



New South Wales

Fair Trading Legislation Amendment Act 1997 No 82

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New South Wales

Fair Trading Legislation Amendment Act 1997 No 82

Act No 82, 1997

An Act to amend the *Fair Trading Act 1987* to establish certain advisory councils; to amend that Act and various other Acts in relation to the administration of those Acts; to repeal the *Property Services Council Act 1990*; and for other purposes. [Assented to 10 July 1997]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Fair Trading Legislation Amendment Act 1997*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Fair Trading Act 1987 No 68

The *Fair Trading Act 1987* is amended as set out in Schedule 1.

4 Amendment of Conveyancers Licensing Act 1995 No 57

The *Conveyancers Licensing Act 1995* is amended as set out in Schedule 2.

5 Amendment of Home Building Act 1989 No 147

The *Home Building Act 1989* is amended as set out in Schedule 3.

6 Amendment of Motor Dealers Act 1974 No 52

The *Motor Dealers Act 1974* is amended as set out in Schedule 4.

7 Amendment of Property, Stock and Business Agents Act 1941 No 28

The *Property, Stock and Business Agents Act 1941* is amended as set out in Schedule 5.

8 Amendment of Valuers Registration Act 1975 No 92

The *Valuers Registration Act 1975* is amended as set out in Schedule 6.

9 Repeal of Property Services Council Act 1990 No 14

The *Property Services Council Act 1990* is repealed.

Schedule 1 Amendment of Fair Trading Act 1987

(Section 3)

[1] The whole Act

Omit “Commissioner” wherever occurring (except in Schedule 5 and in provisions as amended or omitted elsewhere by this Schedule).

Insert instead “Director-General”.

[2] Section 4 Definitions

Omit the definitions of *Commissioner* and *Department* from section 4 (1).

[3] Section 4 (1)

Insert in alphabetical order:

advisory committee means a committee appointed under section 25.

advisory council means any of the councils established by Divisions 5–8 of Part 2.

Department means the Department of Fair Trading.

Director-General means the Director-General of the Department.

[4] Part 2, heading

Omit “Department of Consumer Affairs”.

Insert instead “Administrative matters”.

[5] Part 2, Division 1, heading

Omit “Commissioner for Consumer Affairs”.

Insert instead “Director-General and staff”.

[6] Section 8

Omit the section. Insert instead:

8 Delegation by Director-General

- (1) The Director-General may delegate to any person or committee the exercise of any of the functions conferred or imposed on the Director-General by or under the following:
 - (a) this Act,
 - (b) *Conveyancers Licensing Act 1995*,
 - (c) *Home Building Act 1989*,
 - (d) *Motor Dealers Act 1974*,
 - (e) *Motor Vehicle Repairs Act 1980*,
 - (f) *Property, Stock and Business Agents Act 1941*,
 - (g) *Valuers Registration Act 1975*,
 - (h) any other Act administered by the Minister,
 - (i) any other Act prescribed by the regulations for the purposes of this section (or the prescribed provisions of any other prescribed Act),
 - (j) the regulations under any such Act.
- (2) A delegate of the Director-General may sub-delegate a function if authorised in writing to do so by the Director-General.
- (3) However, functions of the Director-General under section 42A of the *Property, Stock and Business Agents Act 1941* may only be delegated to a committee that includes at least one industry representative and at least one consumer.

[7] Section 10 Exclusion of liability

Insert “or advisory council” after “advisory committee” in section 10 (1) (c).

[8] Section 10 (1)

Insert “or council” after “a committee”.

[9] Part 2, Divisions 5–8 (sections 25A–25L)

Insert after Division 4 of Part 2:

Division 5 Fair Trading Advisory Council

25A Establishment

There is established by this Act a council called the Fair Trading Advisory Council.

258 Membership

- (1) The Fair Trading Advisory Council is to consist of 6 members.
- (2) The members of the Fair Trading Advisory Council are:
 - (a) the Director-General or a nominee of the Director-General, and
 - (b) 5 persons appointed by the Minister and having, in the opinion of the Minister, expertise or qualifications appropriate to its functions (as consumer or industry representatives or otherwise).
- (3) Schedule 4A has effect with respect to the members and procedure of the Fair Trading Advisory Council.

25C Functions

The functions of the Fair Trading Advisory Council are to furnish advice to the Minister:

- (a) as to such fair trading and consumer protection issues as it thinks fit or as are referred to it by the Minister, and
- (b) in particular, as to any issues relevant to any legislation administered by the Minister (including issues about which any other advisory committee or advisory council has functions).

Division 6 Motor Trade Advisory Council

25D Establishment

There is established by this Act a council called the Motor Trade Advisory Council.

25E Membership

- (1) The Motor Trade Advisory Council is to consist of 10 members.
- (2) The members of the Motor Trade Advisory Council are:
 - (a) the Director-General or a nominee of the Director-General, and
 - (b) 9 other persons appointed by the Minister and having, in the opinion of the Minister, expertise appropriate to its functions (as consumer or industry representatives or otherwise).
- (3) Schedule 4A has effect with respect to the members and procedure of the Motor Trade Advisory Council.

25F Functions

- (1) The functions of the Motor Trade Advisory Council are to furnish advice to the Minister:
 - (a) as to any issues relevant to the motor trade as it thinks fit or as are referred to it by the Minister, and
 - (b) in particular:
 - (i) as to the development of policy relating to the motor trade, and
 - (ii) as to any issues relevant to any legislation administered by the Minister for Fair Trading and relating to the motor trade, and
 - (iii) as to education or research programs relating to the motor trade, that are or might be government funded.

- (2) In this section:

motor trade means the industry of trading motor vehicles and the motor vehicle repair and maintenance industry.

motor vehicle means any motor car, motor carriage, motor cycle or other vehicle propelled wholly or partly by any volatile spirit, steam, gas, oil or electricity, and includes a trailer, but does not include:

- (a) a vehicle used on a railway or tramway, or
- (b) a vehicle that is constructed or adapted otherwise than for the carriage of passengers or goods over public roads, or
- (c) anything prescribed by the regulations for the purposes of this definition.

Division 7 Property Services Advisory Council

25G Establishment

There is established by this Act a council called the Property Services Advisory Council.

25H Membership

- (1) The Property Services Advisory Council is to consist of 12 members.
- (2) The members of the Property Services Advisory Council are:
 - (a) the Director-General or a nominee of the Director-General, and
 - (b) 11 persons appointed by the Minister and having, in the opinion of the Minister, expertise appropriate to its functions (as consumer or industry representatives or otherwise).
- (3) Schedule 4A has effect with respect to the members and procedure of the Property Services Advisory Council.

25I Functions

- (1) The functions of the Property Services Advisory Council are to furnish advice to the Minister:

- (a) as to such issues relating to the property services industry as it thinks fit or as are referred to it by the Minister, and
 - (b) in particular:
 - (i) as to any issues relevant to any legislation administered by the Minister for Fair Trading and relating to the property services industry, and
 - (ii) as to education or research programs relating to the property services industry, that are or might be government funded.
- (2) In this section:
- property services industry* includes:
- (a) the business of selling, managing, valuing or otherwise dealing with property (including businesses) that is subject to licensing, registration or regulation under the *Property, Stock and Business Agents Act 1941* or the *Valuers Registration Act 1975*, or
 - (b) the carrying out of conveyancing work as defined by the *Conveyancers Licensing Act 1995*,
- and includes anything prescribed by the regulations as being within this definition, but does not include anything prescribed as excluded from it.

Division 8 Home Building Advisory Council

25J Establishment

There is established by this Act a council called the Home Building Advisory Council.

25K Membership

- (1) The Home Building Advisory Council is to consist of 11 members.

- (2) The members of the Home Building Advisory Council are:
 - (a) the Director-General or a nominee of the Director-General, and
 - (b) 10 persons appointed by the Minister and having, in the opinion of the Minister, expertise appropriate to its functions (as consumer or industry representatives or otherwise).
- (3) Schedule 4A has effect with respect to the members and procedure of the Home Building Advisory Council.

25L Functions

The functions of the Home Building Advisory Council are to advise the Minister on such consumer-related issues relating to the home building industry, including the provision of funding for education and research, as it thinks fit or as are referred to it by the Minister.

[10] Section 92 Regulations

Insert after section 92 (1):

- (1A) The regulations may make provision for or with respect to the procedure for the calling and holding of meetings of an advisory council.

[11] Schedule 4A

Insert after Schedule 4:

Schedule 4A Provisions relating to advisory councils

(Sections 25B, 25E, 25H, 25K)

1 Chairperson

- (1) The Minister may appoint an appointed member of an advisory council as its Chairperson.

- (2) An appointment of an appointed member of an advisory council as its Chairperson may be for a specified or unspecified term, but may be revoked at any time by the Minister in writing for any or no reason.
- (3) Such a revocation of appointment as Chairperson of an advisory council does not of itself affect a person's tenure of office as an appointed member of the advisory council.

2 Acting members

- (1) The Minister may, from time to time, appoint a person to act in the office of an appointed member of an advisory council during the illness or absence of the member. The person, while so acting, has and may exercise all the functions of the appointed member and is taken to be an appointed member of the council.
- (2) Subclause (1) extends to the office and functions of Chairperson of an advisory council, but the Minister may instead appoint another appointed member of the council to act in the office of Chairperson.
- (3) The Minister may remove any person from any office to which the person was appointed under this clause at any time for any or no reason.
- (4) For the purposes of this clause, a vacancy in the office of an appointed member is taken to be an absence from office of the member.

3 Terms of office

Subject to this Schedule, an appointed member of an advisory council holds office for such period not exceeding 3 years as may be specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.

4 Allowances

A member of an advisory council is entitled to be paid such allowances as the Minister from time to time determines in respect of the member.

5 Vacancies

- (1) The office of an appointed member of an advisory council becomes vacant if the member:
 - (a) dies, or
 - (b) completes a term of office and is not re-appointed, or
 - (c) resigns the office by letter addressed to the Minister, or
 - (d) is removed by the Minister from office under this clause, or
 - (e) is absent from 3 consecutive meetings of the council of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for having been absent from those meetings, or
 - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
 - (g) becomes a mentally incapacitated person, or
 - (h) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.
- (2) The Minister may remove an appointed member from office as a member of an advisory council at any time for any or no reason.

6 Filling of vacancy

If the office of an appointed member of an advisory council becomes vacant, a person is, subject to this Act, required to be appointed to fill the vacancy.

7 Disclosure of pecuniary interests

- (1) A member of an advisory council:
- (a) who has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the council, and
 - (b) whose interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the council.

- (2) A disclosure by a member of an advisory council at a meeting of the council that the member:
- (a) is a member, or in the employment, of a specified company or other body, or
 - (b) is a partner, or in the employment, of a specified person, or
 - (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to the company or other body or to that person that may arise after the date of the disclosure and that is required to be disclosed under this clause.

- (3) Particulars of any disclosure made under this clause must be recorded by the members of the advisory council in a book to be kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the members.

8 Effect of certain other Acts

- (1) The *Public Sector Management Act 1988* does not apply to the appointment of an appointed member of an advisory council. An appointed member is not, as an appointed member, subject to that Act.

- (2) If by or under any Act provision is made:
- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
 - (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member of an advisory council or from accepting and retaining any remuneration payable to the person under this Act as a member of an advisory council.

- (3) The office of appointed member of an advisory council is for the purposes of any Act taken not be an office or place of profit under the Crown.

9 General procedure

The procedure for the calling of meetings of an advisory council and the conduct of those meetings of the council is, subject to this Act and the regulations and any directions of the Minister, to be determined by the council. The Minister may give such directions for this purpose as the Minister thinks fit.

10 Meetings

An advisory council is required to meet 4 times during each calendar year. However, an advisory council may hold additional meetings as approved by the Minister, and is required to do so as directed by the Minister.

11 Quorum

The quorum for a meeting of an advisory council is a majority of its members for the time being.

12 Presiding member

- (1) A meeting of an advisory council is to be chaired by:
 - (a) the Chairperson of the council, or
 - (b) in the absence of the Chairperson (including a person appointed under clause 2 to act as Chairperson), another appointed member of the council elected to chair the meeting by a majority of the members of the council present.
- (2) The member chairing any meeting of an advisory council has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

13 Voting

A decision supported by a majority of the votes cast at a meeting of an advisory council at which a quorum is present is the decision of the council.

14 Transaction of business outside meetings or by telephone or other means

- (1) An advisory council may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the council for the time being. A resolution in writing approved by a majority of those members is taken to be a decision of the council.
- (2) An advisory council may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, close-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of
 - (a) the approval of a resolution under subclause (1), or
 - (b) a meeting held in accordance with subclause (2),the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the council.

- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the advisory council.
- (5) Papers may be circulated among members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

15 Minutes

- (1) An advisory council must cause full and accurate minutes to be kept of the proceedings of each meeting of the council.
- (2) The advisory council is to cause a copy of the minutes of each meeting to be forwarded to the Minister within 14 days after the meeting.

16 First meeting

The first meeting of an advisory council is to be called in such manner as the Minister determines.

[12] Schedule 5 Savings and transitional provisions

Insert after clause 11B:

11C Fair Trading Legislation Amendment Act 1997

- (1) In this clause, *amending Act* means the *Fair Trading Legislation Amendment Act 1997*.
- (2) The Property Services Council, Home Building Advisory Council and Motor Dealers Council are abolished on the commencement of the provisions of the amending Act repealing the provisions that respectively constitute them.
- (3) A person ceases to hold office as member or Chairperson of such a council on the abolition of the council concerned. The person is not entitled to be paid any remuneration or compensation by reason of ceasing to hold any such office.

- (4) The Property Services Council Statutory Interest Account is to be closed on the establishment of the Property Services Statutory Interest Account under the *Property, Stock and Business Agents Act 1941*, as amended by the amending Act.
- (5) The Property Services Council Compensation Fund is to be closed on the establishment of the Property Services Compensation Fund under the *Property, Stock and Business Agents Act 1941*, as amended by the amending Act.
- (6) The Property Services Council Administration Account is to be closed by the Director-General on the repeal by the amending Act of section 25 of the *Property, Stock and Business Agents Act 1941*, and the amount standing to its credit is to be paid to the Department of Fair Trading Operating Account.
- (7) Section 64C of the *Property, Stock and Business Agents Act 1941*, as inserted by the amending Act, extends to claims, expenses and costs incurred in connection with the Property Services Council Compensation Fund before the commencement of that section.

[13] Schedule 5, clause 12 Regulations

Insert at the end of clause 12 (1):

Fair Trading Legislation Amendment Act 1997.

Schedule 2 Amendment of Conveyancers Licensing Act 1995

(Section 4)

[1] The whole Act

Omit “Council” wherever occurring (except in section 82 and the Schedules and in provisions as amended or omitted elsewhere by this Schedule).

Insert instead “Director-General”.

[2] Sections 10 (3) and (5) and 71 (2) (b) and (3)

Omit “it” wherever occurring.

Insert instead “the Director-General”.

[3] Sections 10 (4), 13 (4) and 84

Omit “its” wherever occurring.

Insert instead “the Director-General’s”.

[4] Section 38 Claims can be made against Compensation Fund

Omit “Division 1 of” from section 38 (1).

[5] Section 38 (1)

Omit “Property Services Council”.

[6] Section 38 (3)

Omit “Section 72 (3)”. Insert instead “Section 64E (4)”.

[7] Section 39 Contributions by licensees

Omit “section 71 or 72”.

Insert instead “section 64D or 64E”.

[8] Section 40 Definitions

Omit the definition of *Administration Account*.

[9] Section 40

Insert in alphabetical order:

Operating Account means the Department of Fair Trading Operating Account or a departmental account prescribed by the regulations for the purposes of this definition.

[10] Sections 48 (2), 49 (1), 53, 73 (2) and 74 (1)

Omit “Administration Account” wherever occurring.
Insert instead “Operating Account”.

[11] Section 55 Supreme Court may appoint receiver

Omit “Part 6 of” from section 55 (2) (c).

[12] Section 87 Register of licensees

Omit “at its offices” from section 87 (1).

[13] Dictionary

Omit the definition of *Council*.

[14] Dictionary

Insert in alphabetical order:

Director-General means the Director-General of the Department of Fair Trading.

Schedule 3 Amendment of Home Building Act 1989

(Section 5)

[1] Section 3 Definitions

Omit the definition of *Advisory Council*.

[2] Section 112A

Insert after section 112:

112A Building Insurance Fund

- (1) The Administration Corporation is required to maintain with one or more banks, building societies or credit unions in New South Wales a Building Insurance Fund.
- (2) The following amounts are to be paid into the Building Insurance Fund:
 - (a) the amounts transferred to the Fund from the Fair Trading Administration Corporation General Account by way of supplementation under section 113, and
 - (b) all money received by the Administration Corporation that is referable to BSC Insurance.
- (3) Payments from the Building Insurance Fund may be made for the following purposes only:
 - (a) to satisfy any claims or liabilities arising under BSC Insurance,
 - (b) to meet costs associated with any such claims or liabilities,
 - (c) to meet departmental and other costs incurred in relation to the administration of BSC Insurance, including any relevant capital costs,
 - (d) to invest money in the Fund by way of deposit with any one or more banks, building societies or credit unions in New South Wales.

(4) In this section:

BSC Insurance means the insurance schemes established under this Act as in force before the commencement of Schedule 4 [3] to the *Building Services Corporation Legislation Amendment Act 1996*.

[3] Section 113 General Account

Insert “or 112A” after “112” in section 113 (2).

[4] Section 113 (3) and (4)

Omit section 113 (3). Insert instead:

(3) There is payable from the Account:

- (a) all payments required to meet the expenditure incurred in relation to the functions of the Administration Corporation, other than expenditure for purposes for which payments may be made from the Building Insurance Fund, and
- (b) such amounts by way of supplementation of the Building Insurance Fund as may be necessary to enable current or future claims against or liabilities of the Fund to be met.

(4) The amounts referred to in subsection (3) (b) are to be as approved by the Minister and are to be transferred to the Building Insurance Fund.

[5] Part 7A The Home Building Advisory Council

Omit the Part (sections 115A–115D).

[6] Section 140 Regulations

Omit section 140 (2) (1).

[7] Schedule 2A Membership and procedure of Advisory Council

Omit the Schedule.

[8] Schedule 4 Savings and transitional provisions

Omit clause 32.

Schedule 4 Amendment of Motor Dealers Act 1974

(Section 6)

[1] The whole Act

Omit “Commissioner” wherever occurring (except in paragraph (e) of the definition of *authorised officer* in section 4 (1), in sections 11 (2), 23C (1), 26A (1), 46 (3A) and 58 (2) and in provisions as amended or omitted elsewhere by this Schedule).
Insert instead “Director-General”.

[2] Section 4 Definitions

Omit the definition of *Commissioner* from section 4 (1).

[3] Section 4 (1)

Insert in alphabetical order:

Director-General means the Director-General of the Department of Fair Trading.

[4] Sections 32 (1), 33 (2) and 35 (3) (a) and (6)

Omit “Commissioner’s” wherever occurring.
Insert instead “Director-General’s”.

[5] Part 6A The Motor Dealers Council

Omit the Part (sections 42A and 42B).

[6] Schedule 2 Constitution and procedure of the Motor Dealers Council

Omit the Schedule.

Schedule 5 Amendment of Property, Stock and Business Agents Act 1941

(Section 7)

[1] The whole Act

Omit “Council” wherever occurring (except in the Schedules and in provisions as amended or omitted elsewhere by this Schedule).
Insert instead “Director-General”.

[2] The whole Act

Omit “General Manager” wherever occurring (except in the Schedules and in provisions as amended or omitted elsewhere by this Schedule).
Insert instead “Director-General”.

[3] Section 3 Definitions

Omit the definitions of *Administration Account*, *Council*, *Fund*, *General Manager* and *Statutory Interest Account* from section 3 (1).

[4] Section 3 (1)

Insert in alphabetical order:

Compensation Fund or *fund* means the Property Services Compensation Fund referred to in section 64A.

Department means the Department of Fair Trading.

Director-General means the Director-General of the Department.

Statutory Interest Account means the Property Services Statutory Interest Account referred to in section 63B.

[5] Section 23 Procedure

Insert “and” at the end of section 23 (2) (d) (i).

[6] Section 23 (2) (d) (ii)

Omit the subparagraph.

[7] Section 23 (2A)

Omit “ , administration fee”.

[8] Section 23 (7) (a)

Omit “it or”.

[9] Section 23 (9) (e)

Omit the paragraph. Insert instead:

- (e) where the Director-General has objected to the grant of the application, the Director-General may appear at the hearing personally or by any police officer or officer of the Department or by barrister or solicitor.

[10] Section 23A Restoration of licence by Director-General

Omit “ , administration fee” from section 23A (1) (a).

[11] Section 238 Objection to application for restoration of licence

Omit section 23B (4) (b). Insert instead:

- (b) an officer of the Department, or

[12] Section 25 Property Services Council Administration Account

Omit the section.

[13] Section 26 Interstate licences

Omit “General Manager, if authorised to do so by the Council,” from section 26 (2).

Insert instead “Director-General”.

[14] Sections 36AC (3), 36C (2A) and (2B), 39AA (2) and (3) (b) and 42A (6)

Omit “it” wherever occurring.
Insert instead “the Director-General”.

[15] Section 36AD Bank, building society or credit union to provide Director-General with certain information

Insert after section 36AD (2):

(2A) In addition, the regulations may:

- (a) require banks, building societies and credit unions to provide the Director-General with such information relating to all or any trust accounts as is specified or described in the regulations, and
- (b) authorise the Director-General to require a bank, building society or credit union to provide the Director-General with such information relating to trust accounts identified by the Director-General as is specified or described by the Director-General, and
- (c) make provision for or with respect to any associated matter, including the manner in which, and the time within which, any such information is to be provided to the Director-General.

[16] Section 36AF Offences by banks, building societies and credit unions

Insert at the end of the section:

- (2) Without affecting section 92, subsection (1) of this section does not apply to a requirement of or under regulations made under section 36AD (2A).

[17] Section 36C Disposal of unclaimed money in trust accounts

Omit “fund” wherever occurring.
Insert instead “Compensation Fund”.

[18] Section 38B Inspection of records

Omit “an officer of the Council” wherever occurring.
Insert instead “an officer of the Department”.

[19] Section 38B (2AA)

Omit “the General Manager,”.

[20] Section 38B (3)

Omit “The General Manager or an”. Insert instead “An”.

[21] Section 38B (6) (a)

Omit “the General Manager or”.

[22] Section 38E Qualifications and duties of auditors

Omit “a member of the Council or any of its officers” from section 38E (3).
Insert instead “an officer of the Department”.

[23] Section 39AA Procedure for approvals under sec 39

Omit “Council’s” from section 39AA (3).
Insert instead “Director-General’s”.

[24] Section 40 Production of licence

Omit “officer of the Council” from section 40 (1).
Insert instead “officer of the Department”.

[25] Section 50B Records to be kept by business agent

Omit “officer of the Council” from section 50B (2).
Insert instead “officer of the Department”.

[26] Section 50L Production of certain instruments

Omit “officer of the Council”.
Insert instead “officer of the Department”.

[27] Section 57 Procedure

Omit “(other than the administration fee referred to in subsection (6))” from section 57 (4E).

[28] Section 57 (4F) (a)

Omit “it or”.

[29] Section 57 (6) (a)

Omit “and”

[30] Section 57 (6) (b)

Omit the paragraph.

[31] Section 57 (7) (e)

Omit the paragraph. Insert instead:

- (e) where the Director-General has objected to the grant of the application, the Director-General may appear at the hearing personally or by any police officer or officer of the Department or by barrister or solicitor.

[32] Section 57 (9) (c) (i)

Omit “and”.

[33] Section 57 (9) (c) (ii)

Omit the subparagraph.

[34] Section 57 (10)

Omit the subsection.

[35] Section 62 Production of certificate of registration

Omit “officer of the Council”.

Insert instead “officer of the Department”.

[36] Part 4A, heading

Omit “Council”.

[37] Sections 63B–63D

Omit the sections. Insert instead:

63B Statutory interest Account

The Director-General is to cause to be established and maintained in the accounting records of the Department an account, called the Property Services Statutory Interest Account.

63C Money payable to Statutory Interest Account

The Statutory Interest Account is to consist of

- (a) the amounts held in or payable to the Property Services Council Statutory Interest Account immediately before the commencement of this paragraph, and
- (b) any money required or permitted to be paid to the credit of the Statutory Interest Account, whether by this Act or any other Act, and
- (c) income from the investment of the Statutory Interest Account.

63D Application of money in Statutory Interest Account

- (1) Money in the Statutory Interest Account may be applied for any purpose for which it is required or permitted to be applied by or under this or any other Act.
- (2) The Director-General may, with the consent of the Minister, apply money held in the Statutory Interest Account for all or any of the following purposes:
 - (a) supplementing the Compensation Fund by such amount as may be needed to enable the current liabilities of the fund to be met,
 - (b) providing grants or loans for providing or undertaking education or research programs relating to the property services industry (as defined in section 25I of the *Fair Trading Act 1987*) and approved by the Minister,
 - (c) meeting the costs of administering this Act, the *Conveyancers Licensing Act 1995*, the *Valuers Registration Act 1975* and any other Act prescribed by the regulations for the purposes of this paragraph (or the prescribed provisions of any other Act),
 - (d) meeting the costs of the administration of the Property Services Advisory Council,
 - (e) meeting the costs of operating a scheme or schemes for resolving disputes arising between consumers and providers of property services,
 - (f) investing in:
 - (i) schemes that relate to the provision of residential accommodation, or
 - (ii) subject to such terms and conditions as may be prescribed by the regulations, loans to building societies registered under an Act.
- (3) The Treasurer may determine:
 - (a) whether any such money is to be invested in any such scheme or loan, and
 - (b) if any such money is to be so invested, the amount to be invested in the scheme or loan concerned.

(4) In this section:

property services means services provided in the property services industry as defined in section 251 of the *Fair Trading Act 1987*.

[38] Section 63G Application of money for the purposes of the Home Purchase Assistance Authority Act 1993

Omit the section.

[39] Part 6, heading

Omit the heading.

Insert instead **“Part 6 Compensation Fund”**.

[40] Part 6, Division 1

Omit the Division. Insert instead:

Division 1 Establishment and management

64A Compensation Fund

The Director-General is to cause to be established and maintained in the accounting records of the Department a fund, called the Property Services Compensation Fund.

64B Money payable to Compensation Fund

The Compensation Fund is to consist of

- (a) the amounts held in or payable to the Property Services Council Compensation Fund immediately before the commencement of this paragraph, and
- (b) any amounts paid by licensees by way of levy under this Act, and
- (c) any amounts required or permitted to be paid to the credit of the Compensation Fund, whether by this Act or any other Act, and
- (d) any amounts payable to the Compensation Fund from the Statutory Interest Account, and
- (e) income from the investment of the Compensation Fund.

64C Application of money in Compensation Fund

- (1) Money in the Compensation Fund may be applied for any purpose for which it is required or permitted to be applied by or under this or any other Act.
- (2) The Director-General may apply money held in the Compensation Fund (in such order as the Director-General decides) for all or any of the following purposes:
 - (a) satisfying claims (including costs) established against the Compensation Fund in accordance with this or any other Act,
 - (b) meeting legal expenses incurred by the Director-General in connection with claims against the Compensation Fund,
 - (c) meeting expenses incurred by the Director-General in or in relation to court appearances with respect to licences under this Act or the *Conveyancers Licensing Act 1995*,
 - (d) meeting the costs of administering the Compensation Fund,
 - (e) investing in:
 - (i) schemes that relate to the provision of residential accommodation, or
 - (ii) subject to such terms and conditions as may be prescribed by the regulations, loans to building societies registered under an Act.
- (3) The Treasurer may determine:
 - (a) whether any such money is to be invested in any such scheme or loan, and
 - (b) if any such money is to be *so* invested, the amount to be invested in the scheme or loan concerned.

Division 2 Contributions and levies

64D Contributions

- (1) A contribution of \$135 or, where another amount not exceeding \$500 is prescribed by the regulations, that amount is, subject to this section, to be paid every 3 years by every licensee.

- (2) If a person holds more than one class of licence, only one contribution is payable by the person under this section in respect of all the licences.
- (3) Contributions under this section are in addition to any fees and levies payable under this Act.

64E Levies

- (1) If the Director-General is at any time of the opinion that the Compensation Fund is likely to be insufficient to meet the liabilities to which it is subject, the Director-General may, with the approval of the Minister, impose a levy on each licensee.
- (2) A levy is payable to the Director-General at the time, and in the manner, fixed by the Director-General.
- (3) The Director-General may, in any special case, allow time for the payment of the whole or part of any levy.
- (4) If, after being given the notice prescribed by the regulations, a licensee fails to pay a levy in accordance with this section, the Director-General may suspend the licence held by the licensee while the failure continues.

Division 3 Claims

64F Definitions

In this Division:

associate of a licensee means:

- (a) an employee or agent of the licensee, or
- (b) a person who has the apparent control or charge for the time being of the business of the licensee or of any office at which that business is carried on.

failure to account has the meaning set out in section 64G.

pecuniary loss from a failure to account includes:

- (a) all costs (including the legal costs and disbursements of making and proving a claim), charges and expenses that a claimant has suffered or incurred as a direct consequence of the failure to account, and

- (b) all interest on money or other valuable property that a claimant would have received but for the failure to account for the money or other property.

That interest is as calculated to the date on which the Director-General determines the claimant's claim to (or a judgment is recovered against the Director-General in relation to the Compensation Fund in respect **of**) that money or other property.

64G Meaning of "failure to account"

- (1) In this Division, a reference to a failure to account is a reference to a failure by a licensee to account for money or other valuable property entrusted to the licensee or an associate of the licensee in the course of the licensee's business as a licensee.
- (2) This section applies only to a failure to account that arises from an act or omission of the licensee or associate.
- (3) For the purposes of this section, it does not matter that the failure to account occurred after the licensee ceased to be licensed, if the money or other valuable property concerned was entrusted to the licensee (or an associate of the licensee) before the licensee ceased to be licensed.
- (4) This section applies whether the failure to account, or the act or omission, took place before or after the commencement of this section.

64H Application of Compensation Fund

- (1) The Compensation Fund is held, and is to be applied, for the purpose of compensating persons who suffer pecuniary loss because of a failure to account.
- (2) A person who claims to have suffered a pecuniary loss because of a failure to account may make a claim against the Compensation Fund, but only if the claim is made in writing to the Director-General within:

- (a) a period of 12 months after the person has become aware of the failure to account, or
 - (b) a period of 2 years after the date of the failure to account,
- whichever period first ends.
- (3) However, a claim caused by a failure of a licensee (or an employee or agent of a licensee) to lodge a rental bond with the Rental Bond Board may also be made at any time within one year after the termination of the tenancy agreement.
 - (4) A licensee does not have a claim against the Compensation Fund in respect of a pecuniary loss suffered in connection with the licensee's business as a licensee because of a failure to account.

64I Claims against Compensation Fund

- (1) Subject to section 64H, the Director-General may receive and allow, in whole or in part, any claim against the Compensation Fund at any time after the relevant failure to account arose.
- (2) The Director-General may disallow any claim, in whole or in part, in appropriate cases.

64J Legal proceedings

- (1) A person cannot, without the leave of the Director-General, commence any proceedings in relation to the Compensation Fund unless the person has made a claim and the Director-General has disallowed the person's claim.
- (2) A person cannot recover from the Compensation Fund by way of any such proceedings an amount greater than the amount of pecuniary loss suffered by the person, after deducting from the total amount of the pecuniary loss:
 - (a) the amount or value of all money or other benefits received or recovered from any source (other than the Compensation Fund) in reduction of the pecuniary loss, and

- (b) any such amount or value that, in the opinion of the Director-General, might have been received or recovered but for the person's neglect or default.
- (3) Any proceedings in relation to any claim against the Compensation Fund are to be as for a debt due by the Crown and are to be brought in a court of competent jurisdiction. Any such proceedings do not lie against the Director-General.
- (4) In any proceedings referred to in subsection (3), all defences that would have been available to the licensee in relation to whom the claim arose are available to the Crown.
- (5) In any proceedings referred to in subsection (3), all questions of costs are in the discretion of the court or, where the proceedings are tried with a jury, the judge presiding at the trial.
- (6) Any order for the payment of costs made by a Local Court operates as a judgment debt under the *Local Courts (Civil Claims) Act 1970* and is enforceable as such under that Act.
- (7) No proceedings can be brought against the Crown in relation to a claim against the Compensation Fund after the end of:
 - (a) a period of 6 months after the claimant has been notified that the claim has been disallowed, or
 - (b) such longer period as the court may permit, on sufficient cause being shown and on such terms as it thinks fit.

64K Maximum recoverable

The amount that a person may recover from the Compensation Fund cannot, in any case or in any event, exceed \$500,000 or, if another amount is prescribed by the regulations, the prescribed amount.

64L Aggregate recoverable

- (1) The aggregate sum that may be applied in compensating all persons who suffer or incur pecuniary loss because of a failure to account, or of related failures to account, cannot exceed \$2,000,000 or, if another amount is prescribed by the regulations, the prescribed amount.
- (2) The Director-General may disregard subsection (1) in the case of successive failures to account by a licensee, to the extent that the Director-General is satisfied that the failures are not connected.

64M Advertisements

- (1) The Director-General may cause to be published a notice relating to a defaulting licensee and fixing a date within which claims must be made under this Part.
- (2) The notice is to be published in a newspaper circulating in the district in which the defaulting licensee is or was carrying on business, and also in a newspaper circulating in Sydney. One newspaper may satisfy both requirements.

64N Action after advertisement

- (1) Any claim not made in writing on or before the date fixed under section 64M is barred, unless the Director-General otherwise determines.
- (2) After the date fixed under section 64M, the Director-General may distribute compensation in accordance with this Part, having regard only to judgments obtained and claims allowed against the Compensation Fund.

64O Subrogation

On payment out of the Compensation Fund in settlement in whole or in part of a claim under this Act, the Crown is subrogated, to the extent of the payment, to all the rights and remedies of the claimant against the licensee, or the former licensee, in relation to whom the claim arose, or any other person.

64P Production of documents

- (1) The Director-General may, at any time and from time to time, require the production of documents necessary to support any claim under this Act, or available for that purpose, or for the purpose of exercising functions in respect of a defaulting licensee.
- (2) The Director-General may reject a claim if documents are not produced as required.

64Q Satisfaction of claims and judgments

- (1) A claim or judgment against the Compensation Fund can only be satisfied to the extent of money in the Compensation Fund (either then or at a later time). No other money or property (whether of the Crown or otherwise) is available for that purpose.
- (2) If
 - (a) a number of claims or judgments (or both) against the Compensation Fund cannot be satisfied because of an insufficiency of money in the Compensation Fund, or
 - (b) the total amount of claims or judgments (or both) exceeds the relevant aggregate sum (as referred to in section 64L),

the Director-General has an uncontrolled discretion to determine the division and allocation of the available money among the various parties, and whether or not to the exclusion of any one or more of them.

Division 4 Examination of accounts of licensees and former licensees

64R Definitions

In this Division:

associate has the same meaning as in Division 3.

qualified person means a person with such qualifications or experience as in the opinion of the Director-General are appropriate for the purpose of exercising functions under this Division.

64S Appointment of qualified person to examine licensee's accounts

- (1) For the purpose of safeguarding the Compensation Fund in relation to the affairs of a licensee, the Director-General may, at any time and from time to time, appoint an appropriately qualified person to examine the accounts kept by the licensee in connection with the licensee's business.
- (2) The qualified person is to furnish to the Director-General a confidential report about the accounts, indicating whether there is any irregularity or alleged or suspected irregularity in the accounts or any other matter that in the person's opinion should, in the interests of the Compensation Fund, be further investigated.
- (3) A copy of the report is required to be sent by post by the Director-General to the licensee as soon as practicable.
- (4) The appointment of the qualified person under this section is to be by instrument in writing.
- (5) On production by the qualified person of the instrument of appointment, the qualified person may require the licensee (or, in the absence of the licensee, an associate of the licensee):
 - (a) to produce to the qualified person or any assistant of the qualified person:
 - (i) all books, papers, accounts, securities or other documents relating to the business of the licensee, or
 - (ii) any written record made and kept by the licensee under section 38, and
 - (b) to give all information relating to those matters, and
 - (c) to produce all authorities and orders to bankers and other documents that may be reasonably required.

- (6) The licensee or associate is guilty of an offence against this Act if the licensee or associate, without lawful justification or excuse (proof of which lies on the licensee or associate):
- (a) refuses or fails to comply with such a requirement, or
 - (b) otherwise hinders, obstructs or delays the qualified person in the exercise or performance of the qualified person's powers or duties under this section.

64T Confidentiality

- (1) The qualified person must not communicate to any person (other than a partner, employer, employee or assistant of the qualified person):
- (a) the fact of the qualified person's appointment under this Division, or
 - (b) any matter that comes to the qualified person's knowledge in the course of the examination,

except in the course of the preparing and furnishing of the report to the Director-General or in the same circumstances as information can be published under section 86A.

- (2) A partner, employer, employee or assistant (the *colleague*) of the qualified person must not communicate to any person (other than the qualified person or a partner, employer, employee or assistant of the qualified person):
- (a) the fact of the qualified person's appointment under this section, or
 - (b) any matter that comes to the colleague's knowledge in the course of the examination,

except in the course of the preparing and furnishing of the report to the Director-General or in the same circumstances as information can be published under section 86A.

- (3) A person who contravenes this section is guilty of an offence against this Act.

64U Former licensees

This Division extends, with any necessary adaptations, to a former licensee, so that a reference in this Division to a licensee includes a reference to:

- (a) a former licensee, and
- (b) any person who has the possession, custody or control of a written record relating to a former licensee and preserved in accordance with section 38.

[41] Part 6, Division 2 (to become Part 6A)

Omit the heading to Division 2.
Insert instead **“Part 6A Receivers”**.

[42] Section 83O Property not dealt with by receiver

Omit “fund” from section 83O (3).
Insert instead “Compensation Fund”.

[43] Section 83Q Remuneration of receiver and expenses of receivership

Omit “fund” wherever occurring.
Insert instead “Compensation Fund”.

[44] Section 83S Claim or charge against receiver may be paid from Compensation Fund

Omit “fund”. Insert instead “Compensation Fund”.

[45] Section 83U Court may review receiver’s expenses

Omit “fund” wherever occurring.
Insert instead “Compensation Fund”.

[46] Section 86A Officers of Department not to disclose information

Omit “member of the Council or any of its officers or employees”
from section 86A (1).

Insert instead “officer of the Department”.

[47] Section 86A (1) (c)

Omit “fund”. Insert instead “Compensation Fund”.

Schedule 6 Amendment of Valuers Registration Act 1975

(Section 8)

[1] The whole Act

Omit “Council” wherever occurring (except in provisions as amended or omitted elsewhere **by** this Schedule).
Insert instead “Director-General”.

[2] The whole Act

Omit “General Manager” wherever occurring (except in provisions as amended or omitted elsewhere **by** this Schedule).
Insert instead “Director-General”.

[3] Long title

Omit “Property Services Council”.
Insert instead “Director-General of the Department of Fair Trading”.

[4] Section 4 Definitions

Omit the definitions of *Council* and *General Manager* from section 4 (1).

[5] Section 4 (1)

Insert in alphabetical order:

Director-General means the Director-General of the Department of Fair Trading.

[6] Sections 15 (2) (c), 16 (6) (a) and (7), 17 (3), 20 (1)(e), (2) and (3) (except where secondly occurring)

Omit “it” wherever occurring.
Insert instead “the Director-General”.

[7] Section 20 Proceedings before the Director-General against real estate valuers

Omit “its” wherever occurring from section 20 (2) and (3).
Insert instead “the Director-General’s”.

[8] Schedule 1 Inquiries by the Council

Omit clause 1. Insert instead:

1 Definition

In this Schedule, a reference to the Director-General as the person conducting an inquiry includes, subject to the terms of the delegation, a reference to a person or committee if the person or committee is delegated that function.

[9] Schedule 1, clauses 3 (2) (a), 6 (1) and 9 (1) and (3)

Omit “it” wherever occurring.
Insert instead “the Director-General”.

[10] Schedule 1, clause 8 (1) and (3) (a)

Omit “its” wherever occurring.
Insert instead “the Director-General’s”.

[Minister’s second reading speech made in—
Legislative Assembly on 21 May 1997
Legislative Council on 25 June 1997]