

Estate Agents Bill

NOTES ON CLAUSES

Clause 1 is a clause in the usual form, containing provisions relating to the short title and commencement of the Act.

Clause 2 is a clause in the usual form dividing the Bill into Parts.

PART I.—INTRODUCTORY SS. 3–5

Clause 3 repeals the *Estate Agents Act 1958* (herein called the Act) and substitutes in section 16 (4) (a) of the *Sale of Land Act 1962* the expression "*Estate Agents Act 1980*" for the expression "*Estate Agents Act 1958*". It also provides for the continuation of persons or matters established under the Act unless the Bill expressly or implicitly indicates otherwise.

Clause 4 corresponds to section 3 of the Act and inserts interpretations of "Board", "Branch manager", "Branch office", "Employer's copy", "Practising public accountant", "Principal Office", "Secretary" and "Stock and station agent", revised interpretations of "Business", "Estate agent", "Real estate", "Registered address", "Registered office", "Small business" and "Sub-agent" and omits the interpretation of "Committee" and "Registrar" formerly in section 3.

Clause 5 corresponds to section 4 of the Act save and except—

- (i) section 4 (1) (b) of the Act is amended owing to the change in name of the Rural Finance and Settlement Commission to the Rural Finance Commission;
- (ii) sub-clause 2 (a) (g) is inserted to permit approved agents to perform their traditional role of booking holiday accommodation without breaching the provisions of the new Estate Agents Act;
- (iii) section 4 (2) (a) of the Act is amended by the insertion of new sub-clauses (3), (4), (5), (6), (7) and (8).

The effect of these sub-clauses is to ensure that an executor or administrator of the estate of a deceased agent is not able to carry on the business of the deceased agent unless the Estate Agents Board is first satisfied that the executor or administrator is suitably qualified to conduct the business.

In any event an executor or administrator who is not a licensed estate agent will not be permitted to conduct the business of a deceased estate agent beyond a period of 12 months from the date of grant of probate of the will or administration.

Sub-clauses (7) and (8) permit the Board to control the conduct of executors and administrators and, in the event the Board does not approve an executor or administrator as a suitable person, sub-clause (8) provides that a licensed agent is to be employed if the business is to be carried on.

- (iv) sub-clause (9) is inserted to clarify that persons, other than those to whom sub-clause (3) applies, exempted under clause 5 from holding an estate agent's licence are not entitled to receive commission payable to estate agents.

PART II.—THE BOARD SS. 6-11

Clause 6 provides for the establishment of an Estate Agents Board consisting of seven members. The effect of sub-clause (2) is as follows:

- (i) Three members are to be appointed by the Governor in Council— one of these members is to be a barrister and solicitor of not less than five years' standing and another is to be a person qualified in accountancy.
- (ii) Four members are to be appointed by the Governor in Council from panels of names submitted by bodies interested in real estate—two members from a panel of names of five persons submitted by the Real Estate and Stock Institute of Victoria, one member from a panel of names of three persons submitted by the Real Estate Agents Association of Victoria and one from a panel of names of three persons submitted by the Victorian Stock Agents Association.

Sub-clause (3) provides for the Governor in Council to appoint one of the members of the Board to be Chairman of the Board.

Sub-clause (4) provides for the Governor in Council to appoint one of the members of the Board to be the Deputy Chairman of the Board.

Sub-clause (5) deals with the terms of office of members of the Board fixing four years as the maximum term for which a member may be appointed.

Sub-clause (6) provides for the remuneration of the members of the Board.

Sub-clause (7) provides that the Chairman of the Board shall give his full-time attention to the business of the Board.

Sub-clause (8) provides that a person of or above the age of 65 years shall not be capable of being appointed a member and that if a member attains the age of 65 years he shall cease to be a member of the Board.

Sub-clause (9) provides that the office of a member shall become vacant upon the member being absent without permission of the Board from four consecutive meetings, attaining the age of 65 years, becoming bankrupt, being convicted of an indictable offence, becoming insane or resigning or dying.

Sub-clause (10) provides the means by which an extraordinary vacancy in the office of a member is to be filled.

Sub-clause (11) provides for the Minister to nominate members of the representative bodies to the Board if the respective representative bodies fail to submit a panel of names.

Sub-clause (12) provides for the appointment of a Secretary to the Board and such other officers and employés as are necessary to administer the Act.

Sub-clause (13) provides for the abolition of the Estate Agents Committee and for the Board to become its successor in law.

Sub-clause (14) is a transitional provision.

Clause 7 contains provisions in common form for incorporation of the Board and judicial notice of its seal.

Clause 8 deals with meetings of the Board. The substance of the sub-clauses is as follows:

Sub-clause (1). Four members one of whom is the Chairman or Deputy Chairman are required for a quorum.

Sub-clause (2). Provided there is a quorum the Board may meet and transact business.

Sub-clause (3). The Chairman is to preside at meetings and in his absence the Deputy Chairman shall preside.

Sub-clause (4). The member presiding is to have a deliberative and casting vote.

Sub-clause (5). The Chairman shall direct the time and place for meetings of the Board.

Sub-clause (6). The Board may, subject to the Act, regulate its own proceedings.

Clause 9 applies certain provisions of the *Evidence Act 1958* to the Board so that it might—

- (i) summon persons to appear before the Board and require such persons to bring before the Board any documents in their possession relative to the matter before the Board;
- (ii) examine upon oath;
- (iii) report any person who fails to answer the Board's summons to a law officer for appropriate action to be taken pursuant to section 20 of the *Evidence Act 1958*.

Clause 10 corresponds to section 8 of the Act save and except that—

- (i) section 8 (1) (b) of the Act which is made redundant by the creation of the Board with responsibility for the licensing of the estate agents is omitted;
- (ii) a new paragraph (ii) has been inserted in sub-clause (1) (b) which permits the Board with the consent of the Governor in Council to prescribe the percentage (not being less than 25% or more than 50%) of the lowest balance in the trust accounts of estate agents which must be deposited with the Board for the purposes of the Estate Agents Guarantee Fund;
- (iii) section 8 (1) (c) (ii) is amended by empowering the Board to regulate advertising by parties to a franchising agreement in addition to advertising generally by agents and sub-agents.
- (iv) section 8 (1) (c) (v) which provided that the Committee had to prescribe not only courses of instruction but also educational standards and qualifications is replaced with a provision empowering the Board to prescribe courses of instruction and examinations;

- (v) sub-clause (2) has been added which empowers the Governor in Council to revoke by Order any rule of the Board;
- (vi) section 8 (2) is replaced by sub-clause (3) which clarifies that an agent or sub-agent who fills up or obtains a signature to a contract without expectation of any reward other than his commission is not in breach of section 93 of the Legal Profession Practice Act.
- (vii) new sub-clauses (5), (6), (7), (8), (9) and 10 are added to provide for the Board to appoint committees to inquire into and report on matters to the Board.

Sub-clause (6) provides that where the matter referred is of a disciplinary nature the Attorney-General shall nominate for appointment by the Board to the committee a person who is not a licensed estate agent.

Sub-clause (7) provides that the findings of a committee appointed by the Board have no force or effect until adopted by the Board.

Sub-clause (8) permits the Board to accept, reject or vary the determination or recommendation by a committee.

Sub-clause (9) provides that a person aggrieved by the Board's acceptance of a committee recommendation or determination may require the Board to rehear the matter *de novo*.

Clause 11 corresponds to section 8A of the Act with amendments to take account of the responsibility of the Board for the licensing of estate agents.

Sub-clause (1) extends the application that section 8A had so that the provisions of Clause 11 apply not only to estate agents but also to sub-agents.

Sub-clause (3) (*d*) empowers the Board to cancel an estate agent's or sub-agent's licence and disqualify him from holding a licence for a specified period or permanently.

Sub-clause (3) (*c*) increases from \$100 to \$5000 the maximum amount of the fine that may be imposed on an estate agent or sub-agent.

Sub-clause (4) makes fines imposed on, or costs required to be paid by, agents or sub-agents debts due to the Board.

Sub-clause (5) requires the Board if requested to do so by the estate agent or sub-agent penalized to state in writing its reason for the imposition of a penalty.

Sub-clause (6) gives a person aggrieved by a decision of the Board a right of appeal to the County Court.

PART III.—LICENCES SS. 12–37

Clause 12 corresponds to section 9 of the Act requiring persons, including corporations, dealing in real estate to be licensed. Sub-clause (3) is an addition to clarify the position of a licensed estate agent who is an employé rather than in business on his own account.

Clause 13 corresponds to section 10 of the Act requiring persons acting as sub-agents to be licensed and provides that a licensed sub-agent need not hold an estate agent's licence when performing an estate agent's functions with the authority of an estate agent and saves a licensed estate agent from having to hold a sub-agent's licence.

Clause 14 corresponds to section 11 of the Act with modifications to rectify problems that have been identified in relation to its operation and contains an additional provision whereby a person who has not the formal qualifications required can nevertheless be determined by the Board by virtue of his qualifications and experience as eligible to apply for the issue of a licence.

In addition this clause in sub-clause (2) provides that a sub-agent employed by a declared corporation or a stock and station agent substantially in real estate work may be deemed by the Board for the purposes of eligibility for an estate agent's licence to have been in full time employment as a sub-agent.

Clause 15 corresponds to Section 11A of the Act and sets out the provisions governing eligibility of corporations to obtain or continue to hold an estate agent's licence. This clause provides that every director of a corporation seeking to be licensed who is engaged in the estate agency work of the corporation must hold an estate agent's licence and that not less than one half of the directors of a real estate corporation hold estate agents' licences.

Sub-clause (2) provides that sub-agent directors who on 11 March 1980 were both directors and sub-agents of ten years' standing at that date, may continue to be directors of real estate corporations provided they continue to be licensed sub-agents.

Sub-clause (3) provides that sub-agent directors who on 11 March, 1980 have not been both directors and sub-agents for ten years may continue as directors for five years immediately following that date and thereafter only if and subject to such conditions as the Board permits.

Clause 16 sets out the criteria for the eligibility of sub-agents to obtain licences. The clause provides that no person shall be eligible to apply for or be granted a sub-agent's licence unless he resides within Victoria or within 48 kilometres of the border of Victoria, is at least 18 years of age and has passed any courses of instruction or examination prescribed by the rules.

It further provides that no person shall be eligible to apply for or to be granted a sub-agent's licence who is disqualified under this Act from holding a licence or in relation to whom a claim has been allowed against the Estate Agents Guarantee Fund under Part VII. of the Act.

Clause 17 corresponds to section 12 of the Act with appropriate amendments in consequence of the responsibility of the Estate Agents Board to issue licences rather than the Magistrates' Courts. The clause prescribes the manner in which an application for an estate agent's licence is to be made to the Board. It also prescribes what action the Secretary to the Board is to take in respect of applications received.

Clause 18 corresponds to section 13A of the Act with appropriate amendments in consequence of the responsibility of the Estate Agents Board to issue licences rather than Magistrates' Courts. The clause prescribes the manner in which applications by corporations for estate agents' licences are to be made to the Board.

Clause 19 corresponds to section 13B of the Act with appropriate amendments in consequence of the responsibility of the Estate Agents Board to issue licences rather than the Magistrates' Courts. The clause prescribes the documents that certain corporations have to lodge with the Secretary when making application for the issue of an estate agent's licence.

Clause 20 corresponds with section 13 of the Act with appropriate amendments in consequence of the responsibility of the Estate Agents Board to issue licences rather than Magistrates' Courts. The clause prescribes the manner in which applications for sub-agents' licences are to be made to the Board. It also prescribes what action the Secretary to the Board is to take in respect of the applications received.

Clause 21 corresponds to section 14 of the Act with appropriate amendments in consequence of the responsibility of the Estate Agents Board to issue licences rather than Magistrates' Courts. The clause prescribes the manner in which applications for licences received by the Board are to be dealt with and the length of time for which licences are to continue in force. The clause provides for the biennial issue of licences.

Clause 22 sets out the action required to be taken by the Secretary upon the issue of a sub-agent's licence with respect to the issue of a duplicate licence marked "Employer's Copy". It further provides that an estate agent shall not employ as a sub-agent for more than 14 days any person unless the estate agent has in his possession the current employer's copy of that person's sub-agent's licence and the estate agent's responsibilities so far as the employer's copy of the sub-agent's licence is concerned upon cessation of the sub-agent's employment.

Clause 23 prescribes the manner in which applications for renewal of licences are to be made to the Board, and the procedure to be adopted by the Board on receipt of such applications.

In addition to being a licensed estate agent eligible to be granted an estate agent's licence the applicant for renewal must continue to be residentially qualified unless he has been exempted from this requirement by the Board and must have complied with the audit provisions of the Act.

A sub-agent may renew his licence provided he continues to be residentially qualified.

Clause 24 sets out the requirements as to the documents to be lodged by corporations in relation to applications under clause 23 for renewal of licences.

Clause 25 corresponds with section 17 of the Act with appropriate amendments in consequence of the removal of the responsibility for licences from Magistrates' Courts to the Board. The references to "court" are replaced by references to "the Board" and "Board" and other necessary consequential amendments are made.

Clause 26 corresponds to section 17A of the Act with appropriate amendments as a consequence of the Estate Agents Board being responsible for the licensing of estate agents and sub-agents.

The clause also applies to applications for renewal of licences in addition to initial licences.

Clause 27 corresponds to section 18 of the Act and sets out the procedure to be followed to obtain a duplicate licence or further copy of an employer's copy upon proof being given of the loss or destruction of the original document.

Clause 28 corresponds with section 19 of the Act with appropriate amendments in consequence of the responsibility of the Board for the control of licensing of estate agents and sub-agents by substituting references to "court" to references to "Board", together with other necessary consequential amendments.

The clause prescribes the procedure for the cancellation of licences.

Clause 29 makes further provision for the cancellation of estate agents' and sub-agents' licences. The clause prohibits estate agents or sub-agents from lending their licences and provides that in addition to penalties imposed by courts, the court may order that the estate agent or sub-agent be disqualified either permanently or for some set period from holding a licence whether as an estate agent or as a sub-agent or both. The clause also provides for the procedure to be followed where a licence is delivered up to a court for the forwarding of that licence by the proper officer of the court to the Secretary.

Clause 30 makes provision for the management of an estate agency office.

Sub-clause (1) provides that an estate agency office is required to be managed by a licensed estate agent.

Sub-clause (2) provides for exceptions to sub-clause (1) in that any licensed sub-agent who on or before 11 March 1980 managed an estate agency office or any licensed sub-agent who meets certain requirements to the satisfaction of the Board may apply to the Board for approval to manage or continue to manage a specified branch office.

Sub-clause (3) prescribes the manner of application for approval to the Board to manage a branch office.

Sub-clause (4) prescribes the manner in which applications for licences received by the Board are to be dealt with.

Sub-clause (5) prescribes the procedure to be followed by the Secretary when the Board has approved an application under sub-clause (4).

Sub-clause (6) sets out the effect of an approval given by the Board.

Sub-clause (7) prescribes the manner in which the Board may revoke any approval given.

Sub-clause (8) provides that a sub-agent who has been granted approval to manage a particular branch office is not permitted to manage any other branch office of his employer or of any other estate agent.

Sub-clause (9) provides that the management of an estate agency office in contravention of the provisions of this clause shall be an offence.

Clause 31 sets out the effect of disqualification from holding a licence.

Clause 32 provides a right of appeal to the County Court for any person who feels aggrieved by any decision of the Board.

Clause 33 sets out the powers and duties of the Secretary to the Board who will take over the functions formerly exercised by the Registrar under the Act.

Clause 34 provides details of the material that is to be contained in the record kept by the Secretary.

Clause 35 makes provision for every licensed estate agent to have a registered office within Victoria and every licensed sub-agent to have a registered address within Victoria.

The clause also prescribes the procedure to be followed by agents or sub-agents in the event of a change in the situation of the registered office or registered address or the establishment of a branch office.

The clause makes further provision to designate the place that shall be recorded as the principal office of a licensed estate agent and sets out an estate agent's responsibility with regard to notifying the Secretary of details of employment of sub-agents.

Clause 36 provides without affecting business names current at 11 March, 1980 that an estate agent may carry on business as an agent under only one business name which has been approved in writing by the Board and that the Board shall approve the use of a business name unless it considers that the name submitted is misleading and that any change of a business name must be approved in writing by the Board.

Clause 37 prescribes the fees payable under the Act for the estate agent's licences and other documents issued by the Board.

PART IV.—AGENTS AND SUB-AGENTS SS. 38–56

Clause 38 corresponds with section 27 of the Act and prohibits an unlicensed person from representing himself as a licensed estate agent.

Clause 39 corresponds to a large degree with section 28 of the Act and sets out in more detail requirements for the displaying of notices on places of business indicating details of persons engaged in that business.

Clause 40 provides that every licensed estate agent must have his name and description shown on all correspondence from his business and further provides that where the licensed estate agent is a corporation the name of each director of the corporation engaged in its estate agency work must be shown on all correspondence from that estate agency business.

The clause prohibits a person who is not a licensed estate agent or a director of a corporation which is a licensed estate agent from creating the impression by the use of any business letter or statement of account which would indicate that he is a licensed estate agent or a director of a corporation which is a licensed estate agent.

Clause 41 provides the requirements for the production of licences by agents or sub-agents.

Clause 42 corresponds with section 29 of the Act and requires an estate agent when advertising to state the name and address of his registered office, his principal office or any one of his branch offices and proscribes conduct amounting to false representation or misleading advertising.

Clause 43 provides for an estate agent to carry on business pursuant to a franchising agreement subject to the Board approving the particular agreement and imposing such conditions as the Board thinks fit.

This clause also sets out the liability that attaches not only to the franchisee but also the franchisor with respect to any franchising agreement. A "franchising agreement" is defined within the clause and provision is made for any estate agent who at the commencement of this provision was carrying on business pursuant to a franchising agreement to be able to continue to do so.

The clause gives either party to a franchising agreement a right of appeal to the County Court against a decision of the Board in respect of a franchising agreement with which either party feels aggrieved.

Clause 44 corresponds to section 30 of the Act with appropriate amendments in consequence of the responsibility of the Estate Agents Board to issue licences rather than Magistrates' Courts and sub-section (d) is amended by the substitution of sub-clause (d) providing, in effect, that only fit and proper persons may be employed in a real estate agency.

Clause 45 replaces section 30A of the Act and while providing as Section 30A did that sub-agents are to be employed only on a full-time basis a new notion of "full-time basis" is introduced whereby a person who is gainfully employed with an estate agent for such periods as the Board approves and has no other paid employment is deemed to be employed on a full-time basis. It also provides that sub-agents employed by declared corporations and stock and station agents may be employed partly on estate agency work and partly in other work of the corporation or stock and station agency.

This clause also provides at the discretion of the Board for part-time employment of sub-agents where full-time employment is not possible owing to medical disability.

Clause 46 corresponds to section 31 of the Act and makes provision for the keeping of appropriate records in regard to employees sub-agents and their remuneration. It further provides that that record is to be produced by authorized persons when required.

Clause 47 corresponds to section 32 of the Act and provides that a sub-agent in performing work for an estate agent is to be properly authorized to undertake that work. This clause also provides that a sub-agent who makes a false representation shall be guilty of an offence and that a sub-agent is to be employed with only one estate agent at any one time.

Clause 48 regulates commission sharing by estate agents.

Clause 49 provides that estate agents may request the Board to arbitrate on any dispute that arises between them.

Clause 50 corresponds to section 33 of the Act save and except that the proviso to sub-section (1) appears as sub-clause (2) and sub-clause (3) is added to make specific provision as to what will amount to compliance with the requirements of sub-clause 1 (d) as to notification of maximum commission etc.

Clause 51 corresponds to section 34 of the Act save and except that the numbering of the various sub-parts has been re-arranged. The clause sets out the provisions governing representations, if any are made by estate agents, respecting finance.

Clause 52 corresponds to section 34A of the Act with the difference that whereas section 34A required the statement to be given on the sale of a small business to be in compliance with requirements of the section this clause requires the statement to be in a prescribed form containing prescribed particulars.

Clause 53 corresponds to section 35 of the Act with the difference that whereas section 35 required an estate agent to deliver a copy of the relevant document to each person signing that document, this clause requires the agent where there is more than one person's signature to a document to deliver a copy of the relevant document to any one of the persons signing it.

Clause 54 corresponds to section 36 of the Act and sets out the provision regarding agents acting as sole agent for the sale of property with the addition that the provisions relating to sole agency do not apply to an appointment or engagement to act as sole agent for the sale of a lot on a plan of subdivision or a unit on a plan of strata subdivision in the same way that they do not apply in respect of a subdivision of land comprising more than two allotments.

Clause 55 replaces section 37 of the Act with a provision which will have the effect of prohibiting absolutely an estate agent and his employes from purchasing or having any interest in the purchase of any real estate or business which the agent is commissioned to sell. The clause also spells out the circumstances in which an estate agent or employé shall be deemed to have an interest in the purchase of property.

Clause 56 corresponds to section 37A of the Act and provides that an estate agent shall not accept commission from persons who have assisted the purchaser financially for whom the estate agent is acting and further provides that the person who pays any such commission or other consideration to the estate agent is in breach of the Act.

PART V.—BUILDERS AND SUB-DIVIDERS OF LAND S. 57

Clause 57 corresponds to section 37B of the Act and sets out the requirements to be followed by builders and sub-dividers of land in their dealings with purchasers.

PART VI.—ACCOUNTS AND AUDIT SS. 58–70

Clause 58 sets out the interpretation of “Authorized bill of exchange”, “Authorized investment”, “Bank”, “Commencing date”, “Estate agent”, “Moneys”, “Negotiable Certificate of deposit”, and “Quarter day”.

Clause 59 corresponds to section 38 of the Act with amendments to permit estate agents to withdraw trust money for the purpose of paying it to the person entitled, to deposit it with the Board in accordance with the provisions contained in *Clause 60* and prohibiting cash payments from trust accounts.

The clause inserts—

- (i) a new sub-clause (2) making it an offence not to comply with sub-clause (1);
- (ii) a new sub-clause (7) providing that an estate agent has to notify the Board in writing of the existence within 14 days of the opening thereof of any trust account and of the closure within the same period of the closure of any trust account.

Clause 60 provides for—

- (a) a percentage as prescribed by the rules of the amount of moneys in an estate agent’s trust account (but not including security deposits held under clause 59) that is to be deposited with the Board—sub-clauses (1) and (2);
- (b) its repayment on demand—sub-clause (3);
- (c) its investment while with the Board—sub-clauses (4), (5) and (6);
- (d) the application of the interest accrued in respect of moneys invested—sub-clause (7);
- (e) the procedure for dealing with moneys repaid by the Board to estate agents—sub-clause (8);
- (f) exempting an estate agent from compliance with the provisions requiring deposit of trust moneys with the Board, where the lowest balance in his trust account, together with the amount (if any) then deposited with the Board amounts to less than \$3000—sub-clause (9);
- (g) preserving any claim of an estate agent in respect of moneys deposited with the Board, and the rights of persons other than the agent—sub-clause (10).

Clause 61 requires the Board to keep proper accounts of all deposits, to appoint a practising public accountant to audit those accounts and requires that auditor to report regularly to the Board in respect of those accounts.

Clause 62 corresponds to section 39 of the Act and provides that every licensed estate agent shall be personally liable for all money received on his behalf by any sub-agent acting for him.

Clause 63 corresponds to section 40 of the Act with an amendment to ensure that in every instance when an estate agent receives money on behalf of another person a receipt is to be issued for that money. The clause sets out an estate agent's duty in regard to the keeping of accounts of trust money received.

Clause 64 corresponds substantially to section 41 of the the Act in that it imposes upon every person that carries on business as an estate agent the duty to submit an annual audit of trust accounts and sets out procedures and practices in relation thereto and the responsibilities of auditors in relation to audit reports.

Clause 65 permits the date to which an estate agent's trust accounts are to be audited to be varied by the Secretary upon receipt of an application in writing for such variation.

Clause 66 sets out the persons who shall be qualified to act as auditors under Clause 64 and the conditions on which a firm shall be qualified to act as auditor under Clause 64 and in addition provides that interested persons may not act as auditors. This clause has further provisions in relation to the selection and remuneration of auditors. In the case of both individuals and firms a pre-requisite to acting as auditor is approval by the Board which approval may if the Board deems appropriate be varied or revoked as circumstances determine.

Clause 67 provides that the information obtained by an auditor in the course of conducting an audit under clause 64 shall be confidential except in certain specified instances.

Clause 68 sets out specifically the persons to whom the Secretary may disclose information obtained by him by means of an audit report pursuant to clause 64 and provides that the Secretary shall make such report available to the auditor appointed in the next year.

Clause 69 provides that a licensed agent who has no accounts to audit is deemed to have complied with clause 64 if he makes and delivers a statutory declaration to that effect to the Secretary within the three months after the end of the year.

This clause also provides that an audit report in respect of amounts of trust money kept by a partnership shall operate as a report in relation to each member of that partnership.

Clause 70 corresponds to section 42 of the Act and provides the times and place at which an estate agent shall have available for inspection by the Secretary or any other authorized person the records of his trust accounts and other records relating to the business which are required to be kept by him. The clause sets out the rights of the Secretary to inspect those business records and also prescribes as illegal, conduct by persons calculated to prevent the Secretary from carrying out his functions. The clause empowers the Secretary or other authorized person to convey to clients of the estate agents a report of the result of any inspection and imposes upon the manager of a bank with which any estate agent has deposited any money a duty to discuss details of the agent's accounts to the Secretary.

The clause contains interpretations of "Trust account" and "Estate agent" for the purposes of this particular clause.

PART VII.—ESTATE AGENTS' GUARANTEE FUND SS. 71-91

Clause 71 contains interpretations of "Bank", "Court", "Defalcation", "Fund" and "Moneys".

Clause 72 establishes the Estate Agents' Guarantee Fund.

Clause 73 sets out what moneys shall constitute the Estate Agents' Guarantee Fund.

Clause 74 provides that moneys forming part of the Fund when not invested or applied in accordance with the Act shall be kept in a separate bank account.

Clause 75 specifies the payments that may be made out of the Fund.

Clause 76 makes provision for other matters to which the Fund may be applied.

Clause 77 requires the Board to keep proper accounts of the Fund and to appoint a practising public accountant to audit those accounts. It also requires the auditor to report regularly to the Board in respect of those accounts.

Clause 78 permits moneys in the Fund that are not immediately required to be invested in authorized investments as defined in Part VI.

Clause 79 permits the Fund to be used to compensate persons who suffer pecuniary loss as a result of a defalcation committed by an estate agent or by an employé or servant of an estate agent in the course of or in connection with any business in respect of which the agent is or was required to be licensed pursuant to this Act.

Clause 80 entitles a person who suffers pecuniary loss to claim compensation from the Fund and to take proceedings in the County Court to establish the claim; excludes claims for pecuniary loss suffered before the commencement of the Act; provides that only pecuniary loss plus costs and disbursements incurred

in establishing a claim may be recovered; provides that in addition to any compensation that is payable interest is payable out of the Fund on the amount of compensation at a specified rate; and deems an executor, administrator or trustee of a deceased estate agent carrying on the business of that estate agent to be a licensed estate agent.

Clause 81 prescribes the manner in which claims from the Fund are to be made; enables the Board to allow and settle proper claims; prescribes the conditions upon which a person may commence proceedings against the Board; provides that a person refused leave by the Board to commence proceedings against it may apply to the Court for such leave; requires the Board to notify a claimant or his solicitor if a claim is disallowed wholly or partly; limits to three months, save and except in special circumstances, after notice of disallowance the period within which a claimant must commence proceedings against the Board; provides that admissions or evidence of a defalcation by a person not a party to the proceedings pursuant to this section is admissible to prove the defalcation or fraudulent misuse; and provides further that the evidence upon which the Board or Court might allow a claim does not have to be such as would establish the guilt of the person against whom the defalcation is alleged.

Clause 82 provides the procedure that is to be followed in proceedings brought in the County Court against the Board to establish a claim. This clause sets out what the Court is to do in respect of such proceedings and permits the making of rules generally for proceedings under this Part.

Clause 83 empowers the Board to require production of securities, documents or information in respect of a claim, and in default of production thereof to disallow the claim.

Clause 84 gives to the Board all the rights and remedies of a claimant to whom the payment out of the Fund has been made in relation to the loss suffered by him.

Clause 85 provides that money or property of the Board, other than the Fund, is not available to satisfy a claim for compensation.

Clause 86 provides that, where the amount in the Fund is insufficient to satisfy all claims that have been laid against the Fund, the Treasurer may advance to the Fund moneys from the Public Account, and provides for repayment of moneys so advanced in the manner directed by the Treasurer.

Clause 87 provides that the Board may enter into a contract to insure or indemnify itself against claims.

Clause 88 provides that a claimant against the Fund does not have a right of action against a person with whom a contract of insurance or indemnity is made or a claim on moneys paid by the insurer.

Clause 89 corresponds to section 47 of the Act and provides that the Minister may require any trust accounts of estate agents against whom a claim has been made to be frozen.

Clause 90 makes it an offence for an estate agent to have a general deficiency in his trust account without a satisfactory explanation. A prosecution under this Section cannot be commenced without the written consent of the Attorney-General.

Clause 91 corresponds to section 48 of the Act and provides that certain fraudulent activities by an estate agent in the course of his business shall be felonies and prescribes the penalty that may be imposed for such a felony. The monetary penalties have been increased.

PART VIII.—MISCELLANEOUS SS. 92–100

Clause 92 corresponds to section 49 of the Act and provides that a certificate of the Secretary of the Board shall be *prima facie* evidence of the facts stated therein.

Clause 93 corresponds to section 50 of the Act and provides that the furnishing of incorrect particulars in any notice made shall be an offence.

Clause 94 corresponds to section 51 of the Act save and except that the amount of the monetary penalties able to be imposed in respect of offences has been increased.

Clause 95 corresponds to section 51A of the Act save and except that sub-clause (2) provides that proceedings may be commenced up to three years after the commission of an alleged offence or with the consent of the Minister at any later time.

Clause 96 corresponds to section 52 of the Act and provides who may make application or give notice on behalf of a corporation and establishes the liability of a corporation for offences against the Act.

Clause 97 corresponds to section 53 of the Act and provides that an offence under the Act shall not affect any contract or civil liability that may exist.

Clause 98 provides that the Board must report not later than the first day of November each year on its activities during the year ending on the preceeding 30 June and requires the Minister to lay the report before each House of Parliament as soon as practicable after it is received.

Clause 99 corresponds in the main with section 54 of the Act but changes that section by removing the expression "(1)", increasing the maximum amount of penalties that may be prescribed, providing that the period for which the books, accounts and records of an estate agent should be kept may be prescribed and empowers the prescribing of fees for the issue of certificates and for searches of the records kept by the Secretary.

Clause 100 is designed to ensure that the current holder of a sub-agent's licence shall not be adversely affected in relation to payment of the licence fee as a result of the change in the time of licence renewal made by clause 23.

