

Real Estate Agents Bill

Government Bill

As reported from the Justice and Electoral
Committee

Commentary

Recommendation

The Justice and Electoral Committee has examined the Real Estate Agents Bill and recommends by majority that it be passed with the amendments shown.

Introduction

This bill is intended to replace the Real Estate Agents Act 1976. It proposes a new regulatory regime for the real estate industry. The Government's intention is to modernise outdated sections of the 1976 legislation, and increase protection for consumers in real estate transactions.

This commentary covers the key amendments that we recommend to the bill. It does not cover minor or technical amendments.

Membership of the Real Estate Institute of New Zealand

We recommend the inclusion of new clause 157A to remove any uncertainty about the status of membership of the Real Estate Institute

of New Zealand (REINZ) that might arise following the repeal of the 1976 Act, which requires all licensed real estate agents to be members of the REINZ. The bill as introduced was silent on the status of current REINZ membership after the passage of the bill. We are concerned that this might cause unnecessary confusion and uncertainty. New clause 157A provides that a current member of the REINZ will continue to be a member until membership is terminated in accordance with the REINZ rules, or until the person resigns his or her membership. This clause is intended to allow a smooth transition from the 1976 Act to the regime proposed by this bill.

Statistics

Some submitters expressed concern that without compulsory membership of the REINZ statistical information on house sales would not be accessible to the public and the industry. We sought advice on this matter, and have been assured that some statistics would be available through other sources such as Quotable Value New Zealand. We also note that the bill does not restrict the REINZ's ability to collect statistical information from either its members or the industry, and we expect it to continue to do so.

Commencement

We recommend amending clause 2 to ensure that the implementation of the new regulatory regime is staggered and practicable. As introduced, the bill proposes that all provisions come into force on the day after the date on which the bill receives the Royal assent. Given the significant changes proposed, we are concerned that such a commencement date would not allow a smooth transition to the new regime. The amendments we recommend would result in the provisions establishing the Real Estate Agents Authority, making practice rules, setting fees and levies, appointing the Registrar, conferring regulation-making powers, establishing the Complaints Assessment Committees and the associated panel, and establishing the Real Estate Agents Disciplinary Tribunal coming into force the day after enactment. The other provisions of the bill would come into force one year after the date on which the bill received the Royal assent.

Purpose of the Act

We recommend amending clause 3 to include a statement that the Act is intended to promote public confidence in the performance of real estate agency work. This addition is intended to confirm and strengthen the statements in clause 3, and to reinforce the message that the bill sends to the industry and consumers about the importance of consumer protection in real estate transactions.

Definitions

We recommend several amendments to clause 4 to clarify definitions, and to define particular terms used throughout the bill, such as “salesperson”, “branch manager”, and “residential property”. These amendments are intended to assist with interpretation.

Residential property

We recommend including a definition of “residential property”, which is referred to in clauses 125, 129, and 131, to clarify that these clauses only apply to properties used or intended to be used for residential purposes. We also propose amendments to clauses 125 and 129 to ensure that agency agreements would not apply to residential properties in a continuous area that are being sold by the same vendor (subdivisions).

Real estate agency work

The definition of this term, along with the definition of “transaction”, is vital in determining the bill’s application. We recommend amending the definition to ensure that it is clear that work and services for the purpose of bringing about or effecting a real estate transaction are captured by the regulatory regime, and to ensure that bodies such as providers of financial services, businesses offering limited services to vendors selling privately, and newspapers and websites publishing real estate advertising are not captured unintentionally. We received submissions that raised concerns that sharebrokers would be captured by the bill. We do not consider that this is the case, as the sale and purchase of shares do not affect the legal ownership of land. We also recommend amendment of the definition to include work done or services provided by a branch manager or salesperson under the direction of, or on behalf of, an agent. These amendments accord

with the intention of the bill, which is to regulate those involved in the sale and purchase of land interests, rather than those involved solely in advertising or advisory services.

Transaction

We recommend amending this definition to ensure that transactions regarding all registrable interests in land are captured. As introduced, the definition omits various interests and occupation rights that are neither freehold nor leasehold. Our recommended amendments would ensure that sales and purchases of interests including licences under the Land Act 1948, units held under the flat and office owning companies regime in Part 7A of the Land Transfer Act 1952, units in many retirement villages, stratum estates under the Unit Titles Act 1972, and Crown forestry licences under the Crown Forests Assets Act 1985, would be captured. Including all registrable interests in land would provide protection for consumers over the whole range of sale and purchase transactions.

Exemptions

Clauses 7 to 13 of the bill allow the exemption of certain groups from the licensing requirements in the bill.

Lawyers and conveyancers

We recommend the inclusion of clauses 7(1)(c) and 7(3)(c)(v) to ensure that an incorporated firm within the meaning of the Lawyers and Conveyancers Act 2006 is exempt from the licensing requirements if it carries out real estate agency work. Clause 7 is intended to accord with the provisions of the Lawyers and Conveyancers Act 2006, which allows lawyers to undertake real estate agency work, but does not allow a commission to be charged for such work. However, clause 7 as introduced did not prohibit incorporated firms from being licensed and thus charging a commission. We recommend these amendments to address this omission.

We considered whether the charging of a commission should be permitted. We note that this matter was considered carefully during the passage of the Lawyers and Conveyancers Act 2006.

Exemption for Landcorp Farming Limited and granted by Authority

We recommend that clause 9 be deleted from the bill. This clause is a replication of a provision in the Real Estate Agents Act 1976, which allowed Landcorp Farming Limited to carry out any real estate agency work in respect of land of the Crown or of any State-Owned Enterprise. The subsidiary that carried out this business for Landcorp, Landcorp Property Limited, was privatised in 1994, and Landcorp has not acted on behalf of the Crown or of other State-Owned Enterprises since then. It does not envisage doing so in future, making this provision unnecessary.

We recommend the deletion of clause 10, which provides an exemption for persons operating in accordance with a permit. Permits would no longer be granted under the new regime.

Regulation-making power and recommendation by Minister

We recommend that clauses 12 and 13 be deleted and replaced with new clauses 155(aa), 155(2), and 155(3). They provide for an exemption from the requirement to be licensed, to be made by Order in Council. In addition, we recommend amendments to clarify the provisions, for example new clause 155(3)(a)(i).

Real Estate Agents Authority

The establishment of a Real Estate Agents Authority is one of the key proposals of the bill. The Authority would be responsible for administering the licensing regime, setting industry standards, complaints and disciplinary procedures, setting fees and levies, and providing information for consumers. Key clauses in relation to the proposed Authority are set out in Part 2 of the bill.

At present, regulatory responsibility for the industry is divided between the REINZ and the Real Estate Agents Licensing Board. We were told that establishing an independent body to remove direct responsibility from those involved in the industry is expected to improve consumers' confidence in the complaints and disciplinary process.

We heard from many submitters who supported the establishment of an independent body to oversee the complaints and discipline regime. Some queried the potential cost of such a body, and expressed con-

cern that these costs might be passed on to the consumer. We were advised that the regime would be funded through fees and levies. We investigated the possibility of using the interest from agents' trust funds to pay for the Authority, in a similar way to that in which interest from lawyers' trust funds can be used to fund community law centres administered by the Legal Services Agency under the Lawyers and Conveyancers Act 2006. However, we consider that the administrative burden incurred by this type of funding would be too cumbersome, and that it would not be practical to fund the Authority in this way. We asked for costings for funding the Authority by fees, and were provided with material that suggests that licence fees are unlikely to exceed \$500 per annum. Fees and levies are discussed further below.

Functions of the Authority

We recommend a number of amendments to clause 16 of the bill, which sets out the functions of the Authority.

Industry training organisation

We recommend the inclusion of new clause 16(3) to ensure that it is clear that the Authority's functions do not undermine or change the role of any industry training organisation. The Real Estate Institute of New Zealand Industry Training Organisation Limited (REINZ ITO) is currently a recognised industry training organisation. Some submitters expressed concern that the functions of the Authority would undermine its role. Organisations apply to the Minister of Education for industry training organisation status under the Industry Training Act 1992. It is not appropriate to specify an industry training organisation in legislation, as they may change over time.

Consultation

We recommend the inclusion of new clause 16(2) to allow the Authority to consult representatives of the real estate industry on any of its functions. We heard from submitters who expressed concern that representatives of the industry might not be able to participate in the new regime. We consider it appropriate that the bill provide for consultation with the industry as one of the Authority's functions.

Complaint investigation

We recommend the addition of a new subclause in clause 16 to allow the Authority to initiate investigations on its own motion. The Authority should be able to investigate any act, omission, allegation, practice, or other matter that indicates or appears to indicate misconduct or unsatisfactory conduct by a licensee. We consider this would provide desirable protection for consumers.

Appointment of Registrar

We recommend the addition of new clause 16(ab) and amendments to clause 16(b), which would mean that the Authority appointed a Registrar of the register of licensees, and to make it clear that the Authority had overall responsibility for maintaining a public register. This amendment is intended to remove any doubt about the role of the Authority and the way it reconciles with the role of the Registrar in clause 32.

Membership of the Authority

We recommend an amendment to clause 17(3) to require the responsible Minister to appoint a member of the Authority who is a lawyer with not less than seven years' legal experience to be the chairperson of the Authority.

In addition, we recommend the addition of new clause 17(3A) to require the Minister to appoint at least two members to the Authority who are licensees or former licensees. As introduced, the bill provides the Minister with the flexibility to appoint people with a broad range of skills; but it does not specify the need for industry representation, at which many submitters expressed concern. They argued that the requirement to consider the need to represent industry interests would not be sufficient to guarantee adequate industry expertise on the Authority. We agree that industry expertise on the authority would be valuable, and recommend this amendment to provide certainty and reassurance to the industry and consumers.

Consultation on practice rules

We recommend an amendment to clause 20 to allow the Authority to consult those who the Authority considers to be representative of the

real estate industry when making practice rules. This amendment is intended to clarify the consultative requirements, and to ensure that consultation would be effective for both the Authority and the industry. We recommend a similar amendment to clause 22, to allow the Minister to consult those considered to be representative of the industry when considering amendments to any practice rules. We hope that these amendments would encourage effective consultation on practice rules with industry representative bodies.

Fees and levies

Many submitters expressed concern about industry input into the prescribing of fees and levies, and concern that excessive costs could be passed on to the consumer. We have received indicative costings that suggest the proposed fees would be \$500 per year for an agent, \$350 per year for a branch manager, and \$300 per year for a salesperson. These fees would be applied to establish and run the new Authority. The Authority would be subject to the Crown Entities Act 2004 as well as the Treasury and Auditor-General guidelines, which would provide significant checks on the setting of fees and levies by the Authority. We are satisfied that the setting of fees and levies by the Authority would be transparent and subject to appropriate guidelines.

Publication of rules, fees, and levies

We recommend amending clause 23(2) and clause 27(2) to provide that notices of fees and levies and rules are regulations for the purposes of the Acts and Regulations Publication Act 1989. This amendment would ensure that any changes to fees, levies, or rules would be published in the SR (Statutory Regulations) series, ensuring transparency of process and access to fee and levy information.

Powers of intervention

Investigation of financial records and trust accounts

In the bill as introduced clause 29 provides that the Authority may take possession of and inspect an agent's financial records and documents in certain cases, and clauses 122 and 123 provide for the administration of trust accounts by the Authority and the appointment of an interim administrator in certain cases. We recommend the dele-

tion of clauses 122 and 123 and the reinstatement of the substantive focus of these provisions as new clauses 29B and 29C. We recommend including new clause 29D to allow the Authority to direct an audit of an agents trust accounts and to appoint an auditor to carry out that audit. In addition, we recommend deleting clause 29(2) and reinstating this as new clause 29A, which clearly sets out the power of the Authority to take possession of financial records. We recommend that the new clauses use consistent terminology throughout, to remove any doubt about interpretation.

These amendments are intended to ensure that the powers of the Authority in relation to administration of trust accounts and inspection and possession of records are clearly set out in the bill in a logical and readable way.

We also recommend that clause 29 be amended by the addition of new paragraphs (j) and (k), which would allow the Authority to intervene where a trust account had not been administered in accordance with the Act or regulations made under it, or an agent operated a trust account that had been administered fraudulently or recklessly. It is important that the Authority be allowed to intervene in such circumstances if consumers are to be protected adequately.

Registrar

In the bill there is provision for a Registrar to carry out specific functions, particularly in relation to licensing, as outlined in clause 32. However, it is intended that the Authority should have overall control of the licensing process. Some submitters suggested that the respective roles of the Authority and the Registrar regarding licensing were not clear enough.

As noted above, we recommend the addition of new clause 31A and new clause 16(ab) and amendments to clause 16(b) to clarify this interaction.

We also recommend amending clause 33 so that the Registrar could independently delegate only functions of an administrative nature. In the bill as introduced the Registrar could delegate any of his or her functions, duties, and powers to someone else (except the power of delegation). We consider that only the administrative functions of the Registrar should be allowed to be delegated independently. The amendment we recommend would allow other functions (such as de-

cisions about licensing and about the issuing, cancelling, and suspension of licenses) to be delegated with the approval of the Authority. This amendment is intended to provide an additional safeguard for consumers.

Entitlement to licence and renewal of licences

The bill proposes reducing the experience required for an individual to be licensed as an agent or branch manager, from the current requirement of three years' full-time experience in the real estate industry in the last five years to two years' experience within the last 10 years.

Some submitters were concerned that this lesser requirement might reduce the available expertise in the industry. They considered that recent experience is essential to ensuring that agents have good current knowledge of industry practices.

Other submitters considered, on the other hand, that the current experience thresholds are too high. They argued that such onerous requirements (three years' full time real estate work within the last five years) might prevent the introduction of new talent into the industry by presenting a significant barrier to new business ownership. We considered the experience needs of a licensee at length. We concluded that, while some industry experience is necessary, the requirements proposed by some submitters would be most likely to perpetuate a self-replicating business model in the industry. We note also that experience of itself may do little to improve standards, guarantee competence, or protect consumers.

We consider that one of the most important new elements proposed by the bill is the ability for the Authority to make practice rules requiring continuing education (clause 19). If used well, this requirement for continuing education is much more likely to ensure that licensees have a useful knowledge of good current industry practice than experience requirements alone.

Compulsory continuing education

We recommend amending clause 51 to require licensees to complete any compulsory continuing education prescribed under clause 19 in order to renew their licences. We also recommend amending clause

53 to allow the cancellation of a licence if a licensee fails to comply with practice rules on continuing education.

We recommend an amendment to clause 34(1)(e) of the bill to ensure that the experience requirement for real estate agency work is consistent with the definition in clause 4 of the bill.

Trans-Tasman Mutual Recognition Arrangement

Many submitters expressed a view that the Trans-Tasman Mutual Recognition Arrangement could be a source of problems in the real estate industry, because of the difference between industry standards and educational requirements in New Zealand and some Australian states and territories. For example, in New South Wales a person is required to undertake only a one-week course before becoming a licensed real estate agent. This is recognised in New Zealand under the Arrangement. These submitters expressed concern at what they saw as a “short-cut”, and argued that it could lower standards in the industry.

We were not given any evidence that agents or salespersons who registered under the Arrangement are more likely to have complaints made against them than those who have gained the New Zealand qualification. However, we do agree that there is potential for inconsistent standards reflecting differing requirements.

The REINZ ITO has conducted a gap analysis of the courses in New South Wales and New Zealand, and produced a list of qualifications that they consider bridge the gap. We note that the amendments we have recommended to clause 51 requiring continuing education to renew a licence could help to ensure that all licensees, including those eligible under the Arrangement, were aware of legal requirements and industry practices in New Zealand.

We urge the Government to take up the issue of monitoring occupational qualification equivalency in the upcoming review of the Trans-Tasman Mutual Recognition Arrangement.

Persons prohibited from being licensed

We recommend amending clause 35 to prohibit lawyers, conveyancing practitioners, and incorporated firms as defined by the Lawyers and Conveyancers Act 2006 from being licensed. This amendment accords with clauses 6 and 7 of the bill as introduced, which treat

lawyers and conveyancing practitioners as distinct from licensees. Lawyers and conveyancing practitioners are subject to the requirements of the Lawyers and Conveyancers Act, and we do not consider it appropriate that they also be subject to the real estate agents' licensing regime. If lawyers or conveyancing practitioners did not have practising certificates they would be eligible to apply to become licensed real estate agents or branch managers.

We recommend deleting the provision in clause 35(1)(b) that prohibits a person who has been convicted of an offence under section 26 of the Fair Trading Act 1986 in the past five years from being licensed as a real estate agent or a branch manager. Section 26 of the Fair Trading Act relates to false trade description of imported goods, and we do not consider this relevant to a person's ability to operate in the real estate industry. We also recommend deleting reference to section 25 of the Fair Trading Act, which is not relevant to this bill.

We recommend that clause 35(1)(e) be amended to provide that a person would be ineligible to be a licensed real estate agent or a branch manager if he or she had been prohibited from doing so in another country within the last five years, unless the person satisfied the Authority that he or she was a fit and proper person. This amendment would allow the Authority more flexibility in determining the suitability of prospective licensees, and seeks to ensure that people would not be unduly constrained in applying for licenses.

Licences in partnerships and companies

We recommend deleting clauses 42(2) and 42(3) and replacing them with new clause 42(1A). Clauses 42(2) and 42(3) deal with special provisions in respect of partnerships and companies. They were carried over from the 1976 Act, but the intention of this bill is to relax rules restricting real estate company ownership and directorships, so we recommend that they be replaced with a single provision requiring that at least one officer of a company must hold an agent's licence at any given time.

Vicarious liability

Clause 49 of the bill preserves the ability of agents to employ independent contractors as salespeople, as allowed under the 1976 legislation. We recommend an amendment to ensure that an agent who

employs such an independent contractor could be vicariously liable for that salesperson's actions as if they were an employee. This affords better protection to consumers than the bill as introduced.

Review of employment status

Clause 49 preserves the right of salespersons (who are exempt from the tests governing employment status in the Employment Relations Act 2000) to be engaged as independent contractors (from section 51A of the 1976 Act).

Clause 50 of the bill as introduced requires the chief executive of the Ministry of Justice to report to the Minister on the appropriateness of clause 49 not later than five years after the commencement of the Act.

The exemption in clause 49 means that some employment requirements applying to other occupations do not apply to salespeople, which has the potential to harm the industry. For example, there is no obligation for agents to pay salespeople a minimum wage, and salespeople can be engaged on commission-only contracts, so that the cost of wages does not limit the number of salespeople. With these low costs, real estate firms can take on large numbers of salespeople to raise their business profile, regardless of the general business need for staff. The ability to engage salespeople as independent contractors at low cost facilitates large numbers and high turnover of staff.

We accept that many salespeople in the industry prefer to be engaged on commission-only contracts. Many industries engage contractors on similar terms and conditions and are not exempt from the Employment Relations Act. Such occupations include insurance sales, car sales, and contractors to private industry and Government departments. However, we are concerned that in some instances real estate salespeople do not receive remuneration or entitlements that meet minimum standards in employment law. A number of submitters made this point. We consider that it would therefore be useful to retain provision for a review of clause 49, but for the sake of certainty in the industry we recommend amendments to ensure that the report to the Minister takes place after the Act has been in force for five years.

Misconduct

We recommend amending clause 72 of the bill as introduced by taking out the reference to the Fair Trading Act. We are concerned that using this legislative example might unintentionally limit the way this provision is interpreted and thus restrict its application. However, we strongly recommend that when considering the offence of misconduct the Tribunal deem contraventions of Acts such as the Fair Trading Act 1986 to be misconduct. We consider that this change will not limit protection for consumers but in fact give them more.

Complaints Assessment Committee

The bill proposes the establishment of a Complaints Assessment Committee (to be appointed by the Authority), with responsibility for investigating complaints. We were advised that the Complaints Assessment Committee would be expected to hire investigators to do most of the practical investigating, under the oversight of the Committee. The Committee would also oversee the Authority's provision of information to the public about the complaints and discipline system.

Establishment

The bill proposes the establishment of a single Committee (clause 74). We are concerned that the introduction of a new complaints and disciplinary regime might prompt a surge in the number of complaints received, possibly resulting in a bottle-neck preventing the timely addressing of complaints. The REINZ told us that it receives approximately 200 telephone complaints or enquiries each month. In addition, Consumer NZ noted that it regularly receives complaints from clients about the real estate industry. Consumer NZ said it has logged 53 complaints about the real estate industry in the past five years.

We recommend amending clause 74 to allow the Authority to appoint as many Complaints Assessment Committees as it considers necessary to deal effectively with complaints and allegations about licensees. The bill allows discretion to resolve low-level complaints without referral to the Complaints Assessment Committee.

To ensure that the Authority could appoint Committees efficiently, we recommend the inclusion of new clause 74A, which requires the

Authority to maintain a panel of members for possible appointment to Complaints Assessment Committees. When considering the appropriateness of panel members, the Authority would be required to have regard to the prospective members' knowledge of matters likely to come before a Committee. This would ensure that the Authority could appoint appropriately staffed Committees promptly.

Committees would consist of three members, one member being a member of the Authority, and two appointed from a panel maintained by the Authority under new clause 74A. One member would also have to be a lawyer of not less than seven years' legal experience. We expect that these amendments would help to avoid delays in the complaints process, and ensure that Committees were appropriately staffed.

Investigations

We recommend the inclusion of new clause 75(ab) to allow Complaints Assessment Committees to inquire into and investigate allegations against licensees on their own initiative. We consider that this amendment would provide more protection and an easier process for the consumer, as an investigation would not have to be complaint-driven.

We recommend amendments to clauses 79, 80, 86, 88, and 90 to ensure that it is clear that Committee investigations need not be in response to complaints.

Power to make orders

Clause 90 of the bill outlines the powers of a Committee to discipline a licensee. We recommend amending this clause to allow the Complaints Assessment Committee to make one or more of the orders provided for in the clause. This would make it clear that a Committee could use more than one order in a particular case, and would help to ensure that the most appropriate form of discipline could be used in any case of unsatisfactory conduct.

Real Estate Agents Disciplinary Tribunal

Membership

We recommend amending clause 97 of the bill to require that at least one member of the Tribunal must be a licensee. Having industry representation on the Tribunal should ensure that the Tribunal had sufficient experience and knowledge to carry out its functions well.

We also recommend the insertion of new clause 97(4), which would require the designation of a deputy chairperson when the Tribunal was formed. We consider this is important to minimise delays in the disciplinary regime.

Charges and orders

We recommend the addition of new clauses 107(4) and 107(5) to allow the Tribunal to make any of the orders that the Complaints Assessment Committee could have made, or to refer a matter back to the Committee where it considered a licensee had engaged in “unsatisfactory conduct”, but was not guilty of misconduct. This amendment would allow the Committee to deal appropriately with licensees who breached the rules, and allow flexibility for addressing inappropriate behaviour even where it did not amount to misconduct.

We recommend amending clause 108 by replacing the word “complainant” with “appellant”, to recognise that it might not necessarily be a complainant who made an appeal to the High Court.

Business to be identified

We recommend the addition of new clause 117A, which would require every agent to clearly exhibit a notice of their name and the fact that they are a real estate agent licensed under the Act at their place of business. This information would also need to be shown on all notices, advertisements and other publications issued by or on behalf of the agent. We consider that this would promote transparency and help to protect consumers by ensuring that information about the agent and their status as a licensee was readily available. It would also help to draw consumers’ attention to the legislation under which the industry and licensees’ behaviour is regulated. We note that this is a requirement under the current regime.

Agency agreements

Cancellation of sole agency agreements

The bill provides that an agent is not entitled to a commission or expenses without an agency agreement (clause 124). We recommend amending the definition of “sole agency agreement” in clause 4 to simplify it and to make it clear that it is an agreement (between an agent and a client) in which the client agrees not to instruct any other agent to act for the client in respect of the relevant transaction.

Clause 128 provides that a client may cancel a sole agency agreement with effect by 5 p.m. the next working day. This provision is intended to introduce a “cooling-off period”, to help to ensure that clients are not rushed into binding agreements without time to think carefully about them. Because this is such an important protection, we recommend the inclusion of new clause 128(3) to provide that parties cannot contract out of this provision. Under the amendment the provision would continue to have effect regardless of any provision in a contract to the contrary. For the same reason we recommend a similar amendment to clause 129, which would ensure that a party could not contract out of the ability to cancel a sole agency contract.

We also recommend the inclusion of new clause 128(4) to ensure that where a sole agency agreement has been cancelled, an agent could still rely upon that agreement to, for example, recover expenses or commission if work had already been carried out. This would ensure that the cancellation provisions were not misused to the detriment of agents.

Cancellation of sole agency agreements after 90 days

We recommend amending clause 129 so that it applies to agency agreements for the sale of residential property. We also recommend the inclusion of a definition of “residential property” in clause 4 and amendments to clauses 125 and 129, to make it clear that residential properties do not include multiple properties that form part of a single development.

The clause as introduced allows any party to a sole agency agreement to cancel the agreement at any time after a period of 90 days (from the date of signature) has expired. Many submitters were concerned that this provision would not be appropriate for commercial, industrial, and rural properties, or properties in a residential development.

We are satisfied that the recommended amendment takes industry realities into account, while providing consumers with protection.

We also recommend the inclusion of new clause 129(1A) to provide that parties can agree to renew the agency agreement at the end of 90 days, and that the agreement can be cancelled at the end of a further 90 days. This would allow for the situation where both parties wanted to renew an agency agreement, and it might encourage good service provision as such renewed agreements are likely only where the vendor is satisfied with the services being provided.

Copy of contract

We recommend deleting from clause 130 the list of types of documents that a licensee is required to give a copy of to the person who signed them. The addition of a reference to “contractual document” in this clause, with an associated definition in clause 4, renders the list unnecessary.

Regulations and agency agreements

We recommend deleting clauses 127(a) and 127(b), which allow regulations to be made regarding the form and required terms and conditions of agency agreements. Some submitters considered subclause (b) to be too broad; and both subclauses could be used to regulate the fees or commissions charged by agents. We do not consider it appropriate for the content of agency agreements or real estate agents’ commissions to be governed by regulation.

Approved guide

Clause 131 requires the agent or licensee to provide an approved guide to a person before giving them a copy of an offer to buy or sell property or a proposed agreement for the sale and purchase of property. We recommend amending this clause so the agent or licensee was required to provide the guide before an offer or sale and purchase agreement was signed. We consider that this would ensure that consumers were informed as to the protections available to them throughout a real estate transaction.

Disclosure of information

We recommend amending clause 133 so that a valuation of a business can be provided by an independent chartered accountant where a client is to contract with a licensee or related person. Clause 133 is carried over from the 1976 Act and compels licensees to provide a valuation to the client on whose behalf they are carrying out real estate agent work, when they or someone they know is likely to acquire the land or business.

Written disclosure

Clause 134 requires a licensee who carries out real estate agency work to provide in writing for every transaction a statement as to whether they or someone related to them may benefit financially from the transaction. We consider this might duplicate disclosures required under clauses 126 and 132 and impose an unnecessary administrative burden on agents in these circumstances. We recommend amending clause 134 by the addition of new clause 134(1A) to make it clear that when clauses 126 and 132 apply, licensees are not required to make a further disclosure under clause 134.

Auctions

We recommend amending clause 136 by replacing the words “registered auctioneer” with “licensed auctioneer”. In fact under the Auctioneers Act 1928 auctioneers are licensed, not registered.

Licensees

We recommend amending clauses 46(2) and 47(2) of the bill to exempt licensees from being required to also hold an auctioneers’ licence in order to conduct a real estate auction. We consider the bill’s licensing requirements and the disciplinary regime would be sufficient to enhance protection for consumers.

Bidders record

We recognise that a large number of submissions opposed the requirement for a Bidders Record at auctions. However, it is important that reasonable protections are afforded during the auction process. We consider that a Bidders Record would provide some guarantee

for both the vendor and purchaser that only genuine bids will be accepted.

Access to Bidders Record

We recommend deleting clauses 137(6)(a) and (b), which allow regulations to be made which confer an entitlement on a seller to inspect the Bidders Record, and the manner and form in which the Bidders Record is to be kept. We do not consider that sellers should have unlimited access to the Bidders Record. We do however consider that access should be available if it is needed for post-auction negotiations. We recommend the insertion of new clause 137(6)(ba) to allow sellers to access Bidders Record information where it is necessary to effect the transaction to which the auction relates. These amendments are intended to afford bidders reasonable privacy, whilst facilitating auction-based transactions. We consider clause 137(6)(b) unnecessary.

Bidder's identity

We recommend an amendment to clause 138 to clarify that only the bidder's identity needs to be proven through documentation, and not the bidder's address. We consider verification of an address unnecessary for the purposes of this bill.

Offences and penalties

Many submitters expressed dissatisfaction with the low penalties and fines available in the present regime. Some told us that efforts had been made to raise the available penalties for several years. We agree with submitters that the penalties and fines are inadequate and it is very important that this matter is addressed.

Clauses 142 to 153 set out the offence and penalty provisions. We recommend the deletion of clause 142, which is a general offence provision, and its replacement with the specific offence provisions contained in new clauses 150A, 150B, 150C, 151AA, 151AAB, 152A, and 152B. A general offence provision does not distinguish between serious breaches involving substantial loss or risk to consumers, and less serious breaches involving technical failures. The new offence provisions recommended make such distinctions clear.

Fines

The bill as introduced contains a general penalty provision in clause 143. We recommend amending this clause to ensure that it applies only to offences against the Act, and not to offences against regulations. In addition, we recommend amending clause 150 to provide that the maximum fine for failing to notify the Registrar of a change in circumstances would be \$10,000 for individuals and \$50,000 for a company. We also recommend that these penalties be applied to the new offence in new clause 150C of failing to provide information or documents. These fines recognise the nature of the offences, and are comparable with other disciplinary regimes. We note that our proposed maximum fines for an individual are comparable with the Immigrations Advisors Licensing Act 2007.

Civil remedies

We recommend the inclusion of new clause 154A, which replicates provisions of the 1976 Act. This clause provides that nothing in the Act will affect any civil remedy that any person may have against a real estate agent, salesperson, or branch manager in respect of any matter. We consider civil remedies to be an important consumer protection, and it should be clear that they remain available.

Regulations

We recommend a number of amendments to clause 155, which contains the bulk of the regulation-making powers proposed in the bill as introduced. We recommend adding new clause 155(fa), which would allow regulations to be made about the conduct of proceedings before the Disciplinary Tribunal. New clauses 155(aa), 155(2), and 155(3) would replace deleted clauses 12 and 13.

Audit

We recommend deleting clause 155(g), which allows regulations to be made for the auditing of trust accounts, and the insertion of new clause 155(ga) which is more specific than the original clause and provides more detail about the content of regulations regarding audit. The proposed amendment would offer more protection for consumers by ensuring that regulations made in respect of audit functions covered the necessary matters.

Prescribing offences

We recommend amending clause 155(k) to make it clear that offences prescribed by regulation must relate only to contravention of or non-compliance with regulations. In addition, we recommend an amendment to ensure that the maximum penalties available for offences against regulations are clear. In the case of an individual, the maximum penalty should not be permitted to exceed \$25,000 and, in the case of a company, \$50,000.

Compensation

We recommend deleting clause 155(m), and amending clause 107(2)(g) to specify that the maximum amount of compensation that could be awarded by the Tribunal would be \$100,000. The bill as introduced allowed regulations to be made under clause 155(m) prescribing the maximum amount of compensation that could be awarded. We sought the advice of the Regulations Review Committee on the appropriateness of allowing such a matter to be set by regulation, and upon their recommendation suggest including the maximum compensation that the Tribunal can award in the bill itself.

Transition of agency agreements

We recommend the inclusion of new clause 167A to make it clear that agency agreements entered into prior to the Act coming into force remain subject to section 62 of the Real Estate Agents Act 1976. The suggested amendment should help clarify which Act an agency agreement is subject to, and minimise transitional issues in this regard.

Property managers

We examined the possibility of amending the bill to apply to property managers, but such an amendment would be outside the scope of the bill as introduced. The focus of the bill as introduced is the regulation of behaviour regarding the sale and purchase of land interests. The bill does not propose the regulation of any property management activities (such as leasing, letting, collection of rental or collection of payment for other property management services). We recognise that, whilst many real estate agents undertake a property manage-

ment function, this does not make property management a real estate transaction.

We agree with submitters who raised concerns about the lack of regulation of property managers and property management, and the lack of protection for consumers dealing with them. We consider it imperative that immediate action be taken to create an appropriate regulatory regime for property management activities. We do not consider that the provisions for property management in the Residential Tenancies Act 1986, which relate primarily to relationships between parties such as a tenants, owners, and property managers, are sufficient to ensure that consumers are protected in property management transactions. We would expect an appropriate regime to include, at a minimum, trust account and audit requirements, and provision for an independent disciplinary body.

We heard from the REINZ that the last claim against the Real Estate Agents Fidelity Guarantee Fund related to the misappropriation of trust account funds by a property management company. The claim against the fund was for a total of \$67,154.65. We are concerned that there would only be criminal or civil remedies for any misappropriation of funds by property managers, and no other disciplinary regime, if this bill comes into force.

We have been advised that the Government intends to review the regulation of property management. We expect that this review and any legislative proposal that may eventuate will be coordinated so that they coincide with the implementation of this bill, ensuring that some measures in relation to property managers are in place before the entirety of this bill is brought into force.

New Zealand National Party minority view

The National Party opposes the Real Estate Agents Bill.

National agrees that a new independent authority (with industry representation) is required to give consumers confidence that there is effective oversight of this industry.

National supports timely reform of the real estate industry but thinks this bill is inadequate.

A common theme of the majority of submitters was the concern that property management is not included in the bill. We heard that the last claims on the Fidelity Fund were in relation to property manage-

ment and that about one in five complaints relates to property management. Property management is often an integral part of real estate work and National believes that if the real objective of the bill is consumer protection then property management should be included.

National is also concerned:

about the uncertainty created by the five year review of the employment status of real estate agents;

about the inadequacy of the transitional provisions (the Lawyers and Conveyancers Act 2006 has a two year transitional period, as opposed to the one year proposed in this Bill);

that auctioneers remain excluded from the legislation. The new rules relating to auctions are impractical;

that the auction Bidders Record is impractical;

that the bureaucracy created by this bill will result in the consumers paying more in real estate fees to meet the costs of such bureaucracy; and

that the requisite experience for a real estate agent to hold a licence (two years experience within the preceding ten years) is insufficient. National agrees with the majority of the submitters that three years out of five years would be more appropriate.

National supports workable, consumer protection legislation for the real estate industry. This bill does not achieve this objective.

Appendix

Committee process

The Real Estate Agents Bill was referred to the committee on 11 December 2007. The closing date for submissions was 29 February 2008. We received and considered 1,328 submissions from interested groups and individuals. We heard 767 submissions, which included holding a hearing in Auckland.

We received advice from the Ministry of Justice. The Regulations Review Committee reported to the committee on the powers contained in clause 155(m).

Committee membership

Lynne Pillay (Chairperson)

Chris Auchinvole

Charles Chauvel

Christopher Finlayson

Hone Harawira (non-voting member)

Ann Hartley (until 29 February 2008)

Nándor Tánczos

Nicky Wagner

Louisa Wall (from 5 March 2008)

Real Estate Agents Bill

Key to symbols used in reprinted bill

As reported from a select committee

text inserted by a majority

~~text deleted by a majority~~

Hon Clayton Cosgrove

Real Estate Agents Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Real Estate Agents Act **2007**.

2 Commencement

~~This Act comes into force on the day after the date on which it receives the Royal assent.~~ 5

(1) Sections 14 to 28, 31A, 74, 74A, 97, and 155 of this Act come into force on the day after the date on which it receives the Royal assent.

(2) The rest of this Act comes into force on the day that is 1 year after the date it receives the Royal assent. 10

Part 1

Interpretation and application

3 Purpose of Act

(1) The purpose of this Act is to promote and protect the interests of consumers in respect of transactions that relate to real estate and to promote public confidence in the performance of real estate agency work. 15

(2) The Act achieves its purpose by—

- (a) regulating agents, branch managers, and salespersons: 20
- (b) raising industry standards:
- (c) providing accountability through a disciplinary process that is independent, transparent, and effective.

4 Interpretation

In this Act, unless the context otherwise requires,— 25

agency agreement means an agreement under which an agent is authorised to undertake real estate agency work for a client in respect of a transaction

agent means a real estate agent ~~licensed~~ who holds, or is deemed to hold, a current licence as an agent under this Act 30

Authority means the Real Estate Agents Authority established by **section 14**

branch manager means a person who holds, or is deemed to hold, a current licence as a branch manager under this Act

client means the person ~~for whom~~ on whose behalf an agent carries out real estate agency work

company means a company within the meaning of the Companies Act 1993, and includes a building society within the meaning of the Building Societies Act 1965, and a limited partnership registered under the Limited Partnerships Act 2008 5

contractual document, in relation to a transaction, means a document that contains or records an agreement or a proposed agreement to enter into or effect the transaction, and includes a document that contains or records an offer that, on its acceptance, gives rise to such an agreement 10

commission means remuneration by way of commission, fee, gain, or reward for services provided by an agent ~~under an agency agreement~~ in respect of a transaction 15

Complaints Assessment Committee or Committee means ~~the~~ a Complaints Assessment Committee established under **section 74**

crime involving dishonesty has the same meaning as in section 2(1) of the Crimes Act 1961 20

Disciplinary Tribunal or Tribunal means the Disciplinary Tribunal established under **section 97**

expenses means any sum or reimbursement for expenses or charges incurred in connection with services provided by an agent in the capacity of agent 25

former licensee means a person who was, but is no longer, a licensee, and includes a person who was a real estate agent, branch manager, or salesperson under the Real Estate Agents Act 1976 30

land includes all estates and interests, whether freehold or chattel, in real property, and includes any building and any part of a building, and any licence that is registrable under the Land Transfer Act 1952, and any occupation right agreement within the meaning of the Retirement Villages Act 2003; and, in relation to any transaction relating to land that also relates to any goods, chattels, or other property, also includes those goods or chattels and that other property 35

lawyer has the meaning given to it by section 6 of the Lawyers and Conveyancers Act 2006

licence means a licence granted under this Act to act as an agent, branch manager, or salesperson

licensee means a person licensed under this Act as an agent, branch manager, or salesperson 5

Minister means the Minister who is for the time being responsible for the administration of this Act

officer, in relation to a licensee that is a company,—

(a) means every director, manager, or secretary of the company who, on behalf and in the name of the company, carries on the company's business as a real estate agent; and 10

(b) includes any person, however designated, who is responsible for the management of the company and any person who is responsible for the management of any branch of the company, or (in relation to any company that carries on any other business in addition to its business as a real estate agent) the person responsible for the management of the company's real estate agency work 15 20

real estate agency work or agency work—

(a) means any work done or services provided, in trade, ~~for or~~ on behalf of another person ~~in respect of~~ for the purpose of bringing about a transaction; and

(b) includes any work done by a branch manager or salesperson under the direction of, or on behalf of an agent to enable ~~an~~ the agent to do the work or provide the services described in paragraph (a); but 25

(c) does not include—

(i) the provision of general advice or materials to assist owners to locate and negotiate with potential buyers; or 30

(ii) the publication of newspapers, journals, magazines, or websites that include advertisements for the sale or other disposal of any land or business; 35

or
(iii) the broadcasting of television or radio programmes that include advertisements for the sale or other disposal of any land or business; or

(iv) the lending of money on mortgage or otherwise;

or

(v) the provision of investment advice; or

register means the register required to be established by the Registrar under **section 62**

5

residential property means any property used, or intended to be used, exclusively or principally for residential purposes

salesperson means a person who holds, or is deemed to hold, a current licence as a salesperson under this Act

sole agency agreement means an agreement between an agent and a client in which the client agrees ~~to either or both of the following:~~ not to instruct any other agent to act for the client in respect of the transaction to which the agreement relates

10

(a) ~~not to instruct any other agent to act for the client in respect of the transaction to which the agreement relates:~~

15

(b) ~~to pay a commission or other reward to the agent in circumstances in which the transaction is not effected by the agent~~

transaction means ~~anything done to bring about~~ any 1 or more of the following:

20

(a) the sale, purchase, or other disposal or acquisition of a freehold estate or interest in land:

(b) the grant, sale, purchase, or other disposal or acquisition of a leasehold estate or interest in land (other than a tenancy to which the Residential Tenancies Act 1986 applies):

25

(ba) the grant, sale, purchase, or other disposal or acquisition of a licence that is registrable under the Land Transfer Act 1952:

(bb) the grant, sale, purchase, or other disposal or acquisition of an occupation right agreement within the meaning of the Retirement Villages Act 2003:

30

(c) the sale, purchase, or other disposal or acquisition of any business (either with or without any interest in land).

35

5 Act binds the Crown

This Act binds the Crown.

6 Persons may not carry out real estate agency work unless licensed or exempt

- (1) A person must not carry out any real estate agency work unless the person—
- (a) is licensed under this Act and acts within the scope of that licence; or
 - (b) is exempt from the licensing requirement under any of **sections 7 to 4211** or under another enactment.
- (2) No person may hold himself or herself out to the public as ready to carry out any agency work if that person is not licensed under this Act or exempt from the licensing requirement under any of **sections 7 to 4211** or under another enactment.
- (3) For the purposes of this section, it is immaterial ~~as to~~ whether or not a person carries out any agency work as a business in its own right or as part of, or in connection with, any other business.

Compare: 1976 No 9 s 3(1)

7 Exemption for lawyers and conveyancers

- (1) This section applies to any person who is—
- (a) a lawyer within the meaning of the Lawyers and Conveyancers Act 2006 or a person acting under the supervision of such a lawyer; or
 - (b) a conveyancing practitioner within the meaning of the Lawyers and Conveyancers Act 2006 or a person acting under the supervision of such a conveyancing practitioner; or
 - (c) an incorporated firm within the meaning of the Lawyers and Conveyancers Act 2006.
- (2) A person to whom this section applies may carry out any real estate agency work but, in respect of the sale or other disposal of any land or business, is not entitled to be remunerated for that work by commission in addition to, or instead of, the professional charges of that lawyer or conveyancing practitioner.
- (3) When any person to whom this section applies carries out any real estate agency work, that person—
- (a) is deemed not to be doing so as an agent; and
 - (b) is not subject to any of the provisions of this Act; but

- (c) is deemed to be acting in his or her capacity—
- (i) as a lawyer within the meaning of the Lawyers and Conveyancers Act 2006; or
 - (ii) as a person acting under the supervision of a lawyer within the meaning of the Lawyers and Conveyancers Act 2006; or
 - (iii) as a conveyancing practitioner within the meaning of the Lawyers and Conveyancers Act 2006; or
 - (iv) as a person acting under the supervision of a conveyancing practitioner within the meaning of the Lawyer and Conveyancers Act 2006; or
 - (v) as an incorporated firm within the meaning of the Lawyers and Conveyancers Act 2006; and
- (d) is subject accordingly to the provisions of the Lawyers and Conveyancers Act 2006.

Compare: 1976 No 9 s 3(7), (8)

8 Exemption for licensed auctioneers

A person who is licensed as an auctioneer under the Auctioneers Act 1928 may sell or offer to sell any land by auction. 20

9 Exemption for Landcorp Farming Limited

~~Landcorp Farming Limited or any of its employees may carry out any real estate agency work in respect of any land of the Crown or any land of a State enterprise within the meaning of the State-Owned Enterprises Act 1986.~~ 25

Compare: 1976 No 9 s 3(2)(d)

10 Exemption granted by Authority

~~A person may, in accordance with a permit granted by the Authority, carry out real estate agency work involving a specified transaction, or a specified series of transactions.~~ 30

Compare: 1976 No 9 s 3(2)(e)

11 Exemption under regulations

A person who is exempted ~~under an Order in Council~~ by a regulation made under section 42 155(1)(aa) may, in accordance with that ~~order~~ regulation, carry out real estate agency work. 35

12 Exemptions granted by Order in Council

- (1) ~~The Governor-General may, by Order in Council, exempt any person or class of persons from the requirement to be licensed under this Act.~~
- (2) ~~An Order in Council under **subsection (1)** may be made only on the recommendation of the Minister given in accordance with **section 13**:~~ 5
- (3) ~~An exemption under **subsection (1)** may be subject to any terms and conditions specified in the regulations.~~
- (4) ~~The Governor-General may, by Order in Council, vary or revoke an Order in Council made under **subsection (1)**:~~ 10

13 Recommendation by Minister

The Minister must not make a recommendation under **section 12(2)** unless the Minister—

- (a) is satisfied that— 15
- (i) there is little consumer benefit to be gained by requiring the persons proposed to be exempted from the requirement to be licensed; and
 - (ii) there are sufficient processes in place to ensure competent and ethical conduct on the part of those persons; and 20
- (b) has consulted with representatives of organisations that, in the opinion of the Minister, have an interest in the proposed exemption.

Part 2 25**Real Estate Agents Authority***Establishment of Authority***14 Authority established**

This section establishes the Real Estate Agents Authority.

Nature of Authority 30**15 Authority is a Crown entity**

- (1) The Authority is a Crown entity for the purposes of section 7 of the Crown Entities Act 2004.

- (2) The Crown Entities Act 2004 applies to the Authority except to the extent that this Act expressly provides otherwise.

Authority's functions

16 Authority's functions

- (1) The functions of the Authority are to— 5
- (a) administer the licensing regime for agents, branch managers, and salespeople, including the granting and renewal of licence applications; and
 - (ab) appoint a Registrar of the register of licensees; and
 - (b) ~~establish, keep, and maintain the register and carry out any other functions in relation to the register; and~~ ensure that the register of licensees is established, kept, and maintained; and 10
 - (c) develop practice rules for the Minister's approval and maintain these rules for licensees, including ethical responsibilities; and 15
 - (d) set fees and levies; and
 - (e) develop consumer information on matters relating to real estate transactions, including approved guides on agency agreements and sale and purchase agreements; and 20
 - (f) develop and provide consumer information on matters relating to the provision of real estate services, including providing the public with information on how to make a complaint; and 25
 - (g) set professional standards for agents; and
 - (h) investigate and initiate proceedings in relation to offences under this Act and any other enactment; and
 - (ha) investigate of its own motion any act, omission, allegation, practice, or other matter which indicates or appears to indicate unsatisfactory conduct or misconduct on the part of a licensee; and 30
 - (i) provide procedures for the lodging of complaints; and
 - (j) receive complaints relating to the conduct of licensees; and 35
 - (k) carry out any other function that the Minister may direct the Authority to perform in accordance with section 112 of the Crown Entities Act 2004; and

- (1) carry out any other functions that may be conferred on the Authority by this Act or any other enactment.
- (2) The Authority may, where it considers it appropriate to do so, consult with representatives of the real estate industry about any matter that relates to the functions of the Authority. 5
- (3) For the avoidance of doubt, nothing in **subsection (1)** affects the role of an industry training organisation for the time being recognised under the Industry Training Act 1992 as an industry training organisation for the real estate industry.

Membership of Authority 10

17 Membership of Authority

- (1) The Authority consists of no more than 7 members.
- (2) Members of the Authority are the board for the purposes of the Crown Entities Act 2004.
- (3) The Minister must appoint 1 member to be the chairperson of the board and that member must be a ~~barrister and solicitor~~ lawyer of not less than 7 years' legal experience. 15
- (3A) The Minister must appoint at least 2 members who are licensees or former licensees.
- (4) In addition to the criteria for appointments set out in section 29 of the Crown Entities Act 2004, the Minister must, when making any appointment, consider the need for the Authority to represent the views of a broad range of interests, including consumer and industry interests. 20

Practice rules 25

18 Code of professional conduct and client care

- (1) The Authority may, by notice in the *Gazette*, make any practice rules to enable it to discharge the duty imposed on it by **subsection (2)**.
- (2) The Authority must have rules that include or provide for a code of professional conduct and client care, which will be a reference point for discipline and which will focus on, but need not be limited to, the duties of agents to their clients. 30

19 Continuing education

The Authority may, by notice in the *Gazette*, make practice rules that—

- (a) provide for the times or frequencies at which continuing education must be undertaken and the topics to be addressed: 5
- (b) require that particular continuing education be undertaken, or (in addition or as an alternative) require that the continuing education comply with specified requirements: 10
- (c) exempt, or provide for the exemption of, any agent, branch manager, or salesperson from all or any practice rules made under **paragraph (b)**.

20 Consultation in relation to practice rules

Practice rules are made by the Authority with the approval of the Minister and after consultation with— 15

- (a) agents, branch managers, and salespersons that the Authority considers to be representative of the real estate industry; and
- (b) any other persons or groups that the Minister may direct. 20

21 Criteria in relation to approval of practice rules by Minister

The Minister must, in deciding whether to approve any practice rules, have regard, among other things, to—

- (a) the principle that it may be necessary or expedient to impose duties or restrictions on agents, branch managers, or salespersons in order to protect the interests of consumers: 25
- (b) the principle that the burden of a duty or restriction should be proportionate to the benefits that are expected to result from the imposition of the duty or restriction: 30
- (c) the consistency of the rules with New Zealand's international obligations:
- (d) the provisions of this Act and all rights and obligations of agents under the law. 35

22 Power of Minister to amend practice rules

- (1) If the Minister considers any practice rules to be deficient in any respect, the Minister may, subject to **subsections (2) and (3)**, make any amendments to those rules that are necessary to remedy the deficiency. 5
- (2) Amendments made under **subsection (1)** to practice rules may relate only to matters in respect of which practice rules may be made.
- (3) The Minister, in deciding whether to make amendments under **subsection (1)** to any practice rules,— 10
- (a) must consult the Authority; and
- (ab) may consult with agents, branch managers, and salespersons that the Minister considers to be representative of the real estate industry; and
- (b) may consult with any other persons or groups that the Minister thinks fit. 15

23 Further provisions relating to practice rules

- (1) Every notice under **section 18 or 19** comes into force on a date specified in the notice, being not less than 28 days after the date of publication of the notice in the *Gazette*. 20
- (2) Every notice under **section 18 or 19** is a regulation for the purposes of the Regulations (Disallowance) Act 1989; ~~but is not a regulation~~ and for the purposes of the Acts and Regulations Publication Act 1989.
- (3) The Authority must ensure that an up-to-date version of each notice that the Authority has published under either of **sections 18 or 19** is— 25
- (a) available on the Authority's website; and
- (b) available at the office of the Authority during business hours, so that members of the public may— 30
- (i) inspect the notice free of charge; or
- (ii) obtain a photocopy of the notice for a reasonable fee.

*Fees and levies***24 Authority may prescribe fees**

- (1) The Authority may from time to time, by notice in the *Gazette*, prescribe the fees payable for any action that a person wishes the Registrar to perform under this Act. 5
- (2) Different fees may be prescribed under this section for different kinds of action and for different classes of person, depending on the kind of licence that they have, or wish to obtain or renew.
- (3) Any notice prescribing any fee under this section may exempt any class or classes of person from liability to pay any such fee, and may provide for the waiver or refund of any such fee. 10

25 Operational levy

- (1) The Authority may from time to time, by notice in the *Gazette*, impose on every licensee an operational levy of any amount that the Authority thinks fit for the purpose of funding the costs arising from any or all of the following: 15
- (a) the performance of the functions of the Authority:
 - (b) the performance of the functions of the Registrar:
 - (c) any investigation by, or proceeding of, ~~the~~ a Complaints Assessment Committee. 20
- (2) Any notice imposing any levy under this section may do either or both of the following:
- (a) prescribe different amounts as the levy payable by different classes of licensee: 25
 - (b) exempt from liability to pay that levy, in whole or in part, any class or classes of licensee, and may provide for the waiver or refund of the whole or part of that levy.

26 Disciplinary levy

- (1) The Authority may from time to time, by notice in the *Gazette*, impose on every licensee a disciplinary levy of any amount that the Authority thinks fit for the purpose of funding the costs arising from any proceeding of the Tribunal. 30
- (2) Any notice imposing any levy under this section may do either or both of the following: 35

- (a) prescribe different amounts as the levy, in whole or in part, payable by different classes of licensee:
- (b) exempt from liability to pay that levy, in whole or in part, any class or classes of licensee, and may provide for the waiver or refund of the whole or part of that levy. 5

Compare: 2003 No 48 s 131

27 Further provisions relating to fees and levies

- (1) Every notice under any of **sections 24 to 26** comes into force on a date specified in the notice, being not less than 28 days after the date of publication of the notice in the *Gazette*. 10
- (2) Every notice under any of **sections 24 to 26** is a regulation for the purposes of the Regulations (Disallowance) Act 1989; ~~but is not a regulation~~ and for the purposes of the Acts and Regulations Publication Act 1989.
- (3) The Authority must ensure that an up-to-date version of each notice that the authority has published under any of **sections 24 to 26** is— 15
 - (a) available on the Authority’s website; and
 - (b) available at the office of the Authority during business hours, so that members of the public may— 20
 - (i) inspect the notice free of charge; or
 - (ii) obtain a photocopy of the notice for a reasonable fee.
- (4) Every levy imposed by the Authority under **sections 24 to 26**, is payable, and recoverable as a debt due, to the Authority. 25
- (5) The Authority receives any levies imposed under **section 26** as agent for the chief executive of the Ministry of Justice.
- (6) If any fee is payable to the Authority under this Act, the Registrar may decline to do any act, or to permit any act to be done, or to receive any document in respect of which that fee is payable, until the fee is paid. 30

Compare: 2003 No 48 s 132

28 Payment of fees, levies, and fines

- (1) All fees and levies required to be paid under this Act are payable to the Registrar or the Authority. 35

- (2) All fines imposed on a person by ~~the~~ a Complaints Assessment Committee or by the Disciplinary Tribunal are payable to the Registrar.

Powers of intervention

- 29 **Authority may take possession of and inspect agent's financial records and documents** 5
Grounds for intervention
This section applies in any case where the Authority is satisfied, in respect of any agent, ~~—~~ **The grounds for exercising a power conferred by any of sections 29A to 29C in respect of any agent are—** 10
- (a) that there are reasonable grounds to believe that ~~he or she~~ **the agent**, or, if the agent is a company, any officer of the company, has been guilty of theft or of any improper conduct in relation to the money or other property of any other person; or 15
- (b) that there are reasonable grounds to believe that any money or other property entrusted to the agent has been stolen by his or her employee, salesperson, or **person acting on behalf of the agent**, or, if the agent is a company, by any officer, employee, **salesperson, or person acting on behalf of agent** of the company; or 20
- (c) that ~~he or she~~ **the agent** is, owing to physical or mental disability, unable to properly administer ~~his or her~~ **the agent's** trust account; or
- (d) that ~~he or she~~ **the agent** has died; or 25
- (e) that ~~he or she~~ **the agent** has been adjudicated a bankrupt or has been subject to subpart 4 of Part 5 of the **Insolvency Act 2006**, or has been placed in receivership or liquidation under the **Companies Act 1993**; or
- (f) ~~if the agent is a company, that the company has been put into liquidation; or~~ 30
- (g) if the agent is a building society, that the building society is being dissolved; or
- (h) that the licence of the agent has been cancelled or suspended; or 35
- (i) that the agent has ceased to carry on business and has neglected to wind up ~~his or her~~ **the agent's** trust account after reasonable notice has been given to ~~him or her~~ **the**

- agent by the Authority requiring ~~him or her~~ the agent to do so; or
- (j) the agent has not administered the trust account in accordance with this Act and any regulations made under it; or 5
- (k) the agent operates a trust account that has been administered fraudulently or recklessly.
- ~~(2)~~ In any case to which this section applies, the Authority may, if in its opinion it is appropriate to do so, take possession of any financial records, deeds, or other documents belonging to the agent or held in the course of his or her business in his or her possession or under his or her control or, if the agent is a company, in the possession or under the control of any officer, employee, or agent of the company. 10
- Compare: 1976 No 9 s 88 15

29A Power to take possession of documents

- (1) In this section, **documents** includes financial records and deeds.
- (2) If the Authority is satisfied that 1 or more of the grounds specified in **section 29** apply to an agent, the Authority may, if in its opinion it is appropriate to do so, by notice, require any person to give the Authority possession of any documents that— 20
- (a) belong to the agent; or
- (b) in the course of the agent's business, are, or have been, in the possession or control of— 25
- (i) the agent; or
- (ii) if the agent is a company, any officer, employee, or person acting on behalf of the company.

Compare: 1976 No 9 s 88(2)

29B Administration of trust account in certain cases

- (1) If the Authority is satisfied that 1 or more grounds specified in **section 29** apply to an agent, the Authority may, if it is satisfied that it is appropriate, make an order appointing a suitable person as the administrator of the agent's trust account for a period specified by the Authority. 30
- (2) A copy of every order made by the Authority under this section must be served on the banker, and on receipt of that copy the 35

bank in which the trust account is kept must allow the person appointed by the order to administer the trust account.

Compare: 1976 No 9 s 33

29C Appointment of interim administrator in certain cases

- (1) The Authority may make an order appointing an appropriate person as an interim administrator of an agent's trust account if the Authority reasonably suspects that— 5
- (a) any money entrusted to the agent may be at risk; and
- (b) 1 or more of the grounds specified in **section 29** apply to that agent. 10
- (2) The function of the interim administrator is to preserve the assets until the termination of the order under **subsection (1)**.
- (3) An order under **subsection (1)** is terminated when—
- (a) the Authority notifies the agent concerned that the Authority no longer considers that money entrusted to the agent is at risk; or 15
- (b) an order is made under **section 29B**.
- (4) **Section 29B(2)** applies, with all necessary modifications, to an order made under this section.

29D Authority may direct audit of agent's trust account 20

The Authority may direct an audit of an agent's trust account at any time and appoint an auditor to carry out that audit.

30 Authority may inspect books relating to money received by agent certain financial records

- (1) This section applies if the Authority has reasonable grounds to believe that any money entrusted to an agent has been stolen— 25
- (a) by the agent or the agent's employee or agent; or
- (b) in the case of a company that is an agent, by an officer, employee, or agent of the company.
- (2) The Authority may inspect all financial records or other records that relate to any money received by any of the persons specified in **subsection (3)**; whether or not the money has been paid into a private account or a trust account at a bank. 30
- (3) The persons are as follows: 35

- (a) ~~the agent or the agent's employee or agent;~~
 (b) ~~in the case of a company that is an agent, an officer, employee, or agent of the company.~~
- (1) This section applies if the Authority has reasonable grounds to believe that any money entrusted to an agent or to any person acting on behalf of the agent has been stolen by any of the following persons: 5
- (a) by the agent or by a person who is, or has been, employed or engaged by the agent;
 (b) in the case of a company that is an agent, by a person who is, or has been, employed or engaged by the company. 10
- (2) The Authority may, by notice, require any person (including, without limitation, any banker) who has possession or control of financial records or other records that relate to any money received by any person specified in **subsection (1)** to produce those records to a person authorised by the Authority and to permit that person to inspect and copy those records. 15
 Compare: 1976 No 9 s 89(†)
- 31 Authority to give receipt for documents taken into possession District Court Judge may order Authority to return documents** 20
- (1) Upon taking possession of any document under **section 30 29A**, the Authority must, without delay, serve on the agent concerned a notice giving particulars of the document and the date on which it was taken into the Authority's possession. 25
- ~~(2) If any such document is the property of a firm of agents in which the agent is a partner, a copy of the notice must be served on each partner in the firm.~~
- (3) Within 14 days after the notice has been served, the agent, or any of his or her partners, may apply to a District Court Judge for an order directing the Authority to return any document specified in the order to the person from whom it was received, or for any other order that the District Court Judge thinks fit. 30
 Compare: 1976 No 9 s 90 35

31AA High Court Judge may give directions to administrator of trust account or cancel appointment

- (1) If the Authority makes an order, under **section 29B or 29C**, appointing an administrator or interim administrator, the Authority must, without delay, serve a copy of the order on— 5
- (a) the agent concerned; and
- (b) if the agent carries out agency work in partnership, any partner in the partnership; and
- (c) any person who, to the knowledge of the Authority, is or may be entitled to any money held in the trust account administered by the administrator. 10
- (2) A person on whom a copy of the order is served may, within 14 days after service of the order, apply to the High Court for an order under **subsection (4)**.
- (3) The following persons may, at any time while an order under **section 29B or 29C** is in force, apply for an order under **subsection (4)**: 15
- (a) the administrator or interim administrator;
- (b) the banker with whom the trust account is kept;
- (c) a person who claims to be entitled to any money held in the trust account, but who has not been served under **subsection (1)(c)**. 20
- (4) On an application under this section, a High Court Judge may, by order—
- (a) direct the administrator, interim administrator, or the banker on the action to be taken in relation to the administration of the trust account (including the winding-up of that account): 25
- (b) rescind or vary the order of the Authority by which the administrator or interim administrator was appointed. 30

Registrar

31A Authority to appoint Registrar

The Authority must appoint one of its employees as Registrar of the register of licensees.

32 Functions of Registrar 35

The functions of the Registrar are to—

- (a) establish, keep, and maintain the register under **section 62**; and
- (b) make decisions about whether persons meet the requirements for licensing or continued licensing; and
- (c) issue, cancel, and suspend licences, and to perform the other functions relating to licensing under **Part 3**; and 5
- (d) provide administrative support for the board of the Authority sufficient to enable the board to perform its functions efficiently and effectively; and
- (e) perform any other function conferred on the Registrar by this Act or any other enactment. 10

33 Power of Registrar to delegate

- (1) Except as provided in **subsection (1A)**, the Registrar may delegate to any person (whether an employee of the State services or not), either generally or particularly, any of the Registrar's functions, duties, and powers ~~except the power of delegation~~. 15
- (1A) The Registrar must not delegate its general power of delegation and must not, without the prior approval of the Authority, delegate any of its functions, duties, and powers set out in **subsection 32(b) or (c)**. 20
- (2) A delegation—
 - (a) must be in writing; and
 - (b) may be made subject to any restrictions and conditions that the Registrar thinks fit; and 25
 - (c) is revocable at any time, in writing; and
 - (d) does not prevent the performance or exercise of a function or duty or exercise of any power by the Registrar.
- (3) A person to whom any functions, duties, or powers are delegated may perform those functions and duties and exercise those powers in the same manner and with the same effect as if they had been conferred directly by this Act and not by delegation. 30
- (4) A person who appears to act under a delegation is presumed to be acting in accordance with its terms in the absence of evidence to the contrary. 35

Part 3 Licensing

How to become licensed

34 Entitlement to licence

- (1) An individual may be licensed as an agent or branch manager 5
if the individual satisfies the Registrar that he or she—
- (a) has attained the age of 18 years; and
 - (b) is not prohibited from holding a licence under **section 35**; and
 - (c) is a fit and proper person to hold a licence; and 10
 - (d) has the prescribed qualifications; and
 - (e) has obtained 2 years' experience in ~~the real estate sector~~ real estate agency work within the 10 years preceding the application to be licensed as an agent or branch manager under this Act. 15
- (2) An individual may be licensed as a salesperson if the individual satisfies the Registrar that he or she—
- (a) has attained the age of 18 years; and
 - (b) is not prohibited from holding a licence under **section 35**; and 20
 - (c) is a fit and proper person to hold a licence; and
 - (d) has the prescribed qualifications.
- (3) A company ~~or a body corporate~~ may be licensed as an agent if at least 1 ~~director or member, as the case may be,~~ officer of the governing body of the body corporate company satisfies 25
the Registrar of the matters set out in **subsection (1)**.
Compare: 1976 No 9 s 17(1),(3)

35 Persons prohibited from being licensed

- (1) The following persons are not eligible to hold a licence:
- (a) a person who has been convicted, whether in New Zealand or another country, of a crime involving dishonesty within the 10 years preceding the application for a licence: 30
 - (b) a person who has been convicted of an offence under sections 14, 17 to 22, or 24 ~~to 26~~ of the Fair Trading Act 1986, within the 5 years preceding the application for a licence: 35

- (c) a person whose licence or certificate of approval has been cancelled within the preceding 5 years or whose licence is suspended at the time of application under the Real Estate Agents Act 1976:
- (d) a person whose licence has been cancelled within the last 5 years or whose licence is suspended at the time of application under this Act: 5
- (e) a person subject to an order made, or a notice given, under the law of a ~~prescribed~~ country, State, or territory outside New Zealand, within the preceding 5 years who is prohibited from acting as an agent, branch manager, or salesperson (or equivalent) in that country, State, or territory, unless the person satisfies the Authority that he or she is a fit and proper person to hold a licence: 10
- (f) a person who is an officer of a licensee company, a chief executive officer of a licensee company, or a branch manager and who has been disqualified from holding a licence or whose licence has been suspended under the Real Estate Agents Act 1976: 15
- (g) a person who is prohibited from being a director or promoter of, or being concerned or taking part in the management of, an incorporated body under the Companies Act 1993, the Securities Markets Act 1988, or the Takeovers Act 1993: 20
- (h) a company, or other corporate entity or partnership, where a person concerned in its management is disqualified from being licensed in his or her own right under **paragraph (a)**: 25
- (i) a person described in **section 7(1)** (which relates to the exemption of lawyers and conveyancers from this Act) who is subject to the provisions of the Lawyers and Conveyancers Act 2006. 30
- (2) A person is not eligible to hold an agent's licence if he or she is an undischarged bankrupt or is subject to Subpart 4 of Part 5 of the Insolvency Act 2006. 35
Compare: 1976 No 9 s 17(2)

36 Application for licence

An application for a licence under this **Part** must—

- (a) be made to the Registrar in the prescribed form; and
 (ab) be accompanied by a declaration made in the form prescribed in the Oaths and Declarations Act 1957 that the person is eligible to obtain a licence by virtue of **section 34** and is not prohibited from being licensed under **section 35**; and 5
 (b) be accompanied by the prescribed fee (if any).

Compare: 1976 No 9 s18

37 Applicant must advertise application

The applicant must advertise the application for a licence in the prescribed manner. 10

Compare: 1976 No 9 s 20(1)

38 Objections to issue of licence

- (1) A person may, within the prescribed time and in the prescribed manner, give the Registrar written notice of his or her desire to object to the issue of a licence to the applicant. 15
- (2) No objection may be made under **subsection (1)** except on 1 or more of the following grounds:
- (a) that the applicant is not eligible to obtain a licence by virtue of **section 34 or 35**: 20
- (b) if the applicant is an individual, that the applicant is not, by reason of his or her personal character or financial position, a proper person to be the holder of a licence:
- (c) if the applicant is a company, that it is not, by reason of its financial position, or of the nature of any other business carried on or to be carried on by it, a proper person to be the holder of a licence: 25
- (d) if the applicant is a company, that any person who will be an officer of the company if the application is granted is not, by reason of his or her personal character or financial position, a proper person to be an officer of a licensee company. 30
- (3) The notice of objection must include a statement of the grounds relied on and any prescribed matters.
- (4) The Registrar must send a copy of the notice to the applicant. 35

Compare: 1976 No 9 s 20(2)–(5)

39 Written submission in response by applicant

- (1) An applicant to whom a notice of objection has been sent may, within the prescribed time, send to the Registrar a written submission in response to the notice of objection.
- (2) If an applicant sends a written response to the Registrar, the Registrar must send a copy of it to every person who gave notice of an objection. 5

40 Registrar to hold hearing if notice of objection made

If notice of an objection to an application is made the Registrar must,— 10

- (a) as soon as practicable, appoint a time and place for hearing the application and objection; and
- (b) give at least 14 days' notice of the hearing to the applicant and to any person objecting to the issue of the licence; and 15
- (c) hear the applicant and any person objecting to the issue of the licence, if required to do so; and
- (d) consider the evidence put before him or her, including any written submission in response that is provided by the applicant under **section 39**. 20

41 Registrar to license applicant or decline application

- (1) The Registrar must grant a licence to the applicant if, after hearing any objection to the issue of a licence, the Registrar is satisfied that the applicant—
- (a) is entitled to be licensed as an agent, branch manager, or salesperson under **section 34**; and 25
- (b) is not prohibited from being licensed as an agent, branch manager, or salesperson under **section 35**.
- (2) The Registrar, on granting the licence, must— 30
- (a) issue to the applicant 1 of the following classes of licence:
- (i) an agent's licence; or
- (ii) a branch manager's licence; or
- (iii) a salesperson's licence; and
- (b) send to the applicant evidence of the issue of that licence, in the prescribed form; and 35
- (c) enter the applicant's name in the register; and

- (d) issue a registration number to the applicant and notify the applicant as to what the registration number is.
- (3) If the Registrar is not satisfied that the applicant is entitled to be licensed as an agent, branch manager, or salesperson, the Registrar must— 5
- (a) decline the application; and
- (b) notify the applicant of the Registrar's decision and the reasons for it; and
- (c) notify the applicant of his or her right of appeal review by the Tribunal against the decision. 10
- Compare: 1976 No 9 s 23

Provisions relating to licences

42 Special provisions in respect of partnerships and companies

- (1) A person must not, after the issue to him or her of ~~a real estate~~ an agent's licence, enter into partnership with any person in respect of his or her business as an agent without the prior approval of the Authority; and the Authority must refuse to grant its approval unless it is satisfied that the proposed partner holds an agent's licence. 15 20
- (1A) If a company is the holder of an agent's licence, at least 1 officer of the company must, at any given time, hold an agent's licence.
- ~~(2) If a company or body corporate is the holder of an agent licence, a person who was not, at the date of the issue of the licence, an officer of the company may not act in that capacity in respect of that company without the prior approval of the Authority on an application made in that behalf.~~ 25
- ~~(3) Under **subsection (2)**, the Authority must refuse to grant its approval unless it is satisfied that—~~ 30
- ~~(a) the person is eligible to apply for or obtain an agent licence; or~~
- ~~(b) if the person is not eligible to apply for or obtain a licence, the real estate agency business of the company is disproportionately small in relation to any other business of the company.~~ 35

Compare: 1976 No 9 s 30

43 Duty to produce evidence of issue of licence

A licensee must, if asked by any person, produce for inspection by that person either—

- (a) the evidence of the issue of a licence sent to that person under **section 41**; or
- (b) a copy of that evidence.

5

44 Term of licence

- (1) A licence continues in force for a period of 12 months commencing on the date that the Registrar enters the applicant's name in the register, unless—

10

- (a) the licence is cancelled under **section 53**; or
- (b) the licensee is suspended under **section 56 or 57**;
- (c) the licence is surrendered under **section 60**.

- (2) A licence may be renewed for further ~~1-year~~ periods of 12 months in accordance with **section 51**.

15

45 Licence may not be transferred

A licence may not be transferred and may not vest by operation of law in any person other than the person to whom the licence was granted.

Effect of licences and status of licensees

20

46 Agent's licence

- (1) ~~A licence as an agent~~ An agent's licence authorises the licensee to carry out real estate agency work on his or her own account, whether in partnership or otherwise.

- (2) The licence also authorises the licensee to sell or to offer to sell any land by auction without having to be licensed under the Auctioneers Act 1928.

25

47 Branch manager's or salesperson's licence

- (1) ~~A licence as a branch manager or salesperson~~ A branch manager's licence or a salesperson's licence authorises the licensee to carry out real estate agency work for or on behalf of an agent.

30

- (2) The licence also authorises the licensee to sell or to offer to sell, on behalf of the agent, any land by auction without having to be licensed under the Auctioneers Act 1928.

48 Salespersons must be supervised

- (1) A salesperson must, in carrying out any agency work, be properly supervised and managed by an agent or a branch manager. 5
- (2) In this section **properly supervised and managed** means that the agency work is carried out under such direction and control of either a branch manager or an agent as is sufficient to ensure— 10
- (a) that the work is performed competently; and
- (b) that the work complies with the requirements of this Act.

49 Employment status of salesperson

- (1) A salesperson may be employed by an agent as an employee or may be engaged by an agent as an independent contractor. 15
- (2) Any written agreement between an agent and a salesperson is conclusive so far as it expressly states that the relationship between the agent and the salesperson is that of employer and independent contractor. 20
- (3) An agent who engages a salesperson as an independent contractor is liable for the acts and omissions of the salesperson in the same manner, and to the same extent, as if the agent had employed the salesperson as an employee.

50 Review of section 49

The chief executive of the Ministry of Justice must, ~~not later than the date that is~~ 5 years after the commencement of this ~~Act section~~, report to the Minister as to whether—

- (a) **section 49** continues to be appropriate; and
- (b) in particular, whether the employment status of salespersons should be determined by the Employment Relations Act 2000. 30

*Renewal of licence***51 Renewal of licence**

- (1) An application for renewal of a licence must, before the date on which the licence expires,—
- (a) be made to the Registrar in the prescribed form; and 5
 - (b) be accompanied by the prescribed fee (if any).
- (2) Subject to **subsection (2A)**, **sections 34, 35, and 41** apply, with any necessary modifications, to an application for renewal of a licence.
- (2A) The Registrar must, in addition to the matters specified in **section 41(1)**, be satisfied that the applicant for renewal of a licence has completed any continuing education required by practice rules made by the Authority pursuant to **section 19**. 10
- (3) If an application for renewal of a licence has been made but not determined before the date on which the licence is due to expire, the licence continues in force until the application is determined. 15
- (4) The grant of a renewal of a licence takes effect from the date of expiry of the previous licence. 20
- Compare: 1976 No 9 s 29

52 Expiry of licence

If no application for the renewal of a licence is made on or before the date on which the licence would otherwise expire, the Registrar must record the expiry of the licence in the register as soon as practicable after that date. 25

*Cancellation, suspension, surrender of licence,
etc***53 Cancellation of licence**

The Registrar must cancel a person's licence and remove that person's name from the register,— 30

- (a) in the case of an individual, if the person dies; or
- (b) if the person gives written notice to the Registrar requesting that the Registrar cancel his or her licence; or
- (c) if the person has failed to maintain the prescribed qualifications; or 35

- (ca) if the person has failed to complete any continuing education required by practice rules made by the Authority pursuant to **section 19**; or
- (d) in accordance with **section 96**; or
- (e) in accordance with **section 107(2)(b)**; or 5
- (f) if the licence was granted on the basis of any false or fraudulent representation or declaration made orally or in writing; or
- (g) if the person has failed to pay any prescribed fees or levies, or payment of the fee or levy has subsequently been dishonoured. 10

54 Process for cancellation

- (1) The process for cancellation of a licence, other than by determination of the Tribunal under **section 107** or at the request of the licensee under **section 53(b)**, is as follows: 15
 - (a) the Registrar must give the licensee written notice of the Registrar's intention to cancel the licence; and
 - (b) the notice must—
 - (i) contain or be accompanied by a statement of the Registrar's reasons for the cancellation; and 20
 - (ii) state that the licensee has 10 working days within which to make written representations to the Registrar as to why the licence should not be cancelled; and
 - (c) if any written representations are made by the licensee in accordance with **paragraph (b)(ii)**, the Registrar must take those representations into account when deciding whether to cancel the licence; and 25
 - (d) the Registrar must then decide whether to cancel the licence and notify the licensee of the Registrar's decision as soon as practicable. 30
- (2) If the Registrar decides to cancel the licence, the Registrar must—
 - (a) include in the notice referred to in **subsection (1)(d)** the grounds for the decision and the date on which the cancellation takes effect; and 35
 - (b) specify in the notice that the licensee has a right of appeal to the Tribunal under **section 109**; and

- (c) record the cancellation on the register as soon as practicable.

55 Effective date of cancellation

The cancellation takes effect on the date specified by the Registrar in the notice given to the licensee under **section 54(1)(d)**, which must be a date after the date of that notice. 5

Suspension of licence

56 Mandatory suspension of licence

The Registrar must, on receiving notice from the Tribunal that the licence of a licensee has been suspended under **section 107(2)(c) or 112**, record that suspension on the register for the period specified in the notice. 10

57 Voluntary suspension of licence

- (1) A licensee may, by written notice to the Registrar, request that the Registrar suspend his or her or its licence for a period specified in the notice. 15
- (2) The Registrar must suspend the person's licence and record the suspension in the register for that specified period.
- (3) A person whose licence is suspended under this section may, by written notice to the Registrar, request that the Registrar revive that person's licence. 20
- (4) The Registrar must then revive that person's licence unless there is some other ground for cancellation or suspension of that person's licence under **section 53 or 56**.

58 Effect of suspension of licence

- (1) A person is not a licensed agent, branch manager, or salesperson for the purposes of this Act for the period during which his or her licence is suspended. 25
- (2) At the end of the period of suspension the person's licence is immediately revived unless there is some other ground for cancellation or suspension of that person's licence under **section 53 or 56**. 30

59 Effective date of suspension

- (1) The suspension of a licence under **section 56** takes effect on the date notified in the Tribunal's decision communicated under **section 110 or 112**.
- (2) The suspension of a licence under **section 57** takes effect on the date the suspension is recorded in the register. 5

*Surrender of licence***60 Voluntary surrender of licence**

- (1) A licensee may, by written notice to the Registrar, surrender his or her licence. 10
- (2) A written notice under **subsection (1)** must be accompanied by the licence.
- (3) The Registrar must cancel the person's licence and record the cancellation in the register.
- (4) The cancellation takes effect on the date the cancellation is recorded in the register. 15
- (5) The surrender of a licence under this section does not affect the licensee's liability—
- (a) to pay any fees or other money payable or to be payable in accordance with this Act on or before the date on which the licence would, but for its surrender, expire: 20
 - (b) to perform any obligation required to be performed by him or her by or under this Act on or before that date:
 - (c) for any act done or default made before the date on which the licence ceased to have effect. 25

*Temporary licence***61 Temporary licence**

- (1) A reference in this section to a licensee is a reference to a licensee who is an agent.
- (2) Any of the following persons may apply to the ~~Authority~~ Registrar in the prescribed form for permission to carry on or appoint some other person to carry on the licensee's business as an agent for a period specified by the ~~Authority~~ Registrar: 30

-
- (a) in the case of a licensee who is a person subject to a property order under the Protection of Personal and Property Rights Act 1988, the manager of his or her estate; or
- (b) in the case of a licensee in respect of whom a property order is in force under the Protection of Personal and Property Rights Act 1988, the manager of his or her estate; or 5
- (c) in the case of a licensee who is deceased, his or her personal representative; or 10
- (d) in the case of a licensee who has been adjudicated bankrupt, his or her assignee in bankruptcy; or
- (e) in the case of a licensee company that is in liquidation or receivership, the liquidator or receiver of that company, as the case may be; or 15
- (f) in the case of a licensee who is sick, absent, or is otherwise temporarily prevented from carrying on business as a real estate agent, his or her nominated representative; or
- (g) in the case of a licensee building society that is being dissolved, the liquidator or other person conducting its dissolution, or a trustee appointed under an instrument of dissolution of the building society. 20
- (3) If, under **subsection (2)**, a person mentioned in that subsection has applied to the Authority for permission to carry on or to appoint some other person to carry on a licensee's business, then, until the application has been determined, the Registrar may, in writing, authorise the applicant to carry on the licensee's business, either personally or by an agent, for any period not exceeding 2 months. 25 30
- (4) Despite **subsection (3)**, an authority given under that subsection in any event ceases to have effect when the application for the Authority's permission under **subsection (2)** is determined. 35
- Compare: 1976 No 9 s 32

*Register of licensees***62 Register of licensees**

- (1) The Registrar must establish, keep, and maintain, in accordance with this Act, a register of licensees.
- (2) The Registrar must enter in the register— 5
- (a) the name of every licensee; and
 - (b) the information about that licensee that is specified in **section 65**, to the extent that the information is relevant to that person.
- (3) The Registrar must make any other entries in the register that may be required, permitted, or directed to be entered by or under this Act or the regulations. 10

Compare: 1976 No 9 s 36

63 Purpose of register

- The purpose of the register is— 15
- (a) to enable the public to—
 - (i) determine whether a person is a licensed agent, branch manager, or salesperson and, if so, the status and history of that person's licence; and
 - (ii) choose a suitable agent or salesperson from a list of agents and salespersons; and 20
 - (iii) know how to contact the agent or salesperson; and
 - (iv) know which licensees have been disciplined within the last 3 years; and 25
 - (b) to facilitate the administrative, disciplinary, and other functions of the Authority, Registrar, and Disciplinary Tribunal under this Act.

64 Form of register

- (1) The register may be kept— 30
- (a) as an electronic register (for example, on the Authority's website); or
 - (b) in any other manner that the Registrar thinks fit.
- (2) The register must be operated at all times, unless the Registrar suspends the operation of the register, in whole or in part, in accordance with **subsection (3)**. 35

- (3) The Registrar may refuse access to the register or otherwise suspend the operation of the register, in whole or in part, if the Registrar considers that it is not practicable to provide access to the register.

65 Matters to be contained in register 5

- (1) The register must contain all of the following information for each licensee whose name is entered in the register:
- (a) the full name and business address or, in the case of a company, registered office address:
 - (b) any aliases: 10
 - (c) the registration number issued by the Registrar:
 - (d) the address for communications under this Act:
 - (e) the name of any company, body corporate, or other agent that is associated with the licensee:
 - (f) any information about the status and history of the person's licence, particularly— 15
 - (i) the class of licence held by the person; and
 - (ii) the date on which the person's name was entered in the register; and
 - (iii) the date of expiry of the person's licence, or as the case may be, the date of renewal of the licence; and 20
 - (iv) the date on which the term of renewal of the licence expires; and
 - (v) any action taken on a disciplinary matter in respect of the person in the last 3 years: 25
 - (g) any other information that the Registrar considers necessary for the purposes of the register.
- (2) The register must also show—
- (a) whether a licence was suspended in the last 3 years; and 30
 - (b) if **paragraph (a)** applies,—
 - (i) the ground under this Act for the suspension (for example, whether for non-payment of a fee or levy set by the Authority that was required from the licensee); and 35
 - (ii) the period of the suspension; and
 - (iii) any conditions for termination of the suspension.

66 Obligation to notify Registrar

- (1) Each applicant for a licence, and each licensee, must give written notice to the Registrar of any change in circumstances within 10 working days after the change.
- (2) In this section, **change of circumstances** means— 5
- (a) any change in the information recorded in the register; and
 - (b) any change in the real estate business for which the agent, branch manager, or salesperson works (if any); and 10
 - (c) any change that may be prescribed.

67 Alterations to register

The Registrar may at any time make any amendments to the register that are necessary to—

- (a) reflect any changes in the name of the licensee or the information specified in **section 65**; or 15
- (b) correct a mistake caused by any error or omission on the part of the Registrar or any person to whom the Registrar has delegated his or her functions, duties, or powers. 20

Compare: 1976 No 9 s 38

68 Search of register

- (1) A person may search the register, on payment of the prescribed fee, for a purpose set out in **section 63**.
- (2) The Registrar must make the register available for public inspection— 25
- (a) during the hours when the office of the Registrar is open to the public for the transaction of business on a working day; and
 - (b) at any other time that the Registrar allows. 30
- (3) The Registrar must supply copies of all or part of the register on request and on payment of a reasonable charge for the production of the copy if the provision of those copies is consistent with the register's purposes.

69 When search constitutes interference with privacy of individual

A person who searches the register for a purpose that is not a purpose set out in **section 63** must be treated, for the purposes of Part 8 of the Privacy Act 1993, as if that person has breached an information privacy principle under section 66(1)(a)(i) of that Act. 5

**Part 4
Complaints and discipline**

Interpretation

10

70 Meaning of licensee in this Part

In this Part, unless the context otherwise requires, **licensee** has the meaning given to it by **section 4** and includes—

- (a) a former licensee; and
- (b) a person who is or has been an officer of a company that is, or has been, a licensee. 15

Unsatisfactory conduct and misconduct

71 Unsatisfactory conduct

For the purposes of this Act, a licensee is guilty of unsatisfactory conduct if the licensee carries out real estate agency work that— 20

- (a) falls short of the standard that a reasonable member of the public is entitled to expect from a reasonably competent licensee; or
- (ab) contravenes a provision of this Act or of any regulations made under this Act; or 25
- (b) is incompetent or negligent; or
- (c) would reasonably be regarded by agents of good standing as being unacceptable.

72 Misconduct

30

For the purposes of this Act, a licensee is guilty of misconduct if the licensee's conduct—

- (a) would reasonably be regarded by licensees of good standing, or reasonable members of the public, as disgraceful; or
- (b) constitutes seriously incompetent or seriously negligent real estate agency work; or 5
- ~~(c) consists of wilful or reckless contravention of this Act, other Acts that apply to the conduct of licensees (such as the Fair Trading Act 1986) or of regulations or rules made under the Act; or~~
- (c) consists of a wilful or reckless contravention of— 10
- (i) this Act; or
- (ii) other Acts that apply to the conduct of licensees;
- or
- (iii) regulations or rules made under this Act; or
- (d) constitutes an offence for which the licensee has been convicted, being an offence ~~(such as a crime involving dishonesty)~~ that reflects adversely on the licensee's fitness to be a licensee. 15

73 Complaints about licensees

- (1) Any person may, in accordance with regulations made under this Act, complain in writing to the Authority about the conduct of a licensee. 20
- (2) When the Authority receives a complaint under this section, the Authority must refer the complaint to the Committee and notify the person complained about of the reference. 25

Complaints Assessment Committees

74 Authority to establish and maintain Complaints Assessment Committee

- ~~(1) The Authority must appoint 3 members of the board to be members of the Complaints Assessment Committee. 30~~
- ~~(2) One of the members of the Committee must be a lawyer.~~
- ~~(3) The Authority must appoint 1 of the members of the Committee to preside at the meetings of the Committee.~~
- ~~(4) If the member appointed to preside is, for any reason, absent from duty, the other members of the Committee must appoint 1 of their number to preside at the meeting. 35~~

- ~~(5) The member appointed under **subsection (3) or (4)** may determine whether, for the purposes of investigating, hearing, and determining any complaint under this Act, the Committee is to be constituted by 2 or 3 members.~~
- ~~(6) The Authority must ensure that the membership of the Committee is maintained at all times.~~ 5

74 Authority to appoint Complaints Assessment Committees

- (1) The Authority must appoint as many Complaints Assessment Committees as, in its opinion, are required to deal effectively with complaints and allegations about licensees. 10
- (2) Each Committee consists of 3 members.
- (3) One of the members of each Committee must be a member of the Authority.
- (4) Two members of each Committee must be appointed from the panel maintained under **section 74A**. 15
- (5) One of the members of each Committee (whether a member of the Authority or appointed from the panel) must be a lawyer of not less than 7 years' legal experience.
- (6) The Authority must designate one of the members as the chairperson of the Committee, and another member as the Deputy Chairperson. 20

74A Panel

- (1) The Authority must maintain a panel of up to 20 persons who are suitable to serve as members of Complaints Assessment Committees. 25
- (2) In considering the suitability of any person for inclusion on the panel, the Authority must have regard not only to the person's personal attributes but also to the person's knowledge and experience of matters likely to come before a Committee.
- (3) The knowledge and experience referred to in **subsection (2)** includes, without limitation, experience and knowledge of— 30
- (a) law;
- (b) the real estate industry;
- (c) consumer affairs.
- (4) The name of a person must be removed from the panel when 5 years have elapsed since the Authority approved the inclusion 35

of the person's name on the panel or if the person resigns from the panel.

- (5) If **subsection (4)** applies, the name of the person must not be removed from the panel until any current matters that the person is considering as a member of a Committee have been disposed of by the Committee. 5

74B Constitution of Committees for consideration of matters before it

For the purposes of considering any matter before it, each Committee consists of— 10

- (a) the chairperson of the Committee or, if the chairperson is absent from duty for any reason, the deputy chairperson of the Committee; and
- (b) 1 other member or, if the chairperson or deputy chairperson so directs, 2 members. 15

75 Functions of Committees

The functions of ~~the~~ each Committee are—

- (a) to inquire into and investigate complaints made under **section 73:**
- (ab) on its own initiative, to inquire into and investigate al- 20
legations about any licensee:
- (b) to promote, in appropriate cases, the resolution of complaints by negotiation, conciliation, or mediation:
- (c) to make final determinations in relation to complaints, inquiries, or investigations: 25
- (d) to lay, and prosecute, charges before the Disciplinary Tribunal:
- (e) in appropriate cases, to refer the complaint to another agency:
- (f) to inform the complainant and the person complained 30
about of its decision, reasons for the decision, and appeal rights:
- (g) to publish its decisions:
- (h) to oversee the Authority's role of providing information 35
to the public about the complaints and discipline system.

76 Procedure on receipt of complaint

- (1) As soon as practicable after receiving a complaint concerning a licensee, ~~the~~ a Committee must consider the complaint and determine whether to proceed with it.
- (2) The Committee may— 5
- (a) determine that the complaint alleges neither unsatisfactory conduct nor misconduct and dismiss it accordingly:
 - (b) determine that the complaint discloses only ~~a trivial or~~ an inconsequential matter, and for this reason need not be pursued: 10
 - (c) determine that the complaint is frivolous or vexatious and not made in good faith, and for this reason need not be pursued:
 - (d) determine that the complaint should be referred to another agency, and refer it accordingly: 15
 - (e) determine to proceed with the complaint.

77 Decision to take no action on complaint

- (1) ~~The~~ A Committee may, in its discretion, decide to take no action or, as the case may require, no further action on any complaint if, in the opinion of the Committee,— 20
- (a) the length of time that has elapsed between the date when the subject matter of the complaint arose and the date when the complaint was made is such that an investigation of the complaint is no longer practicable or desirable; or 25
 - (b) the subject matter of the complaint is ~~trivial~~ inconsequential.
- (2) Despite anything in **subsection (1)**, the Committee may, in its discretion, decide not to take any further action on a complaint if, in the course of the investigation of the complaint, it appears to the Committee that, having regard to all the circumstances of the case, any further action is unnecessary or inappropriate. 30

Compare: 2006 No 1 s 138

78 Notice of decision

- (1) In any case where ~~the~~ a Committee decides to take no action on a complaint, the Committee must promptly give written notice of that decision to— 35

- (a) the complainant; and
 (b) the person complained about.
- (2) The notice must—
 (a) state the decision and the reasons for it; and
 (b) describe the right of appeal conferred by **section 108**. 5
 Compare: 2006 No 1 s 139
- 79 Inquiry by Committee**
- (1) If ~~the~~ A Committee decides to inquire into a complaint or into matters raised by allegations about a licensee, it must inquire into ~~it~~ the complaint or those matters as soon as practicable. 10
- (2) The Committee may authorise any person to assist it with its inquiry.
 Compare: 2006 No 1 s 140
- 80 Notice to ~~person complained about licensee~~**
- ~~The~~ A Committee— 15
- (a) must send particulars to the ~~person complained about licensee~~, and invite ~~that person~~ the licensee to make a written explanation in relation to the complaint (if any);
 (b) may require the ~~person complained about licensee~~ to appear before it to make an explanation in relation to ~~the complaint inquiry~~; 20
 (c) may, by written notice served on the ~~person complained about licensee~~, request that specified information be supplied to the Committee in writing. 25
 Compare: 2006 No 1 s 141
- 81 Procedure of Committee**
- (1) ~~The~~ A Committee must exercise its powers and perform its duties and functions in a way that is consistent with the rules of natural justice.
- (2) The Committee may, subject to **subsection (1)**, direct such publication of its decisions under **sections 77, 86, and 90** as it considers necessary or desirable in the public interest. 30

- (3) The Committee may regulate its procedure in any manner that it thinks fit as long as it is consistent with this Act and any regulations made under it.

Compare: 2006 No 1 s 142

82 Powers to call for information or documents 5

- (1) If the conditions stated in **subsection (2)** are satisfied, ~~the~~ a Committee may, by notice in writing, require any person to produce to the Committee any papers, documents, records, or things.

- (2) The conditions referred to in **subsection (1)** are that— 10

(a) the members of the Committee believe, on reasonable grounds, that the exercise of the powers conferred by that subsection is necessary to enable the Committee to carry out its inquiry; and

(b) the person to whom a notice under that subsection is to be given has failed to comply with a previous request to produce to the Committee, within a reasonable time, the papers, documents, records, or things required by the notice; and 15

(c) the members of the Committee believe, on reasonable grounds, that— 20

(i) it is not reasonably practicable to obtain the information required by the Committee from another source; or

(ii) for the purposes of the investigation, it is necessary to obtain the papers, documents, records, or things to verify or refute information obtained from another source. 25

Compare: 2003 No 48 s 77

83 Compliance with requirement to provide information or document 30

- (1) A person who receives a notice under **section 82** must, without charge, comply with the requirement stated in the notice in the manner and within the period (being not less than 10 working days after the notice is given to the person) specified in the notice. 35

- (2) **Subsection (1)** does not require a person to provide any information or produce any document that would be privileged in a court of law.
- (3) No person is required to produce to the Committee any papers, records, documents, or things if compliance with that requirement would be in breach of an obligation of secrecy or non-disclosure imposed on the person by an enactment (other than this Act, the Official Information Act 1982, or the Privacy Act 1993).
Compare: 2003 No 48 s 78

84 **Negotiation, conciliation, and mediation**

- (1) ~~The~~ A Committee may give, in relation to any complaint received by it, a direction that, within a time or before a date fixed by the Committee, the parties both—
- (a) explore the possibility of resolving, by negotiation, conciliation, or mediation,—
 - (i) the complaint; or
 - (ii) any issues relating to the complaint as the Committee specifies; and
 - (b) report to the Committee.
- (2) The Committee must not give a direction under **subsection (1)** if it considers that such a direction—
- (a) would not contribute constructively to resolving the complaint; or
 - (b) would not, in all the circumstances, be in the public interest; or
 - (c) would undermine the urgent nature of the complaint.
- (3) If the parties reach an agreed settlement in relation to the complaint or any issue involved in the complaint, the Committee—
- (a) may record the terms of the settlement; and
 - (b) may, by consent of the parties, declare all or some of the terms of the settlement to be all or part of a final determination of the complaint by the Committee.
- (4) No evidence is admissible in any court or before any person acting judicially or before the Committee or before the Disciplinary Tribunal of any information, statement, or admission disclosed or made to any person in the course of any negotiation, conciliation, or mediation conducted, in accordance

with a direction given under **subsection (1)**, for the purpose of resolving a complaint or any issue involved in a complaint.

- (5) Nothing in this section prevents the discovery or affects the admissibility of any evidence (being evidence which is otherwise discoverable or admissible and which existed independently of any negotiation, conciliation, or mediation conducted under a direction given under **subsection (1)** for the purpose of resolving a complaint or any issue involved in a complaint) merely because the evidence was presented in the course of the negotiation, conciliation, or mediation. 5 10

Compare: 2006 No 1 s 143

85 Evidence

- (1) ~~The~~ A Committee may receive in evidence any statement, document, information, or matter that may in its opinion assist it to deal effectively with the matters before it, whether or not the statement, document, information, or matter would be admissible in a court of law. 15
- (2) The Committee may take evidence on oath, and for that purpose, any member or officer of the Committee may administer an oath. 20
- (3) The Committee may permit a person appearing as a witness before it to give evidence by tendering a written statement and, if the Committee thinks fit, verifying that statement by oath.
- (4) The Evidence Act 2006 applies (subject to **subsections (1) to (3)**) to the Committee in the same manner as if it were a court within the meaning of that Act. 25
- (5) This section is subject to **sections 81(1) and 84(4)**.

Compare: 2006 No 1 s 151

86 Power of Committee to determine complaint or allegation

- (1) ~~The~~ A Committee may make 1 or more of the determinations described in **subsection (2)** after both inquiring into a complaint or allegation and conducting a hearing with regard to that complaint or allegation. 30
- (2) The determinations that the Committee may make are as follows: 35

- (a) a determination that the complaint or allegation be considered by the Disciplinary Tribunal:
 - (b) a determination that ~~there has been~~ the licensee has engaged in unsatisfactory conduct ~~on the part of the licensee:~~
 - (c) a determination that the Committee take no further action with regard to the complaint or ~~matter~~ allegation or any issue involved in the complaint or allegation.
- (3) Nothing in this section limits the power of the Committee to make, at any time, a decision under **section 77** with regard to a complaint.

Compare: 2006 No 1 s 152(1)–(3)

87 Hearings on papers

- (1) A hearing conducted under **section 86(1)** by ~~the~~ a Committee is to be a hearing on the papers, unless the Committee otherwise directs.
- (2) If the Committee conducts the hearing on the papers, the Committee must make its determination on the basis of the written material before it.
- (3) Consideration of the written material may be undertaken in whatever manner the Committee thinks fit.

Compare: 2006 No 1 s 153(1), (7), (8)

88 Reference of complaint to Disciplinary Tribunal

If ~~the~~ a Committee makes a determination that the complaint or allegation be determined by the Disciplinary Tribunal, the Committee must—

- (a) frame an appropriate charge and lay it before the Disciplinary Tribunal by submitting it in writing to the Tribunal; and
- (b) give written notice of that determination and a copy of the charge to the person to whom the charge relates and to the complainant.

Compare: 2006 No 1 s 154

89 Application for suspension of licence

If, under **section 88(a)**, ~~the~~ a Committee lays before the Disciplinary Tribunal a charge against a licensee, the Committee may apply to the Tribunal for an order that, pending the determination of the charge, the licence of the licensee be suspended. 5

Compare: 2006 No 1 s 155

90 Power of Committee to make orders

(1) If ~~the~~ a Committee makes a determination under **section 86(2)(b)**, the Committee ~~may~~ do 1 or more of the following: 10

- (a) make an order censuring or reprimanding the ~~person complained about~~ licensee:
- (b) order that all or some of the terms of an agreed settlement between the ~~person complained about~~ licensee and the complainant are to have effect, by consent, as all or part of a final determination of the complaint: 15
- (c) order that the ~~person complained about~~ licensee apologise to the complainant:
- (d) order that the ~~person complained about~~ licensee undergo training or education: 20
- (e) order the ~~person complained about~~ licensee to reduce, cancel, or refund fees charged for work where that work is the subject of the complaint:
- (f) order the ~~person complained about~~ licensee— 25
 - (i) to rectify, at his or her or its own expense, any error or omission; or
 - (ii) where it is not practicable to rectify the error or omission, to take steps to provide, at his or her or its own expense, relief, in whole or in part, from the consequences of the error or omission: 30
- (g) order the ~~person complained about~~ licensee to pay to the Authority a fine not exceeding \$10,000 in the case of an individual or \$20,000 in the case of a company:
- (h) order the ~~person complained about~~ licensee, or the agent for whom the person complained about works, to make his or her business available for inspection or take ad- 35

vice in relation to management from persons specified in the order:

- (i) order the ~~person complained about~~ licensee to pay the complainant any costs or expenses incurred in respect of the inquiry, investigation, or hearing by the Committee. 5
- (2) An order under this section may be made on and subject to any terms and conditions that the Committee thinks fit.

Compare: 2006 No 1 s 156(1)

91 Notice of determination

- (1) When ~~the a~~ Committee makes a determination under **section 86**, the Committee must promptly give written notice of that determination to the complainant and to the ~~person complained about~~ licensee. 10
- (2) The notice must—
 - (a) state the determination and the reasons for it; and 15
 - (b) specify any orders made under **section 90** and be accompanied by copies of those orders; and
 - (c) describe the right of appeal conferred by **section 108**.

Compare: 2006 No 1 s 158

92 Members of Committee not personally liable 20

- (1) A person who is a member of ~~the a~~ Committee or any person authorised by ~~the a~~ Committee to assist it with any investigation or proceeding is not under any civil or criminal liability in respect of—
 - (a) any act done or omitted to be done in the course of performing or exercising any of that person's functions, duties, or powers under this Act or done or omitted to be done to assist in that performance or exercise; or 25
 - (b) any words spoken or written at, or for the purpose of, the hearing of any proceedings under this Act; or 30
 - (c) anything contained in any notice given under this Act.
- (2) **Subsection (1)** does not apply if the person acts in bad faith.

Compare: 2006 No 1 s 185

- 93 Protection and privileges of witnesses**
 Every person has the same privileges and immunities as a witness has in a court of law in relation to—
- (a) the giving of information to ~~the~~ a Committee; and
 - (b) the giving of evidence to, or the answering of questions put by, the Committee; and
 - (c) the production of papers, documents, records, or things to the Committee.
- Compare: 2006 No 1 s186(1)
- 94 Privileges and immunities of counsel**
 Every counsel appearing before ~~the~~ a Committee has the same privileges and immunities as counsel in a court of law.
- Compare: 2006 No 1 s 187
- 95 Enforcement of orders**
 An order ~~for the payment of money~~ made by ~~the~~ a Committee may be enforced in all respects as if it were an order of the District Court on the filing of a sealed copy in that court.
- 96 Non-payment of fines or costs**
 If money payable by a person under an order by ~~the~~ a Committee or by the Disciplinary Tribunal remains unpaid for 60 days or longer after the date of the order, the Committee may suspend the person's licence until the person pays the money and, if he or she does not do so within 12 months, cancel his or her licence and direct the Registrar to remove the person's name from the register.
- Real Estate Agents Disciplinary Tribunal*
- 97 Real Estate Agents Disciplinary Tribunal established**
- (1) This section establishes a body to be known as the Real Estate Agents Disciplinary Tribunal.
 - (2) The Tribunal consists of—
 - (a) a person to act as chair of the Tribunal, who must be a barrister or solicitor with not less than 7 years' legal experience; and

- (b) up to 4 other members, at least one of whom must be a licensee.
- (3) The members of the Tribunal are appointed by the Minister.
- (4) The Minister must designate one of the members referred to in **subsection (2)(b)** as the deputy chairperson of the Tribunal. 5
- 98 Constitution of Tribunal for hearings**
For the purposes of each hearing, the Tribunal consists of—
- (a) the chairperson of the Tribunal or, if the chairperson is absent from duty for any reason, a member designated by the Minister to be the deputy chairperson; and 10
- (b) 2 other members.
- 99 Functions of Tribunal**
The functions of the Tribunal are—
- (a) to hear and determine any application made by ~~the~~ a Complaints Assessment Committee for the suspension of the licence of a licensee pending the determination of a charge that the Committee has laid against the licensee: 15
- (b) to hear and determine any charge against a licensee brought by the Committee: 20
- (c) to hear any appeal under **section 108** against a determination by the Committee (including a determination to take no action):
- (d) to conduct any review, under **section 109**, of a decision of the Registrar. 25
- 100 Services for Tribunal**
The Ministry of Justice must furnish such secretarial, recording, and clerical services as may be necessary to enable the Tribunal to discharge its functions.
- 101 Further provisions in relation to Tribunal and its proceedings** 30
The provisions of **Schedule 1** have effect in relation to the Tribunal and its proceedings.

102 Proceeding before Tribunal

- (1) The Tribunal may regulate its procedures as it thinks fit.
- (2) **Subsection (1)** is subject to the rules of natural justice and to this Act and any regulations made under this Act.

103 Representation before Disciplinary Tribunal

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- (1) Every person whose rights may be affected by a proceeding of the Disciplinary Tribunal (other than a review under **section 109**) is entitled to appear and be heard at the hearing of that proceeding and to be represented by counsel or otherwise.
- (2) A charge made by the Committee against a licensee is, at the hearing, to be prosecuted by the Committee, which, for that purpose, may be represented by counsel or otherwise.

104 Hearings to be in public

- (1) Every hearing of the Disciplinary Tribunal must be held in public. 15
- (2) **Subsection (1)**—
 - (a) does not apply to reviews under **section 109**; and
 - (b) is subject to **subsections (3) and (4)** and to **section 105**.
- (3) If the Disciplinary Tribunal is of the opinion that it is proper to do so, having regard to the interest of any person (including (without limitation) the privacy of the complainant (if any)) and to the public interest, it may hold a hearing or part of a hearing in private. 20
- (4) The Disciplinary Tribunal may, in any case, deliberate in private on its decision or on any question arising in the course of a hearing. 25

Compare: 2006 No 1 s 238

105 Restrictions on publication

- (1) If the Disciplinary Tribunal is of the opinion that it is proper to do so, having regard to the interest of any person (including (without limitation) the privacy of the complainant (if any)) and to the public interest, it may make 1 or more of the following orders: 30

- (a) an order prohibiting the publication of any report or account of any part of any proceedings before it, whether held in public or in private:
- (b) an order prohibiting the publication of the whole or any part of any books, papers, or documents produced at any hearing: 5
- (c) an order prohibiting the publication of the name or any particulars of the affairs of the person charged or any other person.
- (2) Unless it is reversed or modified in respect of its currency by the High Court on appeal under **section 113**, an order made under **subsection (1)** continues in force as specified in the order, or, if no time is specified, until the Disciplinary Tribunal, in its discretion, revokes it on the application of any party to the proceedings in which the order was made or of any other person. 10 15
- (3) **Subsection (1)(c)** does not apply to any communications between the Disciplinary Tribunal and the Authority. 15
- Compare: 2006 No 1 s 240

106 Evidence 20

- (1) Subject to **section 102**, the Disciplinary Tribunal may receive as evidence any statement, document, information, or matter that may, in its opinion, assist it to deal effectively with the matters before it, whether or not that statement, document, information, or matter would be admissible in a court of law. 25
- (2) The Disciplinary Tribunal may take evidence on oath and, for that purpose, any member of the Disciplinary Tribunal may administer an oath.
- (3) The Disciplinary Tribunal may permit a person appearing as a witness before it to give evidence by tendering a written statement and verifying that statement by oath. 30
- (4) Subject to **subsections (1) to (3)**, the Evidence Act 2006 applies to the Disciplinary Tribunal in the same manner as if the Disciplinary Tribunal were a court within the meaning of that Act. 35

- (5) A hearing before the Disciplinary Tribunal is a judicial proceeding within the meaning of section 108 of the Crimes Act 1961 (which relates to perjury).

Compare: 2006 No 1 s 239

107 Determination of charges and orders that may be made if charge proved 5

- (1) If the Disciplinary Tribunal, after hearing any charge against a person who is a licensee, is satisfied that it has been proved on the balance of probabilities that the person has been guilty of misconduct, it may, if it thinks fit, make 1 or more of the orders specified in **subsection (2)**. 10
- (2) The orders are as follows:
- (a) 1 or more of the orders that can be made by ~~the~~ a Committee under **section 90**:
 - (b) an order cancelling the licence of the licensee and, in the case of a licensee that is a company, also cancelling the licence of any officer of the company: 15
 - (c) an order suspending the licence of the licensee for a period not exceeding 24 months and, in the case of a licensee that is a company, also suspending the licence of any officer of the company for a period not exceeding 24 months: 20
 - (d) an order that a licensee not perform any supervisory functions until authorised by the Board to do so:
 - (e) an order, in the case of a licensee who is an employee or independent contractor, or former employee or former independent contractor, that any current employment or engagement of that person by a licensee be terminated and that no agent employ or engage that person in connection with real estate agency work: 25 30
 - (f) an order that a licensee who is an individual pay a fine not exceeding \$15,000 and order a licensee that is a company pay a fine not exceeding \$30,000:
 - (g) where it appears to the Tribunal that any person has suffered loss by reason of any act or omission of a licensee, an order that the licensee pay to that person a sum by way of compensation as is specified in the order, being 35

a sum not exceeding ~~the amount that is from time to time prescribed in the regulations~~ \$100,000.

- (3) The making of an order under this section for the payment of compensation to any person does not affect the right (if any) of that person to recover damages in respect of the same loss, but any sum ordered to be paid under this section, and the effect of any order made under this section for the reduction, cancellation, or refund of fees, must be taken into account in assessing any such damages. 5
- (4) If the Disciplinary Tribunal, after hearing any charge against a licensee, is satisfied that the licensee, although not guilty of misconduct, has engaged in unsatisfactory conduct, the Tribunal may do either of the following: 10
- (a) make any of the orders that a Complaints Assessment Committee may make under **section 90**; 15
- (b) remit the matter to the Committee that laid the charge against the person.
- (5) Where a matter is remitted to a Committee under **subsection (4)(b)**, the Committee is taken to have made a determination under **section 86(2)(b)**. 20

108 Appeal to Tribunal against determination by Committee

- (1) A person affected by a determination of ~~the~~ a Committee may appeal to the Tribunal against a determination of the Committee within 20 working days after the date of the notice given under **section 91**. 25
- (2) The appeal is by way of written notice to the Tribunal of the ~~complainant's~~ appellant's intention to appeal, accompanied by—
- (a) a copy of the notice given to the person under **section 91**; and 30
- (b) any other information that the ~~complainant~~ appellant wishes the Tribunal to consider in relation to the appeal.
- (3) The appeal is by way of rehearing.
- (4) After considering the appeal, the Tribunal may confirm, reverse, or modify the determination of the Committee. 35

- (5) If the Tribunal reverses or modifies a determination of the Committee, it may exercise any of the powers that the Committee could have exercised.

109 Application to Tribunal to review determination by Registrar

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- (1) An applicant may apply to the Tribunal against a determination of the Registrar that adversely affects the applicant within 20 working days after the date the applicant is notified of the determination.
- (2) The application must be made by way of written notice to the Tribunal of the applicant's intention to apply, accompanied by—
- (a) a copy of the notification; and
- (b) any other information that the applicant wishes the Tribunal to consider in relation to the appeal. 15
- (3) The review must be conducted on the papers unless the applicant requests to be heard in his or her application.
- (4) After conducting the review, the Tribunal may confirm, reverse, or modify the decision of the Registrar.
- (5) If the Tribunal reverses or modifies a determination of the Registrar, it may exercise any of the powers that the Registrar could have exercised. 20

110 Notification by Tribunal

When the Tribunal determines a matter in a proceeding, the Tribunal must notify every person involved in the proceeding, the Authority, and the Registrar of the determination in writing, setting out the reasons for the decision and the right of appeal to the High Court. 25

111 Enforcement of order

Any order made by the Tribunal under **section 107 for the payment of any money** may be enforced in all respects as if it were an order of the District Court on the filing of a sealed copy in that court. 30

112 Suspension of licence pending outcome of hearing

- (1) The Tribunal may suspend the licence of a licensee where—
- (a) a licensee has been charged under **section 88**; and
 - (b) the Tribunal considers that it is necessary or desirable to suspend the licence having regard to the interests of the public. 5
- (2) The process for suspending a licence under this section is as follows:
- (a) the Tribunal must give a licensee written notice of its intention to suspend the licence; and 10
 - (b) the notice must—
 - (i) contain the Tribunal’s reasons for the intended suspension; and
 - (ii) state that the licensee has 10 working days within which to make written representations to the Tribunal as to why the licence should not be suspended; and 15
 - (iii) state the proposed period, or otherwise describe the proposed duration, of the suspension; and
 - (c) if any written representations are made by the licensee within the period referred to in **paragraph (b)(ii)**, the Tribunal must take those representations into account in deciding whether to suspend the licence and the period or duration of any suspension; and 20
 - (d) the Tribunal must then decide whether to suspend the licence, and notify the licensee accordingly, as soon as practicable. 25
- (3) If the Tribunal decides to suspend the licence, the Tribunal must give the licensee and the Registrar written notice of its decision and— 30
- (a) include in the notice the grounds for the decision, the date on which the suspension takes effect, and the period or duration of the suspension; and
 - (b) specify in the notice the right of the licensee to appeal to the High Court under **section 113**. 35

*Appeals against decisions of Tribunal***113 Right of appeal**

A person who is affected by a decision of the Tribunal may appeal to the High Court against the decision.

114 High Court may make interim order

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(1) At any time before the final determination of an appeal, the High Court may make an interim order allowing ~~the appellant~~ an appellant who is a licensee to carry out real estate agency work until the close of the day on which the High Court finally determines the appeal.

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(2) An interim order may be subject to any conditions that the High Court thinks fit.

115 Duties of Registrar if interim order made

(1) If an interim order is made allowing ~~the appellant~~ a licensee to engage in agency work,—

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- (a) that person is to be treated for the purposes of this Act as if he or she were licensed; and
- (b) the Registrar must, as appropriate, enter, retain, or restore the person's name on the register.

(2) To enable the Registrar to fulfil the duties imposed by this section, the Registrar of the court in which the interim order is made must send a copy of the order to the Registrar as soon as practicable.

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Compare: 2007 No 15 s 83

116 Determination of appeal

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(1) The High Court's decision in the determination of an appeal is final.

(2) This section is subject to the right of a party to appeal to the Court of Appeal on a question of law under **section 117**.

Compare: 2007 No 15 s 84

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117 Appeal to Court of Appeal on question of law

(1) If dissatisfied with a decision of the High Court on the ground that it is erroneous in law, a party to an appeal under this Part may appeal to the Court of Appeal on a question of law only.

- (2) The appeal must be heard and determined in accordance with the rules of court.
- (3) The decision of the Court of Appeal or any appeal under this section is final.
- Compare: 2007 No 15 s 85

5

Part 5

Duties relating to real estate agency work

Business to be identified

117A Agent to display required name information

- (1) In this section,— 10
- business**, in relation to an agent, means the agent's business as a real estate agent
- required name information**, in relation to an agent, means—
- (a) the name of the agent and the fact that the agent is licensed under this Act; and 15
- (b) if the agent's business as a real estate agent is not carried on in the agent's name, the name or style under which that business is carried on.
- (2) Every agent must ensure that the required name information is displayed in a prominent place— 20
- (a) at each office or shop maintained by the agent for the purposes of the business; and
- (b) on every website maintained by the agent for the purposes of the business; and
- (c) on all notices, advertisements, and other material published by or on behalf of the agent in the course of the business; and 25
- (d) on all letters, accounts, contractual documents, agreements, and other documents sent or handed out, entered into, or published by or on behalf of the agent in the course of the business. 30
- (3) Any required name information displayed at an office or shop must be capable of being easily read from outside the office or shop. 35
- Compare: 1976 No 9 s 53

*Receipt of money and audit of accounts***118 Duty of agent with respect to money received in course of business**

- (1) All money received by an agent in respect of any transaction in his or her capacity as an agent must be paid to the person lawfully entitled to that money or in accordance with that person's directions. 5
- (2) Despite **subsection (1)**, if an agent is in doubt on reasonable grounds as to the person who is lawfully entitled to the money, he or she must take all reasonable steps to ascertain as soon as practicable the person who is entitled and may retain the money in his or her trust account until that person has been ascertained. 10
- (3) Pending the payment of any such money, the money must be paid by the agent into a general or separate trust account at any bank carrying on business in New Zealand under the authority of any Act and may not be drawn upon except for the purpose of paying it to the person entitled or as that person may in writing direct. 15
- (4) No money to which this section applies is available for payment of the agent's debts, nor may it be attached or taken in execution under the order or process of any court at the instance of any of the agent's creditors. 20
- (5) Nothing in this section takes away or affects any just lien or claim that an agent who holds money to which this section applies has against the money. 25

Compare: 1976 No 9 s 56

119 Money to be held by agent for 10 working days

- (1) When an agent receives any money in respect of any transaction in his or her capacity as an agent, he or she must not pay that money to any person for a period of 10 working days after the date on which he or she received it. 30
- (2) Despite **subsection (1)**, a court order or an authority signed by all the parties to the transaction may require the agent to pay the money before the expiry of the period specified in that subsection. 35

- (3) If at any time while holding any money on behalf of any party to the transaction, the agent receives written notice of any requisitions or objections in respect of the title to any land affected by the transaction, the agent must not at any time pay that money to any person except in accordance with a court order or an authority signed by all the parties to the transaction. 5

Compare: 1976 No 9 s 57

120 Agent to furnish account to client

- (1) As soon as an agent is asked by his or her client to do so, and in any case not later than 28 days after the agent receives any money in respect of the transaction in his or her capacity as an agent, the agent must render to the person lawfully entitled to the money an account in writing, setting out particulars of all such money, and its application. 10
15

- (2) If an agent is in doubt on reasonable grounds as to the person who is lawfully entitled to any money, the agent must take all reasonable steps to ascertain as soon as practicable the person who is entitled and is not required to render an account under this section until the person lawfully entitled has been ascertained. 20

Compare: 1976 No 9 s 58

121 Agents' trust accounts to be audited

- (1) Every general or particular trust account of an agent must be audited at the times and in the manner prescribed by regulations made under this Act. 25

- (2) All information obtained by an auditor in the course of the audit of any trust account under this Act must be treated as confidential.

- (3) **Subsection (2)** is subject to any rights of disclosure that may be prescribed for the purposes of the audit. 30

Compare: 1976 No 9 s 60

122 Administration of trust account in certain cases

- (1) ~~This section applies in any case where the Authority is satisfied that any money entrusted to an agent is held by a banker in any~~ 35

trust account of the agent and the Authority is satisfied that the agent—

- (a) is, owing to physical or mental disability, unable to administer his or her trust account properly; or
 - (b) has died; or 5
 - (c) has been adjudicated a bankrupt or has been admitted to the no asset procedure under the Insolvency Act 2006; or has been placed in receivership or liquidation under the Companies Act 1993; or
 - (d) has had his or her licence revoked; or 10
 - (e) has been suspended from carrying on the business of an agent; or
 - (f) has ceased to carry on the business of an agent and has neglected to wind up his or her trust account after reasonable notice has been given to him or her by the Authority requiring him or her to do so; or 15
 - (g) has not administered the trust account in accordance with the Act and regulations; or
 - (h) operates a trust account that has been administered recklessly. 20
- (2) In any case to which this section applies the Authority may, if it is satisfied that it is appropriate, make an order appointing a suitable person to administer the trust account for a period specified by the Authority.
- (3) A copy of every order made by the Authority under this section must be served on the banker, and on receipt of that copy the banker must allow the person appointed by the order to administer the trust account.

Compare: 1976 No 9 s 33

123 Appointment of interim administrator in certain cases 30

- (1) The Authority may make an order appointing an appropriate person as an interim administrator of an agent's trust account if the Authority reasonably suspects that—
- (a) any money entrusted to the agent may be at risk; and
 - (b) † or more of the grounds specified in **section 122(1)** 35 apply to that agent.
- (2) The function of the interim administrator is to preserve the assets until the termination of the order under **subsection (1)**:

- (3) ~~An order under **subsection (1)** is terminated when—~~
- (a) ~~the Authority notifies the agent concerned that the Authority no longer considers that money entrusted to the agent is at risk; or~~
 - (b) ~~an order is made under **section 422(2)**;~~ 5
- (4) ~~**Section 422(3)** applies to an order made under this section:~~

Agency agreements

124 No entitlement to commission or expenses without agency agreement

- (1) An agent is not entitled to any commission or expenses from a client for or in connection with any real estate agency work carried out by the agent for the client unless— 10
- (a) the work is performed under a written agency agreement signed by or on behalf of— 15
 - (i) the client; and
 - (ii) the agent; and
 - (b) the agency agreement complies with any applicable requirements of any regulations made under **section 155**; and
 - (c) a copy of the agency agreement signed by or on behalf of the agent was given by or on behalf of the agent to the client within 48 hours after the agreement was signed by or on behalf of the ~~person~~ client. 20
- (2) A court before which proceedings are taken by an agent for the recovery of any commission or expenses from a ~~person~~ client may order that the commission or expenses concerned are wholly or partly recoverable despite a failure by the agent to give a copy of the relevant agency agreement to the ~~person~~ client within 48 hours after it was signed by or on behalf of the ~~person~~ client. 25
- (3) A court may not make an order described in **subsection (2)** unless satisfied that— 30
- (a) the failure to give a copy of the agreement within the required time was occasioned by inadvertence or other cause beyond the control of the agent; and 35

- (b) the commission or expenses that will be recoverable if the order is made are fair and reasonable in all the circumstances; and
- (c) failure to make the order would be unjust.
- (4) This section overrides the Illegal Contracts Act 1970. 5
Compare: Property, Stock and Business Agents Act 2002 s 55(1), (4), (5) (NSW)
- 125 Approved guide to be provided before agency agreement for residential property signed**
- (1) An agent must not enter into an agency agreement with a person for the sale of residential property unless the agent or a licensee on the agent's behalf— 10
- (a) has provided the person with a copy of the approved guide before the agreement is signed by or on behalf of the person; and 15
- (b) has received a signed acknowledgment from the person that the person has been given the approved guide.
- (2) In this section—
- approved guide** means a guide that—
- (a) is about the sale of residential property: 20
- (b) has been approved by the Authority for the purposes of this section
- residential property** does not include any property that—
- (a) has been developed with other properties in a continuous area; and 25
- (b) is proposed to be sold or otherwise disposed of by a vendor who also proposes to sell or otherwise dispose of, or who has sold or otherwise disposed of, some or all of those other properties.
- (3) A contravention of this section does not affect the validity of the agency agreement. 30
Compare: Property, Stock and Business Agents Act 2002 s 56 (NSW)
- 126 Agency agreement must disclose rebates, discounts, and commissions**
- (1) An agent is not entitled to any expenses from a client for or in connection with any real estate agency work carried out by the agent for the client in connection with a transaction unless the 35

agency agreement under which the agent performs that work contains a statement that—

- (a) identifies the source of all rebates, discounts, or commissions that the agent will or ~~may~~ is eligible to receive in respect of those expenses; and 5
 - (b) specifies the estimated amount of those rebates, discounts, or commissions (to the extent that the amount can reasonably be estimated).
- (2) This section does not limit the liability of any person under the Secret Commissions Act 1910. 10
Compare: Property, Stock and Business Agents Act 2002 s 57(1) (NSW)

127 Regulations may make provisions in respect of agency agreements

Regulations under **section 155** may provide for ~~any~~ 1 or more of the following: 15

- ~~(a) the form of agency agreements;~~
- ~~(b) the terms, conditions, and other provisions that an agency agreement must or must not contain;~~
- (c) 1 or more standard forms of agency agreement: 20
- (d) the manner and form in which disclosure is to be made under **section 126**.

Compare: Property, Stock and Business Agents Act 2002 s 55(2) (NSW)

128 Client may cancel sole agency agreement by 5 pm next working day

- (1) A client who is party to a sole agency agreement with an agent may, by 5 pm on the first working day after the day on which a copy of the agreement is given to the client under **section 124(1)(c)**, cancel the agreement by written notice to the agent. 25
- (2) A notice under **subsection (1)** may be served by fax or email.
- (3) **Subsection (1)** has effect despite any provision to the contrary in any agreement. 30
- (4) **Even though a sole agency agreement has been cancelled, an agent may rely on that agreement if, before that cancellation,—**
 - (a) **the agent carries out any agency work in accordance with the agreement; and** 35

- (b) that agency work enables the conclusion of a contract that effects a transaction to which the agreement relates.

129 Parties may cancel sole agency agreements in respect of residential property 90 days after agreement is signed

- (1) Any party to a sole agency agreement that relates to residential property and is for a term longer than 90 days may, at any time after the expiry of the period of 90 days after the agreement is signed, cancel the agreement by written notice to the other party or parties. 5
- (1A) If the parties to a sole agency agreement to which **subsection (1)** relates agree in writing to renew the sole agency agreement, the signing of the renewal agreement is, for the purposes of that subsection, taken to be the signing of a new sole agency agreement. 10
- (2) For the purposes of **subsection (1)**, a sole agency agreement is signed when it is signed by or on behalf of the client or, if there is more than 1 client, when the agreement is signed by the last client. 15
- (3) A notice under **subsection (1)** may be served by fax or email.
- (4) This section has effect despite any provision to the contrary in any agreement. 20
- (4A) In this section, **residential property** does not include any property that—
- (a) has been developed with other properties in a continuous area; and 25
- (b) is proposed to be sold or otherwise disposed of by a vendor who also proposes to sell or otherwise dispose of, or who has sold or otherwise disposed of, some or all of those other properties.

Disclosure of information as to transaction and conflicts of interest 30

130 Licensee to give copy of contract contractual document

As soon as practicable after a person signs a contractual document specified in **subsection (2)** and gives that document to a licensee carrying out real estate agency work in connection 35

with the document, the licensee must give the person an accurate copy of the document.

- ~~(2) The documents are as follows:~~
- ~~(a) an offer to purchase or lease any land:~~
 - ~~(b) an agreement for the sale and purchase of any land: 5~~
 - ~~(c) an agreement to lease:~~
 - ~~(d) a lease:~~

Compare: 1976 No 9 s 65

- 131 Approved guide to be provided when offer or sale and purchase agreement contractual document provided 10**
- ~~(1) An agent who carries out real estate agency work in respect of the sale of residential property must ensure that **subsection (2)** is complied with before the agent, or a licensee on the agent's behalf, gives a person—~~
- ~~(a) a copy of an offer to buy or sell the property: 15~~
 - ~~(b) a copy of a proposed agreement for the sale and purchase of the property:~~
- (1) An agent must ensure that **subsection (2)** is complied with before a person signs a contractual document if the contractual document— 20
- (a) relates to the proposed sale of a residential property in respect of which the agent is carrying out real estate work; and
 - (b) was provided to the person by the agent or by a licensee on behalf of the agent. 25
- (2) The agent or a licensee on the agent's behalf must have—
- (a) ~~have~~ provided the person with a copy of the approved guide; and
 - (b) received a signed acknowledgment from the person that the client has been given the approved guide. 30
- (3) In this section—
- approved guide** means a guide that—
- (a) is about the sale of residential property;
 - (b) has been approved by the Authority for the purposes of this section. 35
- (4) A contravention of this section does not affect the validity of any contract.

132 Contracts for acquisition by licensee or related person may be cancelled

- (1) No licensee may, without the consent of the client for whom he or she carries out real estate agency work in respect of a transaction, directly or indirectly, whether by himself or herself or through any partner, sub-agent, or nominee, acquire the land or business to which the transaction relates or any legal or beneficial interest in that land or business. 5
- (2) No licensee may, without the consent of the client, carry out or continue to carry out any agency work in respect of a transaction if the licensee knows or should know that the transaction will, or is likely to, result in a person related to the licensee acquiring the land or business to which the transaction relates or any legal or beneficial interest in that land or business. 10
- (3) The client's consent is effective only if— 15
- (a) given in the prescribed form; and
- (b) the client is provided with a valuation in accordance with **section 133**.
- (4) The client may cancel any contract— 20
- (a) made in contravention of **subsection (1)**; or
- (b) brought about by agency work carried out in contravention of **subsection (2)**.
- (5) No commission is payable in respect of any contract of the kind described in **subsection (4)**, regardless of whether the client cancels the contract. 25
- (6) The client may recover any commission paid in respect of any contract of the kind described in **subsection (4)** as a debt.
- (7) For the purposes of this section, a person who is the client of an agent in respect of a transaction is also the client of any branch manager or salesperson whose work enables the agent to carry out real estate agency work for that client. 30
- (8) This section and **section 133** have effect despite any provision to the contrary in any agreement.

133 Client to be provided with valuation

- (1) For the purposes of **section 132(3)**, the licensee must give the client a valuation made at the licensee's expense; ~~by an independent registered valuer of the land or business in question.~~ 35

- (1A) The valuation must have been made by—
- (a) an independent registered valuer; or
 - (b) in the case of a business, by an independent chartered accountant.
- (2) The licensee must give the client the valuation either— 5
- (a) before seeking the consent of the client; or
 - (b) with the agreement of the client, within 14 days after obtaining that consent.
- (3) Every consent given under **section 132** without the valuation being supplied to the client in accordance with **subsection (2)** is ineffective. 10
- (4) Any contract to which the client is a party and to which the consent relates is voidable at the option of the client if—
- (a) the client gives his or her consent in accordance with **subsection (2)(b)**; and 15
 - (b) the valuation, when supplied, is greater than the valuation specified in the prescribed form of consent as the provisional valuation.

Compare: 1976 No 9 s 64

134 Disclosure of other benefits that licensee stands to gain from transaction 20

- (1) A licensee who carries out real estate agency work in respect of a transaction must disclose in writing to every prospective party to the transaction whether or not the licensee, or any person related to the licensee, may benefit financially from the transaction. 25
- (1A) **Subsection (1)** does not apply to any matter disclosed under **section 126 or 132.**
- (2) The licensee must make the disclosure required by **subsection (1)** before or at the time that the licensee provides the prospective party with any ~~of the following~~ contractual documents that relate to the transaction. 30
- ~~(a) a copy of an offer;~~
 - ~~(b) a copy of a proposed sale and purchase agreement;~~
 - ~~(c) a copy of a proposed agreement to lease or a copy of a lease.~~ 35

- (3) For the purposes of this section, an agent does not benefit financially from a transaction merely because of any commission payable to the agent under an agency agreement in respect of the transaction.
- (4) A contract entered into in contravention of this section may not be cancelled merely because of that contravention. 5

135 Meaning of licensee and person related to licensee in sections 132 to 134

- (1) In **sections 132 to 134**, licensee includes, in the case of an agent that is a company, every officer and shareholder of the company. 10
- (2) For the purposes of **sections 132 to 134**, a person is related to a licensee if the person is—
- (a) a partner of the licensee under a partnership agreement:
 - (b) an employee of the licensee: 15
 - (c) a branch manager or salesperson engaged by the licensee:
 - (d) the licensee’s spouse or civil union partner:
 - (e) the licensee’s de facto partner:
 - (f) a child, grandchild, brother, sister, nephew, or niece of the licensee or of any person referred to in **paragraphs (d) or (e)**: 20
 - (g) any other child who is being, or is to be, cared for on a continuous basis by the licensee or any person referred to in **paragraph (d) or (e)**: 25
 - (h) any parent of the licensee or of any person referred to in **paragraph (d) or (e)**:
 - (i) an entity that has an interest in the licensee or an entity (not being an entity listed on the New Zealand Stock Exchange) in which the licensee has an interest. 30

Requirements where land sold by auction

136 Application of sections 137 to 141

Sections 137 to 141 apply to any auction for the sale of land or any interest in land, whether or not the person conducting the auction is a licensee or a ~~registered~~ licensed auctioneer under the Auctioneers Act 1928. 35

137 Bidders Record

- (1) Before ~~an auction is held~~ any bids are taken at an auction, a record (the **Bidders Record**) must be made of the persons who will be entitled to bid at the auction.
- (2) The Bidders Record must show, in respect of each bidder,— 5
- (a) the relevant details of the person; and
 - (b) the identifying number allocated to the person for the purpose of identifying the person at the auction; and
 - (c) any other information required by regulations made under this Act. 10
- (3) For the purposes of **subsection (2)(a)**, the relevant details of a person are—
- (a) the person's name and address and the reference to 1 or more documents by which the identity of that person is proved; and 15
 - (b) in the case of a person bidding on behalf of another person, the name and address of that other person and the reference to 1 or more documents by which the identity of that person is proved.
- (4) The person engaged to conduct the auction must compile the Bidders Record required by this section for the auction unless some other person engaged to act in respect of the sale or acting on behalf of the person has made the Bidders Record for the auction. 20
- (5) The person engaged to conduct the auction must keep the Bidders Record for at least 3 years and must keep all the Bidders Records made by the person together in the form of a register of Bidders Records. 25
- (6) Regulations made under this Act may make provision for, or with respect to,— 30
- ~~(a) conferring an entitlement on a seller of land to inspect the Bidders Record for the sale of the land; and~~
 - (b) the manner and form in which a Bidders Record is to be made and kept; and
 - (ba) the information that a seller may obtain from the auctioneer about the details in the Bidders Record for the purpose of enabling the seller to bring about or effect the transaction or proposed transaction to which the auction relates; and 35

- (c) requiring other information to be included in the Bidders Record.

Compare: Property, Stock and Business Agents Act 2002 s 68 (NSW)

138 Details to be established by proof of identity

- (1) No person may enter a bidder's name and address in a Bidders Record unless both the bidder's name and address details are recorded and the bidder's identity is established by the production to the person of— 5
- (a) 1 or more documents proving the identity of the bidder; and 10
- (b) in the case of the details of a person on whose behalf a bidder is to bid, a letter of authority to bid on the person's behalf specifying the person's name and address and the reference to 1 or more documents by which the identity of that person is proved. 15
- (2) The only documents that may be used to prove the identity of a person for the purposes of this section are—
- (a) a driver licence that is issued or has effect under the Land Transport Act 1998; or
- (b) a New Zealand passport; or 20
- (c) an overseas passport; or
- (d) any other proof of identity that may be prescribed by regulations.
- (3) No person may enter the relevant details of a bidder in a Bidders Record if the person knows, or has reasonable cause to suspect, that the details are false in a material particular. 25

Compare: Property, Stock and Business Agents Act 2002 s 69 (NSW)

139 Confidentiality of Bidders Record

- (1) A person who compiles a Bidders Record, and any licensee or auctioneer to whom the contents of a Bidders Record are disclosed under this Act, must not— 30
- (a) divulge any information that the Bidders Record contains except as authorised or required by this Act; and
- (b) use the Bidders Record or the information that it contains for any purpose not authorised by this Act. 35

- (2) This section does not prevent the divulging of information in accordance with a requirement imposed by or under this Act.
Compare: Property, Stock and Business Agents Act 2002 s 70 (NSW)

140 Bids may only be taken from registered bidders

- (1) A person (**person A**) who conducts an auction must not take a bid from a person (**person B**) unless—
- (a) the relevant details of person B have been entered before the bid is taken in a Bidders Record made in respect of the auction in accordance with **section 137**, and person A is in possession of that record when the bid is taken; and
 - (b) person B identifies himself or herself at the auction by displaying an identifying number allocated to person B for the purposes of the auction and recorded in the Bidders Record as the identifying number allocated to person B.
- (2) If person A refuses to take a bid from person B because of this section, person A is not liable for that refusal.
Compare: Property, Stock and Business Agents Act 2002 s 67(1), (2) (NSW)

141 Vendor's bids to be identified

The person who conducts the auction must either,—

- (a) before the commencement of the auction, provide all bidders with sufficient information to enable each bidder to identify any bid that is made by or on behalf of the vendor as a vendor's bid; or
- (b) identify any bid made by or on behalf of the vendor as a vendor's bid as soon as the bid is made.

Part 6

Miscellaneous provisions

Subpart 1—Offences and penalties

142 General offences

~~Every person commits an offence who knowingly contravenes any provisions of this Act or any regulations made under this Act.~~

143 General penalty

Every person who commits an offence against this Act ~~or against any regulations made under this Act~~ for which no penalty is provided elsewhere than in this section is liable,—

- (a) in the case of an individual, to a fine not exceeding \$40,000; or
- (b) in the case of a company ~~or body corporate~~, to a fine not exceeding \$100,000.

144 Forfeiture for certain offences

- (1) In addition to any fine that may be imposed, a person who commits an offence under **section 146 or 147** is liable to forfeit to the Crown all money received by him or her by way of commission, profit, or remuneration for any services or work performed by him or her as an unlicensed agent, branch manager, or salesperson.

- (2) All money forfeited to the Crown under **subsection (1)** is recoverable at the suit of the Crown in any court of competent jurisdiction, or may be assessed by the court by which the defendant is convicted, and be recoverable as a fine.

Compare: 1976 No 9 s 16(2), (3)

145 Offences to be punishable on summary conviction

Every offence against this Act or regulations made under this Act is punishable on summary conviction.

*Offences relating to requirement to be licensed***146 Offence to carry on business of agent, branch manager, or salesperson unless licensed or exempt**

A person commits an offence if the person carries out any real estate agency work without ~~being licensed to do so under this Act or exempt from the requirement to be licensed.~~

- (a) being licensed to do so under this Act; or
- (b) being exempt from the requirement to be licensed.

147 Offence of holding out as agent, branch manager, or salesperson unless licensed or exempt

A person commits an offence who holds out that any person (including the person himself or herself) who is neither licensed under this Act or exempt from the requirement to be licensed, is an agent, branch manager, or salesperson. 5

148 Offence of employing or contracting unlicensed or non-exempt person as agent, branch manager, or salesperson

A person commits an offence who employs or contracts, or continues to employ or contract, as an agent, branch manager, or salesperson a person— 10

(a) who is not licensed or exempt from the requirement to be licensed under this Act; or

(b) whose licence has been suspended under this Act; or 15

(c) whose licence has been cancelled under this Act; or

(d) who is prohibited from working for an agent in a real estate business in accordance with an order made under **section 107**.

Offences relating to application for licence 20

149 Offence to provide false or misleading information

(1) A person commits an offence who, for the purposes of any application for a licence or for renewal of a licence under this Act,—

(a) supplies to the Registrar any false or misleading information, knowing it to be false or misleading; or 25

(b) supplies to the Registrar any false or misleading information.

(2) It is a defence to a charge under **subsection (1)(b)** that the person to whom the charge relates did not know that he or she was providing false or misleading information and had exercised all reasonable care and due diligence to ensure that the information provided was not false or misleading. 30

150 Offence to fail to notify change in circumstances

(1) A licensee or applicant for a licence commits an offence who, without reasonable excuse, fails to notify the Registrar of any change in circumstances as required by **section 66**.

(2) Every person who commits an offence against this section is liable,— 5

(a) in the case of an individual, to a fine not exceeding \$10,000; or

(b) in the case of a company, to a fine not exceeding \$50,000. 10

Offences relating to Authority's powers of possession and inspection of documents

150A Offence to fail to comply with requirement to give possession of documents

A person commits an offence who, without reasonable excuse, fails to comply with a requirement to give the Authority possession of documents in accordance with a notice given under section 29A. 15

150B Offence to fail to comply with a requirement to produce financial records 20

A person commits an offence who, without reasonable excuse, fails to comply with a requirement stated in a notice given under section 30(2) to produce financial records and to permit a person authorised by the Authority to inspect and copy those records. 25

Offences relating to requirements for real estate transactions

150C Offence to fail to provide information or document

(1) A person commits an offence who, without reasonable excuse, fails to comply with a requirement to produce any papers, documents, records, or things in accordance with a notice given under section 82. 30

(2) Every person who commits an offence against this section is liable,—

- (a) in the case of an individual, to a fine not exceeding \$10,000; or
- (b) in the case of a company, to a fine not exceeding \$50,000.

151AB Offence to fail to pay person lawfully entitled to money received 5

An agent commits an offence if that agent fails to pay a person lawfully entitled to money received in respect of any transaction in accordance with **section 118** or otherwise contravenes that section. 10

151AAB Offence to fail to hold money

An agent commits an offence who fails to hold money required to be held by **section 119** for the period required by that section.

151 Offence to fail to disclose conflict of interest 15

A person commits an offence who fails to disclose information in accordance with **section 134**.

152 Offence to render false accounts

- (1) A person commits an offence who renders an account purporting to be an account for any money received by him or her in his or her capacity as a licensee, knowing the account to be false in a material particular. 20
- (2) Every person who commits an offence against this section is liable,—
 - (a) in the case of an individual, to imprisonment for a term not exceeding 2 years or a fine not exceeding \$40,000, or both; or 25
 - (b) in the case of a company or body corporate, to a fine not exceeding \$100,000.

*Offences relating to auction of land***152A Offence to breach confidentiality of Bidders Record**

A person commits an offence if that person divulges any information contained in the Bidders Record or uses the record of that information in contravention of **section 139.**

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152B Offence to take a bid from unregistered bidder

A person conducting an auction commits an offence if that person takes a bid otherwise than in accordance with **section 140.**

Offences relating to investigation

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153 Offence to resist, obstruct investigation, etc

A person commits an offence who without reasonable excuse,—

- (a) resists, obstructs, deceives, or attempts to deceive any person who is exercising or attempting to exercise any power or perform any function under this Act; or 15
- ~~(b) fails to comply with any requirement under this Act; or~~
- (c) gives to any person who is exercising or attempting to exercise any power or perform any function under this Act any particulars knowing those particulars are false 20 or misleading in any material respect.

Subpart 2—Service

154 Service of notice and documents

- (1) Any notice or other document required or authorised by this Act to be given to or served on any person, is sufficiently given 25 or served if—
 - (a) it is delivered to that person; or
 - (b) it is left at that person's usual or last known place of abode or business or at an address specified for that purpose in any document received from that person; or 30
 - (c) it is posted in a letter addressed to that person by name at that place of abode or business or address; or
 - (d) it is sent in the prescribed manner (if any).

- (2) Any notice or other document required or authorised by this Act to be given to or served on the Authority is sufficiently given or served if—
- (a) it is delivered to the Registrar; or
 - (b) it is left at the office of the Authority; or 5
 - (c) it is posted in a letter addressed to the Authority at the office of the Authority; or
 - (d) it is sent in the prescribed manner (if any).
- (2A) Any notice or other document required or authorised by this Act to be given or served on a business partnership is taken to be given or served on the partnership if, in accordance with **subsection (1)**, it is given or served on any one of the partners. 10
- (3) If any notice or other document is sent by post, it is, unless the contrary is shown, treated to have been given or served on the addressee at the time when the letter would have been delivered in the ordinary course of the post, and, in proving service of the notice, it is sufficient to prove that the letter was properly addressed and posted. 15
- (4) This section does not apply to notices or other documents served or given in any proceedings in any court. 20

Subpart 2A—Civil remedies

154A Civil remedies not affected

- (1) Nothing in this Act affects any civil remedy that a person may have against an agent, branch manager, or salesperson. 25
- (2) **Subsection (1)** is subject to **section 107(3)**.
 Compare: 1976 No 9 s 120

Subpart 3—Regulations

155 Regulations

- The Governor-General may, by Order in Council, make regulations for all or any of the following purposes: 30
- (aa) exempting any person or class of persons from the requirement to be licensed under this Act and prescribing any terms and conditions of such an exemption:

- (a) prescribing the qualifications necessary before a person is entitled to be licensed as an agent, branch manager, or salesperson:
- ~~(b) prescribing countries, States, or territories whose laws prohibiting any person from acting as an agent, branch manager, or salesperson are recognised:~~ 5
- (c) prescribing the form, manner, or content of applications, notices, or any other documentation or information required under this Act:
- (d) prescribing search criteria for the register: ~~the particulars to be entered in the register:~~ 10
- (e) prescribing changes of circumstance that must be notified to the Registrar:
- (f) prescribing the manner and form in which complaints may be made to the Authority about licensees or former licensees: 15
- (fa) prescribing any act or thing necessary to supplement or render more effectual the provisions of this Act as to the conduct of proceedings before the Disciplinary Tribunal: 20
- ~~(g) providing for an audit from time to time of the trust accounts of all agents, and the manner in which and the persons or class of persons by whom that audit must be conducted, and for a report of the result of the audit:~~
- (ga) prescribing for the appointment of auditors, auditing requirements, and conferring such powers, including the power of inspection of documents and records, as may be necessary or desirable for the purposes of carrying out an audit; and 25
- (h) prescribing the form in which a client's consent must be given for the purposes of **section 132:** 30
- (i) prescribing any form of proof of identity that is acceptable for the purposes of **section 138:**
- (j) prescribing requirements relating to the conduct of any auctions for the sale of land: 35
- (k) ~~prescribing offences against any regulations made under this Act:~~ prescribing offences in respect of the contravention of or non-compliance with any regula-

- tions made under this Act, and setting the maximum penalty for each offence, which—
- (i) in the case of an individual, may not exceed \$25,000; or
 - (ii) in the case of a company, may not exceed \$50,000:
- ~~(f) providing for exemptions under **section 11**;~~
 - ~~(m) prescribing the maximum amount of compensation payable under **section 107(2)(g)**;~~
 - (n) prescribing periods of time for the purposes of giving notice, making submissions, and other matters: 10
 - (o) prescribing the manner for giving notice or service under this Act:
 - (p) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect. 15
- (2) Any regulations made under **subsection (1)(aa)** exempting any person or class of persons from the requirement to be licensed under this Act may be made only on the recommendation of the Minister given in accordance with **subsection (3)**. 20
- (3) The Minister must not make a recommendation under **subsection (2)** unless the Minister—
- (a) is satisfied that—
 - (i) there is no material consumer benefit to be gained by requiring the person or class of persons concerned to be licensed; and 25
 - (ii) there are sufficient processes in place to ensure competent and ethical conduct on the part of that person or those persons; and
 - (b) has consulted with representatives of organisations that, in the opinion of the Minister, have an interest in the proposed exemption. 30

Subpart 4—Provisions relating to repeal of Real Estate Agents Act 1976

Repeal of Real Estate Agents Act 1976 35

156 Repeal of Real Estate Agents Act 1976

The Real Estate Agents Act 1976 (1976 No 9) is repealed.

157 Transfer of assets and liabilities

On the commencement of this Act, the assets and liabilities of the Real Estate Agents Licensing Board constituted under section 4 of the Real Estate Agents Act 1976 vest in the Real Estate Institute of New Zealand Incorporated (**REINZ**). 5

157A Membership of REINZ

A person who immediately before the commencement of section 156 is a member of REINZ continues to be a member of REINZ in accordance with the rules of REINZ until the person's membership is terminated in accordance with those rules or until the person resigns his or her membership. 10

*Winding up of Fidelity Guarantee Fund***158 Continuation of certain provisions of Real Estate Agents Act 1976**

Despite the repeal of the Real Estate Agents Act 1976 by **section 156**, the following provisions of that Act continue to be in force until the date on which the Real Estate Agents Fidelity Guarantee Fund is wound up: 15

- (a) sections 71 to 75(1):
- (b) sections 79 to 87: 20
- (c) the Schedule.

Compare: 2006 No 1 s 363

159 Claims in relation to Real Estate Agents Fidelity Guarantee Fund

- (1) No person has any claim against the Real Estate Agents Fidelity Guarantee Fund in relation to any theft committed on or after the date on which the repeal of the Real Estate Agents Act 1976 takes effect. 25
- (2) No person has any claim against the Real Estate Agents Fidelity Guarantee Fund in respect of any theft committed before the date on which the repeal of the Real Estate Agents Act 1976 takes effect unless that person has, on or before the last date for submitting claims, given notice of the claim in writing to the Council of REINZ or to the committee of management 30

appointed under section 74(1) of the Real Estate Agents Act 1976.

- (3) The last date for submitting a claim is the last day of the period of 12 months beginning with the date on which a report under **section 161(1)** is submitted by the Council of REINZ to the Minister. 5

Compare: 2006 No 1 s 365

160 Public notice of last day for making claims

- (1) The Council of REINZ must give public notice of the last date for submitting any claim against the Real Estate Agents Fidelity Guarantee Fund in respect of any theft committed before the date on which the repeal of the Real Estate Agents Act 1976 takes effect. 10

- (2) The public notice under **subsection (1)** must be given at least twice before that last date, the first such notice being given not less than 3 months before that date and the second being given not more than 1 month and not less than 14 days before that date. 15

Compare: 2006 No 1 s 366

161 Winding up of Real Estate Agents Fidelity Guarantee Fund 20

- (1) If the Council of REINZ forms the opinion that all claims against the Real Estate Agents Fidelity Guarantee Fund that it is aware of have been received and fully dealt with, it must submit a report to the Minister stating that opinion and outlining the reasons for that opinion. 25

- (2) If, in the period of 12 months beginning with the date on which the Council of REINZ submits a report under **subsection (1)**, further claims against the Real Estate Agents Fidelity Guarantee Fund are submitted to the Council, it must receive, and deal with, those claims. 30

- (3) After the expiry of the period of 12 months referred to in **subsection (2)**, the Council of REINZ must decline to receive any further claims against the Real Estate Agents Fidelity Guarantee Fund. 35

- (4) **Subsection (5)** applies if—

- (a) no further claims against the Real Estate Agents Fidelity Guarantee Fund are received in the period referred to in **subsection (2)**; or
- (b) the Council of REINZ has fully dealt with any further claims against the Real Estate Agents Fidelity Guarantee Fund that were received in the period referred to in **subsection (2)**. 5
- (5) The Council of REINZ must report to the Minister on the application of this subsection and submit to the Minister its final report and final audited accounts in respect of the Real Estate Agents Fidelity Guarantee Fund. 10
- (6) The Minister may, on receiving that report and those accounts, recommend to the Governor-General the making of an Order in Council under **subsection (7)**.
- (7) The Governor-General may, by Order in Council, declare that the Real Estate Agents Fidelity Guarantee Fund is wound up on a date specified in the order. 15

Compare: 2006 No 1 s 367

- 162 Application of Real Estate Agents Fidelity Guarantee Fund on winding up** 20
- On the date specified in the Order in Council made under **section 161(7)** on which the Real Estate Agents Fidelity Guarantee Fund is wound up, any remaining assets of the fund continue to be the property of REINZ but cease to be held in trust for the purposes stated in section 81 of the Real Estate Agents Act 1976. 25

Transitional provisions

- 163 Continuation in office for purposes of transitional provisions**
- (1) For the purposes of **sections 164 to 169**, the Real Estate Agents Licensing Board constituted under section 4 of the Real Estate Agents Act 1976, the Registrar of Real Estate Agents appointed under section 35 of that Act, and every Regional Disciplinary Committee established pursuant to the rules of the Real Estate Institute under section 70 of that 30 35

Act continue in office and continue to have all the powers necessary to fulfil those purposes.

- (2) If there is a vacancy in any of the bodies or in the office of Registrar referred to in **subsection (1)**, the Minister may appoint any person the Minister considers appropriate to fill the vacancy. 5

164 Agents licensed under Real Estate Agents Act 1976

- (1) Every person is deemed to hold a licence as an agent under this Act who, immediately before the commencement of this Act, holds a current agent's licence under the Real Estate Agents Act 1976. 10
- (2) The licence that the person is deemed to hold under **subsection (1)** continues in force, until the expiration of the year in respect of which the licence was issued under the Real Estate Agents Act 1976 and may be renewed under this Act. 15
- (3) Every person is deemed to hold a licence as an agent under this Act if, immediately before the commencement of this Act, the person is entitled to apply for a renewal of his or her or its agent's licence under the Real Estate Agents Act 1976 and, on the commencement of this Act, the person's application for that renewal is pending before the Real Estate Agents Licensing Board. 20
- (4) The licence that the person is deemed to hold under **subsection (3)** continues in force until the Authority has been notified by the Real Estate Agents Licensing Board under **section 167(2)** of the Board's determination and has taken any appropriate action on that advice. 25
- (5) This section does not limit the provisions of this Act that authorise the cancellation of a licence or the suspension of a licensee. 30

165 Salespersons and branch managers approved under Real Estate Agents Act 1976

- (1) Every person is deemed to hold a licence as a salesperson or as a branch manager under this Act who, on the commencement of this Act, holds a current certificate of approval as a sales- 35

person or as a branch manager under the Real Estate Agents Act 1976.

- (2) The licence that the person is deemed to hold under **subsection (1)** continues in force until the expiry of the year in respect of which the licence was issued under the Real Estate Agents Act 1976 and may be renewed under this Act. 5
- (3) Every person is deemed to hold a licence as a salesperson or as branch manager under this Act if, immediately before the commencement of this Act, the person is entitled to apply for a renewal of his or her certificate of approval under the Real Estate Agents Act 1976 and, on the commencement of this Act, the person's application for that renewal is pending before the Real Estate Agents Licensing Board. 10
- (4) The licence that the person is deemed to hold under **subsection (3)** continues in force until the Authority has been notified by the Real Estate Agents Licensing Board under **section 167(2)** of the Board's determination and has taken any appropriate action on that advice. 15
- (5) This section does not limit the provisions of this Act that authorise the cancellation of a licence or the suspension of a licensee. 20
- (6) A person who, by this section, is deemed to hold a licence and who continues to be employed or engaged by the same agent retains the status that the person had before the commencement of this Act, whether as employee or as independent contractor, until that status is altered by agreement of the parties. 25

166 Continuing effect of permits issued under Real Estate Agents Act 1976

- (1) Every permit issued under section 34 of the Real Estate Agents Act 1976 that is in effect immediately before the commencement of this Act continues in effect according to its tenor despite any provision of this Act (other than this section). 30
- (2) The Authority has, and may exercise, the power conferred on the Real Estate Licensing Board by section 34(5) of the Real Estate Agents Act 1976. 35

- (3) Every permit referred to in **subsection (1)**, unless sooner expired or revoked, expires on the date that is 2 years after the commencement of this Act.

167 Applications pending at commencement of this section to be dealt with under Real Estate Agents Act 1976 5

- (1) Every application for a licence or a certificate of approval, or for a renewal of a licence or a certificate of approval, made under the Real Estate Agents Act 1976 that is, immediately before the commencement of this Act, pending before the Real Estate Agents Licensing Board must be considered and determined as if this Act (other than this section) had not been enacted. 10
- (2) After determining an application of the kind referred to in **subsection (1)**, the Real Estate Agents Licensing Board must promptly advise the Authority of the determination. 15
- (3) If the Authority receives advice under **subsection (2)** that the Real Estate Agents Licensing Board has issued an agent's licence to a person or granted an application for the renewal of such a licence, the Authority must issue a licence as an agent to the person under this Act. 20
- (4) If the Authority receives advice under **subsection (2)** that the Real Estate Agents Licensing Board has issued a certificate of approval as a salesperson or branch manager to a person or granted an application for the renewal of such a certificate, the Authority must issue a licence as a salesperson or as branch manager to the person under this Act. 25
- (5) The Real Estate Agents Licensing Board and any person holding office as Registrar under the Real Estate Agents Act 1976 continue to have all the powers under that Act that are necessary for performing their duties under this section. 30

167A Continuing effect of agency agreements entered into before repeal of Real Estate Agents Act 1976

- (1) The repeal by **section 156** of the Real Estate Agents Act 1976 does not affect the continuation of any subsisting contracts of the kind described in section 62(b) of that Act, and any such contract continues to be governed by that Act. 35

- (2) A contract of the kind described in **subsection (1)** may be renewed only by an agency agreement to which **section 124** applies.
- (3) Section 62 of the Real Estate Agents Act 1976 continues to apply to any service or work performed, before the commencement of **section 156**, by any person as a real estate agent under that Act. 5

168 Continuation of pending disciplinary proceedings

- (1) All applications under any of sections 94, 95, and 99 of the Real Estate Agents Act 1976, every inquiry under section 97 of that Act, ~~and~~ every complaint laid under section 102 of that Act with a Regional Disciplinary Committee, and every matter referred to a sub-committee of a Regional Disciplinary Committee in accordance with rules made under section 70 of that Act that have been commenced before the commencement of this section and that have not been completed before that commencement are to be continued and completed as if that Act had not been repealed. 10 15
- (2) If the Real Estate Agents Licensing Board, in completing any application referred to in **subsection (1)**, determines that the licence of a licensee is to be cancelled or that a licensee is to be suspended, the Board must promptly notify the Authority of that determination and the Authority must give effect to the determination by taking the appropriate action under this Act. 20
- (3) **Subsection (1)** is subject to **subsection (2)**. 25

169 Allegations about conduct before commencement of this section

- (1) The Complaints Assessment Committee may consider a complaint, and the Tribunal may hear a charge, against a licensee or a former licensee in respect of conduct alleged to have occurred before the commencement of this section but only if the Committee or the Tribunal is satisfied that,— 30
- (a) at the time of the occurrence of the conduct, the licensee or former licensee was licensed or approved under the Real Estate Agents Act 1976 and could have been complained about or charged under that Act in respect of that conduct; and 35

- (b) the licensee or former licensee has not been dealt with under the Real Estate Agents Act 1976 in respect of that conduct.
- (2) If, after investigating a complaint or hearing a charge of the kind referred to in **subsection (1)**, the Committee or Tribunal finds the licensee or former licensee guilty of unacceptable conduct or of misconduct in respect of conduct that occurred before the commencement of this section, the Committee or the Tribunal may not make, in respect of that person and in respect of that conduct, any order in the nature of a penalty that could not have been made against that person at the time when the conduct occurred.

170 Amendments to other enactments

The enactments listed in **Schedule 2** are amended in the manner set out in that schedule.

Schedule 1**s 101****Provisions relating to Tribunal**

- 1 Oath of office** 5
 Each member of the Tribunal must, before entering on the performance of his or her functions as a member of the Tribunal, swear or affirm before a Judge of the High Court that he or she will faithfully and impartially perform his or her duties as a member of the Tribunal.
- 2 Term of office** 10
 (1) Every member of the Tribunal is to be appointed for a term not exceeding 3 years.
 (2) A member of the Tribunal is eligible for reappointment from time to time.
 (3) Where the term of office of a member of the Tribunal has expired, that member, unless he or she sooner dies or vacates office under **clause 3**, continues to hold office, by virtue of the appointment for the term that has expired, until—
 (a) that member is reappointed; or
 (b) a successor to that member is appointed; or 20
 (c) that member is informed in writing by the Minister that he or she is not to be reappointed and is not to hold office until a successor is appointed.
- 3 Vacation of office**
 (1) A member of the Tribunal may at any time be removed from office by the Governor-General for incapacity affecting performance of duty, neglect of duty, or misconduct, proved to the satisfaction of the Governor-General. 25
 (2) A member of the Tribunal is deemed to have vacated his or her office if he or she is adjudged bankrupt under the Insolvency Act 2006. 30
 (3) A member of the Tribunal may at any time resign his or her office by giving notice in writing to the Minister.
- 4 Remuneration**
 The chair and other members of the Tribunal are to be paid, 35
 out of public money, remuneration by way of fees, salary, or

allowances and travelling allowances in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act apply accordingly as if the chair or any other member were a member of a statutory board within the meaning of that Act.

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5 **Members of Tribunal**

No person holding office as a member of the Tribunal is deemed by reason of his or her holding of that office to be employed in the Government service for the purposes of the Government Superannuation Fund Act 1956 or in the State services for the purposes of the State Sector Act 1988.

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6 **Witness summons**

(1) For the purposes of any matter before the Tribunal, the Tribunal may, of its own initiative, issue a summons to any person requiring that person to attend before the Tribunal and give evidence.

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(2) The summons must be in the prescribed form, and may require the person to produce before the Tribunal any books, papers, documents, records, or things in that person's possession or under that person's control in any way relating to the matter.

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(3) The power to issue a summons under this clause may be exercised by the Tribunal or by any officer of the Tribunal purporting to act by the direction or with the authority of the Tribunal.

7 **Witnesses' expenses**

(1) Every person attending the Tribunal on a summons, and every other person giving evidence before the Tribunal, is entitled, subject to **subclause (2)**, to be paid, by the party calling that person, witnesses' fees, allowances, and travelling expenses according to the scales for the time being prescribed by regulations made under the Summary Proceedings Act 1957, and those regulations apply accordingly.

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(2) The Tribunal may disallow the whole or any part of any sum payable under **subclause (1)**.

8 Power to take evidence on oath

- (1) The Tribunal may take evidence on oath and, for that purpose, the Tribunal or any other person acting under the express or implied direction of the Tribunal may administer the oath.
- (2) On any indictment for perjury it is sufficient to prove that the oath was administered in accordance with **subclause (1)**. 5

9 Protection and privileges of witnesses

Every person has the same privileges and immunities as witnesses have in a court of law in relation to—

- (a) the giving of information to the Tribunal; and 10
- (b) the giving of evidence to, or the answering of questions put by, the Tribunal; and
- (c) the production of papers, documents, records, or things to the Tribunal.

10 Privileges and immunities of counsel 15

Every counsel appearing before the Tribunal has the same privileges and immunities as counsel in a court of law.

11 Tribunal and members, etc, not personally liable

- (1) Neither the Tribunal, nor any member, officer, or agent of the Tribunal, is under any criminal or civil liability in respect of— 20
- (a) any act done or omitted to be done in the course of performing any of their functions or duties, or exercising any powers under this Act;
- (b) any words spoken or written at, for the purposes of, the hearing or any inquiry or other proceedings under this Act; or 25
- (c) anything contained in any notice given under this Act.
- (2) **Subclause (1)** does not apply if the Tribunal or the person concerned has acted in bad faith.

12 Tribunal to have seal 30

The Tribunal must have a seal, which must be judicially noticed in all courts and for all purposes.

Schedule 2**s 170****Amendments to other enactments****Auctioneers Act 1928 (1928 No 29)**

Section 13: repeal. 5

Crown Entities Act 2004 (2004 No 115)Part 1 of Schedule 1: insert in its appropriate alphabetical order:
“Real Estate Agents Authority”.**Employment Relations Act 2000 (2000 No 24)**Section 6(4): omit “Real Estate Agents Act 1976” and substitute 10
“Real Estate Agents Act **2007**”.**Financial Transactions Reporting Act 1996 (1996 No 9)**The definition of **real estate agent** in section 2(1): repeal and substitute:“**real estate agent** has the same meaning as the definition of 15
agent in **section 4** of the Real Estate Agents Act **2007**.”Paragraph (b) of the definition of **real estate transaction** in section 2(1): omit “Real Estate Agents Act 1976” and substitute “Real Estate Agents Act **2007**”.**Lawyers and Conveyancers Act 2006 (2006 No 1)**

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Section 36(2): omit “real estate agent who holds a licence in force under the Real Estate Agents Act 1976” and substitute “person who holds a current licence under the Real Estate Agents Act **2007**”.

Section 36: insert the following subsection after subsection (2):

“(2A) However, subsection (2) does not apply to a person who, 25
under the Real Estate Agents Act **2007**, holds a licence as a salesperson unless the person has had at least 6 months experience as such as a licensee.”**Maori Trustee Act 1953 (1953 No 95)**Section 45A(1): omit “as a real estate agent under the Real Estate 30
Agents Act 1976” and substitute “as an agent under the Real Estate Agents Act **2007**”.

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Maori Trustee Act 1953 (1953 No 95)—*continued*

Section 45A(7): omit “the Real Estate Agents Act 1976” and substitute “the Real Estate Agents Act **2007**”.

Privacy Act 1993 (1993 No 28)

Part 1 of Schedule 2: insert the following item in its appropriate alphabetical order:

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“Real Estate Agents Act **2007** **sections 62 to 69**”.

Summary Proceedings Act 1957 (1957 No 87)

Part 2 of Schedule 1: omit the item relating to the Real Estate Agents Act 1976.

Unclaimed Money Act 1971 (1971 No 28)

Section 5(1)(h): omit “any real estate agent within the meaning of the Real Estate Agents Act 1976” and substitute “any agent within the meaning of the Real Estate Agents Act **2007**”.

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Legislative history

3 December 2007
11 December 2007

Introduction (Bill 185–1)
First reading and referral to Justice and Electoral
Committee
