Territory of Australia to carry on the business of a real estate agent or to carry out the duties of a real estate manager in that State or Territory; and
- (ii) been engaged full time as a real estate agent or real estate manager in another State or Territory of Australia for a total of at least 2 years during the 5 years immediately preceding the application for the licence; and
- (iii) satisfied the Council, on examination or inquiry, that he or she has sufficient knowledge and experience of managing a real estate business to be granted a real estate managers licence.

**Qualifications for real estate sales consultants licence**

**37**—A real estate sales consultants licence may be granted to a person who satisfies the Council, on examination or inquiry, that he or she has sufficient knowledge to be able to carry out the functions of a real estate sales consultant.

**Disqualifications to be a licensee**

**38—**(1) Notwithstanding any other provision of this Division, a person is not qualified to be a licensee if that person—

(a) in the case of a real estate agent, a principal auctioneer or a real estate manager—is an undischarged bankrupt or has made a composition or arrangement with creditors and—

(i) the debts to which the composition or arrangement relates have not been paid in full; or

(ii) the terms of the composition or arrangement have not been fulfilled; or

(b) in the case of a body corporate—

(i) is in receivership or in liquidation; or

(ii) has served a resolution for voluntary winding up (except for the purpose of reorganization); or

(iii) has a winding up order made in respect of it by the Supreme Court; or

(iv) has a director, manager, secretary or other similar officer who is disqualified for holding a licence by virtue of section 45 (disciplinary action by Council); or

(c) is disqualified for holding a licence by virtue of—

(i) section 43 (effect of suspension); or

(ii) section 45 (disciplinary action by Council); or

(d) has been convicted, in Tasmania or elsewhere, of an offence of a nature which, in the Council's opinion, makes it not in the public interest the person be granted a licence; or

(e) has held a licence—

(i) granted under the law of another State or Territory of Australia; and

(ii) similar in effect to any licence that can be granted under this Act—

that was suspended or revoked, or refused renewal in circumstances which, in the Council's opinion, make it not in the public interest the person be granted a licence.

(2) A person is not qualified to be or continue to be a licensee unless, within a period specified by the Council, that person has undertaken any continuing education course specified by the Council.

*Division 2—Applications for, and grant or renewal of,  
licences*

**Application for licence or renewal of licence**

**39—**(1) An application for a licence or the renewal of a licence shall—

(a) be made to the Council on a form approved for the purpose by the Council; and

(b) be accompanied by—

(i) the prescribed fee; and

(ii) any documents referred to in subsection (4) or (5); and

(iii) in the case of an application for, or the renewal of—

(A) a real estate auctioneers licence; or

(B) a general auctioneers licence; or

(C) a real estate agents licence—

evidence that the applicant is complying with section 62 (certain licensees to have fidelity bond).

(2) An application for a temporary auctioneers licence for a person is to be made by the principal auctioneer engaging that person.

(3) A probationary auctioneers licence and a temporary auctioneers licence cannot be renewed.

(4) An application for a licence must be accompanied by—

(a) the notice published in accordance with section 40 (notice of application for licence to be published) showing the date of its publication; and

(b) evidence sufficient to satisfy the Council that the applicant has the prescribed experience and qualifications.

(5) An application for the renewal of a licence must be accompanied by evidence sufficient to satisfy the Council that the applicant has satisfactorily undertaken, within the period specified by the Council, any continuing education course the Council requires holders of that type of licence to undertake.

**Notice of application for licence to be published**

**40—(1)** A person who intends to apply for a licence (other than a temporary auctioneers licence) shall arrange to have published in a newspaper published in Tasmania and circulating generally in Tasmania a notice stating that that person intends to apply for the licence.

(2) A notice published on behalf of a person in accordance with subsection (1), must be in a form approved by the Council and must specify—

(a) the full name and address of—

(i) that person; and

(ii) in the case of a body corporate—its directors or people holding a similar position in the body corporate; and

(b) the type of licence intended to be applied for; and

(c) except in the case of a person intending to apply for a real estate agents licence, a real estate auctioneers licence or a general auctioneers licence—the full name and address of the real estate agent or principal auctioneer who will engage the person if the licence is granted.

(3) A notice published under subsection (1) shall contain a statement that any person may, within the 14 days following publication of the notice, object to the grant of the licence intended to be applied for by sending a written notice of objection to—

(a) the Council; and

(b) the person who caused the notice to be published—that specifies—

(c) the name and address of the objector; and

(d) the grounds of objection.

**Grant or renewal of licence**

**41—(1)** The Council shall grant or renew a licence if it is satisfied that the applicant is qualified to hold the licence.

(2) The Council may request an applicant for a licence or for the renewal of a licence to produce further evidence to satisfy the Council that the applicant is qualified to hold the licence.

(3) If the Council—

- (a) is not satisfied that an applicant is qualified to hold a licence; or
- (b) proposes to refuse to grant or renew a licence by virtue of subsection (4)—

it shall hold an inquiry in accordance with Part 9 to consider the application further.

(4) Notwithstanding subsection (1), the Council may—

- (a) refuse to renew a licence if the applicant has had disciplinary action taken against him or her in respect of that licence; or
- (b) refuse to grant a licence if the applicant was previously the holder of a licence, whether granted under this Act or the repealed Act, and—
  - (i) had disciplinary action taken against him or her in respect of that licence; or
  - (ii) in the Council's opinion, would have had disciplinary action taken against him or her in respect of that licence if the applicant had not ceased to hold the licence—

and the Council is satisfied that the person is not a fit and proper person to hold a licence.

(5) Notwithstanding subsection (1) and section 42 (3) (c) (licensee ceases to be qualified), the Council may grant a valid licence to a person who is not qualified to hold the licence but in that case the Council shall specify a date in the licence (being a date not more than 1 year after the date of issue of the licence) when the licence ceases to be valid unless by that date the licensee is qualified to hold the licence.

(6) If an application to renew a licence in respect of any year is received by the Council after 31 October of the preceding year a late fee of the prescribed amount is payable.

### *Division 3—Period of validity of licences, form and content*

#### **Period of validity of licence**

42—(1) Subject to section 41 (5) and subsections (3) and (4), a licence is valid from the day the Council grants it until the following 31 December.

(2) Subject to subsection (3), the period of validity of a renewed licence—

(a) starts—

(i) 1 January of the year in respect of which it is valid; or

(ii) if the application to renew the licence is made during that January—on the day the licence is renewed; and

(b) ends on the following 31 December.

(3) A licence ceases to be valid and cannot be renewed if—

(a) the licensee surrenders it to the Council; or

(b) it is revoked in accordance with this Act; or

(c) the licensee ceases to be qualified to hold the licence; or

(d) no application to renew the licence has been received by the Council before the end of the January following it ceasing to be valid.

(4) Subject to subsection (3)—

(a) a probationary auctioneers licence is valid for 1 year from the day on which it is granted by the Council; and

(b) a temporary auctioneers licence is valid for the period, not exceeding 3 months, specified in the licence by the Council.

(5) If a principal auctioneer or real estate agent dies—

(a) the personal representative of the auctioneer or agent shall be deemed to be the holder of the auctioneer's or agent's licence; and

(b) notwithstanding subsection (3) (c) but subject to subsection (3) (a) and (b), the licence shall be valid for 6 months from the death of the auctioneer or agent; and

(c) any fee payable on the renewal of the licence shall be a proportional part of any annual renewal fee payable on the renewal of a similar licence having regard to the period the licence is to remain valid by virtue of paragraph (b) after the day the licence is renewed.



**Effect of suspension of licence**

**43**—While a licence is suspended under section 46 (disciplinary action by Council), section 47 (pending an inquiry) or section 63 (fidelity bond not in force)—

- (a) the licence is not valid for the purposes of this Act; and
- (b) the licensee is not qualified to hold a licence either of the same or any other type.

**Form and content of licences**

**44**—(1) A licence shall—

- (a) be in a form approved by the Council; and
- (b) have specified in it—
  - (i) the full name and address of the licensee; and
  - (ii) any information required to be specified in it by subsection (2).

(2) A licence shall have specified in it—

- (a) in the case of a real estate auctioneers licence or a general auctioneers licence granted to a body corporate—the name of the person in charge of the body corporate's auctioneering business; and
- (b) in the case of an employed auctioneers licence or probationary auctioneers licence—the name of the principal auctioneer by whom the licensee is engaged; and
- (c) in the case of a temporary auctioneers licence—
  - (i) the name of the principal auctioneer by whom the licensee is engaged; and
  - (ii) any conditions subject to which the licence is granted; and
  - (iii) the period of validity of the licence; and
- (d) in the case of a real estate agents licence—
  - (i) the address or addresses where the licensee may carry on the business of a real estate agent; and

- (ii) if the licence is granted to a body corporate—  
the name of each director or person holding  
a similar position in the body corporate, and  
whether or not that person is either the holder  
of a real estate agents licence or a real estate  
managers licence; and
  - (e) in the case of a real estate managers licence—
    - (i) the name of the real estate agent by whom the  
licensee is engaged; and
    - (ii) the address of the agent's premises the licensee  
may manage; and
  - (f) in the case of a real estate sales consultants licence—  
the name and address of the real estate agent by  
whom the licensee is engaged.
- (3) If any matter specified in a licence in accordance with  
subsection (1) (b) changes the licensee shall, within the 14 days  
after the change, notify the Council of the change and return  
the licence to the Council for amendment.
- (4) If—
- (a) a principal auctioneer ceases to engage an employed  
auctioneer or a probationary auctioneer; or
  - (b) a real estate agent ceases to engage a real estate  
manager or a real estate sales consultant—
- the principal auctioneer or real estate agent shall—
- (c) within 14 days—notify the Council accordingly; and
  - (d) if requested to do so by the Council—provide the  
Council with details of the reason why the engagement  
was terminated—
- and the employed auctioneer, probationary auctioneer, real  
estate manager or real estate sales consultant, as the case may  
be, shall immediately deliver his or her licence to the Council  
to be held by the Council until he or she is again employed  
by a principal auctioneer or real estate agent.
- (5) Notification under subsections (3) and (4) shall be in  
writing.
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**PART 6****CONTROL OF LICENSEES*****Division 1—Disciplinary action against licensees*****Council shall take disciplinary action against licensees**

**45—**(1) The Council shall take disciplinary action against a licensee if, after holding an inquiry in accordance with Part 9, it finds that one or more of the grounds for imposing disciplinary action on a licensee have been substantiated.

(2) The grounds for imposing disciplinary action on a licensee are as follows:—

- (a) that the licence of the licensee was obtained—
  - (i) by means of a misrepresentation or a false or misleading statement; or
  - (ii) contrary to the provisions of this Act;
- (b) that the licensee has been convicted—
  - (i) of an offence against this Act; or
  - (ii) of an offence, in Tasmania or elsewhere, of a nature that, in the Council's opinion, makes it not in the public interest that the licensee should be allowed to continue the activities authorized by the licence;
- (c) that the licensee has failed to comply with a rule of conduct specified in section 48;
- (d) that a licence—
  - (i) granted to the licensee under the law of another State or Territory of Australia; and
  - (ii) similar in effect to a licence that may be granted under this Act—

has been suspended or revoked or refused renewal in circumstances which, in the Council's opinion, makes it not in the public interest that the licensee should be allowed to continue the activities authorized by the licence.

(3) A person who considers a ground exists upon which the Council is required to take disciplinary action against a licensee may report the matter to the Council.

(4) If the Council is satisfied, either following a report under subsection (3) or otherwise, that a ground may exist upon which the Council is required to take disciplinary action against a licensee the Council shall hold an inquiry under Part 9.

**Disciplinary action the Council may take against licensee**

**46—(1)** The disciplinary action the Council shall take under section 45 (1) is—

- (a) to reprimand or caution the licensee; or
- (b) to require the licensee to pay a fine, not exceeding 50 penalty units, or, if another amount is prescribed, the amount so prescribed, to the Council; or
- (c) to suspend the licensee's licence for a period, not exceeding 3 years, specified by the Council; or
- (d) to revoke the licensee's licence.

(2) If the Council takes action under subsection (1) (a), (b) or (c) it may also direct the licensee to take, or to refrain from taking, specified action within a specified period.

(3) If the Council requires the licensee to pay a fine under subsection (1) (b) it may direct that the fine be paid within a specified period.

(4) The Council may, on application made by the licensee either before or after the end of a period specified in accordance with subsection (2) or (3), extend that period.

(5) If a licensee has not—

- (a) taken or refrained from taking any action referred to in subsection (2); or
- (b) paid any fine imposed in accordance with subsection (1) (b)—

within the period specified in accordance with subsection (2) or (3), or any extension of that period, the licensee's licence is suspended until the licensee has taken or refrained from taking that action or has paid that fine.

(6) If the Council revokes a licence under subsection (1) (d) it may also—

- (a) specify a period that must elapse; or
- (b) impose a condition that must be fulfilled—

before the former licensee may apply for another licence.

(7) If a period is specified or a condition is imposed in accordance with subsection (6) the former licensee is disqualified for holding a licence of the same or any other type until the expiration of that period or the fulfillment of that condition.

(8) If the Council revokes a licence under subsection (1) (d) but does not—

- (a) specify a period that must elapse; or

(b) impose a condition that must be fulfilled—

before the former licensee may apply for the grant of a licence, the former licensee is disqualified for holding a licence (whether of the same or any other type) until the Council, on the application of the former licensee, gives its consent to the former licensee to apply for a licence.

### **Council may suspend licence pending inquiry**

**47—(1)** If the Council has—

- (a) informed a licensee that it is to hold an inquiry under Part 9 in respect of the licensee; and
- (b) served a notice on a bank or other institution under section 49 (protection of trust money) in respect of trust money held by that licensee—

it may also, by notice served on the licensee, suspend the licensee's licence.

(2) The Council may revoke a suspension of a licence under subsection (1) at any time but if it does not do so the suspension continues until the outcome of the inquiry unless, as a result of the inquiry, the Council decides to suspend or revoke the licence when the suspension continues until the end of the period referred to in section 112 (1).

### **Rules of conduct**

**48—(1)** In this section, “client” in relation to a licensee engaged by another licensee means a client of that other licensee.

(2) A licensee who does any of the following is guilty of a breach of a rule of conduct:—

- (a) contravenes or fails to comply with a provision of this Act or of a regulation made under this Act;
- (b) without a client's consent, discloses, except if required to do so by law, information relating to the affairs of the client obtained by the licensee while acting for the client;
- (c) without a client's consent uses, in a manner prejudicial to the client's interests, information obtained by the licensee while acting for the client;
- (d) fails to perform the licensee's duties to a client;

- (e) fails to carry out a client's lawful instructions;
- (f) fails to exercise due skill, care or diligence in carrying out the licensee's duties for a client;
- (g) having an interest in, or being likely to obtain an interest in, a transaction—
  - (i) entered into on behalf of a client; or
  - (ii) negotiated on behalf of a client—fails to disclose to the client the exact nature of that interest;
- (h) if, in the licensee's opinion, the consideration that a client is prepared to accept on the sale of property is less than the fair market value of that property, fails to inform the client;
- (i) fails to ascertain all pertinent facts concerning a transaction which the licensee undertakes for a client so as to avoid error or misrepresentation;
- (j) in the course of providing a service for a client, by the licensee's conduct, knowingly conveys or allows to be conveyed a false or misleading impression or knowingly makes a statement or representation that is false, misleading or likely to deceive;
- (k) accepts or demands payment from a person other than a client in respect of work undertaken or to be undertaken by the licensee, being work in respect of which the licensee has received payment, or is entitled to receive payment, from a client;
- (l) accepts or demands or negotiates or attempts to negotiate payment for work undertaken or to be undertaken for a client that is excessive;
- (m) without a client's written consent, publishes, or causes to be published, an advertisement or any other mode of public notification which indicates that the licensee is authorized to sell property at a price higher than, or lower than, the price authorized by the client;
- (n) fails to comply with, or contravenes a rule made by the Trust in accordance with section 107 (Trust may make rules);
- (o) fails to comply with a rule of conduct prescribed under section 123 (2) (e).

(3) A licensee who attempts to do an act the doing of which would be a breach of a rule of conduct set out in subsection (2) is guilty of a breach of that rule of conduct.

***Division 2—Protection of trust money, and appointment of receivers and managers***

**Protection of trust money**

**49—**(1) The Council may, if it considers it necessary to do so to protect trust money held by a principal auctioneer or real estate agent, serve on a bank where the auctioneer or agent maintains a trust account a notice, signed by the President of the Council or by an officer of the Council authorized by the Council for the purposes of this subsection, that—

- (a) gives details of the trust account; and
- (b) instructs the bank, that until the Council otherwise directs, it is not to permit any withdrawal to be made from the account without the Council's written consent.

(2) A bank shall comply with an instruction contained in a notice served on it in accordance with subsection (1).

Penalty: Fine not exceeding 50 penalty units.

**Appointment of receiver or manager**

**50—**(1) If the Council is of the opinion—

- (a) that a defalcation has been or may have been committed in relation to a trust account of a principal auctioneer or a real estate agent; or
- (b) that through—
  - (i) the mental or physical infirmity or death or disappearance of a principal auctioneer or a real estate agent; or
  - (ii) the suspension or revocation of the licence of a principal auctioneer or a real estate agent; or
  - (iii) the suspension or termination by a principal auctioneer or a real estate agent of his or her business—

any person is unable to obtain trust money held by the auctioneer or agent—

it may apply to a magistrate for the appointment of a person to be—

- (c) a receiver of the auctioneer's or agent's trust money; or

(d) the manager of the auctioneer's or agent's business—as the circumstances require.

(2) Unless a magistrate otherwise agrees, a copy of an application under subsection (1) must be served on the auctioneer or agent at least 24 hours before the hearing of the application.

(3) After hearing an application under subsection (1), a magistrate may, if the magistrate is satisfied that the Council has reasonable grounds for its opinion—

(a) appoint a receiver of the auctioneer's or agent's trust money; or

(b) appoint a person who holds a licence to carry on a business of the type carried on by the auctioneer or agent—

(i) to manage the auctioneer's or agent's business for such period as the magistrate specifies; or

(ii) to carry on that business with a view to winding it up in the interests of the licensee's clients.

(4) A magistrate may appoint the same person to be both a receiver under subsection (3) (a) and a manager under subsection (3) (b).

(5) Unless the magistrate agrees to dispense with service, a copy of the order of the magistrate appointing a receiver or manager shall, as soon as possible after the hearing, be served on the auctioneer or agent as well as on any other person to whom the magistrate directs that notice of the appointment should be given.

### **Duty of receiver**

**51**—A receiver appointed in respect of trust money held by an auctioneer or agent shall—

(a) take control of any trust money in the auctioneer's or agent's possession or under his or her control; and

(b) gather in any trust money not in the auctioneer's or agent's possession or under his or her control; and

(c) distribute that money to the people entitled to it, as and when they become entitled to it, and in the meantime, act as trustee of that money in the same capacity as that in which the auctioneer or agent was acting, and subject to the same obligations.



**Receiver may require delivery of trust money and supply of information**

**52—**(1) A receiver of an auctioneer's or agent's trust money may require the auctioneer or agent or any other person—

(a) to deliver up to the receiver—

(i) all trust money; and

(ii) all accounts and records relating to that money—

in his or her possession or under his or her control; and

(b) to give to the receiver any other information in his or her possession concerning that trust money.

(2) A receiver making a requirement under subsection (1) shall produce a copy of the order of the magistrate appointing the receiver.

(3) A person shall comply with a requirement of a receiver made in accordance with subsection (1).

Penalty: Fine not exceeding 50 penalty units.

**Dealings with trust account**

**53—**(1) A receiver appointed in respect of an auctioneer's or agent's trust money may serve on a bank where the auctioneer or agent maintains a trust account a notice, with a copy of the order of the magistrate appointing the receiver attached to it, that instructs the bank not to permit any withdrawal to be made from the trust account except by the receiver.

(2) A bank shall comply with an instruction contained in a notice served on it in accordance with subsection (1).

Penalty: Fine not exceeding 50 penalty units.

**Power to take proceedings to recover trust money**

**54—**A receiver appointed in respect of an auctioneer's or agent's trust money may take proceedings in his or her own name to recover any part of that trust money that has been stolen, embezzled, misappropriated or otherwise dealt with in breach of trust.

**Magistrate may give directions, &c., to receiver**

**55**—A magistrate may, on the application of a receiver appointed in respect of an auctioneer's or agent's trust money, authorize the receiver to do such things as the magistrate thinks necessary to carry out the objects of this Division or the administration of the trust money, and may give directions accordingly.

**Powers of manager**

**56**—(1) A manager appointed to manage an auctioneer's or agent's business may do all acts and things in relation to that business that the auctioneer or agent might lawfully have done.

(2) Without limiting the generality of subsection (1), a manager may in his or her own name or in the name of the auctioneer or agent—

- (a) charge commission and other amounts for work undertaken for clients of the auctioneer or agent in the course of the auctioneer's or agent's business; and
- (b) pay from the assets of the business any outgoings payable in connection with the business; and
- (c) administer the trust account of the auctioneer or agent and pay money from that account as and when people become entitled to it.

**Obligations of manager**

**57**—A manager appointed to manage an auctioneer's or agent's business shall, in the course of managing the business, perform all functions and carry out all duties the auctioneer or agent would have been required to perform or carry out by this Act or any other law, or by any agreement.

**Magistrate may give directions, &c., to manager**

**58**—A magistrate may, on the application of a manager appointed to manage an auctioneer's or agent's business, authorize the manager to do such things as the magistrate thinks necessary to carry out the objects of this Division or to manage the auctioneer's or agent's business, and may give directions accordingly.

**Remuneration of receivers and managers**

**59**—(1) A receiver or manager appointed under this Division shall be paid by way of remuneration and in repayment of any cost incurred by him or her—

- (a) such amount as is agreed with the Council; or
- (b) if agreement cannot be reached—such amount as is determined by a magistrate on application by either the Council, or the receiver or manager.

(2) The amount agreed or determined in accordance with subsection (1) shall be paid by the Trust from the Guarantee Fund.

(3) Any amount paid by the Trust from the Guarantee Fund in accordance with subsection (2) may be recovered by the Trust from the auctioneer or agent as a debt owing to the Trust.

**Receiver and manager to report to Council**

**60**—(1) A receiver or manager appointed under this Division shall report to the Council when required to do so by the Council.

(2) A report under subsection (1) shall contain such information as the Council requires.

**Termination, &c., of appointment of receiver or manager**

**61**—Where a receiver or manager has been appointed under this Division in respect of an auctioneer's or agent's trust money or business the Council, or the auctioneer or agent may at any time apply to a magistrate for an order that—

- (a) the appointment of the receiver or manager be terminated; or
- (b) that a different person be appointed to be the receiver or manager—

and the magistrate may, if he or she thinks fit, make such an order.

***Division 3—Obligations of licensees*****Certain licensees to have fidelity bond**

**62—(1)** A principal auctioneer or real estate agent shall lodge with the Council a fidelity bond given by an insurance company or other body approved by the Council, being a bond in the sum of—

(a) \$20 000; or

(b) if section 71 (2) applies—\$100 000—

or, if other amounts are prescribed, the amounts so prescribed.

**Penalty:** Fine not exceeding 50 penalty units.

(2) A fidelity bond referred to in subsection (1) shall be in a form approved by the Council.

(3) If the period of validity of a fidelity bond given by an insurance company or other body for the purpose of subsection (1) in respect of a principal auctioneer or real estate agent follows, without interruption, the period of validity of another bond given by the insurance company or other body in respect of that principal auctioneer or real estate agent, the total liability of the insurance company or other body under those bonds in respect of an act, default or omission is the relevant sum referred to in subsection (1).

(4) The fidelity bond in force in respect of a principal auctioneer or real estate agent at the time any act, default or omission is reported to the Council is the relevant bond in respect of any claim arising from that act, default or omission.

(5) The Council shall, on request by any person, make a fidelity bond lodged with the Council in accordance with this section available for inspection by that person, without payment, at any time during the Council's usual business hours.

(6) If licensees are carrying on business in partnership in accordance with section 29 (2) each of those licensees shall be taken to have complied with subsection (1) if there has been lodged with the Council in accordance with that subsection a fidelity bond in respect of that partnership.

(7) Any person may sue upon a fidelity bond lodged under this section for indemnity in respect of any loss covered by the bond as if that person had been the obligee of the bond.

**Licence suspended when fidelity bond not in force**

**63**—The licence of a principal auctioneer or a real estate agent is suspended during any period when the auctioneer or agent does not have lodged with the Council in accordance with section 62 (1) a fidelity bond having full force and effect.

**Conflict of interest**

**64**—(1) A principal auctioneer, a real estate agent or a person engaged by a principal auctioneer or a real estate agent, shall not acquire, directly or indirectly, an interest in property the auctioneer or agent is instructed to sell unless he or she has obtained the written approval of the owner of the property to do so.

Penalty: Fine not exceeding 50 penalty units.

(2) A principal auctioneer or a real estate agent is guilty of an offence if a person engaged by the auctioneer or agent, acquires, directly or indirectly, an interest in property the auctioneer or agent is instructed to sell if that person did not obtain the written approval of the owner of the property to do so.

Penalty: Fine not exceeding 50 penalty units.

(3) A director or similar officer of a principal auctioneer or a real estate agent that is a body corporate shall not acquire, directly or indirectly, an interest in property the auctioneer or agent is instructed to sell unless he or she has obtained the written approval of the owner of the property to do so.

Penalty: Fine not exceeding 50 penalty units.

(4) A principal auctioneer or a real estate agent that is a body corporate is guilty of an offence if a director or similar officer of the body corporate acquires, directly or indirectly, an interest in property the auctioneer or agent is instructed to sell if the director or officer did not obtain the written approval of the owner of the property to do so.

Penalty: Fine not exceeding 50 penalty units.

(5) A person is guilty of an offence under subsection (1), (2), (3) or (4) if the person acquired the interest, without the appropriate approval, either in the course of business or in a private capacity.

(6) Approval for the purposes of subsection (1), (2), (3) or (4) is not effective unless it was given by the owner of the property before negotiations for the acquisition of the interest were entered into and after a full disclosure of all the relevant facts by the person seeking the approval.

(7) Without prejudice to the generality of subsections (1), (2), (3) and (4) a person acquires an interest in property for the purposes of any of those subsections if an interest in that property is acquired by or on behalf of a relative of the person acquiring the interest.

(8) A person is not guilty of an offence under subsection (1), (2), (3) or (4) if the court is satisfied—

(a) that the person acted honestly and reasonably and ought fairly to be excused; and

(b) that the person who sold the property is in substantially as good a position as if the provisions of the subsection had been complied with.

(9) A principal auctioneer or real estate agent shall not, directly or indirectly, demand, receive or hold any valuable consideration in relation to a transaction in respect of which the auctioneer or agent, or a person engaged by the auctioneer or agent, or a director or similar officer of the auctioneer or agent has acquired an interest in property in contravention of this section.

(10) A court before which a person has been convicted of an offence under this section shall order—

(a) that person to pay to the person who sold the interest in the property any profit that was made, or is, in the court's opinion, likely to be made from the acquisition of the interest or from any related transaction; and

(b) any commission or other valuable consideration received or held by a principal auctioneer or real estate agent in contravention of subsection (9) to be paid to the person who sold the interest in the property.

### **Franchising agreements**

**65—(1)** In this section, “franchising agreement” means an agreement which permits a real estate agent to carry on a real estate business on condition that another person who is entitled to carry on a real estate business (whether in Tasmania or elsewhere) receives a consideration.

(2) A real estate agent shall not carry on a real estate business pursuant to a franchising agreement until the agent has furnished any prescribed details of the agreement to the Council.

(3) If a real estate agent carries on a real estate business pursuant to a franchising agreement—

(a) each party to the agreement is guilty of an offence under section 71 (trust money to be paid into trust account) if the real estate agent fails to comply with that section; and

(b) the parties to the agreement are each liable if criminal or fraudulent conduct in the course of the real estate business causes pecuniary or property loss to another person.

(4) A real estate agent operating a real estate business under a franchising agreement shall include the name of the franchisee on the premises from which the agent carries on business.

### **Unauthorized use of licence**

**66—**(1) A licensee shall not—

(a) transfer or lend, or attempt to transfer or lend, his or her licence to another person; or

(b) allow his or her licence to be used by another person.

(2) A person shall not—

(a) obtain the transfer of, or borrow or use; or

(b) attempt to obtain the transfer of, or attempt to borrow or use—

a licence granted to another person.

Penalty: Fine not exceeding 50 penalty units and a daily fine not exceeding 5 penalty units.

### **Display of notices**

**67—**(1) A real estate agent shall exhibit at each place endorsed on the agent's licence as a place where the agent may carry on the business of a real estate agent—

(a) a notice stating—

(i) the agent's name and the fact that the agent holds a real estate agents licence; and

- (ii) if the business is carried on under a name authorized in accordance with section 117 (2)—that name; and

(b) the licence held by the agent or a true copy of it.

(2) The notice and licence or copy licence referred to in subsection (1) shall be exhibited by the agent in a conspicuous position where they may be easily read.

(3) If a real estate agent ceases to carry on business at a place endorsed on the agent's licence the agent shall remove from that place the notice and licence or copy licence exhibited in accordance with subsection (1).

### **Requirements of advertisements**

**68**—A principal auctioneer or a real estate agent shall not publish an advertisement in connection with his or her business as an auctioneer or real estate agent unless there is stated in the advertisement—

(a) the auctioneer's or agent's name; or

(b) if the business is carried on under a name authorized in accordance with section 117 (2)—that name—

and, in the case of a real estate agent, the address of a place where the agent is authorized to carry on business as a real estate agent.

### **False advertising, &c.**

**69**—(1) A principal auctioneer or a real estate agent shall not in an advertisement or any other mode of public notification—

(a) wilfully and falsely represent to the public that any particular property is available for acquisition; or

(b) publish a false or misleading statement or representation concerning any property that is, or is stated to be, available for acquisition.

Penalty: Fine not exceeding 50 penalty units.

(2) In proceedings for an offence under subsection (1) proof of the publication of an advertisement or other mode of notification that represents a specified person to be a principal auctioneer or a real estate agent is evidence that that person—

(a) published the advertisement or mode of notification or caused it to be published; and



- (b) published or caused to be published, as part of the advertisement or notification, the statements and representations made in it.
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## **PART 7**

### **TRUST MONEY, TRUST ACCOUNTS AND RECORDS**

#### **Trust money**

**70**—Money received by or on behalf of—

- (a) a principal auctioneer from the sale of lots; or
- (b) a real estate agent on behalf of a party to negotiations in which the agent is involved; or
- (c) a real estate agent as a stakeholder—

while in the possession of, or under the control of, the auctioneer or agent, is trust money, and is held by the auctioneer or agent upon trust for the person entitled to it.

#### **Trust money to be paid into trust account**

**71**—(1) Subject to subsection (2), when a principal auctioneer or a real estate agent, or a person engaged by a principal auctioneer or real estate agent, receives trust money that person shall, unless otherwise agreed by the parties, without delay, pay the money into a trust account maintained by the auctioneer or agent.

Penalty: Fine not exceeding 50 penalty units.

(2) Subsection (1) does not apply to trust money received by a principal auctioneer or a person engaged by a principal auctioneer in respect of an auction conducted by the auctioneer or that person if—

- (a) the auction was of farm produce, livestock or wool; and
- (b) the fidelity bond lodged by the principal auctioneer under section 62 (1) is in the sum specified in section 62 (1) (b).

(3) Principal auctioneers or real estate agents carrying on business in partnership in accordance with section 29 (2) may maintain one trust account for the purpose of subsection (1).

#### **Trust account**

**72**—(1) In this Act, “trust account” means an account that—

- (a) is with a bank; and

- (b) is in the name of a person who is or has been—
    - (i) a principal auctioneer; or
    - (ii) a real estate agent; and
  - (c) contains in its title the words “trust account”.
- (2) Subsection (1) (b) includes—
- (a) a name authorized in accordance with section 117 (2); and
  - (b) where licensees are carrying on business in partnership in accordance with section 29 (2)—the name under which the partnership carries on that business.

### **Accounts regulations**

**73—**(1) Regulations made under this Act may make provision as to—

- (a) the opening and keeping of trust accounts; and
- (b) the keeping of accounts and records relating to trust money; and
- (c) the production of those accounts and records for inspection; and
- (d) the auditing of those accounts; and
- (e) the period of retention and subsequent disposal of those accounts.

(2) As to the opening and keeping of trust accounts, the regulations may, in particular—

- (a) require a principal auctioneer or a real estate agent to furnish to the Council details of the name of any bank at which, and the name in which, the auctioneer or agent has opened a trust account; and
- (b) specify the circumstances in which money other than trust money may be paid into a trust account; and
- (c) specify the occasions on which, and the people to whom, money held in a trust account may be paid out; and
- (d) require a principal auctioneer or a real estate agent to provide regular reports at intervals specified by the regulations, containing prescribed particulars of the auctioneer's or agent's trust account.

(3) As to the keeping of accounts and records relating to trust money, the regulations may, in particular—

- (a) specify where those accounts and records shall be kept; and
- (b) prescribe the particulars to be included in those accounts and records.

(4) As to the production of accounts and records of trust money for inspection, the regulations may, in particular, provide for a person authorized for the purpose by the Council—

- (a) to enter, at reasonable times, any place where those accounts and records are kept, and to inspect and take copies of them; and
- (b) to require a principal auctioneer or a real estate agent to provide to that person details of all transactions entered into by the auctioneer or agent in which the auctioneer or agent received or paid out trust money during such period as that person may specify.

(5) As to the auditing of accounts relating to trust money, the regulations may, in particular—

- (a) require such accounts to be drawn in respect of specified accounting periods, and to be audited by an auditor within a specified time after the end of each such period; and
- (b) require the auditor to report to the Council whether, in the auditor's opinion, the requirements of this Act in respect of trust money and the keeping of trust accounts have been complied with, or have been substantially complied with; and
- (c) prescribe the matters to which such a report is to relate and the circumstances in which a report of substantial compliance may be given.

## **Records of transactions**

**74—**(1) Regulations made under this Act may prescribe the records to be kept of transactions undertaken by principal auctioneers and real estate agents.

(2) Regulations made for the purpose specified in subsection (1) may, in particular—

- (a) prescribe the manner of keeping records of transactions; and
- (b) prescribe the matters to be included in the records; and
- (c) prescribe the information to be given to principal auctioneers and real estate agents, the person required to give that information, and the manner and time within which it is to be given; and

- (d) prescribe the persons to whom those records are to be produced and the manner of their production; and
- (e) provide for a person authorized for the purpose by the Council to enter, at reasonable times, any place where those records are kept, and to inspect and take copies of them; and
- (f) prescribe the period during which the records are to be retained; and
- (g) provide for the disposal of those records upon a person ceasing to carry on business as an auctioneer or real estate agent.

### **Inspection of records of banks, &c.**

**75—(1)** The Council may serve a written notice on a bank or any institution where accounts may be kept requiring the bank or institution before a date specified in the notice—

- (a) to notify the Council whether an account that contains or contained trust money is, or has been, kept at the bank or institution by a licensee or former licensee; and
  - (b) to send or deliver to the Council a written statement of any particulars relating to any account that contains or contained trust money that is, or has been, kept at the bank or institution; and
  - (c) to produce for inspection by a person authorized for the purpose by the Council a document or record in the possession of, or under the control of, the bank or institution relating to any account that contains or contained trust money that is, or has been kept, at the bank or institution; and
  - (d) to allow a person authorized for the purpose by the Council to take a copy of any document or record in the possession of, or under the control of, the bank or institution relating to any account that contains or contained trust money that is, or has been, kept at the bank or institution, or, if so required by that person, to provide that person with a copy of any such document or record.
- (2) A bank or institution shall comply with a notice served on it under subsection (1).

Penalty: Fine not exceeding 50 penalty units.

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**PART 8****AUCTIONEERS AND REAL ESTATE AGENTS GUARANTEE FUND*****Division 1—The Auctioneers and Real Estate Agents Trust*****The Auctioneers and Real Estate Agents Trust**

76—(1) The body corporate that was immediately before the commencing day in existence by virtue of section 54B of the repealed Act under the name Auctioneers' and Estate Agents' Trust continues in existence by force of this subsection as a body corporate, under and subject to the provisions of this Act, under the name Auctioneers and Real Estate Agents Trust.

(2) Schedule 2 applies to the Trust and its members.

(3) The Trust—

(a) shall have a seal; and

(b) may sue and be sued.

(4) A court or a person or body acting judicially shall take judicial notice of the imprint of the seal of the Trust on a document and shall presume that the document was duly sealed by the Trust.

**Functions of the Trust**

77—The functions of the Trust are—

(a) to administer a system that provides for a proportion of the money held in trust accounts to be deposited to produce income to be used to establish and maintain a fund to meet claims for loss suffered by people as a result of certain acts and omissions of principal auctioneers and real estate agents, their directors or people engaged by them; and

(b) to administer the fund so established; and

(c) to pay any compensation determined in accordance with Division 5 to be payable from the fund.

**General powers of the Trust**

78—Subject to this Act, the Trust has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

**Administrative accounts of Trust**

**79**—(1) Money received by the Trust in accordance with section 86 (2) (c), (d) or (e) (payment of administrative expenses of Trust) shall be paid into its general fund.

(2) Money in the general fund of the Trust shall be used—

(a) to pay the fees, allowances and expenses of members of the Trust; and

(b) to pay the remuneration of people engaged by the Trust; and

(c) to pay other administrative expenses of the Trust, including auditors' fees.

(3) The Trust may invest money in its general fund in any manner in which a trustee is authorized by law to invest trust funds.

(4) A payment shall not be made from the general fund of the Trust except in accordance with an order of the Trust.

(5) An order under subsection (4) may relate to a single payment, several payments or a series of payments.

**Protection of Trust members**

**80**—An action or proceeding, civil or criminal, does not lie against a member of the Trust, or an officer of the Trust acting as such, for anything done in good faith.

***Division 2—Trust deposit accounts*****Trust deposit accounts**

**81**—(1) The Trust shall maintain at banks or other prescribed institutions such accounts as are necessary for the purposes of this Division.

(2) An account maintained under subsection (1) shall—

(a) have in its name the words “Trust deposit account”; and

(b) a distinguishing addition.

**Licensees to make deposits in trust deposit accounts**

**82—(1)** A principal auctioneer or real estate agent shall, by the last day of each January, April, July and October, have paid from any trust account the auctioneer or agent maintains to the credit of the trust deposit account designated for the purpose by the Trust such amount as will ensure that on that day there is standing to the credit of the trust deposit account an amount equal to not less than 40% of the lowest balance in the auctioneer's or agent's trust account during the 3 months ending on the last day of the preceding month.

(2) If on the last day of any January, April, July or October the amount standing to the credit of a trust deposit account is more than 40% of the lowest balance during the 3 months ending on the last day of the preceding month in the trust account of the auctioneer or agent who would otherwise be required to deposit money in that trust deposit account in accordance with subsection (1), the Trust shall, if requested to do so by that auctioneer or agent, credit to that auctioneer's or agent's trust account from that trust deposit account any amount requested by the auctioneer or agent as will not reduce the amount standing to the credit of the trust deposit account below 40% of that lowest balance.

(3) If the lowest balance in an auctioneer's or agent's trust account during any period referred to in subsection (1) is less than \$5 000, or, if another amount is prescribed, the amount so prescribed, the auctioneer or agent—

(a) need not comply with subsection (1) at the end of that period; and

(b) shall inform the Trust accordingly.

(4) If a trust account is maintained by licensees carrying on business in partnership in accordance with section 29 (2), the trust account shall, for the purpose of this section, be taken to be the trust account of each member of the partnership and the members of the partnership are each liable to perform the obligations imposed by this section, but the discharge by one member of the partnership of his or her obligations under this section in relation to the trust account is a discharge by all the members of the partnership of their obligations in relation to that trust account.

**Meaning of "lowest balance"**

**83—**(1) Subject to subsections (4) and (5), in this Division, **"lowest balance"**, in respect of a trust account or accounts maintained by a principal auctioneer or real estate agent, means—

- (a) if the auctioneer or agent keeps one trust account—the lowest daily balance in that account; or
- (b) if the auctioneer or agent keeps more than one trust account—the lowest daily sum of the daily balances in those accounts.

(2) For the purposes of subsection (1), the amount standing to the credit of a trust account shall be taken to include an amount paid from the trust account into a trust deposit account in accordance with section 82 (1) and not repaid.

(3) If a principal auctioneer or a real estate agent—

- (a) carries on business at more than one office; and
- (b) maintains a separate trust account or accounts in respect of one or more of those offices—

each office in respect of which a separate trust account or accounts are maintained shall be regarded for the purpose of this Division as being an office in which the business of a different auctioneer or agent is being carried on.

(4) If the Trust or a principal auctioneer or a real estate agent considers that the lowest balance in relation to a trust account maintained by the auctioneer or agent during any period, as calculated in accordance with subsections (1) and (2), occurred in circumstances that render it unjust or inexpedient that it should be used for the purposes of this Division the Trust and the auctioneer or agent may agree on another sum as being the lowest balance in that account during that period.

(5) If the Trust and an auctioneer or agent are unable to agree in accordance with subsection (4), either party may apply to a judge in chambers to determine what sum should be taken to be the lowest balance.

**Interest on money in trust deposit accounts**

**84—**(1) Interest earned on money in a trust deposit account shall be paid to the Trust.



(2) A person with a claim on money deposited in the trust account has no right to any interest earned on any money deposited from that account in a trust deposit account.

### **Withdrawals by licensees**

**85—**(1) If a principal auctioneer or real estate agent requires, for the purposes of his or her trust account, money deposited by the auctioneer or agent in a trust deposit account he or she may draw on the Trust for the amount required up to the amount standing to the credit of that account.

(2) The Trust shall conduct its affairs so that it can meet on demand a withdrawal made in accordance with subsection (1).

(3) A principal auctioneer or a real estate agent—

- (a) shall not draw on the Trust unnecessarily; and
- (b) shall recoup the relevant trust deposit account at the first reasonable opportunity; and
- (c) shall give the Trust all reasonable assistance in carrying out this Part.

### ***Division 3—Auctioneers and Real Estate Agents Guarantee Fund***

#### **Auctioneers and Real Estate Agents Guarantee Fund**

**86—**(1) The Trust shall continue to maintain the fund that was, immediately before the commencing day in existence by virtue of section 54M of the repealed Act under the name Auctioneers' and Estate Agents' Guarantee Fund, which fund shall continue in existence by force of this subsection, subject to the provisions of this Act, under the name Auctioneers and Real Estate Agents Guarantee Fund.

(2) The Trust shall pay into the Guarantee Fund the balance of all money received by it—

- (a) as interest on money deposited in trust deposit accounts or otherwise invested; or
- (b) from any other source—

after payment by the Trust to itself of any amount required—

- (c) to pay the fees, allowances and expenses of members of the Trust; and

- (d) to pay the remuneration of people engaged by the Trust; and
- (e) to pay the administrative expenses of the Trust, including auditors' fees.

### **Level of Guarantee Fund**

**87**—Subject to the payment of any demands on the Guarantee Fund in accordance with this Act the Trust shall build up and maintain the Fund at such amount, exceeding \$1 000 000, as the Minister and the Trust may agree, or failing such agreement, such amount as the Minister shall determine.

### **Administration of Guarantee Fund**

**88**—(1) The Trust shall keep money in the Guarantee Fund invested in one or both of the following ways:—

- (a) in any manner in which trustees may invest money;
- (b) in such manner as the Treasurer approves.

(2) Income of the Fund shall be added to the Fund.

### **Use of surplus money in Guarantee Fund**

**89**—(1) When the amount in the Guarantee Fund is more than the amount agreed or determined in accordance with section 87 the Trust shall, if the Council and the Minister agree, pay the whole or any part of the surplus to the Council for its use.

(2) Money received by the Council in accordance with subsection (1) may be used by the Council for all or any of the following purposes:—

- (a) to pay the cost of research relating to the business of auctioneers and real estate agents;
- (b) to pay the cost of educating auctioneers and real estate agents and people engaged or to be engaged in the businesses of auctioneers and real estate agents;
- (c) for any other purpose approved by the Minister.

### Exemption from stamp duty

90—Neither the Trust nor the Council is liable to duty under the *Stamp Duties Act 1931* in respect of a payment received by it under this Part.

## *Division 4—Audit and report*

### Accounts and report

91—(1) Regulations made under this Act may make provision as to—

- (a) the keeping of accounts and records by the Trust relating to money handled by the Trust; and
- (b) the auditing of those accounts.

(2) As to the auditing of accounts, the regulations may, in particular—

- (a) require such accounts to be drawn in respect of specified accounting periods, and to be audited by an auditor within a specified time after the end of each such period; and
- (b) require the auditor to report to the Council and the Minister whether in the auditor's opinion the requirements of this Act and the regulations in respect of the handling of money by the Trust have been complied with or have been substantially complied with; and
- (c) prescribe the matters to which such a report is to relate, and the circumstance in which a report of substantial compliance may be given.

### Trust to report to Council

92—(1) The Trust shall report to the Council on the operation of section 82 (licensees to make deposits in trust deposit accounts) on each 15 February, 15 May, 15 August and 15 November.

(2) The Trust shall within one month after each 30 June and 31 December report to the Council and the Minister on the financial position of the Trust and its operation generally as at those dates.

**Secrecy**

**93**—A member of the Trust, the auditors of the Trust, or a person engaged by the Trust shall not, except in the course of duty or if required to do so by law, disclose information—

- (a) about any amount in a trust account; or
- (b) from which any amount in a trust account may be calculated or inferred.

Penalty: Fine not exceeding 20 penalty units.

***Division 5—Claims against the Guarantee Fund*****Right to claim compensation**

**94**—(1) A person may apply to the Council for compensation for—

- (a) pecuniary loss; or
- (b) loss of property—

suffered by that person arising from the criminal or fraudulent conduct—

- (c) of a principal auctioneer; or
- (d) of a real estate agent; or
- (e) of a person engaged by a principal auctioneer or a real estate agent; or
- (f) if a principal auctioneer or a real estate agent is a body corporate—of a director or a person holding a similar position in that body corporate—

in the course of the business of the auctioneer or agent.

(2) The loss in respect of which compensation may be claimed under subsection (1) is the loss, in money terms, suffered by the applicant less any amount, or the value of any property, the applicant has recovered from any person in respect of the loss.

**Council may invite claims**

**95**—(1) The Council may, by notice published in the *Gazette* and in a newspaper circulating generally in Tasmania, invite any person who may be entitled to compensation in respect of loss suffered as a result of the conduct of a person referred to in section 94, and specified in the notice, to make an application to the Council for compensation within the period specified in the notice.

(2) The period specified in a notice published in accordance with subsection (1) shall be a period of at least 3 months starting on the date of the publication of the notice in the *Gazette*.

(3) An action for damages does not lie against the Council or any other person in respect of the publication in good faith of a notice under this section.

### **Manner and time for making application for compensation**

**96—**(1) An application to the Council for compensation under section 94 shall not be acted on by the Council unless the application—

(a) is in writing; and

(b) is made within the period of 6 months after the applicant became aware of the criminal or fraudulent conduct or within such further period, not exceeding 2 years, as the Council determines.

(2) Despite the time limit in subsection (1) (b), if a notice has been published in accordance with section 95, an application made under section 94 shall be acted on by the Council if the application is made before the end of the period specified in the notice or within such further period, not exceeding 2 years, as the Council determines.

### **Applicant for compensation to provide details of claim**

**97—**An application to the Council for compensation under section 94 shall be accompanied by—

(a) full particulars, in writing, of the claim; and

(b) a statutory declaration supporting the claim.

### **Council may seek further particulars**

**98—**(1) The Council may require a person who has applied for compensation under section 94—

(a) to supply to the Council information in the possession of, or under the control of, the applicant with regard to any matter relating to the application; or

(b) to deliver to the Council any document in the possession of, or under the control of, the applicant that tends to establish—

(i) the facts of the conduct; or

(ii) the amount of the loss—

to which the application relates.

(2) The Council may retain a document delivered to it in accordance with a requirement under subsection (1) (b) for so long as it considers necessary for the purposes of this Division, but the Council shall, if required to do so by the person who produced the document, supply to that person a copy of the document certified by the President of the Council or by an officer of the Council authorized for the purpose by the Council, to be a true copy.

(3) A copy document certified in accordance with subsection (2) shall be received in all courts and by any person or body authorized to receive evidence as if it were an original document.

(4) If the Council has made a requirement under subsection (1), it need take no further action in relation to the application until the requirement is met.

### **Council to consider application**

**99—**(1) The Council shall, after considering an application for compensation made under section 94—

(a) determine whether or not there has been a loss for which compensation may be paid under this Division; and

(b) if it determines that there has been such a loss—recommend to the Trust the amount of compensation payable.

(2) Subsection (1) (a) does not require the Council to be satisfied—

(a) that any person has been convicted of an offence arising out of the conduct giving rise to the application; or

(b) that there is evidence upon which a person might be convicted of such an offence.

(3) If, after considering an application, the Council determines that no compensation may be paid under this Division it shall serve a written notice of the Council's determination on the applicant.

(4) A notice served under subsection (3) shall—

- (a) give reasons for the Council's determination; and
- (b) include details of the facts which in the Council's opinion justify the determination; and
- (c) inform the applicant—
  - (i) of the applicant's right to appeal against the Council's determination; and
  - (ii) of the period in which an appeal may be brought, and of how, and to whom, notice of appeal may be given.

### **Recovery of claims under fidelity bonds**

**100—**(1) Subject to subsection (2), the Council may, before making a determination under section 99 (1), require the applicant to institute proceedings under section 62 (7) to recover any sum mentioned in a fidelity bond.

(2) Where—

- (a) in the Council's opinion, the claim by an applicant arose in respect of an auction of a type referred to in section 71 (2) (auction of farm produce, livestock or wool); and
- (b) the principal auctioneer who conducted the auction has lodged a fidelity bond under section 62 (1) in the sum specified in section 62 (1) (b)—

the Council shall not make a determination under section 99 (1) unless the applicant has instituted proceedings in accordance with section 62 (7) to recover the sum mentioned in the fidelity bond and—

- (c) those proceedings were unsuccessful; or
- (d) the amount recovered was less than the amount claimed.

(3) If an applicant is required to institute proceedings by virtue of subsection (1) or (2) the Trust—

- (a) may take such action as it considers appropriate to aid the applicant; and

- (b) shall pay out of the Guarantee Fund the costs and other expenses necessarily incurred by the applicant in instituting the proceedings and not otherwise recoverable.

### **Trust to determine compensation payable**

**101**—The Trust shall consider a recommendation made to it by the Council under section 99 (1) (b) and shall determine the amount of the compensation to be paid to the claimant.

### **Notice of determination**

**102**—(1) As soon as practicable after the Trust has made a determination under section 101 it shall serve a written notice on the applicant stating the amount of compensation that the Trust has determined may be paid to the applicant under this Division.

(2) A notice served under subsection (1) shall—

- (a) give reasons for the Trust's determination; and
- (b) include details of the facts which in the Trust's opinion justify that determination; and
- (c) inform the applicant of the applicant's right to appeal against the Trust's determination on the amount of the compensation and of the period within which an appeal may be brought, and of how, and to whom, notice of appeal may be given.

### **Appeals**

**103**—(1) If an applicant for compensation under this Division is aggrieved by—

- (a) a determination of the Council that no compensation is payable under this Division; or
- (b) a determination of the Trust on the amount of compensation payable under this Division—

the applicant may appeal to a magistrate within the 28 days following the Council or the Trust serving notice of its determination in accordance with section 99 (3) or 102 (1).

(2) A magistrate to whom an appeal is made under subsection (1) has power to hear and determine the appeal.



(3) The Council or the Trust, as the case may be, shall supply to a magistrate hearing an appeal under this section—

- (a) a copy of the application made to the Council, the statutory declaration which accompanied the written particulars of the claim and the application, and any information or document supplied to the Council pursuant to a requirement made by it under section 98 (1); and
- (b) a statement of the reasons for the Council's or the Trust's determination; and
- (c) any other information requested by the magistrate and in the Council's or the Trust's possession or under its control.

(4) The Council is the respondent to an appeal made in respect of a determination under section 99 (1) (a) and the Trust is the respondent to an appeal made in respect of a determination under section 101.

(5) After hearing an appeal under this section a magistrate may—

- (a) affirm; or
- (b) set aside—

the determination appealed against.

(6) If a magistrate sets aside a determination the magistrate—

- (a) shall make his or her own determination; and
- (b) may direct the Trust to pay such compensation as the magistrate specifies.

(7) The Trust shall comply with a direction given under subsection (6).

(8) After hearing an appeal under this section the magistrate may make such order as to costs as the magistrate thinks fit.

(9) Costs awarded under subsection (8) may be recovered as a debt due to the person to whom they are awarded.

(10) A magistrate hearing an appeal under this section may order that the hearing or any part of it be held in private if the magistrate considers it to be in the public interest to do so.

**Payment of compensation**

**104—**(1) If it is determined or directed that compensation is payable under this Division, the Trust shall pay from the Guarantee Fund to the applicant an amount equal to the amount so determined or directed.

(2) If the aggregate of the amounts that the Trust would, but for this subsection, be required by subsection (1) to pay to applicants for compensation in respect of conduct by the same person exceeds the amount available in the Guarantee Fund, the Trust shall divide the amount available among those applicants in proportion to the amounts that would otherwise be payable to them.

(3) An amount payable under this section shall be paid—

- (a) 28 days after notice of the Trust's determination is served on the applicant in accordance with section 102 (1); or
- (b) if the applicant appeals under section 103 (1)—on the determination of the appeal.

**Subrogation**

**105—**If the Trust has paid compensation to a person under this Division the Trust is, to the extent of the payment, subrogated to the rights of that person against any other person in relation to the occurrence that gave rise to the claim for compensation.

**Licensee may not claim**

**106—**A licensee is not entitled to claim compensation under this Division arising from the criminal or fraudulent conduct of—

- (a) a person engaged by the licensee; or
- (b) if the licensee is a body corporate—a director or a person in a similar position, of the licensee; or
- (c) if the licensee is a partnership—a partner in that partnership.

*Division 6—Rules***Trust may make rules**

**107—**(1) The Trust may, with the approval of the Minister, make rules for the purpose of this Part.

(2) Rules made under subsection (1) may, in particular, regulate the procedure—

- (a) for payments into or out of trust deposit accounts; and
  - (b) for drawings on the Trust in accordance with section 85 (withdrawals by licensees).
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**PART 9****INQUIRIES****Inquiries**

**108—**(1) A meeting of the Council for the purpose of holding an inquiry shall be held at a time and place determined by the President of the Council.

(2) The Council shall give—

- (a) the relevant licensee; or
- (b) in the case of an application for a licence—the relevant applicant—

at least 14 days' written notice of the time and place fixed for the meeting of the Council at which the inquiry will be held.

(3) A notice under subsection (2) shall specify the matter to be inquired into.

(4) If the inquiry is to be held as a result of an objection made under section 40 (person may object to grant of licence), the person who made the objection shall also be given notice under subsection (2).

(5) If the inquiry is to be held as a result of a report made under section 45 (3) (person may report to the Council that a ground may exist upon which disciplinary action may be taken against a licensee), the person who made the report shall also be given notice under subsection (2).

(6) A meeting of the Council at which an inquiry is being held shall not be open to the public.

(7) If a person upon whom a notice has been served in accordance with subsection (2) fails to attend the meeting of the Council at which the inquiry is to be held, the Council may hear and determine the matter to be inquired into in the absence of that person.

(8) For the purpose of an inquiry the Council may take unsworn evidence or take evidence on oath or affirmation and for that purpose the person presiding at the meeting of the Council may administer an oath or affirmation.

(9) A meeting of the Council at which an inquiry is being held may be adjourned from time to time and from place to place.

(10) A person appearing before an inquiry may be represented by another person but shall not be represented by a legal practitioner except with the Council's approval.

(11) The Council may appoint a legal practitioner to assist it during an inquiry.

(12) A person appearing before an inquiry, a person representing such a person or a legal practitioner appointed to assist the Council may examine witnesses and address the Council.

(13) When holding an inquiry the Council is not bound by rules of evidence but may inform itself in such manner as it thinks fit.

(14) Except as provided by clause 7 of Schedule 1 (meetings of the Council) and this section, the procedure at a meeting of the Council at which an inquiry is being held is at the discretion of the Council.

(15) For the purposes of an inquiry a certificate—

(a) containing details of the conviction of, and the sentence imposed upon, a person; and

(b) signed, or purporting to be signed, by the proper officer of the court, whether in Tasmania or elsewhere, that convicted that person—

is evidence of the conviction and sentence.

(16) After holding an inquiry the Council may make such order as to costs as it thinks fit.

(17) Costs awarded under subsection (16) may be recovered as a debt due to the person to whom they are awarded.

**Witnesses**

**109**—(1) The Council may serve a written notice on a person requiring that person to attend, at a time and place specified in the notice, a meeting of the Council at which an inquiry will be held.

(2) A notice served under subsection (1) may also require a person to produce at the inquiry a document in that person's possession or under that person's control that is relevant to the subject of the inquiry.

(3) A person shall comply with a requirement of a notice referred to in subsection (1).

Penalty: Fine not exceeding 20 penalty units.

(4) A witness at an inquiry shall not—

- (a) refuse to be sworn or to make an affirmation; or
- (b) refuse to answer a question relevant to the inquiry; or
- (c) give an answer or make a statement that is false or misleading.

Penalty: Fine not exceeding 20 penalty units.

(5) A witness at an inquiry has the same protection as a witness in proceedings in the Supreme Court.

(6) The Council may require a witness to answer a question or produce a document even though the answer to the question or the contents of the document may incriminate that person.

(7) A person representing a person appearing before an inquiry or a legal practitioner assisting the Council at an inquiry has the same protection and immunity as a legal practitioner has when representing a party to proceedings before the Supreme Court.

(8) A statement or disclosure made at an inquiry is not admissible before any court or any person or body authorized to receive evidence, other than in criminal proceedings for giving false evidence at the inquiry.

**Notification of decision**

**110**—(1) As soon as practicable after the conclusion of a meeting of the Council at which an inquiry was held the Council shall serve written notice of its decision in respect of that inquiry on—

- (a) the relevant licensee or applicant; and

- (b) any person who received notice of the inquiry by virtue of section 108 (4) or (5).
- (2) A notice served under subsection (1) shall—
  - (a) give reasons for the Council's decision; and
  - (b) include the facts which in the Council's opinion justify that decision; and
  - (c) notify the person upon whom it is served—
    - (i) of that person's right to appeal against the decision; and
    - (ii) of the period within which an appeal may be brought and of how, and to whom, notice of appeal may be given.
- (3) If a notice served under subsection (1) notifies a licensee of a decision of the Council to take disciplinary action against the licensee the notice shall be served on the licensee—
  - (a) personally; or
  - (b) by certified post sent to the place specified in the licensee's licence as the place where the business of the licensee is carried on or where the licensee is engaged.
- (4) If a notice is served in accordance with subsection (3) (a) the notice is not duly served for the purpose of that subsection unless the person serving the notice lodges with the Council a declaration of due service in a form approved by the Council.

## Appeals

**111—(1)** If any person is aggrieved by the decision of the Council following an inquiry, that person may appeal to a magistrate within the 28 days following the Council giving notice of its decision in accordance with section 110.

- (2) A magistrate to whom an appeal is made under subsection (1) has power to hear and determine the appeal.
- (3) The Council shall supply to a magistrate hearing an appeal under this section—
  - (a) a record of the inquiry held by the Council; and
  - (b) a statement of the reasons for the Council's decision; and
  - (c) any other information requested by the magistrate and in the Council's possession or under its control.
- (4) The Council is the respondent to an appeal under this section.
- (5) After hearing an appeal under this section a magistrate may—
  - (a) affirm; or
  - (b) set aside—the decision of the Council.
- (6) If a magistrate sets aside the decision of the Council, the magistrate shall make his or her own decision and may order the Council—
  - (a) to take specified disciplinary action against the licensee under section 46 (Council may take disciplinary action against licensee); or
  - (b) to set aside any disciplinary action taken by the Council under that section.
- (7) The Council shall comply with an order given under subsection (6).
- (8) After hearing an appeal under this section the magistrate may make such order as to costs as the magistrate thinks fit.
- (9) Costs awarded under subsection (8) may be recovered as a debt due to the person to whom they are awarded.
- (10) A magistrate hearing an appeal under this section may order that the hearing or any part of it be held in private if the magistrate considers it to be in the public interest to do so.

**Rights of licensee pending disposal of appeal in certain cases**

**112—**(1) Subject to subsection (2), if, after an inquiry, the Council suspends or revokes a licence, that action is of no effect until—

- (a) if notice of appeal is given—the magistrate affirms the decision of the Council; or
- (b) if no notice of appeal is given—28 days after the Council gives notice of its decision in accordance with section 110.

(2) If the Council states in a notice served in accordance with section 110 (notification of decision) that the Council is satisfied that there are special grounds why a decision by the Council to suspend or revoke a licence should come into operation immediately upon service of that notice the suspension or revocation shall come into force immediately upon service of that notice.

**Magistrate may refer appeal back to Council**

**113—**(1) A magistrate hearing an appeal under section 111 may, instead of determining the appeal, direct the Council to reconsider the whole or any specified part of the matter to which the appeal relates.

(2) In giving a direction under subsection (1) the magistrate—

- (a) shall advise the Council of the magistrate's reasons for doing so; and
- (b) may give the Council directions with respect to the matter to be reconsidered and the manner in which it is to be reconsidered.

(3) The Council shall comply with a direction given to it under this section.

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**PART 10****MISCELLANEOUS PROVISIONS****Council to provide annual report and to keep registers**

**114—**(1) As soon as practical after 1 January but before 31 March in each year the Council shall give the Minister a report containing—

- (a) details of its work and activities during the previous year; and
- (b) such other information as the Minister directs.



(2) The Minister shall table the report in both Houses of Parliament within 5 sitting days of receiving it.

(3) The Council shall keep, in a form approved by the Minister, a record of each licence it grants.

(4) The records of each type of licence shall be kept in a separate register.

(5) The record of each licence shall show—

- (a) the name and address of the licensee; and
- (b) details of any matter the Council is required to endorse on the licence in accordance with section 44 (2) (form and content of licences); and
- (c) whether the licence is valid, and, if it is not valid, the reason for it ceasing to be valid; and
- (d) where the licensee is authorized by section 117 (2) to carry on business under a name other than the licensee's own—that name.

(4) The Council shall, on request by any person, make a register kept by it in accordance with this section available for inspection by that person, without payment, at any time during the Council's usual business hours.

## **Obstruction**

**115**—A person shall not obstruct, threaten or intimidate another person—

- (a) in the exercise of a power conferred by this Act; or
  - (b) in the performance of a duty imposed by this Act—
- on that other person.

Penalty: Fine not exceeding 20 penalty units.

## **Revoked licence**

**116**—(1) If the Council revokes a licence the holder of the licence shall return the licence to the Council without delay.

Penalty: Fine not exceeding 20 penalty units.

(2) If, after a licence has been returned to the Council in accordance with subsection (1), the revocation is set aside on appeal to a magistrate the Council shall return the licence to the licensee.

**Name under which principal auctioneers or real estate agents may carry on business**

**117—**(1) The holder of a real estate auctioneers licence, a general auctioneers licence or a real estate agents licence shall not carry on the business of an auctioneer or real estate agent except under a name that is—

- (a) the name of the holder of the licence; or
- (b) where the licensee is carrying on the business in partnership in accordance with section 29 (2)—the names of those partners; or
- (c) a name authorized in accordance with subsection (2).

(2) Subject to the *Business Names Act 1962*—

- (a) a real estate auctioneers licence, a general auctioneers licence or a real estate agents licence; or
- (b) where licensees are carrying on business in partnership in accordance with section 29 (2)—the licences of those licensees—

may authorize the holder of the licence or the holders of the licences, as the case may be, to carry on the business of an auctioneer or real estate agent under a name in addition to, or in substitution for, the name of the licensee or licensees.

**Improper use of title**

**118—**(1) A person, other than a principal auctioneer, shall not use in an advertisement or any other mode of public notification, whether oral or written, words that would reasonably lead to the belief that the person carries on business as an auctioneer.

(2) A person, other than a person who holds a real estate agent's licence, shall not use in an advertisement or any other mode of public notification, whether oral or written, words that would reasonably lead to the belief that the person carries on business as a real estate agent.

(3) Without limiting the effect of subsection (2), a person other than a person who holds a real estate agent's licence shall not—

- (a) place, or permit to be placed, on the building in which the agent's place of business is situated; or
- (b) place on a document as a description of the agent's business—

the words "real estate agent", "estate agent", "land agent", "property agent", "business agent" or words implying that, in the course of business, that person is prepared to carry on all or any of the activities included in the definition of "real estate agent" in section 4.

Penalty: Fine not exceeding 50 penalty units.

### **Liability of directors, &c.**

**119**—If an offence under this Act is committed by a body corporate each person who is, at the time of the commission of the offence, a director, manager, secretary or other similar officer of the body corporate or who is acting or purporting to act as such is guilty of that offence unless that person proves that—

- (a) the offence was committed without his or her consent; and
- (b) he or she exercised such diligence to prevent the commission of the offence as he or she ought to have exercised having regard to—
  - (i) the nature of his or her functions in that capacity; and
  - (ii) the circumstances in which the offence was committed.

### **Evidence of licensing**

**120**—A document signed or purporting to be signed by the President of the Council or an officer of the Council stating—

- (a) that a person was, or was not, on a date or dates, or during a period specified in the document, the holder of a licence; or

(b) that a licence was, or was not, on a date or dates, or during a period specified in the document, endorsed by the Council in a manner specified in the document—  
is evidence of the matter so stated in any court and before any person or body authorized to receive evidence.

### Service of documents

**121—**(1) Except as provided by section 110 (3) (notification of disciplinary action), a document required by this Act to be given to, served on or sent to, a licensee may be so given, served or sent by—

- (a) giving it to the licensee personally; or
- (b) by posting it to the address of the place specified in the licensee's licence as the place where the business of the licensee is carried on, or where the licensee is engaged, or by leaving it at that place.

(2) A document required by this Act to be given to, served on or sent to, a person who is not a licensee may be so given, served or sent by—

- (a) giving it to that person personally; or
- (b) posting it to the last-known place of residence or place of business of that person, or by leaving it at that place.

### Repeals and transitional provisions

**122—**(1) The *Auctioneers and Estate Agents Act 1959* is repealed.

(2) The following subsidiary legislation is rescinded:—

- (a) *Auctioneers and Estate Agents Regulations 1977* (S.R. 1977, No. 243);
- (b) *Auctioneers and Estate Agents Amendment Regulations 1978* (S.R. 1978, No. 2);
- (c) *Auctioneers and Estate Agents Amendment Regulations (No. 2) 1978* (S.R. 1978, No. 210);
- (d) *Auctioneers and Estate Agents Amendment Regulations 1979* (S.R. 1979, No. 35);
- (e) *Auctioneers and Estate Agents Amendment Regulations (No. 2) 1979* (S.R. 1979, No. 93);

- (f) *Auctioneers and Estate Agents Amendment Regulations 1981* (S.R. 1981, No. 187);
- (g) *Auctioneers and Estate Agents Amendment Regulations (No. 2) 1981* (S.R. 1981, No. 248);
- (h) *Auctioneers and Estate Agents Amendment Regulations (No. 3) 1981* (S.R. 1981, No. 279);
- (i) *Auctioneers and Estate Agents Amendment Regulations 1985* (S.R. 1985, No. 197);
- (j) *Auctioneers and Estate Agents Amendment Regulations 1986* (S.R. 1986, No. 250).

(3) The transitional provisions set out in Schedule 3 have effect.

## Regulations

**123—**(1) The Governor may make regulations for the purposes of this Act.

(2) Regulations made under this Act may, in particular, provide for—

- (a) the fees to be paid to the Council for the grant or renewal of a licence; and
- (b) the maximum commission, or rate of commission that principal auctioneers and real estate agents may receive in respect of services or transactions generally or in respect of specified types of transactions or classes of transactions; and
- (c) the exhibition or notification and manner of exhibition or notification by real estate agents of—
  - (i) their rates of commission and any other charges; and
  - (ii) any rates of commission and other charges recommended by the Real Estate Institute of Tasmania; and
- (d) the conduct of examinations by the Council for the purposes of this Act, and the payment to the Council of fees by candidates at any such examinations; and
- (e) rules of conduct to be observed by licensees; and
- (f) penalties not exceeding 50 penalty units for an offence under the regulations.

- (3) Regulations made under this Act may be made—
- (a) so as to confer a discretionary authority on the Council or the Trust; and
  - (b) so as to provide in a specified case or class of cases, for the exemption of a person or a class of persons from any of the provisions of the regulations whether unconditionally or on specified conditions and either wholly or to such an extent as is specified.
- (4) A fee that may be imposed for the grant or renewal of a licence is not limited to an extent that is related to the cost of granting or renewing that licence.
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**SCHEDULE 1**

## Section 5 (2)

**THE AUCTIONEERS AND REAL ESTATE AGENTS COUNCIL OF  
TASMANIA****Constitution of Council**

1—(1) The Council consists of a President and 7 other members.

(2) Members of the Council are appointed by the Governor by notice in the *Gazette*.

(3) The President of the Council must be a legal practitioner, with 3 of the other members being representatives of principal auctioneers, 3 being representatives of real estate agents and the remaining person being a person unconnected with any auctioneering or real estate business who shall be a representative of the general public.

(4) A person cannot be appointed to the Council as a representative of principal auctioneers unless that person is—

(a) a principal auctioneer; or

(b) a director, manager, secretary or similar officer of a body corporate that is a principal auctioneer.

(5) A person cannot be appointed to the Council as a representative of real estate agents unless that person is—

(a) the holder of a real estate agents licence; or

(b) a director, manager, secretary or similar officer of a body corporate that is the holder of a real estate agents licence; or

(c) a holder of a real estate managers licence engaged by a body corporate that is the holder of a real estate agents licence.

SCHEDULE 1—*continued*

(6) A member of the Council, other than its president, holds office for 3 years.

(7) The President of the Council holds office during the Governor's pleasure.

(8) If the office of a member of the Council, other than its president, becomes vacant before the end of that member's term of office, the Governor may appoint a person to hold office for the unexpired part of that term.

(9) A member of the Council is eligible for re-appointment.

(10) The exercise of a power or the performance of a function of the Council is not affected—

(a) by a vacancy or vacancies in the membership of the Council; or

(b) by a defect or irregularity in the appointment of a member of the Council.

**Appointment of ordinary members**

2—(1) Before the office of a member of the Council representing principal auctioneers is filled the Minister shall consult such bodies as the Minister considers represent the interests of principal auctioneers.

(2) Before the office of a member of the Council representing real estate agents is filled the Minister—

(a) shall consult the Real Estate Institute of Tasmania; and

(b) may consult such other bodies as the Minister considers represent the interests of real estate agents.

**Fees and allowances of Council members**

3—The Council shall pay its members such fees, allowances and expenses, and at such rates, as the Governor determines.

**Removal of Council members from office**

4—The Governor may terminate the appointment of a member of the Council for inability, inefficiency, misbehaviour or physical or mental incapacity.



SCHEDULE 1—*continued***Vacation of office of Council members**

5—(1) The Governor shall terminate the appointment of a member of the Council if the member—

- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors, or makes an assignment of remuneration for their benefit; or
- (b) is absent, except on leave of absence granted by the Council, from 3 consecutive meetings of the Council; or
- (c) is convicted of an offence, in Tasmania or elsewhere, of such a nature that, in the opinion of the Governor, it is inappropriate for the member to remain a member of the Council; or
- (d) ceases to be qualified to be appointed to be a member of the Council; or
- (e) fails, without reasonable excuse, to comply with an obligation under clause 8.

(2) In addition to the grounds referred to in subclause (1), the Governor shall terminate the appointment of the President of the Council if the President—

- (a) is absent, except on leave of absence granted by the Trust, from 3 consecutive meetings of the Trust; or
- (b) is convicted of an offence, in Tasmania or elsewhere, of such a nature that, in the opinion of the Governor, it is inappropriate for the President to remain a member of the Trust; or
- (c) fails, without reasonable excuse, to comply with an obligation under clause 7 of Schedule 2.

**Resignation by Council members**

6—A member of the Council may resign from office by giving the Governor written notice of resignation.

**Meetings of Council**

7—(1) The President of the Council—

- (a) shall convene such meetings of the Council as the President considers necessary for the efficient performance by the Council of its functions; and

SCHEDULE 1—*continued*

- (b) shall convene a meeting of the Council on receipt of a written request to do so signed by at least 2 other members of the Council.
- (2) At a meeting of the Council—
  - (a) the President of the Council, if present, presides; and
  - (b) if the President is absent, the members present and voting shall elect one of their number to preside, and that person shall exercise the powers and perform the duties of the President for that meeting; and
  - (c) 4 members constitute a quorum; and
  - (d) questions arising shall be decided by a majority vote of the members present and voting; and
  - (e) the member presiding has a deliberative vote and, if there is an equality of votes, also a casting vote; and
  - (f) the Council shall keep a record of its proceedings; and
  - (g) subject to this Act, the Council shall determine its own procedure.

**Council member not to act where interested**

8—(1) A member of the Council with a direct or indirect pecuniary interest in a matter being, or about to be, considered by the Council shall, as soon as possible after the relevant facts are known by the member, disclose the nature of the interest at a meeting of the Council.

(2) A disclosure under subclause (1) shall be recorded in the minutes of the meeting of the Council.

(3) A member of the Council who has made a disclosure under subclause (1) in respect of a matter shall not—

- (a) be present during any deliberation of the Council; or
  - (b) take part in any decision of the Council—
- with respect to that matter.

(4) Subclause (1) does not apply to a matter that applies or will apply in respect of licensees or a particular group of licensees generally.

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**SCHEDULE 2**

Section 76 (2)

**THE AUCTIONEERS AND REAL ESTATE AGENTS TRUST****Constitution of Trust**

1—(1) The Trust consists of the President of the Council, who is also President of the Trust, and 2 other members appointed by the Governor by notice in the *Gazette*, one of whom is to be a representative of real estate agents, with the other being a person with wide knowledge of financial matters.

(2) A person appointed to be a member of the Trust holds office for 3 years.

(3) If the office of an appointed member of the Trust becomes vacant before the end of that member's term of office, the Governor may appoint a person to hold office for the unexpired part of that term.

(4) An appointed member of the Trust is eligible for re-appointment.

(5) Subject to clause 6 (2) (e), the exercise of a power, or the performance of a function, of the Trust is not affected—

(a) by a vacancy or vacancies in the membership of the Trust; or

(b) by a defect or irregularity in the appointment of a member of the Trust.

**Fees and allowances of Trust members**

2—The Trust shall pay its members such fees, allowances and expenses, and at such rates, as the Governor determines.

**Removal of Trust member from office**

3—The Governor may terminate the appointment of an appointed member of the Trust for inability, inefficiency, misbehaviour or physical or mental incapacity.

SCHEDULE 2—*continued***Vacation of office of Trust members**

4—The Governor shall terminate the appointment of an appointed member of the Trust if the member—

- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors, or makes an assignment of remuneration for their benefit; or
- (b) is absent, except on leave of absence granted by the Trust, from 3 consecutive meetings of the Trust; or
- (c) is convicted of an offence, in Tasmania or elsewhere, of such a nature that, in the opinion of the Governor, it is inappropriate for the member to remain a member of the Trust; or
- (d) fails, without reasonable excuse, to comply with an obligation under clause 7.

**Resignation by Trust members**

5—An appointed member of the Trust may resign from office by giving the Governor written notice of resignation.

**Meetings of Trust**

6—(1) The President of the Trust—

- (a) shall convene such meetings of the Trust as the President considers necessary for the efficient performance of the functions of the Trust; and
- (b) shall convene a meeting of the Trust on receipt of a written request to do so signed by at least one other member of the Trust.

(2) At a meeting of the Trust—

- (a) the President of the Trust, if present, presides; and
- (b) if the President is absent, the members present and voting shall elect one of their number to preside, and that person shall exercise the powers and perform the duties of the President for that meeting; and
- (c) 2 members constitute a quorum; and
- (d) the member presiding has a deliberative vote; and

SCHEDULE 2—*continued*

- (e) if there is an equality of votes on a matter, that matter stands adjourned to the next meeting of the Trust at which all 3 members of the Trust are present unless a member of the Trust is excluded by virtue of clause 7, when the member presiding shall have both a deliberative vote and a casting vote; and
- (f) the Trust shall keep a record of its proceedings; and
- (g) subject to this Act, the Trust shall determine its own procedure.

**Trust member not to act where interested**

7—(1) A member of the Trust with a direct or indirect pecuniary interest in a matter being, or about to be, considered by the Trust shall, as soon as possible after the relevant facts are known by the member, disclose the nature of the interest at a meeting of the Trust.

(2) A disclosure under subclause (1) shall be recorded in the minutes of the meeting of the Trust.

(3) A member of the Trust who has made a disclosure under subclause (1) in respect of a matter shall not—

(a) be present during any deliberation of the Trust; or

(b) take part in any decision of the Trust—

with respect to that matter.

(4) Subclause (1) does not apply to a matter that applies or will apply in respect of licensees or a particular group of licensees generally.

**SCHEDULE 3**    Section 120 (3)  
**TRANSITIONAL PROVISIONS**

**PART 1**

**THE AUCTIONEERS AND REAL ESTATE AGENTS COUNCIL OF  
TASMANIA**

**Reference to the Auctioneers and Estate Agents Council of  
Tasmania**

1—A reference to the Auctioneers and Estate Agents Council of Tasmania in any law or in any contract, award or other instrument to which the Auctioneers and Estate Agents Council of Tasmania was a party, shall, except in relation to matters that occurred before the commencing day, be construed as a reference to the Auctioneers and Real Estate Agents Council.

**Property, powers, liabilities, &c.**

2—The alteration of the name and constitution of the Auctioneers and Estate Agents Council of Tasmania resulting from section 5 does not affect any property, powers, rights, liabilities or obligations of the body corporate continued in existence by that section.

**Savings of proceedings**

3—The alteration of the name and constitution of the Auctioneers and Estate Agents Council of Tasmania resulting from section 5 does not render defective any legal or other proceedings instituted or to be instituted by or against the body corporate continued in existence by that section, and any legal or other proceeding that might have been continued or commenced by or against the body corporate by the name Auctioneers and Estate Agents Council of Tasmania may be continued or commenced by or against the body corporate by the name Auctioneers and Real Estate Agents Council of Tasmania.

SCHEDULE 3—*continued***Judicial notice—Auctioneers and Estate Agents Council of Tasmania**

4—A court, or a person or body acting judicially shall take judicial notice of the imprint of the seal of the Auctioneers and Estate Agents Council of Tasmania on a document and shall presume that the document was duly sealed by the Auctioneers and Estate Agents Council of Tasmania.

**Members of Council**

5—(1) A person who was a member of the Auctioneers and Estate Agents Council of Tasmania immediately before the commencing day continues, under and subject to the provisions of this Act, as a member of the Auctioneers and Real Estate Agents Council of Tasmania as if that person had been appointed under clause 1 of Schedule 1, except that the member's term of appointment (if any) shall end on the same day as it would have ended under the repealed Act had that Act not been repealed.

(2) If, without leave of absence of the Auctioneers and Estate Agents Council of Tasmania, a member of that Council was absent from the last meeting or last 2 meetings of that Council those absences shall, for the purpose of clause 5 (1) (b) of Schedule 1, be taken to be absences, without leave of absence, from meetings of the Auctioneers and Real Estate Agents Council of Tasmania.

**Officers and employees**

6—A person who was an officer or an employee of the Auctioneers and Estate Agents Council of Tasmania immediately before the commencing day continues as an officer or employee of the Auctioneers and Real Estate Agents Council of Tasmania.

**Bank accounts**

7—A bank account maintained by the Auctioneers and Estate Agents Council of Tasmania immediately before the commencing day continues in existence as a bank account of the Auctioneers and Real Estate Agents Council of Tasmania.

SCHEDULE 3—*continued***Audit**

**8**—Any audit of the accounts and records of the Auctioneers and Real Estate Agents Council of Tasmania in respect of any period ending after the commencing day shall include an audit of any accounts and records of the Auctioneers and Estate Agents Council of Tasmania during any part of that period before that day as if they were the accounts and records of the Auctioneers and Real Estate Agents Council of Tasmania.

**Reports**

**9**—Any report of the Auctioneers and Real Estate Agents Council of Tasmania on the activities of that Council during any period ending after the commencing day shall include a report of any activities of the Auctioneers and Estate Agents Council of Tasmania during any part of that period before that day as if they were the activities of the Auctioneers and Real Estate Agents Council of Tasmania.

**Application of money**

**10**—Notwithstanding section 8, the money of the Auctioneers and Real Estate Agents Council of Tasmania may be applied in payment or discharge of any expenses, charges, obligations or liabilities that were lawfully incurred or undertaken before the commencing day by the Auctioneers and Estate Agents Council of Tasmania in or in connection with the performance of its functions or the exercise of its powers and were not paid or discharged before that day.

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SCHEDULE 3—*continued***PART 2****LICENCES AND LICENSEES****Real estate auctioneers licence**

**11—**(1) If, immediately before the commencing day, a person was the holder of a real estate auctioneer's licence and an estate agent's licence granted under the repealed Act, that person shall, on the commencing day, be taken to be the holder of—

(a) a real estate agents licence; and

(b) a real estate auctioneers licence—

granted under this Act that have specified in them the relevant matters referred to in section 44 (2).

(2) Notwithstanding section 30 (qualifications for real estate auctioneers licence) and section 35 (qualifications for real estate agents licence), a licence referred to in subclause (1) (a) or (b) is valid but, except as provided by subclause (3), shall not be renewed by the Council unless, at the time of the renewal, the holder of the licence has the appropriate qualifications prescribed by those sections.

(3) If immediately before the commencing day a body corporate, that, by virtue of subclause (1), is the holder of a real estate auctioneers licence, was an exempt company by virtue of an order made under section 37D of the repealed Act, the Council may renew the licences held by that body corporate, and those licences shall be valid although the body corporate does not comply with section 35 (2) (at least half of the directors to be holders of certain licences).

(4) The Minister may, after consulting the Council, by order, declare that subclause (3) shall cease to apply to a body corporate to which that subclause applies, and which is specified in the order, from a date specified in the order, being a date not earlier than 6 months after the making of the order.

(5) If, immediately before the commencing day, a person was the holder of a real estate auctioneer's licence granted under the repealed Act, but was not the holder of an estate agents licence granted under that Act, that person shall, on the commencing day be taken to be the holder of a real estate auctioneers licence granted under this Act that has specified in it the relevant matters referred to in section 44 (2) and which, despite section 30 (a) (i) (qualifications for real estate auctioneers licence) is valid and may from time to time be renewed.

SCHEDULE 3—*continued***General auctioneers licence**

**12—**(1) If, immediately before the commencing day, a person was the holder of a general auctioneer's licence granted under the repealed Act, that person shall, on the commencing day, be taken to be the holder of a general auctioneers licence granted under this Act that has specified in it any relevant matter referred to in section 44 (2).

(2) Notwithstanding section 31 (qualifications for general auctioneers licence), a licence referred to in subclause (1) is valid but shall not be renewed by the Council unless, at the time of renewal, the holder of the licence has the appropriate qualifications prescribed by that section.

**Employed auctioneers licence**

**13—**(1) If, immediately before the commencing day—

(a) a person was engaged by a person who held—

(i) a real estate auctioneer's licence; or

(ii) a general auctioneer's licence—

granted under the repealed Act; and

(b) the name of that first-mentioned person was endorsed on that licence in accordance with the repealed Act—

that person shall, on the commencing day, be taken to be the holder of an employed auctioneers licence granted under this Act that has specified in it, in accordance with section 44 (2) (b), the name of the principal auctioneer by whom the licensee is engaged.

(2) Notwithstanding section 32 (qualifications for an employed auctioneers licence), an employed auctioneers licence referred to in subclause (1) is valid but shall not be renewed by the Council unless, at the time of renewal, the holder of the licence has the qualifications prescribed by that section.

**Probationary auctioneers licence**

**14—**If, immediately before the commencing day a person—

(a) was employed by a person who held—

(i) a real estate auctioneer's licence; or

(ii) a general auctioneer's licence—

granted under the repealed Act; and

SCHEDULE 3—*continued*

- (b) held a probationary auctioneer's licence granted under the repealed Act—

that person shall, on the commencing day, be taken to be the holder of a probationary licence granted under this Act—

- (c) that has specified in it, in accordance with section 44 (2) (b), the name of the principal auctioneer by whom the licensee is engaged; and
- (d) that expires on the same day as the licence granted under the repealed Act would have expired if that Act had not been repealed.

**Temporary auctioneers licence**

**15**—If, immediately before the commencing day, a person held an auctioneer's temporary permit granted under the repealed Act that person shall, on the commencing day, be taken to be the holder of a temporary auctioneers licence granted under this Act that authorizes that person to conduct auctions on behalf of the same principal auctioneer, subject to the same conditions and restrictions and until the same day as that permitted by the auctioneer's temporary permit.

**Auctioneers temporary permit**

**16**—If, immediately before the commencing day, a person held an auction permit granted under section 16 of the repealed Act that permit shall, after the commencing day, have effect as if the repealed Act had not been repealed and that Act, despite its repeal, shall continue to apply in respect of that person accordingly while the permit has effect.

**Real estate agents licence**

**17**—(1) If, immediately before the commencing day, a person was the holder of an estate agent's licence granted under the repealed Act, that person shall, on the commencing day, be taken to be the holder of a real estate agents licence granted under this Act that has specified in it the relevant matters referred to in section 44 (2) (d).

SCHEDULE 3—*continued*

(2) Notwithstanding section 35 (qualifications for a real estate agents licence), a real estate agents licence referred to in subclause (1) is valid, but except as provided by subclause (3), shall not be renewed by the Council unless, at the time of the renewal, the holder of the licence has the appropriate qualifications prescribed by that section.

(3) If, immediately before the commencing day a body corporate, that by virtue of subclause (1), is the holder of a real estate agents licence, was an exempt company by virtue of an order made under section 37D of the repealed Act, the Council may renew the licence held by that body corporate, and that licence shall be valid although the body corporate does not comply with section 35 (2) (at least half of the directors to be holders of certain licences).

(4) The Minister may, after consulting the Council, by order, declare that subclause (3) shall cease to apply to a body corporate to which that subclause applies, and which is specified in the order, from a date specified in the order, being a date not earlier than 6 months after the making of the order.

(5) A body corporate may appeal to a magistrate in respect of an order made against it under subclause (4).

**Real estate managers licence**

**18**—If, immediately before the commencing day, a person was the holder of a manager's licence granted under the repealed Act, that person shall, on the commencing day, be taken to be the holder of a real estate managers licence granted under this Act that has specified in it the relevant matters referred to in section 44 (2) (e).

**Real estate sales consultants licence**

**19**—If, immediately before the commencing day, a person was the holder of a real estate salesman's licence granted under the repealed Act, that person shall, on the commencing day, be taken to be the holder of a real estate sales consultants licence granted under this Act that has specified in it the relevant matters referred to in section 44 (2) (f).

**Council to issue new licences on renewal**

**20**—When, in accordance with this Act, the Council first renews a licence a person is taken to hold by virtue of this Part the Council shall issue to that person a licence that complies with this Act.

SCHEDULE 3—*continued***Qualifications**

**21**—In sections 35, 36 and 37 a reference to a real estate agents licence, a real estate managers licence or a real estate sales consultants licence includes, respectively, a reference to an estate agent's licence, a manager's licence or a real estate salesman's licence granted under the repealed Act.

**Applications**

**22**—Where an application for a licence or a renewal of a licence was made under the repealed Act but not determined before the commencing day the application shall be dealt with and determined by the Council as if the application had been made for a licence under this Act or for the renewal of a licence granted under this Act, as the case may be, and this Act shall apply to the application accordingly.

**“Lowest balance”**

**23**—In calculating for the purpose of sections 82 and 83 the lowest balance in a trust account during any period ending after the commencing day any portion of that period before that day shall be taken to be part of that period.

**Outstanding claims**

**24**—If an action brought or a claim made under Part VIB of the repealed Act (settlement of claims against defaulting licensees), is not settled or finalized before the commencing day, that Part shall continue to apply to and in respect of that action or claim after the commencing day as if, with the necessary amendments, it were part of this Act.

**Authorized investments**

**25**—A manner of investment approved by the Treasurer under section 54F (2) of the repealed Act shall be taken to be a manner of investment approved by the Treasurer under section 88 (1) (b) of this Act.

SCHEDULE 3—*continued***Fidelity bond**

26—A fidelity bond lodged with the Auctioneers and Estate Agents Council under section 42 of the repealed Act and in force immediately before the commencing day shall have effect on and after that day as if it were a fidelity bond lodged with the Council under section 62 of this Act that complied with the requirements of that section.

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**PART 3****THE AUCTIONEERS AND ESTATE AGENTS TRUST****Reference to the Auctioneers and Estate Agents Trust**

27—A reference to the Auctioneers' and Estate Agents' Trust in any law or in any contract, award or other instrument to which the Auctioneers' and Estate Agents' Trust was a party, shall, except in relation to matters that occurred before the commencing day, be construed as a reference to the Auctioneers and Real Estate Agents Trust.

**Property, powers, liabilities, &c.**

28—The alteration of the name and constitution of the Auctioneers' and Estate Agents' Trust resulting from section 76 does not affect any property, powers, rights, liabilities or obligations of the body corporate continued in existence by that section.

**Savings of proceedings**

29—The alteration of the name and constitution of the Auctioneers' and Estate Agents' Trust resulting from section 76 does not render defective any legal or other proceedings instituted or to be instituted by or against the body corporate continued in existence by that section, and any legal or other proceeding that might have been continued or commenced by or against the body corporate by the name Auctioneers' and Estate Agents' Trust may be continued or commenced by or against the body corporate by the name Auctioneers and Real Estate Agents Trust.

SCHEDULE 3—*continued***Judicial notice—Auctioneers' and Estate Agents' Trust**

**30**—A court, or a person or body acting judicially shall take judicial notice of the imprint of the seal of the Auctioneers' and Estate Agents' Trust on a document and shall presume that the document was duly sealed by the Auctioneers' and Estate Agents' Trust.

**Members of Trust**

**31**—(1) A person who was an appointed member of the Auctioneers' and Estate Agents' Trust immediately before the commencing day continues, under and subject to the provisions of this Act, as a member of the Auctioneers and Real Estate Agents Trust as if that person had been appointed under clause 1 of Schedule 2 except that the member's term of appointment shall end on the same day as it would have ended under the repealed Act had that Act not been repealed.

(2) If, without leave of absence of the Auctioneers' and Estate Agents' Trust a member of that Trust was absent from the last meeting or last 2 meetings of that Trust those absences shall, for the purposes of clause 5 (1) (b) of Schedule 1, or, in the case of the President of the Trust, the purposes of clause 5 (2) (a) of Schedule 1, be taken to be absences, without leave of absence from meetings of the Auctioneers and Real Estate Agents Trust.

**Officers and employees**

**32**—A person who was an officer or an employee of the Auctioneers' and Estate Agents' Trust immediately before the commencing day continues as an officer or employee of the Auctioneers and Real Estate Agents Trust.

**Bank accounts**

**33**—A bank account, including a trust deposit account, maintained by the Auctioneers' and Estate Agents' Trust immediately before the commencing day continues in existence as a bank account or trust deposit account maintained by the Auctioneers and Real Estate Agents Trust.

SCHEDULE 3—*continued***Audit**

**34**—Any audit of the accounts and records of the Auctioneers and Real Estate Agents Trust in respect of any period ending after the commencing day shall include an audit of any accounts and records of the Auctioneers' and Estate Agents' Trust during any part of that period before that day as if they were the accounts and records of the Auctioneers and Real Estate Agents Trust.

**Reports**

**35**—Any report of the Auctioneers and Real Estate Agents Trust on the activities of that Trust during any period ending after the commencing day shall include a report of any activities of the Auctioneers' and Estate Agents' Trust during any part of that period before that day as if they were the activities of the Auctioneers and Real Estate Agents Trust.

**Application of money**

**36**—Notwithstanding section 79 (2), money received by the Auctioneers and Real Estate Agents Trust in accordance with section 79 (1) may be applied in payment or discharge of any expenses, charges, obligations or liabilities that were lawfully incurred or undertaken before the commencing day by the Auctioneers' and Estate Agents' Trust in or in connection with the performance of its functions or the exercise of its powers and were not paid or discharged before that day.