

# **Business Licensing Authority Act 1998**

## **Act No. 49/1998**

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Victoria

No. 49 of 1998

# **Business Licensing Authority Act 1998<sup>†</sup>**

[Assented to 2 June 1998]

**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.

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- (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
- (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 of the Office of Fair Trading and Business Affairs in the Department of Justice;

**"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.

### **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 appointed or employed under the **Public Sector Management Act 1992** 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.

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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 appointed or employed under the **Public Sector Management Act 1992**—
  - (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.

**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 appointed or employed under the **Public**

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**Sector Management Act 1992** 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.

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

## **19. Immunity**

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- (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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## 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 Act 1992** (including Part 9) does not apply to a member in respect of the office of member (except in accordance with Part 8).

#### 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.

#### 4. *Acting Chairperson*

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- (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.

**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
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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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Notes

**NOTES**

† *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."