Conveyancers Licensing Amendment Bill 2006

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Conveyancers Licensing Act 2003* (the ***Principal Act***) for the following purposes:

(a) to remove the distinction between ***trust money*** and ***controlled money*** by defining trust money more generally as money received for or on behalf of any person by a licensee in connection with the licensee's conveyancing business (providing a comprehensive scheme for trust accounting rather than two separate schemes),

(b) to clarify that Australian legal practitioners, incorporated legal practices and solicitor corporations are disqualified persons for the purposes of the Principal Act and therefore not eligible to hold a licence under that Act (and not permitted to be employed by a licensee),

(c) to broaden the disqualification provisions relating to undischarged bankrupts and persons concerned in the management of insolvent corporations so that a director or person concerned in the management of an externally-administered body corporate (within the meaning of the *Corporations Act 2001* of the Commonwealth) is a disqualified person except in a case of the voluntary winding up of the body corporate,

(d) to further extend this category of disqualified persons so that a person cannot avoid disqualification by resigning within the 12 month period before the appointment of an external administrator,

(e) to clarify that the Commissioner for Fair Trading (***the Commissioner***), in exercising his or her discretionary power to grant a licence to a person that falls within this category of disqualified persons, must consider the steps that could have been taken when the relevant financial difficulties first arose (and not just those that could have been taken when the bankruptcy, liquidation or administration was imminent),

(f) to disqualify persons who have been disqualified from holding certain licences under New South Wales law from holding a licence under the Principal Act,

(g) to make other minor and consequential amendments and amendments by way of statute law revision.

Outline of provisions

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 the date of assent.

Clause 3 is a formal provision that gives effect to the amendments to the *Conveyancers Licensing Act 2003* set out in Schedule 1.

Clause 4 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendments

Disqualified persons—lawyers

The Principal Act provides that the requirement that a person hold a licence under that Act in order to conduct a conveyancing business does not apply to an Australian legal practitioner or an incorporated legal practice. **Schedule 1 [8]** clarifies that Australian legal practitioners, incorporated legal practices and solicitor corporations are also disqualified persons for the purposes of the Principal Act (and therefore not eligible to hold a licence under that Act and not permitted to be employed by a

licensee).
Schedule 1 [2] provides that a corporation cannot be a disqualified person in order to be eligible to hold a corporation licence.

Disqualified persons—undischarged bankrupts and persons involved in the management of an insolvent corporation

Schedule 1 [4] omits the current provisions relating to the disqualification of undischarged bankrupts and other persons involved in the management of insolvent corporations from holding a licence under the Principal Act. At present, the Principal Act provides for the disqualification of 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. **Schedule 1 [10]** generally re-enacts the current provisions but broadens this category so as to include the disqualification of a director or person concerned in the management of an externally-administered body corporate (within the meaning of the *Corporations Act 2001* of the Commonwealth) except in the case of the voluntary winding up of the body corporate. The proposed new provisions also disqualify a director or person concerned in the management of a body corporate that, within 12 months after the person ceased to be a director or person concerned in the management of the body corporate, became an externally-administered body corporate (so that a person cannot avoid disqualification by resigning just before the appointment of an external administrator).

At present, the Commissioner may grant a licence to a person that falls within the category of disqualified persons if the Commissioner is satisfied that the person took all reasonable steps to avoid the bankruptcy or the liquidation or administration. **Schedule 1 [11]** inserts proposed section 10 (3B)–(3D) into the Principal Act to re-enact this discretionary power of the Commissioner and to further clarify that, in determining whether a person has taken such reasonable steps, the Commissioner is to have regard to the steps that could have been taken when the financial difficulties first arose (and not just those that could have been taken when the bankruptcy, liquidation or administration was imminent).

Trust money

The Principal Act makes a distinction between ***trust money*** and ***controlled money***. Trust money received from a person by a licensee is money held exclusively for that person and must be paid into a general trust account under that Act. Controlled money, on the other hand, is money received by the licensee that is to be paid or disbursed as the person directs and must be held in accordance with separate regulations relating to controlled money. **Schedule 1 [18]** substitutes Divisions 1 and 2 of Part 5 of the Principal Act so as to remove the distinction between trust money and controlled money. The definition of, and any references to, controlled money are omitted. Trust money is more generally defined as money received for or on behalf of any person by a licensee in connection with the licensee's conveyancing business. Accordingly, the amendments establish a comprehensive scheme for the accounting requirements relating to trust money. **Schedule 1 [19]** substitutes Division 4 of Part 5 so that the introduction of the proposed comprehensive scheme is also reflected in the provisions relating to unclaimed trust money. **Schedule 1 [7], [15], [17] and [20]–[26]** make consequential amendments relating to the introduction of the proposed comprehensive scheme.

Schedule 1 [18] also sets out additional particulars relating to the trust accounts that must appear on the books and records of the licensee and the cheques drawn on the trust account.

Schedule 1 [19] also makes a minor amendment to the procedures relating to the repayment of trust money.

Other miscellaneous amendments

Schedule 1 [1] clarifies that the conveyancers licensing scheme in the Principal Act

does not apply to the conduct of a conveyancing business by a solicitor corporation.
Schedule 1 [3] makes an amendment by way of statute law revision.
Schedule 1 [5] provides that a person is a disqualified person for the purposes of the Principal Act if the person is the holder of a licence, permit or other authority that is suspended under legislation administered by the Minister or is disqualified from holding a licence, permit or other authority under legislation administered by the Minister. Currently, this disqualification applies only to the holder of a licence, permit or other authority that is suspended under the *Fair Trading Act 1987*.
Schedule 1 [11] inserts proposed section 10 (3A) in order to extend the discretionary power of the Commissioner to grant a licence to a person that falls within this category of disqualified person if the Commissioner determines that it is appropriate to do so. **Schedule 1 [6]** makes a consequential amendment.
Schedule 1 [9] re-enacts a provision that is removed as a consequence of **Schedule 1 [10]**.
Schedule 1 [12] applies section 21 (7) of the *Licensing and Registration (Uniform Procedures) Act 2002* to licences issued under the Principal Act so that a licence is taken to be cancelled if the licensee surrenders the licence to the Commissioner together with a notice to the effect that the licensee intends that the licence be cancelled. **Schedule 1 [13] and [14]** make consequential amendments.
Schedule 1 [16] makes a minor amendment to clarify that publishing an advertisement includes causing it to be published.
Schedule 1 [27] enables regulations to be made for or with respect to the waiver or refund of the whole or any part of a fee payable under the Principal Act.
Schedule 1 [28] and [30] make consequential amendments.
Schedule 1 [29] enable regulations of a savings and transitional nature to be made as a consequence of the enactment of the proposed Act.
Schedule 1 [31] inserts provisions of a savings and transitional nature.