



New South Wales

# 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.



New South Wales

# Conveyancers Licensing Bill 2002

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New South Wales

# Conveyancers Licensing Bill 2002

No. , 2002

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## **A Bill for**

An Act to provide for the licensing and regulation of conveyancers, to repeal the *Conveyancers Licensing Act 1995*; and for other purposes.

---

Clause 1            Conveyancers Licensing Bill 2002

Part 1             Preliminary

---

**The Legislature of New South Wales enacts:** 1

**Part 1 Preliminary** 2

**1 Name of Act** 3

This Act is the *Conveyancers Licensing Act 2002*. 4

**2 Commencement** 5

This Act commences on a day or days to be appointed by proclamation. 6  
7

**3 Definitions** 8

In this Act: 9

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

*business day* means a day other than a Saturday, Sunday, public holiday or bank holiday in New South Wales. 11  
12

*Compensation Fund* or *Fund* means the Property Services Compensation Fund established and maintained under the *Property, Stock and Business Agents Act 2002*. 13  
14  
15

*conveyancer* means a person who carries out conveyancing work. 16

*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. 17  
18  
19  
20

*conveyancing work* has the meaning given to it by section 4. 21

*Corporations Act* means the *Corporations Act 2001* of the Commonwealth. 22  
23

*costs* includes fees, charges, disbursements, expenses and remuneration. 24  
25

*Department* means the Department of Fair Trading. 26

*Director-General* means the Director-General of the Department. 27

*disqualified person* has the meaning given to it by section 10. 28

*employee* includes any person employed whether on salary, wages, bonus, fees, allowance or other remuneration and includes a director or member of the governing body of a corporation. 29  
30  
31

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<i>exercise</i> a function includes perform a duty.	1
<i>firm</i> of licensees includes any licensees who share remuneration as licensees, whether or not on the same basis for each of them.	2 3
<i>function</i> includes a power, authority or duty.	4
<i>licence</i> means a licence under this Act.	5
<i>licensee</i> means the holder of a licence under this Act.	6
<i>licensee's records</i> has the meaning given in Part 6 (Records).	7
<i>money</i> includes an instrument for the payment of money in any case where the instrument may be paid into a bank or other deposit-taking institution.	8 9 10
<i>money received for or on behalf of any person</i> includes money held for or on behalf of any person, whether originally received for or on behalf of the person or not.	11 12 13
<i>records</i> includes books, accounts and other documents.	14
<i>Statutory Interest Account</i> means the Property Services Statutory Interest Account referred to in Part 11 of the <i>Property, Stock and Business Agents Act 2002</i> .	15 16 17
<i>Tribunal</i> means the Consumer, Trader and Tenancy Tribunal established by the <i>Consumer, Trader and Tenancy Tribunal Act 2001</i> .	18 19
<i>trust account</i> means a trust account required to be kept under this Act.	20
<b>4 Conveyancing work</b>	21
(1) For the purposes of this Act, <i>conveyancing work</i> 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:	22 23 24 25
(a) a sale or lease of land,	26
(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,	27 28 29
(c) the grant of a mortgage or other charge.	30
(2) Without limiting subsection (1), <i>conveyancing work</i> includes:	31
(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	32 33 34

---



(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	1 2 3
(c)	any other legal work that is prescribed by the regulations as constituting conveyancing work for the purposes of this Act.	4 5
(3)	However, <b>conveyancing work</b> does not include the carrying out of any work for the purpose of:	6 7
(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 <i>Conveyancing Act 1919</i> ), or	8 9 10 11 12
(b)	commencing or maintaining legal proceedings, or	13
(c)	establishing a corporation or varying the memorandum or articles of association of a corporation, or	14 15
(d)	creating, varying or extinguishing a trust, or	16
(e)	preparing a testamentary instrument, or	17
(f)	giving investment or financial advice, or	18
(g)	investing money otherwise than as provided for by Division 2 of Part 5,	19 20
	and does not include any work that is prescribed by the regulations as not constituting conveyancing work for the purposes of this Act.	21 22
(4)	In this section:	23
	<b>legal work</b> 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 <i>Legal Profession Act 1987</i> .	24 25 26
<b>5</b>	<b>Notes</b>	27
	Notes included in this Act do not form part of this Act.	28

<b>Part 2 Licences</b>	1
<b>Division 1 Requirement for licence</b>	2
<b>6 Persons conducting conveyancing business required to be licensed</b>	3
(1) A person must not conduct a conveyancing business for fee or reward unless the person is the holder of a licence.	4
Maximum penalty: 100 penalty units.	5
(2) This section does not apply to the conduct of a conveyancing business by a person:	6
(a) who is a solicitor or barrister, or	7
(b) who is an incorporated legal practice if the conveyancing business is carried on on its behalf by a barrister or solicitor.	8
<b>7 Effect of licence</b>	9
(1) A licensee is not guilty of an offence under Part 3A (Unqualified practitioners) of the <i>Legal Profession Act 1987</i> in respect of conveyancing work that the licensee carries out in accordance with this Act, the regulations and the conditions of the licence.	10
(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.	11
<b>Division 2 Eligibility, qualifications and disqualification</b>	12
<b>8 Eligibility for licence</b>	13
(1) A natural person is eligible to hold a licence only if the Director-General is satisfied that the person:	14
(a) is at least 18 years of age, and	15
(b) is a fit and proper person to hold a licence, and	16
(c) each person with whom the person is in partnership in connection with the business concerned is a fit and proper person to hold a licence, and	17
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Clause 8                    Conveyancers Licensing Bill 2002

Part 2                      Licences

Division 2                Eligibility, qualifications and disqualification

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(d)	has the qualifications required for the issue of the licence, and	1
(e)	is not a disqualified person, and	2
(f)	has paid such part of any contribution or levy payable under section 12 as is due and payable on the granting of the licence.	3 4
(2)	A corporation is eligible to hold a corporation licence only if the Director-General is satisfied that:	5 6
(a)	the corporation is a fit and proper person to hold a licence, and	7
(b)	each director of the corporation is a fit and proper person to hold a licence, and	8 9
(c)	no director or executive officer (within the meaning of the Corporations Act) of the corporation is a disqualified person, and	10 11 12
(d)	at least one of the directors of the corporation holds a licence that a natural person is required to hold to carry on the business that the corporation carries on or proposes to carry on, and	13 14 15
(e)	the corporation has paid such part of any contribution or levy payable under section 12 as is due and payable on the granting of the licence.	16 17 18
<b>9</b>	<b>Qualifications for licence</b>	19
(1)	The qualifications required for the issue of a licence are such qualifications as the Minister may approve from time to time by order published in the Gazette.	20 21 22
(2)	Without limiting the Minister's power to approve qualifications, the Minister may approve qualifications by reference to any one or more of the following:	23 24 25
(a)	the completion of a course of study,	26
(b)	the completion of a period of training in a particular activity,	27
(c)	the attainment of a standard of competency in a particular activity,	28 29
(d)	satisfaction of professional development requirements.	30
(3)	Qualifications may be approved for a limited range of activities specified in the approval, so as to enable a person who has those qualifications to be granted a licence subject to conditions that limit the person to exercising the functions of a licensee in relation to that limited range of activities only.	31 32 33 34 35

- (4) Qualifications may be approved by reference to qualifications obtained before a specific day or during a specified period. 1  
2
- (5) A person does not have the qualifications required for the replacement or restoration of a licence if the person has failed to comply with any condition of the licence that required the holder to undertake professional development, continuing education or a course of study, unless the Director-General otherwise determines in a particular case. 3  
4  
5  
6  
7
- 10 Disqualified persons** 8
- (1) A person is a disqualified person for the purposes of this Act if the person: 9  
10
- (a) has a conviction in New South Wales or elsewhere for an offence involving dishonesty that was recorded in the last 10 years, unless the Director-General has determined under subsection (3) that the offence should be ignored, or 11  
12  
13  
14
- (b) is an undischarged bankrupt or is a director or person concerned in the management of a corporation that is the subject of a winding up order or for which a controller or administrator has been appointed, unless (in the case of an undischarged bankrupt) the Director-General has certified that he or she is satisfied that the person took all reasonable steps to avoid the bankruptcy, or 15  
16  
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21
- (c) at any time in the 3 years preceding the application for the licence, was an undischarged bankrupt or applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounded with his or her creditors or made an assignment of his or her remuneration for their benefit, unless the Director-General has certified that he or she is satisfied that the person took all reasonable steps to avoid the bankruptcy, or 22  
23  
24  
25  
26  
27  
28
- (d) at any time in the 3 years preceding the application for the licence, was concerned in the management of a corporation when the corporation was the subject of a winding up order or when a controller or administrator was appointed, unless (in the case of an undischarged bankrupt) the Director-General is satisfied that the person took all reasonable steps to avoid the liquidation or administration, or 29  
30  
31  
32  
33  
34  
35
- (e) is a mentally incapacitated person, or 36

Clause 10                    Conveyancers Licensing Bill 2002

Part 2                        Licences

Division 2                   Eligibility, qualifications and disqualification

---

- (f) is disqualified from holding a licence or other authority under a corresponding law or is the holder of such a licence or authority that is suspended, or 1  
2  
3
- (g) is the holder of a licence, permit or other authority that is suspended under the *Fair Trading Act 1987*, or 4  
5
- (h) is in partnership with a person who is the holder of a licence, permit or other authority that is suspended under the *Fair Trading Act 1987*, or 6  
7  
8
- (i) is for the time being declared to be a disqualified person under Part 9 (Complaints and disciplinary action), or 9  
10
- (j) is a corporation that is the subject of a winding up order or for which a controller or administrator has been appointed, or 11  
12
- (k) has failed to pay a contribution or levy payable by the person under section 89 and the failure continues, or 13  
14
- (l) has failed to pay an amount due as a debt to the Crown by way of recovery of an amount paid out of the Compensation Fund and the failure continues, or 15  
16  
17
- (m) has failed to pay any monetary penalty payable by the person under Part 9 (Complaints and disciplinary action) or has failed to comply with any direction given by the Director-General under that Part, and the failure continues, or 18  
19  
20  
21
- (n) has failed to provide the Director-General with an auditor's report that the person is required to provide under this Act on the audit of the records and documents relating to any trust money or controlled money held by the person under this Act, unless the Director-General determines that in the circumstances that failure should not disqualify the person, or 22  
23  
24  
25  
26  
27
- (o) has been removed (otherwise than at his or her own request) from the roll of legal practitioners kept by the Supreme Court or from a corresponding roll of legal practitioners kept by a superior court of another State or Territory, or 28  
29  
30  
31
- (p) is disqualified from being employed in a solicitor's office by virtue of an order in force under section 48I of the *Legal Profession Act 1987*, or 32  
33  
34
- (q) is a disqualified person under the *Property, Stock and Business Agents Act 2002*, or 35  
36

(r)	is in breach of any provision of this Act or the regulations that is prescribed by the regulations as a disqualifying breach.	1 2
(2)	A person is also a disqualified person for the purposes of this Act if the person is the holder of a licence or certificate of registration under the <i>Property, Stock and Business Agents Act 2002</i> .	3 4 5
(3)	The Director-General may determine that an offence committed by a person should be ignored for the purposes of this section because of the time that has passed since the offence was committed or because of the triviality of the acts or omissions giving rise to the offence.	6 7 8 9
(4)	In this section: <i>corresponding law</i> means a law of another Australian jurisdiction that is declared by the Minister from time to time by order published in the Gazette to be a law that corresponds to this Act.	10 11 12 13
<b>Division 3</b>	<b>Application and issue procedure</b>	14
<b>11</b>	<b>Application to licences of Licensing and Registration (Uniform Procedures) Act 2002</b>	15 16
(1)	The Director-General may grant licences for the purposes of this Act.	17
(2)	Part 2 of the <i>Licensing and Registration (Uniform Procedures) Act 2002</i> ( <i>the applied Act</i> ) applies to and in respect of a licence, subject to the modifications and limitations prescribed by or under this Act.	18 19 20 21
(3)	For the purpose of applying Part 2 of the applied Act to a licence:	22
(a)	the Director-General is taken to be the licensing authority, and	23
(b)	the licence may be amended under that Act, and	24
(c)	the reference to 2 weeks in section 9 (1) (a) of that Act is to be read as a reference to 4 weeks, and	25 26
(d)	an application for restoration of a licence under section 10 of that Act may not be made more than 3 months after the date on which the licence expires, and	27 28 29
(e)	the reference to 28 days in section 17 (1) of that Act (as to the period within which an application must be determined) is to be read as a reference to 8 weeks, and	30 31 32

(f)	the reference to 14 days in section 24 (1) of that Act (as to the period within which changed particulars must be notified) is to be read as a reference to 7 days, and	1 2 3
(g)	section 25 of that Act does not have effect, and	4
(h)	the reference in section 21 (7) of that Act to a licence that is cancelled is to be read as including a reference to a licence that is suspended.	5 6 7
(4)	A licence is taken to be a fixed-term licence for the purposes of Part 2 of the applied Act.	8 9
(5)	Subject to this section, the regulations may make provision for or with respect to such matters concerning a licence as are relevant to the operation of Part 2 of the applied Act.	10 11 12
<b>12</b>	<b>Application fees and Compensation Fund contributions</b>	13
(1)	An applicant for a licence must make provision for the payment of an application fee of an amount prescribed by the regulations.	14 15
(2)	An applicant for a licence must also make provision for the payment of the contribution to the Compensation Fund required under section 89 in relation to the application.	16 17 18
<b>13</b>	<b>Grounds for refusal of licence</b>	19
(1)	A licence must not be granted to an applicant unless the applicant is eligible to be granted a licence (as provided by section 8).	20 21
(2)	The Director-General may refuse an application on any of the grounds (listed in section 132) on which the Director-General may take disciplinary action.	22 23 24
<b>14</b>	<b>Conditions—general</b>	25
	A licence may be granted subject to conditions, including (but not limited to) conditions of the following kind:	26 27
(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,	28 29 30
(b)	a condition prohibiting the licensee from carrying out conveyancing work in relation to specified kinds of transaction,	31 32

(c)	a condition prohibiting the licensee from carrying out conveyancing work except in relation to specified kinds of transaction,	1 2 3
(d)	a condition requiring the licensee to undertake or complete a specified course of studies within a specified period of time,	4 5
(e)	a condition requiring a licensee to undertake by way of professional development specified further education or training during the term of the licence.	6 7 8
<b>15</b>	<b>Special condition requiring professional indemnity insurance</b>	<b>9</b>
(1)	The regulations may make provision for or with respect to requiring the holder of a licence to be insured under a policy of professional indemnity insurance in force with respect to the licensee or his or her employer. It is a condition of a licence that the holder of the licence be insured as required by any such regulations.	10 11 12 13 14
(2)	In particular, the regulations may require that the policy of insurance be a policy, or a policy of a kind, that is approved by the Minister for the time being by order published in the Gazette.	15 16 17
(3)	An order may provide that a policy is an approved policy if the policy complies with either or both of the following:	18 19
(a)	the policy complies with the conditions set out in the order,	20
(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.	21 22 23
<b>16</b>	<b>Issue of licence</b>	<b>24</b>
	Licences are issued by the Director-General and are to be in such form and specify such information as the Director-General determines.	25 26
<b>17</b>	<b>Duration</b>	<b>27</b>
	A licence takes effect on the date on which it is granted or on such later date as may be specified in it and (unless it is sooner suspended, cancelled or surrendered) remains in force until the following 30 June.	28 29 30
<b>18</b>	<b>Surrender of licence</b>	<b>31</b>
	A licensee may surrender the licence by giving it to the Director-General, together with a notice stating that it is surrendered.	32 33



Clause 19            Conveyancers Licensing Bill 2002

Part 3                General conduct of licensees

Division 1            Place and name of business

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**Part 3    General conduct of licensees** 1

**Division 1            Place and name of business** 2

**19    Business names** 3

(1) A licensee must not conduct a conveyancing business under a business name that is not approved by the Director-General. 4

Maximum penalty: 50 penalty units. 5

(2) The Director-General is not to approve a proposed business name for a conveyancing business if the name is so similar to that of another business name under which another conveyancing business is conducted as to suggest that there is a relationship between the two businesses. 6

(3) A licensee must not enter into any arrangement under which some other person, whether or not a licensee, is authorised by the licensee to conduct a conveyancing business under the same business name, or under a substantially similar business name, as that under which the licensee conducts a conveyancing business. 7

Maximum penalty: 50 penalty units. 8

(4) This section does not affect the *Business Names Act 1962*. 9

**Division 2            Business practices and supervision** 10

**20    Each place of business to be in charge of licensee** 11

(1) A licensee who conducts a conveyancing business under a licence at more than one place of business must employ at each of those places of business (except the place at which the licensee is personally in charge) as the person in charge of business at that place a person who is the holder of a licence that an individual is required to hold to carry on a conveyancing business. 12

(2) A corporation that conducts a conveyancing business under a licence must employ as the person in charge at each place of business at which the corporation carries on business under the licence a person who is the holder of a licence that an individual is required to hold to carry on a conveyancing business.	1 2 3 4 5
(3) A licensee must not employ a person to be the person in charge of business at a place of business of the licensee if the person is also employed to be the person in charge of business at another place of business of the licensee or at a place of business of another licensee.	6 7 8 9
(4) A person employed as the person in charge of business at a place of business of a licensee must not exercise functions or provide services on behalf of 2 or more licensees at that place (whether corporations or individuals) unless those licensees are in partnership.	10 11 12 13
(5) The Director-General may grant a person an exemption from a provision of this section. The exemption may be granted unconditionally or subject to conditions. The Director-General may at any time by notice in writing to a person granted an exemption revoke the exemption or vary the conditions of the exemption.	14 15 16 17 18
(6) The regulations may specify the matters to be taken into account by the Director-General in considering whether to grant a person an exemption from a provision of this section.	19 20 21
Maximum penalty:	22
(a) 200 penalty units in the case of a corporation, or	23
(b) 100 penalty units in any other case.	24
<b>21 Duty of licensee and person in charge to properly supervise conveyancing business</b>	<b>25 26</b>
(1) A licensee must properly supervise the conveyancing business carried on by the licensee.	27 28
(2) The requirement to properly supervise the conduct of a conveyancing business includes the following requirements:	29 30
(a) a requirement to properly supervise employees engaged in the business,	31 32
(b) a requirement to establish procedures designed to ensure that the provisions of this Act and any other laws relevant to the conduct of that business are complied with,	33 34 35

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Part 3	General conduct of licensees
Division 2	Business practices and supervision

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	(c) a requirement to monitor the conduct of business in a manner that will ensure as far as practicable that those procedures are complied with.	1 2 3
	(3) The Director-General may from time to time issue and notify to licensees guidelines as to what constitutes the proper supervision of the business of a licensee. A failure to comply with the requirements of any such guidelines in connection with the supervision of a business constitutes a failure to properly supervise the business.	4 5 6 7 8
	Maximum penalty: 200 penalty units in the case of a corporation or 100 penalty units in any other case.	9 10
<b>22</b>	<b>Rules of conduct for licensee’s business</b>	11
	(1) The regulations may prescribe rules of conduct to be observed in the course of the conduct of conveyancing businesses or the exercise of functions under licences.	12 13 14
	<b>Note.</b> Part 9 (Complaints and disciplinary action) provides that a contravention of a provision of the regulations is grounds for taking disciplinary action against a person.	15 16 17
	(2) Without limiting subsection (1), the regulations may adopt, with or without modification, the provisions of any rules made by the Law Society with respect to the conduct of solicitors.	18 19 20
	(3) Without limiting subsection (1), the regulations may make provision for or with respect to matters to be disclosed to a person for whom a licensee carries out, or is retained to carry out, conveyancing work, including (but not limited to):	21 22 23 24
	(a) any conflict of interest that might arise from the carrying out of the work, and	25 26
	(b) any beneficial interest in property that a licensee or employee of a licensee may obtain or be concerned in obtaining in carrying out conveyancing work in relation to the sale of the property.	27 28 29 30
<b>23</b>	<b>Undertakings by licensees</b>	31
	The Director-General may accept a written undertaking from a licensee as to the manner in which the licensee will exercise functions under the licence.	32 33 34
	<b>Note.</b> Part 9 provides that a breach of such an undertaking is grounds for taking disciplinary action against a person.	35 36

<b>24</b>	<b>Duty of licensee to notify failure to account</b>	1
(1)	A licensee must notify the Director-General as soon as practicable after becoming aware of any failure to account by the licensee.	2
	Maximum penalty: 50 penalty units.	3
(2)	In this section:	4
	<i>failure to account</i> has the same meaning as in Part 8 (Management and receivership).	5
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<b>25</b>	<b>Industry association to report failure to account</b>	8
	A body engaged in the provision of services to conveyancers as an industry association or similar undertaking must notify the Director-General in writing within 7 days after becoming aware of any failure to account by a licensee.	9
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	Maximum penalty: 100 penalty units.	13
<b>26</b>	<b>Sharing of receipts with unqualified persons</b>	14
(1)	A licensee must not share the receipts of a conveyancing business with another person unless:	15
	(a) the other person is a licensee, or	16
	(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.	17
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	Maximum penalty: 200 penalty units in the case of a corporation or 100 penalty units in any other case.	21
		22
(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:	23
	(a) will not result in a person other than a licensee gaining control of the business, and	24
		25
	(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.	26
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(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.	32
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Part 3	General conduct of licensees
Division 2	Business practices and supervision

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| (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. | 1 |
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<b>27</b>	<b>Multidisciplinary partnerships</b>	4
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| (1) | A licensee must not be in partnership with another person unless:   | 5 |
| (a) | the other person is a licensee, or  | 6 |
| (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. | 7 |
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Maximum penalty: 200 penalty units in the case of a corporation or 100 penalty units in any other case.	10
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| (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. | 12 |
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| (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 <i>Property, Stock and Business Agents Act 2002</i> . | 15 |
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| (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. | 18 |
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| (5) | The following provisions apply in respect of a partnership in which a licensee is a member: | 21 |
|     |   | 22 |

(a)	a partner who is not a licensee is not guilty of an offence under Part 3A (Unqualified practitioners) of the <i>Legal Profession Act 1987</i> merely because the partner conducts business of the partnership that is conveyancing business,	23
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(b)	a partner who is not a licensee is not guilty of an offence under Part 3A of the <i>Legal Profession Act 1987</i> merely because the partner receives any fee, gain or reward for business of the partnership that is conveyancing business,	27
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(c)	a partner who is not a licensee is not guilty of an offence under Part 3A of the <i>Legal Profession Act 1987</i> merely because the partner holds out, advertises or represents himself or herself as a member of a partnership conducting conveyancing business,	31
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- (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, 1  
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- (e) Division 2 of Part 5 (Trust money and controlled money), 4  
Part 7 (Claims arising from failure to account) and Part 8 5  
(Management and receivership) apply, subject to the 6  
regulations, as if each partner who is not a licensee were a 7  
licensee. Those provisions so apply in connection with any 8  
business of the partnership (whether or not it is conveyancing 9  
business). 10

**28 Conduct of other businesses** 11

- (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. 12  
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  - (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. 16  
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- Maximum penalty: 200 penalty units in the case of a corporation or 19  
100 penalty units in any other case. 20

**Division 3 Employees** 21

**29 Employment of disqualified persons** 22

- (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. 23  
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- (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. 26  
27
- (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. 28  
29  
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- (4) Leave given under this section may be limited as to time or given subject to specified conditions. 31  
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(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.	1 2 3
	Maximum penalty (subsection (5)): 50 penalty units.	4
<b>30</b>	<b>Liability of licensee for acts of employees</b>	5
	A licensee who employs a person at any place of business of the licensee is responsible, in tort and in contract, for anything done or not done by the person:	6 7 8
	(a) within the scope of the employee’s authority, or	9
	(b) for the benefit, or the purported or intended benefit, of the licensee or the licensee’s business.	10 11
<b>31</b>	<b>Licensee to keep records of certain employees</b>	12
(1)	A licensee must make and keep a record of the name and residential address of each employee that the licensee employs as a conveyancer.	13 14
(2)	The licensee must keep the record for at least 3 years after the person ceases to be an employee.	15 16
(3)	The licensee must keep the record in the form of a register of employees and that register must be kept at the place of business of the licensee at which the employee is employed or at such other place as the Director-General may approve.	17 18 19 20
	Maximum penalty: 50 penalty units.	21
<b>32</b>	<b>Duty of licensee to notify disqualification of employee</b>	22
	A licensee must notify the Director-General in writing within 7 days after becoming aware that a person employed by the licensee has become a disqualified person.	23 24 25
	Maximum penalty: 50 penalty units.	26
<b>33</b>	<b>Employees required to notify disqualification</b>	27
	A person employed by a licensee must notify the licensee within 7 days after the person becomes a disqualified person.	28 29
	Maximum penalty: 50 penalty units.	30

<b>Division 4</b>	<b>Advertisements and representations</b>	1
<b>34</b>	<b>Advertising</b>	2
(1)	A licensee may, subject to this Division, advertise in any way the licensee thinks fit.	3 4
(2)	However, an advertisement must not be of a kind that is or that might reasonably be regarded as:	5 6
(a)	false, misleading or deceptive, or	7
(b)	in contravention of the <i>Trade Practices Act 1974</i> of the Commonwealth, the <i>Fair Trading Act 1987</i> or any similar legislation, or	8 9 10
(c)	in contravention of any requirements of the regulations.	11
(3)	The regulations may make provision for or with respect to advertising by licensees.	12 13
<b>35</b>	<b>Advertisement to include information about licensee</b>	14
	A licensee must not publish (in a newspaper or otherwise) an advertisement relating to or in connection with the licensee’s business unless the advertisement includes the following:	15 16 17
(a)	if the licensee is an individual carrying on business in the licensee’s own name and is not a member of a partnership—the licensee’s name,	18 19 20
(b)	if the licensee is an individual carrying on business under a business name registered under any Act relating to the registration of business names—either the licensee’s name or that business name,	21 22 23 24
(c)	if the licensee carries on business as a member of a partnership—either the licensee’s name or the name of the partnership, or the name under which the partnership is registered under any Act relating to the registration of business names,	25 26 27 28 29
(d)	if the licensee is a corporation and the corporation is carrying on business in its own name—the name of the corporation,	30 31



Clause 35	Conveyancers Licensing Bill 2002
Part 3	General conduct of licensees
Division 4	Advertisements and representations

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(e)	if the licensee is a corporation and the corporation is carrying on business under a business name registered under any Act relating to the registration of business names—either its own name or that business name,	1 2 3 4
(f)	the number of the licence.	5
	Maximum penalty: 100 penalty units.	6

## **Division 5      Disclosure of costs and other matters** 7

### **36    Obligation to disclose costs and other matters to clients** 8

(1)	A licensee must disclose to a client in accordance with this Division the basis of the costs for conveyancing work to be carried out for the client by the licensee and any conflict or beneficial interest of a kind required to be disclosed by the regulations.	9 10 11 12
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Maximum penalty: 200 penalty units in the case of a corporation or 100 penalty units in any other case. 13  
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(2)	The following matters are to be disclosed to the client:	15
(a)	the amount of the costs, if known,	16
(b)	if the amount of the costs is not known, the basis of calculating the costs,	17 18
(c)	the billing arrangements,	19
(d)	the client's rights under Part 4 in relation to the hearing of disputes about the fees by the Tribunal,	20 21
(e)	any conflict or beneficial interest of a kind required to be disclosed by the regulations,	22 23
(f)	any other matter required to be disclosed by the regulations.	24

### **37    When disclosure to be made** 25

(1)	A disclosure under this Division is to be made before or when the licensee is retained to carry out the conveyancing work concerned, unless this section otherwise provides.	26 27 28
(2)	If it is not reasonably practicable to make the disclosure before or when the licensee is retained, the disclosure is to be made as soon as practicable after the licensee is so retained.	29 30 31

<b>38</b>	<b>Disclosure to be in writing</b>	1
	(1) A disclosure under this Division must be made in writing and be expressed in clear plain language.	2 3
	(2) The disclosure may be made separately or in a costs agreement or in any other contract relating to the carrying out by the licensee of the conveyancing work concerned.	4 5 6
<b>39</b>	<b>Exception to disclosure</b>	7
	A disclosure is not required to be made under this Division when it would not be reasonable to require it.	8 9
<b>40</b>	<b>Regulations as to disclosure</b>	10
	The regulations may make provision for or with respect to:	11
	(a) the information to be disclosed under this Division, and	12
	(b) when it would not be reasonable to require a disclosure to be made under this Division.	13 14
<b>41</b>	<b>Effect of non-disclosure of matters related to basis of costs</b>	15
	(1) If a licensee fails to make a disclosure to a client in accordance with this Division of the matters required to be disclosed by section 36 in relation to costs, the client need not pay the costs of the conveyancing work.	16 17 18 19
	(2) A licensee who fails to make a disclosure in accordance with this Division of the matters required to be disclosed by section 36 in relation to costs may not maintain proceedings for the recovery of the costs.	20 21 22 23

**Part 4 Resolution of costs disputes** 1

**Division 1 Interpretation** 2

**42 Definition** 3

In this Part: 4

*costs dispute* means a dispute about costs payable in respect of conveyancing work. 5  
6

**Division 2 Preliminary procedure** 7

**43 Notifying Tribunal about costs dispute** 8

(1) Any person may notify the Tribunal, in accordance with the regulations, of any costs dispute that the person has with another person. 9  
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(2) A notification must be accompanied by the fee prescribed by the regulations. 12  
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**44 Attempts to resolve costs dispute** 14

(1) The Tribunal may, on notification of a costs dispute, take any action that it considers necessary to resolve the dispute. 15  
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(2) On notification of a costs dispute, the Tribunal must determine whether the subject-matter of the dispute should be assessed by an independent expert and may, if it considers it appropriate, refer the dispute to an independent expert for assessment. 17  
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(3) An independent expert may be selected from a panel of experts approved by the Chairperson of the Tribunal. 21  
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(4) An independent expert to whom a costs dispute is referred under this section must prepare a written report on the dispute and provide it to the parties within the time limit specified by the Tribunal. 23  
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(5) Nothing in this section prevents the Tribunal from referring a costs dispute for mediation or neutral evaluation under the *Consumer, Trader and Tenancy Tribunal Act 2001*. 26  
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<b>45</b>	<b>Costs of assessment</b>	1
(1)	The costs of assessment by an independent expert, including the costs payable to the expert are to be borne by the Tribunal, except to the extent that the regulations provide that the parties to the proceedings are to bear them.	2 3 4 5
(2)	Regulations made for the purposes of this section may provide that the parties are to bear the costs:	6 7
(a)	in such proportions as they may agree among themselves or, failing agreement, in such manner as may be ordered by the Tribunal, or	8 9 10
(b)	in any other prescribed manner.	11
<b>46</b>	<b>Procedure if agreement reached on costs dispute</b>	12
	If parties to a costs dispute reach an agreement or arrangement during or after an assessment by an independent expert, that agreement must be put in writing by the independent expert, signed by the parties to the dispute and filed with the Tribunal.	13 14 15 16
<b>Division 3</b>	<b>Determination of costs dispute</b>	17
<b>47</b>	<b>Application for determination of costs dispute</b>	18
	Any person may apply to the Tribunal, in accordance with the regulations, and on payment of the prescribed fee, for the determination of a costs dispute.	19 20 21
<b>48</b>	<b>Preliminary procedure must be followed</b>	22
	An application must not be accepted unless the procedure relating to costs disputes set out in Division 2 has been followed in relation to the costs dispute or unless the Tribunal does not consider it appropriate that the procedure be followed.	23 24 25 26
<b>49</b>	<b>Jurisdiction of Consumer, Trader and Tenancy Tribunal in relation to costs disputes</b>	27 28
(1)	The Tribunal has jurisdiction to hear and determine any costs dispute brought before it in accordance with this Part.	29 30

(2)	The Tribunal has jurisdiction to hear and determine any costs dispute whether or not the matter to which the dispute relates arose before or after the commencement of this Division, except as provided by this Act.	1 2 3 4
<b>50</b>	<b>Tribunal to be chiefly responsible for resolving costs disputes</b>	5
(1)	This section applies if a person starts any proceedings in or before any court in respect of a costs dispute and the costs dispute is one that could be heard by the Tribunal under this Division.	6 7 8
(2)	If a defendant in proceedings to which this section applies makes an application for the proceedings to be transferred, the proceedings must be transferred to the Tribunal in accordance with the regulations and are to continue before the Tribunal as if they had been instituted there.	9 10 11 12
(3)	This section has effect despite section 23 of the <i>Consumer, Trader and Tenancy Tribunal Act 2001</i> .	13 14
<b>51</b>	<b>Powers of Tribunal</b>	15
(1)	In determining a costs dispute, the Tribunal is empowered to make one or more of the following orders as it considers appropriate:	16 17
(a)	an order that one party to the proceedings pay money to another party or to a person specified in the order, whether by way of debt, damages or restitution, or refund any money paid by a specified person,	18 19 20 21
(b)	an order that a specified amount of money is not due or owing by a party to the proceedings to a specified person, or that a party to the proceedings is not entitled to a refund of any money paid to another party to the proceedings.	22 23 24 25
(2)	The provisions of sections 9–13 of the <i>Consumer Claims Act 1998</i> apply, with any necessary modifications, to and in respect of the determination of a costs dispute.	26 27 28

<b>Part 5 Trust money and controlled money</b>	1
<b>Division 1 Preliminary</b>	2
<b>52 Interpretation</b>	3
(1) In this Part:	4
<i>controlled money</i> means money required to be dealt with in accordance with section 53 (1) (b) that, while under the direct or indirect control of the licensee by or on whose behalf it is received, is for the time being held otherwise than in a general trust account at a bank or other deposit-taking institution in New South Wales.	5 6 7 8 9
<i>trust account</i> means a trust account referred to in section 53 (1) (c) (i).	10
<i>trust money</i> means money required to be dealt with in accordance with section 53 (1) (a).	11 12
(2) A reference in this Part to a licensee includes a reference to a person who has ceased to be a licensee and to the personal representative of a licensee who has died.	13 14 15
(3) In the application of this Part:	16
(a) to a person who has ceased to be a licensee, a reference to money received for or on behalf of a person by a licensee is to be read as a reference to money received by that person for or on behalf of any other person in connection with his or her business as a licensee, and	17 18 19 20 21
(b) to the personal representative of a licensee who has died, a reference to money received for or on behalf of a person by a licensee is to be read as a reference to money received by that licensee or personal representative for or on behalf of a person in connection with the business carried on by that licensee.	22 23 24 25 26

Clause 53	Conveyancers Licensing Bill 2002
Part 5	Trust money and controlled money
Division 2	Payment of trust money and controlled money

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<b>Division 2</b>	<b>Payment of trust money and controlled money</b>	1
<b>53</b>	<b>Payment of trust money into trust account and controlled money as directed</b>	2
		3
(1)	Money received for or on behalf of any person by a licensee in connection with the licensee's conveyancing business:	4
		5
(a)	is to be held by the licensee or (if the licensee is employed by a corporation) by the corporation, exclusively for that person, and	6
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		8
(b)	is to be paid to the person or disbursed as the person directs, and	9
		10
(c)	until so paid or disbursed:	11
(i)	is to be paid into and retained in a trust account (whether general or separate) at an authorised deposit-taking institution in New South Wales and approved by the Director-General for the purposes of this Part, or	12
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(ii)	if the person for or on whose behalf the money is received directs that it be paid otherwise than into a general trust account, is to be paid as directed and (if the money is to be held under the direct or indirect control of the licensee for more than the period prescribed by the regulations) is to be held in accordance with the regulations relating to controlled money.	17
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(2)	If the licence is held by a corporation, the trust account is to be in the name of the corporation and in any other case is to be in the name of the licensee or of the firm of licensees of which the licensee is a member.	24
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(3)	Subsection (1) does not prevent a licensee from:	28
(a)	withdrawing or receiving, from trust money or controlled money, money due, or to accrue due, to the licensee for costs so long as the procedure prescribed by the regulations is followed, and	29
		30
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(b)	holding, or disposing of, a cheque or other negotiable instrument payable to a third party if the licensee does so on behalf of a client and in accordance with directions given by the client, and	33
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(c)	exercising a general retaining lien for unpaid costs and disbursements in respect of money in a trust account or controlled money account (other than money received subject to an express direction by the client with respect to the purposes for which the money is to be applied).	1 2 3 4 5
(4)	A lien referred to in subsection (3) (c):	6
(a)	may not be exercised for an amount in excess of the sum of the costs and disbursements unpaid, and	7 8
(b)	may not be exercised unless the licensee has delivered an outline bill of costs and disbursements.	9 10
(5)	The words “Trust Account” are to appear in the name of the trust account and in the description of the trust account in the books and records of the licensee and also on all cheques drawn on the trust account.	11 12 13 14
(6)	When opening a trust account at an authorised deposit-taking institution for the purpose of complying with this section, the licensee concerned must ensure that the authorised deposit-taking institution is notified in writing that the account is a trust account required by this Act.	15 16 17 18 19
(7)	A licensee must, within 14 days after closing a trust account, notify the Director-General in writing of the closure.	20 21
	Maximum penalty: 100 penalty units.	22
<b>54</b>	<b>Approval of authorised deposit-taking institutions</b>	23
(1)	The Director-General may approve an authorised deposit-taking institution for the purposes of this Part and may revoke any such approval by notice in writing to the authorised deposit-taking institution.	24 25 26 27
(2)	The Director-General is not to approve an authorised deposit-taking institution for the purposes of this Part unless satisfied that the institution is able to discharge the obligations of an authorised deposit-taking institution under this Part.	28 29 30 31
(3)	An authorised deposit-taking institution that is the subject of an approval that is in force for the purposes of Part 7 of the <i>Property, Stock and Business Agents Act 2002</i> is taken to have been approved by the Director-General for the purposes of this Part.	32 33 34 35



Clause 55	Conveyancers Licensing Bill 2002
Part 5	Trust money and controlled money
Division 2	Payment of trust money and controlled money

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<b>55</b>	<b>Trust money and controlled money not available to pay licensee’s debts</b>	1
(1)	Trust money and controlled money are not available for the payment of the debts of the licensee to any other creditor of the licensee, or liable to be attached or taken in execution under the order or process of any court at the instance of any other creditor of the licensee.	2 3 4 5
(2)	This section does not take away or affect any just claim or lien that any licensee may have against or upon trust money or controlled money.	6 7
<b>56</b>	<b>Licensee to notify trust account becoming overdrawn</b>	8
	A licensee must, within 5 days after becoming aware that a trust account of the licensee has become overdrawn, notify the Director-General in writing of:	9 10 11
(a)	the name and number of the account, and	12
(b)	the amount by which the account is overdrawn, and	13
(c)	the reason for the account becoming overdrawn.	14
	Maximum penalty: 100 penalty units.	15
<b>57</b>	<b>Bankers to pay interest to Statutory Interest Account</b>	16
(1)	Sections 90 and 91 of the <i>Property, Stock and Business Agents Act 2002</i> apply in respect of all money held in a general trust account under this Division as if:	17 18 19
(a)	the trust account were a trust account opened and kept under section 86 of that Act, and	20 21
(b)	the licensee who opened and keeps the trust account were a licensee under that Act.	22 23
	<b>Note.</b> Section 90 of the <i>Property, Stock and Business Agents Act 2002</i> provides for interest earned on trust accounts to be paid to the Statutory Interest Account. Section 91 requires authorised deposit-taking institutions to notify the Director-General of certain matters with respect to trust accounts kept with the institution, including the number of trust accounts opened with the institution during a month and the names of the licensees who opened the accounts.	24 25 26 27 28 29
(2)	A licensee must, when opening a trust account at an authorised deposit-taking institution under this Division, ensure that the authorised deposit-taking institution is notified that the trust account is, for the purposes of sections 90 and 91 of the <i>Property, Stock and Business</i>	30 31 32 33

*Agents Act 2002*, to be regarded as a trust account required by that Act. 1  
Such a notification is, for the purposes of those sections, to be 2  
regarded as a notification that the trust account concerned is required 3  
by that Act. 4

### **Division 3      Responsibilities of authorised deposit-taking 5                                  institutions 6**

#### **58      Overdrawn trust accounts 7**

When an authorised deposit-taking institution becomes aware that a 8  
trust account kept with it under this Part is overdrawn, the institution 9  
must as soon as practicable (and in any case within 5 business days) 10  
after becoming so aware inform the Director-General of the following 11  
by notice in writing: 12

- (a) the name and business address of the licensee concerned, 13
- (b) the name and number of the account, 14
- (c) the date on which the account became overdrawn, 15
- (d) the amount by which the account is overdrawn. 16

Maximum penalty: 100 penalty units. 17

#### **59      Dishonoured cheques 18**

Within 5 business days of an authorised deposit-taking institution 19  
becoming aware that a cheque presented on a trust account kept with 20  
it under this Part has been dishonoured, the institution must, by notice 21  
in writing, inform the Director-General of the following: 22

- (a) the name and business address of the licensee concerned, 23
- (b) the name and number of the account, 24
- (c) the amount of the dishonour, 25
- (d) the date on which the cheque was dishonoured. 26

Maximum penalty: 100 penalty units. 27

#### **60      Annual certification by auditor 28**

Not later than 31 May in each year, an authorised deposit-taking 29  
institution approved for the purposes of this Part must provide to the 30  
Director-General a certificate given by a registered company auditor 31

Clause 60	Conveyancers Licensing Bill 2002
Part 5	Trust money and controlled money
Division 3	Responsibilities of authorised deposit-taking institutions

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	(within the meaning of the Corporations Act) certifying as to the following:	1
		2
	(a) that the institution has complied with the requirements of this Part in relation to trust accounts kept by it under this Part during the 12 month period ending on 30 April immediately preceding that 31 May,	3
		4
		5
		6
	(b) the total amount of interest that the institution paid under this Part to the Director-General during that 12 month period in respect of those trust accounts for crediting to the Statutory Interest Account.	7
		8
		9
		10
	Maximum penalty: 100 penalty units.	11
<b>61</b>	<b>Protection of authorised deposit-taking institutions from liability</b>	12
	(1) An authorised deposit-taking institution:	13
	(a) does not incur liability, and is not obliged to make inquiries, in relation to any transaction concerning an account of a licensee kept with the institution or with some other financial institution, and	14
		15
		16
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	(b) is, in relation to any such transaction, taken not to have any knowledge of a right of any person to money credited to such an account,	18
		19
		20
	unless it would incur such a liability, be obliged to make such inquiries or be taken to have that knowledge in relation to an account kept with it in respect of a person absolutely entitled to the money held in that account.	21
		22
		23
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	(2) This section does not relieve an authorised deposit-taking institution from any liability or obligation that it would have apart from this Act.	25
		26
	(3) An authorised deposit-taking institution at which a licensee keeps an account for clients' money does not, as regards any liability that the licensee has to the institution (other than a liability relating to that account), have a right to any of the money held in that account, whether by way of set-off, counterclaim, charge or otherwise.	27
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<b>Division 4</b>	<b>Unclaimed trust money and controlled money</b>	1
<b>62</b>	<b>Unclaimed trust money held and controlled money controlled by licensee</b>	2
		3
(1)	A licensee who in the month of January in a year holds in a trust account kept by the licensee money that was received by the licensee more than 2 years before that month must furnish to the Director-General in that month a statement (an <i>unclaimed money statement</i> ) showing particulars of:	4
		5
		6
		7
		8
(a)	the money so held, and	9
(b)	each person for whom or on whose behalf the money is held, and	10
		11
(c)	the address last known to the licensee of each of those persons.	12
(2)	A licensee who in the month of January in a year has the direct or indirect control of money held otherwise than in a general trust account at a bank or other authorised deposit-taking institution in New South Wales that was received by or on behalf of the licensee more than 2 years before that month must furnish to the Director-General in that month a statement (an <i>unclaimed money statement</i> ) showing particulars of:	13
		14
		15
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		19
(a)	the money so held, and	20
(b)	each person for whom or on whose behalf the money is held, and	21
		22
(c)	the address last known to the licensee of each of those persons.	23
(3)	A statement under this section is to be in the form approved by the Director-General.	24
		25
<b>63</b>	<b>Unclaimed trust money or controlled money held by former licensee or personal representative</b>	26
		27
(1)	A former licensee, or the personal representative of a deceased licensee, who holds money in a trust account kept under this Act must furnish to the Director-General a statement giving particulars of:	28
		29
		30
(a)	the money held in the trust account as at the date on which the statement is furnished, and	31
		32
(b)	the names of the persons for whom or on whose behalf the money is held, and	33
		34

Clause 63	Conveyancers Licensing Bill 2002
Part 5	Trust money and controlled money
Division 4	Unclaimed trust money and controlled money

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(c)	the address of each of those persons last known to the person furnishing the statement.	1 2
(2)	A former licensee, or the personal representative of a deceased licensee, who has the direct or indirect control of money held otherwise than in a general trust account at a bank or other authorised deposit-taking institution in New South Wales must furnish to the Director-General a statement giving particulars of:	3 4 5 6 7
(a)	the money held at the date on which the statement is furnished, and	8 9
(b)	the names of the persons for whom or on whose behalf the money is held, and	10 11
(c)	the address of each of those persons last known to the person furnishing the statement.	12 13
(3)	This statement is the first statement that the former licensee or personal representative is required to furnish and it is to be furnished within 3 months after the date on which the person ceased to be a licensee or became the personal representative of the deceased licensee.	14 15 16 17
(4)	The former licensee or personal representative must furnish a further statement (an <i>unclaimed money statement</i> ) within 14 days after the period of 12 months has elapsed since the first statement was furnished.	18 19 20 21
(5)	The further statement is to give particulars of the same matters as the first statement and also include particulars of any payments made from the trust account or other place where money is held since the date of the first statement.	22 23 24 25
(6)	A statement under this section is to be in the form approved by the Director-General.	26 27
(7)	The regulations may exempt money or a class of money from the operation of this section.	28 29
<b>64</b>	<b>Disposal of unclaimed trust money and controlled money</b>	30
(1)	When the Director-General receives an unclaimed money statement under this Division, the Director-General is to:	31 32
(a)	send by post to each person for whom or on whose behalf any money referred to in the statement is held a notice (an <i>individual notice</i> ) in writing addressed to the person at the	33 34 35

- person's address shown in the statement stating the particulars of the money held for or on behalf of that person, and 1  
2
- (b) cause notification to be published in the Gazette (a *Gazette notification*) stating the particulars of the money held for or on behalf of each of those persons. 3  
4  
5
- (2) Each individual notice and the Gazette notification is to state that, if the money is not paid out of the trust account or other place in which it is held within 3 months after the date of publication of the Gazette notification, the person holding the money will be required to pay it to the Director-General. 6  
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- (3) At any time after the expiration of that 3 months the Director-General may, by a notice in writing served personally or by post on the person by whom the money is held, require that person: 11  
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- (a) to pay to the Director-General any money referred to in the Gazette notification that has not been previously paid by that person out of the trust account or other place in which it is held, and 14  
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- (b) to furnish to the Director-General, within such period as may be specified in the notice to the person, a statement showing particulars of any payments made out of the money referred to in the Gazette notification since the unclaimed money statement was made. 18  
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- (4) The Director-General must pay any money received by the Director-General under this section into the Compensation Fund. 23  
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- (5) Within 2 months after 31 December in each year, the Director-General must pay into the Consolidated Fund all money received by the Director-General and paid into the Compensation Fund under this section during the period of 12 months ending on that 31 December. 25  
26  
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- (6) When the Director-General makes a payment into the Consolidated Fund, the Director-General is to give the Treasurer a statement containing the following particulars: 29  
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31
- (a) the name and last known address of each person for whom or on whose behalf the money received by the Director-General was held, 32  
33  
34
- (b) the amount held in respect of each of those persons, 35
- (c) the date of publication of the Gazette notification in respect of that money, 36  
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Clause 64	Conveyancers Licensing Bill 2002	
Part 5	Trust money and controlled money	
Division 4	Unclaimed trust money and controlled money	
		<hr/>
	(d) the name and address of each licensee who furnished an unclaimed money statement to the Director-General in respect of that money.	1 2 3
	(7) A person who fails to comply with the requirements of any notice served on the person under this section is guilty of an offence.	4 5
	Maximum penalty: 50 penalty units.	6
<b>65</b>	<b>Repayment of unclaimed trust money or controlled money</b>	7
	(1) The Treasurer must, on application made to the Treasurer by a person entitled to money paid into the Consolidated Fund under this Division, pay the money to the person.	8 9 10
	(2) If an application for the payment of money to which a person is entitled is made while the money is held in the Compensation Fund, the Director-General must pay the money to the person from the Compensation Fund.	11 12 13 14
<b>Division 5</b>	<b>Information about trust accounts, controlled money or transactions</b>	15 16
<b>66</b>	<b>Director-General may require information</b>	17
	(1) The Director-General may by notice in writing served on a licensee require the licensee to furnish to the Director-General in the manner required by the notice a statement in writing setting out full particulars as to any of the following:	18 19 20 21
	(a) the name of the trust account on which the licensee operates in accordance with this Act, the name of the authorised deposit-taking institution at which the account is current, the balance of the money standing to the credit of the account as at a date specified in the notice, and particulars of all cheques drawn on the account as at such date and not presented and duly paid,	22 23 24 25 26 27 28
	(b) any controlled money paid by any person to the licensee or received by the licensee for or on behalf of any person in connection with the licensee's business as a licensee and, if not still held by the licensee, the manner and time of its disbursement,	29 30 31 32 33
	(c) any transaction by or with the licensee as a licensee.	34

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- (2) The licensee must comply with a notice under this section within 7 days after it is served on the licensee. 1  
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- (3) A notice under this section cannot relate to any transaction by or with the licensee more than 3 years before the notice is served on the licensee. 3  
4  
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- 67 Person concerned in transaction may request itemised account 6**
- (1) A person directly concerned in any transaction by or with a licensee in connection with the licensee's conveyancing business may request the licensee in writing to render to the person in the manner prescribed by the regulations an itemised account of the transaction. 7  
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- (2) The licensee must comply with the request within 14 days after the request is served on the licensee. 11  
12
- (3) A person may not request an itemised account of a transaction that took place more than 6 months before the making of the request. 13  
14
- 68 Offence 15**
- (1) A licensee must not fail without reasonable excuse (proof of which lies on the licensee) to comply with a requirement under this Division. 16  
17
- (2) A licensee must not, in purported compliance with a requirement under this Division, furnish information that the licensee knows is false or misleading in a material particular. 18  
19  
20
- Maximum penalty: 100 penalty units. 21



**Part 6 Records** 1

**Division 1        Keeping and inspection of records** 2

**69    Licensee's records** 3

(1) In this Act: 4

*licensee's records* means records and other documents required to be kept by a licensee under this Act or the regulations. 5  
6

(2) The regulations may make provision for or with respect to: 7

(a) requiring licensees to make and keep specified records and documents relating to the licensee's conveyancing business, accounts kept in connection with that business and transactions carried out by the licensee or employees of the licensee in connection with conveyancing work carried out by them, and 8  
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(b) the manner and form in which such records and documents are to be kept. 13  
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(3) A provision of such a regulation may impose a penalty not exceeding 50 penalty units for a contravention of the provision. 15  
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(4) If records or documents that were licensee's records are in the possession, custody or control of a person as a former licensee, as the personal representative of a deceased licensee, or as a result of the transfer of the business of the licensee or otherwise, those records or documents are still licensee's records for the purposes of this Division. 17  
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(5) This Part extends to records and documents in the possession, custody or control of a person even when the records or documents are located outside the State. 22  
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**70    Inspection of licensee's records** 25

(1) A licensee's records are at all reasonable times open to inspection by an authorised officer. 26  
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(2) An authorised officer may require a person who has possession, custody or control of a licensee's records: 28  
29

(a) to produce the licensee's records for inspection, and 30

(b)	to furnish all authorities and orders to financial institutions as may be reasonably required of the person.	1 2
(3)	If a licensee is absent from an office or place of business of the licensee, any employee or agent of the licensee for the time being having the apparent control or charge of the office or place of business is taken to have possession, custody or control of the licensee's records at that office or place of business.	3 4 5 6 7
(4)	An authorised officer may take copies of or extracts from, or make notes from, any licensee's records produced to the authorised officer under this section and for that purpose may take temporary possession of those records.	8 9 10 11
<b>71</b>	<b>Inspection of records of authorised deposit-taking institutions</b>	12
(1)	An authorised officer may serve on an authorised deposit-taking institution with which a licensee has deposited any money in any account (whether the licensee's own account or a general or separate trust account) a notice, in a form approved by the Director-General and signed by the authorised officer:	13 14 15 16 17
(a)	certifying as to the reason for serving the notice, as provided by this section, and	18 19
(b)	requiring the authorised deposit-taking institution to produce to the authorised officer for inspection the records of the institution relating to the account.	20 21 22
(2)	Each of the following is a reason for serving a notice under this section:	23 24
(a)	the licensee cannot be located,	25
(b)	the licensee has left the State,	26
(c)	the licensee or any other person required to do so has failed to furnish any authority or order on the institution in accordance with a requirement under this Division,	27 28 29
(d)	the licensee has ceased to be a licensee,	30
(e)	the licensee has contravened a provision of Part 5 (Trust money and controlled money).	31 32
(3)	An authorised officer may take copies of or extracts from, or make notes from, any records produced to the authorised officer under this section and for that purpose may take temporary possession of those records.	33 34 35 36

<b>72</b>	<b>Power to require production of licensee's records</b>	1
(1)	An authorised officer may give a written notice to a licensee or to another person that the officer reasonably believes has possession, custody or control of the licensee's records requiring the licensee or person to produce the licensee's records specified in the notice at the time and place specified in the notice.	2 3 4 5 6
(2)	An authorised officer may inspect any record produced in response to a notice under this section and may take copies of or extracts from, or make notes from, any such record.	7 8 9
(3)	A licensee does not contravene a provision of this Act if the licensee was unable to comply with the provision because an authorised officer retained possession of a record or document under this section.	10 11 12
<b>73</b>	<b>Power to take possession of records to be used as evidence</b>	13
(1)	An authorised officer to whom any record is produced under this Part may take possession of the record if the authorised officer considers it necessary to do so for the purpose of obtaining evidence or protecting evidence from destruction.	14 15 16 17
(2)	If an authorised officer takes possession of any record under this section, the record may be retained by the officer until the completion of any proceedings (including proceedings on appeal) in which the record may be evidence.	18 19 20 21
(3)	The person from whom the record was taken must be provided, within a reasonable time after the record is taken, with a copy of the record certified by an authorised officer as a true copy.	22 23 24
(4)	A copy of a record provided under this section is, as evidence, of equal validity to the record of which it is certified to be a copy.	25 26
<b>74</b>	<b>Offence</b>	27
(1)	A person must not:	28
(a)	wilfully delay or obstruct an authorised officer in the exercise of the authorised officer's functions under this Division, or	29 30
(b)	fail to comply with a requirement under this Division to produce a record or document in the person's possession, custody, or control, or	31 32 33

- (c) fail to comply with a requirement under this Division to furnish any authority or order reasonably required of the person under this Division, or 1  
2  
3
  - (d) in purported compliance with a requirement under this Division produce a document or record knowing it to be false or misleading in a material particular. 4  
5  
6
- Maximum penalty: 100 penalty units. 7
- (2) A court that convicts a person of an offence under this section may, in addition to any penalty imposed, order the person to produce the records in respect of which the offence occurred to the Director-General or an authorised officer within such time as the court specifies in the order. 8  
9  
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12
  - (3) A person who fails to produce a record in accordance with an order of a court made under this section is guilty of an offence punishable by a penalty not exceeding 10 penalty units in respect of each day that the failure continues. 13  
14  
15  
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**Division 2      Audit of licensee's records** 17

**75 Requirement for audit** 18

- (1) A person who is a licensee, a former licensee or the personal representative of a licensee must, within 3 months after the end of the audit period applicable to the person: 19  
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21
  - (a) cause the records and documents relating to any trust money or controlled money held during that period by the person in accordance with this Act to be audited by a person qualified to act as an auditor for the purposes of this Division, and 22  
23  
24  
25
  - (b) lodge the auditor's report on the audit with the Director-General. 26  
27
- (2) The Director-General may in a particular case or class of cases by order in writing extend the period of 3 months under subsection (1). 28  
29
- (3) The person must retain a copy of the auditor's report on the audit for a period of 3 years after the date on which the report was made. 30  
31

(4) The auditor's report is to be in a form approved by the Director-General and is to be signed by the auditor.	1 2
Maximum penalty:	3
(a) 100 penalty units in the case of a corporation, or	4
(b) 50 penalty units in any other case.	5
<b>76 Audit period</b>	6
(1) The audit period applicable to a person is the year ending on 30 June or such other period as the Director-General may fix in respect of the person under this section.	7 8 9
(2) The Director-General may by order in writing served on a person fix some other period as the audit period applicable to the person.	10 11
(3) Such an order may be made on the application of the person or on the Director-General's own initiative.	12 13
(4) Such an order may be made with such limitations as to time or circumstances, and subject to such conditions, as the Director-General considers appropriate.	14 15 16
<b>77 Statutory declaration required where no trust money or controlled money held or received</b>	17 18
A licensee who in the course of the audit period applicable to the licensee neither received nor held any money for or on behalf of any other person must, within the period of 3 months after that day, make and lodge with the Director-General a statutory declaration to that effect.	19 20 21 22 23
Maximum penalty: 100 penalty units.	24
<b>78 Audit obligations of partners</b>	25
If the provisions of this Division are complied with by any one of the licensees in a partnership of licensees in relation to the audit of the records and documents of the partnership, each of those partners is taken to have complied with those provisions.	26 27 28 29
<b>79 Qualifications of auditors</b>	30
(1) A person is qualified to act as an auditor for the purposes of this Division if the person:	31 32

- (a) is a registered company auditor within the meaning of the Corporations Act, or 1  
2
- (b) is a person who has been nominated by the person whose records and documents are to be audited and who has been approved by the Director-General by order in writing. 3  
4  
5
- (2) Such a person is not qualified to act as an auditor for the purposes of this Division if the person: 6  
7
  - (a) is or has at any time within 2 years before the last day of the period in respect of which the audit is to be made, been an employee or partner of the person whose records or documents are to be audited, or 8  
9  
10  
11
  - (b) is a licensee, or a shareholder in a corporation that is a licensee and that has not more than 20 shareholders. 12  
13

**80 Duties of auditors** 14

- (1) If an auditor in the course of making an audit for the purposes of this Division discovers that any breach of this Act or the regulations has been committed, that there is any discrepancy relating to the trust money or controlled money to which the audit relates or that the records or documents concerned are not kept in such a manner as to enable them to be properly audited, the auditor must: 15  
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  - (a) fully set out the facts so discovered by the auditor in the report made by the auditor for the purposes of the audit, and 21  
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  - (b) forward a copy of the report to the Director-General. 23
- (2) An auditor, or an assistant of an auditor, appointed to make an audit for the purposes of this Division must not communicate any matter which may come to the auditor's knowledge in the course of the audit to any person except: 24  
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  - (a) in the course of the auditor's duties as an auditor or assistant of an auditor, or 28  
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  - (b) in accordance with this section, or 30
  - (c) in the like circumstances and to the like extent as an officer of the Department is permitted under this Act to publish that information. 31  
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- (3) An auditor's report under this Division (including under this section) relating to records or documents of any person, and any statutory declaration lodged with the Director-General under this Division, are 34  
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available in the hands of the Director-General for inspection by an            1  
auditor appointed to carry out for the purposes of this Division any            2  
subsequent audit of the records or documents of that person.            3

**Division 3            Freezing of accounts**            4

**81    Definitions**            5

In this Division:            6

*account* means:            7

(a)    a trust account in a licensee's name with a financial institution,            8  
or            9

(b)    an account in a licensee's name or in which a licensee has an            10  
interest with a financial institution, or            11

(c)    another account to which trust money is deposited.            12

*financial institution* includes an approved deposit-taking institution.            13

*holder* of an account means the licensee or other person authorised to            14  
operate on the account.            15

*licensee* includes a former licensee and the personal representative of            16  
a deceased licensee.            17

*trust money* means money received for or on behalf of any person by            18  
a licensee (whether or not the money is deposited in a trust account            19  
required to be kept by a licensee).            20

**82    Director-General may freeze licensee's accounts in particular cases**            21

(1) A direction under this Division may be given when it appears to the            22  
Director-General that any of the following persons has, or may have,            23  
stolen, misappropriated or misapplied trust money:            24

(a)    a licensee,            25

(b)    the person in charge of a licensee's business at a place,            26

(c)    an employee of a licensee.            27

(2) The Director-General may by direction in writing direct that:            28

(a)    if a claim has been made against the Fund concerning the trust            29  
money, all or part of the amount to the credit of a specified            30  
account be paid to the Director-General, or            31

(b)	an amount must not be drawn from a specified account other than with the Director-General’s written approval, or	1 2
(c)	a specified account may be operated only under specified conditions.	3 4
(3)	The direction must be given to each holder of the account and the financial institution at which the account is kept, and must identify the account to which it relates.	5 6 7
(4)	Any amount paid to the Director-General pursuant to such a direction must be paid into the Fund.	8 9
<b>83</b>	<b>Financial institution must comply with direction</b>	<b>10</b>
(1)	A financial institution to which a direction under this Division is given (whether or not the direction has been given to anyone else) must not, while the direction is in force:	11 12 13
(a)	pay a cheque or other instrument drawn on the account concerned unless the cheque or instrument is also signed by the Director-General or a person authorised by the Director-General for the purposes of this section, or	14 15 16 17
(b)	give effect to another transaction on the account that is not authorised because of the direction.	18 19
	Maximum penalty: 500 penalty units.	20
(2)	The signature of the Director-General or authorised person on a cheque or other instrument is sufficient evidence of the Director-General’s approval to draw an amount from the account to honour the cheque or other instrument.	21 22 23 24
(3)	A manager or principal officer in charge of an office or branch of the financial institution where an account is kept, or another officer of the financial institution, must not knowingly permit a contravention of this section by the financial institution.	25 26 27 28
	Maximum penalty: 100 penalty units or imprisonment for 12 months, or both.	29 30
(4)	A person to whom a direction is given does not incur a civil liability to another person by reason only of complying with the direction.	31 32



<b>84</b>	<b>Account not to be operated unless Director-General allows</b>	1
	After a direction under this Division has been given to the holder of an account, the holder must not (while the direction remains in force) sign a cheque or other instrument drawn on the account unless the cheque or other instrument has first been signed by the Director-General or a person authorised by the Director-General to sign the cheque or instrument.	2 3 4 5 6 7
	Maximum penalty: 100 penalty units or imprisonment for 12 months, or both.	8 9
<b>85</b>	<b>Director-General may operate account</b>	10
	(1) The Director-General or a person authorised in writing by the Director-General (an <i>authorised person</i> ) may operate on an account that is the subject of a direction under this Division if the holder of the account refuses to operate the account.	11 12 13 14
	(2) A statutory declaration made by the Director-General or authorised person to the effect that the account holder is refusing to operate on the account is sufficient evidence to the licensee's financial institution of that fact.	15 16 17 18
<b>86</b>	<b>Withdrawal of direction</b>	19
	(1) A direction remains in force until it is withdrawn.	20
	(2) The Director-General may withdraw a direction under this Division at any time.	21 22
	(3) When a direction is withdrawn, the Director-General is to give all persons who were given the direction a notice that the direction has been withdrawn. Failure to give notice does not affect the withdrawal of the direction.	23 24 25 26

<b>Part 7</b>	<b>Claims arising from failure to account</b>	1
<b>87</b>	<b>Definition</b>	2
	In this Part:	3
	<i>PSBA Act</i> means the <i>Property, Stock and Business Agents Act 2002</i> .	4
<b>88</b>	<b>Claims can be made against Compensation Fund</b>	5
	(1) Part 10 of the PSBA Act applies to and in respect of a failure to account (within the meaning of that Part) arising from any act or omission of a licensee under this Act that occurs on or after the commencement of this Act, as if the licensee were a licensee under the PSBA Act.	6 7 8 9 10
	(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.	11 12 13
	(3) Section 169 (4) of the PSBA Act is not applicable to a person as a licensee under this Act.	14 15
<b>89</b>	<b>Contributions by applicants for licences</b>	16
	An applicant for a licence is liable to pay the contribution and any levy required to be paid from time to time under section 168 or 169 of the PSBA Act.	17 18 19

**Part 8 Management and receivership** 1

**Division 1 Interpretation** 2

**90 Definitions** 3

In this Part: 4

*associate*, in relation to a licensee, has the meaning given to it by section 91. 5  
6

*expenses* of management or receivership means: 7

(a) the remuneration payable to the manager or receiver, or 8

(b) the expenses incurred in the course of the management or receivership, or 9  
10

(c) the costs of legal proceedings involved in the management or receivership, or 11  
12

(d) any reimbursement of the manager or receiver under this Part. 13

*failure to account* has the meaning given to it by section 92. 14

*licensee* includes: 15

(a) a firm of licensees, and 16

(b) a former licensee, and 17

(c) in relation to anything done or omitted by a licensee—a deceased licensee and a deceased former licensee, and 18  
19

(d) except in relation to anything done or omitted by a licensee—the personal representative of a deceased licensee or a deceased former licensee. 20  
21  
22

*Operating Account* means the Department of Fair Trading Operating Account or a departmental account prescribed by the regulations for the purposes of this definition. 23  
24  
25

*property* of a licensee means: 26

(a) money or other property received by the licensee on behalf of another person in the conduct of a conveyancing business, or 27  
28

(b) interest, dividends, income, profits or other property derived from or acquired with money or other property referred to in paragraph (a), or 29  
30  
31

- (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 1  
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3
- (d) any means by which any records referred to in paragraph (c) that are not written may be reproduced in writing, 4  
5
- and, in relation to a licensee whose conveyancing business is under management, includes any property of the business. 6  
7
- 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. 8  
9  
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12
- receiver* means a receiver appointed by the Supreme Court under this Part. 13  
14
- relevant associate* means a licensee’s associate of whose property a receiver has been appointed under this Part. 15  
16
- relevant licensee* means a licensee of whose property a receiver has been appointed. 17  
18

**91 Associates of a licensee** 19

- (1) In this Part, a reference to a licensee’s associate is a reference to: 20
  - (a) a partner of the licensee, or 21
  - (b) an employee or agent of the licensee, or 22
  - (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 23  
24  
25  
26
  - (d) a person who bears a prescribed relationship to the licensee or to a person referred to in paragraphs (a)–(c), or 27  
28
  - (e) a corporation that (if a person referred to in paragraphs (b)–(d) is a corporation) is a subsidiary of the person within the meaning of the Corporations Act, or 29  
30  
31
  - (f) a person declared by the regulations to be an associate of the licensee or belonging to a class of persons so declared. 32  
33

- (2) For the purposes of subsection (1) (d), a person bears a prescribed relationship to a licensee or other person if the relationship is that of:
- (a) a spouse, or
  - (b) a de facto partner, being a person who has a de facto relationship (within the meaning of the *Property Relationships Act 1984*) with the licensee or other person, or
  - (c) a child, grandchild, sibling, parent or grandparent, whether derived through paragraph (a) or (b) or otherwise, or
  - (d) a kind prescribed by the regulations for the purposes of this section.

**92 Failure to account**

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

**Division 2                    Management**

**93 Appointment of manager**

- (1) The Director-General may appoint a manager for a licensee’s conveyancing business in any of the following cases if the Director-General is of the opinion that it is necessary to make the appointment in order to protect the interests of other persons:

- (a) the licensee has made a request to the Director-General for the appointment of a manager, 1  
2
  - (b) the licensee’s licence has been cancelled or is under suspension, 3
  - (c) the Director-General is of the opinion (whether as a consequence of a determination by the Director-General under Part 10 of the *Property, Stock and Business Agents Act 2002* as applied by section 88 of this Act or otherwise) that there has been, or that there may have been, a failure to account by the licensee, 4  
5  
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  - (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: 10  
11  
12
    - (i) is mentally or physically infirm, or 13
    - (ii) is bankrupt, has applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, has compounded with his or her creditors or has made an assignment of his or her remuneration for their benefit, or 14  
15  
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18
    - (iii) is an inmate within the meaning of the *Crimes (Administration of Sentences) Act 1999*, or 19  
20
    - (iv) has died, or 21
    - (v) has abandoned his or her conveyancing business. 22
  - (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. 23  
24  
25
  - (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. 26  
27  
28  
29
- 94 Qualifications for appointment as a manager** 30
- A person is not eligible to be appointed as the manager of a licensee’s conveyancing business unless the person is: 31  
32
- (a) a licensee who holds a licence that is not subject to a condition of the kind referred to in section 14 (b) or (c), or 33  
34
  - (b) a solicitor who holds an unrestricted practising certificate. 35
- Note.** Section 14 (b) and (c) provide for the grant of licences subject to conditions prohibiting the licensee from carrying out conveyancing work in relation to specific kinds of transaction or except in relation to specified kinds of transaction. 36  
37  
38

<b>95</b>	<b>Powers of a manager</b>	1
(1)	The manager of a licensee’s conveyancing business may, subject to subsection (2) and to the terms of his or her appointment:	2
		3
(a)	carry out conveyancing work on behalf of the existing clients of the business, and	4
		5
(b)	accept instructions from, and carry out conveyancing work on behalf of, new clients, and	6
		7
(c)	dispose of, and otherwise deal with, any property in relation to the business, and	8
		9
(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	10
		11
(e)	incur such expenses as are reasonably related to the conduct of the business, and	12
		13
(f)	do all such things as are ancillary to the exercise of the powers referred to in paragraphs (a)–(e),	14
		15
	as if he or she were the licensee to whom the business belongs.	16
(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.	17
		18
		19
		20
<b>96</b>	<b>Management continues under receivership</b>	21
(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.	22
		23
		24
(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.	25
		26
		27
<b>97</b>	<b>Acts of manager to be taken to be acts of licensee</b>	28
(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.	29
		30
		31
(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.	32
		33
		34

<b>98</b>	<b>Manager may be reimbursed</b>	1
	(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 3 4 5
	(2) Reimbursement under this section is to be by way of payment from the Operating Account.	6 7
	(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.	8 9 10 11 12 13
<b>99</b>	<b>Payment of expenses of management</b>	14
	(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.	15 16 17 18
	(2) An amount paid under this section is recoverable by the Director-General as a debt owed by the relevant licensee.	19 20
<b>100</b>	<b>Manager to report to Director-General</b>	21
	(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.	22 23 24 25
	(2) A report is to include such information as the Director-General directs.	26
	(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.	27 28 29 30
<b>101</b>	<b>Trust money and controlled money</b>	31
	(1) Part 6 (Records) applies to the accounts kept by a manager in the same way as it applies to the accounts kept by a licensee.	32 33



Clause 101            Conveyancers Licensing Bill 2002

Part 8                Management and receivership

Division 2            Management

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- (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.            1  
2  
3  
4

**102    Office accounts**            5

The regulations may make provision with respect to:            6

- (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            7  
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9  
10
- (b) the purposes for which money in any such account may be expended.            11  
12

**103    Termination of management**            13

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.            14  
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**104    Obstruction of managers**            20

A person must not hinder, obstruct or delay a manager in the exercise of his or her functions under this Division.            21  
22

Maximum penalty: 100 penalty units.            23

**Division 3            Receivership**            24

**105    Supreme Court may appoint receiver**            25

- (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.            26  
27  
28  
29
- (2) Such an application may be made by the Director-General only if:            30
- (a) the licensee has made a request to the Director-General for the appointment of a receiver, or            31  
32

- (b) the licensee’s licence has been cancelled or suspended, or 1
  - (c) the Director-General is of the opinion (whether as a 2  
consequence of a determination by the Director-General under 3  
Part 10 of the *Property, Stock and Business Agents Act 2002* as 4  
applied by section 88 of this Act or otherwise) that there has 5  
been, or that there may have been, a failure to account by the 6  
licensee, or 7
  - (d) the Director-General is of the opinion that a person is unable to 8  
obtain payment or delivery of property held by the licensee 9  
because the licensee: 10
    - (i) is mentally or physically infirm, or 11
    - (ii) is bankrupt, has applied to take the benefit of any law 12  
for the relief of bankrupt or insolvent debtors, has 13  
compounded with his or her creditors or has made an 14  
assignment of his or her remuneration for their benefit, 15  
or 16
    - (iii) is an inmate within the meaning of the *Crimes 17  
(Administration of Sentences) Act 1999*, or 18
    - (iv) has died, or 19
    - (v) has abandoned his or her conveyancing business, 20

and if the Director-General is of the opinion that it is necessary for the 21  
application to be made in order to protect the interests of other persons. 22
  - (3) Nothing in this Division prevents a manager of a licensee’s 23  
conveyancing business from being appointed as a receiver of the 24  
licensee’s property. 25
- 106 Receivership may extend to property of licensee’s associate** 26
- If, on the application of a receiver, the Supreme Court is satisfied that 27  
all or any of the property of a licensee’s associate should be declared 28  
to be receivable property, the Court may appoint the receiver to be the 29  
receiver of all or any of that property. 30
- 107 Court to be closed** 31
- (1) Before commencing to hear an application for the appointment of a 32  
receiver, the Supreme Court may order from the precincts of the Court 33  
any person who is not: 34
    - (a) an officer of the Court, or 35

- (b) a party, a legal representative of a party or a clerk of such a legal representative, or 1  
2
  - (c) a member of the same firm of licensees as the respondent, or 3
  - (d) a person who is in the course of giving evidence, or 4
  - (e) a person permitted by the Court to be present in the interests of justice. 5  
6
- (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. 7  
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**108 Order to be served** 11

- (1) On the appointment of a receiver, the Director-General is to cause a copy of the order of appointment to be served on: 12  
13
- (a) the relevant licensee or relevant associate, and 14
  - (b) any other person on whom the Supreme Court directs a copy of the order to be served. 15  
16
- (2) The Supreme Court may give directions as to the manner of service and may dispense with service if it thinks fit. 17  
18

**109 Receiver may take possession of property** 19

- (1) A receiver may take possession of receivable property of the relevant licensee or relevant associate. 20  
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- (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. 22  
23  
24
- (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. 25  
26  
27
- (4) If, on the application of a receiver, the Supreme Court is satisfied that such an order has not been complied with, the Court: 28  
29
- (a) may order the seizure of any receivable property located on premises specified in the order, and 30  
31
  - (b) may make such further order in the matter as it thinks fit. 32

(5) An order under subsection (4) (a) authorises:	1
(a) any police officer, or	2
(b) the receiver, or a person authorised by the receiver, together with any police officer,	3
to enter the premises specified in the order and to search for, seize and remove any property that appears to be receivable property.	4
to enter the premises specified in the order and to search for, seize and remove any property that appears to be receivable property.	5
to enter the premises specified in the order and to search for, seize and remove any property that appears to be receivable property.	6
(6) An application by a receiver under subsection (3) may be made:	7
(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	8
(b) in any other case—in the name of the relevant licensee or relevant associate.	9
(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	10
(b) in any other case—in the name of the relevant licensee or relevant associate.	11
(b) in any other case—in the name of the relevant licensee or relevant associate.	12
(7) A receiver must, as soon as possible, return property seized under this section if it transpires that it is not receivable property.	13
(7) A receiver must, as soon as possible, return property seized under this section if it transpires that it is not receivable property.	14
<b>110 Information about receivable property</b>	15
(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.	16
(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.	17
(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.	18
(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.	19
Maximum penalty: 100 penalty units.	20
(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.	21
(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.	22
(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.	23
(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.	24
(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.	25
(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.	26
(4) Information given to a receiver under this section is not admissible as evidence in any legal proceedings, other than:	27
(4) Information given to a receiver under this section is not admissible as evidence in any legal proceedings, other than:	28
(a) proceedings taken by a receiver for the recovery of receivable property, or	29
(b) proceedings taken under this Part, or	30
(c) proceedings taken under Part 5 (Trust money and controlled money) against a licensee:	31
(i) if the information was given to the receiver otherwise than by the licensee, or	32
(i) if the information was given to the receiver otherwise than by the licensee, or	33
(i) if the information was given to the receiver otherwise than by the licensee, or	34
(i) if the information was given to the receiver otherwise than by the licensee, or	35

- (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.            1  
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**111 Stop order on account**            4

- (1) A receiver who believes on reasonable grounds that money held in an account with an authorised deposit-taking institution is receivable property may serve on the institution concerned an order (in this section referred to as a *stop order*) prohibiting operations on the account by any person other than the receiver or a person authorised by the receiver.            5  
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- (2) A stop order may be served by leaving it with the manager, accountant or other person appearing to be in charge at the branch of the authorised deposit-taking institution at which the account is kept, but has no effect unless there is annexed to it a copy of the order appointing the receiver.            11  
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15
- (3) An authorised deposit-taking institution served with a stop order:            16
- (a) must permit the receiver, or a person authorised by the receiver, to operate on the account to which the order relates, and            17  
18
- (b) must not permit any withdrawal from the account otherwise than by, or by the authority of, the receiver.            19  
20
- (4) A receiver may transfer money from an account the subject of a stop order to another account with the authorised deposit-taking institution in the name of the receiver to be dealt with as receivable property.            21  
22  
23
- (5) The authorised deposit-taking institution has the same obligations and protections:            24  
25
- (a) in relation to an account the subject of a stop order, and            26
- (b) in relation to an account to which money in such an account is transferred,            27  
28
- as if the receiver were the relevant licensee or relevant associate.            29

**112 Improper dealing with property**            30

- A person must not, with intent to defeat the purposes of this Division:            31
- (a) operate on an account at an authorised deposit-taking institution, or            32  
33
- (b) destroy or conceal receivable property or property that is likely to become receivable property, or            34  
35

(c)	move receivable property, or property that is likely to become receivable property, from one place to another, or	1 2
(d)	deliver possession of receivable property, or property that is likely to become receivable property, to another person, or	3 4
(e)	deliver control of receivable property, or property that is likely to become receivable property, to another person.	5 6
	Maximum penalty: 100 penalty units.	7
<b>113</b>	<b>Recovery of compensation for disposal of receivable property</b>	8
(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:	9 10 11
(a)	the person knew or believed at the time that the taking, payment or transfer was unlawful or in breach of trust, or	12 13
(b)	there was no consideration for the taking, payment or transfer, or	14 15
(c)	there was inadequate consideration for the taking, payment or transfer, or	16 17
(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,	18 19 20
	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.	21 22 23
(2)	A person from whom an amount is recovered under subsection (1) is not liable to any other person in respect of the amount.	24 25
(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:	26 27 28 29
(a)	may recover from the person as a debt the amount of the payment or the value of the property, or	30 31
(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.	32 33 34 35

- (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. 1  
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- (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. 5  
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- (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. 10  
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**114 Receiver may give certificate** 13

- (1) A receiver, or a person authorised by the Director-General, may give a certificate as to any one or more of the following: 14  
15
- (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, 16  
17  
18  
19
- (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, 20  
21  
22
- (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, 23  
24  
25
- (d) the entries made in the records of a licensee or a licensee's associate and the truth or falsity of the entries, 26  
27
- (e) the use of property unlawfully or in breach of trust. 28
- (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. 29  
30  
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**115 Receiver is taken to be beneficially entitled** 32

- (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. 33  
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35

(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.	1 2 3 4 5
<b>116 Receiver may deal with property</b>	6
(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.	7 8 9
(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.	10 11 12
<b>117 Other powers of receiver</b>	13
(1) A receiver:	14
(a) may prove, grant, claim or draw a dividend in respect of a debt that is receivable property, and	15 16
(b) may take proceedings to recover damages for a tort committed in relation to receivable property, and	17 18
(c) may give a receipt for money that is receivable property, and	19
(d) may employ a person to advise or act in relation to receivable property,	20 21
in the name of the receiver or in the name of the relevant licensee or relevant associate.	22 23
(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.	24 25 26
(3) A receiver is not, in the exercise of his or her functions as a receiver, a personal representative of a deceased licensee.	27 28
<b>118 Notice to claim receivable property</b>	29
(1) A receiver may give notice to:	30
(a) the relevant licensee or relevant associate, or	31



- (b) any other person, 1
- that any claim the licensee, associate or other person has to receivable 2  
property must be submitted to the receiver within 1 month after the 3  
giving of the notice or within such longer period as is stated in the 4  
notice. 5
- (2) A claim submitted in response to such a notice must state: 6
  - (a) full particulars of the property, and 7
  - (b) the grounds of the claim. 8
- (3) A receiver may disregard a claim made by a licensee, a licensee’s 9  
associate or any other person who has been given a notice under this 10  
section if the claim is not made in accordance with the notice. 11
- (4) The relevant licensee or relevant associate is not entitled: 12
  - (a) to enforce a claim to receivable property, or 13
  - (b) except against a client—to the benefit of a lien against a 14  
document that is receivable property, 15

unless all other enforceable claims against the property have been 16  
satisfied and the expenses of the receivership paid. 17

**119 Lien for costs on receivable property** 18

- (1) If a licensee claims a lien for costs on receivable property, the receiver 19  
may serve on the licensee a written notice requiring the licensee to give 20  
to the receiver, within a specified period of not less than one month: 21
  - (a) particulars sufficient to identify the property, and 22
  - (b) a detailed itemised account relating to the amount in respect of 23  
which each lien is claimed. 24
- (2) If the licensee requests the receiver in writing to allow access to such 25  
records as may be reasonably necessary to enable the preparation of the 26  
itemised account, the time allowed for providing the itemised account 27  
does not begin to run until access to those records is provided. 28
- (3) If a requirement of a notice under this section is not complied with, the 29  
receiver may disregard the claim in dealing with the property claimed 30  
to be subject to a lien. 31

<b>120 Examination by receiver</b>	1
(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 3 4
(2) On an examination under this section:	5
(a) the licensee or other person may be represented by a solicitor or barrister, and	6 7
(b) the Supreme Court may put, or allow to be put, to the licensee or other person such questions as it thinks fit.	8 9
(3) The licensee or other person may be examined on oath or affirmation.	10
(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.	11 12 13 14
(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.	15 16 17
<b>121 Property not dealt with by receiver</b>	18
(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:	19 20 21
(a) if the Director-General so requires within one month after the notice is given—must transfer and deliver the property to the Director-General, or	22 23 24
(b) if no such requirement is made—must transfer and deliver the property to the relevant licensee or relevant associate.	25 26
(2) If property other than money is transferred or delivered to the Director-General under this section, the Director-General:	27 28
(a) must deal with it as the Supreme Court directs, and	29
(b) if the property is sold—must treat the proceeds as money paid to the Director-General under this section.	30 31
(3) The Director-General must apply money paid to the Director-General under this section:	32 33
(a) firstly—towards the satisfaction of wholly or partly unsatisfied claims against the relevant licensee, and	34 35

(b)	secondly—in payment of the expenses of the receivership.	1
(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.	2 3 4
<b>122</b>	<b>Investment of money by receiver</b>	5
(1)	A receiver may invest receivable property in any manner in which trustees are authorised by the <i>Trustee Act 1925</i> to invest trust funds.	6 7
(2)	Income received from an investment under this section, and any profit made on the sale of such an investment, is receivable property.	8 9
<b>123</b>	<b>Receiver may be reimbursed for damages</b>	10
(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.	11 12 13 14
(2)	Reimbursement under this section is to be by way of payment from the Operating Account.	15 16
<b>124</b>	<b>Payment of expenses of receivership</b>	17
(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.	18 19 20
(2)	An amount paid under this section may be recovered by the Director-General from the relevant licensee as a debt.	21 22
(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.	23 24 25 26
(4)	The Supreme Court, on the application of the relevant licensee:	27
(a)	may re-open any agreement between the Director-General and a receiver for remuneration of the receiver, and	28 29
(b)	may determine the amount to be paid.	30

<b>125</b>	<b>Supreme Court may review expenses of receivership</b>	1
(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 3 4 5
(2)	After the taking of accounts, the Supreme Court:	6
(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	7 8 9
(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.	10 11 12
<b>126</b>	<b>Receivable property not to be attached</b>	13
	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.	14 15 16
<b>127</b>	<b>Applications for directions by receiver, licensee etc</b>	17
(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.	18 19 20 21
(2)	On an application under this section, the Supreme Court may give such directions as it thinks fit.	22 23
<b>128</b>	<b>Supreme Court may give general directions to receiver</b>	24
(1)	The Supreme Court:	25
(a)	may authorise a receiver to do such things in the exercise of the receiver's functions as the Supreme Court considers appropriate, and	26 27 28
(b)	may give directions for the exercise of any such authority.	29
(2)	A receiver must exercise any authority so conferred in accordance with any direction so given.	30 31

<b>129</b>	<b>Receiver to report to Supreme Court and Director-General</b>	1
(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 3 4
(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.	5 6 7
(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.	8 9 10
(4)	Unless the Supreme Court orders their destruction, records lodged under this section are to remain in the custody of the Court.	11 12
<b>130</b>	<b>Termination of appointment of receiver</b>	13
(1)	The Supreme Court:	14
(a)	may terminate the appointment of a receiver, and	15
(b)	may, if it thinks fit, appoint a new receiver either immediately or at any time within the next 14 days.	16 17
(2)	The former receiver must transfer or deliver the receivable property:	18
(a)	if a new receiver is appointed—to the new receiver in accordance with any directions given by the Supreme Court, or	19 20
(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.	21 22 23
	Maximum penalty: 50 penalty units.	24
(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.	25 26 27
(4)	A former receiver is not required to comply with the requirements of this section unless:	28 29
(a)	the expenses of the receivership have been paid to the Director-General, or	30 31
(b)	the Director-General otherwise directs in relation to those expenses.	32 33

- (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). 1  
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**131 Obstruction of receivers** 5

A person must not hinder, obstruct or delay a receiver in the exercise of his or her functions under this Division. 6  
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Maximum penalty: 100 penalty units. 8

## **Part 9 Complaints and disciplinary action** 1

### **132 Grounds for disciplinary action** 2

- (1) Disciplinary action under this Part can be taken against a person who is or was the holder of a licence on any one or more of the following grounds: 3
- (a) the person has contravened a provision of this Act or any other Act administered by the Minister, or the regulations under any such Act, whether or not the person has been prosecuted or convicted of an offence in respect of the contravention, 4  
5
  - (a) the person has contravened a provision of this Act or any other Act administered by the Minister, or the regulations under any such Act, whether or not the person has been prosecuted or convicted of an offence in respect of the contravention, 6  
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  - (b) the person has failed to observe any rules of conduct prescribed by the regulations under section 22, 10  
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  - (c) the person has contravened a condition of the licence, 12
  - (d) the person is a disqualified person or is otherwise not eligible under section 8 to hold a licence, 13  
14
  - (e) the person is not a fit and proper person to be involved in the direction, management or conduct of the business of a licensee, 15  
16
  - (f) without limiting paragraphs (d) and (e), the person is (because of physical or mental illness or infirmity) unfit to carry out conveyancing work and it is in the public interest that disciplinary action be taken, 17  
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  - (g) the person has failed to pay any part of a contribution or levy that is due and payable under section 12, 21  
22
  - (h) the person has breached an undertaking given by the person to the Director-General under this Act or the *Fair Trading Act 1987*, in respect of the person's conduct of business or exercise of functions under the licence, 23  
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26
  - (i) the person has failed to comply with a direction given to the person by the Director-General pursuant to the taking of disciplinary action under this Part, 27  
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29
  - (j) the person has failed to pay a monetary penalty imposed on the person by the Director-General pursuant to the taking of disciplinary action under this Part, 30  
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  - (k) the issue of the person's licence was obtained by fraud or mistake, 33  
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- (1) any other ground specified in the regulations as a ground for the taking of disciplinary action against a person under this Act. 1  
2
- (2) For the purposes of subsection (1) (f), a person is unfit to carry out conveyancing work only if the person, because of his or her physical or mental illness or infirmity, is unable to carry out the inherent requirements of conveyancing work. 3  
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6
- (3) The following are to be taken into account in determining whether a person is unable to carry out the inherent requirements of conveyancing work: 7  
8  
9
  - (a) the person’s past training, qualifications and experience relevant to such work, 10  
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  - (b) if the person is already carrying out such work—the person’s performance in carrying out such work, 12  
13
  - (c) all other factors that it is reasonable to take into account. 14

**133 Disciplinary action** 15

- (1) Each of the following actions is disciplinary action that the Director-General can take against a person under this Act: 16  
17
  - (a) caution or reprimand the person, 18
  - (b) give a direction to the person requiring the person to give a specified undertaking to the Director-General as to the manner in which the person will conduct the conveyancing business or exercise functions under the person’s licence, 19  
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  - (c) give a direction to the person requiring the person to take specified action within a specified time in connection with the conduct of the conveyancing business or the exercise of functions under a licence, 23  
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26
  - (d) impose a monetary penalty on the person of an amount not exceeding 200 penalty units in the case of a corporation or 100 penalty units in any other case, 27  
28  
29
  - (e) impose a condition on the person’s licence, 30
  - (f) suspend the person’s licence for a period that does not exceed the unexpired term of the licence, 31  
32
  - (g) cancel the person’s licence, 33
  - (h) declare the person to be a disqualified person for the purposes of this Act, either permanently or for a specified period, 34  
35



(i)	disqualify the person from being involved in the direction, management or conduct of the conveyancing business.	1 2
(2)	A power conferred by this Act to take disciplinary action against a person is a power to take any one or more of the actions that constitute disciplinary action.	3 4 5
(3)	When a licence is suspended, it is taken not to be in force except for such provisions of this Act or the regulations as the regulations may prescribe as provisions that remain applicable to a suspended licence.	6 7 8
<b>134</b>	<b>Decision to take no further action</b>	9
	The Director-General may at any stage of a matter that is the subject of consideration by the Director-General under this Part determine to take no further action in respect of the matter, whether or not the matter is the subject of a complaint or a show cause notice and whether or not the Director-General determines that there are grounds for taking disciplinary action in connection with the matter.	10 11 12 13 14 15
<b>135</b>	<b>Complaints</b>	16
(1)	Any person may make a complaint to the Director-General setting out matters that are alleged to constitute grounds for taking disciplinary action against a person under this Act.	17 18 19
(2)	Action can be taken under this Part whether or not a complaint has been made.	20 21
<b>136</b>	<b>Show cause notice</b>	22
(1)	The Director-General may serve a show cause notice on a person if the Director-General is of the opinion that there is reasonable cause to believe that there are grounds for taking disciplinary action against the person.	23 24 25 26
(2)	A show cause notice is a notice requiring a person to show cause why disciplinary action should not be taken against the person under this Act on the grounds specified in the notice.	27 28 29
(3)	A show cause notice is to be in writing and is to specify a period of not less than 14 days after service of the notice as the period that the person to whom the notice is directed has to show cause as required by the notice.	30 31 32 33

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(4)	The person on whom a show cause notice is served may within the period allowed by the notice make oral or written submissions to the Director-General in respect of the matters to which the notice relates. In the case of a corporation, submissions may be made by a director or officer of the corporation.	1 2 3 4 5
<b>137</b>	<b>Power to suspend licence when show cause notice served</b>	6
(1)	When a show cause notice is served on a person, the Director-General may by notice in writing to the person suspend the person's licence pending a determination by the Director-General of whether to take disciplinary action under this Act against the person.	7 8 9 10
(2)	The Director-General may only suspend a licence under this section if satisfied that the grounds for disciplinary action specified in the show cause notice would, if established, justify the suspension or cancellation of the licence.	11 12 13 14
(3)	Such a suspension may not be imposed for a period of more than 60 days after the show cause notice is served.	15 16
(4)	The Director-General is not required to afford a person an opportunity to be heard before taking action against the person under this section.	17 18
(5)	The Director-General can revoke a suspension under this section at any time by notice in writing to the suspended person.	19 20
(6)	This section does not limit or otherwise affect any power to suspend a licence under section 64A of the <i>Fair Trading Act 1987</i> .	21 22
<b>138</b>	<b>Inquiries and investigation</b>	23
(1)	The Director-General may conduct inquiries and make investigations in relation to the matters to which a show cause notice relates and the submissions, if any, made by or on behalf of the person to whom the show cause notice relates in relation to those matters, as the Director-General thinks fit.	24 25 26 27 28
(2)	Without limiting subsection (1), the Director-General may, if a show cause notice relates to a matter referred to in section 132 (1) (f), require the person concerned to be examined by a medical practitioner nominated by the Director-General.	29 30 31 32

<b>139</b>	<b>Taking of disciplinary action</b>	1
(1)	If the Director-General is satisfied that there are grounds for taking disciplinary action under this Act against a person on whom a show cause notice has been served, the Director-General may by order in writing served on the person take such disciplinary action against the person as the Director-General thinks is warranted.	2 3 4 5 6
(2)	The order must include a statement of the reasons for the Director-General's decision on the matter.	7 8
<b>140</b>	<b>Recovery of monetary penalty</b>	9
	A monetary penalty imposed on a person by disciplinary action under this Part may be recovered by the Director-General in a court of competent jurisdiction as a debt due to the Crown.	10 11 12
<b>141</b>	<b>Review of disciplinary action by ADT</b>	13
	A person against whom disciplinary action is taken by the Director-General may apply to the Administrative Decisions Tribunal under the <i>Administrative Decisions Tribunal Act 1997</i> for a review of the Director-General's decision on the disciplinary action or on a review of the disciplinary action.	14 15 16 17 18
<b>142</b>	<b>Warning notices</b>	19
(1)	The Director-General may authorise publication of a notice warning persons of particular risks involved in dealing with a specified licensee, or a person who does not hold a licence, in connection with the activities of licensees.	20 21 22 23
(2)	For example, a warning may relate to the risks involved in dealing with a person who has a recent history of unconscionable conduct in the person's dealings with consumers.	24 25 26
(3)	The Director-General may authorise publication of such a notice in any one or more of the following ways:	27 28
(a)	to any person making inquiries to the Director-General about the licensee concerned,	29 30
(b)	by advertisement by the use of any medium,	31
(c)	to any media representatives.	32

(4) Publication of such a notice may not be authorised unless an investigation has been conducted by the Director-General, whether or not a complaint has been made.	1 2 3
(5) Before authorising publication of such a notice, the Director-General must give the person concerned an opportunity for a period of not less than 48 hours to make representations to the Director-General about publication of such a notice, unless:	4 5 6 7
(a) the Director-General is not able, after making reasonable efforts to do so, to contact the person promptly and advise the person of that opportunity, or	8 9 10
(b) the person refuses to make any representations.	11
(6) No opportunity to make representations is required to be given if, in the opinion of the Director-General, there is an immediate risk to the public.	12 13 14
(7) No liability is incurred by a person for publishing in good faith:	15
(a) a notice under this section, or	16
(b) a fair report or summary of such a notice.	17
<b>143 Failure to comply with disqualification from involvement in business</b>	18
A person who is disqualified under this Part from being involved in the direction, management or conduct of the business of a licensee must not act contrary to the disqualification.	19 20 21
Maximum penalty:	22
(a) 200 penalty units in the case of a corporation, or	23
(b) 100 penalty units in any other case.	24
<b>144 Return of suspended or cancelled licence</b>	25
A person who has possession of a licence that has been suspended or cancelled under this Part must give the licence to an officer of the Department at any office of the Department within 7 days after the suspension or cancellation takes effect.	26 27 28 29
Maximum penalty:	30
(a) 40 penalty units in the case of a corporation, or	31
(b) 20 penalty units in any other case.	32

## Part 10 Enforcement

### 145 Authorised officers

(1) In this Act:

*authorised officer* means:

- (a) an officer of the Department for the time being appointed under this Part as an authorised officer, or
- (b) an investigator appointed under section 18 of the *Fair Trading Act 1987*, or
- (c) a police officer.

(2) The Director-General may appoint any officer of the Department as an authorised officer for the purposes of this Act.

(3) An authorised officer who is not a police officer is to be provided by the Director-General with a certificate of identification.

(4) An authorised officer (other than a police officer) must, when exercising on any premises any function of the authorised officer under this Act, produce the officer's certificate of identification to any person apparently in charge of the premises who requests its production.

### 146 Powers of entry, inspection etc

(1) An authorised officer may exercise the powers conferred by this section for the purpose of:

- (a) ascertaining whether the provisions of this Act or the regulations are being complied with or have been contravened, or
- (b) investigating a complaint made or intended to be made under this Act, or
- (c) obtaining evidence, records or information in relation to a matter that constitutes or may constitute a contravention of this Act or the regulations.

(2) An authorised officer may enter and inspect at any reasonable time any premises that the officer believes on reasonable grounds are being used for the carrying on of a conveyancing business, whether or not the business is being carried on by a licensee.

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

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

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

- (a) to provide an authorised officer, by writing signed by the person (or, in the case of a corporation, by a competent officer of the corporation) and given to the authorised officer within the time and in the manner specified in the notice, with any such information, or 1  
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5
- (b) to produce to an authorised officer, in accordance with the notice, any such records, or 6  
7
- (c) to appear before an authorised officer at a time and place specified in the notice and give any such evidence, either orally or in writing, and produce any such records. 8  
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**148 Obstruction etc of authorised officers** 11

A person must not: 12

- (a) without reasonable excuse, refuse or fail to comply with any notice given or requirement made, or to answer any question asked, by an authorised officer under this Part, or 13  
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- (b) provide information or give evidence in purported compliance with a requirement made or question asked by an authorised officer under this Part knowing the information or evidence to be false or misleading in a material particular, or 16  
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- (c) wilfully delay, hinder or obstruct an authorised officer in the exercise of the officer’s functions under this Part. 20  
21

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both. 22  
23

**149 Taking possession of records to be used as evidence** 24

- (1) If an authorised officer takes possession of any records under this Part for the purpose of obtaining evidence or protecting evidence from destruction, they may be retained by the officer until the completion of any proceedings (including proceedings on appeal) in which they may be evidence. 25  
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- (2) The person from whom the records are taken must be provided, within a reasonable time after the records are taken, with a copy of the records certified by an authorised officer as a true copy. 30  
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32
- (3) A copy of records provided under this section is, as evidence, of equal validity to the records of which it is certified to be a copy. 33  
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<b>150</b>	<b>Search warrants</b>	1
(1)	An authorised officer may apply to an authorised justice for the issue of a search warrant for premises if the officer believes on reasonable grounds:	2
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		4
(a)	that a provision of this Act or the regulations is being or has been contravened on the premises, or	5
		6
(b)	that there is on the premises evidence of a contravention of this Act or the regulations.	7
		8
(2)	An authorised justice to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an authorised officer named in the warrant:	9
		10
		11
(a)	to enter and inspect the premises, and	12
(b)	to exercise on the premises any function of an authorised officer under this Part.	13
		14
(3)	Part 3 of the <i>Search Warrants Act 1985</i> applies to a search warrant issued under this section.	15
		16
(4)	In this section, <i>authorised justice</i> has the same meaning as in the <i>Search Warrants Act 1985</i> .	17
		18
<b>151</b>	<b>Injunctions</b>	19
(1)	On the application of the Director-General, the Supreme Court may grant an injunction restraining a threatened or apprehended contravention, or the continuation of a contravention, of a provision of this Act or the regulations.	20
		21
		22
		23
(2)	An injunction may be granted without the Director-General being required to show a likelihood of damage.	24
		25
(3)	If in the opinion of the Court it is desirable to do so, the Court may grant an interim injunction pending determination of the application.	26
		27
(4)	When the Director-General makes an application for the grant of an injunction under this section, the Court is not to require the Director-General or any other person, as a condition of granting an interim injunction, to give an undertaking as to damages.	28
		29
		30
		31
(5)	This section does not limit any provision of the <i>Fair Trading Act 1987</i> .	32

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**Part 11    Offences and proceedings** 1

**Division 1            Offences** 2

**152    Fraudulent conversion and false accounts of money received by licensee** 3  
4

(1) This section applies to: 5

(a) any money received by a licensee on behalf of any person in respect of any transaction in the licensee's capacity as a licensee, or any part of any such money, and 6  
7  
8

(b) any money so received that is held by the licensee as a stakeholder or in trust pending the completion of any transaction. 9  
10  
11

(2) If the licensee fraudulently converts the money or any part of that money to his or her own use or to the use of any other person, the licensee is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years. 12  
13  
14  
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(3) If the licensee fraudulently omits to account for, deliver or pay the money or any part of the money to the person from whom it was received or to the person or persons entitled to it, the licensee is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years. 16  
17  
18  
19  
20

(4) If the licensee fraudulently renders an account of the money or any part of the money knowing the account to be false in any material particular, the licensee is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years. 21  
22  
23  
24

(5) On the prosecution of a person for an offence under this section it is not necessary to prove the fraudulent conversion by the accused of any specific sum of money if there is proof of a general deficiency on the examination of the books of account, or entries kept, or made by the accused, or otherwise, and the jury is satisfied that the accused fraudulently converted the deficient money or any part of it. 25  
26  
27  
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<b>153</b>	<b>Fraudulent accounts for expenses, fees and other charges</b>	1
	If a licensee fraudulently renders an account of expenses, fees or other charges incidental to any transaction or proposed or contemplated transaction as a licensee knowing the account to be false in any material particular, the licensee is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years.	2 3 4 5 6
<b>154</b>	<b>Failure to account</b>	7
	(1) In this section:	8
	<i>failure to account</i> for money in relation to a licensee has the same meaning as it has in section 92.	9 10
	(2) A licensee who fails to account for money held by the licensee on behalf of another person is guilty of an offence.	11 12
	Maximum penalty: 1,000 penalty units for a corporation or 200 penalty units in any other case.	13 14
<b>155</b>	<b>Offences by persons other than principal offenders</b>	15
	A person who:	16
	(a) aids, abets, counsels or procures a person to contravene, or	17
	(b) induces, or attempts to induce, a person, whether by threats or promises or otherwise, to contravene, or	18 19
	(c) is in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of, or	20 21
	(d) conspires with others to contravene,	22
	a provision of this Act or the regulations is guilty of an offence against this Act or the regulations and liable to the same penalty as a person who contravenes the provision.	23 24 25
<b>156</b>	<b>Operation of Crimes Act 1900 not affected</b>	26
	Nothing in this Division affects the generality of any provisions of the <i>Crimes Act 1900</i> .	27 28

**Division 2            Proceedings** 1

**157    Proceedings for offences** 2

- (1) Proceedings for an offence under this Act or the regulations may be taken and prosecuted only by the Director-General or, in the name of the Director-General, by a person acting with the authority of the Director-General. 3  
4  
5  
6
- (2) Proceedings for an offence under this Act or the regulations (other than proceedings for an indictable offence) may be dealt with: 7  
8
  - (a) summarily before a Local Court constituted by a Magistrate sitting alone, or 9  
10
  - (b) summarily before the Supreme Court in its summary jurisdiction. 11  
12
- (3) If proceedings are brought in a Local Court, the maximum monetary penalty that the Local Court may impose for the offence is 1,000 penalty units or such other amount as may be prescribed by the regulations, despite any higher maximum monetary penalty provided in respect of the offence. 13  
14  
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- (4) Despite any proceedings against a person for an offence against this Act or the regulations (whether resulting in a conviction or otherwise) the person remains liable to civil proceedings in the same manner as if the proceedings for an offence had not been taken. 18  
19  
20  
21

**158    Penalty notices** 22

- (1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence against this Act or the regulations, being an offence prescribed by the regulations as a penalty notice offence. 23  
24  
25  
26
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person can pay, within the time and to the person specified in the notice, the amount of the penalty prescribed by the regulations for the offence if dealt with under this section. 27  
28  
29  
30  
31
- (3) A penalty notice may be served personally or by post. 32

(4) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.	1 2 3
(5) Payment under this section is not to be regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.	4 5 6 7
(6) The regulations may:	8
(a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and	9 10 11
(b) prescribe the amount of penalty payable for the offence if dealt with under this section, and	12 13
(c) prescribe different amounts of penalties for different offences or classes of offences.	14 15
(7) The amount of a penalty prescribed under this section for an offence is not to exceed the maximum amount of penalty that could be imposed for the offence by a court.	16 17 18
(8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.	19 20 21
(9) In this section:	22
<i>authorised officer</i> means a person authorised in writing by the Director-General as an authorised officer for the purposes of this section.	23 24 25
<b>159 Time for laying information</b>	26
Proceedings for an offence against this Act (other than proceedings that are to be dealt with on indictment) or the regulations may be commenced within 3 years after the date on which the offence is alleged to have been committed or, with the consent of the Attorney General, at any time.	27 28 29 30 31
<b>160 Offences by corporations</b>	32
(1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each director of the corporation, and each person concerned in the management of the corporation, is taken to	33 34 35

Clause 160            Conveyancers Licensing Bill 2002

Part 11                Offences and proceedings

Division 2            Proceedings

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- have contravened the same provision unless the director or person satisfies the court that: 1  
2
- (a) he or she was not in a position to influence the conduct of the corporation in relation to its contravention of the provision, or 3  
4
- (b) he or she, being in such a position, used all due diligence to prevent the contravention by the corporation. 5  
6
- (2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or been convicted under that provision. 7  
8  
9
- (3) Nothing in subsection (1) prejudices or affects any liability imposed by a provision of this Act or the regulations on any corporation by which an offence against the provision is actually committed. 10  
11  
12

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## Part 12 Administration

1

### 161 Disclosure of information

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(1) A person must not disclose any information obtained in connection with the administration or execution of this Act unless that disclosure is made:

3

4

5

(a) with the consent of the person from whom the information was obtained, or

6

7

(b) in connection with the administration or execution of this Act, or

8

9

(c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings, or

10

11

(d) in accordance with a requirement imposed under the *Ombudsman Act 1974*, the *Freedom of Information Act 1989* or the *Independent Commission Against Corruption Act 1988*, or

12

13

14

15

(e) to a regulatory officer or law enforcement officer, for the purposes of assisting the officer in the exercise of the officer's functions, or

16

17

18

(f) as otherwise authorised by this section or the regulations, or

19

(g) with other lawful excuse.

20

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

21

22

(2) The Director-General may communicate to any person directly concerned in any transaction with a licensee in connection with his or her conveyancing business any information furnished to the Director-General in connection with the administration or execution of this Act, in so far as it relates to any such transaction and directly concerns any such person.

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(3) The Director-General may request and receive information from a law enforcement officer or regulatory officer for the purpose of assisting the Director-General in the exercise of functions under this Act or under any other Act administered by the Minister.

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(4) The Director-General may enter into agreements and other arrangements for the sharing or exchange of information as authorised by this section.

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- (5) In this section: 1
- law enforcement officer** means: 2
- (a) a member of the Police Service, the Australian Federal Police 3  
or of the police force of another State or a Territory, or 4
  - (b) the Director of Public Prosecutions or the Crown Prosecutor of 5  
the State or the Director of Public Prosecutions or the Crown 6  
Prosecutor of the Commonwealth or of another State or 7  
Territory, or 8
  - (c) any other person, or officer of an authority, responsible for the 9  
investigation or prosecution of offences under laws of the State, 10  
the Commonwealth, another State or a Territory. 11
- regulatory officer** means an officer or employee of a government 12  
agency (including the government of a jurisdiction outside the State 13  
and outside Australia) exercising functions under an enactment with 14  
respect to fair trading or an enactment that provides for the issue of 15  
licences or other authorities in connection with the undertaking of an 16  
activity regulated under the enactment. 17

**162 Register** 18

- (1) The Director-General is to maintain a Register for the purposes of this 19  
Act and is to enter and keep in the Register particulars of such of the 20  
following as the regulations may require: 21
- (a) the licences issued under this Act, 22
  - (b) applications for a licence that are refused, 23
  - (c) prosecutions taken under this Act and the result of those 24  
prosecutions, 25
  - (d) warning notices that the Director-General has authorised 26  
publication of under this Act, 27
  - (e) disciplinary action taken under this Act, 28
  - (f) undertakings given under this Act by licensees, 29
  - (g) the appointment of a manager or receiver under this Act, 30
  - (h) such other matters as may be prescribed by the regulations. 31
- (2) Any person is entitled to inspect any entry in the Register on payment 32  
of such fee as the Director-General may determine for the giving of 33  
access to the Register. 34

<b>163</b>	<b>Certificate evidence</b>	1
	A document purporting to be a certificate signed by the	2
	Director-General and certifying that any person is or is not or was or	3
	was not on any date or during any specified period a licensee is	4
	evidence of the matters certified in all courts and before all persons and	5
	bodies authorised by law to receive evidence.	6
<b>164</b>	<b>Delegation</b>	7
	The Director-General may delegate the exercise of any function of the	8
	Director-General under this Act (other than this power of delegation)	9
	to:	10
	(a) any member of staff of the Department of Fair Trading, or	11
	(b) any person, or any class of persons, authorised for the purposes	12
	of this section by the regulations.	13



## **Part 13   Miscellaneous**

### **165   Fair Trading Act not affected**

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

### **166   Exclusion of personal liability**

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

### **167   Service of notices and directions**

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

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(c)	by posting it in a letter addressed to the corporation at the address last known to the Director-General of its only or principal place of business.	1 2 3
(4)	This section does not limit any provision of the Corporations Act.	4
<b>168</b>	<b>Repeals</b>	5
(1)	The <i>Conveyancers Licensing Act 1995</i> is repealed.	6
(2)	The <i>Conveyancers Licensing Regulation 2001</i> is repealed.	7
<b>169</b>	<b>Savings and transitional provisions</b>	8
	Schedule 1 has effect.	9
<b>170</b>	<b>Consequential amendments of Acts</b>	10
	Schedule 2 has effect.	11
<b>171</b>	<b>Displacement of Corporations legislation</b>	12
	A provision of Part 8 (Management and receivership) is a Corporations legislation displacement provision for the purposes of section 5G of the Corporations Act.	13 14 15
<b>172</b>	<b>Regulations</b>	16
(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.	17 18 19 20
(2)	In particular the Governor may make regulations for or with respect to the following:	21 22
(a)	prescribing the procedure to be followed in respect of applications under this Act,	23 24
(b)	fixing the maximum amount of remuneration to which a licensee is entitled, by way of fee, gain or reward, for services performed by him or her as a licensee,	25 26 27
(c)	requiring licensees to display or otherwise publicise or give notice of particulars of their remuneration and prescribe the consequences of a failure to comply with any such requirement,	28 29 30
(d)	prescribing the accounts and other records to be kept by a licensee and the manner in which they are to be kept,	31 32

(e)	prescribing a method of service (which may include electronic transmission) of any notice, statement of claim, order or other document authorised or required to be served by or under a provision of this Act, either in addition to or as an alternative to a method of service provided for by the provision concerned,	1 2 3 4 5
(f)	prescribing exemptions from the operation of this Act or specified provisions of this Act.	6 7
(3)	A regulation may create an offence punishable by a penalty not exceeding 40 penalty units in the case of a corporation or 20 penalty units in any other case.	8 9 10
<b>173</b>	<b>Review of Act</b>	11
(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.	12 13 14
(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.	15 16
(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.	17 18

<b>Schedule 1</b>	<b>Savings and transitional provisions</b>	1
	(Section 169)	2
<b>1</b>	<b>Definition</b>	3
	In this Schedule:	4
	<i>repealed Act</i> means the <i>Conveyancers Licensing Act 1995</i> .	5
<b>2</b>	<b>Regulations</b>	6
	(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:	7
	this Act	8
	this Act	9
	(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.	10
	the date of assent to the Act concerned or a later date.	11
	(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:	12
	the provision does not operate so as:	13
	the provision does not operate so as:	14
	(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	15
	(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	16
	(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	17
	(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.	18
	(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.	19
	(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.	20
<b>3</b>	<b>Licences under the repealed Act</b>	21
	(1) A person who was the holder of a licence under a provision of the repealed Act immediately before its repeal is taken to be the holder of a licence under this Act.	22
	A person who was the holder of a licence under a provision of the repealed Act immediately before its repeal is taken to be the holder of a licence under this Act.	23
	A person who was the holder of a licence under a provision of the repealed Act immediately before its repeal is taken to be the holder of a licence under this Act.	24
	(2) The licence:	25
	(a) is taken to have been issued subject to the same conditions to which it was subject under the repealed Act, and	26
	(a) is taken to have been issued subject to the same conditions to which it was subject under the repealed Act, and	27
	(b) remains in force for the remainder of the period for which it was issued.	28
	(b) remains in force for the remainder of the period for which it was issued.	29

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<b>4 Pending applications and objections</b>	1
(1) The repealed Act continues to apply as if it had not been repealed to and in respect of an application for the issue, renewal or restoration of a licence under a provision of the repealed Act that was pending immediately before its repeal.	2 3 4 5
(2) A licence issued or renewed under a provision of the repealed Act pursuant to subclause (1) is taken to have been issued or renewed immediately before the repeal of the provision.	6 7 8
<b>5 Multidisciplinary partnerships</b>	9
A partnership approved under section 19 of the repealed Act is taken to have been approved under section 27 of this Act.	10 11
<b>6 Pending reviews by ADT</b>	12
(1) A review pending under section 14 of the repealed Act immediately before its repeal is to continue and be determined as if the repealed Act had not been repealed.	13 14 15
(2) For the purposes of the operation of this Schedule, the determination of the review is to have effect as if the review was made immediately before the repeal of section 14.	16 17 18
<b>7 Pending disciplinary proceedings</b>	19
(1) Any proceeding pending under Part 10 of the <i>Legal Profession Act 1987</i> (as applying under Part 6 of the repealed Act immediately before its repeal) is to continue and be determined as if the repealed Act had not been repealed.	20 21 22 23
(2) For the purposes of the operation of this Schedule, the determination of the proceeding is to have effect as if the proceeding was taken immediately before the repeal of Part 6.	24 25 26
<b>8 Records</b>	27
Any records kept under or for the purposes of a provision of the repealed Act are taken to be kept under or for the purposes of the corresponding provision of this Act.	28 29 30

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<b>9</b>	<b>Claims arising from failures to account</b>	1
(1)	In this clause:	2
	<i>prior defalcation</i> means a failure to account within the meaning of	3
	Part 4 of the repealed Act where the act or omission from which the	4
	failure to account arose occurred before the repeal of the repealed Act.	5
(2)	The repealed Act continues to apply to and in respect of a prior	6
	defalcation as if the repealed Act had not been repealed.	7
<b>10</b>	<b>Claims against Compensation Fund</b>	8
(1)	Any amount payable to or from the Compensation Fund under the	9
	repealed Act immediately before the commencement of this clause is	10
	payable instead to or from the Compensation Fund under this Act.	11
(2)	Contributions made to the Compensation Fund under the repealed Act	12
	are taken to have been made to the Compensation Fund under this Act.	13
(3)	Any payment under the repealed Act out of the Compensation Fund in	14
	settlement in whole or in part of a claim under the repealed Act is, for	15
	the purposes of this Act, taken to be a payment made out of the	16
	Compensation Fund under this Act in settlement in whole or in part of	17
	the claim concerned as if it were a claim under this Act.	18
<b>11</b>	<b>Approval of business name</b>	19
	The Director-General is taken to have approved of a licensee carrying	20
	on, or advertising or holding out that the licensee carries on, business	21
	as a licensee under a name for the purposes of this Act if, immediately	22
	before the commencement of this clause, the licensee carried on	23
	business as a licensee under that name in compliance with regulations	24
	made under section 17 of the repealed Act.	25
<b>12</b>	<b>Licences cancelled under repealed Act</b>	26
	A reference in this Act to a licence cancelled under this Act includes	27
	a reference to a licence cancelled under the repealed Act.	28
<b>13</b>	<b>Receivers</b>	29
	The repealed Act continues to apply to and in respect of a receiver	30
	whose appointment under the repealed Act is in force immediately	31
	before the commencement of this clause as if the repealed Act had not	32
	been repealed.	33

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<b>14 Act extends to acts and omissions before commencement</b>	1
Unless the context otherwise indicates or requires, a provision of this Act extends to any act or omission occurring before the commencement of the provision.	2 3 4
<b>15 Continuity of things done before commencement</b>	5
Anything done by the Director-General or a licensee under or for the purposes of a provision of the repealed Act is, to the extent that the thing done has effect immediately before the repeal of the provision, taken to have been done under or for the purposes of the corresponding provision of this Act.	6 7 8 9 10
<b>16 Disclosure of information</b>	11
For the purposes of section 161 (Disclosure of information) of this Act, information obtained in connection with the administration or execution of the repealed Act is taken to have been obtained in connection with the administration or execution of this Act.	12 13 14 15

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<b>Schedule 2</b>	<b>Consequential amendments</b>	1
	(Section 170)	2
<b>2.1</b>	<b>Administrative Decisions Tribunal Act 1997 No 76</b>	3
<b>[1]</b>	<b>Schedule 2 Composition and functions of Divisions</b>	4
	Omit “and” where lastly occurring from clause 1 (2) (c) of Part 3.	5
<b>[2]</b>	<b>Schedule 2, Part 3</b>	6
	Omit clause 1 (2) (d).	7
<b>[3]</b>	<b>Schedule 2, Part 3</b>	8
	Omit “ <i>Conveyancers Licensing Act 1995</i> ” from clause 2.	9
<b>[4]</b>	<b>Schedule 2, Part 3</b>	10
	Omit clause 3.	11
<b>[5]</b>	<b>Schedule 2, Part 4</b>	12
	Insert in appropriate order in clause 2 (1):	13
	<i>Conveyancers Licensing Act 2002</i>	14
<b>[6]</b>	<b>Schedule 2, Part 4</b>	15
	Insert at the end of the Part (with appropriate clause number):	16
	<b>Conveyancers Licensing Act 2002 (Original decisions)</b>	17
	For the purposes of a review under section 141 of the	18
	<i>Conveyancers Licensing Act 2002</i> , the Tribunal is to be	19
	constituted by 1 Division member of the General Division of	20
	the Tribunal who is a judicial member.	21



<b>2.2 Fair Trading Act 1987 No 68</b>	1
<b>[1] Section 8 Delegation by Director-General</b>	2
Omit “ <i>Conveyancers Licensing Act 1995</i> ” from section 8 (1) (b).	3
Insert instead “ <i>Conveyancers Licensing Act 2002</i> ”.	4
<b>[2] Section 25I Functions</b>	5
Omit “ <i>Conveyancers Licensing Act 1995</i> ” from paragraph (b) of the definition of <i>property services industry</i> in section 25I (2).	6
Insert instead “ <i>Conveyancers Licensing Act 2002</i> ”.	7
<b>2.3 Fines Act 1996 No 99</b>	9
<b>Schedule 1 Statutory provisions under which penalty notices issued</b>	10
	11
Insert in alphabetical order:	12
<i>Conveyancers Licensing Act 2002</i> , section 158.	13
<b>2.4 Legal Profession Act 1987 No 109</b>	14
<b>[1] Section 3 Definitions</b>	15
Omit the definition of <i>licensed conveyancer</i> from section 3 (1).	16
Insert instead:	17
<i>licensed conveyancer</i> means the holder of a licence in force under the <i>Conveyancers Licensing Act 2002</i> .	18
	19
<b>[2] Section 48B Unqualified person acting as barrister or solicitor and barrister</b>	20
	21
Omit “ <i>Conveyancers Licensing Act 1995</i> ” from section 48B (2).	22
Insert instead “ <i>Conveyancers Licensing Act 2002</i> ”.	23

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<b>[3]</b>	<b>Section 48E Limitation on general legal work and probate work</b>	1
	Omit “ <i>Conveyancers Licensing Act 1995</i> ” from section 48E (4) (d).	2
	Insert instead “ <i>Conveyancers Licensing Act 2002</i> ”.	3
<b>[4]</b>	<b>Section 48K Associates who are disqualified or convicted persons</b>	4
	Omit paragraph (e) of the definition of <i>disqualified person</i> from section 48K (7).	5
	Insert instead:	6
	(e) who is disqualified from holding a licence under the	7
	<i>Conveyancers Licensing Act 2002</i> .	8
		9
<b>[5]</b>	<b>Section 59D Functions of Commissioner</b>	10
	Omit the note to section 59D (3).	11
<b>[6]</b>	<b>Section 69G Payment of certain costs and expenses from Fund</b>	12
	Omit section 69G (1) (h).	13
<b>2.5</b>	<b>Licensing and Registration (Uniform Procedures) Act 2002 No 28</b>	14
	<b>Schedule 1 Licences to which Part 2 of Act applies</b>	15
	Omit the matter relating to the <i>Conveyancers Licensing Act 1995</i> .	16
	Insert instead:	17
	<b>Conveyancers Licensing Act 2002</b>	18
	section 11 (1), conveyancer’s licence	19
<b>2.6</b>	<b>Property, Stock and Business Agents Act 2002 No 66</b>	20
<b>[1]</b>	<b>Section 64 Contracts for sale of residential property</b>	21
	Omit “ <i>Conveyancers Licensing Act 1995</i> ” from section 64 (6).	22
	Insert instead “ <i>Conveyancers Licensing Act 2002</i> ”.	23

<b>[2] Section 167 Application of money in Compensation Fund</b>	1
Omit “ <i>Conveyancers Licensing Act 1995</i> ” from section 167 (2) (c).	2
Insert instead “ <i>Conveyancers Licensing Act 2002</i> ”.	3
<b>[3] Section 189 Application of money in Statutory Interest Account</b>	4
Omit “ <i>Conveyancers Licensing Act 1995</i> ” from section 189 (2) (d).	5
Insert instead “ <i>Conveyancers Licensing Act 2002</i> ”.	6
<b>2.7 Real Property Act 1900 No 25</b>	7
<b>Section 3 Definitions</b>	8
Omit the definition of <i>Licensed conveyancer</i> from section 3 (1) (a).	9
Insert instead:	10
<i>Licensed conveyancer</i> means the holder of a licence in force under the <i>Conveyancers Licensing Act 2002</i> .	11 12
<b>2.8 Retail Leases Act 1994 No 46</b>	13
<b>Section 3 Definitions</b>	14
Omit the definition of <i>licensed conveyancer</i> from section 3 (1).	15
Insert instead:	16
<i>licensed conveyancer</i> means the holder of a licence in force under the <i>Conveyancers Licensing Act 2002</i> .	17 18

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<b>2.9 Retirement Villages Act 1999 No 81</b>	1
<b>Section 4 Definitions</b>	2
Omit the definition of <i>licensed conveyancer</i> from section 4 (1).	3
Insert instead:	4
<i>licensed conveyancer</i> means the holder of a licence in force	5
under the <i>Conveyancers Licensing Act 2002</i> .	6
<b>2.10 Search Warrants Act 1985 No 37</b>	7
<b>Section 10 Definitions</b>	8
Insert in appropriate order in the definition of <i>search warrant</i> :	9
section 150 of the <i>Conveyancers Licensing Act 2002</i> ,	10