



New South Wales

Conveyancers Licensing Act 2003 No 3

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New South Wales

Conveyancers Licensing Act 2003 No 3

Act No 3, 2003

An Act to provide for the licensing and regulation of conveyancers, to repeal the *Conveyancers Licensing Act 1995*; and for other purposes. [Assented to 28 May 2003]

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Conveyancers Licensing Act 2003*.

2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).
- (2) Schedule 2.2 and 2.5 commence on the commencement of Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

3 Definitions

In this Act:

authorised officer has the meaning given in Part 10 (Enforcement).

business day means a day other than a Saturday, Sunday, public holiday or bank holiday in New South Wales.

Compensation Fund or *Fund* means the Property Services Compensation Fund established and maintained under the *Property, Stock and Business Agents Act 2002*.

conveyancer means a person who carries out conveyancing work.

conveyancing business means any business in the course of which conveyancing work is carried out for fee or reward, whether or not the carrying out of conveyancing work is the sole or dominant purpose of the business.

conveyancing work has the meaning given to it by section 4.

Corporations Act means the *Corporations Act 2001* of the Commonwealth.

costs includes fees, charges, disbursements, expenses and remuneration.

Department means the Department of Commerce.

Director-General means:

- (a) the Commissioner for Fair Trading, Department of Commerce, or
- (b) if there is no such position in the Department—the Director-General of the Department.

disqualified person has the meaning given to it by section 10.

employee includes any person employed whether on salary, wages, bonus, fees, allowance or other remuneration and includes a director or member of the governing body of a corporation.

exercise a function includes perform a duty.

firm of licensees includes any licensees who share remuneration as licensees, whether or not on the same basis for each of them.

function includes a power, authority or duty.

licence means a licence under this Act.

licensee means the holder of a licence under this Act.

licensee's records has the meaning given in Part 6 (Records).

money includes an instrument for the payment of money in any case where the instrument may be paid into a bank or other deposit-taking institution.

money received for or on behalf of any person includes money held for or on behalf of any person, whether originally received for or on behalf of the person or not.

records includes books, accounts and other documents.

Statutory Interest Account means the Property Services Statutory Interest Account referred to in Part 11 of the *Property, Stock and Business Agents Act 2002*.

Tribunal means the Consumer, Trader and Tenancy Tribunal established by the *Consumer, Trader and Tenancy Tribunal Act 2001*.

trust account means a trust account required to be kept under this Act.

4 Conveyancing work

- (1) For the purposes of this Act, **conveyancing work** is legal work carried out in connection with any transaction that creates, varies, transfers or extinguishes a legal or equitable interest in any real or personal property, such as (for example) any of the following transactions:
 - (a) a sale or lease of land,
 - (b) the sale of a business (including the sale of goodwill and stock-in-trade), whether or not a sale or lease of land or any other transaction involving land is involved,
 - (c) the grant of a mortgage or other charge.
- (2) Without limiting subsection (1), **conveyancing work** includes:
 - (a) legal work involved in preparing any document (such as an agreement, conveyance, transfer, lease or mortgage) that is necessary to give effect to any such transaction, and
 - (b) legal work (such as the giving of advice or the preparation, perusal, exchange or registration of documents) that is consequential or ancillary to any such transaction, and
 - (c) any other legal work that is prescribed by the regulations as constituting conveyancing work for the purposes of this Act.
- (3) However, **conveyancing work** does not include the carrying out of any work for the purpose of:
 - (a) a mortgage on non-residential property where the amount secured by the mortgage exceeds 7 million dollars (with non-residential property being any property that is not residential property for the purposes of Division 8 of Part 4 of the *Conveyancing Act 1919*), or
 - (b) commencing or maintaining legal proceedings, or
 - (c) establishing a corporation or varying the memorandum or articles of association of a corporation, or
 - (d) creating, varying or extinguishing a trust, or
 - (e) preparing a testamentary instrument, or
 - (f) giving investment or financial advice, or
 - (g) investing money otherwise than as provided for by Division 2 of Part 5,

and does not include any work that is prescribed by the regulations as not constituting conveyancing work for the purposes of this Act.

(4) In this section:

legal work means work that, if done for fee or reward by a person who is neither a solicitor nor a barrister, would give rise to an offence under Part 3A of the *Legal Profession Act 1987*.

5 Notes

Notes included in this Act do not form part of this Act.

Part 2 Licences

Division 1 Requirement for licence

6 Persons conducting conveyancing business required to be licensed

- (1) A person must not conduct a conveyancing business for fee or reward unless the person is the holder of a licence.

Maximum penalty: 100 penalty units.

- (2) This section does not apply to the conduct of a conveyancing business by a person:
- (a) who is a solicitor or barrister, or
 - (b) who is an incorporated legal practice if the conveyancing business is carried on on its behalf by a barrister or solicitor.

7 Effect of licence

- (1) A licensee is not guilty of an offence under Part 3A (Unqualified practitioners) of the *Legal Profession Act 1987* in respect of conveyancing work that the licensee carries out in accordance with this Act, the regulations and the conditions of the licence.
- (2) This section does not permit a licensee to do anything, or to allow anything to be done, that is calculated to imply that the licensee is qualified to act as a solicitor.

Division 2 Eligibility, qualifications and disqualification

8 Eligibility for licence

- (1) A natural person is eligible to hold a licence only if the Director-General is satisfied that the person:
- (a) is at least 18 years of age, and
 - (b) is a fit and proper person to hold a licence, and
 - (c) each person with whom the person is in partnership in connection with the business concerned is a fit and proper person to hold a licence, and
 - (d) has the qualifications required for the issue of the licence, and
 - (e) is not a disqualified person, and
 - (f) has paid such part of any contribution or levy payable under section 12 as is due and payable on the granting of the licence.

- (2) A corporation is eligible to hold a corporation licence only if the Director-General is satisfied that:
- (a) the corporation is a fit and proper person to hold a licence, and
 - (b) each director of the corporation is a fit and proper person to hold a licence, and
 - (c) no director or executive officer (within the meaning of the Corporations Act) of the corporation is a disqualified person, and
 - (d) at least one of the directors of the corporation holds a licence that a natural person is required to hold to carry on the business that the corporation carries on or proposes to carry on, and
 - (e) the corporation has paid such part of any contribution or levy payable under section 12 as is due and payable on the granting of the licence.

9 Qualifications for licence

- (1) The qualifications required for the issue of a licence are such qualifications as the Minister may approve from time to time by order published in the Gazette.
- (2) Without limiting the Minister's power to approve qualifications, the Minister may approve qualifications by reference to any one or more of the following:
 - (a) the completion of a course of study,
 - (b) the completion of a period of training in a particular activity,
 - (c) the attainment of a standard of competency in a particular activity,
 - (d) satisfaction of professional development requirements.
- (3) Qualifications may be approved for a limited range of activities specified in the approval, so as to enable a person who has those qualifications to be granted a licence subject to conditions that limit the person to exercising the functions of a licensee in relation to that limited range of activities only.
- (4) Qualifications may be approved by reference to qualifications obtained before a specific day or during a specified period.
- (5) A person does not have the qualifications required for the replacement or restoration of a licence if the person has failed to comply with any condition of the licence that required the holder to

undertake professional development, continuing education or a course of study, unless the Director-General otherwise determines in a particular case.

10 Disqualified persons

- (1) A person is a disqualified person for the purposes of this Act if the person:
- (a) has a conviction in New South Wales or elsewhere for an offence involving dishonesty that was recorded in the last 10 years, unless the Director-General has determined under subsection (3) that the offence should be ignored, or
 - (b) is an undischarged bankrupt or is a director or person concerned in the management of a corporation that is the subject of a winding up order or for which a controller or administrator has been appointed, unless (in the case of an undischarged bankrupt) the Director-General has certified that he or she is satisfied that the person took all reasonable steps to avoid the bankruptcy, or
 - (c) at any time in the 3 years preceding the application for the licence, was an undischarged bankrupt or applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounded with his or her creditors or made an assignment of his or her remuneration for their benefit, unless the Director-General has certified that he or she is satisfied that the person took all reasonable steps to avoid the bankruptcy, or
 - (d) at any time in the 3 years preceding the application for the licence, was concerned in the management of a corporation when the corporation was the subject of a winding up order or when a controller or administrator was appointed, unless (in the case of an undischarged bankrupt) the Director-General is satisfied that the person took all reasonable steps to avoid the liquidation or administration, or
 - (e) is a mentally incapacitated person, or
 - (f) is disqualified from holding a licence or other authority under a corresponding law or is the holder of such a licence or authority that is suspended, or
 - (g) is the holder of a licence, permit or other authority that is suspended under the *Fair Trading Act 1987*, or

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- (h) is in partnership with a person who is the holder of a licence, permit or other authority that is suspended under the *Fair Trading Act 1987*, or
 - (i) is for the time being declared to be a disqualified person under Part 9 (Complaints and disciplinary action), or
 - (j) is a corporation that is the subject of a winding up order or for which a controller or administrator has been appointed, or
 - (k) has failed to pay a contribution or levy payable by the person under section 89 and the failure continues, or
 - (l) has failed to pay an amount due as a debt to the Crown by way of recovery of an amount paid out of the Compensation Fund and the failure continues, or
 - (m) has failed to pay any monetary penalty payable by the person under Part 9 (Complaints and disciplinary action) or has failed to comply with any direction given by the Director-General under that Part, and the failure continues, or
 - (n) has failed to provide the Director-General with an auditor's report that the person is required to provide under this Act on the audit of the records and documents relating to any trust money or controlled money held by the person under this Act, unless the Director-General determines that in the circumstances that failure should not disqualify the person, or
 - (o) has been removed (otherwise than at his or her own request) from the roll of legal practitioners kept by the Supreme Court or from a corresponding roll of legal practitioners kept by a superior court of another State or Territory, or
 - (p) is disqualified from being employed in a solicitor's office by virtue of an order in force under section 48I of the *Legal Profession Act 1987*, or
 - (q) is a disqualified person under the *Property, Stock and Business Agents Act 2002*, or
 - (r) is in breach of any provision of this Act or the regulations that is prescribed by the regulations as a disqualifying breach.
- (2) A person is also a disqualified person for the purposes of this Act if the person is the holder of a licence or certificate of registration under the *Property, Stock and Business Agents Act 2002*.

(3) The Director-General may determine that an offence committed by a person should be ignored for the purposes of this section because of the time that has passed since the offence was committed or because of the triviality of the acts or omissions giving rise to the offence.

(4) In this section:

corresponding law means a law of another Australian jurisdiction that is declared by the Minister from time to time by order published in the Gazette to be a law that corresponds to this Act.

Division 3 Application and issue procedure

11 Application to licences of Licensing and Registration (Uniform Procedures) Act 2002

(1) The Director-General may grant licences for the purposes of this Act.

(2) Part 2 of the *Licensing and Registration (Uniform Procedures) Act 2002* (*the applied Act*) applies to and in respect of a licence, subject to the modifications and limitations prescribed by or under this Act.

(3) For the purpose of applying Part 2 of the applied Act to a licence:

(a) the Director-General is taken to be the licensing authority, and

(b) the licence may be amended under that Act, and

(c) the reference to 2 weeks in section 9 (1) (a) of that Act is to be read as a reference to 4 weeks, and

(d) an application for restoration of a licence under section 10 of that Act may not be made more than 3 months after the date on which the licence expires, and

(e) the reference to 28 days in section 17 (1) of that Act (as to the period within which an application must be determined) is to be read as a reference to 8 weeks, and

(f) section 21 (1), (4) and (7) of that Act do not have effect, and

(g) the reference to 14 days in section 24 (1) of that Act (as to the period within which changed particulars must be notified) is to be read as a reference to 7 days, and

(h) section 25 of that Act does not have effect.

(4) A licence is taken to be a fixed-term licence for the purposes of Part 2 of the applied Act.

- (5) Subject to this section, the regulations may make provision for or with respect to such matters concerning a licence as are relevant to the operation of Part 2 of the applied Act.

12 Application fees and Compensation Fund contributions

- (1) An applicant for a licence must make provision for the payment of an application fee of an amount prescribed by the regulations.
- (2) An applicant for a licence must also make provision for the payment of the contribution to the Compensation Fund required under section 89 in relation to the application.

13 Grounds for refusal of licence

- (1) A licence must not be granted to an applicant unless the applicant is eligible to be granted a licence (as provided by section 8).
- (2) The Director-General may refuse an application on any of the grounds (listed in section 132) on which the Director-General may take disciplinary action.

14 Conditions—general

A licence may be granted subject to conditions, including (but not limited to) conditions of the following kind:

- (a) a condition prohibiting the licensee from carrying out conveyancing work otherwise than as an employee of a licensee whose licence does not contain such a condition,
- (b) a condition prohibiting the licensee from carrying out conveyancing work in relation to specified kinds of transaction,
- (c) a condition prohibiting the licensee from carrying out conveyancing work except in relation to specified kinds of transaction,
- (d) a condition requiring the licensee to undertake or complete a specified course of studies within a specified period of time,
- (e) a condition requiring a licensee to undertake by way of professional development specified further education or training during the term of the licence.

15 Special condition requiring professional indemnity insurance

- (1) The regulations may make provision for or with respect to requiring the holder of a licence to be insured under a policy of professional indemnity insurance in force with respect to the licensee or his or her employer. It is a condition of a licence that the holder of the licence be insured as required by any such regulations.
- (2) In particular, the regulations may require that the policy of insurance be a policy, or a policy of a kind, that is approved by the Minister for the time being by order published in the Gazette.
- (3) An order may provide that a policy is an approved policy if the policy complies with either or both of the following:
 - (a) the policy complies with the conditions set out in the order,
 - (b) the policy is described in the order by reference to the insurer and the number of the policy or is identified in the order by other specified particulars.

16 Issue of licence

Licences are issued by the Director-General and are to be in such form and specify such information as the Director-General determines.

17 Duration

A licence takes effect on the date on which it is granted or on such later date as may be specified in it and (unless it is sooner suspended, cancelled or surrendered) remains in force until the following 30 June.

18 Surrender of licence

A licensee may surrender the licence by giving it to the Director-General, together with a notice stating that it is surrendered.

Part 3 General conduct of licensees

Division 1 Place and name of business

19 Business names

- (1) A licensee must not conduct a conveyancing business under a business name that is not approved by the Director-General.

Maximum penalty: 50 penalty units.

- (2) The Director-General is not to approve a proposed business name for a conveyancing business if the name is so similar to that of another business name under which another conveyancing business is conducted as to suggest that there is a relationship between the two businesses.

- (3) A licensee must not enter into any arrangement under which some other person, whether or not a licensee, is authorised by the licensee to conduct a conveyancing business under the same business name, or under a substantially similar business name, as that under which the licensee conducts a conveyancing business.

Maximum penalty: 50 penalty units.

- (4) This section does not affect the *Business Names Act 1962*.

Division 2 Business practices and supervision

20 Each place of business to be in charge of licensee

- (1) A licensee who conducts a conveyancing business under a licence at more than one place of business must employ at each of those places of business (except the place at which the licensee is personally in charge) as the person in charge of business at that place a person who is the holder of a licence that an individual is required to hold to carry on a conveyancing business.

- (2) A corporation that conducts a conveyancing business under a licence must employ as the person in charge at each place of business at which the corporation carries on business under the licence a person who is the holder of a licence that an individual is required to hold to carry on a conveyancing business.

- (3) A licensee must not employ a person to be the person in charge of business at a place of business of the licensee if the person is also employed to be the person in charge of business at another place of business of the licensee or at a place of business of another licensee.

- (4) A person employed as the person in charge of business at a place of business of a licensee must not exercise functions or provide services on behalf of 2 or more licensees at that place (whether corporations or individuals) unless those licensees are in partnership.
- (5) The Director-General may grant a person an exemption from a provision of this section. The exemption may be granted unconditionally or subject to conditions. The Director-General may at any time by notice in writing to a person granted an exemption revoke the exemption or vary the conditions of the exemption.
- (6) The regulations may specify the matters to be taken into account by the Director-General in considering whether to grant a person an exemption from a provision of this section.

Maximum penalty:

- (a) 200 penalty units in the case of a corporation, or
- (b) 100 penalty units in any other case.

21 Duty of licensee and person in charge to properly supervise conveyancing business

- (1) A licensee must properly supervise the conveyancing business carried on by the licensee.
- (2) The requirement to properly supervise the conduct of a conveyancing business includes the following requirements:
 - (a) a requirement to properly supervise employees engaged in the business,
 - (b) a requirement to establish procedures designed to ensure that the provisions of this Act and any other laws relevant to the conduct of that business are complied with,
 - (c) a requirement to monitor the conduct of business in a manner that will ensure as far as practicable that those procedures are complied with.
- (3) The Director-General may from time to time issue and notify to licensees guidelines as to what constitutes the proper supervision of the business of a licensee. A failure to comply with the requirements of any such guidelines in connection with the supervision of a business constitutes a failure to properly supervise the business.

Maximum penalty: 200 penalty units in the case of a corporation or 100 penalty units in any other case.

22 Rules of conduct for licensee's business

- (1) The regulations may prescribe rules of conduct to be observed in the course of the conduct of conveyancing businesses or the exercise of functions under licences.

Note. Part 9 (Complaints and disciplinary action) provides that a contravention of a provision of the regulations is grounds for taking disciplinary action against a person.

- (2) Without limiting subsection (1), the regulations may adopt, with or without modification, the provisions of any rules made by the Law Society with respect to the conduct of solicitors.
- (3) Without limiting subsection (1), the regulations may make provision for or with respect to matters to be disclosed to a person for whom a licensee carries out, or is retained to carry out, conveyancing work, including (but not limited to):
- (a) any conflict of interest that might arise from the carrying out of the work, and
 - (b) any beneficial interest in property that a licensee or employee of a licensee may obtain or be concerned in obtaining in carrying out conveyancing work in relation to the sale of the property.

23 Undertakings by licensees

The Director-General may accept a written undertaking from a licensee as to the manner in which the licensee will exercise functions under the licence.

Note. Part 9 provides that a breach of such an undertaking is grounds for taking disciplinary action against a person.

24 Duty of licensee to notify failure to account

- (1) A licensee must notify the Director-General as soon as practicable after becoming aware of any failure to account by the licensee.

Maximum penalty: 50 penalty units.

- (2) In this section:

failure to account has the same meaning as in Part 8 (Management and receivership).

25 Industry association to report failure to account

A body engaged in the provision of services to conveyancers as an industry association or similar undertaking must notify the Director-General in writing within 7 days after becoming aware of any failure to account by a licensee.

Maximum penalty: 100 penalty units.

26 Sharing of receipts with unqualified persons

- (1) A licensee must not share the receipts of a conveyancing business with another person unless:
- (a) the other person is a licensee, or
 - (b) the sharing of those receipts with that other person is approved by the Director-General and does not contravene the provisions of any regulation under this section.

Maximum penalty: 200 penalty units in the case of a corporation or 100 penalty units in any other case.

- (2) An approval may not be given under this section unless the Director-General is satisfied that the sharing of the receipts of the conveyancing business in accordance with the approval:
- (a) will not result in a person other than a licensee gaining control of the business, and
 - (b) will not adversely affect the independent conduct of the licensee's business or give rise to a conflict between the interests of the licensee and the interests of any of the licensee's clients.
- (3) This section does not prevent a party to a transaction from recovering from any other person the costs of conveyancing work carried out by a licensee who is employed by the party under a contract of service.
- (4) The regulations may make provision for or with respect to restricting the circumstances in which a licensee may share the receipts of a conveyancing business with another person who is not a licensee.

27 Multidisciplinary partnerships

- (1) A licensee must not be in partnership with another person unless:
- (a) the other person is a licensee, or

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- (b) the partnership with that other person is approved by the Director-General and does not contravene the provisions of any regulation under this section.

Maximum penalty: 200 penalty units in the case of a corporation or 100 penalty units in any other case.

- (2) An approval for a partnership may not be given under this section unless the Director-General is satisfied that the business of the partnership concerned will include conveyancing business.
- (3) An approval may not be given for a partnership with a person who is the holder of a licence or certificate of registration under the *Property, Stock and Business Agents Act 2002*.
- (4) The regulations may make provision for or with respect to restricting the classes of persons (other than licensees) with whom a licensee may be in partnership.
- (5) The following provisions apply in respect of a partnership in which a licensee is a member:
- (a) a partner who is not a licensee is not guilty of an offence under Part 3A (Unqualified practitioners) of the *Legal Profession Act 1987* merely because the partner conducts business of the partnership that is conveyancing business,
 - (b) a partner who is not a licensee is not guilty of an offence under Part 3A of the *Legal Profession Act 1987* merely because the partner receives any fee, gain or reward for business of the partnership that is conveyancing business,
 - (c) a partner who is not a licensee is not guilty of an offence under Part 3A of the *Legal Profession Act 1987* merely because the partner holds out, advertises or represents himself or herself as a member of a partnership conducting conveyancing business,
 - (d) a partner who is a licensee does not contravene this Part merely because the partner shares with any other partner the receipts of business of the partnership that is conveyancing business,
 - (e) Division 2 of Part 5 (Trust money and controlled money), Part 7 (Claims arising from failure to account) and Part 8 (Management and receivership) apply, subject to the regulations, as if each partner who is not a licensee were a

licensee. Those provisions so apply in connection with any business of the partnership (whether or not it is conveyancing business).

28 Conduct of other businesses

- (1) The regulations may prohibit a licensee who conducts a conveyancing business, or who is employed in the conduct of a conveyancing business, from conducting, or being employed in the conduct of, any other business or class of businesses.
- (2) A licensee must not conduct any business, or be employed in the conduct of any business, in contravention of the regulations under this section.

Maximum penalty: 200 penalty units in the case of a corporation or 100 penalty units in any other case.

Division 3 Employees

29 Employment of disqualified persons

- (1) A licensee must not, in connection with his or her conveyancing business, employ or pay a person whom the licensee knows to be a disqualified person.
- (2) Subsection (1) does not apply in relation to a person who is employed or paid in accordance with leave given by the Director-General.
- (3) If the Director-General refuses an application by a person for leave under this section, the person may apply to the Administrative Decisions Tribunal for a review of the decision.
- (4) Leave given under this section may be limited as to time or given subject to specified conditions.
- (5) A disqualified person must not seek employment or payment in connection with a licensee's conveyancing business unless he or she has informed the licensee of the fact of his or her disqualification.

Maximum penalty (subsection (5)): 50 penalty units.

30 Liability of licensee for acts of employees

A licensee who employs a person at any place of business of the licensee is responsible, in tort and in contract, for anything done or not done by the person:

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- (a) within the scope of the employee's authority, or
 - (b) for the benefit, or the purported or intended benefit, of the licensee or the licensee's business.

31 Licensee to keep records of certain employees

- (1) A licensee must make and keep a record of the name and residential address of each employee that the licensee employs as a conveyancer.
- (2) The licensee must keep the record for at least 3 years after the person ceases to be an employee.
- (3) The licensee must keep the record in the form of a register of employees and that register must be kept at the place of business of the licensee at which the employee is employed or at such other place as the Director-General may approve.

Maximum penalty: 50 penalty units.

32 Duty of licensee to notify disqualification of employee

A licensee must notify the Director-General in writing within 7 days after becoming aware that a person employed by the licensee has become a disqualified person.

Maximum penalty: 50 penalty units.

33 Employees required to notify disqualification

A person employed by a licensee must notify the licensee within 7 days after the person becomes a disqualified person.

Maximum penalty: 50 penalty units.

Division 4 Advertisements and representations

34 Advertising

- (1) A licensee may, subject to this Division, advertise in any way the licensee thinks fit.
- (2) However, an advertisement must not be of a kind that is or that might reasonably be regarded as:
 - (a) false, misleading or deceptive, or

- (b) in contravention of the *Trade Practices Act 1974* of the Commonwealth, the *Fair Trading Act 1987* or any similar legislation, or
 - (c) in contravention of any requirements of the regulations.
- (3) The regulations may make provision for or with respect to advertising by licensees.

35 Advertisement to include information about licensee

A licensee must not publish (in a newspaper or otherwise) an advertisement relating to or in connection with the licensee's business unless the advertisement includes the following:

- (a) if the licensee is an individual carrying on business in the licensee's own name and is not a member of a partnership—the licensee's name,
- (b) if the licensee is an individual carrying on business under a business name registered under any Act relating to the registration of business names—either the licensee's name or that business name,
- (c) if the licensee carries on business as a member of a partnership—either the licensee's name or the name of the partnership, or the name under which the partnership is registered under any Act relating to the registration of business names,
- (d) if the licensee is a corporation and the corporation is carrying on business in its own name—the name of the corporation,
- (e) if the licensee is a corporation and the corporation is carrying on business under a business name registered under any Act relating to the registration of business names—either its own name or that business name,
- (f) the number of the licence.

Maximum penalty: 100 penalty units.

Division 5 Disclosure of costs and other matters

36 Obligation to disclose costs and other matters to clients

- (1) A licensee must disclose to a client in accordance with this Division the basis of the costs for conveyancing work to be carried out for the

client by the licensee and any conflict or beneficial interest of a kind required to be disclosed by the regulations.

Maximum penalty: 200 penalty units in the case of a corporation or 100 penalty units in any other case.

- (2) The following matters are to be disclosed to the client:
- (a) the amount of the costs, if known,
 - (b) if the amount of the costs is not known, the basis of calculating the costs,
 - (c) the billing arrangements,
 - (d) the client's rights under Part 4 in relation to the hearing of disputes about the fees by the Tribunal,
 - (e) any conflict or beneficial interest of a kind required to be disclosed by the regulations,
 - (f) any other matter required to be disclosed by the regulations.

37 When disclosure to be made

- (1) A disclosure under this Division is to be made before or when the licensee is retained to carry out the conveyancing work concerned, unless this section otherwise provides.
- (2) If it is not reasonably practicable to make the disclosure before or when the licensee is retained, the disclosure is to be made as soon as practicable after the licensee is so retained.

38 Disclosure to be in writing

- (1) A disclosure under this Division must be made in writing and be expressed in clear plain language.
- (2) The disclosure may be made separately or in a costs agreement or in any other contract relating to the carrying out by the licensee of the conveyancing work concerned.

39 Exception to disclosure

A disclosure is not required to be made under this Division when it would not be reasonable to require it.

40 Regulations as to disclosure

The regulations may make provision for or with respect to:

- (a) the information to be disclosed under this Division, and

- (b) when it would not be reasonable to require a disclosure to be made under this Division.

41 Effect of non-disclosure of matters related to basis of costs

- (1) If a licensee fails to make a disclosure to a client in accordance with this Division of the matters required to be disclosed by section 36 in relation to costs, the client need not pay the costs of the conveyancing work.
- (2) A licensee who fails to make a disclosure in accordance with this Division of the matters required to be disclosed by section 36 in relation to costs may not maintain proceedings for the recovery of the costs.

Part 4 Resolution of costs disputes

Division 1 Interpretation

42 Definition

In this Part:

costs dispute means a dispute about costs payable in respect of conveyancing work.

Division 2 Preliminary procedure

43 Notifying Tribunal about costs dispute

- (1) Any person may notify the Tribunal, in accordance with the regulations, of any costs dispute that the person has with another person.
- (2) A notification must be accompanied by the fee prescribed by the regulations.

44 Attempts to resolve costs dispute

- (1) The Tribunal may, on notification of a costs dispute, take any action that it considers necessary to resolve the dispute.
- (2) On notification of a costs dispute, the Tribunal must determine whether the subject-matter of the dispute should be assessed by an independent expert and may, if it considers it appropriate, refer the dispute to an independent expert for assessment.
- (3) An independent expert may be selected from a panel of experts approved by the Chairperson of the Tribunal.
- (4) An independent expert to whom a costs dispute is referred under this section must prepare a written report on the dispute and provide a copy of it to the parties and to the Tribunal within the time limit specified by the Tribunal.
- (5) Nothing in this section prevents the Tribunal from referring a costs dispute for mediation or neutral evaluation under the *Consumer, Trader and Tenancy Tribunal Act 2001*.

45 Costs of assessment

- (1) The costs of assessment by an independent expert, including the costs payable to the expert, are to be borne equally by the parties to the dispute.
- (2) Regulations made for the purposes of this section may provide that the parties are to bear the costs:
 - (a) in such manner as may be ordered by the Tribunal, or
 - (b) in any other prescribed manner.

46 Procedure if agreement reached on costs dispute

- (1) If parties to a costs dispute reach an agreement or arrangement during or after an assessment by an independent expert, that agreement must be put in writing by the independent expert, signed by the parties to the dispute and filed with the Tribunal.
- (2) The Tribunal is to make such orders as it considers appropriate to give effect to the agreement.

Division 3 Determination of costs dispute

47 Application for determination of costs dispute

Any person may apply to the Tribunal, in accordance with the regulations, and on payment of the prescribed fee, for the determination of a costs dispute.

48 Preliminary procedure must be followed

An application must not be accepted unless the procedure relating to costs disputes set out in Division 2 has been followed in relation to the costs dispute or unless the Chairperson of the Tribunal does not consider it appropriate that the procedure be followed.

49 Jurisdiction of Consumer, Trader and Tenancy Tribunal in relation to costs disputes

- (1) The Tribunal has jurisdiction to hear and determine any costs dispute brought before it in accordance with this Part.
- (2) The Tribunal has jurisdiction to hear and determine any costs dispute whether or not the matter to which the dispute relates arose before or after the commencement of this Division, except as provided by this Act.

50 Tribunal to be chiefly responsible for resolving costs disputes

- (1) This section applies if a person starts any proceedings in or before any court in respect of a costs dispute and the costs dispute is one that could be heard by the Tribunal under this Division.
- (2) If a defendant in proceedings to which this section applies makes an application for the proceedings to be transferred, the proceedings must be transferred to the Tribunal in accordance with the regulations and are to continue before the Tribunal as if they had been instituted there.
- (3) This section has effect despite section 23 of the *Consumer, Trader and Tenancy Tribunal Act 2001*.

51 Powers of Tribunal

- (1) In determining a costs dispute, the Tribunal is empowered to make one or more of the following orders as it considers appropriate:
 - (a) an order that one party to the proceedings pay money to another party or to a person specified in the order,
 - (b) an order that one party to the proceedings return to another party, or to a person specified in the order, documents in the possession or under the control of the party,
 - (c) an order that a specified amount of money is not due or owing by a party to the proceedings to a specified person, or that a party to the proceedings is not entitled to a refund of any money paid to another party to the proceedings.
- (2) The provisions of sections 9–13 of the *Consumer Claims Act 1998* apply, with any necessary modifications, to and in respect of the determination of a costs dispute.

Part 5 Trust money and controlled money

Division 1 Preliminary

52 Interpretation

- (1) In this Part:

controlled money means money required to be dealt with in accordance with section 53 (1) (b) that, while under the direct or indirect control of the licensee by or on whose behalf it is received, is for the time being held otherwise than in a general trust account at a bank or other deposit-taking institution in New South Wales.

trust account means a trust account referred to in section 53 (1) (c) (i).

trust money means money required to be dealt with in accordance with section 53 (1) (a).

- (2) A reference in this Part to a licensee includes a reference to a person who has ceased to be a licensee and to the personal representative of a licensee who has died.
- (3) In the application of this Part:
- (a) to a person who has ceased to be a licensee, a reference to money received for or on behalf of a person by a licensee is to be read as a reference to money received by that person for or on behalf of any other person in connection with his or her business as a licensee, and
 - (b) to the personal representative of a licensee who has died, a reference to money received for or on behalf of a person by a licensee is to be read as a reference to money received by that licensee or personal representative for or on behalf of a person in connection with the business carried on by that licensee.

Division 2 Payment of trust money and controlled money

53 Payment of trust money into trust account and controlled money as directed

- (1) Money received for or on behalf of any person by a licensee in connection with the licensee's conveyancing business:
- (a) is to be held by the licensee or (if the licensee is employed by a corporation) by the corporation, exclusively for that person, and

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- (b) is to be paid to the person or disbursed as the person directs, and
 - (c) until so paid or disbursed:
 - (i) is to be paid into and retained in a trust account (whether general or separate) at an authorised deposit-taking institution in New South Wales and approved by the Director-General for the purposes of this Part, or
 - (ii) if the person for or on whose behalf the money is received directs that it be paid otherwise than into a general trust account, is to be paid as directed and (if the money is to be held under the direct or indirect control of the licensee for more than the period prescribed by the regulations) is to be held in accordance with the regulations relating to controlled money.
- (2) If the licence is held by a corporation, the trust account is to be in the name of the corporation and in any other case is to be in the name of the licensee or of the firm of licensees of which the licensee is a member.
- (3) Subsection (1) does not prevent a licensee from:
- (a) withdrawing or receiving, from trust money or controlled money, money due, or to accrue due, to the licensee for costs so long as the procedure prescribed by the regulations is followed, and
 - (b) holding, or disposing of, a cheque or other negotiable instrument payable to a third party if the licensee does so on behalf of a client and in accordance with directions given by the client, and
 - (c) exercising a general retaining lien for unpaid costs and disbursements in respect of money in a trust account or controlled money account (other than money received subject to an express direction by the client with respect to the purposes for which the money is to be applied).
- (4) A lien referred to in subsection (3) (c):
- (a) may not be exercised for an amount in excess of the sum of the costs and disbursements unpaid, and
 - (b) may not be exercised unless the licensee has delivered an outline bill of costs and disbursements.

- (5) The words “Trust Account” are to appear in the name of the trust account and in the description of the trust account in the books and records of the licensee and also on all cheques drawn on the trust account.
- (6) When opening a trust account at an authorised deposit-taking institution for the purpose of complying with this section, the licensee concerned must ensure that the authorised deposit-taking institution is notified in writing that the account is a trust account required by this Act.
- (7) A licensee must, within 14 days after closing a trust account, notify the Director-General in writing of the closure.
Maximum penalty: 100 penalty units.

54 Approval of authorised deposit-taking institutions

- (1) The Director-General may approve an authorised deposit-taking institution for the purposes of this Part and may revoke any such approval by notice in writing to the authorised deposit-taking institution.
- (2) The Director-General is not to approve an authorised deposit-taking institution for the purposes of this Part unless satisfied that the institution is able to discharge the obligations of an authorised deposit-taking institution under this Part.
- (3) An authorised deposit-taking institution that is the subject of an approval that is in force for the purposes of Part 7 of the *Property, Stock and Business Agents Act 2002* is taken to have been approved by the Director-General for the purposes of this Part.

55 Trust money and controlled money not available to pay licensee’s debts

- (1) Trust money and controlled money are not available for the payment of the debts of the licensee to any other creditor of the licensee, or liable to be attached or taken in execution under the order or process of any court at the instance of any other creditor of the licensee.
- (2) This section does not take away or affect any just claim or lien that any licensee may have against or upon trust money or controlled money.

56 Licensee to notify trust account becoming overdrawn

A licensee must, within 5 days after becoming aware that a trust account of the licensee has become overdrawn, notify the Director-General in writing of:

- (a) the name and number of the account, and
- (b) the amount by which the account is overdrawn, and
- (c) the reason for the account becoming overdrawn.

Maximum penalty: 100 penalty units.

57 Bankers to pay interest to Statutory Interest Account

- (1) Sections 90 and 91 of the *Property, Stock and Business Agents Act 2002* apply in respect of all money held in a general trust account under this Division as if:
 - (a) the trust account were a trust account opened and kept under section 86 of that Act, and
 - (b) the licensee who opened and keeps the trust account were a licensee under that Act.

Note. Section 90 of the *Property, Stock and Business Agents Act 2002* provides for interest earned on trust accounts to be paid to the Statutory Interest Account. Section 91 requires authorised deposit-taking institutions to notify the Director-General of certain matters with respect to trust accounts kept with the institution, including the number of trust accounts opened with the institution during a month and the names of the licensees who opened the accounts.

- (2) A licensee must, when opening a trust account at an authorised deposit-taking institution under this Division, ensure that the authorised deposit-taking institution is notified that the trust account is, for the purposes of sections 90 and 91 of the *Property, Stock and Business Agents Act 2002*, to be regarded as a trust account required by that Act. Such a notification is, for the purposes of those sections, to be regarded as a notification that the trust account concerned is required by that Act.

Division 3 Responsibilities of authorised deposit-taking institutions**58 Overdrawn trust accounts**

When an authorised deposit-taking institution becomes aware that a trust account kept with it under this Part is overdrawn, the institution must as soon as practicable (and in any case within 5 business days)

after becoming so aware inform the Director-General of the following by notice in writing:

- (a) the name and business address of the licensee concerned,
- (b) the name and number of the account,
- (c) the date on which the account became overdrawn,
- (d) the amount by which the account is overdrawn.

Maximum penalty: 100 penalty units.

59 Dishonoured cheques

Within 5 business days of an authorised deposit-taking institution becoming aware that a cheque presented on a trust account kept with it under this Part has been dishonoured, the institution must, by notice in writing, inform the Director-General of the following:

- (a) the name and business address of the licensee concerned,
- (b) the name and number of the account,
- (c) the amount of the dishonour,
- (d) the date on which the cheque was dishonoured.

Maximum penalty: 100 penalty units.

60 Annual certification by auditor

Not later than 31 May in each year, an authorised deposit-taking institution approved for the purposes of this Part must provide to the Director-General a certificate given by a registered company auditor (within the meaning of the Corporations Act) certifying as to the following:

- (a) that the institution has complied with the requirements of this Part in relation to trust accounts kept by it under this Part during the 12 month period ending on 30 April immediately preceding that 31 May,
- (b) the total amount of interest that the institution paid under this Part to the Director-General during that 12 month period in respect of those trust accounts for crediting to the Statutory Interest Account.

Maximum penalty: 100 penalty units.

61 Protection of authorised deposit-taking institutions from liability

- (1) An authorised deposit-taking institution:

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- (a) does not incur liability, and is not obliged to make inquiries, in relation to any transaction concerning an account of a licensee kept with the institution or with some other financial institution, and
 - (b) is, in relation to any such transaction, taken not to have any knowledge of a right of any person to money credited to such an account,

unless it would incur such a liability, be obliged to make such inquiries or be taken to have that knowledge in relation to an account kept with it in respect of a person absolutely entitled to the money held in that account.

- (2) This section does not relieve an authorised deposit-taking institution from any liability or obligation that it would have apart from this Act.
- (3) An authorised deposit-taking institution at which a licensee keeps an account for clients' money does not, as regards any liability that the licensee has to the institution (other than a liability relating to that account), have a right to any of the money held in that account, whether by way of set-off, counterclaim, charge or otherwise.

Division 4 Unclaimed trust money and controlled money

62 Unclaimed trust money held and controlled money controlled by licensee

- (1) A licensee who in the month of January in a year holds in a trust account kept by the licensee money that was received by the licensee more than 2 years before that month must furnish to the Director-General in that month a statement (an *unclaimed money statement*) showing particulars of:
 - (a) the money so held, and
 - (b) each person for whom or on whose behalf the money is held, and
 - (c) the address last known to the licensee of each of those persons.
- (2) A licensee who in the month of January in a year has the direct or indirect control of money held otherwise than in a general trust account at a bank or other authorised deposit-taking institution in New South Wales that was received by or on behalf of the licensee

more than 2 years before that month must furnish to the Director-General in that month a statement (an *unclaimed money statement*) showing particulars of:

- (a) the money so held, and
 - (b) each person for whom or on whose behalf the money is held, and
 - (c) the address last known to the licensee of each of those persons.
- (3) A statement under this section is to be in the form approved by the Director-General.

63 Unclaimed trust money or controlled money held by former licensee or personal representative

- (1) A former licensee, or the personal representative of a deceased licensee, who holds money in a trust account kept under this Act must furnish to the Director-General a statement giving particulars of:
- (a) the money held in the trust account as at the date on which the statement is furnished, and
 - (b) the names of the persons for whom or on whose behalf the money is held, and
 - (c) the address of each of those persons last known to the person furnishing the statement.
- (2) A former licensee, or the personal representative of a deceased licensee, who has the direct or indirect control of money held otherwise than in a general trust account at a bank or other authorised deposit-taking institution in New South Wales must furnish to the Director-General a statement giving particulars of:
- (a) the money held at the date on which the statement is furnished, and
 - (b) the names of the persons for whom or on whose behalf the money is held, and
 - (c) the address of each of those persons last known to the person furnishing the statement.

- (3) This statement is the first statement that the former licensee or personal representative is required to furnish and it is to be furnished within 3 months after the date on which the person ceased to be a licensee or became the personal representative of the deceased licensee.
- (4) The former licensee or personal representative must furnish a further statement (an *unclaimed money statement*) within 14 days after the period of 12 months has elapsed since the first statement was furnished.
- (5) The further statement is to give particulars of the same matters as the first statement and also include particulars of any payments made from the trust account or other place where money is held since the date of the first statement.
- (6) A statement under this section is to be in the form approved by the Director-General.
- (7) The regulations may exempt money or a class of money from the operation of this section.

64 Disposal of unclaimed trust money and controlled money

- (1) When the Director-General receives an unclaimed money statement under this Division, the Director-General is to:
 - (a) send by post to each person for whom or on whose behalf any money referred to in the statement is held a notice (an *individual notice*) in writing addressed to the person at the person's address shown in the statement stating the particulars of the money held for or on behalf of that person, and
 - (b) cause notification to be published in the Gazette (a *Gazette notification*) stating the particulars of the money held for or on behalf of each of those persons.
- (2) Each individual notice and the Gazette notification is to state that, if the money is not paid out of the trust account or other place in which it is held within 3 months after the date of publication of the Gazette notification, the person holding the money will be required to pay it to the Director-General.
- (3) At any time after the expiration of that 3 months the Director-General may, by a notice in writing served personally or by post on the person by whom the money is held, require that person:

- (a) to pay to the Director-General any money referred to in the Gazette notification that has not been previously paid by that person out of the trust account or other place in which it is held, and
 - (b) to furnish to the Director-General, within such period as may be specified in the notice to the person, a statement showing particulars of any payments made out of the money referred to in the Gazette notification since the unclaimed money statement was made.
- (4) The Director-General must pay any money received by the Director-General under this section into the Compensation Fund.
- (5) Within 2 months after 31 December in each year, the Director-General must pay into the Consolidated Fund all money received by the Director-General and paid into the Compensation Fund under this section during the period of 12 months ending on that 31 December.
- (6) When the Director-General makes a payment into the Consolidated Fund, the Director-General is to give the Treasurer a statement containing the following particulars:
 - (a) the name and last known address of each person for whom or on whose behalf the money received by the Director-General was held,
 - (b) the amount held in respect of each of those persons,
 - (c) the date of publication of the Gazette notification in respect of that money,
 - (d) the name and address of each licensee who furnished an unclaimed money statement to the Director-General in respect of that money.
- (7) A person who fails to comply with the requirements of any notice served on the person under this section is guilty of an offence.

Maximum penalty: 50 penalty units.

65 Repayment of unclaimed trust money or controlled money

- (1) The Treasurer must, on application made to the Treasurer by a person entitled to money paid into the Consolidated Fund under this Division, pay the money to the person.

- (2) If an application for the payment of money to which a person is entitled is made while the money is held in the Compensation Fund, the Director-General must pay the money to the person from the Compensation Fund.

Division 5 Information about trust accounts, controlled money or transactions

66 Director-General may require information

- (1) The Director-General may by notice in writing served on a licensee require the licensee to furnish to the Director-General in the manner required by the notice a statement in writing setting out full particulars as to any of the following:
- (a) the name of the trust account on which the licensee operates in accordance with this Act, the name of the authorised deposit-taking institution at which the account is current, the balance of the money standing to the credit of the account as at a date specified in the notice, and particulars of all cheques drawn on the account as at such date and not presented and duly paid,
 - (b) any controlled money paid by any person to the licensee or received by the licensee for or on behalf of any person in connection with the licensee's business as a licensee and, if not still held by the licensee, the manner and time of its disbursement,
 - (c) any transaction by or with the licensee as a licensee.
- (2) The licensee must comply with a notice under this section within 7 days after it is served on the licensee.
- (3) A notice under this section cannot relate to any transaction by or with the licensee more than 3 years before the notice is served on the licensee.

67 Person concerned in transaction may request itemised account

- (1) A person directly concerned in any transaction by or with a licensee in connection with the licensee's conveyancing business may request the licensee in writing to render to the person in the manner prescribed by the regulations an itemised account of the transaction.
- (2) The licensee must comply with the request within 14 days after the request is served on the licensee.

- (3) A person may not request an itemised account of a transaction that took place more than 6 months before the making of the request.

68 Offence

- (1) A licensee must not fail without reasonable excuse (proof of which lies on the licensee) to comply with a requirement under this Division.
- (2) A licensee must not, in purported compliance with a requirement under this Division, furnish information that the licensee knows is false or misleading in a material particular.

Maximum penalty: 100 penalty units.

Part 6 Records

Division 1 Keeping and inspection of records

69 Licensee's records

- (1) In this Act:

licensee's records means records and other documents required to be kept by a licensee under this Act or the regulations.

- (2) The regulations may make provision for or with respect to:
- (a) requiring licensees to make and keep specified records and documents relating to the licensee's conveyancing business, accounts kept in connection with that business and transactions carried out by the licensee or employees of the licensee in connection with conveyancing work carried out by them, and
 - (b) the manner and form in which such records and documents are to be kept.
- (3) A provision of such a regulation may impose a penalty not exceeding 50 penalty units for a contravention of the provision.
- (4) If records or documents that were licensee's records are in the possession, custody or control of a person as a former licensee, as the personal representative of a deceased licensee, or as a result of the transfer of the business of the licensee or otherwise, those records or documents are still licensee's records for the purposes of this Division.
- (5) This Part extends to records and documents in the possession, custody or control of a person even when the records or documents are located outside the State.

70 Inspection of licensee's records

- (1) A licensee's records are at all reasonable times open to inspection by an authorised officer.
- (2) An authorised officer may require a person who has possession, custody or control of a licensee's records:
- (a) to produce the licensee's records for inspection, and
 - (b) to furnish all authorities and orders to financial institutions as may be reasonably required of the person.

- (3) If a licensee is absent from an office or place of business of the licensee, any employee or agent of the licensee for the time being having the apparent control or charge of the office or place of business is taken to have possession, custody or control of the licensee's records at that office or place of business.
- (4) An authorised officer may take copies of or extracts from, or make notes from, any licensee's records produced to the authorised officer under this section and for that purpose may take temporary possession of those records.

71 Inspection of records of authorised deposit-taking institutions

- (1) An authorised officer may serve on an authorised deposit-taking institution with which a licensee has deposited any money in any account (whether the licensee's own account or a general or separate trust account) a notice, in a form approved by the Director-General and signed by the authorised officer:
 - (a) certifying as to the reason for serving the notice, as provided by this section, and
 - (b) requiring the authorised deposit-taking institution to produce to the authorised officer for inspection the records of the institution relating to the account.
- (2) Each of the following is a reason for serving a notice under this section:
 - (a) the licensee cannot be located,
 - (b) the licensee has left the State,
 - (c) the licensee or any other person required to do so has failed to furnish any authority or order on the institution in accordance with a requirement under this Division,
 - (d) the licensee has ceased to be a licensee,
 - (e) the licensee has contravened a provision of Part 5 (Trust money and controlled money).
- (3) An authorised officer may take copies of or extracts from, or make notes from, any records produced to the authorised officer under this section and for that purpose may take temporary possession of those records.

72 Power to require production of licensee's records

- (1) An authorised officer may give a written notice to a licensee or to another person that the officer reasonably believes has possession, custody or control of the licensee's records requiring the licensee or person to produce the licensee's records specified in the notice at the time and place specified in the notice.
- (2) An authorised officer may inspect any record produced in response to a notice under this section and may take copies of or extracts from, or make notes from, any such record.
- (3) A licensee does not contravene a provision of this Act if the licensee was unable to comply with the provision because an authorised officer retained possession of a record or document under this section.

73 Power to take possession of records to be used as evidence

- (1) An authorised officer to whom any record is produced under this Part may take possession of the record if the authorised officer considers it necessary to do so for the purpose of obtaining evidence or protecting evidence from destruction.
- (2) If an authorised officer takes possession of any record under this section, the record may be retained by the officer until the completion of any proceedings (including proceedings on appeal) in which the record may be evidence.
- (3) The person from whom the record was taken must be provided, within a reasonable time after the record is taken, with a copy of the record certified by an authorised officer as a true copy.
- (4) A copy of a record provided under this section is, as evidence, of equal validity to the record of which it is certified to be a copy.

74 Offence

- (1) A person must not:
 - (a) wilfully delay or obstruct an authorised officer in the exercise of the authorised officer's functions under this Division, or
 - (b) fail to comply with a requirement under this Division to produce a record or document in the person's possession, custody, or control, or
 - (c) fail to comply with a requirement under this Division to furnish any authority or order reasonably required of the person under this Division, or

- (d) in purported compliance with a requirement under this Division produce a document or record knowing it to be false or misleading in a material particular.

Maximum penalty: 100 penalty units.

- (2) A court that convicts a person of an offence under this section may, in addition to any penalty imposed, order the person to produce the records in respect of which the offence occurred to the Director-General or an authorised officer within such time as the court specifies in the order.
- (3) A person who fails to produce a record in accordance with an order of a court made under this section is guilty of an offence punishable by a penalty not exceeding 10 penalty units in respect of each day that the failure continues.

Division 2 Audit of licensee's records

75 Requirement for audit

- (1) A person who is a licensee, a former licensee or the personal representative of a licensee must, within 3 months after the end of the audit period applicable to the person:
- (a) cause the records and documents relating to any trust money or controlled money held during that period by the person in accordance with this Act to be audited by a person qualified to act as an auditor for the purposes of this Division, and
- (b) lodge the auditor's report on the audit with the Director-General.
- (2) The Director-General may in a particular case or class of cases by order in writing extend the period of 3 months under subsection (1).
- (3) The person must retain a copy of the auditor's report on the audit for a period of 3 years after the date on which the report was made.
- (4) The auditor's report is to be in a form approved by the Director-General and is to be signed by the auditor.

Maximum penalty:

- (a) 100 penalty units in the case of a corporation, or
- (b) 50 penalty units in any other case.

76 Audit period

- (1) The audit period applicable to a person is the year ending on 30 June or such other period as the Director-General may fix in respect of the person under this section.
- (2) The Director-General may by order in writing served on a person fix some other period as the audit period applicable to the person.
- (3) Such an order may be made on the application of the person or on the Director-General's own initiative.
- (4) Such an order may be made with such limitations as to time or circumstances, and subject to such conditions, as the Director-General considers appropriate.

77 Statutory declaration required where no trust money or controlled money held or received

A licensee who in the course of the audit period applicable to the licensee neither received nor held any money for or on behalf of any other person must, within the period of 3 months after that day, make and lodge with the Director-General a statutory declaration to that effect.

Maximum penalty: 100 penalty units.

78 Audit obligations of partners

If the provisions of this Division are complied with by any one of the licensees in a partnership of licensees in relation to the audit of the records and documents of the partnership, each of those partners is taken to have complied with those provisions.

79 Qualifications of auditors

- (1) A person is qualified to act as an auditor for the purposes of this Division if the person:
 - (a) is a registered company auditor within the meaning of the Corporations Act, or
 - (b) is a person who has been nominated by the person whose records and documents are to be audited and who has been approved by the Director-General by order in writing.
- (2) Such a person is not qualified to act as an auditor for the purposes of this Division if the person:

- (a) is or has at any time within 2 years before the last day of the period in respect of which the audit is to be made, been an employee or partner of the person whose records or documents are to be audited, or
- (b) is a licensee, or a shareholder in a corporation that is a licensee and that has not more than 20 shareholders.

80 Duties of auditors

- (1) If an auditor in the course of making an audit for the purposes of this Division discovers that any breach of this Act or the regulations has been committed, that there is any discrepancy relating to the trust money or controlled money to which the audit relates or that the records or documents concerned are not kept in such a manner as to enable them to be properly audited, the auditor must:
 - (a) fully set out the facts so discovered by the auditor in the report made by the auditor for the purposes of the audit, and
 - (b) forward a copy of the report to the Director-General.
- (2) An auditor, or an assistant of an auditor, appointed to make an audit for the purposes of this Division must not communicate any matter which may come to the auditor's knowledge in the course of the audit to any person except:
 - (a) in the course of the auditor's duties as an auditor or assistant of an auditor, or
 - (b) in accordance with this section, or
 - (c) in the like circumstances and to the like extent as an officer of the Department is permitted under this Act to publish that information.
- (3) An auditor's report under this Division (including under this section) relating to records or documents of any person, and any statutory declaration lodged with the Director-General under this Division, are available in the hands of the Director-General for inspection by an auditor appointed to carry out for the purposes of this Division any subsequent audit of the records or documents of that person.

Division 3 Freezing of accounts

81 Definitions

In this Division:

account means:

- (a) a trust account in a licensee's name with a financial institution, or
- (b) an account in a licensee's name or in which a licensee has an interest with a financial institution, or
- (c) another account to which trust money is deposited.

financial institution includes an approved deposit-taking institution.

holder of an account means the licensee or other person authorised to operate on the account.

licensee includes a former licensee and the personal representative of a deceased licensee.

trust money means money received for or on behalf of any person by a licensee (whether or not the money is deposited in a trust account required to be kept by a licensee).

82 Director-General may freeze licensee's accounts in particular cases

- (1) A direction under this Division may be given when it appears to the Director-General that any of the following persons has, or may have, stolen, misappropriated or misapplied trust money:
 - (a) a licensee,
 - (b) the person in charge of a licensee's business at a place,
 - (c) an employee of a licensee.
- (2) The Director-General may by direction in writing direct that:
 - (a) if a claim has been made against the Fund concerning the trust money, all or part of the amount to the credit of a specified account be paid to the Director-General, or
 - (b) an amount must not be drawn from a specified account other than with the Director-General's written approval, or
 - (c) a specified account may be operated only under specified conditions.

- (3) The direction must be given to each holder of the account and the financial institution at which the account is kept, and must identify the account to which it relates.
- (4) Any amount paid to the Director-General pursuant to such a direction must be paid into the Fund.

83 Financial institution must comply with direction

- (1) A financial institution to which a direction under this Division is given (whether or not the direction has been given to anyone else) must not, while the direction is in force:
 - (a) pay a cheque or other instrument drawn on the account concerned unless the cheque or instrument is also signed by the Director-General or a person authorised by the Director-General for the purposes of this section, or
 - (b) give effect to another transaction on the account that is not authorised because of the direction.

Maximum penalty: 500 penalty units.

- (2) The signature of the Director-General or authorised person on a cheque or other instrument is sufficient evidence of the Director-General's approval to draw an amount from the account to honour the cheque or other instrument.
- (3) A manager or principal officer in charge of an office or branch of the financial institution where an account is kept, or another officer of the financial institution, must not knowingly permit a contravention of this section by the financial institution.

Maximum penalty: 100 penalty units or imprisonment for 12 months, or both.

- (4) A person to whom a direction is given does not incur a civil liability to another person by reason only of complying with the direction.

84 Account not to be operated unless Director-General allows

After a direction under this Division has been given to the holder of an account, the holder must not (while the direction remains in force) sign a cheque or other instrument drawn on the account unless the cheque or other instrument has first been signed by the Director-General or a person authorised by the Director-General to sign the cheque or instrument.

Maximum penalty: 100 penalty units or imprisonment for 12 months, or both.

85 Director-General may operate account

- (1) The Director-General or a person authorised in writing by the Director-General (an *authorised person*) may operate on an account that is the subject of a direction under this Division if the holder of the account refuses to operate the account.
- (2) A statutory declaration made by the Director-General or authorised person to the effect that the account holder is refusing to operate on the account is sufficient evidence to the licensee's financial institution of that fact.

86 Withdrawal of direction

- (1) A direction remains in force until it is withdrawn.
- (2) The Director-General may withdraw a direction under this Division at any time.
- (3) When a direction is withdrawn, the Director-General is to give all persons who were given the direction a notice that the direction has been withdrawn. Failure to give notice does not affect the withdrawal of the direction.

Part 7 Claims arising from failure to account

87 Definition

In this Part:

PSBA Act means the *Property, Stock and Business Agents Act 2002*.

88 Claims can be made against Compensation Fund

- (1) Part 10 of the PSBA Act applies to and in respect of a failure to account (within the meaning of that Part) arising from any act or omission of a licensee under this Act that occurs on or after the commencement of this Act, as if the licensee were a licensee under the PSBA Act.
- (2) For that purpose, a licensee under this Act is taken to be a licensee within the meaning of the PSBA Act and a licence under this Act is taken to be a licence within the meaning of the PSBA Act.
- (3) Section 169 (4) of the PSBA Act is not applicable to a person as a licensee under this Act.

89 Contributions by applicants for licences

An applicant for a licence is liable to pay the contribution and any levy required to be paid from time to time under section 168 or 169 of the PSBA Act.

Part 8 Management and receivership

Division 1 Interpretation

90 Definitions

In this Part:

associate, in relation to a licensee, has the meaning given to it by section 91.

expenses of management or receivership means:

- (a) the remuneration payable to the manager or receiver, or
- (b) the expenses incurred in the course of the management or receivership, or
- (c) the costs of legal proceedings involved in the management or receivership, or
- (d) any reimbursement of the manager or receiver under this Part.

failure to account has the meaning given to it by section 92.

licensee includes:

- (a) a firm of licensees, and
- (b) a former licensee, and
- (c) in relation to anything done or omitted by a licensee—a deceased licensee and a deceased former licensee, and
- (d) except in relation to anything done or omitted by a licensee—the personal representative of a deceased licensee or a deceased former licensee.

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

property of a licensee means:

- (a) money or other property received by the licensee on behalf of another person in the conduct of a conveyancing business, or
- (b) interest, dividends, income, profits or other property derived from or acquired with money or other property referred to in paragraph (a), or
- (c) documents and records of any description relating to anything referred to in paragraph (a) or (b) or to the licensee's conveyancing business, or

- (d) any means by which any records referred to in paragraph (c) that are not written may be reproduced in writing,

and, in relation to a licensee whose conveyancing business is under management, includes any property of the business.

receivable property means property of a licensee or an associate of a licensee that is the subject of an order appointing a receiver, and includes property that, but for its having been taken, paid or transferred unlawfully or in breach of trust, would be receivable property.

receiver means a receiver appointed by the Supreme Court under this Part.

relevant associate means a licensee's associate of whose property a receiver has been appointed under this Part.

relevant licensee means a licensee of whose property a receiver has been appointed.

91 Associates of a licensee

- (1) In this Part, a reference to a licensee's associate is a reference to:
- (a) a partner of the licensee, or
 - (b) an employee or agent of the licensee, or
 - (c) a corporation, or a member of a corporation, partnership, syndicate or joint venture, in which the licensee or a person referred to in paragraph (a), (b) or (d) has a beneficial interest, or
 - (d) a person who bears a prescribed relationship to the licensee or to a person referred to in paragraphs (a)–(c), or
 - (e) a corporation that (if a person referred to in paragraphs (b)–(d) is a corporation) is a subsidiary of the person within the meaning of the Corporations Act, or
 - (f) a person declared by the regulations to be an associate of the licensee or belonging to a class of persons so declared.
- (2) For the purposes of subsection (1) (d), a person bears a prescribed relationship to a licensee or other person if the relationship is that of:
- (a) a spouse, or
 - (b) a de facto partner, being a person who has a de facto relationship (within the meaning of the *Property Relationships Act 1984*) with the licensee or other person, or

- (c) a child, grandchild, sibling, parent or grandparent, whether derived through paragraph (a) or (b) or otherwise, or
- (d) a kind prescribed by the regulations for the purposes of this section.

92 Failure to account

- (1) In this Part, *failure to account* means a failure by a licensee to account for, pay or deliver money or other valuable property:
 - (a) that has been received by or entrusted to the licensee, or an associate of the licensee, in the course of the licensee's conveyancing business, and
 - (b) that is, in the case of money or other valuable property received by or entrusted to an associate of the licensee, under the direct or indirect control of the licensee,being a failure that arises from an act or omission of the licensee or associate.
- (2) The reference in the definition of *failure to account* in subsection (1) to money or other valuable property received by or entrusted to a licensee includes a reference to money or other valuable property that is received by or entrusted to the licensee as trustee, agent, bailee or stakeholder, or in any other capacity.

Division 2 Management

93 Appointment of manager

- (1) The Director-General may appoint a manager for a licensee's conveyancing business in any of the following cases if the Director-General is of the opinion that it is necessary to make the appointment in order to protect the interests of other persons:
 - (a) the licensee has made a request to the Director-General for the appointment of a manager,
 - (b) the licensee's licence has been cancelled or is under suspension,
 - (c) the Director-General is of the opinion (whether as a consequence of a determination by the Director-General under Part 10 of the *Property, Stock and Business Agents Act 2002* as applied by section 88 of this Act or otherwise) that there has been, or that there may have been, a failure to account by the licensee,

- (d) the Director-General is of the opinion that a person is unable to obtain payment or delivery of property held by the licensee because the licensee:
 - (i) is mentally or physically infirm, or
 - (ii) is bankrupt, has applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, has compounded with his or her creditors or has made an assignment of his or her remuneration for their benefit, or
 - (iii) is an inmate within the meaning of the *Crimes (Administration of Sentences) Act 1999*, or
 - (iv) has died, or
 - (v) has abandoned his or her conveyancing business.
- (2) In the case of a conveyancing business that is conducted by 2 or more licensees in partnership, a reference in subsection (1) to a licensee is to be read as a reference to all of the licensees in the partnership.
- (3) The terms of appointment of a manager must specify the remuneration to which the manager is to be entitled in connection with the management of the conveyancing business for which the manager is appointed.

94 Qualifications for appointment as a manager

A person is not eligible to be appointed as the manager of a licensee's conveyancing business unless the person is:

- (a) a licensee who holds a licence that is not subject to a condition of the kind referred to in section 14 (b) or (c), or
- (b) a solicitor who holds an unrestricted practising certificate.

Note. Section 14 (b) and (c) provide for the grant of licences subject to conditions prohibiting the licensee from carrying out conveyancing work in relation to specific kinds of transaction or except in relation to specified kinds of transaction.

95 Powers of a manager

- (1) The manager of a licensee's conveyancing business may, subject to subsection (2) and to the terms of his or her appointment:
 - (a) carry out conveyancing work on behalf of the existing clients of the business, and

- (b) accept instructions from, and carry out conveyancing work on behalf of, new clients, and
- (c) dispose of, and otherwise deal with, any property in relation to the business, and
- (d) exercise any right in the nature of a lien over property held by the manager on behalf of the clients of the business, and
- (e) incur such expenses as are reasonably related to the conduct of the business, and
- (f) do all such things as are ancillary to the exercise of the powers referred to in paragraphs (a)–(e),

as if he or she were the licensee to whom the business belongs.

- (2) The manager of a licensee's conveyancing business may not exercise any of the functions conferred by this section in relation to the affairs of a client of the business unless the client's consent has been obtained to the manager's exercise of those functions.

96 Management continues under receivership

- (1) The manager of a licensee's conveyancing business may continue to exercise his or her functions under this Division even if a receiver is appointed under Division 3 in respect of the licensee's property.
- (2) The manager of a licensee's conveyancing business for which a receiver is appointed must comply with any lawful direction given by the receiver in connection with the conduct of the business.

97 Acts of manager to be taken to be acts of licensee

- (1) An act done by the manager of a licensee's conveyancing business is, for the purposes of any proceedings or transaction that relies on that act, taken to have been done by the licensee.
- (2) Nothing in this section subjects a licensee to any personal liability in relation to any act done by the manager of the licensee's conveyancing business.

98 Manager may be reimbursed

- (1) The Director-General may reimburse a manager for any damages and costs recovered against the manager, or an employee or agent of the manager, for an act or omission done or omitted in good faith and in the purported exercise of a function under this Act.

- (2) Reimbursement under this section is to be by way of payment from the Operating Account.
- (3) Neither the manager of a licensee's conveyancing business nor the Director-General is liable for any loss incurred by the licensee as a consequence of any act or omission of the manager or the Director-General in the conduct of the business if the act or omission was done or omitted in good faith and in the purported exercise of a function under this Act.

99 Payment of expenses of management

- (1) So much of the expenses of the management of a licensee's conveyancing business as have not otherwise been paid to the manager out of the receipts of the business are to be paid to the manager by the Director-General from the Operating Account.
- (2) An amount paid under this section is recoverable by the Director-General as a debt owed by the relevant licensee.

100 Manager to report to Director-General

- (1) The manager of a licensee's conveyancing business must report to the Director-General on the management of the business. A report must be made at such times as the Director-General directs and be in accordance with any directions given by the Director-General.
- (2) A report is to include such information as the Director-General directs.
- (3) On the conclusion of the management of a licensee's conveyancing business, the manager must, when giving the Director-General his or her final report, lodge with the Director-General all the manager's records that relate to the management.

101 Trust money and controlled money

- (1) Part 6 (Records) applies to the accounts kept by a manager in the same way as it applies to the accounts kept by a licensee.
- (2) The trust accounts and controlled money accounts of a conveyancing business under management are to be maintained separately from the trust accounts and controlled money accounts of any other conveyancing business under management.

102 Office accounts

The regulations may make provision with respect to:

- (a) the accounts that are to be kept in relation to the income accrued, and the expenses incurred, by the manager of a licensee's conveyancing business in connection with the conduct of the business, and
- (b) the purposes for which money in any such account may be expended.

103 Termination of management

When a licensee's conveyancing business ceases to be under management, any money held by the manager in connection with the business (after reimbursement of any money paid out of the Operating Account in connection with the management of the business and after payment of the expenses of the management of the business) becomes the property of the licensee.

104 Obstruction of managers

A person must not hinder, obstruct or delay a manager in the exercise of his or her functions under this Division.

Maximum penalty: 100 penalty units.

Division 3 Receivership**105 Supreme Court may appoint receiver**

- (1) The Supreme Court may, on the application of the Director-General, appoint a receiver of all or any of the property of a licensee and may make the appointment whether or not the licensee has been notified of the application or is a party to the proceedings.
- (2) Such an application may be made by the Director-General only if:
 - (a) the licensee has made a request to the Director-General for the appointment of a receiver, or
 - (b) the licensee's licence has been cancelled or suspended, or
 - (c) the Director-General is of the opinion (whether as a consequence of a determination by the Director-General under Part 10 of the *Property, Stock and Business Agents Act 2002* as applied by section 88 of this Act or otherwise) that there has been, or that there may have been, a failure to account by the licensee, or

- (d) the Director-General is of the opinion that a person is unable to obtain payment or delivery of property held by the licensee because the licensee:
- (i) is mentally or physically infirm, or
 - (ii) is bankrupt, has applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, has compounded with his or her creditors or has made an assignment of his or her remuneration for their benefit, or
 - (iii) is an inmate within the meaning of the *Crimes (Administration of Sentences) Act 1999*, or
 - (iv) has died, or
 - (v) has abandoned his or her conveyancing business,

and if the Director-General is of the opinion that it is necessary for the application to be made in order to protect the interests of other persons.

- (3) Nothing in this Division prevents a manager of a licensee's conveyancing business from being appointed as a receiver of the licensee's property.

106 Receivership may extend to property of licensee's associate

If, on the application of a receiver, the Supreme Court is satisfied that all or any of the property of a licensee's associate should be declared to be receivable property, the Court may appoint the receiver to be the receiver of all or any of that property.

107 Court to be closed

- (1) Before commencing to hear an application for the appointment of a receiver, the Supreme Court may order from the precincts of the Court any person who is not:
- (a) an officer of the Court, or
 - (b) a party, a legal representative of a party or a clerk of such a legal representative, or
 - (c) a member of the same firm of licensees as the respondent, or
 - (d) a person who is in the course of giving evidence, or
 - (e) a person permitted by the Court to be present in the interests of justice.

- (2) The Supreme Court may, whether or not at the instance of a party, prohibit the publication of any report relating to the evidence or other proceedings or of any order made on the hearing of an application for the appointment of a receiver.

108 Order to be served

- (1) On the appointment of a receiver, the Director-General is to cause a copy of the order of appointment to be served on:
 - (a) the relevant licensee or relevant associate, and
 - (b) any other person on whom the Supreme Court directs a copy of the order to be served.
- (2) The Supreme Court may give directions as to the manner of service and may dispense with service if it thinks fit.

109 Receiver may take possession of property

- (1) A receiver may take possession of receivable property of the relevant licensee or relevant associate.
- (2) A person in possession, or having control, of receivable property must permit the receiver to take possession of the property if required by the receiver to do so.
- (3) If a person fails to comply with such a requirement, the Supreme Court may, on the application of the receiver, order the person to deliver the property to the receiver.
- (4) If, on the application of a receiver, the Supreme Court is satisfied that such an order has not been complied with, the Court:
 - (a) may order the seizure of any receivable property located on premises specified in the order, and
 - (b) may make such further order in the matter as it thinks fit.
- (5) An order under subsection (4) (a) authorises:
 - (a) any police officer, or
 - (b) the receiver, or a person authorised by the receiver, together with any police officer,

to enter the premises specified in the order and to search for, seize and remove any property that appears to be receivable property.

- (6) An application by a receiver under subsection (3) may be made:
 - (a) in the case of property in the possession, or under the control, of the relevant licensee or relevant associate—in the name of the receiver, or
 - (b) in any other case—in the name of the relevant licensee or relevant associate.
- (7) A receiver must, as soon as possible, return property seized under this section if it transpires that it is not receivable property.

110 Information about receivable property

- (1) A person who has information relating to receivable property, or property that a receiver believes on reasonable grounds to be receivable property, must give the information to the receiver if required by the receiver to do so.
Maximum penalty: 100 penalty units.
- (2) A licensee who has any such information may not refuse to comply with such a requirement merely because the information was obtained in confidence from a client or former client of the licensee.
- (3) A person who complies with a requirement under this section is not, merely because of that compliance, subject to any liability, claim or demand.
- (4) Information given to a receiver under this section is not admissible as evidence in any legal proceedings, other than:
 - (a) proceedings taken by a receiver for the recovery of receivable property, or
 - (b) proceedings taken under this Part, or
 - (c) proceedings taken under Part 5 (Trust money and controlled money) against a licensee:
 - (i) if the information was given to the receiver otherwise than by the licensee, or
 - (ii) if the information was given to the receiver by the licensee and is given in evidence in those proceedings with the licensee's consent.

111 Stop order on account

- (1) A receiver who believes on reasonable grounds that money held in an account with an authorised deposit-taking institution is receivable property may serve on the institution concerned an order

(in this section referred to as a *stop order*) prohibiting operations on the account by any person other than the receiver or a person authorised by the receiver.

- (2) A stop order may be served by leaving it with the manager, accountant or other person appearing to be in charge at the branch of the authorised deposit-taking institution at which the account is kept, but has no effect unless there is annexed to it a copy of the order appointing the receiver.
- (3) An authorised deposit-taking institution served with a stop order:
 - (a) must permit the receiver, or a person authorised by the receiver, to operate on the account to which the order relates, and
 - (b) must not permit any withdrawal from the account otherwise than by, or by the authority of, the receiver.
- (4) A receiver may transfer money from an account the subject of a stop order to another account with the authorised deposit-taking institution in the name of the receiver to be dealt with as receivable property.
- (5) The authorised deposit-taking institution has the same obligations and protections:
 - (a) in relation to an account the subject of a stop order, and
 - (b) in relation to an account to which money in such an account is transferred,as if the receiver were the relevant licensee or relevant associate.

112 Improper dealing with property

A person must not, with intent to defeat the purposes of this Division:

- (a) operate on an account at an authorised deposit-taking institution, or
- (b) destroy or conceal receivable property or property that is likely to become receivable property, or
- (c) move receivable property, or property that is likely to become receivable property, from one place to another, or
- (d) deliver possession of receivable property, or property that is likely to become receivable property, to another person, or

- (e) deliver control of receivable property, or property that is likely to become receivable property, to another person.

Maximum penalty: 100 penalty units.

113 Recovery of compensation for disposal of receivable property

- (1) If receivable property has at any time been taken by, or paid or transferred to, a person unlawfully or in breach of trust in circumstances in which:
 - (a) the person knew or believed at the time that the taking, payment or transfer was unlawful or in breach of trust, or
 - (b) there was no consideration for the taking, payment or transfer, or
 - (c) there was inadequate consideration for the taking, payment or transfer, or
 - (d) the person became indebted or otherwise liable to the relevant licensee or relevant associate, or to a client of the licensee, as a result of the taking, payment or transfer,the receiver may recover from the person, as a debt, the amount taken, paid or transferred, the amount of the inadequacy or the amount of the debt, as the case may be.
- (2) A person from whom an amount is recovered under subsection (1) is not liable to any other person in respect of the amount.
- (3) If receivable property has at any time been paid or transferred unlawfully or in breach of trust to, or for the benefit of, a person in respect of a cause of action the person claims to have against another person, the receiver:
 - (a) may recover from the person as a debt the amount of the payment or the value of the property, or
 - (b) to the extent to which the full amount or value is not recovered from the person under paragraph (a)—may take such proceedings in relation to the claimed cause of action as the person could have taken.
- (4) If a receiver takes proceedings under subsection (3) (b) in relation to a cause of action claimed by a person, the receiver may not later take proceedings under subsection (3) (a) to recover property paid or transferred to the person in respect of the same cause of action.

- (5) If receivable property is used unlawfully or in breach of trust to discharge a debt or liability of a person, the receiver may recover from the person as a debt the amount that was required for the discharge of the debt or liability, reduced by the value of any consideration provided by the person for the discharge.
- (6) Recovery proceedings under this section may be taken in the name of the receiver or in the name of any other person who, had the receiver not been appointed, would have been entitled to take the proceedings.

114 Receiver may give certificate

- (1) A receiver, or a person authorised by the Director-General, may give a certificate as to any one or more of the following:
 - (a) the receipt of property by a licensee or a licensee's associate, the nature and value of the property received, the date of its receipt by the licensee or associate and the identity of the person from whom it was received,
 - (b) the taking or transfer of property, the nature and value of the property, the date of its taking or transfer and the identity of the person by whom it was taken or to whom it was transferred,
 - (c) the payment of money, the amount of money paid, the date of the payment and the identity of the person who received the payment,
 - (d) the entries made in the records of a licensee or a licensee's associate and the truth or falsity of the entries,
 - (e) the use of property unlawfully or in breach of trust.
- (2) A certificate under this section is admissible in any proceedings taken by a receiver under this Division and is evidence of the matters specified in the certificate.

115 Receiver is taken to be beneficially entitled

- (1) Proceedings taken under this Division in the name of a receiver in relation to any property may be so taken as if the receiver were beneficially entitled to the property.

- (2) If receivable property has been taken by, or paid or transferred to, a person or otherwise used unlawfully or in breach of trust, a receiver may take proceedings in the name of the receiver as if the receiver were beneficially entitled to the property at the time the property was so taken, paid, transferred or used.

116 Receiver may deal with property

- (1) A receiver may deal with receivable property in any manner in which the relevant licensee or relevant associate could, had the receiver not been appointed, have dealt with it.
- (2) A receiver must, as soon as possible after receiving receivable property, vest the property in the person on whose behalf it was held by the relevant licensee or relevant associate.

117 Other powers of receiver

- (1) A receiver:
- (a) may prove, grant, claim or draw a dividend in respect of a debt that is receivable property, and
 - (b) may take proceedings to recover damages for a tort committed in relation to receivable property, and
 - (c) may give a receipt for money that is receivable property, and
 - (d) may employ a person to advise or act in relation to receivable property,
- in the name of the receiver or in the name of the relevant licensee or relevant associate.
- (2) A receipt given to a person under subsection (1) (c) discharges the person from any responsibility to see to the application of the money for which the receipt was given.
- (3) A receiver is not, in the exercise of his or her functions as a receiver, a personal representative of a deceased licensee.

118 Notice to claim receivable property

- (1) A receiver may give notice to:
- (a) the relevant licensee or relevant associate, or
 - (b) any other person,

that any claim the licensee, associate or other person has to receivable property must be submitted to the receiver within 1 month after the giving of the notice or within such longer period as is stated in the notice.

- (2) A claim submitted in response to such a notice must state:
 - (a) full particulars of the property, and
 - (b) the grounds of the claim.
- (3) A receiver may disregard a claim made by a licensee, a licensee's associate or any other person who has been given a notice under this section if the claim is not made in accordance with the notice.
- (4) The relevant licensee or relevant associate is not entitled:
 - (a) to enforce a claim to receivable property, or
 - (b) except against a client—to the benefit of a lien against a document that is receivable property,

unless all other enforceable claims against the property have been satisfied and the expenses of the receivership paid.

119 Lien for costs on receivable property

- (1) If a licensee claims a lien for costs on receivable property, the receiver may serve on the licensee a written notice requiring the licensee to give to the receiver, within a specified period of not less than one month:
 - (a) particulars sufficient to identify the property, and
 - (b) a detailed itemised account relating to the amount in respect of which each lien is claimed.
- (2) If the licensee requests the receiver in writing to allow access to such records as may be reasonably necessary to enable the preparation of the itemised account, the time allowed for providing the itemised account does not begin to run until access to those records is provided.
- (3) If a requirement of a notice under this section is not complied with, the receiver may disregard the claim in dealing with the property claimed to be subject to a lien.

120 Examination by receiver

- (1) The Supreme Court may, on the application of a receiver, make such order as it thinks fit for the examination by the receiver of a licensee or other person in relation to receivable property.
- (2) On an examination under this section:
 - (a) the licensee or other person may be represented by a solicitor or barrister, and
 - (b) the Supreme Court may put, or allow to be put, to the licensee or other person such questions as it thinks fit.
- (3) The licensee or other person may be examined on oath or affirmation.
- (4) The licensee or other person is compellable to answer all questions asked in the course of the examination, including any question to which an objection is made on the ground that the answer would tend to incriminate the licensee or other person.
- (5) An answer given by a licensee or other person to a question to which such an objection is made is not admissible in any criminal proceedings other than proceedings relating to the falsity of the answer.

121 Property not dealt with by receiver

- (1) If receivable property under the control of the receiver has not been dealt with in accordance with this Division, the receiver must cause notice of that fact to be given to the Director-General and:
 - (a) if the Director-General so requires within one month after the notice is given—must transfer and deliver the property to the Director-General, or
 - (b) if no such requirement is made—must transfer and deliver the property to the relevant licensee or relevant associate.
- (2) If property other than money is transferred or delivered to the Director-General under this section, the Director-General:
 - (a) must deal with it as the Supreme Court directs, and
 - (b) if the property is sold—must treat the proceeds as money paid to the Director-General under this section.
- (3) The Director-General must apply money paid to the Director-General under this section:

- (a) firstly—towards the satisfaction of wholly or partly unsatisfied claims against the relevant licensee, and
 - (b) secondly—in payment of the expenses of the receivership.
- (4) Any money paid to the Director-General under this section that is surplus to the requirements of this section must be paid to the relevant licensee or relevant associate.

122 Investment of money by receiver

- (1) A receiver may invest receivable property in any manner in which trustees are authorised by the *Trustee Act 1925* to invest trust funds.
- (2) Income received from an investment under this section, and any profit made on the sale of such an investment, is receivable property.

123 Receiver may be reimbursed for damages

- (1) The Director-General may reimburse a receiver for any damages or costs recovered against the receiver, or an employee or agent of the receiver, for any act or omission done or omitted in good faith and in the purported exercise of the receiver's functions.
- (2) Reimbursement under this section is to be by way of payment from the Operating Account.

124 Payment of expenses of receivership

- (1) So much of the expenses of receivership as have not otherwise been paid to the receiver are to be paid to the receiver by the Director-General from the Operating Account.
- (2) An amount paid under this section may be recovered by the Director-General from the relevant licensee as a debt.
- (3) If the Director-General and a receiver fail to agree on the remuneration to be paid to the receiver, the Supreme Court may, on the application of the Director-General or the receiver, determine the amount to be paid.
- (4) The Supreme Court, on the application of the relevant licensee:
 - (a) may re-open any agreement between the Director-General and a receiver for remuneration of the receiver, and
 - (b) may determine the amount to be paid.

125 Supreme Court may review expenses of receivership

- (1) If, on the application of the relevant licensee, the Supreme Court is satisfied that the expenses of the receivership are excessive, the Supreme Court may order the taking of accounts between the Director-General and the receiver.
- (2) After the taking of accounts, the Supreme Court:
 - (a) may relieve the relevant licensee from payment of any amount in excess of that determined by the Supreme Court to be fairly payable, or
 - (b) if the receiver has been paid, or allowed on account, an amount that includes such an excess—may order the receiver to repay the excess.

126 Receivable property not to be attached

The receivable property of a relevant licensee or relevant associate is not liable to be taken in execution of any judgment, order or other process of any court or tribunal.

127 Applications for directions by receiver, licensee etc

- (1) A receiver, a licensee or a licensee's associate who holds receivable property, or a person who claims receivable property so held, may apply to the Supreme Court for directions as to the performance of the receiver's functions.
- (2) On an application under this section, the Supreme Court may give such directions as it thinks fit.

128 Supreme Court may give general directions to receiver

- (1) The Supreme Court:
 - (a) may authorise a receiver to do such things in the exercise of the receiver's functions as the Supreme Court considers appropriate, and
 - (b) may give directions for the exercise of any such authority.
- (2) A receiver must exercise any authority so conferred in accordance with any direction so given.

129 Receiver to report to Supreme Court and Director-General

- (1) A receiver must, at such times and in respect of such periods as the Supreme Court directs, submit reports on the receivership to the Supreme Court and the Director-General.
- (2) A report is to deal with such matters as the Supreme Court directs and with such other matters as the receiver considers appropriate to include in the report.
- (3) On the conclusion of a receivership, the receiver must lodge with the Supreme Court all of the receiver's records that relate to the receivership.
- (4) Unless the Supreme Court orders their destruction, records lodged under this section are to remain in the custody of the Court.

130 Termination of appointment of receiver

- (1) The Supreme Court:
 - (a) may terminate the appointment of a receiver, and
 - (b) may, if it thinks fit, appoint a new receiver either immediately or at any time within the next 14 days.
- (2) The former receiver must transfer or deliver the receivable property:
 - (a) if a new receiver is appointed—to the new receiver in accordance with any directions given by the Supreme Court, or
 - (b) if a new receiver is not appointed and if the relevant licensee or relevant associate so requires by notice in writing served on the receiver—to the licensee or associate.

Maximum penalty: 50 penalty units.

- (3) The receivable property must, in accordance with any directions given by the Supreme Court, be transferred or delivered as soon as possible after the former receiver's appointment is terminated.
- (4) A former receiver is not required to comply with the requirements of this section unless:
 - (a) the expenses of the receivership have been paid to the Director-General, or
 - (b) the Director-General otherwise directs in relation to those expenses.

- (5) Subject to any direction given by the Supreme Court, a former receiver may transfer or deliver receivable property to the relevant licensee or relevant associate without having been given a notice under subsection (2) (b).

131 Obstruction of receivers

A person must not hinder, obstruct or delay a receiver in the exercise of his or her functions under this Division.

Maximum penalty: 100 penalty units.

Part 9 Complaints and disciplinary action

132 Grounds for disciplinary action

- (1) Disciplinary action under this Part can be taken against a person who is or was the holder of a licence on any one or more of the following grounds:
- (a) the person has contravened a provision of this Act or any other Act administered by the Minister, or the regulations under any such Act, whether or not the person has been prosecuted or convicted of an offence in respect of the contravention,
 - (b) the person has failed to observe any rules of conduct prescribed by the regulations under section 22,
 - (c) the person has contravened a condition of the licence,
 - (d) the person is a disqualified person or is otherwise not eligible under section 8 to hold a licence,
 - (e) the person is not a fit and proper person to be involved in the direction, management or conduct of the business of a licensee,
 - (f) without limiting paragraphs (d) and (e), the person is (because of physical or mental illness or infirmity) unfit to carry out conveyancing work and it is in the public interest that disciplinary action be taken,
 - (g) the person has failed to pay any part of a contribution or levy that is due and payable under section 12,
 - (h) the person has breached an undertaking given by the person to the Director-General under this Act or the *Fair Trading Act 1987*, in respect of the person's conduct of business or exercise of functions under the licence,
 - (i) the person has failed to comply with a direction given to the person by the Director-General pursuant to the taking of disciplinary action under this Part,
 - (j) the person has failed to pay a monetary penalty imposed on the person by the Director-General pursuant to the taking of disciplinary action under this Part,
 - (k) the issue of the person's licence was obtained by fraud or mistake,

- (1) any other ground specified in the regulations as a ground for the taking of disciplinary action against a person under this Act.
- (2) For the purposes of subsection (1) (f), a person is unfit to carry out conveyancing work only if the person, because of his or her physical or mental illness or infirmity, is unable to carry out the inherent requirements of conveyancing work.
- (3) The following are to be taken into account in determining whether a person is unable to carry out the inherent requirements of conveyancing work:
 - (a) the person's past training, qualifications and experience relevant to such work,
 - (b) if the person is already carrying out such work—the person's performance in carrying out such work,
 - (c) all other factors that it is reasonable to take into account.

133 Disciplinary action

- (1) Each of the following actions is disciplinary action that the Director-General can take against a person under this Act:
 - (a) caution or reprimand the person,
 - (b) give a direction to the person requiring the person to give a specified undertaking to the Director-General as to the manner in which the person will conduct the conveyancing business or exercise functions under the person's licence,
 - (c) give a direction to the person requiring the person to take specified action within a specified time in connection with the conduct of the conveyancing business or the exercise of functions under a licence,
 - (d) impose a monetary penalty on the person of an amount not exceeding 200 penalty units in the case of a corporation or 100 penalty units in any other case,
 - (e) impose a condition on the person's licence,
 - (f) suspend the person's licence for a period that does not exceed the unexpired term of the licence,
 - (g) cancel the person's licence,
 - (h) declare the person to be a disqualified person for the purposes of this Act, either permanently or for a specified period,

- (i) disqualify the person from being involved in the direction, management or conduct of the conveyancing business.
- (2) A power conferred by this Act to take disciplinary action against a person is a power to take any one or more of the actions that constitute disciplinary action.
- (3) When a licence is suspended, it is taken not to be in force except for such provisions of this Act or the regulations as the regulations may prescribe as provisions that remain applicable to a suspended licence.

134 Decision to take no further action

The Director-General may at any stage of a matter that is the subject of consideration by the Director-General under this Part determine to take no further action in respect of the matter, whether or not the matter is the subject of a complaint or a show cause notice and whether or not the Director-General determines that there are grounds for taking disciplinary action in connection with the matter.

135 Complaints

- (1) Any person may make a complaint to the Director-General setting out matters that are alleged to constitute grounds for taking disciplinary action against a person under this Act.
- (2) Action can be taken under this Part whether or not a complaint has been made.

136 Show cause notice

- (1) The Director-General may serve a show cause notice on a person if the Director-General is of the opinion that there is reasonable cause to believe that there are grounds for taking disciplinary action against the person.
- (2) A show cause notice is a notice requiring a person to show cause why disciplinary action should not be taken against the person under this Act on the grounds specified in the notice.
- (3) A show cause notice is to be in writing and is to specify a period of not less than 14 days after service of the notice as the period that the person to whom the notice is directed has to show cause as required by the notice.

- (4) The person on whom a show cause notice is served may within the period allowed by the notice make oral or written submissions to the Director-General in respect of the matters to which the notice relates. In the case of a corporation, submissions may be made by a director or officer of the corporation.

137 Power to suspend licence when show cause notice served

- (1) When a show cause notice is served on a person, the Director-General may by notice in writing to the person suspend the person's licence pending a determination by the Director-General of whether to take disciplinary action under this Act against the person.
- (2) The Director-General may only suspend a licence under this section if satisfied that the grounds for disciplinary action specified in the show cause notice would, if established, justify the suspension or cancellation of the licence.
- (3) Such a suspension may not be imposed for a period of more than 60 days after the show cause notice is served.
- (4) The Director-General is not required to afford a person an opportunity to be heard before taking action against the person under this section.
- (5) The Director-General can revoke a suspension under this section at any time by notice in writing to the suspended person.
- (6) This section does not limit or otherwise affect any power to suspend a licence under section 64A of the *Fair Trading Act 1987*.

138 Inquiries and investigation

- (1) The Director-General may conduct inquiries and make investigations in relation to the matters to which a show cause notice relates and the submissions, if any, made by or on behalf of the person to whom the show cause notice relates in relation to those matters, as the Director-General thinks fit.
- (2) Without limiting subsection (1), the Director-General may, if a show cause notice relates to a matter referred to in section 132 (1) (f), require the person concerned to be examined by a medical practitioner nominated by the Director-General.

139 Taking of disciplinary action

- (1) If the Director-General is satisfied that there are grounds for taking disciplinary action under this Act against a person on whom a show cause notice has been served, the Director-General may by order in writing served on the person take such disciplinary action against the person as the Director-General thinks is warranted.
- (2) The order must include a statement of the reasons for the Director-General's decision on the matter.

140 Recovery of monetary penalty

A monetary penalty imposed on a person by disciplinary action under this Part may be recovered by the Director-General in a court of competent jurisdiction as a debt due to the Crown.

141 Review of disciplinary action by ADT

A person against whom disciplinary action is taken by the Director-General may apply to the Administrative Decisions Tribunal under the *Administrative Decisions Tribunal Act 1997* for a review of the Director-General's decision on the disciplinary action or on a review of the disciplinary action.

142 Warning notices

- (1) The Director-General may authorise publication of a notice warning persons of particular risks involved in dealing with a specified licensee, or a person who does not hold a licence, in connection with the activities of licensees.
- (2) For example, a warning may relate to the risks involved in dealing with a person who has a recent history of unconscionable conduct in the person's dealings with consumers.
- (3) The Director-General may authorise publication of such a notice in any one or more of the following ways:
 - (a) to any person making inquiries to the Director-General about the licensee concerned,
 - (b) by advertisement by the use of any medium,
 - (c) to any media representatives.
- (4) Publication of such a notice may not be authorised unless an investigation has been conducted by the Director-General, whether or not a complaint has been made.

- (5) Before authorising publication of such a notice, the Director-General must give the person concerned an opportunity for a period of not less than 48 hours to make representations to the Director-General about publication of such a notice, unless:
 - (a) the Director-General is not able, after making reasonable efforts to do so, to contact the person promptly and advise the person of that opportunity, or
 - (b) the person refuses to make any representations.
- (6) No opportunity to make representations is required to be given if, in the opinion of the Director-General, there is an immediate risk to the public.
- (7) No liability is incurred by a person for publishing in good faith:
 - (a) a notice under this section, or
 - (b) a fair report or summary of such a notice.

143 Failure to comply with disqualification from involvement in business

A person who is disqualified under this Part from being involved in the direction, management or conduct of the business of a licensee must not act contrary to the disqualification.

Maximum penalty:

- (a) 200 penalty units in the case of a corporation, or
- (b) 100 penalty units in any other case.

144 Return of suspended or cancelled licence

A person who has possession of a licence that has been suspended or cancelled under this Part must give the licence to an officer of the Department at any office of the Department within 7 days after the suspension or cancellation takes effect.

Maximum penalty:

- (a) 40 penalty units in the case of a corporation, or
- (b) 20 penalty units in any other case.

Part 10 Enforcement

145 Authorised officers

- (1) In this Act:

authorised officer means:

- (a) an officer of the Department for the time being appointed under this Part as an authorised officer, or
 - (b) an investigator appointed under section 18 of the *Fair Trading Act 1987*, or
 - (c) a police officer.
- (2) The Director-General may appoint any officer of the Department as an authorised officer for the purposes of this Act.
- (3) An authorised officer who is not a police officer is to be provided by the Director-General with a certificate of identification.
- (4) An authorised officer (other than a police officer) must, when exercising on any premises any function of the authorised officer under this Act, produce the officer's certificate of identification to any person apparently in charge of the premises who requests its production.

146 Powers of entry, inspection etc

- (1) An authorised officer may exercise the powers conferred by this section for the purpose of:
- (a) ascertaining whether the provisions of this Act or the regulations are being complied with or have been contravened, or
 - (b) investigating a complaint made or intended to be made under this Act, or
 - (c) obtaining evidence, records or information in relation to a matter that constitutes or may constitute a contravention of this Act or the regulations.
- (2) An authorised officer may enter and inspect at any reasonable time any premises that the officer believes on reasonable grounds are being used for the carrying on of a conveyancing business, whether or not the business is being carried on by a licensee.

- (3) While on premises entered under this section or under the authority of a search warrant under this Part, an authorised officer may do any one or more of the following:
- (a) require any person on those premises to produce any records in the possession or under the control of that person relating to the conduct of the conveyancing business, and (in the case of records stored electronically) to produce any such record in written form,
 - (b) inspect, take copies of or extracts from, or make notes from, any such records, and for that purpose may take temporary possession of any such records,
 - (c) take possession of any such records if the authorised officer considers it necessary to do so for the purpose of obtaining evidence or protecting evidence from destruction,
 - (d) take such photographs, films and audio, video and other recordings as the authorised officer considers necessary,
 - (e) require any person on those premises to answer questions or otherwise furnish information in relation to the carrying on of the conveyancing business or a contravention of a provision of this Act or the regulations,
 - (f) require the owner or occupier of those premises to provide the authorised officer with such assistance and facilities as is or are reasonably necessary to enable the authorised officer to exercise the functions of an authorised officer under this section.
- (4) An authorised officer is not entitled to enter a part of premises used for residential purposes, except:
- (a) with the consent of the occupier of the part, or
 - (b) under the authority of a search warrant.

147 Power of authorised officer to obtain information, records and evidence

If an authorised officer believes on reasonable grounds that a person is capable of giving information, producing records or giving evidence in relation to a matter that constitutes, or may constitute, an offence against this Act or the regulations, the authorised officer may, by notice in writing given to the person, require the person:

- (a) to provide an authorised officer, by writing signed by the person (or, in the case of a corporation, by a competent officer of the corporation) and given to the authorised officer within the time and in the manner specified in the notice, with any such information, or
- (b) to produce to an authorised officer, in accordance with the notice, any such records, or
- (c) to appear before an authorised officer at a time and place specified in the notice and give any such evidence, either orally or in writing, and produce any such records.

148 Obstruction etc of authorised officers

A person must not:

- (a) without reasonable excuse, refuse or fail to comply with any notice given or requirement made, or to answer any question asked, by an authorised officer under this Part, or
- (b) provide information or give evidence in purported compliance with a requirement made or question asked by an authorised officer under this Part knowing the information or evidence to be false or misleading in a material particular, or
- (c) wilfully delay, hinder or obstruct an authorised officer in the exercise of the officer's functions under this Part.

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.

149 Taking possession of records to be used as evidence

- (1) If an authorised officer takes possession of any records under this Part for the purpose of obtaining evidence or protecting evidence from destruction, they may be retained by the officer until the completion of any proceedings (including proceedings on appeal) in which they may be evidence.
- (2) The person from whom the records are taken must be provided, within a reasonable time after the records are taken, with a copy of the records certified by an authorised officer as a true copy.
- (3) A copy of records provided under this section is, as evidence, of equal validity to the records of which it is certified to be a copy.

150 Search warrants

- (1) An authorised officer may apply to an authorised justice for the issue of a search warrant for premises if the officer believes on reasonable grounds:
 - (a) that a provision of this Act or the regulations is being or has been contravened on the premises, or
 - (b) that there is on the premises evidence of a contravention of this Act or the regulations.
- (2) An authorised justice to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an authorised officer named in the warrant:
 - (a) to enter and inspect the premises, and
 - (b) to exercise on the premises any function of an authorised officer under this Part.
- (3) Part 3 of the *Search Warrants Act 1985* applies to a search warrant issued under this section.
- (4) In this section, *authorised justice* has the same meaning as in the *Search Warrants Act 1985*.

151 Injunctions

- (1) On the application of the Director-General, the Supreme Court may grant an injunction restraining a threatened or apprehended contravention, or the continuation of a contravention, of a provision of this Act or the regulations.
- (2) An injunction may be granted without the Director-General being required to show a likelihood of damage.
- (3) If in the opinion of the Court it is desirable to do so, the Court may grant an interim injunction pending determination of the application.
- (4) When the Director-General makes an application for the grant of an injunction under this section, the Court is not to require the Director-General or any other person, as a condition of granting an interim injunction, to give an undertaking as to damages.
- (5) This section does not limit any provision of the *Fair Trading Act 1987*.

Part 11 Offences and proceedings

Division 1 Offences

152 Fraudulent conversion and false accounts of money received by licensee

- (1) This section applies to:
 - (a) any money received by a licensee on behalf of any person in respect of any transaction in the licensee's capacity as a licensee, or any part of any such money, and
 - (b) any money so received that is held by the licensee as a stakeholder or in trust pending the completion of any transaction.
- (2) If the licensee fraudulently converts the money or any part of that money to his or her own use or to the use of any other person, the licensee is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years.
- (3) If the licensee fraudulently omits to account for, deliver or pay the money or any part of the money to the person from whom it was received or to the person or persons entitled to it, the licensee is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years.
- (4) If the licensee fraudulently renders an account of the money or any part of the money knowing the account to be false in any material particular, the licensee is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years.
- (5) On the prosecution of a person for an offence under this section it is not necessary to prove the fraudulent conversion by the accused of any specific sum of money if there is proof of a general deficiency on the examination of the books of account, or entries kept, or made by the accused, or otherwise, and the jury is satisfied that the accused fraudulently converted the deficient money or any part of it.

153 Fraudulent accounts for expenses, fees and other charges

If a licensee fraudulently renders an account of expenses, fees or other charges incidental to any transaction or proposed or contemplated transaction as a licensee knowing the account to be false in any material particular, the licensee is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years.

154 Failure to account

- (1) In this section:
failure to account for money in relation to a licensee has the same meaning as it has in section 92.
- (2) A licensee who fails to account for money held by the licensee on behalf of another person is guilty of an offence.
- Maximum penalty: 1,000 penalty units for a corporation or 200 penalty units in any other case.

155 Offences by persons other than principal offenders

- A person who:
- (a) aids, abets, counsels or procures a person to contravene, or
 - (b) induces, or attempts to induce, a person, whether by threats or promises or otherwise, to contravene, or
 - (c) is in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of, or
 - (d) conspires with others to contravene,
- a provision of this Act or the regulations is guilty of an offence against this Act or the regulations and liable to the same penalty as a person who contravenes the provision.

156 Operation of Crimes Act 1900 not affected

Nothing in this Division affects the generality of any provisions of the *Crimes Act 1900*.

Division 2 Proceedings

157 Proceedings for offences

- (1) Proceedings for an offence under this Act or the regulations may be taken and prosecuted only by the Director-General or, in the name of the Director-General, by a person acting with the authority of the Director-General.
- (2) Proceedings for an offence under this Act or the regulations (other than proceedings for an indictable offence) may be dealt with:
- (a) summarily before a Local Court constituted by a Magistrate sitting alone, or

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- (b) summarily before the Supreme Court in its summary jurisdiction.
 - (3) If proceedings are brought in a Local Court, the maximum monetary penalty that the Local Court may impose for the offence is 1,000 penalty units or such other amount as may be prescribed by the regulations, despite any higher maximum monetary penalty provided in respect of the offence.
 - (4) Despite any proceedings against a person for an offence against this Act or the regulations (whether resulting in a conviction or otherwise) the person remains liable to civil proceedings in the same manner as if the proceedings for an offence had not been taken.

158 Penalty notices

- (1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence against this Act or the regulations, being an offence prescribed by the regulations as a penalty notice offence.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person can pay, within the time and to the person specified in the notice, the amount of the penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice may be served personally or by post.
- (4) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (5) Payment under this section is not to be regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (6) The regulations may:
 - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
 - (b) prescribe the amount of penalty payable for the offence if dealt with under this section, and
 - (c) prescribe different amounts of penalties for different offences or classes of offences.

- (7) The amount of a penalty prescribed under this section for an offence is not to exceed the maximum amount of penalty that could be imposed for the offence by a court.
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.
- (9) In this section:
authorised officer means a person authorised in writing by the Director-General as an authorised officer for the purposes of this section.

159 Time for laying information

Proceedings for an offence against this Act (other than proceedings that are to be dealt with on indictment) or the regulations may be commenced within 3 years after the date on which the offence is alleged to have been committed or, with the consent of the Attorney General, at any time.

160 Offences by corporations

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each director of the corporation, and each person concerned in the management of the corporation, is taken to have contravened the same provision unless the director or person satisfies the court that:
 - (a) he or she was not in a position to influence the conduct of the corporation in relation to its contravention of the provision, or
 - (b) he or she, being in such a position, used all due diligence to prevent the contravention by the corporation.
- (2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or been convicted under that provision.
- (3) Nothing in subsection (1) prejudices or affects any liability imposed by a provision of this Act or the regulations on any corporation by which an offence against the provision is actually committed.

Part 12 Administration

161 Disclosure of information

- (1) A person must not disclose any information obtained in connection with the administration or execution of this Act unless that disclosure is made:
- (a) with the consent of the person from whom the information was obtained, or
 - (b) in connection with the administration or execution of this Act, or
 - (c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings, or
 - (d) in accordance with a requirement imposed under the *Ombudsman Act 1974*, the *Freedom of Information Act 1989* or the *Independent Commission Against Corruption Act 1988*, or
 - (e) to a regulatory officer or law enforcement officer, for the purposes of assisting the officer in the exercise of the officer's functions, or
 - (f) as otherwise authorised by this section or the regulations, or
 - (g) with other lawful excuse.

Maximum penalty: 20 penalty units or imprisonment for 6 months, or both.

- (2) The Director-General may communicate to any person directly concerned in any transaction with a licensee in connection with his or her conveyancing business any information furnished to the Director-General in connection with the administration or execution of this Act, in so far as it relates to any such transaction and directly concerns any such person.
- (3) The Director-General may request and receive information from a law enforcement officer or regulatory officer for the purpose of assisting the Director-General in the exercise of functions under this Act or under any other Act administered by the Minister.
- (4) The Director-General may enter into agreements and other arrangements for the sharing or exchange of information as authorised by this section.

(5) In this section:

law enforcement officer means:

- (a) a member of NSW Police, the Australian Federal Police or of the police force of another State or a Territory, or
- (b) the Director of Public Prosecutions or the Crown Prosecutor of the State or the Director of Public Prosecutions or the Crown Prosecutor of the Commonwealth or of another State or Territory, or
- (c) any other person, or officer of an authority, responsible for the investigation or prosecution of offences under laws of the State, the Commonwealth, another State or a Territory.

regulatory officer means an officer or employee of a government agency (including the government of a jurisdiction outside the State and outside Australia) exercising functions under an enactment with respect to fair trading or an enactment that provides for the issue of licences or other authorities in connection with the undertaking of an activity regulated under the enactment.

162 Register

- (1) The Director-General is to maintain a Register for the purposes of this Act and is to enter and keep in the Register particulars of such of the following as the regulations may require:
 - (a) the licences issued under this Act,
 - (b) applications for a licence that are refused,
 - (c) prosecutions taken under this Act and the result of those prosecutions,
 - (d) warning notices that the Director-General has authorised publication of under this Act,
 - (e) disciplinary action taken under this Act,
 - (f) undertakings given under this Act by licensees,
 - (g) the appointment of a manager or receiver under this Act,
 - (h) such other matters as may be prescribed by the regulations.
- (2) Any person is entitled to inspect any entry in the Register on payment of such fee as the Director-General may determine for the giving of access to the Register.

163 Certificate evidence

A document purporting to be a certificate signed by the Director-General and certifying that any person is or is not or was or was not on any date or during any specified period a licensee is evidence of the matters certified in all courts and before all persons and bodies authorised by law to receive evidence.

164 Delegation

The Director-General may delegate the exercise of any function of the Director-General under this Act (other than this power of delegation) to:

- (a) any member of staff of the Department, or
- (b) any person, or any class of persons, authorised for the purposes of this section by the regulations.

Part 13 Miscellaneous

165 Fair Trading Act not affected

This Act does not limit or otherwise affect the exercise of any function under the *Fair Trading Act 1987*.

166 Exclusion of personal liability

A matter or thing done or omitted to be done by the Director-General, an authorised officer or any person acting under the direction of the Director-General does not, if the matter or thing was done or omitted in good faith for the purpose of executing this or any other Act, subject the Director-General, authorised officer or person so acting personally to any action, liability, claim or demand.

167 Service of notices and directions

- (1) A notice or direction in writing that is required or permitted to be given under this Act may be given as provided by this section.
- (2) A notice or direction may be given to a person other than a corporation:
 - (a) by giving it to the person himself or herself, or
 - (b) by leaving it at his or her place of residence with someone who apparently resides there and has apparently reached the age of 16 years, or
 - (c) by leaving it at his or her place of employment or business with someone who is apparently employed there and has apparently reached the age of 16 years, or
 - (d) by posting it in a letter addressed to him or her at the address last known to the Director-General of his or her place of residence, employment or business.
- (3) A notice or direction may be given to a corporation:
 - (a) by giving it to the secretary of the corporation, or any other person concerned in the management of the corporation, personally, or
 - (b) by leaving it at the corporation's only or principal place of business with someone who is apparently employed there and has apparently reached the age of 16 years, or

(c) by posting it in a letter addressed to the corporation at the address last known to the Director-General of its only or principal place of business.

(4) This section does not limit any provision of the Corporations Act.

168 Repeals

(1) The *Conveyancers Licensing Act 1995* is repealed.

(2) The *Conveyancers Licensing Regulation 2001* is repealed.

169 Savings and transitional provisions

Schedule 1 has effect.

170 Consequential amendments of Acts

Schedule 2 has effect.

171 Displacement of Corporations legislation

A provision of Part 8 (Management and receivership) is a Corporations legislation displacement provision for the purposes of section 5G of the Corporations Act.

172 Regulations

(1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) In particular the Governor may make regulations for or with respect to the following:

(a) prescribing the procedure to be followed in respect of applications under this Act,

(b) fixing the maximum amount of remuneration to which a licensee is entitled, by way of fee, gain or reward, for services performed by him or her as a licensee,

(c) requiring licensees to display or otherwise publicise or give notice of particulars of their remuneration and prescribe the consequences of a failure to comply with any such requirement,

(d) prescribing the accounts and other records to be kept by a licensee and the manner in which they are to be kept,

- (e) prescribing a method of service (which may include electronic transmission) of any notice, statement of claim, order or other document authorised or required to be served by or under a provision of this Act, either in addition to or as an alternative to a method of service provided for by the provision concerned,
 - (f) prescribing exemptions from the operation of this Act or specified provisions of this Act.
- (3) A regulation may create an offence punishable by a penalty not exceeding 40 penalty units in the case of a corporation or 20 penalty units in any other case.

173 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Schedule 1 Savings and transitional provisions

(Section 169)

1 Definition

In this Schedule:

repealed Act means the *Conveyancers Licensing Act 1995*.

2 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
this Act
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

3 Licences under the repealed Act

- (1) A person who was the holder of a licence under a provision of the repealed Act immediately before its repeal is taken to be the holder of a licence under this Act.
- (2) The licence:
 - (a) is taken to have been issued subject to the same conditions to which it was subject under the repealed Act, and
 - (b) remains in force for the remainder of the period for which it was issued.

4 Pending applications and objections

- (1) The repealed Act continues to apply as if it had not been repealed to and in respect of an application for the issue, renewal or restoration of a licence under a provision of the repealed Act that was pending immediately before its repeal.

- (2) A licence issued or renewed under a provision of the repealed Act pursuant to subclause (1) is taken to have been issued or renewed immediately before the repeal of the provision.

5 Multidisciplinary partnerships

A partnership approved under section 19 of the repealed Act is taken to have been approved under section 27 of this Act.

6 Pending reviews by ADT

- (1) A review pending under section 14 of the repealed Act immediately before its repeal is to continue and be determined as if the repealed Act had not been repealed.
- (2) For the purposes of the operation of this Schedule, the determination of the review is to have effect as if the review was made immediately before the repeal of section 14.

7 Pending disciplinary proceedings

- (1) Any proceeding pending under Part 10 of the *Legal Profession Act 1987* (as applying under Part 6 of the repealed Act immediately before its repeal) is to continue and be determined as if the repealed Act had not been repealed.
- (2) For the purposes of the operation of this Schedule, the determination of the proceeding is to have effect as if the proceeding was taken immediately before the repeal of Part 6.

8 Records

Any records kept under or for the purposes of a provision of the repealed Act are taken to be kept under or for the purposes of the corresponding provision of this Act.

9 Claims arising from failures to account

- (1) In this clause:
prior defalcation means a failure to account within the meaning of Part 4 of the repealed Act where the act or omission from which the failure to account arose occurred before the repeal of the repealed Act.
- (2) The repealed Act continues to apply to and in respect of a prior defalcation as if the repealed Act had not been repealed.

10 Claims against Compensation Fund

- (1) Any amount payable to or from the Compensation Fund under the repealed Act immediately before the commencement of this clause is payable instead to or from the Compensation Fund under this Act.
- (2) Contributions made to the Compensation Fund under the repealed Act are taken to have been made to the Compensation Fund under this Act.
- (3) Any payment under the repealed Act out of the Compensation Fund in settlement in whole or in part of a claim under the repealed Act is, for the purposes of this Act, taken to be a payment made out of the Compensation Fund under this Act in settlement in whole or in part of the claim concerned as if it were a claim under this Act.

11 Approval of business name

The Director-General is taken to have approved of a licensee carrying on, or advertising or holding out that the licensee carries on, business as a licensee under a name for the purposes of this Act if, immediately before the commencement of this clause, the licensee carried on business as a licensee under that name in compliance with regulations made under section 17 of the repealed Act.

12 Licences cancelled under repealed Act

A reference in this Act to a licence cancelled under this Act includes a reference to a licence cancelled under the repealed Act.

13 Receivers

The repealed Act continues to apply to and in respect of a receiver whose appointment under the repealed Act is in force immediately before the commencement of this clause as if the repealed Act had not been repealed.

14 Act extends to acts and omissions before commencement

Unless the context otherwise indicates or requires, a provision of this Act extends to any act or omission occurring before the commencement of the provision.

15 Continuity of things done before commencement

Anything done by the Director-General or a licensee under or for the purposes of a provision of the repealed Act is, to the extent that the thing done has effect immediately before the repeal of the provision, taken to have been done under or for the purposes of the corresponding provision of this Act.

16 Disclosure of information

For the purposes of section 161 (Disclosure of information) of this Act, information obtained in connection with the administration or execution of the repealed Act is taken to have been obtained in connection with the administration or execution of this Act.

Schedule 2 Consequential amendments

(Section 170)

2.1 Administrative Decisions Tribunal Act 1997 No 76

[1] Schedule 2 Composition and functions of Divisions

Omit “and” where lastly occurring from clause 1 (2) (c) of Part 3.

[2] Schedule 2, Part 3

Omit clause 1 (2) (d).

[3] Schedule 2, Part 3

Omit “*Conveyancers Licensing Act 1995*” from clause 2.

[4] Schedule 2, Part 3

Omit clause 3.

[5] Schedule 2, Part 4

Insert in appropriate order in clause 2 (1):

Conveyancers Licensing Act 2003

[6] Schedule 2, Part 4

Insert at the end of the Part (with appropriate clause number):

Conveyancers Licensing Act 2003 (Original decisions)

For the purposes of a review under section 141 of the *Conveyancers Licensing Act 2003*, the Tribunal is to be constituted by 1 Division member of the General Division of the Tribunal who is a judicial member.

2.2 Conveyancers Licensing Act 2003

[1] Section 150 Search warrants

Insert “under this Act” after “authorised officer” in section 150 (1).

[2] Section 150 (2)

Insert “under this Act” after “authorised officer” where firstly occurring.

[3] Section 150 (1) and (2)

Omit “authorised justice” wherever occurring.

Insert instead “authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002*”.

[4] Section 150 (3)

Omit the subsection. Insert instead:

- (3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.

[5] Section 150 (4)

Omit the subsection.

2.3 Fair Trading Act 1987 No 68

[1] Section 8 Delegation by Director-General

Omit section 8 (1) (b).

[2] Section 25I Functions

Omit “*Conveyancers Licensing Act 1995*” from paragraph (b) of the definition of *property services industry* in section 25I (2).

Insert instead “*Conveyancers Licensing Act 2003*”.

2.4 Fines Act 1996 No 99

Schedule 1 Statutory provisions under which penalty notices issued

Insert in alphabetical order:

Conveyancers Licensing Act 2003, section 158.

2.5 Law Enforcement (Powers and Responsibilities) Act 2002 No 103

Schedule 2 Search warrants under other Acts

Insert in alphabetical order:

Conveyancers Licensing Act 2003, section 150

2.6 Legal Profession Act 1987 No 109

[1] Section 3 Definitions

Omit the definition of *licensed conveyancer* from section 3 (1).

Insert instead:

licensed conveyancer means the holder of a licence in force under the *Conveyancers Licensing Act 2003*.

[2] Section 48B Unqualified person acting as barrister or solicitor and barrister

Omit “*Conveyancers Licensing Act 1995*” from section 48B (2).

Insert instead “*Conveyancers Licensing Act 2003*”.

[3] Section 48E Limitation on general legal work and probate work

Omit “*Conveyancers Licensing Act 1995*” from section 48E (4) (d).

Insert instead “*Conveyancers Licensing Act 2003*”.

[4] Section 48K Associates who are disqualified or convicted persons

Omit paragraph (e) of the definition of *disqualified person* from section 48K (7).

Insert instead:

(e) who is disqualified from holding a licence under the *Conveyancers Licensing Act 2003*.

[5] Section 59D Functions of Commissioner

Omit the note to section 59D (3).

[6] Section 69G Payment of certain costs and expenses from Fund

Omit section 69G (1) (h).

2.7 Licensing and Registration (Uniform Procedures) Act 2002 No 28

Schedule 1 Licences to which Part 2 of Act applies

Omit the matter relating to the *Conveyancers Licensing Act 1995*.

Insert instead:

Conveyancers Licensing Act 2003

section 11 (1), conveyancer's licence

2.8 Property, Stock and Business Agents Act 2002 No 66

[1] Section 64 Contracts for sale of residential property

Omit "*Conveyancers Licensing Act 1995*" from section 64 (6).

Insert instead "*Conveyancers Licensing Act 2003*".

[2] Section 167 Application of money in Compensation Fund

Omit "*Conveyancers Licensing Act 1995*" from section 167 (2) (c).

Insert instead "*Conveyancers Licensing Act 2003*".

[3] Section 189 Application of money in Statutory Interest Account

Omit "*Conveyancers Licensing Act 1995*" from section 189 (2) (d).

Insert instead "*Conveyancers Licensing Act 2003*".

2.9 Real Property Act 1900 No 25

Section 3 Definitions

Omit the definition of *Licensed conveyancer* from section 3 (1) (a).

Insert instead:

Licensed conveyancer means the holder of a licence in force under the *Conveyancers Licensing Act 2003*.

2.10 Retail Leases Act 1994 No 46

Section 3 Definitions

Omit the definition of *licensed conveyancer* from section 3 (1).

Insert instead:

licensed conveyancer means the holder of a licence in force under the *Conveyancers Licensing Act 2003*.

2.11 Retirement Villages Act 1999 No 81

Section 4 Definitions

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

Insert instead:

licensed conveyancer means the holder of a licence in force under the *Conveyancers Licensing Act 2003*.

2.12 Search Warrants Act 1985 No 37

Section 10 Definitions

Insert in appropriate order in the definition of *search warrant*:

section 150 of the *Conveyancers Licensing Act 2003*,

[Second reading speech made in—
Legislative Assembly on 30 April 2003
Legislative Council on 20 May 2003]

BY AUTHORITY