

Conveyancers Licensing Act 1995 No 57

[1995-57]



New South Wales

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The provisions displayed in this version of the legislation have all commenced.

Notes—

- **See also**
[Statute Law \(Miscellaneous Provisions\) Bill 2001](#)

Authorisation

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New South Wales

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Conveyancers Licensing Act 1995 No 57



New South Wales

An Act to provide for the licensing and regulation of conveyancers, to repeal the [Conveyancers Licensing Act 1992](#), and for other purposes.

Part 1 Preliminary

1 Name of Act

This Act is the [Conveyancers Licensing Act 1995](#).

2 Commencement

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

3 Definitions

- (1) In this Act, the words and expressions appearing in the Dictionary at the end of this Act have the meanings given to them in that Dictionary.
- (2) Certain words and expressions used in Part 5 (Management and receivership) are defined in Division 1 of that Part.

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 3,

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 Disqualified persons

(1) A person is a disqualified person for the purposes of this Act if the person:

- (a) is a corporation, or
- (b) is an undischarged bankrupt, or
- (c) has been convicted in New South Wales or elsewhere of an offence involving dishonesty, or

- (d) is a mentally incapacitated person, or
 - (e) 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
 - (f) is disqualified from holding a licence under this Act or the *Conveyancers Licensing Act 1992* by virtue of an order in force under section 171C of the *Legal Profession Act 1987* (as applying under section 82 of this Act), or
 - (g) 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
 - (h) is disqualified from holding a licence or certificate of registration under the *Property, Stock and Business Agents Act 1941* by virtue of an order in force under section 29, 29A, 60AA or 60A of that Act.
- (2) A person is also a disqualified person for the purposes of this Act if the person:
- (a) is the holder of a barrister's or a solicitor's practising certificate under the *Legal Profession Act 1987*, or
 - (b) is the holder of a licence or certificate of registration under the *Property, Stock and Business Agents Act 1941*.
- (3) On an appeal against a decision of the Director-General refusing to grant a licence to a person because the person is a disqualified person under subsection (1) (c), the Administrative Decisions Tribunal may determine that the fact that the person has committed the offence concerned should be ignored 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.

Part 2 Licensing

Division 1 Preliminary

6 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.

7 Qualifications for a licence

- (1) To be qualified to be granted a licence a person must satisfy the Director-General that

he or she:

- (a) is at least 18 years of age, and
 - (b) has such educational qualifications, practical training and conveyancing experience as the Minister approves by order published in the Gazette, and
 - (c) is not a disqualified person, and
 - (d) has paid such part of any contribution or levy payable under Part 4 as is due and payable on the granting of the licence, and
 - (e) will, for the whole of the period of the licence, be insured under an approved policy of professional indemnity insurance in force with respect to the person or his or her employer, or will as a licensee be exempt under the regulations from the requirement for professional indemnity insurance.
- (2) Under this section the Minister can approve educational qualifications, practical training and conveyancing experience for a limited class of transactions specified in the approval, so as to enable a person who has the qualifications, training and experience concerned to be granted a licence subject to conditions that limit the licensee to carrying out conveyancing work in relation to that limited class of transactions.
- (3) Such a limited approval can be expressed to apply only to persons who obtained the qualifications, training and experience concerned before a specified day or during a specified period.

8 What constitutes approved policy of professional indemnity insurance

- (1) For the purposes of this Act, an **approved policy of professional indemnity insurance** means a policy, or a policy of a kind, that is approved by the Minister for the time being by order published in the Gazette.
- (2) An order under this section 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.
- (3) If an order under this section requires an approved policy to comply with conditions set out in the order a policy ceases to be an approved policy if it ceases to comply with those conditions.
- (4) An order under this section may:
- (a) apply generally or be limited in its application by reference to specified exceptions

or factors, or

(b) apply differently according to different factors of a specified kind.

(5) An order under this section takes effect:

(a) on the day it is published in the Gazette, or

(b) on a later date specified in the order.

(6) An order under this section may contain provisions of a savings or transitional nature consequent on the making of the order.

(7) If an order under this section takes effect during the term of a licence, any policy in force in respect of the licensee immediately before the order takes effect that is at that time an approved policy of professional indemnity insurance:

(a) is taken to continue to be an approved policy of professional indemnity insurance in relation to the licensee until the expiry of the term of the licence, and

(b) is subject to the same conditions to which it was subject immediately before the order took effect.

(8) Subsection (7) is subject to any express provision to the contrary contained in the order.

Editorial note—

For orders under this section see Gazettes No 81 of 30.6.2000, p 5793; No 100 of 22.6.2001, p 4256 and No 103 of 29.6.2001, p 5030.

Division 2 Procedure for obtaining a licence

9 Applications for licences

(1) An application for a licence is to be made to the Director-General in a form approved by the Director-General.

(2) An application is to be accompanied by:

(a) an application fee of an amount prescribed by the regulations, and

(b) such information and evidence as the Director-General may request for the purposes of determining the application.

(3) The Director-General may require further information and evidence to be given in connection with an application.

(4) The Director-General may require the application, and any such information or evidence, to be verified by statutory declaration.

- (5) An application is not duly made until any requirement under this section is complied with.
- (6) The prescribed proportion of the application fees received by the Director-General under this section is to be paid by the Director-General to the trustees of the Public Purpose Fund for the credit of the Public Purpose Fund maintained under Division 2 of Part 6 of the *Legal Profession Act 1987*, to be applied as authorised by that Act.

10 Determination of applications

- (1) After considering an application, the Director-General may determine to grant a licence to the applicant, or to refuse the application.
- (2) A licence must not be granted to an applicant unless the applicant is qualified to be granted a licence (as provided by section 7).
- (3) The Director-General may refuse an application on any of the grounds (listed in section 13) on which the Director-General may suspend or cancel a licence.
- (4) The Director-General must cause notice of the Director-General's decision on an application (including reasons for the decision, if the decision is to refuse the application) to be given to the applicant within 14 days after the decision is made.
- (5) For the purposes only of any appeal proceedings arising in connection with an application for a licence, the Director-General is taken to have refused the application if the Director-General has not finally disposed of the application within 8 weeks after the application was duly made.

11 Imposition of conditions

- (1) A licence may be granted subject to conditions.
- (2) The conditions may include 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 requiring the licensee to undertake or complete a specified course of studies within a specified period of time,
 - (c) a condition prohibiting the licensee from carrying out conveyancing work in relation to specified kinds of transaction,
 - (d) a condition prohibiting the licensee from carrying out conveyancing work except in relation to specified kinds of transaction,
 - (e) a condition requiring the proposed licensee to undertake or complete a specified course of further education during each year for which he or she remains a

licensee.

12 Duration of licences

- (1) A licence takes effect on the date on which it is granted, or on such later date as may be specified in the licence, and (unless sooner suspended or cancelled) remains in force until the following 30 June or, if an application for a further licence is duly made before the following 30 June, until the date on which the application is finally disposed of.
- (2), (3) (Repealed)

13 Suspension and cancellation of licences

- (1) The Director-General may suspend or cancel a licence on any of the following grounds:
 - (a) that the licensee has requested the suspension or cancellation of the licence,
 - (b) that the licensee has failed to comply with a condition of the licence,
 - (c) that the licensee has failed to comply with an order in force under Part 10 of the *Legal Profession Act 1987* (as applying under section 82),
 - (d) that the licensee has failed to comply with the requirements of Division 2 of Part 3 in relation to trust money or controlled money,
 - (e) that the licensee has failed to pay any part of a contribution or levy due and payable under Part 4,
 - (f) that there is no approved policy of professional indemnity insurance in force with respect to the licensee (unless the licensee is exempt under the regulations from the requirement for professional indemnity insurance),
 - (g) that the licensee has become a disqualified person,
 - (h) that the licensee has failed to comply with a requirement under this Act to furnish any record, document or information or if any record, document or information so furnished fails to give a satisfactory explanation of the licensee's conduct,
 - (i) that the licensee has been convicted of an offence against this Act or the regulations,
 - (j) that the licensee is an inmate within the meaning of the *Crimes (Administration of Sentences) Act 1999*,
 - (k) that the licensee is (because of physical or mental illness or infirmity) unfit to carry out conveyancing work and that it is in the public interest that the licence be suspended or cancelled.

- (1A) For the purposes of subsection (1) (k), a licensee is unfit to carry out conveyancing work only if the licensee, because of his or her physical or mental illness or infirmity, would be unable to carry out the inherent requirements of conveyancing work.
- (1B) The following are to be taken into account in determining whether a licensee would be unable to carry out the inherent requirements of conveyancing work:
- (a) the licensee's past training, qualifications and experience relevant to such work,
 - (b) if the licensee is already carrying out such work, the licensee's performance in carrying out such work,
 - (c) all other relevant factors that it is reasonable to take into account.
- (2) Before suspending or cancelling a licence on the ground referred to in subsection (1) (k), the Director-General may hold an inquiry and may require the licensee to be examined by a medical practitioner nominated by the Director-General.
- (3) An inquiry under this section is to be conducted in accordance with such procedures as the Director-General determines.
- (4) The Director-General must cause notice of the Director-General's decision to suspend or cancel a licence to be given to the licensee. The notice must include the reasons for the decision (except when the suspension or cancellation is at the request of the licensee).
- (5) A suspension or cancellation of a licence takes effect when notice of the suspension or cancellation is served on the licensee or on such later date as may be specified in the notice.

Division 3 Reviews of decisions

14 Reviews by the Administrative Decisions Tribunal

A person may apply to the Administrative Decisions Tribunal for a review of any of the following decisions:

- (a) a decision of the Director-General refusing to grant a licence to the person,
- (b) a decision of the Director-General to impose a condition on a licence of the person,
- (c) a decision of the Director-General suspending or cancelling a licence of the person.

Part 3 Conveyancing practice

Division 1 General

15 Effect of contravention of Division 1

Contravention of a provision of this Division does not give rise to an offence (except where the provision specifies a penalty in respect of such a contravention) but may constitute unsatisfactory professional conduct or professional misconduct.

16 Fees

Part 11 of the *Legal Profession Act 1987* applies to the fees charged by a licensee in the same way as it applies to the costs charged by a solicitor, subject to such modifications as are prescribed by the regulations.

17 Conduct of conveyancing businesses

- (1) The regulations may make provision for or with respect to the following matters:
 - (a) the manner or capacity in which a licensee may conduct a conveyancing business,
 - (b) attendance of licensees at premises on which a conveyancing business is conducted,
 - (c) use of business names by licensees and approval of business names by the Director-General.
- (2) A licensee must not conduct a conveyancing business in contravention of the regulations under this section.

18 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.
- (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, and

(c) will be on the same basis as that on which receipts may be shared under section 48F of the *Legal Profession Act 1987*.

(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.

19 Multidisciplinary partnerships

(1) A licensee must not be in partnership with another person unless:

(a) the other person is a licensee, or

(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.

(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 1941*.

(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 (Trust money and controlled money) of Part 3, Part 4 (Claims arising from failures to account) and Part 5 (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).

20 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.

21 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)): 10 penalty units.

22 Sharing staff of legal practitioners and real estate and other agents

- (1) A licensee must not employ a person in the conduct of a conveyancing business if the person, while so employed, is employed also by the holder of a licence or certificate of registration under the *Property, Stock and Business Agents Act 1941*.
- (2) A licensee must not employ a person in the conduct of a conveyancing business if the

person, while so employed, is employed also by a barrister or solicitor, unless the licensee is in partnership with the barrister or solicitor.

23 Advertising

- (1) A licensee may 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.

24 Regulations may establish guidelines for conduct of conveyancing business

- (1) The regulations may establish guidelines as to the manner in which conveyancing businesses should be conducted.
- (2) The guidelines may adopt, with or without modification, the provisions of any rules or guidelines made by the Law Society with respect to the conduct of solicitors.
- (3) The regulations may, in establishing guidelines, specify whether the guidelines are mandatory or for guidance only. If a regulation does not specify whether a guideline is mandatory or for guidance only, it is taken to be mandatory.
- (4) A guideline which is for guidance only is not required to be complied with.
- (5) A licensee must not conduct a conveyancing business in contravention of any mandatory guidelines in force under the regulations.

Division 2 Trust money and controlled money

25 Money received by licensee on behalf of another

- (1) A licensee who, in the course of conducting a conveyancing business, receives money on behalf of another person:
 - (a) must pay the money, within the time prescribed by the regulations, into a general trust account at a bank, building society or credit union in New South Wales and must hold the money in accordance with the regulations relating to trust money, or
 - (b) if the person on whose behalf the money is received directs that it be paid otherwise than into a general trust account, must pay the money 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) must hold the money in accordance with the regulations relating to controlled money.

- (2) In either case, the licensee must hold the money exclusively for, and must disburse the money in accordance with the directions of, the person on whose behalf it is held.
- (3) This section:
- (a) does not prevent a licensee from withdrawing or receiving, from trust money or controlled money:
 - (i) reimbursement for disbursements paid by the licensee, or
 - (ii) money for disbursements to be paid by the licensee, or
 - (iii) money due, or to accrue due, to the licensee for costs,so long as the procedure prescribed by the regulations is followed, and
 - (b) does not affect any enforceable lien or claim that a licensee has to any money, and
 - (c) does not prevent a licensee from exercising a general retaining lien for unpaid costs and disbursements in respect of money in a trust account or a 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), and
 - (d) does not prevent a licensee from 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.
- (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 to the client on whose behalf the money is held.
- (5) Money received by a licensee on behalf of another person:
- (a) is not available for payment to a creditor of the licensee, and
 - (b) is not liable to be taken in execution of any judgment, order or other process of any court or tribunal at the instance of a creditor of the licensee,
- unless the creditor is the person on whose behalf the money is held by the licensee.
- (6) If a trust account kept by a licensee is, as authorised by or under the regulations,

operated on by a person other than the licensee, section 53 of the *Trustee Act 1925* does not apply to the person in relation to the operation on the trust account.

(7) It is professional misconduct for a licensee to contravene this section.

26 Keeping of accounts

(1) A licensee must keep accounting records that disclose at all times the true position in relation to money received by the licensee on behalf of another person.

(2) The accounting records must be kept in a manner that enables them to be conveniently and properly audited and, if the regulations so require, must be kept in such manner as the regulations prescribe.

(3) It is professional misconduct for a licensee to contravene this section.

27 Audits

(1) The regulations may make provision with respect to:

- (a) the auditing of a licensee's records, and
- (b) the reports to be made by auditors, and
- (c) the submission of auditors' reports to the Director-General.

(2) An auditor may require a licensee to do any of the following:

- (a) to produce for the auditor's inspection any accounting or other records relating to the licensee's conveyancing business,
- (b) to give the auditor such other information as is reasonably necessary for the purposes of the audit,
- (c) to furnish the auditor with such authorities or orders on bankers and others as relate to the licensee's conveyancing business.

(3) A person of whom such a requirement is made:

- (a) must not fail to comply with the requirement, and
- (b) must not, in purported compliance with the requirement, provide information that the person knows to be false or misleading in a material particular.

Maximum penalty: 10 penalty units.

(4) If a record:

- (a) is not in writing, or
- (b) is not written in English, or

(c) is not decipherable on sight,

a requirement to produce the record is not complied with unless access is provided to a statement, written in English and decipherable on sight, that contains all the information in the record.

- (5) It is professional misconduct for a licensee to contravene this section.
- (6) A person who complies with a requirement under this section is not subject, merely because of that compliance, to any liability, claim or demand.

28 Money not claimed from licensee

- (1) If a licensee holding money in a trust account cannot find the person on whose behalf the money is held or any other person authorised to receive the money, the licensee:
 - (a) may pay the money to the Treasurer for payment into the Consolidated Fund, and
 - (b) must in that event, provide the Treasurer with such information as the Treasurer requires in relation to the money and the person on whose behalf the money was held.
- (2) If a licensee pays money to the Treasurer under this section, the licensee is relieved from any further liability in relation to the money.
- (3) The Treasurer may pay money deposited under this section to any person who satisfies the Treasurer as to the person's entitlement to the money.
- (4) Payment of money to such a person discharges the Crown and the Treasurer from any liability in relation to the money, but does not discharge the person from any liability to any other person who establishes an entitlement to the money.
- (5) The Treasurer may require a person to provide any information that the person has, or can reasonably obtain, about the entitlement of any other person to money paid to the Treasurer under this section and about any attempts that have been made to locate that other person.
- (6) A person of whom such a requirement is made:
 - (a) must not fail to comply with the requirement, and
 - (b) must not, in purported compliance with the requirement, provide information that the person knows to be false or misleading in a material particular.

Maximum penalty (subsection (6)): 5 penalty units.

29 Bankers to pay interest to Statutory Interest Account

- (1) Sections 36AC (Interest earned on trust accounts to be paid to Statutory Interest

Account) and 36AD (Prescribed financial institutions to provide the Director-General with certain information) of the *Property, Stock and Business Agents Act 1941* 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 36 of that Act, and
 - (b) the licensee who opened and keeps the trust account were a licensee under that Act.
- (2) A licensee must when opening a trust account at a bank, building society or credit union under this Division ensure that the bank, building society or credit union is notified that the trust account is for the purposes of sections 36AC and 36AD of that Act 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.

30 Relief for bankers

- (1) A bank, building society or credit union, in relation to a transaction on an account kept by a licensee at that or any other bank, building society or credit union:
- (a) does not incur any obligation to make inquiries, or any other obligation or liability, other than an obligation or liability to which it would be subject apart from this Act, and
 - (b) does not have imputed to it any knowledge of the entitlement of a person to money credited to the account,
- that it would not incur, or have imputed to it, if the account were kept by the bank, building society or credit union for a person absolutely entitled to the money held in the account.
- (2) A bank, building society or credit union at which a licensee keeps an account for clients' money has no recourse (whether by way of set-off, counter-claim, charge or otherwise) against money held in the account in respect of any liability of the licensee to the bank, building society or credit union other than a liability in respect of the account.

Division 3 Inspection of trust accounts and investigations generally

31 Appointment of trust account inspectors and investigators

- (1) The Director-General:
- (a) may appoint trust account inspectors to inspect, either generally or in a particular case, the accounts kept by licensees under Division 2, and

- (b) may appoint an investigator to investigate the affairs of a particular licensee.
- (2) A trust account inspector may exercise the functions of an investigator in the course of any inspection of accounts carried out by the inspector.
- (3) A trust account inspector or an investigator may appoint an assistant to assist in the conduct of inspections or investigations.
- (4) Trust account inspectors and investigators are referred to in this Division as inspectors.
- (5) An investigator appointed under section 18 of the *Fair Trading Act 1987* is taken to be a trust account inspector appointed generally under subsection (1).

32 Production of records

- (1) An inspector may require a licensee, or any other person who has possession or control of any records of a licensee or relating to the affairs of a licensee, to do any of the following:
 - (a) to produce for the inspector's inspection such of those records as relate to the accounts being inspected or the affairs being investigated,
 - (b) to give the inspector such other information as the licensee or other person is able to give in relation to those accounts or affairs,
 - (c) to furnish the inspector with such authorities or orders on bankers and others as relate to those accounts or affairs.
- (2) A person of whom such a requirement is made:
 - (a) must not fail to comply with the requirement, and
 - (b) must not, in purported compliance with the requirement, provide information that the person knows to be false or misleading in a material particular.

Maximum penalty: 10 penalty units.

- (3) If a record:
 - (a) is not in writing, or
 - (b) is not written in English, or
 - (c) is not decipherable on sight,

a requirement to provide access to the record is not complied with unless access is provided to a statement, written in English and decipherable on sight, that contains all the information in the record.

- (4) A person who complies with a requirement under this section is not subject, merely because of that compliance, to any liability, claim or demand.

33 Inspectors' reports

An inspector must send a copy of his or her report to the licensee (at the address of the licensee last known to the Director-General) and to the Director-General.

34 Costs of inspection and investigation

- (1) The amount of the costs of an inspection or investigation, as certified by the Director-General, is a debt due to the Director-General by the licensee under inspection or investigation if:
 - (a) the inspector states in his or her report that there is evidence that the licensee is guilty of professional misconduct or unsatisfactory professional conduct in relation to the affairs investigated or is guilty of an offence against this Act or the regulations, and
 - (b) the Director-General is of the opinion that the conduct or breach was wilful or of a substantial nature.
- (2) The Director-General may waive payment of costs under this section.
- (3) If the inspection or investigation concerned relates to the accounts or affairs of a firm of licensees, the Director-General may determine the proportion or amount (if any) of the debt due to the Director-General payable by each licensee involved.

35 Secrecy

- (1) It is an offence for an inspector, unless making a requirement under this Division, or for an inspector's assistant, to make an unauthorised disclosure:
 - (a) of the appointment of the inspector or assistant, or
 - (b) of any matter that comes to his or her notice in the course of the inspection or investigation, or
 - (c) of anything in the inspector's report.

Maximum penalty: 10 penalty units.

- (2) Subsection (1) is not contravened:
 - (a) if an inspector discloses anything to his or her assistant, or
 - (b) if an inspector's assistant discloses anything to the inspector.
- (3) A member, solicitor, officer or agent of the Director-General must not make an unauthorised disclosure:

- (a) of the appointment of an inspector or of an inspector's assistant, or
- (b) of anything in an inspector's report.

Maximum penalty: 10 penalty units.

(4) Subsection (3) is not contravened if:

- (a) an inspector states in his or her report that there is evidence of professional misconduct, unsatisfactory professional conduct or irregularity in relation to the affairs inspected or investigated, and
- (b) a member, solicitor, officer or agent of the Director-General, discloses information in the report to a person to whom the Director-General decides that the information should be disclosed.

(5) A disclosure is an unauthorised disclosure if it is made to a person other than:

- (a) the Minister, or
- (b) the Director-General, or
- (c) an agent or officer of the Department of Fair Trading or a legal practitioner acting for or on behalf of the Director-General, or
- (d) the Supreme Court, or
- (e) the Legal Services Commissioner or the Administrative Decisions Tribunal, or
- (f) a police officer, or
- (g) a person to whom a copy of the report is required by this Act to be sent.

36 Obstruction of inspectors

A person must not hinder, obstruct or delay an inspector in the exercise of his or her functions.

Maximum penalty: 10 penalty units.

Part 4 Claims arising from failures to account

37 Definition

In this Part:

PSBA Act means the *Property, Stock and Business Agents Act 1941*.

38 Claims can be made against Compensation Fund

(1) Part 6 (Compensation Fund) 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 64E (4) of the PSBA Act is not applicable to a person as a licensee under this Act.

39 Contributions by licensees

A licensee is liable to pay the contribution and any levy required to be paid from time to time under section 64D or 64E of the PSBA Act.

Part 5 Management and receivership

Division 1 Preliminary

40 Definitions

In this Part:

associate, in relation to a licensee, has the meaning given to it by section 41.

expenses, in relation to 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 section 48 or 73.

failure to account has the meaning given to it by section 42.

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

property, in relation to 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 being taken, paid or transferred unlawfully or in breach of trust, would be receivable property.

receiver means a receiver appointed by the Supreme Court under section 55.

relevant associate means a licensee's associate of whose property a receiver has been appointed under section 56.

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

41 Associate

(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 2001](#) of the

Commonwealth, 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, that is:

(i) if the licensee or other person is a man—a woman who is living or has lived with him as his wife on a bona fide domestic basis although not married to him, or

(ii) if the licensee or other person is a woman—a man who is living or has lived with her as her husband on a bona fide domestic basis although not married to her,

(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.

42 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

43 Appointment of manager

(1) The Director-General may appoint a manager for a licensee's conveyancing business if:

- (a) the licensee has made a request to the Director-General for the appointment of a manager, or
- (b) the Director-General has suspended or cancelled the licensee's licence under section 13, or
- (c) the Director-General is of the opinion (whether as a consequence of a determination by the Director-General under Part 6 of the *Property, Stock and Business Agents Act 1941* 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:
 - is mentally or physically infirm, or
 - 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
 - is an inmate within the meaning of the *Crimes (Administration of Sentences) Act 1999*, or
 - has died, or
 - has abandoned his or her conveyancing business,

and 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.

- (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.

44 Qualifications for appointment as manager

A person is not eligible to be appointed as the manager of a licensee's conveyancing business unless the person is a licensee or a solicitor who holds an unrestricted practising certificate.

45 Powers of 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.

46 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.

47 Acts of manager to be taken as 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.

48 Manager may be reimbursed for damages

- (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.

49 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.

50 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.

51 Trust money

- (1) Division 2 of Part 3 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.

52 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.

53 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.

54 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: 50 penalty units.

Division 3 Receivership

55 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 Director-General has suspended or cancelled the licensee's licence under section 13, or
 - (c) the Director-General is of the opinion (whether as a consequence of a determination by the Director-General under the *Property, Stock and Business Agents Act 1941* 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:
 - is mentally or physically infirm, or
 - 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
 - is an inmate within the meaning of the *Crimes (Administration of Sentences) Act 1999*, or
 - has died, or

- 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.

56 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.

57 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.

58 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.

59 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.

60 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: 50 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 6 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.

61 Stop order on account

- (1) A receiver who believes on reasonable grounds that money held in an account with a bank, building society or credit union is receivable property may serve on the bank, building society or credit union 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 bank, building society or credit union 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) A bank, building society or credit union 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 bank, building society or credit union in the name of the receiver to be dealt with as receivable property.
- (5) The bank, building society or credit union 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.

62 Improper dealing with property

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

- (a) operate on a bank, building society or credit union account, 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: 20 penalty units.

63 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.

64 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.

65 Receiver taken to be beneficially entitled to property

- (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.

66 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.

67 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.

68 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.

69 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 1 month:
 - (a) particulars sufficient to identify the property, and
 - (b) a detailed bill of costs.
- (2) The notice, or a subsequent written notice served on the licensee, may require the licensee to apply for an assessment under Part 11 of the [Legal Profession Act 1987](#) of the bill of costs within a reasonable time specified in the notice.
- (3) If the licensee requests the receiver in writing to allow access to receivable property to enable the licensee to have a bill of costs assessed, the time allowed for taxation does not begin to run until access is provided.
- (4) 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.

70 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.

71 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 1 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.

72 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.

73 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.

74 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.

75 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.

76 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.

77 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.

78 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.

79 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.

80 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: 10 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).

81 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: 50 penalty units.

Part 6 Disciplinary proceedings

82 Application of [Legal Profession Act 1987](#)

- (1) Part 10 of the [Legal Profession Act 1987](#) applies to licensees and to professional misconduct and unsatisfactory professional conduct of a licensee in the same way as it applies to solicitors and any such misconduct or conduct of a solicitor, subject to this Part and to such modifications as are prescribed by the regulations.
- (2) For the purposes of the application of the provisions of that Part:
 - (a) references in those provisions to professional misconduct and unsatisfactory professional conduct are to be read as references to professional misconduct and unsatisfactory professional conduct within the meaning of this Act, and
 - (b) references in those provisions to “a Council” and to “the appropriate Council” are to be read as references to the Director-General of the Department of Fair Trading, and
 - (c) references in those provisions to a solicitor is to be read as a reference to a licensee, and

- (d) references in those provisions to the practising certificate of a solicitor is to be read as a reference to the licence of a licensee.

83 (Repealed)

Part 7 Miscellaneous

84 Functions of the Director-General

For the purpose of exercising the Director-General's functions under this Act or under Part 10 of the *Legal Profession Act 1987* (as applying under section 82), the Director-General:

- (a) may take such steps as, in the opinion of the Director-General, are necessary or proper for or with respect to the investigation of any question as to the conduct of a licensee, and
- (b) may appear, by a solicitor or barrister, before the Supreme Court or the Administrative Decisions Tribunal in the exercise of the Court's functions under this Act in relation to licensees, and
- (c) may commence prosecutions and other proceedings for any contravention of this Act or the regulations, and
- (d) may recover as a debt due to the Director-General any money payable to the Director-General under this Act or the regulations.

85 Delivery up of documents

- (1) On the application of a licensee's client, the Supreme Court may order the licensee:
 - (a) to give to the client a bill of costs in respect of any conveyancing business transacted by the licensee, and
 - (b) to give to the client, on such conditions as the Supreme Court may determine, such of the client's documents as are held by the licensee in relation to that business.
- (2) This section does not affect the provisions of Division 6 of Part 11 of the *Legal Profession Act 1987* (as applying under section 16) with respect to the assessment of costs.

86 Auditors

A person is not qualified to be appointed, or to act, as auditor of any accounts required by or under this Act to be audited unless the person is a registered company auditor within the meaning of the *Corporations Act 2001* of the Commonwealth.

87 Register of licensees

- (1) The Director-General must maintain a register of licensees in the form required by the regulations.
- (2) The register is to be open to public inspection, on payment of such fee as may be prescribed by the regulations, during normal office hours.

88 Evidentiary certificates

A certificate issued by the Director-General stating that, on a date or during a period specified in the certificate:

- (a) a specified person was or was not a licensee, or
- (b) a specified licence was or was not subject to a specified condition,

is admissible in any legal proceedings and is evidence of the fact or facts so stated.

89 Proceedings for offences

- (1) Proceedings for an offence against this Act or the regulations are to be taken before a Local Court constituted by a Magistrate sitting alone.
- (2) Proceedings for an offence against this Act or the regulations may be brought at any time within 12 months after the date of the alleged offence.

90 Order restraining breach of this Act

- (1) Any person may bring proceedings in the Supreme Court for an order to restrain a breach of this Act.
- (2) If satisfied that a breach of this Act has been committed or will, unless restrained by order of the Court, be committed, the Supreme Court may make such order as it considers appropriate to restrain the breach.

91 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) A regulation may create an offence punishable by a penalty not exceeding 20 penalty units.

92 Repeal of [Conveyancers Licensing Act 1992 No 55](#)

The [Conveyancers Licensing Act 1992](#) is repealed.

93 (Repealed)

94 Savings, transitional and other provisions

Schedule 2 has effect.

95 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 (Repealed)

Schedule 2 Savings, transitional and other provisions

(Section 94)

Part 1 Preliminary

1 Regulations

- (1) The regulations may include provisions of a savings or transitional nature consequent on the enactment of the following Acts:

 this Act

[*Conveyancers Licensing Amendment \(Professional Indemnity Insurance\) Act 2000*](#)

- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to the Act concerned or from a later date.
- (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate:
 - (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.

Part 2 Provisions consequent on enactment of this Act

2 Definitions

In this Part:

former Act means the *Conveyancers Licensing Act 1992*, as in force immediately before its repeal.

3 Holders of licences under the former Act

- (1) A person who held a licence (a **superseded licence**) under the former Act immediately before its repeal is taken to have been granted a licence (a **transitional licence**) under this Act on the commencement of this clause.
- (2) The transitional licence is subject to the same conditions as the superseded licence and is also subject to a condition that the licensee is prohibited from carrying out any conveyancing work except in relation to a transaction mentioned in section 4 (1) of the former Act.

4 Continuation of approved qualifications, training and experience

- (1) The Minister is taken to have approved by order published in the Gazette under section 7 (Qualifications for a licence) of this Act, to the following effect:
 - (a) the educational qualifications, practical training and conveyancing experience approved by the Committee under section 12 of the former Act are approved for the purposes of section 7 of this Act but only for the limited class of transactions that comprises the transactions mentioned in section 4 (1) of the former Act,
 - (b) this approval applies only to a person who, immediately before the repeal of the former Act, held a certificate of eligibility under the former Act or was attending a course of instruction leading to the award of the educational qualifications concerned.
- (2) The Minister may by order published in the Gazette revoke the approval provided for by subclause (1) but may not do so for at least 12 months after the commencement of section 7 of this Act.
- (3) A certificate of eligibility granted pursuant to an appeal referred to in clause 6 is for the purposes of this clause taken to have been granted immediately before the repeal of the former Act.

5 Effect of certificates of eligibility

- (1) A certificate of eligibility under the former Act is evidence sufficient to satisfy the Council under this Act that the holder of the certificate has the educational qualifications, practical training and conveyancing experience approved by the

Minister as referred to in clause 4.

- (2) This clause applies only for the purposes of the making and determination of an application for a licence under this Act made within 12 months after the commencement of this clause or within 12 months after the grant of the certificate of eligibility pursuant to the determination of an appeal referred to in clause 6, whichever is later.

6 Pending appeals to the Supreme Court

- (1) An appeal pending under section 21 of the former Act immediately before its repeal is to continue and be determined as if the former Act had not been repealed.
- (2) For the purpose of giving effect to a decision on any such appeal, the Council under this Act may exercise any function of the Committee or Council under the former Act, including the function of granting a certificate of eligibility or a licence under the former Act.
- (3) A licence granted pursuant to such an appeal is granted subject to a condition (in addition to any other condition to which it is subject) that the licensee is prohibited from carrying out any conveyancing work except in relation to a transaction mentioned in section 4 (1) of the former Act.

7 Actions of the former Committee

- (1) If anything done or commenced by or in relation to the Committee under the former Act could have been done or commenced by or in relation to the Council under this Act if this Act had been in force when it was done or commenced, it has effect on and after the repeal of the former Act as if it had been done or commenced by or in relation to the Council under this Act.
- (2) In particular, any approval or leave given or granted by the Committee under the former Act and having effect immediately before the repeal of that Act is taken to have been given or granted by the Council under this Act.

8 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 former Act where the act or omission from which the failure to account arose occurred before the repeal of the former Act.

- (2) The former Act continues to apply to and in respect of a prior defalcation as if the former Act had not been repealed.

9 Time for payment of first contributions to Compensation Fund

The first contribution payable under section 39 by a licensee who is taken to have been granted a licence under clause 3 is payable within 30 days after a notice requiring payment is served on the licensee by the Council.

10 Management and receivership under the former Act

- (1) Any management or receivership in effect under the former Act immediately before its repeal is to continue as a management or receivership under this Act.
- (2) For that purpose, a receiver or manager appointed under a provision of the former Act and holding office as such immediately before the repeal of the former Act is taken to have been appointed under the corresponding provision of this Act and acts or omissions by such a manager or receiver under the former Act are taken to be acts or omissions under this Act.
- (3) The protections and immunities afforded to a manager or receiver in respect of acts or omissions under this Act extend to acts or omissions under the former Act.
- (4) The reference in section 53 to the Administration Account includes a reference to the Statutory Interest Account (within the meaning of the former Act).

11 Management and receivership under this Act

- (1) The provisions of Part 5 (Management and receivership) of this Act extend to apply to and in respect of matters (in particular, an act or omission by a licensee, or associate of a licensee, under the former Act) that occurred before the repeal of the former Act.
- (2) For that purpose, the expression “former licensee” in Part 5 includes a licensee under the former Act.
- (3) Part 5 extends to authorise payment out of the Administration Account in respect of acts, matters or things that occurred before the repeal of the former Act.
- (4) Anything done or commenced by or in relation to the Law Society Council under the former Act that could have been done or commenced by or in relation to the Council under this Act if this Act had been in force when it was done or commenced, has effect on and after the repeal of the former Act as if it had been done or commenced by or in relation to the Council under this Act.
- (5) In particular, an application by the Law Society Council for the appointment of a receiver that is pending under the former Act immediately before its repeal is taken to be an application made by the Council under this Act.

12 Pending disciplinary proceedings

- (1) Any act, matter or thing done or commenced under Part 10 of the *Legal Profession Act*

[1987](#) (as applying under Part 6 of the former Act) and having effect immediately before the repeal of the former Act is taken to have been done or commenced under Part 10 of the [Legal Profession Act 1987](#) as applying under Part 6 of this Act.

- (2) In determining for the purposes of section 83 (4) the conditions to which a licence is subject, a condition to which the licence is subject because of clause 3 (2) is to be disregarded.

13 Return of trust money deposited with Law Society

Money on deposit with the Law Society under section 36 of the former Act is to be repaid to the licensees concerned.

14 Notice to banks of responsibilities with respect to trust accounts

- (1) Section 29 (Bankers to pay interest to Statutory Interest Account) of this Act extends to a trust account opened before the commencement of this clause.
- (2) As soon as practicable after the commencement of this clause, the Council is by notice in writing to each licensee to require the licensee to notify the bank at which the licensee keeps a general trust account under this Act that the trust account is for the purposes of sections 36AC and 36AD of the [Property, Stock and Business Agents Act 1941](#) to be regarded as a trust account required by that Act.
- (3) A licensee who receives such a notice must comply with it within the period (not less than 30 days) required by the notice.
- (4) Alternatively, the Council may notify a bank on behalf of a licensee and such a notification given by the Council is taken to have been given by the licensee.
- (5) Notification to a bank as provided by this clause is taken to be a notification that the trust account concerned is required by the [Property, Stock and Business Agents Act 1941](#).

15 Offences under former Act or regulations

A reference in this Act to a failure to comply with a requirement under, or to an offence against, or to a contravention of, this Act or the regulations includes a reference to a failure to comply with a requirement under, or to an offence against, or to a contravention of, the former Act or the regulations under that Act.

16 Disclosures under the former Act

A disclosure in respect of any act, matter or thing occurring before the repeal of the former Act that would have not been an unauthorised disclosure under section 43 (Secrecy) of the former Act is not an unauthorised disclosure under section 35 (Secrecy) of this Act.

17 Records etc under former Act

The Law Society Council and any other person who has possession of any record, register or other document created for the purposes of the administration of the former Act is required to give possession of it to the Council under this Act as soon as practicable after the repeal of the former Act.

18 Final reports of Committee and Association

- (1) As soon as practicable after the repeal of the former Act the Committee and the Association under the former Act must each prepare and forward to the Minister reports of their work and activities under the former Act for the period beginning on 1 July 1995 and ending on the repeal of the former Act, for inclusion in the annual report of the Council.
- (2) For the purposes of this clause, the Committee under the former Act continues in existence as if the former Act had not been repealed.

19 Final reports of Law Society Council

- (1) As soon as practicable after the repeal of the former Act, the Law Society Council must prepare and forward to the Attorney General a report of its work and activities under the former Act for the period beginning on 1 July 1995 and ending on the repeal of the former Act.
- (2) The Attorney General must lay the report, or cause it to be laid, before both Houses of Parliament as soon as practicable after receiving the report.
- (3) A report is to deal with such matters as may be prescribed by the regulations in force under the [Legal Profession Act 1987](#) for the purposes of section 209B of that Act (before its repeal), and with such other matters as the Law Society Council considers appropriate to include in the report.

20 (Repealed)

21 Former regulations

- (1) The regulations in force under the former Act immediately before its repeal, amended as provided by Schedule 1 to this Act, are taken to have been made under this Act. This does not prevent the future amendment or repeal of those regulations.
- (2) For the purposes of the [Subordinate Legislation Act 1989](#), those regulations are taken to have been made when they were made under the former Act.

Part 3 Provisions consequent on enactment of [Conveyancers](#)

Licensing Amendment (Professional Indemnity Insurance) Act 2000

22 Validation of licences granted before commencement of amending Act

- (1) The fact that a policy of professional indemnity insurance in force in respect of a licensee or former licensee during the term or any part of the term of the licence or former licence was not an approved policy of professional indemnity insurance:
 - (a) is taken not to have invalidated the grant of the licence or former licence, and
 - (b) is taken not to have resulted in the licence or former licence being of no effect during that term or part of that term.
- (2) This clause applies only to a term or part of a term occurring before the commencement of this clause.

Dictionary

(Section 3)

affairs, in relation to a licensee, includes:

- (a) accounts kept by or on behalf of the licensee or an associate of the licensee, and
- (b) any other records kept by or on behalf of the licensee or an associate of the licensee, and
- (c) any transactions to which the licensee was a party or in which the licensee acted for a party, and
- (d) any related matter that an inspector considers should be further investigated.

approved policy of professional indemnity insurance has the meaning given to it by section 8 (1).

controlled money means money required to be dealt with in accordance with section 25 (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, building society or credit union in New South Wales.

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.

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

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

disqualified person has the meaning given to it by section 5.

exercise a function includes, where the function is a duty, to perform the 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 in force under this Act.

licensee means the holder of a licence in force under this Act.

money includes an instrument enabling a bank, building society or credit union to credit or debit an amount of money to an account with the bank, building society or credit union.

money received, in relation to a licensee, includes:

- (a) money coming under the direct control of the licensee, whether or not by the exercise of an express power or authority or by operation of law, and
- (b) money paid to an associate of the licensee on the advice of the licensee, but only if the money is under the direct or indirect control of the licensee, and
- (c) money in relation to which the licensee (whether or not through an associate) has a power of disposal exercisable jointly and severally with the person on whose behalf it was received or a nominee of that person.

professional misconduct includes:

- (a) unsatisfactory professional conduct, if the conduct is such that it involves a substantial or consistent failure to reach reasonable standards of competence and diligence, and
- (b) conduct (whether consisting of an act or omission) occurring otherwise than in connection with a conveyancing business which, if established, would justify a finding that a licensee is not of good fame and character, and
- (c) conduct that is declared to be professional misconduct by any provision of this Act.

record includes any book, account, document, paper or other source of information compiled, recorded or stored in written form or on microfilm, or by electronic process, or in any other manner or by any other means.

trust money means money required to be dealt with in accordance with section 25 (1) (a).

unsatisfactory professional conduct includes conduct (whether consisting of an act or omission) occurring in connection with a conveyancing business that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent licensee.