

**Version No. 003****Business Licensing Authority Act 1998****Act No. 49/1998**

Version incorporating amendments as at 9 October 2003

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**Version No. 003**

**Business Licensing Authority Act 1998**

**Act No. 49/1998**

Version incorporating amendments as at 9 October 2003

**The Parliament of Victoria enacts as follows:**

**PART 1—PRELIMINARY**

**1. Purpose**

The main purpose of this Act is to establish and provide for the operation of the Business Licensing Authority.

**2. Commencement**

- (1) This Part comes into operation on the day on which this Act receives the Royal Assent.
- (2) Subject to sub-section (3), the remaining provisions of this Act come into operation on a day or days to be proclaimed.
- (3) If a provision referred to in sub-section (2) does not come into operation before 31 December 1999, it comes into operation on that day.

**3. Definitions**

In this Act—

**"Authority"** means the Business Licensing Authority established under Part 2;

**"business licensing Act"** means—

- (a) the **Consumer Credit (Victoria) Act 1995**; or
- (b) the **Estate Agents Act 1980**; or
- (c) the **Introduction Agents Act 1997**; or

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S. 3 def. of  
"Director"  
substituted by  
No. 17/1999  
s. 23.

- (d) the **Motor Car Traders Act 1986**; or
- (e) the **Prostitution Control Act 1994**; or
- (f) the **Second-Hand Dealers and Pawnbrokers Act 1989**; or
- (g) the **Travel Agents Act 1986**;

**"Deputy Registrar"** means a Deputy Registrar of the Authority;

**"Director"** means the Director within the meaning of the **Fair Trading Act 1999**;

**"Registrar"** means the Registrar of the Authority;

**"Tribunal"** means Victorian Civil and Administrative Tribunal established under the **Victorian Civil and Administrative Tribunal Act 1998**.

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**PART 2—BUSINESS LICENSING AUTHORITY**

**4. Establishment of Authority**

- (1) There is established a Business Licensing Authority.
- (2) The Authority—
  - (a) is a body corporate with perpetual succession;
  - (b) shall have a common seal;
  - (c) may acquire, hold and dispose of real and personal property;
  - (d) may sue and be sued in its corporate name;
  - (e) may do and suffer all acts and things that a body corporate may by law do and suffer.
- (3) The common seal of the Authority must be kept in the custody that the Authority directs and must not be used except as authorised by the Authority.
- (4) All courts must take judicial notice of the common seal of the Authority on a document and must presume that it was properly sealed.

**5. Constitution of Authority**

- (1) The Authority is constituted by one or more persons appointed by the Governor in Council.
- (2) A person is not eligible for appointment as a member unless he or she is a legal practitioner of not less than 5 years standing.
- (3) The Governor in Council must appoint one of the members of the Authority as the Chairperson of the Authority.
- (4) The Schedule applies to the members of the Authority.

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## 6. Functions of Authority

The functions of the Authority are—

- (a) to administer the licensing and registration provisions of—
  - (i) the **Consumer Credit (Victoria) Act 1995**;
  - (ii) the **Estate Agents Act 1980**;
  - (iii) the **Introduction Agents Act 1997**;
  - (iv) the **Motor Car Traders Act 1986**;
  - (v) the **Prostitution Control Act 1994**;
  - (vi) the **Second-Hand Dealers and Pawnbrokers Act 1989**;
  - (vii) the **Travel Agents Act 1986**; and
- (b) to carry out any other functions conferred on it by this or any other Act.

## 7. Powers of the Authority

- (1) The Authority has power to do anything that is necessary or convenient to be done for or in connection with the carrying out of its functions.
- (2) Without limiting sub-section (1), the Authority may enter into agreements or arrangements for the use of the services of any staff of a Department, statutory authority or other public body.
- (3) Without limiting sub-section (1), the Authority, in carrying out its functions, may seek advice and information on any matter from any person or body or source it thinks fit.

## 8. Consultants

- (1) The Authority may engage persons with suitable qualifications and experience as consultants.

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- (2) An engagement under sub-section (1) may be on any terms and conditions the Authority considers appropriate.

**9. Role of members**

Subject to any direction of the Chairperson of the Authority, the functions and powers of the Authority may be carried out or exercised by any member of the Authority.

**10. Procedure of the Authority**

Subject to this Act and to any business licensing Act, the procedure of the Authority is in its discretion.

**11. Delegation by Authority**

Subject to this Act and to any business licensing Act, the Authority may by instrument delegate to the Registrar, the Deputy Registrar, any person employed under Part 3 of the **Public Sector Management and Employment Act 1998** or any person referred to in section 7(2) any of its powers and functions under this Act or a business licensing Act except—

- (a) a power to register any person or to grant a licence, permission or authority; or
- (b) this power of delegation.

**12. Director to give effect to decision**

The Director must take such action (if any) as is necessary to give effect to a decision of the Authority under a business licensing Act.

**13. Authority may request Director to investigate matters**

The Authority may request the Director to investigate a matter arising in the course of the carrying out of its functions and the Director may investigate that matter.

S. 11  
 amended by  
 No. 46/1998  
 s. 7(Sch. 1).

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**14. Correcting mistakes**

The Authority may at any time correct a decision made by it under this Act or a business licensing Act if the decision contains—

- (a) a clerical mistake; or
- (b) an error arising from an accidental slip or omission; or
- (c) a material miscalculation of figures or a material mistake in the description of any person, thing or matter referred to in the decision; or
- (d) a defect of form.

**15. Registrar and other staff**

- (1) There shall be employed under Part 3 of the **Public Sector Management and Employment Act 1998**—
  - (a) a Registrar of the Authority; and
  - (b) such Deputy Registrars and other staff as are necessary for the purposes of the Authority.
- (2) A Deputy Registrar may exercise any of the powers of the Registrar under this Act or a business licensing Act but is subject to the directions of the Registrar in exercising those powers.
- (3) All courts must take judicial notice of the official signature of a person who is or has been the Registrar or Deputy Registrar and of the fact that that person is or was the Registrar or Deputy Registrar.

S. 15(1)  
amended by  
No. 46/1998  
s. 7(Sch. 1).



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**16. Delegation by the Registrar**

Subject to this Act and to any business licensing Act and to the direction of the Authority, the Registrar may by instrument delegate to any person employed under Part 3 of the **Public Sector Management and Employment Act 1998** or any person whose services are used by the Authority under section 7(2) any of his or her powers and functions under this Act or a business licensing Act except this power of delegation.

S. 16  
amended by  
No. 46/1998  
s. 7(Sch. 1).

**17. Registers**

- (1) The Registrar may correct an error or omission in any register kept by the Registrar under a business licensing Act by—
  - (a) inserting an entry; or
  - (b) amending an entry; or
  - (c) omitting an entry—if he or she decides that the correction is necessary.
- (2) A certificate purporting to be signed by the Registrar certifying as to any matter relating to the contents of a register kept by the Registrar under a business licensing Act is evidence of that matter.
- (3) The Director may, at any time, free of charge, inspect a register kept by the Registrar under a business licensing Act and make a copy of, or take an extract from, that register.

**18. Secrecy**

- (1) This section applies to every person who is or has been a member of the Authority, the Registrar, a Deputy Registrar, a member of the other staff assisting the Authority, a person whose services are used by the Authority under section 7(2) or a person engaged under section 8.

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- (2) A person to whom this section applies must not, either directly or indirectly, make a record of, or disclose or communicate to any person, any information concerning the affairs of any person acquired by reason of the office or employment under or for the purposes of this Act or a business licensing Act.

Penalty: 5 penalty units.

- (3) Despite sub-section (2), a person to whom this section applies may—
- (a) make a record of, or disclose or communicate any information referred to in that sub-section—
    - (i) in any legal proceedings under this Act or any of the business licensing Acts; or
    - (ii) in the performance of a duty under or in connection with this Act or any of the business licensing Acts;
  - (b) divulge or communicate any information referred to in that sub-section to—
    - (i) the Director; or
    - (ii) the Tribunal; or
    - (iii) a member of the police force for the purposes of reporting a suspected offence or assisting in the investigation of a suspected offence; or
    - (iv) a member of the police force who is performing a duty under or in connection with any Act; or
    - (v) a prescribed person who is, or a prescribed body which is, performing a duty under or in connection with any Act; or

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- (vi) with the consent of the person to whom the information relates, to any other person.

**19. Immunity**

- (1) A member of the Authority is not personally liable for anything done or omitted to be done in good faith—
    - (a) in the exercise of a power or the discharge of a duty under this Act or a business licensing Act or a regulation under that Act; or
    - (b) in the reasonable belief that the act or omission was in the exercise of a power or the discharge of a duty under this Act or a business licensing Act or a regulation under that Act.
  - (2) Any liability resulting from an act or omission that would but for sub-section (1) attach to a member of the Authority attaches instead to the Authority.
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Pt 3 (Heading  
and ss 20–25)  
inserted by  
No. 30/2003  
s. 77.

S. 20  
inserted by  
No. 30/2003  
s. 77.

Victorian Legislation and Parliamentary Documents

**PART 3—LICENCE SUSPENSION**

**20. Definitions**

In this Part—

"licence" means—

- (a) a licence issued or granted under—
  - (i) the **Estate Agents Act 1980**; or
  - (ii) the **Motor Car Traders Act 1986**; or
  - (iii) the **Prostitution Control Act 1994**; or
  - (iv) the **Travel Agents Act 1986**; or
- (b) a right to act as an agent's representative within the meaning of the **Estate Agents Act 1980**; or
- (c) a right to participate in a customer service capacity in the business of a motor car trader within the meaning of the **Motor Car Traders Act 1986**; or
- (d) an approval under Division 5 of Part 3 of the **Prostitution Control Act 1994**; or
- (e) a registration granted under Part 4 of the **Consumer Credit (Victoria) Act 1995**; or
- (f) a right to engage in finance broking within the meaning of Part 4A of the **Consumer Credit (Victoria) Act 1995**; or

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- (g) a right to act as an introduction agent within the meaning of the **Introduction Agents Act 1997**; or
- (h) a registration or endorsement of registration under the **Second-Hand Dealers and Pawnbrokers Act 1989**;

**"licence suspension period"** in relation to a licence, means the period—

- (a) commencing on the date of service of the notice in relation to the licence under section 21; and
- (b) ending on—
  - (i) the lapsing of the suspension of the licence under section 23; or
  - (ii) the date of an order referred to in section 23(2) relating to the suspension of the licence;

**"licensee"**, in relation to a licence, means the person who is the holder of the licence.

**21. Authority may suspend licence**

- (1) Despite anything to the contrary in a business licensing Act or any other Act or law other than this Part, the Authority may suspend a licence by notice in writing issued to the licensee.
- (2) The Authority may only suspend a licence under this section if the Authority has reasonable grounds to believe that—
  - (a) the licensee has engaged in conduct that under the relevant business licensing Act would constitute grounds for the initiation of disciplinary action against the licensee or the bringing of proceedings for an offence or for an injunction; and

S. 21  
 inserted by  
 No. 30/2003  
 s. 77.

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- (b) it is likely that the licensee will continue to engage in that conduct; and
  - (c) there is a danger that a person may suffer substantial harm, loss or damage as a result of that conduct unless action is taken urgently.
- (3) A notice under sub-section (1)—
- (a) must be served—
    - (i) personally on a licensee who is a natural person; or
    - (ii) at the registered office and the last known business address of a licensee that is a corporation; or
    - (iii) at the last known business address of a licensee that is a body corporate, other than a corporation;
  - (b) must specify the conduct which the licensee is believed to have engaged in;
  - (c) must state the rights of review open to the licensee;
  - (d) has effect, whether or not the licensee has been afforded an opportunity to be heard on the matter.
- (4) Despite sub-section (3)(a)(i), if, on the application of the Authority, it appears to the Tribunal that service cannot be promptly effected on a licensee who is a natural person, the Tribunal may order that the notice be served—
- (a) by sending it by post, facsimile or other electronic transmission to the person at his or her usual or last known residential or business address; or

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- (b) by leaving it at the person's usual or last known residential or business address with a person on the premises who is apparently at least 16 years old and apparently residing or employed there.
- (5) The suspension takes effect on the service of the notice.

**22. Effect of suspension**

- (1) This section applies despite anything to the contrary in a business licensing Act or any other Act or law other than this Part.
- (2) If a notice is issued under this Part suspending—
- (a) an estate agent's licence under the **Estate Agents Act 1980**; or
  - (b) a motor car trader's licence under the **Motor Car Traders Act 1986**; or
  - (c) a licence within the meaning of the **Prostitution Control Act 1994**; or
  - (d) a travel agent's licence under the **Travel Agents Act 1986**—

the licence is deemed to be suspended for the purposes of that Act for the licence suspension period.

- (3) If a notice is issued under this Part suspending a licensee's right to act as an agent's representative within the meaning of the **Estate Agents Act 1980**, the licensee is deemed to be ineligible to act as an agent's representative for the purposes of that Act for the licence suspension period.
- (4) If a notice is issued under this Part suspending a licensee's right to participate in a customer service capacity in the business of a motor car trader within the meaning of the **Motor Car Traders Act 1986**, the licensee is deemed, for the purposes

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 inserted by  
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- of that Act, not to be permitted to be employed in a customer service capacity by a motor car trader for the licence suspension period.
- (5) If a notice is issued under this Part suspending an approval under Division 5 of Part 3 of the **Prostitution Control Act 1994**, the approval is deemed to be suspended for the purposes of that Act for the licence suspension period.
  - (6) If a notice is issued under this Part suspending the registration of a licensee under Part 4 of the **Consumer Credit (Victoria) Act 1995**, the registration is deemed to be suspended for the purposes of that Part for the licence suspension period.
  - (7) If a notice is issued under this Part suspending a licensee's right to engage in finance broking within the meaning of Part 4A of the **Consumer Credit (Victoria) Act 1995**, the licensee is deemed to be prohibited from engaging in finance broking for the purposes of that Act for the licence suspension period.
  - (8) If a notice is issued under this Part suspending a licensee's right to act as an introduction agent within the meaning of the **Introduction Agents Act 1997**, the licensee is deemed to be disqualified from acting as an introduction agent for the purposes of that Act for the licence suspension period.
  - (9) If a notice is issued under this Part suspending the registration or endorsement of registration of a licensee under the **Second-Hand Dealers and Pawnbrokers Act 1989**, the registration or endorsement is deemed to be suspended for the purposes of that Act for the licence suspension period.



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**23. Lapsing or continuation of suspension**

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inserted by  
No. 30/2003  
s. 77.

- (1) A suspension under this Part lapses if within the required period after the service of the notice—
  - (a) an application is not made to the Tribunal under a business licensing Act to inquire into the conduct of the licensee that is the subject of the notice; or
  - (b) proceedings have not commenced in a court in relation to the conduct of the licensee that is the subject of the notice.
- (2) If within the required period after the service of the notice—
  - (a) an application is made to the Tribunal under a business licensing Act to inquire into the conduct of the licensee that is the subject of the notice; or
  - (b) proceedings are commenced in a court in relation to the conduct of the licensee that is the subject of the notice—

the suspension continues until a further order is made by the Tribunal or the court.
- (3) If a suspension lapses under this section after service of a notice, the Authority must not serve another notice on the licensee under this Part for a period of 6 months from the date of service of the first notice.
- (4) The power conferred by this Part is in addition to and does not limit or displace a power conferred on the Authority or any other person or body by or under a business licensing Act to suspend or cancel a licence or to take action against a licensee in respect of the conduct concerned.

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- (5) In this section "**required period**" means—
- (a) 14 days; or
  - (b) if the Tribunal or a court makes an order under section 24 extending that period, that extended period.

**24. Extension of period**

- (1) The Director, at the request of the Authority, may apply to the Tribunal or the court within 14 days after the service of a notice under section 21 or if, an extension of that period has been granted under this section, before the end of the period of the extension, to extend the period within which an application must be made or proceedings commenced for the purposes of section 23(1) and (2).
- (2) On an application under sub-section (1), the Tribunal or court—
  - (a) must consider the likelihood that an application or proceedings referred to in section 23(1) and (2) will be made or commenced; and
  - (b) may make an order extending the period if in all the circumstances it considers it just and convenient to do so.
- (3) An extension may be for a period not exceeding 14 days.
- (4) The Tribunal or court may adjourn any application under this section to enable notice of the application to be given to any person.

**25. Right of review**

A licensee may apply to the Tribunal for a review of the decision to issue a notice under this Part.

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**SCHEDULE**

**MEMBERS OF AUTHORITY**

**1. Terms of appointment**

- (1) A member—
  - (a) holds office for the term, not exceeding 5 years, specified in his or her instrument of appointment;
  - (b) is eligible for re-appointment;
  - (c) is entitled to be paid the remuneration and allowances (if any) fixed in respect of him or her by the Governor in Council.
- (2) The Governor in Council may, in the instrument of appointment of a member, specify terms and conditions of appointment.
- (3) The **Public Sector Management and Employment Act 1998** (except in accordance with Part 7 of that Act) does not apply to a member in respect of the office of member.

Sch. cl. 1(3)  
substituted by  
No. 46/1998  
s. 7(Sch. 1).

**2. Resignation**

A member may resign from office by delivering to the Governor a signed letter of resignation.

**3. Termination of office**

- (1) The office of a member becomes vacant if he or she—
  - (a) becomes an insolvent under administration; or
  - (b) is convicted of an offence punishable by imprisonment for 12 months or more; or
  - (c) becomes a represented person within the meaning of the **Guardianship and Administration Act 1986**; or
  - (d) is removed or resigns from office.
- (2) The Governor in Council may remove a member from office—
  - (a) for misbehaviour; or
  - (b) if the member becomes incapable of performing the duties of his or her office.

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**4. Acting Chairperson**

- (1) If the Chairperson is ill or absent or is unable to perform the duties of Chairperson, the Governor in Council may appoint another member to act for the Chairperson during the illness or absence or period of inability, as the case requires.
- (2) A person appointed to act for the Chairperson while so acting—
  - (a) has all the powers and may perform all the duties of the Chairperson; and
  - (b) is entitled to be paid the remuneration and allowances (if any) to which the Chairperson would have been entitled for performing those duties; and
  - (c) subject to this clause, is subject to the same terms and conditions of appointment as the Chairperson.

**5. Acting appointments—members**

- (1) If a member is ill or absent or is unable to perform the duties of his or her office, the Governor in Council may appoint a person to act for that member during the illness or absence or the period of inability, as the case requires.
- (2) A person appointed to act for a member while so acting—
  - (a) has all the powers and may perform all the duties of the member for whom he or she is acting; and
  - (b) is entitled to be paid the remuneration and allowances (if any) to which the member for whom he or she is acting would have been entitled for performing those duties; and
  - (c) is subject to the same terms and conditions of appointment as the member for whom he or she is acting.

**6. Decision not invalid by reason of vacancy etc.**

An act or decision of the Authority is not invalid only because—

- (a) of a defect or irregularity in the appointment of a member or acting member; or
- (b) the occasion for the appointment of an acting member had ceased to exist.

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**7. Disclosure of interest by members**

- (1) If a member of the Authority has a direct or indirect pecuniary interest in a matter which is about to be or is being considered by the Authority, the member must as soon as possible after the relevant facts come to his or her knowledge disclose the nature of the interest—
  - (a) to the Minister, in the case of the Chairperson; or
  - (b) to the Chairperson, in the case of any other member.
- (2) A member who has disclosed a pecuniary interest in a matter under sub-clause (1) must not consider or decide or take any further part in the consideration or decision of the matter before the Authority.
- (3) An act or decision of the Authority is not invalid merely because a member contravenes sub-clause (1) or (2).

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Endnotes

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**ENDNOTES**

**1. General Information**

*Minister's second reading speech—*

*Legislative Assembly: 9 April 1998*

*Legislative Council: 19 May 1998*

The long title for the Bill for this Act was "to establish the Business Licensing Authority and for other purposes."

The **Business Licensing Authority Act 1998** was assented to on 2 June 1998 and came into operation as follows:

Part 1 (sections 1–3) on 2 June 1998: section 2(1); rest of Act on 1 July 1998: Government Gazette 18 June 1998 page 1512.

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Endnotes

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**2. Table of Amendments**

This Version incorporates amendments made to the **Business Licensing Authority Act 1998** by Acts and subordinate instruments.

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**Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998**

*Assent Date:* 26.5.98  
*Commencement Date:* S. 7(Sch. 1) on 1.7.98: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Business Licensing Authority Act 1998**

**Fair Trading (Inspectors Powers and Other Amendments) Act 1999, No. 17/1999**

*Assent Date:* 18.5.99  
*Commencement Date:* S. 23 on 1.9.99: Government Gazette 19.8.99 p. 1901  
*Current State:* This information relates only to the provision/s amending the **Business Licensing Authority Act 1998**

**Fair Trading (Amendment) Act 2003, No. 30/2003**

*Assent Date:* 27.5.03  
*Commencement Date:* S. 77 on 9.10.03: Government Gazette 9.10.03 p. 2589  
*Current State:* This information relates only to the provision/s amending the **Business Licensing Authority Act 1998**

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**Endnotes**

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**3. Explanatory Details**

No entries at date of publication