

Conveyancers Licensing Bill 2002

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to repeal and re-enact the *Conveyancers Licensing Act 1995* with the following modifications:

- (a) the issue of licences under the proposed Act will be on the basis of entry-level competence, good character and continuing professional development,
- (b) a corporation will be able to hold a licence provided that it is established that it is a fit and proper person,
- (c) a person holding a barrister's or solicitor's practising certificate will no longer be disqualified from holding a licence,
- (d) persons who are barred from holding a licence or other authority under a law of another jurisdiction that corresponds to the proposed Act will be disqualified from holding a licence,
- (e) it will be an offence for a person (other than a legal practitioner or incorporated legal practice whose conveyancing work is done by a legal practitioner) to conduct a conveyancing business unless the person holds a licence,
- (f) there will be provision for rules of conduct (including rules relating to the disclosure of information relating to potential conflicts of interest and the obtaining of beneficial interests in property the subject of conveyancing work) to be prescribed by the regulations,
- (g) there will be provision for requiring licence holders to take out professional indemnity insurance and to undertake continuing professional development,
- (h) licences will be renewable annually,
- (i) conveyancers will be able to share staff with legal practitioners,
- (j) obligations are placed on a licensee and the licensee in charge at a place of business to properly supervise the business carried on under a licence,
- (k) provision is made for complaints about, and discipline of, holders of licences to be regulated under the proposed Act, instead of under the *Legal Profession Act 1987*,
- (l) simplified and modernised disciplinary provisions are introduced, including provision for show cause proceedings, power to suspend, appointment of a manager of a licensee's business and the keeping of a register of disciplinary action,
- (m) procedures for the taking of action in relation to general trust accounts and other accounts are brought into line with current accounting and banking practice,
- (n) it will be an offence for a licensee to fail to account for money held on behalf of another person,
- (o) powers of inspection and enforcement are enhanced and broadened to cover unlicensed carrying on of conveyancing work,
- (p) provisions for the payment of compensation out of a Compensation Fund in the event of defalcation by a licensee are extended to apply to transactions where the consumer reasonably believed he or she was dealing with a licensee,
- (q) penalty levels for offences are revised,
- (r) provision will be made for the issue of penalty notices for offences,
- (s) the language of the proposed Act is modernised and simplified, redundant provisions are removed and various changes of a minor or statute law revision nature are made.

The Bill also contains savings and transitional provisions and makes consequential amendments to various Acts.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 defines certain words and expressions used in the proposed Act.

Conveyancing business is defined, as it is in the *Conveyancers Licensing Act 1995*, as 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.

Clause 4 defines the meaning of **conveyancing work** for the purposes of the proposed Act in the same way as it is in the *Conveyancers Licensing Act 1995*.

Clause 5 provides that notes in the proposed Act are explanatory only and do not form part of the proposed Act.

Part 2 Licences

Division 1 Requirement for licence

Clause 6 provides that a person must not, without a licence, carry on a conveyancing business for fee or reward. The proposed section does not apply to the carrying on of a conveyancing business by a person who is a solicitor or barrister or who is an incorporated legal practice if the business is carried on on its behalf by a barrister or solicitor.

Clause 7 states that a licensee is not liable for an offence under Part 3A (Unqualified practitioners) of the *Legal Profession Act 1987* in respect of conveyancing work done in accordance with the proposed Act, the regulations under it and the conditions of the licence.

Division 2 Eligibility, qualifications and disqualification

Clause 8 specifies the matters of which the Director-General of the Department of Fair Trading (the **Director-General**) must be satisfied for a natural person or corporation to be eligible to hold a licence.

Clause 9 specifies that the qualifications required for the issue of a licence are the qualifications approved by the Minister from time to time by order published in the Gazette.

The Minister's power to approve qualifications includes, but is not limited to, the power to approve qualifications by reference to the completion of a course of study, the completion of a period of training in a particular activity, the attainment of a standard of competency in a particular activity and the satisfaction of professional development requirements.

Clause 10 specifies the grounds on which a person is disqualified from holding a licence.

Division 3 Application and issue procedure

Clause 11 provides for applications for a licence to be made to the Director-General and applies the provisions of Part 2 of the *Licensing and Registration (Uniform Procedures) Act 2002*, with specified modifications, to the licences.

Clause 12 provides for the payment of application fees for licences and requires an applicant to make a contribution to the Property Services Compensation Fund established under the *Property, Stock and Business Agents Act 2002* (the **Compensation Fund**).

Clause 13 prevents the Director-General from granting an application for a licence unless an applicant is eligible to hold it and sets out the grounds on which an application may be refused.

Clause 14 provides that a licence may be granted subject to conditions, including the following conditions:

(a) a condition prohibiting the holder of a licence from exercising certain

functions other than as an employee of a licensee,

(b) a condition requiring the holder of a licence to undertake or complete specified study, education or training.

Clause 15 provides that the regulations may require a licensee to be insured under a policy of professional indemnity insurance. It is a condition of a licence that any such regulations are complied with.

Clause 16 provides that licences are to be in the form, and specify the information, determined by the Director-General.

Clause 17 provides that a licence has effect for 1 year from the date on which it is granted, or a later date specified in the licence.

Clause 18 enables a licensee who no longer wishes to hold a licence to surrender it to the Director-General.

Part 3 General conduct of licensees

Division 1 Place and name of business

Clause 19 makes it an offence for a licensee to conduct a conveyancing business under a business name that has not been approved by the Director-General.

Division 2 Business practices and supervision

Clause 20 provides for each place of business of a conveyancing business to be in the charge of a licensee.

Clause 21 provides that a licensee must properly supervise the conveyancing business carried on by the licensee.

The requirement to properly supervise the conduct of the business includes a requirement to properly supervise employees engaged in the business, to establish procedures designed to ensure that the provisions of the proposed Act (and any other laws relevant to the conduct of that business) are complied with and to monitor compliance with the procedures.

The Director-General may issue guidelines as to what constitutes proper supervision of the business of a licensee.

Clause 22 provides that regulations may prescribe rules of conduct to be observed in the course of conducting a conveyancing business.

Clause 23 provides that the Director-General may accept a written undertaking from the holder of a licence as to the manner in which the holder will exercise functions under the licence.

Clause 24 imposes an obligation on a licensee to notify the Director-General of any failure to account by the licensee.

Clause 25 requires an industry body to give notice of any failure to account by a licensee of which it becomes aware.

Clause 26 provides that a licensee must not enter into an arrangement with an unlicensed person whereby the unlicensed person is entitled to a share of the commission, fee, gain or reward payable to the licensee in respect of any transaction.

Clause 27 provides that a licensee must not be in partnership with another person who is not a licensee unless the Director-General approves the partnership and the partnership does not contravene the regulations. The clause sets out the circumstances in which the Director-General may not approve a partnership and provides that a partner who is not a licensee is not, by reason of being a partner in a business that includes a conveyancing business, liable for certain offences under the proposed Act and the *Legal Profession Act 1987*.

Clause 28 provides for the making of regulations prohibiting licensees from conducting other businesses.

Division 3 Employees

Clause 29 provides that a licensee must not employ certain specified persons in any capacity in connection with the carrying on of the business conducted by the licensee.

Clause 30 provides that a licensee is liable, in tort and contract, for anything done or not done, by an employee within the scope of the employee's authority or for the benefit, or purported or intended benefit, of the licensee or the licensee's business.

Clause 31 specifies the records a licensee must keep in respect of employees.

Clause 32 imposes a duty on a licensee to notify the Director-General within 7 days of becoming aware that a person employed by the licensee has become a disqualified person.

Clause 33 imposes a duty on an employee of a licensee to notify the licensee within 7 days if the employee becomes a disqualified person.

Division 4 Advertisements and representations

Clause 34 contains general requirements as to advertising by licensees.

Clause 35 provides that a licensee must not publish an advertisement relating to or in connection with the licensee's business unless the advertisement includes specified information relating to the licensee's name or business name.

Division 5 Disclosure of costs and other matters

Clause 36 requires a licensee to disclose to a client in accordance with the proposed Division the basis of costs of the conveyancing work to be carried out for the client by the licensee and any conflict or beneficial interest of a kind required to be disclosed by the regulations.

Clause 37 requires a disclosure to be made before or when the licensee is retained by the client.

Clause 38 requires a disclosure to be in writing and to be expressed in clear plain language and permits it to be made separately or in a costs agreement or in any other contract relating to the carrying out by the licensee of the conveyancing work concerned.

Clause 39 makes it clear that a disclosure is not required to be made when it would not be reasonable to require it.

Clause 40 provides for the making of regulations for or with respect to the information to be disclosed and when it would not be reasonable to require a disclosure.

Clause 41 provides that, if a licensee fails to make a disclosure to a client in accordance with the proposed Division, the client need not pay the costs of the conveyancing work and the licensee may not maintain proceedings for the recovery of costs.

Part 4 Resolution of costs disputes

Division 1 Interpretation

Clause 42 defines *costs dispute*.

Division 2 Preliminary procedure

Clause 43 provides for any person to notify the Consumer, Trader and Tenancy Tribunal (the *Tribunal*) of any costs dispute that the person has with another person.

Clause 44 provides for the Tribunal to attempt to resolve the costs dispute, including by appointing an independent expert to evaluate the situation.

Clause 45 provides for the costs of the assessment by an independent expert to be borne by the Tribunal, unless the regulations otherwise provide.

Clause 46 requires any agreement reached on the costs dispute to be put in writing, signed and filed with the Tribunal.

Division 3 Determination of costs dispute

Clause 47 provides for the making of an application for the determination of a costs dispute.

Clause 48 provides that an application cannot be dealt with unless the preliminary costs dispute procedure has been followed.

Clause 49 provides that the Tribunal has jurisdiction to hear and determine costs disputes.

Clause 50 provides for the Tribunal to be chiefly responsible for resolving costs disputes.

Clause 51 sets out the powers of the Tribunal in determining a costs dispute.

Part 5 Trust money and controlled money

Division 1 Preliminary

Clause 52 defines certain terms used in the proposed Part.

Division 2 Payment of trust money and controlled money

Clause 53 provides that money received for or on behalf of any person by a licensee:

- (a) is to be held exclusively for that person, and
- (b) is to be paid to the person or disbursed as the person directs, and
- (c) until paid or disbursed is to be kept in a trust account with an authorised deposit-taking institution in New South Wales and approved by the Director-General or, if the person on whose behalf it is to be held directs that it be paid otherwise, as directed.

Clause 54 provides that the Director-General may approve an authorised deposit-taking institution for the purposes of the proposed Part.

Clause 55 provides that trust money and controlled money is not available for the payment of the licensee's debts.

Clause 56 provides that a licensee must notify the Director-General of certain particulars within 5 days after becoming aware that a trust account of the licensee is overdrawn.

Clause 57 provides that interest earned on trust accounts is to be paid to the Statutory Interest Account.

Division 3 Responsibilities of authorised deposit-taking institutions

Clause 58 provides that an authorised deposit-taking institution must, within 5 business days of becoming aware that a trust account kept with it under the proposed Part is overdrawn, notify the Director-General.

Clause 59 provides that an authorised deposit-taking institution must, within 5 business days of becoming aware that a cheque presented on a trust account kept with it under the proposed Part has been dishonoured, inform the Director-General.

Clause 60 provides that an authorised deposit-taking institution must, on an annual basis, provide to the Director-General a certificate given by a registered company auditor certifying that the institution has complied with the requirements of the proposed Part in relation to trust accounts and the total amount of interest that the institution paid to the Director-General in respect of those trust accounts for payment to the Statutory Interest Account.

Clause 61 provides an authorised deposit-taking institution with a limited protection from liability in relation to any transaction concerning an account of a licensee kept with the institution or with another financial institution.

Division 4 Unclaimed trust money and controlled money

Clause 62 provides that a licensee who has held trust account money or controlled money for more than 2 years must give the Director-General a statement showing particulars of the money held, each person for whom or on whose behalf the money is held and the address of each of those persons last known to the licensee.

Clause 63 provides that a former licensee, or the personal representative of a deceased licensee, who holds money in a trust account kept under the proposed Act or as otherwise directed must give the Director-General a statement giving particulars of the money held in the trust account.

Clause 64 provides a procedure for the Director-General to dispose of unclaimed trust money and controlled money. If trust money or controlled money is not claimed, the money is to be paid into the Compensation Fund and then, if still unclaimed, into the Consolidated Fund.

Clause 65 provides that if an application for the payment to which a person is entitled is made while the money is held in the Compensation Fund or Consolidated Fund, the money must be paid to the person.

Division 5 Information about trust accounts, controlled money or transactions

Clause 66 provides that the Director-General may require a licensee to give the Director-General a written statement setting out particulars in relation to the licensee's trust accounts, trust money and controlled money paid to the licensee or transactions by or with the licensee as licensee.

Clause 67 provides that a person directly concerned in a transaction by or with a licensee as licensee may ask the licensee to give the person an itemised account of the transaction.

Clause 68 creates an offence for a licensee who fails, without reasonable excuse, to comply with a requirement under the proposed Division or to furnish false or misleading information.

Part 6 Records

Division 1 Keeping and inspection of records

Clause 69 defines the term *licensee's records* and enables regulations to be made requiring the making and keeping of such records.

Clause 70 provides for inspection of a licensee's records by an authorised officer.

Clause 71 provides for inspection by an authorised officer of the records of an authorised deposit-taking institution with which a licensee has deposited any money in any account, whether the licensee's own account or a general or separate trust account.

Clause 72 provides an authorised officer with power to require a licensee or another person who has possession, custody or control of a licensee's records to produce specified licensee's records.

Clause 73 provides an authorised officer with power to take possession of a record produced under the proposed Part if the authorised officer considers it necessary to do so for the purpose of obtaining evidence or protecting evidence from destruction.

Clause 74 creates offences in relation to a person delaying or obstructing an authorised officer exercising the officer's functions under the proposed Division or failing to comply with a requirement under the proposed Division.

Division 2 Audit of licensee's records

Clause 75 requires a licensee, former licensee or the personal representative of a licensee, within 3 months after the end of the audit period, to have records and documents relating to trust money and controlled money held during that period audited by an auditor. The auditor's report on the audit must be lodged with the Director-General.

Clause 76 provides that the audit period is the year ending on 30 June, or another period fixed by the Director-General.

Clause 77 provides that if a licensee did not in an audit period receive or hold money for or on behalf of another person, the licensee must make and lodge with the Director-General a statutory declaration to that effect.

Clause 78 specifies the obligations of partners in relation to the audit of records and documents of the partnership.

Clause 79 specifies the qualifications a person must have to act as an auditor for the purposes of the proposed Division.

Clause 80 specifies the duties of an auditor.

Division 3 Freezing of accounts

Clause 81 defines certain terms used in the proposed Division.

Clause 82 provides that the Director-General may give a direction under the proposed Division if it appears to the Director-General that a licensee, the person in charge of a licensee's business at a place or a licensee's employee has, or may

have, stolen, misappropriated or misapplied trust money. **Trust money** is defined for the purposes of the proposed Division to include controlled money. The Director-General's direction may direct that an amount of trust money be paid to the Director-General, that an amount not be drawn from an account or that an account may be operated only under specified conditions.

Clause 83 provides that a financial institution given a direction under the proposed Division must not pay a cheque or other instrument drawn on the account concerned unless it is also signed by the Director-General (or a person authorised by the Director-General) or give effect to another transaction on the account that is not authorised because of the direction.

Clause 84 provides that after a direction under the proposed Division has been given to the holder of an account, the holder must not (while the direction remains in force) sign a cheque or other instrument drawn on the account unless the cheque or other instrument has been signed by the Director-General, or a person authorised by the Director-General.

Clause 85 provides that the Director-General (or a person authorised by the Director-General) may operate an account that is the subject of a direction under the proposed Division if the holder of the account refuses to operate the account.

Clause 86 provides that the Director-General may withdraw a direction under the proposed Division.

Part 7 Claims arising from failure to account

Clause 87 defines a term used in the proposed Part.

Clause 88 applies Part 10 of the *Property, Stock and Business Agents Act 2002* to failures to account arising from acts or omissions of licensees under the proposed Act. Under that Part, the Director-General may apply money held in the Property Services Compensation Fund (the **Compensation Fund**) for specified purposes, including satisfying claims established against the Fund.

Clause 89 requires a licensee under the proposed Act to make contributions to the Compensation Fund and to pay levies imposed by the Director-General with respect to the Compensation Fund.

Part 8 Management and receivership

Division 1 Interpretation

Clause 90 defines certain terms used in the proposed Part.

Clause 91 specifies what is meant by a reference in the proposed Part to a licensee's associate.

Clause 92 specifies what is meant by a reference in the proposed Part to a **failure to account**.

Division 2 Management

Clause 93 provides that the Director-General may appoint a manager for a licensee's business in certain circumstances 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.

Clause 94 specifies qualifications necessary for a person to be eligible for appointment as the manager of a licensee's business.

Clause 95 specifies the powers of a person appointed as the manager of a licensee's business.

Clause 96 provides that the manager of a licensee's business may continue to exercise his or her functions even if a receiver is appointed in respect of the licensee's property.

Clause 97 provides that an act of the manager of a licensee's business is, for the purposes of any proceedings or transaction that relies on that act, taken to have been done by the licensee.

Clause 98 provides that the Director-General may reimburse a manager for any damages and costs recovered against the manager, or the manager's employee or

agent, for anything done or omitted in good faith and in the purported exercise of a function under the proposed Act.

Clause 99 provides that the expenses of the management of a licensee's business that 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. An amount paid under this clause is recoverable by the Director-General as a debt owed by the relevant licensee.

Clause 100 provides that the manager of a licensee's business must report to the Director-General on the management of the business.

Clause 101 provides that Part 6 (Records) applies to the accounts kept by a manager in the same way as it applies to the accounts kept by a licensee.

Clause 102 provides that the regulations may make provision with respect to the accounts to be kept by the manager of a licensee's business and the purposes for which money in any such account may be expended.

Clause 103 provides that when a licensee's business ceases to be under management any money held by the manager in connection with the business becomes the property of the licensee.

Clause 104 creates an offence for a person hindering, obstructing or delaying a manager in the exercise of his or her functions.

Division 3 Receivership

Clause 105 provides that the Supreme Court may, on the application of the Director-General, appoint a receiver for all or any of the property of a licensee. An application may be made by the Director-General only in specified circumstances.

Clause 106 provides that 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 receiver of all or any of the property.

Clause 107 provides that before commencing to hear an application for the appointment of a receiver, the Supreme Court may order from the Court any person who is not necessary to the hearing.

Clause 108 provides that on the appointment of a receiver the Director-General must cause a copy of the order of appointment to be served on the relevant licensee or relevant associate and any other person on whom the Supreme Court has directed a copy be served.

Clause 109 provides that the receiver may take possession of receivable property of the relevant licensee or relevant associate.

Clause 110 provides that 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.

Clause 111 provides that a receiver who believes on reasonable grounds that money held in an account with an authorised deposit-taking institution is receivable property may serve on the institution concerned an order prohibiting operations on the account by any person other than the receiver or a person authorised by the receiver.

Clause 112 provides that a person must not, with intent to defeat the purposes of the proposed Division, improperly deal with receivable property, or property that is likely to become receivable property, or operate an account at an authorised deposit-taking institution.

Clause 113 provides that if receivable property has at any time been taken by, or paid or transferred to, a person unlawfully or in breach of trust in certain circumstances the receiver may recover from the person, as a debt, the amount taken, paid or transferred, the amount of any inadequate consideration for the taking, payment or transfer, the amount of any debt resulting from the taking, payment or transfer, or the value of the property taken or transferred, as appropriate.

Clause 114 provides that a certificate given by the receiver, or a person authorised by the Director-General, in relation to certain matters, such as the receipt of property by the licensee or an associate, is admissible in any proceedings taken by a receiver and is evidence of the matters specified in the certificate.

Clause 115 provides that proceedings taken in the name of the receiver in relation to any property may be so taken as if the receiver were beneficially entitled to the property.

Clause 116 provides that 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.

Clause 117 specifies other powers of a receiver.

Clause 118 provides that a receiver may give notice to the relevant licensee or associate, or another 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 the longer period stated in the notice. A receiver may disregard a claim made by a person given a notice if the claim is not made in accordance with the notice.

Clause 119 specifies the procedure to be followed if a licensee claims a lien for remuneration on receivable property.

Clause 120 provides that the Supreme Court may, on the application of a receiver, make such orders as it thinks fit for the examination by the receiver of a licensee or other person in relation to receivable property.

Clause 121 specifies the procedure to be followed in respect of receivable property under the control of a receiver that has not been dealt with in accordance with the proposed Division.

Clause 122 provides that a receiver may invest receivable property in any manner in which trustees are authorised by the *Trustee Act 1925* to invest trust funds.

Clause 123 provides that the Director-General may reimburse a receiver for any damages or costs recovered against the receiver, or the receiver's employee or agent, for anything done or omitted in good faith and in the purported exercise of the receiver's functions.

Clause 124 provides that the Director-General may pay the expenses of the receivership that have not otherwise been paid to the receiver. An amount paid may be recovered by the Director-General from the relevant licensee as a debt.

Clause 125 provides that, on the application of the relevant licensee, the Supreme Court may, if satisfied the expenses of the receivership are excessive, order the taking of accounts between the Director-General and the receiver.

Clause 126 provides that receivable property of a relevant licensee or associate is not liable to be taken in execution of any judgment, order or other process of any court or tribunal.

Clause 127 provides that a receiver, a licensee or a licensee's associate who holds receivable property, or a person who claims receivable property, may apply to the Supreme Court for directions as to the performance of the receiver's functions. The Supreme Court may give such directions as it thinks fit.

Clause 128 provides that the Supreme Court may give general directions to a receiver for the exercise of the receiver's functions.

Clause 129 provides that 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.

Clause 130 provides for the termination of the appointment of a receiver.

Clause 131 creates an offence for a person hindering, obstructing or delaying a receiver in the exercise of his or her functions.

Part 9 Complaints and disciplinary action

Clause 132 specifies the grounds on which disciplinary action may be taken against

a person who is or was the holder of a licence.

Clause 133 specifies the disciplinary action that the Director-General may take against a person.

Clause 134 provides that the Director-General may, at any stage of a matter that is the subject of consideration by the Director-General under the proposed Part, determine to take no further action.

Clause 135 provides that any person may make a complaint to the Director-General setting out matters that are alleged to constitute grounds for taking disciplinary action against a person. Action may be taken against a person whether or not a complaint has been made.

Clause 136 provides that the Director-General may serve a show cause notice on a person if the Director-General is of the opinion that there is reasonable cause to believe that there are grounds for taking disciplinary action against the person.

Clause 137 provides that the Director-General may, when a show cause notice is served on a person, suspend the person's licence pending a determination by the Director-General of whether or not to take disciplinary action. The Director-General may only suspend a licence if satisfied that the grounds for disciplinary action specified in the show cause notice would, if established, justify the suspension or cancellation of the licence.

Clause 138 provides the Director-General with power to conduct inquiries and make investigations in relation to the matters to which a show cause notice relates.

Clause 139 provides that if the Director-General is satisfied that there are grounds for taking disciplinary action against a person on whom a show cause notice has been served, the Director-General may take such disciplinary action against the person as the Director-General thinks is warranted.

Clause 140 provides for the recovery as a debt in a court of competent jurisdiction of a monetary penalty imposed by disciplinary action under the proposed Part.

Clause 141 provides that a person against whom disciplinary action is taken may apply to the Administrative Decisions Tribunal under the *Administrative Decisions Tribunal Act 1997* for a review of the decision on the disciplinary action or on a review of the disciplinary action.

Clause 142 provides that the Director-General may authorise publication of a notice warning persons of particular risks involved in dealing with a specified licensee, or a person who does not hold a licence, in connection with the activities of licensees.

Clause 143 creates an offence for a person who is disqualified under the proposed Part from being involved in the direction, management or conduct of the business of a licensee and who acts contrary to the direction.

Clause 144 provides that a person who has possession of a licence that has been suspended or cancelled must give the licence to an officer of the Department of Fair Trading within 7 days after the suspension or cancellation takes effect.

Part 10 Enforcement

Clause 145 defines the term *authorised officer*.

Clause 146 provides a power for an authorised officer to enter and inspect premises that the officer believes on reasonable grounds are being used for the carrying on of a conveyancing business, whether or not the business is being carried on by the holder of a licence. An authorised officer's powers after entering premises are specified in the clause.

Clause 147 provides a power for an authorised officer to require a person to give information, produce records or give evidence in relation to a matter that constitutes or may constitute an offence under the proposed Act or regulations.

Clause 148 creates an offence for refusing or failing to comply with a requirement made, or to answer a question asked by, an authorised officer, or wilfully delaying, hindering, or obstructing an authorised officer.

Clause 149 provides that an authorised officer may take possession of, and retain

until the completion of any proceedings, records for the purpose of obtaining evidence or protecting evidence from destruction.

Clause 150 specifies the procedure for an authorised officer to obtain a search warrant for premises.

Clause 151 provides that the Supreme Court may grant an injunction restraining a threatened or apprehended contravention, or the continuation of a contravention, of a provision of the proposed Act or regulations.

Part 11 Offences and proceedings

Division 1 Offences

Clause 152 creates offences for a licensee fraudulently converting money received by the licensee on behalf of any person in respect of any transaction in the licensee's capacity as a licensee, or money held by the licensee as a stakeholder or in trust. Offences are also created for fraudulently omitting to account for such money and fraudulently rendering an account of such money.

Clause 153 creates an offence for a licensee who fraudulently renders an account of expenses, commission or other charges incidental to any transaction, or proposed or contemplated transaction, as a licensee, knowing the account to be false in any material particular.

Clause 154 makes it an offence for a licensee to fail to account for money held by the licensee on behalf of another person.

Clause 155 makes it an offence to aid or abet, induce, be concerned in or conspire in the commission of an offence under the proposed Act or the regulations.

Clause 156 provides that nothing in the proposed Division affects the provisions of the *Crimes Act 1900*.

Division 2 Proceedings

Clause 157 provides that proceedings for an offence against the proposed Act or regulations may be taken and prosecuted only by the Director-General, or a person acting with the authority of the Director-General.

Such proceedings may be dealt with summarily before a Local Court constituted by a Magistrate sitting alone or summarily before the Supreme Court in its summary jurisdiction.

Clause 158 provides that the regulations may prescribe an offence as a penalty notice offence.

Clause 159 provides that proceedings for an offence against the proposed Act (other than proceedings that are to be dealt with on indictment) or the regulations may be commenced within 3 years after the date on which the offence is alleged to have been committed.

Clause 160 makes specific provision in relation to offences by corporations.

Part 12 Administration

Clause 161 prohibits a person who obtains information in connection with the administration or execution of the proposed Act from disclosing the information except in specified circumstances.

Clause 162 requires the Director-General to maintain a Register for the purposes of the proposed Act and specifies the information to be entered and kept in that Register.

Clause 163 provides that a certificate signed by the Director-General certifying that a person is or is not or was or was not on any date or during any period the holder of a licence is prima facie evidence of the matters certified.

Clause 164 provides that the Director-General may delegate the exercise of any of The Director-General's functions under the proposed Act to any member of the staff the Department of Fair Trading or to any person, or class of persons, authorised by the regulations.

Part 13 Miscellaneous

Clause 165 provides that the proposed Act does not limit or otherwise affect the

exercise of any function under the *Fair Trading Act 1987*.

Clause 166 confers protection against personal liability for persons exercising functions under the proposed Act.

Clause 167 provides for the service of notices under the proposed Act.

Clause 168 repeals the *Conveyancers Licensing Act 1995* and the regulations under that Act.

Clause 169 is a formal provision giving effect to Schedule 1 (Savings and transitional provisions).

Clause 170 is a formal provision giving effect to Schedule 2 (Consequential amendments of Acts).

Clause 171 provides that a provision of Part 8 is a Corporations legislation displacement provision for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth, which will avoid inconsistencies between provisions of that Part and provisions of the Commonwealth Act.

Clause 172 provides a general regulation-making power.

Clause 173 provides that the Minister must review the proposed Act to determine whether the policy objectives of the proposed Act remain valid and whether the terms of the proposed Act remain appropriate for securing those objectives. The review must be undertaken 5 years after the proposed Act commences.

Schedules

Schedule 1 contains savings and transitional provisions consequent on the enactment of the proposed Act.

Schedule 2 contains consequential amendments to various Acts. It includes amendments to the *Administrative Decisions Tribunal Act 1997* to provide for the allocation of review of decisions under proposed Part 9 to the General Division of the Tribunal constituted by a judicial member.