

FIRST PRINT

CONVEYANCERS LICENSING BILL 1992

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The objects of this Bill are:

- (a) to provide for the licensing of conveyancers; and
- (b) to regulate the practice of conveyancing by licensed conveyancers; and
- (c) to entitle persons who suffer pecuniary loss as a result of a failure to account by a licensed conveyancer to payment of compensation by the Association of Property Conveyancers and to provide for the compulsory insurance of the Association against such claims; and
- (d) to provide for the appointment of managers and receivers for businesses conducted by licensed conveyancers; and
- (e) to establish a procedure for dealing with complaints made against licensed conveyancers; and
- (f) to establish a Conveyancers Licensing Committee; and
- (g) to enact other provisions of a minor, consequential or ancillary nature.

The Bill also amends certain other Acts and contains certain savings and transitional provisions consequent on the enactment of the proposed Act.

PART 1—PRELIMINARY

This Part (clauses 1–5) contains machinery provisions (Short title, commencement and definitions) in connection with the proposed Act. Clause 4 defines “conveyancing work” as legal work carried out in connection with any transaction that creates, varies, transfers or extinguishes a legal or equitable interest in residential property (other than residential property having an area of more than 10 hectares) or that otherwise affects residential property. The definition is expressed to include certain specified kinds of legal work and to exclude certain other kinds of legal work. Legal work is defined to mean work that, done for fee or reward, would give rise to an offence under Part 9 of the Legal Profession Act 1987 if done by anyone other than a practising barrister or

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practising solicitor. Clause 5 defines certain classes of persons as disqualified persons for the purposes of the proposed Act. A disqualified person will not be eligible to hold a licence under the proposed Act or to be employed in the conduct of a conveyancing business.

PART 2—LICENSING

This Part, containing 4 Divisions, establishes the procedure for obtaining a licence to carry out conveyancing work and specifies the effect of such a licence. The procedures for obtaining a licence involve both the proposed Conveyancers Licensing Committee ("the Committee") and the Law Society Council ("the Council").

Division 1—Preliminary

This Division (clauses 6–9) contains provisions:

- specifying that the effect of a licence is to protect a licensed conveyancer from proceedings for an offence under Part 9 of the Legal Profession Act 1987 in relation to the kinds of legal work that the licensed conveyancer is permitted by the proposed Act to carry out
- defining the procedure for obtaining a licence (which requires a certificate of eligibility) and prescribing the qualifications for a licence
- requiring an applicant for a licence to have paid the appropriate fidelity contribution under Division 2 of Part 4
- requiring an applicant for a licence to be covered by an approved policy of professional indemnity insurance

Division 2—Certificates of eligibility

This Division (clauses 10–16) contains provisions:

- prescribing the manner in which applications are to be made to the Committee for certificates of eligibility
- enabling the Committee to require an applicant to furnish further particulars in connection with an application
- providing for the manner in which the Committee may determine an application
- enabling the Committee to require the imposition of conditions on a licence granted by the Council
- requiring the Committee to notify the applicant of its decision within 14 days
- providing that a certificate of eligibility remains in force until it is withdrawn or until a new certificate is granted
- enabling the Committee to withdraw a certificate of eligibility under specified circumstances

Division 3—Licences

This Division (clauses 17–20) contains provisions:

- prescribing the manner in which applications for a licence may be made to the Council

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- providing for the manner in which the Council may determine an application
- providing that a licence remains in force until the following 30 June unless it is sooner suspended or cancelled
- enabling the Council to suspend or cancel a licence under specified circumstances

Division 4—Appeals

This Division (clause 21) contains a provision enabling appeals to be made against certain decisions under the proposed Part.

PART 3—CONVEYANCING PRACTICE

This Part, containing 3 Divisions, regulates the manner in which a licensed conveyancer may conduct conveyancing business. In particular, the Part contains requirements concerning the keeping of and accounting for money held by a licensed conveyancer and provides for the inspection of a licensed conveyancer's accounts and affairs for the purpose of ensuring that these requirements are complied with.

Division 1—General

This Division (clauses 22–32) contains provisions:

- providing that contravention of the proposed Division does not generally constitute an offence but may constitute unsatisfactory professional conduct or professional misconduct for the purposes of the disciplinary provisions of proposed Part 6
- establishing maximum fees that may be charged for conveyancing work and prohibiting the charging of fees in excess of that maximum
- prohibiting the conduct of a conveyancing business otherwise than by sole practitioners and partnerships
- requiring a licensed conveyancer to be in reasonable attendance at his or her business premises while those premises are open for business
- prohibiting a licensed conveyancer from conducting a conveyancing business under a business name that has not been approved by the Committee
- prohibiting a licensed conveyancer from sharing the receipts of a conveyancing business with persons who are not licensed conveyancers unless the permission of the Committee has been obtained
- prohibiting a licensed conveyancer from employing disqualified persons and prohibiting disqualified persons from seeking employment with a licensed conveyancer
- prohibiting a licensed conveyancer from sharing staff with a legal practitioner or real estate agent
- prohibiting a licensed conveyancer from advertising otherwise than in accordance with the regulations under the proposed Act
- prohibiting a licensed conveyancer from being involved in the conduct of any other business unless that business has been approved by the Committee

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- enabling the Committee to establish guidelines for the conduct of a conveyancing business and prohibiting a licensed conveyancer from conducting a conveyancing business in contravention of the guidelines

Division 2—Trust money and controlled money

This Division (clauses 33–38) contains provisions:

- regulating the manner in which money received by a licensed conveyancer on behalf of another person must be kept
- requiring a licensed conveyancer to keep proper accounts of such money
- providing for the auditing of such accounts
- requiring a proportion of trust money held by a licensed conveyancer to be paid into the Statutory Interest Account kept by the Law Society
- providing for the disposition of unclaimed trust money
- providing that a bank in which trust money is held by a licensed conveyancer in accordance with the proposed Division does not incur any obligation in relation to the money that would not be incurred in relation to trust money generally

These provisions are an adaptation of similar provisions contained in the Legal Profession Act 1987.

Division 3—Inspection of trust accounts and investigations generally

This Division (clauses 39–44) contains provisions:

- providing for the appointment of trust account inspectors and investigators (referred to collectively as “inspectors”) for the purposes of the proposed Division
- requiring a licensed conveyancer to produce records concerning the affairs of the licensed conveyancer when required to do so by an inspector
- requiring an inspector to report to the Law Society Council and to the Minister on the results of an inspection or investigation carried out under the proposed Act
- requiring a licensed conveyancer to pay the costs of an inspector’s inspection or investigation under the proposed Act
- prohibiting an inspector from disclosing information concerning the fact of, or the results of, an inspection or investigation carried out under the proposed Act
- prohibiting the hindrance or obstruction of an inspector in the exercise of the inspector’s functions

These provisions are an adaptation of similar provisions contained in the Legal Profession Act 1987.

PART 4—CLAIMS ARISING FROM FAILURES TO ACCOUNT

This Part, containing 3 Divisions, provides that the Association of Property Conveyancers (“the Association”) is liable for pecuniary losses suffered as a result of failures to account by licensed conveyancers and provides further for the making of claims against the Association with respect to such losses and the indemnification of the Association against such claims by an appropriate policy of fidelity insurance.

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These provisions are an adaptation of similar provisions contained in the Legal Profession Act 1987.

Division 1—Preliminary

This Division (clauses 45 and 46) defines certain words and expressions for the purposes of the proposed Part.

Division 2—Fidelity insurance

This Division (clauses 47 and 48) requires the Association to take out fidelity insurance with respect to all licensed conveyancers and enables the Association to levy licensed conveyancers for contributions to the payment of the insurance premiums.

Division 3—Claims against the Association in respect of failures to account

This Division (clauses 49–58) contains provisions:

- enabling persons who have suffered pecuniary loss as a result of a licensed conveyancer's failure to account to seek compensation from the Association
- enabling licensed conveyancers to be reimbursed for claims made against them as a result of the actions of their associates
- enabling the Association to fix a final date for the making of claims with respect to any particular failure to account
- requiring claims to be pursued
- providing for the determination of claims by the Association
- providing for the avoidance of double compensation
- enabling the Association to place a limit on the aggregate claims that can be made in respect of any single licensed conveyancer or firm of licensed conveyancers
- restricting the taking of proceedings against the Association in respect of the Association's determination of a claim
- providing that the Association is subrogated to the rights of a claimant once the claim has been paid
- allowing for the proportional settlement of claims in the event that the Association's assets are inadequate to pay all claims in full

PART 5—MANAGEMENT AND RECEIVERSHIP

This Part, containing 3 Divisions, provides for the appointment of managers and receivers to a licensed conveyancer's conveyancing business.

These provisions are an adaptation of similar provisions contained in the Legal Profession Act 1987.

Division 1—Preliminary

This Division (clauses 59–61) defines certain words and expressions for the purposes of the proposed Part.

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Division 2—Management

This Division (clauses 62–73) contains provisions:

- enabling the Council, with the consent of the Committee, to appoint a manager to a licensed conveyancer's conveyancing business under certain circumstances
- specifying that only a licensed conveyancer or a practising solicitor is qualified to be appointed as a manager
- conferring certain powers on a manager of a licensed conveyancer's conveyancing business
- enabling a conveyancing business to continue under management even if a receiver for the business is appointed under proposed Division 3
- providing that the acts of a manager are taken to be the acts of the licensed conveyancer
- providing for the reimbursement of a manager for damages and costs recovered against the manager in relation to matters arising from the management of a licensed conveyancer's conveyancing business
- providing for the payment of the expenses of the management of a licensed conveyancer's conveyancing business
- requiring a manager to report to the Council and to the Association on the management of a licensed conveyancer's conveyancing business
- requiring the manager of a licensed conveyancer's conveyancing business to comply with the requirements of the proposed Act in relation to trust accounts
- enabling the regulations to control the manner in which the manager of a licensed conveyancer's conveyancing business is to keep office accounts in relation to the business
- providing for the transfer back to the relevant licensed conveyancer of a conveyancing business that has ceased to be under management
- prohibiting the hindrance or obstruction of a manager in the exercise of the manager's functions

Division 3—Receivership

This Division (clauses 74–100) contains provisions:

- enabling the Supreme Court to appoint a receiver of a licensed conveyancer's property on the application of the Law Society
- allowing a receivership to extend to the property of a licensed conveyancer's associate
- requiring the court to be closed to the public when the application for the appointment is being heard
- requiring a copy of the order of appointment of a receiver to be served on the licensed conveyancer concerned and on any other person on whom the Supreme Court requires such a copy to be served
- empowering a receiver to take possession of any receivable property of the relevant licensed conveyancer
- requiring persons to furnish a receiver with information concerning the receivable property of a licensed conveyancer

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- enabling the receiver of a licensed conveyancer's property to prohibit transactions on bank accounts containing money that the receiver believes to be receivable property
- prohibiting persons from unlawfully dealing with receivable property
- empowering a receiver to recover compensation from persons who have received receivable property that has been unlawfully disposed of
- enabling the receiver of a licensed conveyancer's property to give certain certificates in relation to property dealt with by the receiver
- providing that the receiver of a licensed conveyancer's property is taken to be beneficially entitled to the property
- empowering the receiver of a licensed conveyancer's property to deal with receivable property in any way in which the licensed conveyancer could have dealt with the property
- conferring other miscellaneous powers on a receiver
- enabling the receiver of a licensed conveyancer's property to fix a time limit of not less than 1 month within which claims against the property are to be made to the receiver
- requiring a licensed conveyancer to notify the receiver of the licensed conveyancer's property of any lien claimed by the licensed conveyancer
- enabling the receiver of a licensed conveyancer's property to seek an order from the Supreme Court empowering the receiver to conduct an examination of the licensed conveyancer or any other person in relation to receivable property
- providing for the disposal of receivable property that is not otherwise dealt with by the receiver of a licensed conveyancer's property
- providing for the investment of receivable property in the hands of the receiver of a licensed conveyancer's property
- providing for the reimbursement of the receiver of a licensed conveyancer's property for damages and costs recovered against the receiver in relation to matters arising from the receivership
- providing for the payment of the expenses of the receivership of a licensed conveyancer's property
- providing for the review by the Supreme Court of the expenses of the receivership
- ensuring that receivable property is not capable of being attached for payment of any judgment debt
- enabling a receiver to apply to the Supreme Court for directions as to how the receiver should exercise his or her functions under the receivership
- enabling the Supreme Court to give general directions as to how a receiver should exercise his or her functions under the receivership
- requiring a receiver to submit periodic reports to the Supreme Court and to the Council and the Association

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- providing for the termination of a receivership and for the appointment of a new receiver and the transfer of receivable property out of the hands of a former receiver
- prohibiting the hindrance or obstruction of a receiver in the exercise of the receiver's functions

PART 6—DISCIPLINARY PROCEEDINGS

This Part, containing 7 divisions, provides for the action to be taken against a licensed conveyancer who is alleged to be guilty of unsatisfactory professional conduct or professional misconduct.

These provisions are an adaptation of similar provisions contained in the Legal Profession Act 1987.

Division 1—Preliminary

This Division (clauses 101–105) contains provisions:

- applying the provisions of proposed Part 6 to former licensed conveyancers
- ensuring that conduct does not cease to be unsatisfactory conduct or professional misconduct merely because it happens also to constitute an offence
- providing for the appointment of licensed conveyancer members to the Legal Profession Conduct Review Panel ("the Panel") for the purposes of proceedings under the proposed Part
- providing for the appointment of licensed conveyancer members to the Legal Profession Standards Board ("the Board") for the purposes of proceedings under the proposed Part
- providing for the appointment of licensed conveyancer members to the Legal Profession Disciplinary Tribunal ("the Tribunal") for the purposes of proceedings under the proposed Part

Division 2—Complaints against licensees

This Division (clauses 106–112) contains provisions:

- providing for the making of complaints to the Council with respect to the conduct of licensed conveyancers
- enabling the Council to require a complainant to furnish further particulars in relation to a complaint
- enabling the Council to dismiss a complaint summarily where it is clear that the complaint is frivolous or vexatious
- requiring the Council to investigate all other complaints
- requiring the Council to consult with the Committee before making a decision with respect to a complaint
- specifying the decisions that the Council may make with respect to a complaint
- enabling the Council to make a complaint after consultation with the Committee

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Division 3—Review of the Council's decisions

This Division (clauses 113–117) contains provisions:

- enabling a dissatisfied complainant to seek a review of the Council's decision with respect to a complaint
- defining the composition of the Panel for the purposes of the conduct of a review
- prescribing the manner in which a review is to be conducted by the Panel
- enabling the Panel to recommend what further action should be taken in relation to the complaint under review
- authorising the Attorney General to act on the recommendation of the Panel

Division 4—Unsatisfactory professional conduct

This Division (clauses 118–125) contains provisions:

- defining the composition of the Board for the purposes of the conduct of a complaint that has been referred to it
- prescribing the manner in which a hearing is to be conducted by the Board
- specifying which persons are to be taken to be parties in relation to the proceedings on a complaint
- requiring hearings to be conducted in the absence of the public
- enabling the Board to summon witnesses and to take evidence
- enabling the Board to compel the production of documents
- enabling the Board to prohibit the release of information concerning proceedings before it
- specifying the action that the Board may take in determining proceedings before it

Division 5—Review of the Board's decisions

This Division (clauses 126–131) contains provisions:

- enabling applications to be made against the determination of the Board with respect to proceedings under proposed Division 4
- defining the composition of the Tribunal for the purposes of the hearing of an application for review that has been made to it
- specifying which persons are to be taken to be parties in relation to the proceedings on a complaint
- prescribing the manner in which a review is to be conducted by the Tribunal
- specifying the action that the Tribunal may take in determining proceedings before it
- enabling the Tribunal to deal with a complaint as if it related to professional misconduct

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Division 6—Professional misconduct

This Division (clauses 132–140) contains provisions:

- defining the composition of the Tribunal for the purposes of the hearing of a complaint that has been referred to it
- prescribing the manner in which a hearing is to be conducted by the Tribunal
- specifying which persons are to be taken to be parties in relation to the proceedings on a complaint
- requiring hearings to be conducted in the presence of the public
- enabling the Tribunal to summon witnesses and to take evidence
- enabling the Tribunal to compel the production of documents
- enabling the Tribunal to prohibit the release of information concerning proceedings before it
- specifying the action that the Tribunal may take in determining proceedings before it
- providing for an appeal to the Supreme Court against a decision of the Tribunal under the proposed Division

Division 7—Miscellaneous

This Division (clauses 141–145) contains provisions:

- providing for the enforcement of orders of the Board and the Tribunal
- providing for the payment of fines and costs to the Prothonotary of the Supreme Court for payment into the Statutory Interest Account
- providing for the payment of the costs of administering the proposed Part
- requiring the Council to submit periodic reports to the Attorney General on complaints dealt with by it under the proposed Part
- excluding the members and Registrars of the Council, the Committee, the Panel, the Board and the Tribunal from personal liability for acts done in good faith for the purpose of executing the proposed Part

PART 7—THE CONVEYANCERS LICENSING COMMITTEE

This Part (clauses 146–152) deals with the constitution and functions of the Conveyancers Licensing Committee and contains provisions:

- constituting the Committee as a corporation that is not to represent the Crown or to be under the control or direction of the Minister
- defining the membership of the Committee
- specifying the functions of the Committee
- establishing an education subcommittee of the Committee and defining its membership and functions
- establishing an insurance subcommittee of the Committee and defining its membership and functions
- enabling the Committee to establish other advisory sub-committees

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- providing for the appointment of a Registrar and other staff for the Committee, the use by the Committee of the services of Government staff and facilities and the employment by the Committee of consultants

PART 8—MISCELLANEOUS

This Part (clauses 153–162) deals with the miscellaneous matters and contains provisions:

- requiring the Committee and the Association to submit annual reports to the Minister for tabling in Parliament
- conferring certain functions on the Council in connection with the administration of the proposed Act
- enabling the Supreme Court to order the delivery up of documents
- providing for the qualifications of auditors for the purposes of the proposed Act
- providing for the establishment of a register of licensed conveyancers
- providing for the issue of evidentiary certificates concerning the persons who are licensed conveyancers and the terms of the licences in force under the Act
- providing that offences against the proposed Act or the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate
- enabling the Governor to make regulations for the purposes of the proposed Act
- giving effect to a Schedule of amendments to other Acts
- giving effect to a Schedule of savings, transitional and other provisions

SCHEDULE 1—THE CONVEYANCERS LICENSING COMMITTEE

This Schedule provides for the membership and procedure of the Committee.

Part 1 (Members of the Committee) contains provisions concerning:

- reserve members
- terms of office
- remuneration
- filling of vacancy in office of a member
- casual vacancies
- conflict of interests
- effect of certain other Acts

Part 2 (Procedure of the Committee) contains provisions concerning:

- general procedure
- quorum
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- first meeting

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- Conveyancing Act 1919
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SCHEDULE 3—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

This Schedule contains savings, transitional and other provisions.

Part 1 (Preliminary) contains a provision enabling the regulations to include provisions of a savings or transitional nature.

Part 2 (Provisions consequent on enactment of the proposed Act) contains provisions concerning:

- a definition
- interim constitution of the Committee
- interim constitution of the Panel
- interim constitution of the Board
- interim constitution of the Tribunal
- interim certificates of eligibility

DICTIONARY OF WORDS AND EXPRESSIONS

The Dictionary defines the following words and expressions:

affairs	Law Society
Association	licence
Board	licensee
Committee	money
controlled money	money received
conveyancing business	Panel
conveyancing work	professional misconduct
costs	record
Council	Statutory Interest Account
disqualified person	Tribunal
exercise a function	trust money
firm of licensees	unsatisfactory professional conduct
function	

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SCHEDULE 2—AMENDMENT OF OTHER ACTS

SCHEDULE 3—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

DICTIONARY OF WORDS AND EXPRESSIONS

affairs	Law Society
Association	licence
Board	licensee
Committee	money
controlled money	money received
conveyancing business	Panel
conveyancing work	professional misconduct
costs	record
Council	Statutory Interest Account
disqualified person	Tribunal
exercise a function	trust money
firm of licensees	unsatisfactory professional conduct
function	

CONVEYANCERS LICENSING BILL 1992

NEW SOUTH WALES



No. , 1992

A BILL FOR

An Act to provide for the licensing and regulation of conveyancers; and
for other purposes.

The Legislature of New South Wales enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the Conveyancers Licensing Act 1992.

5 Commencement

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

Definitions

3. (1) In this Act, the words and expressions appearing in the
10 Dictionary at the end of this Act have the meanings given to them in that Dictionary.

- (2) Certain words and expressions used in Part 4 (Claims arising from Failures to Account) are defined in Division 1 of that Part.

- 15 (3) Certain words and expressions used in Part 5 (Management and Receivership) are defined in Division 1 of that Part.

Conveyancing work

4. (1) For the purposes of this Act, **conveyancing work** is legal work carried out in connection with any transaction that creates, varies, transfers or extinguishes a legal or equitable interest in residential
20 property or that otherwise affects residential property.

- (2) Without limitation, **conveyancing work** includes:

- (a) legal work involved in preparing any document (such as an agreement, conveyance, transfer, lease or mortgage) that is necessary to give effect to any such transaction; and
25 (b) legal work (such as the giving of advice or the preparation, perusal, exchange or registration of documents) that is consequential or ancillary to any such transaction; and
(c) any other legal work that is prescribed by the regulations as constituting conveyancing work for the purposes of this Act.

- 30 (3) However, **conveyancing work** does not include the carrying out of any work for the purpose of:

- (a) commencing or maintaining legal proceedings; or
(b) establishing a corporation or varying the memorandum or articles of association of a corporation; or

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- (c) preparing a mortgage otherwise than in connection with an agreement for sale of residential property where the vendor is to be the mortgagee under the mortgage; or
 - (d) creating, varying or extinguishing a trust; or
 - (e) preparing a testamentary instrument; or 5
 - (f) creating, varying, transferring or extinguishing a legal or equitable interest in animals or in the goodwill or stock-in-trade of a business; or
 - (g) obtaining the consent of any public or local authority to the subdivision of land, the erection of a building or the carrying out of development (within the meaning of the Environmental Planning and Assessment Act 1979) on land; 10
 - (h) giving investment or financial advice; or
 - (i) investing money otherwise than as provided for by Division 2 of Part 3, 15
- and does not include any work that is prescribed by the regulations as not constituting conveyancing work for the purposes of this Act.
- (4) In this section:
- “legal work” means work that, if done for fee or reward by a person who is neither a solicitor nor a barrister, would give rise to an offence under Part 9 of the Legal Profession Act 1987; 20
- “residential property” has the same meaning as it has in Division 8 of Part 4 of the Conveyancing Act 1919, except that it includes land having an area of up to, but not more than, 10 hectares.
- Disqualified persons** 25
5. (1) A person is a disqualified person for the purposes of this Act if the person:
- (a) is a corporation; or
 - (b) is an undischarged bankrupt; or
 - (c) has been convicted in New South Wales or elsewhere of an offence involving dishonesty; or 30
 - (d) is a mentally incapacitated person; or
 - (e) has been removed (otherwise than at his or her own request) from the roll of solicitors or the roll of barristers kept by the Supreme Court or from a corresponding roll of legal practitioners kept by a superior court of another State or Territory; or 35
 - (f) is disqualified from holding a licence under this Act by virtue of an order in force under section 139; or

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- (g) is disqualified from being employed in a solicitor's office by virtue of an order in force under section 120 of the Legal Profession Act 1987; or
- 5 (h) is disqualified from holding a licence or certificate of registration under the Auctioneers and Agents Act 1941 by virtue of an order in force under section 29 or 60 of that Act.
- (2) A person is also a disqualified person for the purposes of this Act if the person:
- 10 (a) is the holder of a barrister's or a solicitor's practising certificate under the Legal Profession Act 1987; or
- (b) is the holder of a licence or certificate of registration under the Auctioneers and Agents Act 1941.

PART 2—LICENSING**Division 1—Preliminary****15 Effect of licence**

6. (1) A licensee is not guilty of an offence under Part 9 (Unqualified Practitioners) of the Legal Profession Act 1987 in respect of conveyancing work that the licensee carries out in accordance with this Act, the regulations and the conditions of the licence.
- 20 (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.

Procedure for obtaining a licence

- 25 7. (1) A person is qualified to hold a licence if the person is the holder of a current certificate of eligibility to hold a licence.
- (2) A person is qualified to be granted a certificate of eligibility to hold a licence if the person:
- (a) is of or above the age of 18 years; and
- 30 (b) has such educational qualifications, practical training and conveyancing experience as may be approved by the Committee; and
- (c) is not a disqualified person.
- (3) Certificates of eligibility are granted by the Committee under Division 2.
- 35 (4) Licences are granted by the Council under Division 3.

Licensee to have paid fidelity contribution

8. A person is not entitled to be granted a licence unless the person has paid such part of any contribution under Division 2 of Part 4 as is due and payable on the granting of a licence.

Licensee to be covered by an approved policy of professional indemnity insurance 5

9. (1) The regulations may identify particular licensees or classes of licensees as persons who are required to be insured under a policy of professional indemnity insurance.

(2) A person who would, as a result of being granted a licence, become a licensee identified in such a regulation is not entitled to be granted a licence unless an approved policy of professional indemnity insurance will be in force with respect to the person for the whole of the period of the licence. 10

(3) A policy of professional indemnity insurance is an approved policy if the insurer and the terms of the policy (including the financial limits of any cover provided by the policy) are approved by the Committee. 15

(4) The Committee must consult with the Council and the Association before approving an insurance policy for the purposes of this section and must consider any representations made by the Council or the Association as to the form of, and as to the terms to be included in, the policy. 20

(5) An insurance policy may not be approved for the purposes of this section unless it indemnifies the insured person against all liabilities incurred by the person during any period that the person is a licensee, including any period during which the licence is of no effect by virtue of section 19 (2) or (3), regardless of when any claim is made in respect of any such liability. 25

Division 2—Certificates of eligibility**Applications for certificates of eligibility**

10. (1) An application for a certificate of eligibility to hold a licence may be made to the Committee by any person. 30

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(2) An application must be in the form approved by the Committee and must be accompanied by:

- (a) an application fee of an amount prescribed by the regulations; and
- 5 (b) in the case of an initial application—evidence that the applicant has the educational qualifications, practical training and conveyancing experience approved by the Committee.

(3) The application fee is to be paid into the Statutory Interest Account.

Committee may require further particulars

11. The Committee, by notice in writing served on the applicant:

- 10 (a) may require further information to be given in connection with the application; and
- (b) may require the application, or any further information, to be verified by statutory declaration,

within such time as it may specify in the notice.

15 **Determination of applications**

12. (1) After considering an application, the Committee may determine:

- (a) to grant a certificate of eligibility to the applicant; or
- (b) to refuse the application.

20 (2) A certificate of eligibility may not be granted to an applicant unless the Committee is satisfied that the applicant:

- (a) is of or above the age of 18 years; and
- (b) has such educational qualifications, practical training and conveyancing experience as may be approved by the Committee;
- 25 and

(c) is not a disqualified person.

(3) A certificate of eligibility may not, except after consultation with the Council, be granted to an applicant who has been the holder of a licence that has been cancelled (otherwise than at the request of the applicant) since the previous certificate of eligibility was granted.

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(4) A certificate of eligibility may not, except after consultation with the Association, be granted to an applicant who has been the holder of a licence that has been cancelled on a ground referred to in section 20 (1) (e), (f) or (g) since the previous certificate of eligibility was granted.

(5) For the purpose of determining whether or not a person is a disqualified person by virtue of section 5 (1) (c), the Committee:

- (a) may determine whether an offence committed by the person was or was not, in the circumstances of the case, an offence involving dishonesty; and
- (b) may determine to ignore the fact that the person has committed such an offence if (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) it considers it appropriate to do so.

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Imposition of conditions

13. (1) A certificate of eligibility may specify conditions to which a licence granted to the applicant should be subject.

(2) The conditions so specified may include conditions of the following kind:

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- (a) a condition prohibiting the proposed licensee from carrying out conveyancing work otherwise than as an employee of a licensee whose licence does not contain such a condition;
- (b) a condition requiring the proposed licensee to undertake or complete a specified course of studies within a specified period of time;
- (c) a condition prohibiting the proposed licensee from carrying out conveyancing work in relation to specified kinds of transaction;
- (d) a condition requiring the proposed licensee to undertake or complete a specified course of further legal education during each year for which he or she remains a licensee.

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Notice of Committee's decision to be given

14. (1) The Committee must cause notice of its decision on an application (including reasons for the decision, if the decision is to refuse the application) to be given to the applicant within 14 days after the decision is made.

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(2) For the purposes only of any appeal proceedings arising in connection with an application under this section, the Committee is taken to have refused the application if it has not finally disposed of the application within 6 weeks after the application was made.

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Duration of certificates of eligibility

15. A certificate of eligibility remains in force until it is withdrawn or until it is replaced by another certificate of eligibility.

Withdrawal of certificates of eligibility

5 16. The Committee, by notice in writing served on the holder of a certificate of eligibility, may withdraw the certificate on any of the following grounds:

- 10 (a) that the holder of the certificate has ceased to hold a licence for a single period of more than 6 months since the certificate was granted;
- (b) that a licence held by the holder of the certificate has been cancelled otherwise than at the request of the licensee;
- (c) that the holder of the certificate has failed to comply with the conditions of any licence issued by virtue of the certificate;
- 15 (d) that the holder of the certificate is disqualified from holding a licence by virtue of an order in force under section 139;
- (e) that the Tribunal has cancelled the certificate under section 139.

Division 3—Licences**Applications for licences**

20 17. (1) An application for a licence may be made to the Council by any person who holds a current certificate of eligibility.

 (2) An application must be in the form approved by the Council and must be accompanied by:

- 25 (a) an application fee of an amount prescribed by the regulations; and
- (b) the applicant's current certificate of eligibility to hold a licence; and
- (c) evidence that the applicant has paid such part of any contribution under Division 2 of Part 4 as is due and payable on the granting of a licence; and
- 30 (d) in the case of an applicant who would, as a result of being granted a licence, be required to be covered by an approved policy of professional indemnity insurance—evidence that such a policy will be in force with respect to the applicant for the whole of the period of the licence; and
- 35 (e) in the case of an application for the renewal of an expiring licence—the most recent auditor's certificate in relation to the licensee's accounts.

- (3) The application fee is to be paid into the Statutory Interest Account.
- (4) The Council may require an application to be verified by statutory declaration.
- (5) The applicant's current certificate of eligibility to hold a licence is to be returned to the applicant as soon as the application has been dealt with. 5

Determination of applications

- 18. (1) After considering an application, the Council may determine:
 - (a) to grant a licence to the applicant; or
 - (b) to refuse the application. 10
- (2) A licence may not be granted to an applicant unless the Council is satisfied:
 - (a) that the applicant is not a disqualified person; and
 - (b) that the applicant is the holder of a current certificate of eligibility to hold a licence; and 15
 - (c) that the applicant has paid such part of any contribution under Division 2 of Part 4 as is due and payable on the granting of a licence; and
 - (d) in the case of an applicant who would, as a result of being granted a licence, be required to be covered by an approved policy of professional indemnity insurance—that such a policy will be in force with respect to the applicant for the whole of the period of the licence. 20
- (3) The Council may refuse an application on any of the grounds (listed in section 20 (1)) on which it may suspend or cancel a licence. 25
- (4) The licence is to be in a form approved by the Council and is to be granted subject to the conditions set out in the current certificate of eligibility.
- (5) For the purposes only of any appeal proceedings arising in connection with an application under this section, the Council is taken to have refused the application if it has not finally disposed of the application within 8 weeks after the application was made. 30

Duration of licences

- 19. (1) A licence takes effect on the date on which it is granted, or on such later date as may be specified in the licence, and (unless sooner suspended or cancelled) remains in force until the following 30 June or, if 35

an application for a further licence is duly made before the following 30 June, until the date on which the application is finally disposed of.

(2) A licence is of no effect during any period for which any part of a contribution under Division 2 of Part 4 remains due and payable by the licensee.

(3) A licence held by a licensee who is required to be covered by an approved policy of professional indemnity insurance is of no effect during any period for which such a policy is not in force with respect to the licensee.

10 Suspension and cancellation of licences

20. (1) The Council may suspend or cancel a licence on any of the following grounds:

- (a) that the licensee has requested the suspension or cancellation of the licence;
- 15 (b) that the Tribunal has ordered the cancellation of the licence;
- (c) that the licensee has failed to comply with a condition of the licence;
- (d) that the licensee has failed to comply with an order in force under section 125, 130 or 139;
- 20 (e) that the licensee has failed to comply with the requirements of Division 2 of Part 3 in relation to trust money or controlled money;
- (f) that the licensee has failed to pay any part of a contribution due and payable under Division 2 of Part 4;
- 25 (g) in the case of a licensee who is required to be covered by an approved policy of professional indemnity insurance—that such a policy is no longer in force with respect to the licensee;
- (h) that the licensee has become a disqualified person;
- (i) that the licensee has failed to comply with a requirement under this Act to furnish any record, document or information or if any record, document or information so furnished fails to give a satisfactory explanation of the licensee's conduct;
- 30 (j) that the licensee has been convicted of an offence against this Act;
- (k) that the licensee is a prisoner within the meaning of the Prisons Act 1952;
- 35 (l) that the licensee is (because of illness or infirmity) unfit to carry out conveyancing work and that it is in the public interest that the licence be suspended or cancelled.

(2) A licence may not be suspended or cancelled on a ground referred to in subsection (1) (e), (f) or (g) except after consultation with the Association.

(3) A licence may not be suspended or cancelled on the ground referred to in subsection (1) (l) except after consultation with the Committee. 5

(4) Before suspending or cancelling a licence on the ground referred to in subsection (1) (l), the Council:

(a) may hold an inquiry; and

(b) may require the licensee to be examined by a medical practitioner nominated by the Council. 10

(5) An inquiry under this section is to be conducted in accordance with the procedures prescribed by the regulations.

(6) The Council must cause notice of its decision to suspend or cancel a licence to be given to the licensee, to the Committee and (if the decision is based on a ground referred to in subsection (1) (e), (f) or (g)) to the Association within 14 days after the decision is made. 15

(7) The notice must include the reasons for the decision if the decision is based on a ground referred to in subsection (1) (b)–(l).

(8) A suspension or cancellation of a licence takes effect when notice of the suspension or cancellation is served on the licensee or on such later date as may be specified in the notice. 20

Division 4—Appeals

Appeals

21. (1) An appeal lies to the Supreme Court against the following decisions: 25

(a) a decision of the Committee refusing to grant a certificate of eligibility for a licence;

(b) a decision of the Committee requiring the imposition of a condition on a licence;

(c) a decision of the Council refusing to grant a licence; 30

(d) a decision of the Council suspending or cancelling a licence.

(2) Such an appeal must be made within 28 days after the date on which the decision was made or is taken to have been made.

(3) The making of an appeal does not operate to stay the decision appealed against except to the extent (if any) to which the Supreme Court orders. 35

PART 3—CONVEYANCING PRACTICE**Division 1—General****Effect of contravention of Division 1**

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

Fees

23. (1) If a maximum fee for the carrying out of work by a solicitor
10 (or a maximum rate according to which such a fee may be calculated) is
fixed by a determination of the Legal Fees and Costs Board, the
maximum fee for the carrying out of the same kind of work by a licensee
(or the maximum rate according to which such a fee may be calculated) is
the same as that fixed by the determination.
- 15 (2) Despite any Act or law to the contrary, a licensee is not entitled to
charge or recover, in respect of any work, any amount in excess of the
maximum amount payable, in respect of that work, in accordance with
subsection (1).
- (3) A licensee must not enter into an agreement that attempts to
20 exclude, modify or restrict the operation of this section.
- (4) Any agreement that attempts to exclude, modify or restrict the
operation of this section is void to the extent to which it attempts to do
so.
- 25 (5) Division 5 of Part 11 of the Legal Profession Act 1987 applies to
the fees charged by a licensee in the same way as it applies to the fees
charged by a solicitor.

Nature of conveyancing business

24. (1) A licensee must not conduct a conveyancing business, or be
involved in the conduct of a conveyancing business, otherwise than as a
30 sole practitioner, in partnership with other licensees or as an employee of
another licensee.
- (2) A licensee must not falsely represent, or permit any other person to
falsely represent, that another person is a partner of the licensee.

Attendance at business premises

25. A licensee must not permit conveyancing work to be carried out at any premises at which the licensee conducts a conveyancing business unless the licensee, or some other licensee, gives reasonable attendance at those premises.

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Business names

26. (1) A licensee must not conduct a conveyancing business under a business name that is not approved by the Committee.

(2) The Committee 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.

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(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.

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Sharing of receipts with unqualified persons

27. (1) A licensee must not share the receipts of a conveyancing business with another person unless:

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- (a) the other person is a licensee; or
- (b) the sharing of those receipts with that other person is approved by the Committee.

(2) An approval may not be given under this section unless the Committee is satisfied that the sharing of the receipts of the conveyancing business in accordance with the approval:

25

- (a) will not result in a person other than a licensee gaining control of the business; and
- (b) will not adversely affect the independent conduct of the licensee's business or give rise to a conflict between the interests of the licensee and the interests of any of the licensee's clients.

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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.

35

Employment of disqualified persons

28. (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.

- 5 (2) Subsection (1) does not apply in relation to a person who is employed or paid in accordance with leave given by the Committee or by the Supreme Court.

- 10 (3) If the Committee refuses an application by a person for leave under this section, the person may appeal against the decision to the Supreme Court which may either confirm the decision appealed against or else give leave for the appellant to be employed or paid in connection with the conveyancing business.

(4) Leave given under this section may be limited as to time or given subject to specified conditions.

- 15 (5) A disqualified person must not seek employment or payment in connection with a licensee's conveyancing business unless he or she has informed the licensee of the fact of his or her disqualification.

Maximum penalty (subsection (5)): 10 penalty units.

Sharing staff of legal practitioners and real estate agents etc.

- 20 29. A licensee must not employ any person in the conduct of a conveyancing business if the person, while so employed, is employed also:

- (a) by the holder of a barrister's or solicitor's practising certificate under the Legal Profession Act 1987; or
25 (b) by the the holder of a licence or certificate of registration under the Auctioneers and Agents Act 1941.

Advertising

- 30 30. (1) The regulations may make provision with respect to advertising in connection with the carrying out of conveyancing work and the conduct of a conveyancing business.

- (2) In particular, the regulations may make provision with respect to the manner in which a licensee may advertise, the subject-matter of advertisements and the manner in which a licensee must represent himself or herself in correspondence arising in the conduct of a conveyancing
35 business.

(3) A licensee must not advertise otherwise than in accordance with the regulations under this section.

Conduct of other businesses

31. (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.

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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.

Committee may establish guidelines for conduct of conveyancing business

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32. (1) The Committee may, by order published in the Gazette, establish guidelines as to the manner in which conveyancing businesses should be conducted.

(2) The guidelines may adopt, with or without modification, the provisions of any rules made by the Law Society with respect to the conduct of solicitors.

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(3) A licensee must not conduct a conveyancing business in contravention of any guidelines in force under this section.

Division 2—Trust money and controlled money**Money received by licensee on behalf of another**

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33. (1) A licensee who, in the course of conducting a conveyancing business, receives money on behalf of another person:

(a) must pay the money, within the time prescribed by the regulations, into a general trust account at a bank in New South Wales and must hold the money in accordance with the regulations relating to trust money; or

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(b) if the person on whose behalf the money is received directs that it be paid otherwise than into a general trust account, must pay the money as directed and (if the money is to be held under the direct or indirect control of the licensee for more than the period prescribed by the regulations) must hold the money in accordance with the regulations relating to controlled money.

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(2) In either case, the licensee must hold the money exclusively for, and must disburse the money in accordance with the directions of, the person on whose behalf it is held.

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- (3) This section:
- (a) does not prevent a licensee from depositing money with the Law Society in accordance with section 36, but continues to apply to any money so deposited that is repaid to the licensee; and
 - 5 (b) does not prevent a licensee from withdrawing or receiving, from trust money or controlled money:
 - reimbursement for disbursements paid by the licensee; or
 - money for disbursements to be paid by the licensee; or
 - money due, or to accrue due, to the licensee for costs,
 - 10 so long as the procedure prescribed by the regulations is followed; and
 - (c) does not affect any enforceable lien or claim that a licensee has to any money; and
 - 15 (d) does not prevent a licensee from exercising a general retaining lien for unpaid costs and disbursements in respect of money in a trust account or a controlled money account (other than money received subject to an express direction by the client with respect to the purposes for which the money is to be applied).
- (4) A lien referred to in subsection (3) (d):
- 20 (a) may not be exercised for an amount in excess of the sum of the costs and disbursements unpaid; and
 - (b) may not be exercised unless the licensee has delivered an outline bill of costs and disbursements to the client on whose behalf the money is held.
- 25 (5) Money received by a licensee on behalf of another person:
- (a) is not available for payment to a creditor of the licensee; and
 - (b) is not liable to be taken in execution of any judgment, order or other process of any court or tribunal at the instance of a creditor of the licensee,
 - 30 unless the creditor is the person on whose behalf the money is held by the licensee.
- (6) If a trust account kept by a licensee is operated on by a person other than the licensee, section 53 of the Trustee Act 1925 does not apply to the person in relation to the operation on the trust account.
- 35 (7) It is professional misconduct for a licensee to contravene this section.

Keeping of accounts

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

(2) The accounting records must be kept in a manner that enables them to be conveniently and properly audited and, if the regulations so require, must be kept in such manner as the regulations prescribe. 5

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

Audits

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

- (a) the auditing of a licensee's records; and
- (b) the reports to be made by auditors; and
- (c) the submission of auditors' reports to the Council and to the Association. 15

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

- (a) to produce for the auditor's inspection any accounting or other records relating to the licensee's conveyancing business;
- (b) to give the auditor such other information as is reasonably necessary for the purposes of the audit; 20
- (c) to furnish the auditor with such authorities or orders on bankers and others as relate to the licensee's conveyancing business.

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

- (a) must not fail to comply with the requirement; and
- (b) must not, in purported compliance with the requirement, provide information that the person knows to be false or misleading in a material particular. 25

Maximum penalty: 10 penalty units.

(4) If a record:

- (a) is not in writing; or 30

(b) is not written in English; or

(c) is not decipherable on sight,

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

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

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

Deposit of trust funds with Law Society

15 36. (1) Out of the money that is paid into a licensee's trust account, the licensee must cause to be deposited with the Law Society, and to be kept deposited with the Law Society, an amount calculated as prescribed by the regulations.

(2) This section applies to each member of a firm of licensees, and to money paid into a trust account kept by such a firm, in the same way as it applies to a licensee and to money paid into a trust account kept by a licensee.

20 (3) This section does not apply to a separate trust account kept on the instructions of a client for the exclusive use of the client.

(4) This section does not affect any enforceable lien or claim that a licensee has to any money.

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

Money not claimed from licensee

37. (1) If a licensee holding money in a trust account cannot find the person on whose behalf the money is held or any other person authorised to receive the money, the licensee:

30 (a) may pay the money to the Treasurer for payment into the Consolidated Fund; and

(b) must in that event, provide the Treasurer with such information as the Treasurer requires in relation to the money and the person on whose behalf the money was held.

35 (2) If a licensee pays money to the Treasurer under this section, the licensee is relieved from any further liability in relation to the money.

(3) The Treasurer may pay money deposited under this section to any person who satisfies the Treasurer as to his or her entitlement to the money.

(4) Payment of money to such a person discharges the Crown and the Treasurer from any liability in relation to the money, but does not discharge the person from any liability to any other person who establishes an entitlement to the money.

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(5) The Treasurer may require a person to provide any information that the person has, or can reasonably obtain, about the entitlement of any other person to money paid to the Treasurer under this section and about any attempts that have been made to locate that other person.

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

(a) must not fail to comply with the requirement; and

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

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

Relief for bankers

38. (1) A bank, in relation to a transaction on an account kept by a licensee at that or any other bank:

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(a) does not incur any obligation to make inquiries, or any other obligation or liability, other than an obligation or liability to which it would be subject apart from this Act; and

(b) does not have imputed to it any knowledge of the entitlement of a person to money credited to the account,

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that it would not incur, or have imputed to it, if the account were kept by the bank for a person absolutely entitled to the money held in the account.

(2) A bank at which a licensee keeps an account for clients' money has no recourse (whether by way of set-off, counter-claim, charge or otherwise) against money held in the account in respect of any liability of the licensee to the bank other than a liability in respect of the account.

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Division 3—Inspection of trust accounts and investigations generally

Appointment of trust account inspectors etc.

39. (1) The Council:

- 5 (a) may appoint trust account inspectors to inspect, either generally or in a particular case, the accounts kept by licensees under Division 2; and
- (b) may, after consultation with the Association, appoint an investigator to investigate the affairs of a particular licensee.
- 10 (2) A trust account inspector may exercise the functions of an investigator in the course of any inspection of accounts carried out by the inspector.
- (3) A trust account inspector or an investigator may appoint an assistant to assist in the conduct of inspections or investigations.
- 15 (4) Trust account inspectors and investigators are referred to in this Division as inspectors.

Production of records

- 20 **40. (1)** An inspector may require a licensee, or any other person who has possession or control of any records of a licensee or relating to the affairs of a licensee, to do any of the following:
- (a) to produce for the inspector's inspection such of those records as relate to the accounts being inspected or the affairs being investigated;
- 25 (b) to give the inspector such other information as the licensee or other person is able to give in relation to those accounts or affairs;
- (c) to furnish the inspector with such authorities or orders on bankers and others as relate to those accounts or affairs.
- (2)** A person of whom such a requirement is made:
- (a) must not fail to comply with the requirement; and
- 30 (b) must not, in purported compliance with the requirement, provide information that the person knows to be false or misleading in a material particular.

Maximum penalty: 10 penalty units.

(3) If a record:

- 35 (a) is not in writing; or

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- (b) is not written in English; or
- (c) is not decipherable on sight,

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

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

Inspectors' reports

- 41. An inspector: 10
 - (a) must send a copy of his or her report to the licensee (at the address of the licensee last known to the Council) and further copies to the Association and the Council; and
 - (b) must provide the Minister with a copy of the report if the report indicates that there are reasonable grounds for suspecting professional misconduct, unsatisfactory professional conduct or irregularity in relation to the affairs of the licensee. 15

Costs of inspection and investigation

- 42. (1) The amount of the costs of an inspection or investigation, as certified by the Council, is a debt due to the Law Society by the licensee under inspection or investigation: 20
 - (a) if the inspector states in his or her report that there is evidence that the licensee is guilty of professional misconduct or unsatisfactory professional conduct in relation to the affairs investigated or is guilty of an offence against this Act or the regulations; and 25
 - (b) if the Council is of the opinion that the conduct or breach was wilful or of a substantial nature.
- (2) The Council may waive payment of costs under this section.
- (3) If the inspection or investigation concerned relates to the accounts or affairs of a firm of licensees, the Council may determine the proportion or amount (if any) of the debt due to the Law Society payable by each licensee involved. 30

Secrecy

- 43. (1) It is an offence for an inspector, unless making a requirement under this Division, or for an inspector's assistant, to make an unauthorised disclosure: 35

- (a) of the appointment of the inspector or assistant; or
 - (b) of any matter that comes to his or her notice in the course of the inspection or investigation; or
 - (c) of anything in the inspector's report.
- 5 Maximum penalty: 10 penalty units.
- (2) Subsection (1) is not contravened:
- (a) if an inspector discloses anything to his or her assistant; or
 - (b) if an inspector's assistant discloses anything to the inspector.
- (3) A member of the Council, or a solicitor, officer or agent of the Law
- 10 Society, must not make an unauthorised disclosure:
- (a) of the appointment of an inspector or of an inspector's assistant; or
 - (b) of anything in an inspector's report.
- Maximum penalty: 10 penalty units.
- (4) Subsection (3) is not contravened:
- 15 (a) if an inspector states in his or her report that there is evidence of professional misconduct, unsatisfactory professional conduct or irregularity in relation to the affairs inspected or investigated; and
- (b) if a member of the Council, or a solicitor, officer or agent of the
- 20 Law Society, discloses information in the report to a person to whom the Council decides that the information should be disclosed.
- (5) A disclosure is an unauthorised disclosure if it is made to a person other than:
- (a) the Minister; or
 - (b) a member of the Committee, the Association or the Council; or

25 (c) any insurer of the Association; or

 - (d) a solicitor, agent or officer of the Committee, the Law Society, the Association or any insurer of the Association; or
 - (e) the Supreme Court; or
 - (f) the Panel, the Board or the Tribunal; or

30 (g) a police officer; or

 - (h) a person to whom a copy of the report is required by this Act to be sent.

Obstruction of inspectors etc.

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

Maximum penalty: 10 penalty units.

PART 4—CLAIMS ARISING FROM FAILURES TO ACCOUNT

Division 1—Preliminary

Definitions

45. In this Part: 5
- “associate” has the same meaning as it has in Part 5;
- “failure to account” has the meaning given to it by section 46;
- “pecuniary loss” includes:
- (a) the costs of a claimant that are due to a failure to account; and
 - (b) the costs involved in making a claim; and 10
 - (c) interest that, but for a failure to account, would have been received by a claimant, calculated to the date on which the claim succeeds, being interest at a rate up to, but not exceeding, the rate prescribed by the Supreme Court Rules in respect of unpaid judgments as at that date. 15

Failure to account

46. (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 20
 - (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: 25
- (c) for which the licensee or associate has been convicted of an offence involving dishonesty; or
 - (d) which the Association has found to be dishonest.
- (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. 30
- (3) A finding by the Association that an act or omission is, or is not, dishonest is conclusive for the purposes of subsection (1). 35

Division 2—Fidelity insurance**Association to take out fidelity insurance**

47. (1) The Association must ensure that an approved policy of fidelity insurance is in force at all times in relation to all licensees.

- 5 (2) A policy of fidelity insurance is an approved policy if the insurer and the terms of the policy (including the financial limits of any cover provided by the policy) are approved by the Committee.

- 10 (3) The Committee must consult with the Council and the Association before approving an insurance policy for the purposes of this section and must consider any representations made by the Council or the Association as to the form of, and as to the terms to be included in, the policy.

- 15 (4) An insurance policy may not be approved for the purposes of this section unless it is in the form of a master policy of fidelity insurance, being a policy that is held by the Association and that indemnifies the Association against all liabilities incurred by the Association under Division 3, regardless of when any claim is made in respect of any such liability.

Contributions by licensees

- 20 48. (1) A licensee is liable to pay a contribution to the Association with respect to the approved policy of fidelity insurance held by the Association in respect of any year during which the licensee holds a licence.

- 25 (2) The appropriate contribution is the amount determined from time to time by the Association, with the approval of the Committee, in relation to the licensee or to the class of licensees to which the licensee belongs.

- (3) The appropriate contribution for a licence that is to take effect on or after 1 January in any year is half the contribution that would otherwise be payable.

- 30 (4) The Association may determine different contributions for different licensees or for different classes of licensees and may determine the manner in which, and the time or times at which, a contribution, or an instalment of a contribution, is to be paid.

- (5) The Association is to notify the Committee in the event that any part of a contribution remains due and unpaid.

Division 3—Claims against the Association in respect of failures to account

Claims against the Association

49. (1) Any person who suffers pecuniary loss as a result of a failure to account by a licensee is entitled to be compensated for the loss by the Association. 5

(2) The Association must notify the Council and the Committee of any claim made against it under this section.

(3) A person is not prevented from making a claim merely because, after the act or omission from which a failure to account arises, a licensee: 10

(a) dies; or

(b) ceases to conduct a conveyancing business; or

(c) ceases to hold a licence.

(4) If a licensee authorises a person to operate on an account for clients' money kept by the licensee at a bank, an act or omission by the person in relation to those operations is, for the purposes of this Division, an act or omission of an agent of the licensee. 15

(5) A claim must be made:

(a) within 3 months after the claimant becomes aware of the failure to account; or 20

(b) within such further time as the Association allows; or

(c) if the Association refuses to allow further time—within such further time as the Supreme Court allows.

Reimbursement of licensees and others 25

50. (1) If, in respect of a failure to account by a licensee's associate:

(a) all claims (other than claims under this section) have been met; and

(b) the licensee has paid compensation for a pecuniary loss due to the failure to account; and

(c) the licensee has, in the opinion of the Association, at all times acted honestly and reasonably in relation to the failure to account, 30

the licensee may make a claim as if the compensation paid by the licensee were a pecuniary loss suffered as a result of the failure to account.

(2) A reference in this section to a licensee includes a reference to:

(a) a former licensee; and 35

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- (b) in relation to the payment of compensation and the making of a claim—the personal representative of a deceased licensee or a deceased former licensee.

Final date for making claims

- 5 **51.** (1) If the Association has reason to believe that there has been or may have been a failure to account, it may publish:
 - (a) in a newspaper published and circulating in the district in which the licensee is, or was, carrying on business; and
 - (b) in a newspaper published and circulating in Sydney,
- 10 a notice that fixes a date on or before which claims relating to the failure must be made.
 - (2) The date fixed by the notice must be a date that is not earlier than 3 months after its first or only publication and a claim made after that date is barred unless:
 - 15 (a) further time is allowed by the Association; or
 - (b) if the Association refuses to allow further time, further time is allowed by the Supreme Court.
 - (3) The publication in a newspaper in good faith of a notice under this section does not subject:
 - 20 (a) the Association; or
 - (b) a member, employee or agent of the Association; or
 - (c) the proprietor, editor or publisher of the newspaper,to a liability to any person.
 - (4) The Association may, after such date as it may fix in each case, pay
 - 25 successful claims.

Claims must be pursued

- 52. (1) The Association may give a claimant not less than 21 days' written notice requiring the claimant:
 - (a) to take such steps for the purpose of pursuing the claim; or
 - 30 (b) to supply such particulars in connection with the claim; or
 - (c) to produce or deliver to it any securities or documents necessary or available to support the claim or to enable it to establish any rights of the Association against a licensee or an associate of the licensee; or
 - 35 (d) to do such things in connection with the claim,as are specified in the notice.

- (2) If the claimant fails to comply with the notice, the Association:
- (a) may wholly or partly disallow the claim; or
 - (b) may direct that the whole, or a specified part, of any interest otherwise payable be not paid.

Determination of claims

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53. (1) After considering a claim, the Association may determine the claim:

- (a) by allowing the claim, either wholly or in part; or
- (b) by disallowing the claim.

(2) A claim is not to be allowed, either wholly or in part, unless the Association is satisfied that there has been a failure to account by the licensee to whom the claim relates and that the claimant has suffered pecuniary loss as a result of that failure.

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(3) If a claim is allowed in part only, there is to be paid to the claimant by the Association, in respect of costs incurred by the claimant as a result of the failure to account, an amount assessed:

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- (a) by agreement between the claimant and the Association; or
- (b) in default of agreement—as if taxed on a reference for taxation under Division 5 of Part 11 of the Legal Profession Act 1987.

(4) If a claim is disallowed but the Association determines that a specified amount should be paid in respect of costs incurred by the claimant as a result of the failure to account, that amount is to be paid to the claimant by the Association.

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(5) The Association must cause notice to be given to the Council of any determination under this section within 7 days after the determination is made.

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(6) Even if a successful claim does not include a claim for interest, there is payable to the claimant by the Association interest at the rate prescribed by the regulations on:

- (a) the amount allowed by the Association; or
- (b) the amount of the judgment recovered against the Association, from the date on which the claim was made until the date on which it succeeded.

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Avoidance of double compensation

54. (1) If, in respect of a claim, a claimant:

(a) receives a payment from the Association; and

5 (b) receives or recovers from another source a payment on account of the pecuniary loss,

the claimant is liable to pay to the Association the amount of surplus (if any) after deducting from the total amount received or recovered by the claimant the amount of the pecuniary loss.

(2) If, in respect of a claim, a claimant:

10 (a) receives or recovers from a source other than the Association a payment on account of the pecuniary loss; and

(b) recovers judgment against the Association,

15 the amount of any such judgment against the Association is reduced by the amount of surplus (if any) after deducting from the total amount received or recovered (including the amount of the judgment) by the claimant the amount of the pecuniary loss.

(3) Any amount payable to the Association under subsection (1) is a debt due to the Association by the licensee.

Ceiling on payments by the Association

20 55. (1) The maximum aggregate amount that is payable by the Association in respect of all failures to account by the same licensee or firm of licensees is such amount as the Association may, after consultation with the Committee, determine.

25 (2) The Association may make a payment that, but for this subsection, could not be made because of the limit imposed by subsection (1) if it is satisfied, after taking into account all of its ascertained and contingent liabilities, that it would be reasonable to do so.

Proceedings against the Association

30 56. (1) An action does not lie against the Association in respect of its determination of a claim otherwise than as provided by this section.

(2) If the Association wholly or partly disallows a claim relating to a failure to account in respect of which a licensee or associate has been convicted of an offence involving dishonesty:

35 (a) the claimant may take proceedings in the Supreme Court as for a debt due by the Association; and

(b) in any such proceedings, the defences that would have been available to the licensee are available to the Association.

(3) If the Association wholly or partly disallows a claim, it must, without delay, give written notice of the disallowance to the claimant or the claimant's solicitor.

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(4) A claimant whose claim is wholly or partly disallowed, or whose claim is not determined by the Association within the time prescribed by the regulations, may appeal to the Supreme Court against the disallowance of or the failure to determine the claim.

(5) On an appeal under this section, the Supreme Court may make such order as it thinks fit.

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(6) A claimant may take proceedings under either subsection (2) or subsection (4).

Association subrogated to rights etc. of claimants

57. (1) On payment being made under a claim, the Association is subrogated to all the rights and remedies of the claimant against:

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(a) the licensee or associate in respect of whom the claim was made; or

(b) the person authorised to administer the estate of any such licensee who is deceased or bankrupt; or

(c) any other person,

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in relation to the failure to account.

(2) This section does not extend to a right or remedy against a licensee who is a partner of a claimant and who, in the opinion of the Association, acted honestly and reasonably in relation to the failure to account.

(3) The Association may exercise its rights or remedies under this section in its own name or the name of the claimant.

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(4) If the Association brings proceedings under this section in the name of a claimant, the Association indemnifies the claimant against any costs awarded against the claimant in the proceedings.

Insufficiency of the assets of the Association

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58. (1) If the assets of the Association are at any time insufficient to meet the liabilities to which the Association is subject under this Division:

(a) the Association may determine the manner of division among the successful claimants, or any of them to the exclusion of the others, of the money for the time being available; and

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(b) the judgments and claims are, subject to any limitations imposed by this Act, to be finally satisfied from future assets of the Association.

5 (2) Proceedings based on, or for the enforcement of, a judgment against the Association in respect of a claim may not be taken without the leave of the Supreme Court.

PART 5—MANAGEMENT AND RECEIVERSHIP

Division 1—Preliminary

Definitions

10 59. In this Part:

“associate”, in relation to a licensee, has the meaning given to it by section 60;

“expenses”, in relation to management or receivership, means:

- (a) the remuneration payable to the manager or receiver; or
- 15 (b) the expenses incurred in the course of the management or receivership; or
- (c) the costs of legal proceedings involved in the management or receivership; or
- 20 (d) any reimbursement of the manager or receiver under section 67 or 92;

“failure to account” has the meaning given to it by section 61;

“licensee” includes:

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

30 “property”, in relation to a licensee, means:

- (a) money or other property received by the licensee on behalf of another person in the conduct of a conveyancing business; or
- (b) interest, dividends, income, profits or other property derived from or acquired with money or other property referred to in
- 35 paragraph (a); or

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-
- (c) documents and records of any description relating to anything referred to in paragraph (a) or (b) or to the licensee's conveyancing business; or
- (d) any means by which any records referred to in paragraph (c) that are not written may be reproduced in writing, 5
- and, in relation to a licensee whose conveyancing business is under management, includes any property of the business;
- "receivable property"** means property of a licensee or an associate of a licensee that is the subject of an order appointing a receiver, and includes property that, but for its having being taken, paid or transferred unlawfully or in breach of trust, would be receivable property; 10
- "receiver"** means a receiver appointed by the Supreme Court under section 74;
- "relevant associate"** means a licensee's associate of whose property a receiver has been appointed under section 75; 15
- "relevant licensee"** means a licensee of whose property a receiver has been appointed.
- Associate**
60. (1) In this Part, a reference to a licensee's associate is a reference to: 20
- (a) a partner of the licensee; or
- (b) an employee or agent of the licensee; or
- (c) a corporation, or a member of a corporation, partnership, syndicate or joint venture, in which the licensee or a person referred to in paragraph (a), (b) or (d) has a beneficial interest; or 25
- (d) a person who bears a prescribed relationship to the licensee or to a person referred to in paragraphs (a)–(c); or
- (e) a corporation that (if a person referred to in paragraphs (b)–(d) is a corporation) is a subsidiary of the person within the meaning of the Corporations Law; or 30
- (f) a person declared by the regulations to be an associate of the licensee or belonging to a class of persons so declared.
- (2) For the purposes of subsection (1) (d), a person bears a prescribed relationship to a licensee or other person if the relationship is that of: 35
- (a) a spouse; or
- (b) a de facto partner within the meaning of the De Facto Relationships Act 1984; or

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- (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.

Failure to account

- 5 **61. (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
 - 10 (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:
- 15 (c) for which the licensee or associate has been convicted, or is likely to be convicted, of an offence involving dishonesty; or
 - (d) which the Council has found, or is likely to find, to be dishonest.
- (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
- 20 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.
- (3) A finding by the Council that an act or omission is, or is not, dishonest is conclusive for the purposes of subsection (1).

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Division 2—Management

Appointment of manager

62. (1) The Council may appoint a manager for a licensee’s conveyancing business if:
- 30 (a) the licensee has made a request to the Council for the appointment of a manager; or
 - (b) the Council has suspended or cancelled the licensee’s licence under section 20; or
 - 35 (c) the Council is of the opinion (whether as a consequence of a determination by the Association under Part 4 or otherwise) that there has been, or that there may have been, a failure to account by the licensee; or

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(d) the Council is of the opinion that a person is unable to obtain payment or delivery of property held by the licensee because the licensee:

- is mentally or physically infirm; or
- is bankrupt, has applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, has compounded with his or her creditors or has made an assignment of his or her remuneration for their benefit; or
- is a prisoner within the meaning of the Prisons Act 1952; or
- has died; or
- has abandoned his or her conveyancing business,

and if the Council is of the opinion that it is necessary to make the appointment in order to protect the interests of other persons.

(2) In the case of a conveyancing business that is conducted by 2 or more licensees in partnership, a reference in subsection (1) to a licensee is to be read as a reference to all of the licensees in the partnership.

(3) The terms of appointment of a manager must specify the remuneration to which the manager is to be entitled in connection with the management of the conveyancing business for which the manager is appointed.

(4) The Council must cause notice to be given to the Committee and the Association of any appointment under this section within 7 days after the appointment is made.

Qualifications for appointment as manager

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

Powers of manager

64. (1) The manager of a licensee's conveyancing business may, subject to subsection (2) and to the terms of his or her appointment:

- (a) carry out conveyancing work on behalf of the existing clients of the business; and
- (b) accept instructions from, and carry out conveyancing work on behalf of, new clients; and
- (c) dispose of, and otherwise deal with, any property in relation to the business; and

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- (d) exercise any right in the nature of a lien over property held by the manager on behalf of the clients of the business; and
- (e) incur such expenses as are reasonably related to the conduct of the business; and
- 5 (f) do all such things as are ancillary to the exercise of the powers referred to in paragraphs (a)–(e),

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

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

Management continues under receivership

- 65. (1) The manager of a licensee's conveyancing business may continue to exercise his or her functions under this Division even if a
- 15 receiver is appointed under Division 3 in respect of the licensee's property.

(2) The manager of a licensee's conveyancing business for which a receiver is appointed must comply with any lawful direction given by the receiver in connection with the conduct of the business.

20 Acts of manager to be taken as acts of licensee

66. (1) An act done by the manager of a licensee's conveyancing business is, for the purposes of any proceedings or transaction that relies on that act, taken to have been done by the licensee.

- (2) Nothing in this section subjects a licensee to any personal liability
- 25 in relation to any act done by the manager of the licensee's conveyancing business.

Manager may be reimbursed for damages

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

(2) Reimbursement under this section is to be by way of payment from the Statutory Interest Account.

- (3) Neither the manager of a licensee's conveyancing business nor the
- 35 Law Society is liable for any loss incurred by the licensee as a consequence of any act or omission of the manager or the Council 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.

Payment of expenses of management

68. (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 Law Society from the Statutory Interest Account. 5

(2) An amount paid under this section is recoverable by the Law Society as a debt owed by the relevant licensee.

Manager to report to Council and Association

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69. (1) The manager of a licensee's conveyancing business must:

(a) at such times as are fixed by the Council; and

(b) in accordance with any directions given by the Council,

report to the Council and to the Association on the management of the business. 15

(2) A report is to include such information as the Council directs.

(3) On the conclusion of the management of a licensee's conveyancing business, the manager must, when giving the Council his or her final report, lodge with the Council all the manager's records that relate to the management. 20

Trust money

70. (1) Division 2 of Part 3 applies to the accounts kept by a manager in the same way as it applies to the accounts kept by a licensee.

(2) The trust accounts and controlled money accounts of a conveyancing business under management are to be maintained separately from the trust accounts and controlled money accounts of any other conveyancing business under management. 25

Office accounts

71. The regulations may make provision with respect to:

(a) the accounts that are to be kept in relation to the income accrued, and the expenses incurred, by the manager of a licensee's conveyancing business in connection with the conduct of the business; and 30

(b) the purposes for which money in any such account may be expended. 35

Termination of management

72. 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 Statutory Interest 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.

Obstruction of managers

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

Maximum penalty: 50 penalty units.

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

74. (1) The Supreme Court may, on the application of the Law Society, appoint a receiver of all or any of the property of a licensee and may make the appointment whether or not the licensee has been notified of the application or is a party to the proceedings.
- (2) Such an application may be made by the Law Society only if:
- (a) the licensee has made a request to the Council for the appointment of a receiver; or
 - (b) the Council has suspended or cancelled the licensee's licence under section 20; or
 - (c) the Council is of the opinion (whether as a consequence of a determination by the Association under Part 4 or otherwise) that there has been, or that there may have been, a failure to account by the licensee; or
 - (d) the Council is of the opinion that a person is unable to obtain payment or delivery of property held by the licensee because the licensee:
 - is mentally or physically infirm; or
 - is bankrupt, has applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, has compounded with his or her creditors or has made an assignment of his or her remuneration for their benefit; or
 - is a prisoner within the meaning of the Prisons Act 1952; or
 - has died; or
 - has abandoned his or her conveyancing business,

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

(3) The Council must cause notice to be given to the Committee and the Association of any application under this section within 7 days after the application is made.

5

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

Receivership may extend to property of licensee's associate

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

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Court to be closed

76. (1) Before commencing to hear an application for the appointment of a receiver, the Supreme Court may order from the precincts of the Court any person who is not:

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- (a) an officer of the Court; or
- (b) a party, a legal representative of a party or a clerk of such a legal representative; or
- (c) a member of the same firm of licensees as the respondent; or
- (d) a person who is in the course of giving evidence; or
- (e) a person permitted by the Court to be present in the interests of justice.

20

(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.

25

Order to be served

77. (1) On the appointment of a receiver, the Council is to cause a copy of the order of appointment to be served on:

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- (a) the relevant licensee or relevant associate; and
- (b) any other person on whom the Supreme Court directs a copy of the order to be served.

(2) The Supreme Court may give directions as to the manner of service and may dispense with service if it thinks fit.

Receiver may take possession of property

5 78. (1) A receiver may take possession of receivable property of the relevant licensee or relevant associate.

(2) A person in possession, or having control, of receivable property must permit the receiver to take possession of the property if required by the receiver to do so.

10 (3) If a person fails to comply with such a requirement, the Supreme Court may, on the application of the receiver, order the person to deliver the property to the receiver.

(4) If, on the application of a receiver, the Supreme Court is satisfied that such an order has not been complied with, the Court:

15 (a) may order the seizure of any receivable property located on premises specified in the order; and

(b) may make such further order in the matter as it thinks fit.

(5) An order under subsection (4) (a) authorises:

(a) any police officer; or

20 (b) the receiver, or a person authorised by the receiver, together with any police officer,

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

(6) An application by a receiver under subsection (3) may be made:

25 (a) in the case of property in the possession, or under the control, of the relevant licensee or relevant associate—in the name of the receiver; or

(b) in any other case—in the name of the relevant licensee or relevant associate.

30 (7) A receiver must, as soon as possible, return property seized under this section if it transpires that it is not receivable property.

Information about receivable property

35 79. (1) A person who has information relating to receivable property, or property that a receiver believes on reasonable grounds to be receivable property, must give the information to the receiver if required by the receiver to do so.

Maximum penalty: 50 penalty units.

(2) A licensee who has any such information may not refuse to comply with such a requirement merely because the information was obtained in confidence from a client or former client of the licensee.

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

(4) Information given to a receiver under this section is not admissible as evidence in any legal proceedings, other than:

(a) proceedings taken by a receiver for the recovery of receivable property; or

(b) proceedings taken under this Part; or

(c) proceedings taken under Part 6 against a licensee:

- if the information was given to the receiver otherwise than by the licensee; or

- if the information was given to the receiver by the licensee and is given in evidence in those proceedings with the licensee's consent.

Stop order on bank account

80. (1) A receiver who believes on reasonable grounds that money held in a bank account is receivable property may serve on the bank an order (in this section referred to as a "stop order") prohibiting operations on the account by any person other than the receiver or a person authorised by the receiver.

(2) A stop order may be served by leaving it with the manager, accountant or other person appearing to be in charge at the branch of the bank at which the account is kept, but has no effect unless there is annexed to it a copy of the order appointing the receiver.

(3) A bank served with a stop order:

(a) must permit the receiver, or a person authorised by the receiver, to operate on the account to which the order relates; and

(b) must not permit any withdrawal from the account otherwise than by, or by the authority of, the receiver.

(4) A receiver may transfer money from an account the subject of a stop order to another account with the bank in the name of the receiver to be dealt with as receivable property.

- (5) The bank has the same obligations and protections:
- (a) in relation to an account the subject of a stop order; and
 - (b) in relation to an account to which money in such an account is transferred,
- 5 as if the receiver were the relevant licensee or relevant associate.

Improper dealing with property

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

- (a) operate on a bank account; or
- 10 (b) destroy or conceal receivable property or property that is likely to become receivable property; or
- (c) move receivable property, or property that is likely to become receivable property, from one place to another; or
- 15 (d) deliver possession of receivable property, or property that is likely to become receivable property, to another person; or
- (e) deliver control of receivable property, or property that is likely to become receivable property, to another person.

Maximum penalty: 20 penalty units.

Recovery of compensation for disposal of receivable property

- 20 82. (1) If receivable property has at any time been taken by, or paid or transferred to, a person unlawfully or in breach of trust in circumstances in which:
- (a) the person knew or believed at the time that the taking, payment or transfer was unlawful or in breach of trust; or
 - 25 (b) there was no consideration for the taking, payment or transfer; or
 - (c) there was inadequate consideration for the taking, payment or transfer; or
 - 30 (d) the person became indebted or otherwise liable to the relevant licensee or relevant associate, or to a client of the licensee, as a result of the taking, payment or transfer,

the receiver may recover from the person, as a debt, the amount taken, paid or transferred, the amount of the inadequacy or the amount of the debt, as the case may be.

- 35 (2) A person from whom an amount is recovered under subsection (1) is not liable to any other person in respect of the amount.

(3) If receivable property has at any time been paid or transferred unlawfully or in breach of trust to, or for the benefit of, a person in respect of a cause of action the person claims to have against another person, the receiver:

- (a) may recover from the person as a debt the amount of the payment or the value of the property; or 5
- (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. 10

(4) If a receiver takes proceedings under subsection (3) (b) in relation to a cause of action claimed by a person, the receiver may not later take proceedings under subsection (3) (a) to recover property paid or transferred to the person in respect of the same cause of action.

(5) If receivable property is used unlawfully or in breach of trust to discharge a debt or liability of a person, the receiver may recover from the person as a debt the amount that was required for the discharge of the debt or liability, reduced by the value of any consideration provided by the person for the discharge. 15

(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. 20

Receiver may give certificate

83. (1) A receiver, or a person authorised by the Council, may give a certificate as to any one or more of the following: 25

- (a) the receipt of property by a licensee or a licensee's associate, the nature and value of the property received, the date of its receipt by the licensee or associate and the identity of the person from whom it was received;
- (b) the taking or transfer of property, the nature and value of the property, the date of its taking or transfer and the identity of the person by whom it was taken or to whom it was transferred; 30
- (c) the payment of money, the amount of money paid, the date of the payment and the identity of the person who received the payment;
- (d) the entries made in the records of a licensee or a licensee's associate and the truth or falsity of the entries; 35
- (e) the use of property unlawfully or in breach of trust.

(2) A certificate under this section is admissible in any proceedings taken by a receiver under this Division and is evidence of the matters specified in the certificate.

Receiver taken to be beneficially entitled to property

5 84. (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.

10 (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.

Receiver may deal with property

15 85. (1) A receiver may deal with receivable property in any manner in which the relevant licensee or relevant associate could, had the receiver not been appointed, have dealt with it.

(2) A receiver must, as soon as possible after receiving receivable property, vest the property in the person on whose behalf it was held by the relevant licensee or relevant associate.

20 **Other powers of receiver**

86. (1) A receiver:

- (a) may prove, grant, claim or draw a dividend in respect of a debt that is receivable property; and
- 25 (b) may take proceedings to recover damages for a tort committed in relation to receivable property; and
- (c) may give a receipt for money that is receivable property; and
- (d) may employ a person to advise or act in relation to receivable property,

30 in the name of the receiver or in the name of the relevant licensee or relevant associate.

(2) A receipt given to a person under subsection (1) (c) discharges the person from any responsibility to see the application of the money for which the receipt was given.

35 (3) A receiver is not, in the exercise of his or her functions as a receiver, a personal representative of a deceased licensee.

Notice to claim receivable property

87. (1) A receiver may give notice to:

- (a) the relevant licensee or relevant associate; or
- (b) any other person,

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

5

(2) A claim submitted in response to such a notice must state:

- (a) full particulars of the property; and
- (b) the grounds of the claim.

10

(3) A receiver may disregard a claim made by a licensee, a licensee's associate or any other person who has been given a notice under this section if the claim is not made in accordance with the notice.

(4) The relevant licensee or relevant associate is not entitled:

- (a) to enforce a claim to receivable property; or
- (b) except against a client—to the benefit of a lien against a document that is receivable property,

15

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

Lien for costs on receivable property

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88. (1) If a licensee claims a lien for costs on receivable property, the receiver may serve on the licensee a written notice requiring the licensee to give to the receiver, within a specified period of not less than 1 month:

- (a) particulars sufficient to identify the property; and
- (b) a detailed bill of costs.

25

(2) The notice, or a subsequent written notice served on the licensee, may require the licensee to tax the bill of costs within a reasonable time specified in the notice.

(3) If the licensee requests the receiver in writing to allow access to receivable property to enable the licensee to tax a bill of costs, the time allowed for taxation does not begin to run until access is provided.

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(4) If a requirement of a notice under this section is not complied with, the receiver may disregard the claim in dealing with the property claimed to be subject to a lien.

Examination by receiver

89. (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.
- 5 (2) On an examination under this section:
- (a) the licensee or other person may be represented by a solicitor or barrister; and
 - (b) the Supreme Court may put, or allow to be put, to the licensee or other person such questions as it thinks fit.
- 10 (3) The licensee or other person may be examined on oath or affirmation.
- (4) The licensee or other person is compellable to answer all questions asked in the course of the examination, including any question to which an objection is made on the ground that the answer would tend to
- 15 incriminate the licensee or other person.
- (5) An answer given by a licensee or other person to a question to which such an objection is made is not admissible in any criminal proceedings other than proceedings relating to the falsity of the answer.

Property not dealt with by receiver

- 20 90. (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 Council and:
- (a) if the Council so requires within 1 month after the notice is given—must transfer and deliver the property to the Law Society;
 - 25 or
 - (b) if no such requirement is made—must transfer and deliver the property to the relevant licensee or relevant associate.
- (2) If property other than money is transferred or delivered to the Law Society under this section, the Law Society:
- 30 (a) must deal with it as the Supreme Court directs; and
- (b) if the property is sold—must treat the proceeds as money paid to it under this section.
- (3) The Law Society must apply money paid to it under this section:
- (a) firstly—towards the satisfaction of wholly or partly unsatisfied
 - 35 claims against the relevant licensee; and
 - (b) secondly—in payment of the expenses of the receivership.

(4) Any money paid to the Law Society under this section that is surplus to the requirements of this section must be paid to the relevant licensee or relevant associate.

Investment of money by receiver

91. (1) A receiver may invest receivable property in any manner in which trustees are authorised by the Trustee Act 1925 to invest trust funds. 5

(2) Income received from an investment under this section, and any profit made on the sale of such an investment, is receivable property.

Receiver may be reimbursed for damages 10

92. (1) The Law Society may reimburse a receiver for any damages or costs recovered against the receiver, or an employee or agent of the receiver, for any act or omission done or omitted in good faith and in the purported exercise of the receiver's functions.

(2) Reimbursement under this section is to be by way of payment from the Statutory Interest Account. 15

Payment of expenses of receivership

93. (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 Law Society from the Statutory Interest Account. 20

(2) An amount paid under this section may be recovered by the Law Society from the relevant licensee as a debt.

(3) If the Law Society and a receiver fail to agree on the remuneration to be paid to the receiver, the Supreme Court may, on the application of the Law Society or the receiver, determine the amount to be paid. 25

(4) The Supreme Court, on the application of the relevant licensee:

(a) may re-open any agreement between the Law Society and a receiver for remuneration of the receiver; and

(b) may determine the amount to be paid.

Supreme Court may review expenses of receivership 30

94. (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 Law Society and the receiver.

- (2) After the taking of accounts, the Supreme Court:
- (a) may relieve the relevant licensee from payment of any amount in excess of that determined by the Supreme Court to be fairly payable; or
 - 5 (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.

Receivable property not to be attached

- 10 95. 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.

Applications for directions by receiver, licensee etc.

- 15 96. (1) A receiver, a licensee or a licensee's associate who holds receivable property, or a person who claims receivable property so held, may apply to the Supreme Court for directions as to the performance of the receiver's functions.

(2) On an application under this section, the Supreme Court may give such directions as it thinks fit.

Supreme Court may give general directions to receiver

- 20 97. (1) The Supreme Court:
- (a) may authorise a receiver to do such things in the exercise of the receiver's functions as the Supreme Court considers appropriate; and
 - (b) may give directions for the exercise of any such authority.
- 25 (2) A receiver must exercise any authority so conferred in accordance with any direction so given.

Receiver to report to the Supreme Court etc.

- 30 98. (1) A receiver must, at such times and in respect of such periods as the Supreme Court directs, submit to the Supreme Court, and to the Council and the Association, reports on the receivership.

(2) A report is to deal with such matters as the Supreme Court directs and with such other matters as the receiver considers appropriate to include in the report.

(3) On the conclusion of a receivership, the receiver must lodge with the Supreme Court all of the receiver's records that relate to the receivership.

(4) Unless the Supreme Court orders their destruction, records lodged under this section are to remain in the custody of the Court.

5

Termination of appointment of receiver

99. (1) The Supreme Court:

- (a) may terminate the appointment of a receiver; and
- (b) may, if it thinks fit, appoint a new receiver either immediately or at any time within the next 14 days.

10

(2) The former receiver must transfer or deliver the receivable property:

- (a) if a new receiver is appointed—to the new receiver in accordance with any directions given by the Supreme Court; or
- (b) if a new receiver is not appointed and if the relevant licensee or relevant associate so requires by notice in writing served on the receiver—to the licensee or associate.

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Maximum penalty: 10 penalty units.

(3) The receivable property must, in accordance with any directions given by the Supreme Court, be transferred or delivered as soon as possible after the former receiver's appointment is terminated.

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(4) A former receiver is not required to comply with the requirements of this section unless:

- (a) the expenses of the receivership have been paid to the Law Society; or
- (b) the Council otherwise directs in relation to those expenses.

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(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).

Obstruction of receivers

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

Maximum penalty: 50 penalty units.

PART 6—DISCIPLINARY PROCEEDINGS**Division 1—Preliminary****Application to ex-licensees**

- 5 **101.** This Part applies to and in respect of a person against whom a complaint of unsatisfactory professional conduct or professional misconduct has been made (being a person who was a licensee when the conduct allegedly occurred but who is no longer a licensee) as if the person were still a licensee.

Conduct amounting to an offence

- 10 **102.** Action may be taken under this Part in relation to any conduct that is alleged to be unsatisfactory professional conduct or professional misconduct:
- 15 (a) whether or not the conduct constitutes an offence; and
- (b) whether or not the person against whom the action is taken has been prosecuted or convicted for an offence arising out of the conduct.

The Legal Profession Conduct Review Panel

- 103.** (1) The Legal Profession Conduct Review Panel may include, for the purposes of this Act, 1 or more licensees.
- 20 (2) A reference to a solicitor in Schedule 4 to the Legal Profession Act 1987 is to be read as including a reference to a licensee.
- (3) In this section, a reference to a licensee is a reference to the holder of a licence that is free of any conditions other than conditions of the kind referred to in section 13 (2) (d).

25 **The Legal Profession Standards Board**

- 104.** (1) The Legal Profession Standards Board may include, for the purposes of this Act, 1 or more licensees.
- (2) A reference to a solicitor in Schedule 5 to the Legal Profession Act 1987 is to be read as including a reference to a licensee.
- 30 (3) In this section, a reference to a licensee is a reference to the holder of a licence that is free of any conditions other than conditions of the kind referred to in section 13 (2) (d).

The Legal Profession Disciplinary Tribunal

105. (1) The Legal Profession Disciplinary Tribunal may include, for the purposes of this Act, 1 or more licensees.

(2) A reference to a solicitor in Schedule 6 to the Legal Profession Act 1987 is to be read as including a reference to a licensee. 5

(3) In this section, a reference to a licensee is a reference to the holder of a licence that is free of any conditions other than conditions of the kind referred to in section 13 (2) (d).

Division 2—Complaints against licensees**Complaints**

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106. (1) A person may make a complaint to the Council alleging that a licensee is guilty of conduct that may constitute unsatisfactory professional conduct or professional misconduct.

(2) A complaint:

(a) must be in writing; and 15

(b) must identify the complainant and the licensee against whom the complaint is made; and

(c) must give particulars of the unsatisfactory professional conduct or professional misconduct that is alleged to have occurred.

(3) A complainant who has suffered loss as a consequence of the alleged unsatisfactory professional conduct or professional misconduct may, in the complaint, request the making of any one or more of the following orders: 20

(a) an order that the licensee waive or repay the whole or part of the fees charged by the licensee in respect of work carried out by the licensee for the complainant; 25

(b) an order that the licensee carry out specified work for the complainant free of charge;

(c) an order that the licensee waive any lien in respect of a specified document or class of documents; 30

(d) an order that the licensee pay to the complainant an amount by way of compensation.

(4) A complaint that requests the making of such an order must give particulars of the loss suffered by the complainant as a consequence of the alleged unsatisfactory professional conduct or professional misconduct. 35

(5) The Council must take all reasonable steps to ensure that a person who wishes to make a complaint is given such assistance as is necessary to enable the person to make the complaint in accordance with this section.

5 Council may require further particulars

107. The Council, by notice in writing served on the complainant:

- (a) may require further particulars of any complaint to be given; and
- (b) may require the complaint, or any further particulars, to be verified by statutory declaration,

10 within such time as it may specify in the notice.

Summary dismissal of complaints

108. The Council may dismiss a complaint without further investigation:

- 15 (a) if further particulars of the complaint are not furnished, or the complaint or the further particulars are not verified, as required by the Council; or
- (b) if the complaint is frivolous or vexatious.

Investigation of complaints

20 109. (1) The Council is to conduct an investigation into each complaint made to it under this Division, other than a complaint that has been dismissed under section 108.

(2) The Council must cause a record of its decision, together with the reasons for its decision, to be kept in respect of each investigation conducted by it under this section.

25 Consultation with the Committee

110. The Council is not to make any decision with respect to a complaint against a licensee unless:

- 30 (a) it has caused notice to be given to the Committee of the fact that it is conducting an investigation into the complaint and of its preliminary findings with respect to the complaint; and
- (b) it has given the Committee a reasonable opportunity (at least 14 days) within which to comment on those findings; and
- (c) it has given due consideration to any comments made to it by the Committee.

Decisions of the Council

111. (1) If, after it has completed an investigation into a complaint against a licensee, the Council is satisfied:

- (a) that the complaint does not involve any question of unsatisfactory professional conduct or professional misconduct—it must dismiss the complaint; or 5
- (b) that the complaint involves a question of unsatisfactory professional conduct:
 - it must refer the complaint to the Board; or
 - it must dismiss the complaint; or 10
- (c) that the complaint involves a question of professional misconduct—it must refer the complaint to the Tribunal.

(2) The Council may not dismiss a complaint pursuant to subsection (1) (b) unless it is satisfied that the licensee concerned is generally competent and diligent and that no other material complaints have been made against the licensee. 15

Council may make complaint after consultation with the Committee

112. The Council may, after consultation with the Committee, make a complaint to the Board or the Tribunal against any licensee if it appears to the Council that the licensee may be guilty of unsatisfactory professional conduct or professional misconduct. 20

Division 3—Review of the Council's decisions**Applications for reviews**

113. (1) A complainant may apply to the Panel for a review of a decision by the Council to dismiss a complaint made by the complainant, other than a decision to dismiss a complaint the subject of a notice given to the Council under section 116 (2). 25

(2) Such an application must be made, in writing, within 2 months after the decision is made or is deemed to have been made.

Composition of the Panel 30

114. (1) The Panel is, for the purpose of conducting a review under this Division, to be constituted by 1 of its licensee members and 2 of its lay members.

(2) The Chairperson of the Panel is to nominate the persons to constitute the Panel for the purposes of any particular review. 35

(3) The Chairperson of the Panel is to preside at any review for which the Panel is so constituted as to include the Chairperson.

(4) In the case of a review for which the Panel is so constituted as not to include the Chairperson of the Panel, the Chairperson is to nominate
5 one of the other lay members to preside at the review.

(5) More than one review may be conducted by the Panel at the same time.

Reviews

115. (1) The Panel is to review each decision to dismiss a complaint
10 the subject of an application made to it under this Division.

(2) The Panel must consult with the Council before it completes its review of the decision to dismiss a complaint.

(3) For the purpose of enabling it to review a decision to dismiss a complaint, the Panel is entitled to view:

- 15 (a) the record of the Council's investigation of the complaint; and
(b) all other documents held by the Council in relation to that investigation.

Recommendations of the Panel

116. (1) When the Panel has completed its review of a decision to
20 dismiss a complaint:

- (a) it may uphold the decision; or
(b) it may recommend to the Attorney General that the matter be referred to the Board; or
25 (c) it may recommend to the Attorney General that the matter be referred to the Tribunal,

as it thinks fit.

(2) Before making a recommendation under subsection (1) (b) or (c), the Panel is to give notice to the Council of its intention to make the recommendation and of the Panel's reasons for making the
30 recommendation.

(3) The Panel may make such a recommendation only if:

- (a) a period of one month or more has elapsed since notice of its intention to do so was given to the Council under subsection (2); and
35 (b) the matter has not been referred to the Board or the Tribunal.

(4) Such a recommendation must be accompanied by a statement of the Panel's reasons for making the recommendation.

Determinations by the Attorney General

117. (1) On receiving a recommendation from the Panel in connection with a complaint, the Attorney General:

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(a) may uphold the decision of the Council with respect to the complaint; or

(b) may refer the complaint to the Board; or

(c) may refer the complaint to the Tribunal,

as the Attorney General thinks fit.

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(2) In exercising the Attorney General's functions under this section, the Attorney General is to take into consideration, but is not bound to follow, the recommendation made by the Panel.

(3) The Attorney General is to cause his or her decision with respect to a complaint, together with his or her reasons for the decision, to be notified to the complainant.

15

Division 4—Unsatisfactory professional conduct

Composition of the Board

118. (1) The Board is, for the purpose of conducting a hearing into a complaint, to be constituted by 1 of its solicitor members, 1 of its licensee members and 1 of its lay members.

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(2) The Chairperson of the Board is to nominate the persons to constitute the Board for the purposes of any particular hearing.

(3) The Chairperson of the Board is to preside at any hearing for which the Board is so constituted as to include the Chairperson.

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(4) In the case of a hearing for which the Board is so constituted as not to include the Chairperson of the Board, the Chairperson is to nominate the solicitor member to preside at the hearing.

(5) More than one hearing may be conducted by the Board at the same time.

30

Hearings

119. (1) The Board is to conduct a hearing into any complaint made or referred to it under Division 2 or 3.

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(2) For the purpose of conducting such a hearing, the Board is not bound to observe the rules of law governing the admission of evidence, but may inform itself of any matter in such manner as it thinks fit.

5 (3) If, in the course of conducting a hearing into a complaint, the Board considers that the complaint involves a question of professional misconduct, the Board:

(a) must terminate the hearing; and

(b) must refer the complaint to the Tribunal to be dealt with in accordance with Division 6.

10 (4) The Board must cause a record of its determination, together with the reasons for its determination, to be kept in respect of each hearing conducted by it under this Division.

15 (5) If one of the members (not being the presiding member) constituting the Board for the purpose of conducting a hearing under this Division vacates office for any reason referred to in clause 8 of Schedule 5 to the Legal Profession Act 1987:

(a) before the Board has completed the hearing; or

(b) before the Board has made a determination in respect of the hearing,

20 the hearing may be continued, or a determination may be made, by the remaining members of the Board.

(6) If the remaining members are divided in opinion as to the determination to be made in respect of the hearing, the opinion of the presiding member is to prevail.

25 (7) However, if the presiding member or more than one other member vacates office for any such reason before the Board has completed the hearing or made a determination in respect of the hearing, the hearing is terminated.

30 (8) The Board may, for the purpose of conducting a new hearing into the complaint concerned, be reconstituted in accordance with this Division.

Parties

120. (1) The following persons are entitled to appear at a hearing into a complaint:

- 35 (a) the licensee against whom the complaint has been made;
(b) the Council;
(c) the Attorney General;
(d) the complainant (if any).

(2) A complainant is entitled to appear at a hearing only if the complainant has, in his or her complaint, requested the making of an order referred to in section 106 (3).

(3) A complainant's entitlement to appear at a hearing is limited to those aspects of the hearing that deal with the loss (if any) suffered by the complainant as a consequence of the conduct the subject of the hearing.

5

(4) The Board may grant leave to any other person to appear at a hearing if the Board is satisfied that it is appropriate for that person to appear at the hearing.

(5) Any person who is entitled to appear at a hearing, or who is granted leave to appear at a hearing, may appear personally or be represented by a solicitor or barrister or, with the leave of the Board, by any other person.

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(6) Any person who appears (otherwise than as a witness) at a hearing is taken to be a party to the hearing.

Hearings to be conducted in camera

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121. (1) A hearing is to be held in the absence of the public.

(2) No persons other than the parties to a hearing and their representatives are entitled to be present at the hearing.

Power to summon witnesses and take evidence

122. (1) A member of the Board or the Registrar of the Board may summon a person to appear at a hearing to give evidence and to produce such documents (if any) as are referred to in the summons.

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(2) The member of the Board presiding at a hearing may require a person appearing at the hearing to produce a document.

(3) The Board may, at a hearing, take evidence on oath or affirmation and, for that purpose:

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(a) a member of the Board may require a person appearing at the hearing to give evidence either to take an oath or to make an affirmation in a form approved by the member of the Board presiding at the hearing; and

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(b) a member of the Board may administer an oath or affirmation to a person so appearing at the hearing.

(4) A person served with a summons to appear at a hearing to give evidence must not, without reasonable excuse:

(a) fail to attend as required by the summons; or

35

- (b) fail to attend from day to day unless excused, or released from further attendance, by a member of the Board.

Maximum penalty: 20 penalty units.

- 5 (5) A person appearing at a hearing to give evidence must not, without reasonable excuse:

- (a) when required to take an oath or make an affirmation—fail to comply with the requirement; or
(b) fail to answer a question that the person is required to answer by the member of the Board presiding at the hearing; or
10 (c) fail to produce a document that the person is required to produce by a summons served under this section.

Maximum penalty: 20 penalty units.

Power to obtain documents

- 15 123. (1) A member of the Board or the Registrar of the Board may, by notice in writing served on a person, require the person:

- (a) to attend, at a time and place specified in the notice, before a person so specified, being a member of the Board or the Registrar of the Board or a person authorised by the Board in that behalf; and
20 (b) to produce, at that time and place, to the person so specified a document specified in the notice.

- (2) A person must not, without reasonable excuse, fail to comply with a notice served on the person under this section.

Maximum penalty: 20 penalty units.

Release of information

- 25 124. (1) The Board may give directions preventing or restricting the publication of evidence given at a hearing or of matter contained in documents produced at a hearing.

- (2) A person must not make a publication in contravention of a direction given under this section.

- 30 Maximum penalty: 20 penalty units.

Determinations of the Board

- 35 125. (1) If, after it has completed a hearing into a complaint against a licensee, the Board is satisfied that the licensee is guilty of unsatisfactory professional conduct, the Board may do any one or more of the following:

- (a) it may reprimand the licensee;
- (b) it may order that the licensee undertake and complete such course of further legal education as it may specify in the order;
- (c) it may order that the licensee's conveyancing business be subject to periodic inspection by such person or persons, and for such period, as it may specify in the order; 5
- (d) it may order that the licensee seek advice in relation to the management of his or her conveyancing business from such person or persons as it may specify in the order;
- (e) it may order that the licensee cease to employ in his or her conveyancing business such person or persons as it may specify in the order; 10
- (f) it may order that the licensee employ in his or her conveyancing business a person belonging to such class of persons as it may specify in the order; 15
- (g) it may order that the licensee cease to accept instructions in relation to such class of work as it may specify in the order;
- (h) it may order that the licensee pay a fine of such amount (not exceeding 20 penalty units) as it may specify in the order.
- (2) If, after it has completed a hearing into a complaint against a licensee, the Board is satisfied that the licensee is guilty of unsatisfactory professional conduct and that the complainant has suffered loss as a consequence of the conduct, the Board may do any one or more of the following: 20
 - (a) it may order that the licensee waive or repay the whole, or such part as it may specify in the order, of the fees charged to the complainant by the licensee in respect of such work as it may so specify; 25
 - (b) it may order that the licensee carry out for the complainant such work as it may specify in the order, either free of charge or for such fee as it may so specify; 30
 - (c) it may order that the licensee waive any lien in respect of such document or class of documents as it may specify in the order;
 - (d) it may order that the licensee pay to the complainant such amount by way of compensation as it may specify in the order. 35
- (3) An order (other than an order for the payment of compensation not exceeding \$2,000) may not be made under subsection (2) unless:
 - (a) the complainant has, in his or her complaint, requested the making of the order; and

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(b) the complainant and the licensee both consent to the making of the order,

nor may such an order be made in respect of any loss for which the complainant has received, or is entitled to receive, compensation pursuant to an order of a court.

(4) The recovery of compensation awarded under this section does not affect any other remedy available to the complainant, but any compensation so awarded is to be taken into account in any other proceedings by or on behalf of the complainant in respect of the same loss.

(5) In addition to any other order that the Board may make under this section with respect to a licensee whom it has found guilty of unsatisfactory professional conduct, the Board:

- (a) may make ancillary orders; and
- (b) may make orders requiring the licensee to pay such amounts by way of costs (including the costs of the Council and the complainant) as it may determine.

(6) If, after it has completed a hearing into a complaint against a licensee, the Board is satisfied that the licensee is not guilty of unsatisfactory professional conduct, the Board may (but only if it considers that special circumstances so warrant) order payment from the Statutory Interest Account to the licensee of such amount, by way of costs, as it may determine.

Division 5—Review of the Board's decisions

25 Applications for reviews

126. (1) Any party to a hearing conducted by the Board may apply to the Tribunal for a review of the Board's determination of a complaint.

(2) The complainant at a hearing conducted by the Board may not make an application under this section except with respect to those aspects of the hearing that deal with the loss (if any) suffered by the complainant as a consequence of the conduct the subject of the hearing.

(3) An application under this section must be made in accordance with the rules of the Tribunal.

Composition of the Tribunal

127. (1) The Tribunal is, for the purpose of conducting a review of the Board's determination of a complaint, to be constituted by 1 of its solicitor members, 1 of its licensee members and 1 of its lay members.

(2) The President of the Tribunal is to nominate the persons to constitute the Tribunal for the purposes of any particular review.

(3) The President of the Tribunal is to nominate the solicitor member to preside at the review.

(4) More than one review may be conducted by the Tribunal at the same time. 5

Parties

128. The parties to a hearing the subject of a review under this Division are taken to be the parties to the review.

Reviews 10

129. (1) The Tribunal is to conduct a review of each determination the subject of an application made to it under this Division.

(2) An application is to be dealt with by way of a new hearing and fresh evidence, or evidence in addition to or in substitution for the evidence received at the original hearing, may be given. 15

(3) Sections 119–124 apply to and in respect of a review conducted by the Tribunal in the same way as they apply to and in respect of a hearing conducted by the Board.

(4) The Tribunal must cause a record of its decision, together with the reasons for its decision, to be kept in respect of each review conducted by it under this Division. 20

Decisions of the Tribunal

130. (1) The Tribunal:

- (a) may uphold the Board's determination of a complaint; or
- (b) may make any one or more of the orders that the Board could have made in relation to the complaint. 25

(2) The Tribunal's decision in respect of a complaint is final and is to be given effect to as if it were a determination by the Board.

Professional misconduct

131. If the Tribunal considers that a complaint the subject of a determination under review involves a question of professional misconduct, the Tribunal: 30

- (a) may terminate the review; and
- (b) may deal with the complaint in accordance with Division 6 as if the complaint had been made or referred to it under Division 2, 3 or 4. 35

Division 6—Professional misconduct**Composition of the Tribunal**

132. (1) The Tribunal is, for the purpose of conducting a hearing into a complaint, to be constituted by 1 of its solicitor members, 1 of its
5 licensee members and 1 of its lay members.

(2) The President of the Tribunal is to nominate the persons to constitute the Tribunal for the purposes of any particular hearing.

(3) The President of the Tribunal is to nominate the solicitor member to preside at the hearing.

10 (4) More than one hearing may be conducted by the Tribunal at the same time.

Hearings

133. (1) The Tribunal is to conduct a hearing into any complaint made or referred to it under Division 2, 3 or 4.

15 (2) For the purpose of conducting such a hearing, the Tribunal must observe the rules of law governing the admission of evidence.

(3) The Tribunal must cause a record of its determination, together with the reasons for its determination, to be kept in respect of each hearing conducted by it under this Division.

20 (4) If one of the members (not being the presiding member) constituting the Tribunal for the purpose of conducting a hearing under this Division vacates office for any reason referred to in clause 7 of Schedule 6 to the Legal Profession Act 1987:

(a) before the Tribunal has completed the hearing; or

25 (b) before the Tribunal has made a determination in respect of the hearing,

the hearing may be continued, or a determination may be made, by the remaining members of the Tribunal.

30 (5) If the remaining members are divided in opinion as to the determination to be made in respect of the hearing, the opinion of the presiding member is to prevail.

(6) However, if the presiding member or more than one other member vacates office for any such reason before the Tribunal has completed the hearing or made a determination in respect of the hearing, the hearing is
35 terminated.

(7) The Tribunal may, for the purpose of conducting a new hearing into the complaint concerned, be reconstituted in accordance with this Division.

Parties

134. (1) The following persons are entitled to appear at a hearing into a complaint: 5

- (a) the licensee against whom the complaint has been made;
- (b) the Council;
- (c) the Attorney General;
- (d) the complainant (if any). 10

(2) A complainant is entitled to appear at a hearing only if the complainant has, in his or her complaint, requested the making of an order referred to in section 106 (3).

(3) A complainant's entitlement to appear at a hearing is limited to those aspects of the hearing that deal with the loss (if any) suffered by the complainant as a consequence of the conduct the subject of the hearing. 15

(4) The Tribunal may grant leave to any other person to appear at a hearing if the Tribunal is satisfied that it is appropriate for that person to appear at the hearing.

(5) Any person who is entitled to appear at a hearing, or who is granted leave to appear at a hearing, may appear personally or be represented by a solicitor or barrister or, with the leave of the Tribunal, by any other person. 20

(6) Any person who appears at a hearing (otherwise than as a witness) is taken to be a party to the inquiry. 25

Hearings to be conducted in public

135. (1) A hearing is to be held in the presence of the public.

(2) The Tribunal may, however, direct that a hearing be held in the absence of the public if it is of the opinion that the absence of the public will be in the interests of justice. 30

(3) When a hearing is held in the absence of the public, no persons other than the parties to the hearing and their representatives are entitled to be present at the hearing.

Power to summon witnesses and take evidence

136. (1) A member of the Tribunal or the Registrar of the Tribunal may summon a person to appear at a hearing to give evidence and to produce such documents (if any) as are referred to in the summons.

- 5 (2) The member of the Tribunal presiding at a hearing may require a person appearing at the hearing to produce a document.

(3) The Tribunal may, at a hearing, take evidence on oath or affirmation and, for that purpose:

- 10 (a) a member of the Tribunal may require a person appearing at the hearing to give evidence either to take an oath or to make an affirmation in a form approved by the member of the Tribunal presiding at the hearing; and

(b) a member of the Tribunal may administer an oath or affirmation to a person so appearing at the hearing.

- 15 (4) A person served with a summons to appear at a hearing to give evidence must not, without reasonable excuse:

(a) fail to attend as required by the summons; or

(b) fail to attend from day to day unless excused, or released from further attendance, by a member of the Tribunal.

- 20 Maximum penalty: 20 penalty units.

(5) A person appearing at a hearing to give evidence must not, without reasonable excuse:

(a) when required to take an oath or make an affirmation—fail to comply with the requirement; or

- 25 (b) fail to answer a question that the person is required to answer by the member of the Tribunal presiding at the hearing; or

(c) fail to produce a document that the person is required to produce by a summons served under this section.

Maximum penalty: 20 penalty units.

30 **Power to obtain documents**

137. (1) A member of the Tribunal or the Registrar of the Tribunal may, by notice in writing served on a person, require the person:

- 35 (a) to attend, at a time and place specified in the notice, before a person specified in the notice, being a member of the Tribunal or the Registrar of the Tribunal or a person authorised by the Tribunal in that behalf; and

(b) to produce, at that time and place, to the person so specified a document specified in the notice.

(2) A person must not, without reasonable excuse, fail to comply with a notice served on the person under this section.

Maximum penalty: 20 penalty units.

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Release of information

138. (1) The Tribunal may give directions preventing or restricting the publication of evidence given at a hearing or of matter contained in documents produced at a hearing.

(2) A person must not make a publication in contravention of a direction given under this section.

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Maximum penalty: 20 penalty units.

Determinations of the Tribunal

139. (1) If, after it has completed a hearing into a complaint against a licensee, the Tribunal is satisfied that the licensee is guilty of professional misconduct, the Tribunal may do any one or more of the following:

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(a) it may order that the licensee's certificate of eligibility and licence be cancelled;

(b) it may order that a certificate of eligibility or licence not be granted to the licensee until the expiration of such period as it may specify in the order;

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(c) it may order that the licensee pay a fine of such amount (not exceeding 250 penalty units) as it may specify in the order.

(2) If, after it has completed a hearing into a complaint against a licensee, the Tribunal is satisfied that the licensee is guilty of unsatisfactory professional conduct, the Tribunal may do any one or more of the things referred to in section 125 (1).

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(3) If, after it has completed a hearing into a complaint against a licensee, the Tribunal is satisfied that the licensee is guilty of unsatisfactory professional conduct or professional misconduct and that the complainant has suffered loss as a consequence of the conduct or misconduct, the Tribunal may do any one or more of the following:

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(a) it may order that the licensee waive or repay the whole, or such part as it may specify in the order, of the fees charged to the complainant by the licensee in respect of such work as it may so specify;

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- (b) it may order that the licensee carry out for the complainant such work as it may specify in the order, either free of charge or for such fee as it may so specify;
- 5 (c) it may order that the licensee waive any lien in respect of such document or class of documents as it may specify in the order; or
- (d) it may order that the licensee pay to the complainant such amount by way of compensation as it may specify in the order.
- (4) An order (other than an order for the payment of compensation not exceeding \$2,000) may not be made under subsection (3) unless:
- 10 (a) the complainant has, in his or her complaint, requested the making of the order; and
- (b) the complainant and the licensee both consent to the making of the order,
- 15 nor may such an order be made in respect of any loss for which the complainant has received, or is entitled to receive, compensation pursuant to an order of a court.
- (5) The recovery of compensation awarded under this section does not affect any other remedy available to the complainant, but any compensation so awarded is to be taken into account in any other
- 20 proceedings by or on behalf of the complainant in respect of the same loss.
- (6) In addition to any other order that the Tribunal may make under this section with respect to a licensee whom it has found guilty of unsatisfactory professional conduct or professional misconduct, the
- 25 Tribunal:
- (a) may make ancillary orders; and
- (b) may make orders requiring the licensee to pay such amounts by way of costs (including the costs of the Council and the complainant) as it may determine.
- 30 (7) If, after it has completed a hearing into a complaint against a licensee, the Tribunal is satisfied that the licensee is not guilty of professional misconduct, the Tribunal may (but only if it considers that special circumstances so warrant) order payment from the Statutory Interest Account to the licensee of such amount, by way of costs, as it
- 35 may determine.

Appeals from orders of the Tribunal

140. (1) Any party to a hearing conducted by the Tribunal under this Division may appeal to the Supreme Court against the Tribunal's determination of a complaint.

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(2) The complainant at a hearing conducted by the Tribunal may not make such an appeal except with respect to those aspects of the hearing that deal with the loss (if any) suffered by the complainant as a consequence of the conduct the subject of the hearing.

(3) The Supreme Court is to hear and determine an appeal under this section. 5

(4) An appeal is to be by way of a new hearing and fresh evidence, or evidence in addition to or in substitution for the evidence received at the original hearing, may be given.

Division 7—Miscellaneous 10

Enforcement of orders

141. An order of the Board or the Tribunal under this Part is enforceable in the same way as a judgment or order of the Supreme Court.

Payment of fines and costs 15

142. Any fine imposed on a person under this Part is to be paid to the Law Society for credit of the Statutory Interest Account.

Costs of administering Part 6

143. All costs incurred by the Board and the Tribunal in administering this Part are, in accordance with section 67 of the Legal Profession Act 1987, to be paid from the Statutory Interest Account to the Treasurer for credit of the Consolidated Fund. 20

Reports

144. (1) The Council must submit to the Attorney General, at such times and in respect of such periods as the Attorney General directs, a report on its investigations into complaints dealt with by it under this Part. 25

(2) A report is to deal with such matters as the Attorney General directs and with such other matters as the Council considers appropriate to include in the report. 30

Protection from liability

145. No matter or thing done by:

- (a) the Council, the Committee, the Panel, the Board or the Tribunal;
- or

- (b) any member of the Council, the Committee, the Panel, the Board or the Tribunal; or
 - (c) the Registrar of the Board or the Registrar of the Tribunal,
- 5 subjects any such member or Registrar personally to any action, liability, claim or demand if the matter or thing was done in good faith for the purpose of executing this Part.

PART 7—THE CONVEYANCERS LICENSING COMMITTEE

Constitution of the Committee

- 10 **146. (1)** There is constituted by this Act a corporation under the name of the Conveyancers Licensing Committee.

(2) The Committee is not a statutory body representing the Crown and is not subject to the control or direction of the Minister.

Membership of the Committee

- 15 **147. (1)** The Committee is to consist of 7 members appointed by the Minister, of whom:

- (a) 2 are to be appointed from a panel of at least 4 practising solicitors nominated by the Law Society; and
- (b) 2 are to be appointed from a panel of at least 4 licensees nominated by the Association; and
- 20 (c) 2 are to be persons appointed to represent the interests of consumers; and
- (d) 1 is to be a person who, in the opinion of the Minister, has appropriate qualifications and experience in business or commerce.

- 25 **(2)** In subsection (1) (b), a reference to a licensee is a reference to the holder of a licence that is free of any conditions other than conditions of the kind referred to in section 13 (2) (d).

(3) The member referred to in subsection (1) (d) is to be the Chairperson of the Committee.

(4) Schedule 1 has effect with respect to the Committee.

30 Functions of the Committee

148. The Committee has the following functions:

- (a) the function of determining the educational qualifications, practical training and conveyancing experience that are suitable to qualify a person for a licence;

- (b) the function of accrediting courses of studies leading to such educational qualifications;
- (c) the function of dealing with applications for certificates of eligibility;
- (d) the function of approving policies of professional indemnity and fidelity insurance; 5
- (e) the function of establishing guidelines as to the manner in which conveyancing businesses should be conducted;
- (f) the function of dealing with complaints referred to it by the Council; 10
- (g) such other functions as are conferred or imposed on it by or under this or any other Act.

Education subcommittee

149. (1) For the purpose of exercising its functions in relation to:

- (a) determining the educational qualifications, practical training and conveyancing experience that are suitable to qualify a person for a licence; and 15
- (b) accrediting courses of study leading to such educational qualifications,

the Committee is to establish an education subcommittee. 20

(2) The education subcommittee is to consist of 6 members, of whom:

- (a) 1 is to be the Chairperson of the Committee; and
- (b) 3 are to comprise 1 each of the members referred to in section 147 (1) (a), (b) and (c) appointed by the Chairperson of the Committee; and 25
- (c) 1 is to be the Dean of the Faculty of Law at the University of Technology, Sydney; and
- (d) 1 is to be a person appointed by the Minister for Conservation and Land Management.

(3) The Chairperson of the Committee is to be the chairperson of the education subcommittee. 30

(4) Schedule 1 has effect with respect to the education subcommittee as if references in that Schedule to the Committee were references to the subcommittee.

(5) The functions of the education subcommittee are:

- 5 (a) to investigate such matters in relation to the determination of educational qualifications and the accreditation of courses of study leading to such educational qualifications as are referred to it by the Committee; and
- (b) to report to the Committee on the results of its investigations.

Insurance subcommittee

10 **150.** (1) For the purpose of exercising its functions in relation to approving policies of professional indemnity and fidelity insurance, the Committee is to establish an insurance subcommittee.

(2) The insurance subcommittee is to consist of 6 members, of whom:

- (a) 1 is to be the Chairperson of the Committee; and
- 15 (b) 3 are to comprise 1 each of the members referred to in section 147 (1) (a), (b) and (c) appointed by the Chairperson of the Committee; and
- (c) 1 is to be a person appointed by the Insurance Council of Australia; and
- (d) 1 is to be a person appointed by the Minister.

20 (3) The Chairperson of the Committee is to be the chairperson of the insurance subcommittee.

(4) Schedule 1 has effect with respect to the insurance subcommittee as if references in that Schedule to the Committee were references to the subcommittee.

(5) The functions of the insurance subcommittee are:

- 25 (a) to investigate such matters in relation to the approval of policies of professional indemnity and fidelity insurance as are referred to it by the Committee; and
- (b) to report to the Committee on the results of its investigations.

Advisory subcommittees

30 **151.** (1) The Committee may appoint such other subcommittees as it considers appropriate to assist it in the exercise of its functions.

(2) The members of any such subcommittee may include persons who are not members of the Committee.

35 (3) The chairperson of any such subcommittee must be a person who is a member of the Committee.

(4) The regulations may make provision with respect to the constitution and procedure of any subcommittee appointed under this section.

Staff etc. of the Committee

152. The Committee:

- (a) may employ a Registrar and such other staff as it requires to exercise its functions; and 5
- (b) may fix the salary, wages and other conditions of employment of its staff in so far as they are not fixed by or under any other Act or law; and
- (c) may arrange for the use of the services of any staff (by secondment or otherwise) or facilities of a government department, an administrative office or a public or local authority; and 10
- (d) may engage such consultants as it requires to exercise its functions.

PART 8—MISCELLANEOUS

Committee and Association to submit annual reports 15

153. (1) As soon as practicable after 30 June, but on or before 31 October, in each year, the Committee and the Association must each prepare and forward to the Minister reports of their work and activities under this Act for the 12 months ending on 30 June in that year.

(2) The Minister must lay the reports, or cause them to be laid, before both Houses of Parliament as soon as practicable after receiving the reports. 20

(3) A report is to deal with such matters as may be prescribed by the regulations and with such other matters as the Committee or Association considers appropriate to include in the report. 25

Functions of the Council

154. In addition to its other functions under this Act, the Council:

- (a) may take such steps as, in the opinion of the Council, are necessary or proper for or with respect to the investigation of any question as to the conduct of a licensee; and 30
- (b) may appear, by a solicitor or barrister, before the Supreme Court in the exercise of the Supreme Court's functions under this Act in relation to licensees; and
- (c) may commence prosecutions and other proceedings for any contravention of this Act or the regulations; and 35

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- (d) may recover as a debt due to the Law Society any money payable to the Law Society under this Act or the regulations.

Delivery up of documents

- 5 155. (1) On the application of a licensee's client, the Supreme Court may order the licensee:

- (a) to give to the client a bill of costs in respect of any conveyancing business transacted by the licensee; and
- 10 (b) to give to the client, on such conditions as the Supreme Court may determine, such of the client's documents as are held by the licensee in relation to that business.

(2) This section does not affect the provisions of Division 5 of Part 11 of the Legal Profession Act 1987 with respect to the taxation of bills of costs.

Auditors

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

Register of licensees

- 20 157. (1) The Council must maintain at its offices a register of licensees in the form required by the regulations.

(2) The register is to be open to public inspection, on payment of such fee as may be prescribed by the regulations, during normal office hours.

Evidentiary certificates

- 25 158. A certificate that is issued by the Council and that states that, on a date or during a period specified in the certificate:

- (a) a specified person was or was not a licensee; or
 - (b) a specified licence was or was not subject to a specified condition,
- 30 is admissible in any legal proceedings and is evidence of the fact or facts so stated.

Proceedings for offences

159. (1) Proceedings for an offence against this Act or the regulations are to be taken before a Local Court constituted by a Magistrate sitting alone.

(2) Proceedings for an offence against this Act or the regulations may be brought at any time within 12 months after the date of the alleged offence.

Regulations

160. (1) The Governor may, on the recommendation of the Minister, 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. 5

(2) Such a recommendation may not be given by the Minister except after consultation with the Committee. 10

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

Amendment of other Acts

161. Each Act specified in Schedule 2 is amended as set out in that Schedule. 15

Savings, transitional and other provisions

162. Schedule 3 has effect.

*Conveyancers Licensing 1992***SCHEDULE 1—THE CONVEYANCERS LICENSING
COMMITTEE**

(Secs. 147, 149, 150)

Part 1—Members of the Committee**5 Reserve members**

1. (1) The Minister may, for each appointed member of the Committee, appoint one or more reserve members to act in the office of the appointed member during the illness or absence of the appointed member, and the reserve member, while so acting, has and may exercise all the functions of the appointed member and is taken to be a member of the Committee.

(2) A person, in order to be appointed as a reserve member of the Committee, must be qualified for appointment in the same way as the appointed member for whom he or she is the reserve member.

(3) The Minister may remove any person from any office to which the person was appointed under this clause.

(4) A person while acting in the office of a member of the Committee is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

(5) For the purposes of this clause, a vacancy in the office of a member of the Committee is taken to be an absence from office of the member.

Terms of office

2. Subject to this Schedule, a member of the Committee holds office for such period, not exceeding 7 years, as may be specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.

25 Remuneration

3. A member of the Committee is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

Filling of vacancy in office of a member

4. If the office of any member of the Committee becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

Casual vacancies

5. (1) A member of the Committee is taken to have vacated office if the member:
(a) dies; or

*Conveyancers Licensing 1992*SCHEDULE 1—THE CONVEYANCERS LICENSING COMMITTEE—*continued*

- (b) absents himself or herself from 4 consecutive meetings of the Committee of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Minister (which leave the Minister is authorised to grant) or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for being absent from those meetings; or 5
 - (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or 10
 - (d) becomes a mentally incapacitated person; or
 - (e) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or upwards, or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable; or 15
 - (f) resigns office by instrument in writing addressed to the Minister; or
 - (g) is removed from office by the Minister under subclause (2).
 - (2) The Minister may remove a member of the Committee from office for incapacity, incompetence or misbehaviour.
 - (3) The Chairperson of the Committee is taken to have vacated office as Chairperson if the person: 20
 - (a) resigns office by instrument in writing addressed to the Minister; or
 - (b) ceases to be a member of the Committee.
- Conflict of interests**
- 6. (1) If: 25
 - (a) a member of the Committee has an interest in a matter being considered or about to be considered at a meeting of the Committee; and
 - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,
 the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Committee. 30
 - (2) A disclosure by a member at a meeting of the Committee that the member:
 - (a) is a member, or is in the employment, of a specified company or other body; or
 - (b) is a partner, or is in the employment, of a specified person; or
 - (c) has some other specified interest relating to a specified company or other body or to a specified person, 35
 is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

*Conveyancers Licensing 1992***SCHEDULE 1—THE CONVEYANCERS LICENSING COMMITTEE—*continued***

(3) Particulars of any disclosure made under this clause must be recorded by the Committee in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person.

5 (4) After a member of the Committee has disclosed the nature of an interest in any matter, the member must not, unless the Committee otherwise determines:

(a) be present during any deliberation of the Committee with respect to the matter; or

(b) take part in any decision of the Committee with respect to the matter.

10 (5) For the purpose of the making of a determination by the Committee under subclause (4), a member of the Committee who has an interest in a matter to which the disclosure relates must not:

(a) be present during any deliberation of the Committee for the purpose of making the determination; or

15 (b) take part in the making by the Committee of the determination.

(6) A contravention of this clause does not invalidate any decision of the Committee.

Effect of certain other Acts

20 7. (1) Part 2 of the Public Sector Management Act 1988 does not apply to or in respect of the appointment of a member of the Committee and a member of the Committee is not, as a member, subject to that Act.

(2) If by or under any other Act provision is made:

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or

25 (b) prohibiting the person from engaging in employment outside the duties of that office,

that provision does not operate to disqualify the person from holding that office and also the office of a member of the Committee or from accepting and retaining any remuneration payable to the person under this Act as a member of the Committee.

Part 2—Procedure of the Committee**30 General procedure**

8. The procedure for the calling of meetings of the Committee and for the conduct of business at those meetings is, subject to this Act, to be as determined by the Committee.

Quorum

35 9. The quorum for a meeting of the Committee is 4 members, of whom 1 must be the Chairperson or a member referred to in section 147 (1) (c).

Conveyancers Licensing 1992

SCHEDULE 1—THE CONVEYANCERS LICENSING COMMITTEE—*continued*

Presiding member

10. (1) The Chairperson of the Committee or, in the absence of the Chairperson, a member of the Committee referred to in section 147 (1) (c) elected by the members present is to preside at a meeting of the Committee.

5

(2) The person presiding at a meeting of the Committee has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

Voting

11. A decision supported by a majority of the votes cast at a meeting of the Committee at which a quorum is present is the decision of the Committee.

10

Minutes

12. The Committee must cause full and accurate minutes to be kept of the proceedings of each meeting of the Committee.

First meeting

13. The Minister may call the first meeting of the Committee in such manner as the Minister thinks fit.

15

SCHEDULE 2—AMENDMENT OF OTHER ACTS

(Sec. 161)

Auctioneers and Agents Act 1941 No. 28

Section 84AB (Contracts for sale of residential property):

20

After section 84AB (9), insert:

(10) In this section, a reference to a solicitor includes a reference to a licensee within the meaning of the Conveyancers Licensing Act 1992.

Conveyancing Act 1919 No. 6

(1) Section 7 (Definitions):

25

In section 7 (1), insert in alphabetical order:

“Licensed conveyancer” means the holder of a licence in force under the Conveyancers Licensing Act 1992.

(2) Section 53 (Obligation to show title etc.):

In section 53 (2) (e) after “solicitor” wherever occurring, insert “or licensed conveyancer”.

30

Conveyancers Licensing 1992

SCHEDULE 2—AMENDMENT OF OTHER ACTS—*continued*

- (3) Section 59 (Rights of purchaser as to execution):
 In section 59 (1) after “solicitor” wherever occurring, insert “or licensed conveyancer”.
- 5 (4) Section 66P (Definitions):
 In the definition of “solicitor” in section 66P (1), after “Territory”, insert
 “, and includes a licensed conveyancer”.
- 10 (5) Section 66Z (Definitions):
 In the definition of “solicitor” in section 66Z (1), after “Territory”,
 insert “, and includes a licensed conveyancer”.
- (6) Section 96 (Power for mortgagor to inspect title deeds):
 In section 96 (1), after “solicitor”, insert “or licensed conveyancer”.
- (7) Section 176 (Protection of solicitors, licensed conveyancers, trustees etc.):
 After “solicitor” wherever occurring, insert “or licensed conveyancer”.
- 15 (8) Section 197 (Official searches):
 In section 197 (4), after “solicitor” wherever occurring, insert “or
 licensed conveyancer”.
- (9) Schedule 3 (Conditions of sale):
 After “solicitor” wherever occurring, insert “or licensed conveyancer”.
- 20 Land Sales Act 1964 No. 12
- (1) Section 2 (Definitions):
 Insert in alphabetical order:
 “Licensed conveyancer” means the holder of a licence in force
 under the Conveyancers Licensing Act 1992.
- 25 (2) Section 7 (Trust deeds):
 In section 7 (2), after “solicitor”, insert “or licensed conveyancer”.
- Legal Profession Act 1987 No. 109
- (1) Section 3 (Definitions):
 In section 3 (1), insert in alphabetical order:
 “licensed conveyancer” means the holder of a licence in force under
 the Conveyancers Licensing Act 1992;
- 30

Conveyancers Licensing 1992

SCHEDULE 2—AMENDMENT OF OTHER ACTS—*continued*

- (2) Section 54 (Functions of Law Society Council):
 After section 54 (2), insert:
 (3) The Law Society Council also has such functions as are conferred or imposed on it by or under the Conveyancers Licensing Act 1992. 5
- (3) Section 65 (Repayment of deposit with Law Society):
 After "section 64" wherever occurring, insert "of this Act or section 36 of the Conveyancers Licensing Act 1992".
- (4) Section 66 (Accounts to be kept by Law Society):
 From section 66 (a), omit "and repaid or invested by it under section 65", insert instead "of this Act or section 36 of the Conveyancers Licensing Act 1992". 10
- (5) Section 67 (Statutory Interest Account):
 Omit section 67 (2) (a), insert instead:
 (a) for the purposes authorised by subsection (3) (c), (c1), (d), (e), (e1), (e2) and (e3)—such amounts as are from time to time incurred under Parts 9 and 10 of this Act or under the Conveyancers Licensing Act 1992 in relation to those purposes; and 15
 After section 67 (3) (c), insert: 20
 (c1) the payment under section 143 of the Conveyancers Licensing Act 1992 of the costs related to the administration of Part 6 of that Act;
 After section 67 (3) (e1), insert:
 (e2) the costs incurred by the Law Society Council in exercising its functions for the purposes of the Conveyancers Licensing Act 1992; 25
 (e3) the costs incurred by the Conveyancers Licensing Committee in exercising its functions for the purposes of the Conveyancers Licensing Act 1992; 30
- (6) Section 115 (Person acting as a barrister or solicitor):
 After section 115 (2), insert:
 (2A) Subsection (2) does not prevent a licensed conveyancer from carrying out conveyancing work in accordance with a licence in force under the Conveyancers Licensing Act 1992. 35
- (7) Section 117 (Limitation on general legal work and probate work):
 (a) In the definition of "general legal work" in section 117 (1), after the words "preparing an instrument", insert "or other document".

*Conveyancers Licensing 1992*SCHEDULE 2—AMENDMENT OF OTHER ACTS—*continued*

- (b) Omit paragraph (b) of the definition of “general legal work” in section 117 (1), insert instead:
- 5 (b) creates, regulates or affects, or purports to create, regulate or affect, rights between parties;
- (c) At the end of section 117 (4) (c), insert:
- ; or
- (d) a licensed conveyancer acting in accordance with a licence in force under the Conveyancers Licensing Act 1992.
- 10 (8) Section 121 (Employment of disqualified or convicted persons):
- (a) From paragraph (c) of the definition of “disqualified person” in section 121 (8), omit “or” where lastly occurring.
- (b) At the end of paragraph (d) of the definition of “disqualified person” in section 121 (8), insert:
- 15 ; or
- (e) who is disqualified from holding a licence under the Conveyancers Licensing Act 1992 by virtue of an order in force under section 139 of that Act.
- (9) Section 122:
- 20 Omit the section, insert instead:
- Order restraining breach of this Act
122. (1) Any person may bring proceedings in the Supreme Court for an order to restrain a breach of this Act.
- 25 (2) If satisfied that a breach of this Act has been committed or will, unless restrained by order of the Court, be committed, the Supreme Court may make such order as it considers appropriate to restrain the breach.
- (10) Section 212 (Offences):
- At the end of section 212, insert:
- 30 (2) Proceedings for an offence against this Act or the regulations may be brought at any time within 12 months after the date of the alleged offence.
- (11) Section 213A:
- After section 213, insert:
- Evidentiary certificates
- 35 213A. (1) A certificate that is issued by the Bar Council and that states that, on a date or during a period specified in the certificate:
- (a) a specified person was or was not the holder of a barristers’ practising certificate; or

*Conveyancers Licensing 1992***SCHEDULE 2—AMENDMENT OF OTHER ACTS—*continued***

- (b) a specified barrister's practising certificate was or was not subject to a specified condition,
is admissible in any legal proceedings and is evidence of the fact or facts so stated. 5
- (2) A certificate that is issued by the Law Society Council and that states that, on a date or during a period specified in the certificate:
- (a) a specified person was or was not the holder of a solicitor's practising certificate; or
- (b) a specified solicitor's practising certificate was or was not subject to a specified condition, 10
is admissible in any legal proceedings and is evidence of the fact or facts so stated.

Real Property Act 1900 No. 25

- (1) Section 3 (Definitions): 15
In section 3 (1) (a), insert in alphabetical order:
"Licensed conveyancer"—The holder of a licence in force under the Conveyancers Licensing Act 1992.
- (2) Section 74N (Service of notices on the caveator for the purposes of this Part): 20
In section 74N (1), after "solicitor" wherever occurring, insert "or licensed conveyancer".
- (3) Section 96I (Effect of official searches):
In section 96I (2), after "solicitor" wherever occurring, insert "or licensed conveyancer". 25

SCHEDULE 3—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

(Sec. 162)

Part 1—Preliminary**Regulations**

1. (1) The regulations may include provisions of a savings or transitional nature consequent on the enactment of this Act. 30
- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the commencement of this Act or from a later date.

Conveyancers Licensing 1992

SCHEDULE 3—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
continued

- 5 (3) To the extent that a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of publication; or
- 10 (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 that date of publication.

Part 2—Provisions consequent on enactment of this Act

Definition

2. (1) In this Part:
- 15 “appointed day”, in relation to a provision of this Part, means the day appointed by proclamation for the purposes of that provision.
- (2) The Governor may make proclamations for the purposes of the provisions of this Part.

Interim constitution of the Committee

- 20 3. The members of the Committee referred to in section 147 (1) (b) are, until the appointed day, to comprise the Director-General of the Attorney General's Department and the Director of the Land Titles Office, rather than 2 licensees nominated by the Association.

Interim constitution of the Panel

- 25 4. For the purposes of section 114, the Panel is, until the appointed day, to be constituted by 1 of its solicitor members and 2 of its lay members rather than by 1 of its licensee members and 2 of its lay members.

Interim constitution of the Board

- 30 5. For the purposes of section 118, the Board is, until the appointed day, to be constituted by 2 of its solicitor members and 1 of its lay members rather than by 1 of its solicitor members, 1 of its licensee members and 1 of its lay members.

Interim constitution of the Tribunal

- 35 6. For the purposes of sections 127 and 132, the Tribunal is, until the appointed day, to be constituted by 2 of its solicitor members and 1 of its lay members rather than by 1 of its solicitor members, 1 of its licensee members and 1 of its lay members.

Conveyancers Licensing 1992

SCHEDULE 3—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
continued

Interim certificates of eligibility

7. (1) For the purposes of Division 2 of Part 2, any person:

- (a) who, at the commencement of this Act, had conducted a conveyancing business, as a principal of the business, for at least 2 years prior to 1 March 1992; and 5
- (b) who, when applying for a certificate of eligibility to hold a licence, satisfies the Committee that the person is sufficiently knowledgeable in relation to the law and practice of conveyancing to warrant being granted a licence by virtue of this clause, 10

is, subject to section 5, qualified to hold a licence even if the person does not have the educational qualifications, practical training or conveyancing experience approved by the Committee for the purposes of Part 2.

(2) The Committee may, for the purposes of this clause, examine any applicant as to his or her knowledge in relation to the law and practice of conveyancing and cause an inspection to be made of the accounts in relation to his or her conveyancing business. 15

(3) A person is not entitled to be granted a certificate of eligibility to hold a licence by virtue of this clause unless the person lodges an application for such a certificate within 6 months after the commencement of this Act.

(4) A member of the Committee (as constituted in accordance with clause 3) is not entitled to be granted a certificate of eligibility to hold a licence by virtue of this clause. 20

DICTIONARY OF WORDS AND EXPRESSIONS

(Sec. 3)

affairs, in relation to a licensee, includes:

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

Association means the Association of Property Conveyancers.**Board** means the Legal Profession Standards Board constituted under Part 10 of the Legal Profession Act 1987.15 **Committee** means the Conveyancers Licensing Committee constituted under section 146.

controlled money means money required to be dealt with in accordance with section 33 (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 in New South Wales.

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

conveyancing work has the meaning given to it by section 4.**costs** includes fees, charges, disbursements, expenses and remuneration.**Council** means the Law Society Council.30 **disqualified person** has the meaning given to it by section 5.**exercise a function** includes, where the function is a duty, to perform the duty.**firm of licensees** includes any licensees who share remuneration as licensees, whether or not on the same basis for each of them.35 **function** includes a power, authority and duty.**Law Society** means the Law Society of New South Wales.**licence** means a licence in force under this Act.**licensee** means the holder of a licence in force under this Act.

DICTIONARY OF WORDS AND EXPRESSIONS—*continued*

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

money received, in relation to a licensee, includes:

- (a) money coming under the direct control of the licensee, whether or not by the exercise of an express power or authority or by operation of law; and 5
- (b) money paid to an associate of the licensee on the advice of the licensee, but only if the money is under the direct or indirect control of the licensee; and 10
- (c) money in relation to which the licensee (whether or not through an associate) has a power of disposal exercisable jointly and severally with the person on whose behalf it was received or a nominee of that person.

Panel means the Legal Profession Conduct Review Panel constituted under Part 10 of the Legal Profession Act 1987. 15

professional misconduct includes:

- (a) unsatisfactory professional conduct, if the conduct is such that it involves a substantial or consistent failure to reach reasonable standards of competence and diligence; and 20
- (b) conduct (whether consisting of an act or omission) occurring otherwise than in connection with a conveyancing business which, if established, would justify a finding that a licensee is not of good fame and character; and
- (c) conduct that is declared to be professional misconduct by any provision of this Act. 25

record includes any book, account, document, paper or other source of information compiled, recorded or stored in written form or on microfilm, or by electronic process, or in any other manner or by any other means. 30

Statutory Interest Account means the Statutory Interest Account maintained by the Law Society under Part 6 of the Legal Profession Act 1987.

Tribunal means the Legal Profession Disciplinary Tribunal constituted under Part 10 of the Legal Profession Act 1987. 35

DICTIONARY OF WORDS AND EXPRESSIONS—*continued*

trust money means money required to be dealt with in accordance with section 33 (1) (a).

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

CONVEYANCERS LICENSING BILL 1992

NEW SOUTH WALES



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SCHEDULE 2—AMENDMENT OF OTHER ACTS

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Association	licence
Board	licensee
Committee	money
controlled money	money received
conveyancing business	Panel
conveyancing work	professional misconduct
costs	record
Council	Statutory Interest Account
disqualified person	Tribunal
exercise a function	trust money
firm of licensees	unsatisfactory professional conduct
function	

This PUBLIC BILL, originated in the LEGISLATIVE ASSEMBLY and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

Legislative Assembly

Clerk of the Legislative Assembly.

NEW SOUTH WALES



Act No. , 1992

An Act to provide for the licensing and regulation of conveyancers; and for other purposes.

Conveyancers Licensing 1992

The Legislature of New South Wales enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the Conveyancers Licensing Act 1992.

5 Commencement

2. (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).
- (2) The following provisions commence on the date of assent:
- (a) Parts 1 and 7;
- 10 (b) Schedules 1, 2 and 3 (except for item (9) of the matter in Schedule 2 that relates to the Legal Profession Act 1987);
- (c) the Dictionary at the end of the Act.

Definitions

3. (1) In this Act, the words and expressions appearing in the
- 15 Dictionary at the end of this Act have the meanings given to them in that Dictionary.
- (2) Certain words and expressions used in Part 4 (Claims arising from Failures to Account) are defined in Division 1 of that Part.
- (3) Certain words and expressions used in Part 5 (Management and
- 20 Receivership) are defined in Division 1 of that Part.

Conveyancing work

4. (1) For the purposes of this Act, **conveyancing work** is legal work carried out in connection with any transaction that creates, varies, transfers or extinguishes a legal or equitable interest in residential
- 25 property or that otherwise affects residential property.
- (2) Without limitation, **conveyancing work** includes:
- (a) legal work involved in preparing any document (such as an agreement, conveyance, transfer, lease or mortgage) that is necessary to give effect to any such transaction; and
- 30 (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

Conveyancers Licensing 1992

(c) any other legal work that is prescribed by the regulations as constituting conveyancing work for the purposes of this Act.

(3) However, **conveyancing work** does not include the carrying out of any work for the purpose of:

- (a) commencing or maintaining legal proceedings; or 5
- (b) establishing a corporation or varying the memorandum or articles of association of a corporation; or
- (c) preparing a mortgage otherwise than where the mortgage is prepared in connection with an agreement for sale of residential property and: 10
 - the mortgagee is the vendor of the property; or
 - the mortgagee has nominated the purchaser of the property as the mortgagor and has specified the terms of the mortgage independently of any advice given by the person by whom the mortgage is being prepared; or 15
- (d) creating, varying or extinguishing a trust; or
- (e) preparing a testamentary instrument; or
- (f) creating, varying, transferring or extinguishing a legal or equitable interest in animals or in the goodwill or stock-in-trade of a business; or 20
- (g) obtaining the consent of any public or local authority to the subdivision of land, the erection of a building or the carrying out of development (within the meaning of the Environmental Planning and Assessment Act 1979) on land;
- (h) giving investment or financial advice; or 25
- (i) investing money otherwise than as provided for by Division 2 of Part 3,

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

(4) In this section: 30

“legal work” means work that, if done for fee or reward by a person who is neither a solicitor nor a barrister, would give rise to an offence under Part 9 of the Legal Profession Act 1987;

“residential property” has the same meaning as it has in Division 8 of Part 4 of the Conveyancing Act 1919, except that it includes land 35
having an area of up to, but not more than, 10 hectares.

Conveyancers Licensing 1992

Disqualified persons

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

- (a) is a corporation; or
- 5 (b) is an undischarged bankrupt; or
- (c) has been convicted in New South Wales or elsewhere of an offence involving dishonesty; or
- (d) is a mentally incapacitated person; or
- 10 (e) has been removed (otherwise than at his or her own request) from the roll of solicitors or the roll of barristers kept by the Supreme Court or from a corresponding roll of legal practitioners kept by a superior court of another State or Territory; or
- (f) is disqualified from holding a licence under this Act by virtue of an order in force under section 139; or
- 15 (g) is disqualified from being employed in a solicitor's office by virtue of an order in force under section 120 of the Legal Profession Act 1987; or
- 20 (h) is disqualified from holding a licence or certificate of registration under the Auctioneers and Agents Act 1941 by virtue of an order in force under section 29 or 60 of that Act.

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

- (a) is the holder of a barrister's or a solicitor's practising certificate under the Legal Profession Act 1987; or
- 25 (b) is the holder of a licence or certificate of registration under the Auctioneers and Agents Act 1941.

PART 2—LICENSING**Division 1—Preliminary****Effect of licence**

- 30 6. (1) A licensee is not guilty of an offence under Part 9 (Unqualified Practitioners) of the Legal Profession Act 1987 in respect of conveyancing work that the licensee carries out in accordance with this Act, the regulations and the conditions of the licence.

- 35 (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.

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Procedure for obtaining a licence

7. (1) A person is qualified to hold a licence if the person is the holder of a current certificate of eligibility to hold a licence.

(2) A person is qualified to be granted a certificate of eligibility to hold a licence if the person:

(a) is of or above the age of 18 years; and

(b) has such educational qualifications, practical training and conveyancing experience as may be approved by the Committee; and

(c) is not a disqualified person.

(3) Certificates of eligibility are granted by the Committee under Division 2.

(4) Licences are granted by the Council under Division 3.

Licensee to have paid fidelity contribution

8. A person is not entitled to be granted a licence unless the person has paid such part of any contribution under Division 2 of Part 4 as is due and payable on the granting of a licence.

Licensee to be covered by an approved policy of professional indemnity insurance

9. (1) The regulations may identify particular licensees or classes of licensees as persons who are required to be insured under a policy of professional indemnity insurance.

(2) A person who would, as a result of being granted a licence, become a licensee identified in such a regulation is not entitled to be granted a licence unless an approved policy of professional indemnity insurance will be in force with respect to the person for the whole of the period of the licence.

(3) A policy of professional indemnity insurance is an approved policy if the insurer and the terms of the policy (including the financial limits of any cover provided by the policy) are approved by the Committee.

(4) The Committee must consult with the Council and the Association before approving an insurance policy for the purposes of this section and must consider any representations made by the Council or the Association as to the form of, and as to the terms to be included in, the policy.

(5) An insurance policy may not be approved for the purposes of this section unless it indemnifies the insured person against all liabilities incurred by the person during any period that the person is a licensee,

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including any period during which the licence is of no effect by virtue of section 19 (2) or (3), regardless of when any claim is made in respect of any such liability.

Division 2—Certificates of eligibility**5 Applications for certificates of eligibility**

10. (1) An application for a certificate of eligibility to hold a licence may be made to the Committee by any person.

(2) An application must be in the form approved by the Committee and must be accompanied by:

- 10 (a) an application fee of an amount prescribed by the regulations; and
(b) in the case of an initial application—evidence that the applicant has the educational qualifications, practical training and conveyancing experience approved by the Committee.

(3) The application fee is to be paid into the Statutory Interest Account.

15 Committee may require further particulars

11. The Committee, by notice in writing served on the applicant:

- (a) may require further information to be given in connection with the application; and
20 (b) may require the application, or any further information, to be verified by statutory declaration,

within such time as it may specify in the notice.

Determination of applications

12. (1) After considering an application, the Committee may determine:

- 25 (a) to grant a certificate of eligibility to the applicant; or
(b) to refuse the application.

(2) A certificate of eligibility may not be granted to an applicant unless the Committee is satisfied that the applicant:

- (a) is of or above the age of 18 years; and
30 (b) has such educational qualifications, practical training and conveyancing experience as may be approved by the Committee; and
(c) is not a disqualified person.

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(3) A certificate of eligibility may not, except after consultation with the Council, be granted to an applicant who has been the holder of a licence that has been cancelled (otherwise than at the request of the applicant) since the previous certificate of eligibility was granted.

(4) A certificate of eligibility may not, except after consultation with the Association, be granted to an applicant who has been the holder of a licence that has been cancelled on a ground referred to in section 20 (1) (e), (f) or (g) since the previous certificate of eligibility was granted.

(5) For the purpose of determining whether or not a person is a disqualified person by virtue of section 5 (1) (c), the Committee:

(a) may determine whether an offence committed by the person was or was not, in the circumstances of the case, an offence involving dishonesty; and

(b) may determine to ignore the fact that the person has committed such an offence if (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) it considers it appropriate to do so.

Imposition of conditions

13. (1) A certificate of eligibility may specify conditions to which a licence granted to the applicant should be subject.

(2) The conditions so specified may include conditions of the following kind:

(a) a condition prohibiting the proposed licensee from carrying out conveyancing work otherwise than as an employee of a licensee whose licence does not contain such a condition;

(b) a condition requiring the proposed licensee to undertake or complete a specified course of studies within a specified period of time;

(c) a condition prohibiting the proposed licensee from carrying out conveyancing work in relation to specified kinds of transaction;

(d) a condition requiring the proposed licensee to undertake or complete a specified course of further legal education during each year for which he or she remains a licensee.

Notice of Committee's decision to be given

14. (1) The Committee must cause notice of its decision on an application (including reasons for the decision, if the decision is to refuse the application) to be given to the applicant within 14 days after the decision is made.

(2) For the purposes only of any appeal proceedings arising in connection with an application under this section, the Committee is taken to have refused the application if it has not finally disposed of the application within 6 weeks after the application was made.

5 Duration of certificates of eligibility

15. A certificate of eligibility remains in force until it is withdrawn or until it is replaced by another certificate of eligibility.

Withdrawal of certificates of eligibility

10 16. The Committee, by notice in writing served on the holder of a certificate of eligibility, may withdraw the certificate on any of the following grounds:

- (a) that the holder of the certificate has ceased to hold a licence for a single period of more than 6 months since the certificate was granted;
- 15 (b) that a licence held by the holder of the certificate has been cancelled otherwise than at the request of the licensee;
- (c) that the holder of the certificate has failed to comply with the conditions of any licence issued by virtue of the certificate;
- 20 (d) that the holder of the certificate is disqualified from holding a licence by virtue of an order in force under section 139;
- (e) that the Tribunal has cancelled the certificate under section 139.

Division 3—Licences

Applications for licences

25 17. (1) An application for a licence may be made to the Council by any person who holds a current certificate of eligibility.

(2) An application must be in the form approved by the Council and must be accompanied by:

- (a) an application fee of an amount prescribed by the regulations; and
- (b) the applicant's current certificate of eligibility to hold a licence; and
- 30 (c) evidence that the applicant has paid such part of any contribution under Division 2 of Part 4 as is due and payable on the granting of a licence; and

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- (d) in the case of an applicant who would, as a result of being granted a licence, be required to be covered by an approved policy of professional indemnity insurance—evidence that such a policy will be in force with respect to the applicant for the whole of the period of the licence; and 5
 - (e) in the case of an application for the renewal of an expiring licence—the most recent auditor's certificate in relation to the licensee's accounts.
- (3) The application fee is to be paid into the Statutory Interest Account.
- (4) The Council may require an application to be verified by statutory declaration. 10
- (5) The applicant's current certificate of eligibility to hold a licence is to be returned to the applicant as soon as the application has been dealt with.
- Determination of applications** 15
 - 18. (1) After considering an application, the Council may determine:
 - (a) to grant a licence to the applicant; or
 - (b) to refuse the application.
 - (2) A licence may not be granted to an applicant unless the Council is satisfied: 20
 - (a) that the applicant is not a disqualified person; and
 - (b) that the applicant is the holder of a current certificate of eligibility to hold a licence; and
 - (c) that the applicant has paid such part of any contribution under Division 2 of Part 4 as is due and payable on the granting of a licence; and 25
 - (d) in the case of an applicant who would, as a result of being granted a licence, be required to be covered by an approved policy of professional indemnity insurance—that such a policy will be in force with respect to the applicant for the whole of the period of the licence. 30
 - (3) The Council may refuse an application on any of the grounds (listed in section 20 (1)) on which it may suspend or cancel a licence.
 - (4) The licence is to be in a form approved by the Council and is to be granted subject to the conditions set out in the current certificate of eligibility. 35

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(5) For the purposes only of any appeal proceedings arising in connection with an application under this section, the Council is taken to have refused the application if it has not finally disposed of the application within 8 weeks after the application was made.

5 Duration of licences

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

(2) A licence is of no effect during any period for which any part of a contribution under Division 2 of Part 4 remains due and payable by the licensee.

15 (3) A licence held by a licensee who is required to be covered by an approved policy of professional indemnity insurance is of no effect during any period for which such a policy is not in force with respect to the licensee.

Suspension and cancellation of licences

20 20. (1) The Council may suspend or cancel a licence on any of the following grounds:

- (a) that the licensee has requested the suspension or cancellation of the licence;
- (b) that the Tribunal has ordered the cancellation of the licence;
- 25 (c) that the licensee has failed to comply with a condition of the licence;
- (d) that the licensee has failed to comply with an order in force under section 125, 130 or 139;
- (e) that the licensee has failed to comply with the requirements of Division 2 of Part 3 in relation to trust money or controlled money;
- 30 (f) that the licensee has failed to pay any part of a contribution due and payable under Division 2 of Part 4;
- (g) in the case of a licensee who is required to be covered by an approved policy of professional indemnity insurance—that such a policy is no longer in force with respect to the licensee;
- 35 (h) that the licensee has become a disqualified person;
- (i) that the licensee has failed to comply with a requirement under this Act to furnish any record, document or information or if any record, document or information so furnished fails to give a satisfactory explanation of the licensee's conduct;

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- (j) that the licensee has been convicted of an offence against this Act;
- (k) that the licensee is a prisoner within the meaning of the Prisons Act 1952;
- (l) that the licensee is (because of illness or infirmity) unfit to carry out conveyancing work and that it is in the public interest that the licence be suspended or cancelled. 5
- (2) A licence may not be suspended or cancelled on a ground referred to in subsection (1) (e), (f) or (g) except after consultation with the Association.
- (3) A licence may not be suspended or cancelled on the ground referred to in subsection (1) (c), (h) or (l) except after consultation with the Committee and the Council has obtained the concurrence of the Committee or the Council certifies that the suspension or cancellation was occasioned by a failure to account (as defined in section 46) on the part of the licensee. 10 15
- (4) Before suspending or cancelling a licence on the ground referred to in subsection (1) (l), the Council:
- (a) may hold an inquiry; and
- (b) may require the licensee to be examined by a medical practitioner nominated by the Council. 20
- (5) An inquiry under this section is to be conducted in accordance with the procedures prescribed by the regulations.
- (6) The Council must cause notice of its decision to suspend or cancel a licence to be given to the licensee, to the Committee and (if the decision is based on a ground referred to in subsection (1) (e), (f) or (g)) to the Association within 14 days after the decision is made. 25
- (7) The notice must include the reasons for the decision if the decision is based on a ground referred to in subsection (1) (b)–(l).
- (8) A suspension or cancellation of a licence takes effect when notice of the suspension or cancellation is served on the licensee or on such later date as may be specified in the notice. 30

Division 4—Appeals**Appeals**

21. (1) An appeal lies to the Supreme Court against the following decisions:

- (a) a decision of the Committee refusing to grant a certificate of eligibility for a licence;

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- (b) a decision of the Committee requiring the imposition of a condition on a licence;
 - (c) a decision of the Council refusing to grant a licence;
 - (d) a decision of the Council suspending or cancelling a licence.
- 5 (2) Such an appeal must be made within 28 days after the date on which the decision was made or is taken to have been made.
- (3) The making of an appeal does not operate to stay the decision appealed against except to the extent (if any) to which the Supreme Court orders.

10 **PART 3—CONVEYANCING PRACTICE**
 Division 1—General

Effect of contravention of Division 1

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

23. (1) If a maximum fee for the carrying out of work by a solicitor (or a maximum rate according to which such a fee may be calculated) is fixed by a determination of the Legal Fees and Costs Board, the maximum fee for the carrying out of the same kind of work by a licensee (or the maximum rate according to which such a fee may be calculated) is the same as that fixed by the determination.
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- (2) Despite any Act or law to the contrary, a licensee is not entitled to charge or recover, in respect of any work, any amount in excess of the maximum amount payable, in respect of that work, in accordance with subsection (1).
- 25

- (3) A licensee must not enter into an agreement that attempts to exclude, modify or restrict the operation of this section.

- (4) Any agreement that attempts to exclude, modify or restrict the operation of this section is void to the extent to which it attempts to do so.
- 30

- (5) Division 5 of Part 11 of the Legal Profession Act 1987 applies to the fees charged by a licensee in the same way as it applies to the fees charged by a solicitor.
- 35

Nature of conveyancing business

24. (1) A licensee must not conduct a conveyancing business, or be involved in the conduct of a conveyancing business, otherwise than as a sole practitioner, in partnership with other licensees or as an employee of another licensee.

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(2) A licensee must not falsely represent, or permit any other person to falsely represent, that another person is a partner of the licensee.

Attendance at business premises

25. A licensee must not permit conveyancing work to be carried out at any premises at which the licensee conducts a conveyancing business unless the licensee, or some other licensee, gives reasonable attendance at those premises.

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Business names

26. (1) A licensee must not conduct a conveyancing business under a business name that is not approved by the Committee.

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

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

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Sharing of receipts with unqualified persons

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27. (1) A licensee must not share the receipts of a conveyancing business with another person unless:

- (a) the other person is a licensee; or
- (b) the sharing of those receipts with that other person is approved by the Committee.

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(2) An approval may not be given under this section unless the Committee is satisfied that the sharing of the receipts of the conveyancing business in accordance with the approval:

- (a) will not result in a person other than a licensee gaining control of the business; and

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(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.

- 5 (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.

Employment of disqualified persons

- 10 28. (1) A licensee must not, in connection with his or her conveyancing business, employ or pay a person whom the licensee knows to be a disqualified person.

(2) Subsection (1) does not apply in relation to a person who is employed or paid in accordance with leave given by the Committee or by the Supreme Court.

- 15 (3) If the Committee refuses an application by a person for leave under this section, the person may appeal against the decision to the Supreme Court which may either confirm the decision appealed against or else give leave for the appellant to be employed or paid in connection with the conveyancing business.

- 20 (4) Leave given under this section may be limited as to time or given subject to specified conditions.

(5) A disqualified person must not seek employment or payment in connection with a licensee's conveyancing business unless he or she has informed the licensee of the fact of his or her disqualification.

- 25 Maximum penalty (subsection (5)): 10 penalty units.

Sharing staff of legal practitioners and real estate agents etc.

29. A licensee must not employ any person in the conduct of a conveyancing business if the person, while so employed, is employed also:

- 30 (a) by the holder of a barrister's or solicitor's practising certificate under the Legal Profession Act 1987; or
 (b) by the the holder of a licence or certificate of registration under the Auctioneers and Agents Act 1941.

Advertising

- 35 30. (1) The regulations may make provision with respect to advertising in connection with the carrying out of conveyancing work and the conduct of a conveyancing business.

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(2) In particular, the regulations may make provision with respect to the manner in which a licensee may advertise, the subject-matter of advertisements and the manner in which a licensee must represent himself or herself in correspondence arising in the conduct of a conveyancing business.

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(3) A licensee must not advertise otherwise than in accordance with the regulations under this section.

Conduct of other businesses

31. (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.

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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.

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Committee may establish guidelines for conduct of conveyancing business

32. (1) The Committee may, by order published in the Gazette, establish guidelines as to the manner in which conveyancing businesses should be conducted.

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(2) The guidelines may adopt, with or without modification, the provisions of any rules made by the Law Society with respect to the conduct of solicitors.

(3) A licensee must not conduct a conveyancing business in contravention of any guidelines in force under this section.

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Division 2—Trust money and controlled money

Money received by licensee on behalf of another

33. (1) A licensee who, in the course of conducting a conveyancing business, receives money on behalf of another person:

- (a) must pay the money, within the time prescribed by the regulations, into a general trust account at a bank in New South Wales and must hold the money in accordance with the regulations relating to trust money; or

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- 5 (b) if the person on whose behalf the money is received directs that it be paid otherwise than into a general trust account, must pay the money as directed and (if the money is to be held under the direct or indirect control of the licensee for more than the period prescribed by the regulations) must hold the money in accordance with the regulations relating to controlled money.
- (2) In either case, the licensee must hold the money exclusively for, and must disburse the money in accordance with the directions of, the person on whose behalf it is held.
- 10 (3) This section:
- (a) does not prevent a licensee from depositing money with the Law Society in accordance with section 36, but continues to apply to any money so deposited that is repaid to the licensee; and
- 15 (b) does not prevent a licensee from withdrawing or receiving, from trust money or controlled money:
- reimbursement for disbursements paid by the licensee; or
 - money for disbursements to be paid by the licensee; or
 - money due, or to accrue due, to the licensee for costs,
- 20 so long as the procedure prescribed by the regulations is followed; and
- (c) does not affect any enforceable lien or claim that a licensee has to any money; and
- 25 (d) does not prevent a licensee from exercising a general retaining lien for unpaid costs and disbursements in respect of money in a trust account or a controlled money account (other than money received subject to an express direction by the client with respect to the purposes for which the money is to be applied).
- (4) A lien referred to in subsection (3) (d):
- 30 (a) may not be exercised for an amount in excess of the sum of the costs and disbursements unpaid; and
- (b) may not be exercised unless the licensee has delivered an outline bill of costs and disbursements to the client on whose behalf the money is held.
- (5) Money received by a licensee on behalf of another person:
- 35 (a) is not available for payment to a creditor of the licensee; and
- (b) is not liable to be taken in execution of any judgment, order or other process of any court or tribunal at the instance of a creditor of the licensee,
- 40 unless the creditor is the person on whose behalf the money is held by the licensee.

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(6) If a trust account kept by a licensee is, as authorised by or under the regulations, operated on by a person other than the licensee, section 53 of the Trustee Act 1925 does not apply to the person in relation to the operation on the trust account.

(7) It is professional misconduct for a licensee to contravene this section. 5

Keeping of accounts

34. (1) A licensee must keep accounting records that disclose at all times the true position in relation to money received by the licensee on behalf of another person. 10

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

(3) It is professional misconduct for a licensee to contravene this section. 15

Audits

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

- (a) the auditing of a licensee's records; and
- (b) the reports to be made by auditors; and
- (c) the submission of auditors' reports to the Council and to the Association. 20

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

- (a) to produce for the auditor's inspection any accounting or other records relating to the licensee's conveyancing business;
- (b) to give the auditor such other information as is reasonably necessary for the purposes of the audit; 25
- (c) to furnish the auditor with such authorities or orders on bankers and others as relate to the licensee's conveyancing business.

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

- (a) must not fail to comply with the requirement; and 30
- (b) must not, in purported compliance with the requirement, provide information that the person knows to be false or misleading in a material particular.

Maximum penalty: 10 penalty units.

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(4) If a record:

- (a) is not in writing; or
- (b) is not written in English; or
- (c) is not decipherable on sight,

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

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

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

Deposit of trust funds with Law Society

15 36. (1) Out of the money that is paid into a licensee's trust account, the licensee must cause to be deposited with the Law Society, and to be kept deposited with the Law Society, an amount calculated as prescribed by the regulations.

20 (2) This section applies to each member of a firm of licensees, and to money paid into a trust account kept by such a firm, in the same way as it applies to a licensee and to money paid into a trust account kept by a licensee.

(3) This section does not apply to a separate trust account kept on the instructions of a client for the exclusive use of the client.

25 (4) This section does not affect any enforceable lien or claim that a licensee has to any money.

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

Money not claimed from licensee

30 37. (1) If a licensee holding money in a trust account cannot find the person on whose behalf the money is held or any other person authorised to receive the money, the licensee:

- (a) may pay the money to the Treasurer for payment into the Consolidated Fund; and
- 35 (b) must in that event, provide the Treasurer with such information as the Treasurer requires in relation to the money and the person on whose behalf the money was held.

(2) If a licensee pays money to the Treasurer under this section, the licensee is relieved from any further liability in relation to the money.

(3) The Treasurer may pay money deposited under this section to any person who satisfies the Treasurer as to his or her entitlement to the money.

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(4) Payment of money to such a person discharges the Crown and the Treasurer from any liability in relation to the money, but does not discharge the person from any liability to any other person who establishes an entitlement to the money.

(5) The Treasurer may require a person to provide any information that the person has, or can reasonably obtain, about the entitlement of any other person to money paid to the Treasurer under this section and about any attempts that have been made to locate that other person.

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

(a) must not fail to comply with the requirement; and

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

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

Relief for bankers

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38. (1) A bank, in relation to a transaction on an account kept by a licensee at that or any other bank:

(a) does not incur any obligation to make inquiries, or any other obligation or liability, other than an obligation or liability to which it would be subject apart from this Act; and

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(b) does not have imputed to it any knowledge of the entitlement of a person to money credited to the account,

that it would not incur, or have imputed to it, if the account were kept by the bank for a person absolutely entitled to the money held in the account.

(2) A bank at which a licensee keeps an account for clients' money has no recourse (whether by way of set-off, counter-claim, charge or otherwise) against money held in the account in respect of any liability of the licensee to the bank other than a liability in respect of the account.

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Division 3—Inspection of trust accounts and investigations generally

Appointment of trust account inspectors etc.

39. (1) The Council:

- 5 (a) may appoint trust account inspectors to inspect, either generally or in a particular case, the accounts kept by licensees under Division 2; and
- (b) may, after consultation with the Association, appoint an investigator to investigate the affairs of a particular licensee.
- 10 (2) A trust account inspector may exercise the functions of an investigator in the course of any inspection of accounts carried out by the inspector.
- (3) A trust account inspector or an investigator may appoint an assistant to assist in the conduct of inspections or investigations.
- 15 (4) Trust account inspectors and investigators are referred to in this Division as inspectors.

Production of records

- 20 **40. (1)** An inspector may require a licensee, or any other person who has possession or control of any records of a licensee or relating to the affairs of a licensee, to do any of the following:
- (a) to produce for the inspector's inspection such of those records as relate to the accounts being inspected or the affairs being investigated;
- 25 (b) to give the inspector such other information as the licensee or other person is able to give in relation to those accounts or affairs;
- (c) to furnish the inspector with such authorities or orders on bankers and others as relate to those accounts or affairs.
- (2) A person of whom such a requirement is made:
- (a) must not fail to comply with the requirement; and
- 30 (b) must not, in purported compliance with the requirement, provide information that the person knows to be false or misleading in a material particular.

Maximum penalty: 10 penalty units.

(3) If a record:

- 35 (a) is not in writing; or
- (b) is not written in English; or
- (c) is not decipherable on sight,

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

- (4) A person who complies with a requirement under this section is not subject, merely because of that compliance, to any liability, claim or demand. 5

Inspectors' reports

41. An inspector:

- (a) must send a copy of his or her report to the licensee (at the address of the licensee last known to the Council) and further copies to the Association and the Council; and 10
- (b) must provide the Minister with a copy of the report if the report indicates that there are reasonable grounds for suspecting professional misconduct, unsatisfactory professional conduct or irregularity in relation to the affairs of the licensee. 15

Costs of inspection and investigation

42. (1) The amount of the costs of an inspection or investigation, as certified by the Council, is a debt due to the Law Society by the licensee under inspection or investigation:

- (a) if the inspector states in his or her report that there is evidence that the licensee is guilty of professional misconduct or unsatisfactory professional conduct in relation to the affairs investigated or is guilty of an offence against this Act or the regulations; and 20
- (b) if the Council is of the opinion that the conduct or breach was wilful or of a substantial nature. 25

(2) The Council may waive payment of costs under this section.

(3) If the inspection or investigation concerned relates to the accounts or affairs of a firm of licensees, the Council may determine the proportion or amount (if any) of the debt due to the Law Society payable by each licensee involved. 30

Secrecy

43. (1) It is an offence for an inspector, unless making a requirement under this Division, or for an inspector's assistant, to make an unauthorised disclosure:

- (a) of the appointment of the inspector or assistant; or 35
- (b) of any matter that comes to his or her notice in the course of the inspection or investigation; or

(c) of anything in the inspector's report.

Maximum penalty: 10 penalty units.

(2) Subsection (1) is not contravened:

(a) if an inspector discloses anything to his or her assistant; or

5 (b) if an inspector's assistant discloses anything to the inspector.

(3) A member of the Council, or a solicitor, officer or agent of the Law Society, must not make an unauthorised disclosure:

(a) of the appointment of an inspector or of an inspector's assistant; or

(b) of anything in an inspector's report.

10 Maximum penalty: 10 penalty units.

(4) Subsection (3) is not contravened:

(a) if an inspector states in his or her report that there is evidence of professional misconduct, unsatisfactory professional conduct or irregularity in relation to the affairs inspected or investigated; and

15 (b) if a member of the Council, or a solicitor, officer or agent of the Law Society, discloses information in the report to a person to whom the Council decides that the information should be disclosed.

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

20 (a) the Minister; or

(b) a member of the Committee, the Association or the Council; or

(c) any insurer of the Association; or

(d) a solicitor, agent or officer of the Committee, the Law Society, the Association or any insurer of the Association; or

25 (e) the Supreme Court; or

(f) the Panel, the Board or the Tribunal; or

(g) a police officer; or

(h) a person to whom a copy of the report is required by this Act to be sent.

30 **Obstruction of inspectors etc.**

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

Maximum penalty: 10 penalty units.

PART 4—CLAIMS ARISING FROM FAILURES TO ACCOUNT

Division 1—Preliminary

Definitions

45. In this Part: 5
- “associate” has the same meaning as it has in Part 5;
- “failure to account” has the meaning given to it by section 46;
- “pecuniary loss” includes:
- (a) the costs of a claimant that are due to a failure to account; and
 - (b) the costs involved in making a claim; and 10
 - (c) interest that, but for a failure to account, would have been received by a claimant, calculated to the date on which the claim succeeds, being interest at a rate up to, but not exceeding, the rate prescribed by the Supreme Court Rules in respect of unpaid judgments as at that date. 15

Failure to account

46. (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 20
 - (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: 25
- (c) for which the licensee or associate has been convicted of an offence involving dishonesty; or
 - (d) which the Association has found to be dishonest.
- (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. 30
- (3) A finding by the Association that an act or omission is, or is not, dishonest is conclusive for the purposes of subsection (1). 35

Division 2—Fidelity insurance**Association to take out fidelity insurance**

47. (1) The Association must ensure that an approved policy of fidelity insurance is in force at all times in relation to all licensees.

- 5 (2) A policy of fidelity insurance is an approved policy if the insurer and the terms of the policy (including the financial limits of any cover provided by the policy) are approved by the Committee.

- 10 (3) The Committee must consult with the Council and the Association before approving an insurance policy for the purposes of this section and must consider any representations made by the Council or the Association as to the form of, and as to the terms to be included in, the policy.

- 15 (4) An insurance policy may not be approved for the purposes of this section unless it is in the form of a master policy of fidelity insurance, being a policy that is held by the Association and that indemnifies the Association against all liabilities incurred by the Association under Division 3, regardless of when any claim is made in respect of any such liability.

Contributions by licensees

- 20 48. (1) A licensee is liable to pay a contribution to the Association with respect to the approved policy of fidelity insurance held by the Association in respect of any year during which the licensee holds a licence.

- 25 (2) The appropriate contribution is the amount determined from time to time by the Association, with the approval of the Committee, in relation to the licensee or to the class of licensees to which the licensee belongs.

- (3) The appropriate contribution for a licence that is to take effect on or after 1 January in any year is half the contribution that would otherwise be payable.

- 30 (4) The Association may determine different contributions for different licensees or for different classes of licensees and may determine the manner in which, and the time or times at which, a contribution, or an instalment of a contribution, is to be paid.

- (5) The Association is to notify the Committee in the event that any part of a contribution remains due and unpaid.

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Division 3—Claims against the Association in respect of failures to account

Claims against the Association

49. (1) Any person who suffers pecuniary loss as a result of a failure to account by a licensee is entitled to be compensated for the loss by the Association. 5

(2) The Association must notify the Council and the Committee of any claim made against it under this section.

(3) A person is not prevented from making a claim merely because, after the act or omission from which a failure to account arises, a licensee: 10

(a) dies; or

(b) ceases to conduct a conveyancing business; or

(c) ceases to hold a licence.

(4) If a licensee authorises a person to operate on an account for clients' money kept by the licensee at a bank, an act or omission by the person in relation to those operations is, for the purposes of this Division, an act or omission of an agent of the licensee. 15

(5) A claim must be made:

(a) within 3 months after the claimant becomes aware of the failure to account; or 20

(b) within such further time as the Association allows; or

(c) if the Association refuses to allow further time—within such further time as the Supreme Court allows.

Reimbursement of licensees and others 25

50. (1) If, in respect of a failure to account by a licensee's associate:

(a) all claims (other than claims under this section) have been met; and

(b) the licensee has paid compensation for a pecuniary loss due to the failure to account; and

(c) the licensee has, in the opinion of the Association, at all times acted honestly and reasonably in relation to the failure to account, 30

the licensee may make a claim as if the compensation paid by the licensee were a pecuniary loss suffered as a result of the failure to account.

(2) A reference in this section to a licensee includes a reference to:

(a) a former licensee; and 35

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- (b) in relation to the payment of compensation and the making of a claim—the personal representative of a deceased licensee or a deceased former licensee.

Final date for making claims

- 5 **51.** (1) If the Association has reason to believe that there has been or may have been a failure to account, it may publish:
- (a) in a newspaper published and circulating in the district in which the licensee is, or was, carrying on business; and
 - (b) in a newspaper published and circulating in Sydney,
- 10 a notice that fixes a date on or before which claims relating to the failure must be made.
- (2) The date fixed by the notice must be a date that is not earlier than 3 months after its first or only publication and a claim made after that date is barred unless:
- 15 (a) further time is allowed by the Association; or
 - (b) if the Association refuses to allow further time, further time is allowed by the Supreme Court.
- (3) The publication in a newspaper in good faith of a notice under this section does not subject:
- 20 (a) the Association; or
 - (b) a member, employee or agent of the Association; or
 - (c) the proprietor, editor or publisher of the newspaper,
- to a liability to any person.
- (4) The Association may, after such date as it may fix in each case, pay
- 25 successful claims.

Claims must be pursued

- 52.** (1) The Association may give a claimant not less than 21 days' written notice requiring the claimant:
- (a) to take such steps for the purpose of pursuing the claim; or
 - 30 (b) to supply such particulars in connection with the claim; or
 - (c) to produce or deliver to it any securities or documents necessary or available to support the claim or to enable it to establish any rights of the Association against a licensee or an associate of the licensee; or
 - 35 (d) to do such things in connection with the claim,
- as are specified in the notice.

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- (2) If the claimant fails to comply with the notice, the Association:
- (a) may wholly or partly disallow the claim; or
 - (b) may direct that the whole, or a specified part, of any interest otherwise payable be not paid.

Determination of claims

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53. (1) After considering a claim, the Association may determine the claim:

- (a) by allowing the claim, either wholly or in part; or
- (b) by disallowing the claim.

(2) A claim is not to be allowed, either wholly or in part, unless the Association is satisfied that there has been a failure to account by the licensee to whom the claim relates and that the claimant has suffered pecuniary loss as a result of that failure.

10

(3) If a claim is allowed in part only, there is to be paid to the claimant by the Association, in respect of costs incurred by the claimant as a result of the failure to account, an amount assessed:

15

- (a) by agreement between the claimant and the Association; or
- (b) in default of agreement—as if taxed on a reference for taxation under Division 5 of Part 11 of the Legal Profession Act 1987.

(4) If a claim is disallowed but the Association determines that a specified amount should be paid in respect of costs incurred by the claimant as a result of the failure to account, that amount is to be paid to the claimant by the Association.

20

(5) The Association must cause notice to be given to the Council of any determination under this section within 7 days after the determination is made.

25

(6) Even if a successful claim does not include a claim for interest, there is payable to the claimant by the Association interest at the rate prescribed by the regulations on:

- (a) the amount allowed by the Association; or
- (b) the amount of the judgment recovered against the Association, from the date on which the claim was made until the date on which it succeeded.

30

Avoidance of double compensation

54. (1) If, in respect of a claim, a claimant:

35

- (a) receives a payment from the Association; and

- (b) receives or recovers from another source a payment on account of the pecuniary loss,

the claimant is liable to pay to the Association the amount of surplus (if any) after deducting from the total amount received or recovered by the claimant the amount of the pecuniary loss.

- (2) If, in respect of a claim, a claimant:

(a) receives or recovers from a source other than the Association a payment on account of the pecuniary loss; and

(b) recovers judgment against the Association,

the amount of any such judgment against the Association is reduced by the amount of surplus (if any) after deducting from the total amount received or recovered (including the amount of the judgment) by the claimant the amount of the pecuniary loss.

(3) Any amount payable to the Association under subsection (1) is a debt due to the Association by the licensee.

Ceiling on payments by the Association

55. (1) The maximum aggregate amount that is payable by the Association in respect of all failures to account by the same licensee or firm of licensees is such amount as the Association may, after consultation with the Committee, determine.

(2) The Association may make a payment that, but for this subsection, could not be made because of the limit imposed by subsection (1) if it is satisfied, after taking into account all of its ascertained and contingent liabilities, that it would be reasonable to do so.

Proceedings against the Association

56. (1) An action does not lie against the Association in respect of its determination of a claim otherwise than as provided by this section.

(2) If the Association wholly or partly disallows a claim relating to a failure to account in respect of which a licensee or associate has been convicted of an offence involving dishonesty:

(a) the claimant may take proceedings in the Supreme Court as for a debt due by the Association; and

(b) in any such proceedings, the defences that would have been available to the licensee are available to the Association.

(3) If the Association wholly or partly disallows a claim, it must, without delay, give written notice of the disallowance to the claimant or the claimant's solicitor.

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(4) A claimant whose claim is wholly or partly disallowed, or whose claim is not determined by the Association within the time prescribed by the regulations, may appeal to the Supreme Court against the disallowance of or the failure to determine the claim.

(5) On an appeal under this section, the Supreme Court may make such order as it thinks fit. 5

(6) A claimant may take proceedings under either subsection (2) or subsection (4).

Association subrogated to rights etc. of claimants

57. (1) On payment being made under a claim, the Association is subrogated to all the rights and remedies of the claimant against: 10

(a) the licensee or associate in respect of whom the claim was made; or

(b) the person authorised to administer the estate of any such licensee who is deceased or bankrupt; or

(c) any other person, 15

in relation to the failure to account.

(2) This section does not extend to a right or remedy against a licensee who is a partner of a claimant and who, in the opinion of the Association, acted honestly and reasonably in relation to the failure to account.

(3) The Association may exercise its rights or remedies under this section in its own name or the name of the claimant. 20

(4) If the Association brings proceedings under this section in the name of a claimant, the Association indemnifies the claimant against any costs awarded against the claimant in the proceedings.

Insufficiency of the assets of the Association 25

58. (1) If the assets of the Association are at any time insufficient to meet the liabilities to which the Association is subject under this Division:

(a) the Association may determine the manner of division among the successful claimants, or any of them to the exclusion of the others, of the money for the time being available; and 30

(b) the judgments and claims are, subject to any limitations imposed by this Act, to be finally satisfied from future assets of the Association.

(2) Proceedings based on, or for the enforcement of, a judgment against the Association in respect of a claim may not be taken without the leave of the Supreme Court. 35

PART 5—MANAGEMENT AND RECEIVERSHIP**Division 1—Preliminary****Definitions**

59. In this Part:

5 “associate”, in relation to a licensee, has the meaning given to it by section 60;

“expenses”, in relation to management or receivership, means:

- (a) the remuneration payable to the manager or receiver; or
- 10 (b) the expenses incurred in the course of the management or receivership; or
- (c) the costs of legal proceedings involved in the management or receivership; or
- (d) any reimbursement of the manager or receiver under section 67 or 92;

15 “failure to account” has the meaning given to it by section 61;

“licensee” includes:

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

“property”, in relation to a licensee, means:

- 25 (a) money or other property received by the licensee on behalf of another person in the conduct of a conveyancing business; or
- (b) interest, dividends, income, profits or other property derived from or acquired with money or other property referred to in paragraph (a); or
- 30 (c) documents and records of any description relating to anything referred to in paragraph (a) or (b) or to the licensee’s conveyancing business; or
- (d) any means by which any records referred to in paragraph (c) that are not written may be reproduced in writing,

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

- “receivable property”** means property of a licensee or an associate of a licensee that is the subject of an order appointing a receiver, and includes property that, but for its having being taken, paid or transferred unlawfully or in breach of trust, would be receivable property; 5
- “receiver”** means a receiver appointed by the Supreme Court under section 74;
- “relevant associate”** means a licensee’s associate of whose property a receiver has been appointed under section 75;
- “relevant licensee”** means a licensee of whose property a receiver has been appointed. 10

Associate

60. (1) In this Part, a reference to a licensee’s associate is a reference to:

- (a) a partner of the licensee; or 15
- (b) an employee or agent of the licensee; or
- (c) a corporation, or a member of a corporation, partnership, syndicate or joint venture, in which the licensee or a person referred to in paragraph (a), (b) or (d) has a beneficial interest; or
- (d) a person who bears a prescribed relationship to the licensee or to a person referred to in paragraphs (a)–(c); or 20
- (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 Law; or
- (f) a person declared by the regulations to be an associate of the licensee or belonging to a class of persons so declared. 25

(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 within the meaning of the De Facto Relationships Act 1984; or 30
- (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.

Failure to account

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61. (1) In this Part, **“failure to account”** means a failure by a licensee to account for, pay or deliver money or other valuable property:

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- (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
- 5 (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:

- 10 (c) for which the licensee or associate has been convicted, or is likely to be convicted, of an offence involving dishonesty; or
- (d) which the Council has found, or is likely to find, to be dishonest.

- (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
- 15 received by or entrusted to the licensee as trustee, agent, bailee or stakeholder, or in any other capacity.

(3) A finding by the Council that an act or omission is, or is not, dishonest is conclusive for the purposes of subsection (1).

Division 2—Management**20 Appointment of manager**

62. (1) The Council may appoint a manager for a licensee's conveyancing business if:

- (a) the licensee has made a request to the Council for the appointment of a manager; or
- 25 (b) the Council has suspended or cancelled the licensee's licence under section 20; or
- (c) the Council is of the opinion (whether as a consequence of a determination by the Association under Part 4 or otherwise) that there has been, or that there may have been, a failure to account by
- 30 the licensee; or
- (d) the Council is of the opinion that a person is unable to obtain payment or delivery of property held by the licensee because the licensee:
 - is mentally or physically infirm; or
 - 35 • 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

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- is a prisoner within the meaning of the Prisons Act 1952; or
- has died; or
- has abandoned his or her conveyancing business,

and if the Council is of the opinion that it is necessary to make the appointment in order to protect the interests of other persons. 5

(2) In the case of a conveyancing business that is conducted by 2 or more licensees in partnership, a reference in subsection (1) to a licensee is to be read as a reference to all of the licensees in the partnership.

(3) The terms of appointment of a manager must specify the remuneration to which the manager is to be entitled in connection with the management of the conveyancing business for which the manager is appointed. 10

(4) The Council must cause notice to be given to the Committee and the Association of any appointment under this section within 7 days after the appointment is made. 15

Qualifications for appointment as manager

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

Powers of manager 20

64. (1) The manager of a licensee's conveyancing business may, subject to subsection (2) and to the terms of his or her appointment:

- (a) carry out conveyancing work on behalf of the existing clients of the business; and
- (b) accept instructions from, and carry out conveyancing work on behalf of, new clients; and 25
- (c) dispose of, and otherwise deal with, any property in relation to the business; and
- (d) exercise any right in the nature of a lien over property held by the manager on behalf of the clients of the business; and 30
- (e) incur such expenses as are reasonably related to the conduct of the business; and
- (f) do all such things as are ancillary to the exercise of the powers referred to in paragraphs (a)–(e),

as if he or she were the licensee to whom the business belongs. 35

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(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.

5 Management continues under receivership

65. (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.

- 10 (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.

Acts of manager to be taken as acts of licensee

- 15 66. (1) An act done by the manager of a licensee's conveyancing business is, for the purposes of any proceedings or transaction that relies on that act, taken to have been done by the licensee.

(2) Nothing in this section subjects a licensee to any personal liability in relation to any act done by the manager of the licensee's conveyancing business.

20 Manager may be reimbursed for damages

67. (1) The Law Society 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.

- 25 (2) Reimbursement under this section is to be by way of payment from the Statutory Interest Account.

- 30 (3) Neither the manager of a licensee's conveyancing business nor the Law Society is liable for any loss incurred by the licensee as a consequence of any act or omission of the manager or the Council 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.

Payment of expenses of management

- 35 68. (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 Law Society from the Statutory Interest Account.

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(2) An amount paid under this section is recoverable by the Law Society as a debt owed by the relevant licensee.

Manager to report to Council and Association

69. (1) The manager of a licensee's conveyancing business must:

- (a) at such times as are fixed by the Council; and 5
- (b) in accordance with any directions given by the Council,

report to the Council and to the Association on the management of the business.

(2) A report is to include such information as the Council directs.

(3) On the conclusion of the management of a licensee's conveyancing business, the manager must, when giving the Council his or her final report, lodge with the Council all the manager's records that relate to the management. 10

Trust money

70. (1) Division 2 of Part 3 applies to the accounts kept by a manager in the same way as it applies to the accounts kept by a licensee. 15

(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. 20

Office accounts

71. The regulations may make provision with respect to:

- (a) the accounts that are to be kept in relation to the income accrued, and the expenses incurred, by the manager of a licensee's conveyancing business in connection with the conduct of the business; and 25
- (b) the purposes for which money in any such account may be expended.

Termination of management

72. 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 Statutory Interest 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. 30
35

Obstruction of managers

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

Maximum penalty: 50 penalty units.

5

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

74. (1) The Supreme Court may, on the application of the Law Society, 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
10 of the application or is a party to the proceedings.

(2) Such an application may be made by the Law Society only if:

- (a) the licensee has made a request to the Council for the appointment of a receiver; or
- 15 (b) the Council has suspended or cancelled the licensee's licence under section 20; or
- (c) the Council is of the opinion (whether as a consequence of a determination by the Association under Part 4 or otherwise) that there has been, or that there may have been, a failure to account by the licensee; or
- 20 (d) the Council is of the opinion that a person is unable to obtain payment or delivery of property held by the licensee because the licensee:
 - is mentally or physically infirm; or
 - 25 • is bankrupt, has applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, has compounded with his or her creditors or has made an assignment of his or her remuneration for their benefit; or
 - is a prisoner within the meaning of the Prisons Act 1952; or
 - has died; or
 - 30 • has abandoned his or her conveyancing business,

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

(3) The Council must cause notice to be given to the Committee and the Association of any application under this section within 7 days after
35 the application is made.

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

Receivership may extend to property of licensee's associate

75. If, on the application of a receiver, the Supreme Court is satisfied that all or any of the property of a licensee's associate should be declared to be receivable property, the Court may appoint the receiver to be the receiver of all or any of that property. 5

Court to be closed

76. (1) Before commencing to hear an application for the appointment of a receiver, the Supreme Court may order from the precincts of the Court any person who is not: 10

- (a) an officer of the Court; or
- (b) a party, a legal representative of a party or a clerk of such a legal representative; or 15
- (c) a member of the same firm of licensees as the respondent; or
- (d) a person who is in the course of giving evidence; or
- (e) a person permitted by the Court to be present in the interests of justice.

(2) The Supreme Court may, whether or not at the instance of a party, prohibit the publication of any report relating to the evidence or other proceedings or of any order made on the hearing of an application for the appointment of a receiver. 20

Order to be served

77. (1) On the appointment of a receiver, the Council is to cause a copy of the order of appointment to be served on: 25

- (a) the relevant licensee or relevant associate; and
- (b) any other person on whom the Supreme Court directs a copy of the order to be served.

(2) The Supreme Court may give directions as to the manner of service and may dispense with service if it thinks fit. 30

Receiver may take possession of property

78. (1) A receiver may take possession of receivable property of the relevant licensee or relevant associate.

(2) A person in possession, or having control, of receivable property must permit the receiver to take possession of the property if required by the receiver to do so.

5 (3) If a person fails to comply with such a requirement, the Supreme Court may, on the application of the receiver, order the person to deliver the property to the receiver.

(4) If, on the application of a receiver, the Supreme Court is satisfied that such an order has not been complied with, the Court:

10 (a) may order the seizure of any receivable property located on premises specified in the order; and

(b) may make such further order in the matter as it thinks fit.

(5) An order under subsection (4) (a) authorises:

(a) any police officer; or

15 (b) the receiver, or a person authorised by the receiver, together with any police officer,

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

(6) An application by a receiver under subsection (3) may be made:

20 (a) in the case of property in the possession, or under the control, of the relevant licensee or relevant associate—in the name of the receiver; or

(b) in any other case—in the name of the relevant licensee or relevant associate.

25 (7) A receiver must, as soon as possible, return property seized under this section if it transpires that it is not receivable property.

Information about receivable property

30 79. (1) A person who has information relating to receivable property, or property that a receiver believes on reasonable grounds to be receivable property, must give the information to the receiver if required by the receiver to do so.

Maximum penalty: 50 penalty units.

(2) A licensee who has any such information may not refuse to comply with such a requirement merely because the information was obtained in confidence from a client or former client of the licensee.

35 (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.

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(4) Information given to a receiver under this section is not admissible as evidence in any legal proceedings, other than:

- (a) proceedings taken by a receiver for the recovery of receivable property; or
- (b) proceedings taken under this Part; or 5
- (c) proceedings taken under Part 6 against a licensee:
 - if the information was given to the receiver otherwise than by the licensee; or
 - if the information was given to the receiver by the licensee and is given in evidence in those proceedings with the licensee's consent. 10

Stop order on bank account

80. (1) A receiver who believes on reasonable grounds that money held in a bank account is receivable property may serve on the bank 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. 15

(2) A stop order may be served by leaving it with the manager, accountant or other person appearing to be in charge at the branch of the bank at which the account is kept, but has no effect unless there is annexed to it a copy of the order appointing the receiver. 20

(3) A bank served with a stop order:

- (a) must permit the receiver, or a person authorised by the receiver, to operate on the account to which the order relates; and
- (b) must not permit any withdrawal from the account otherwise than by, or by the authority of, the receiver. 25

(4) A receiver may transfer money from an account the subject of a stop order to another account with the bank in the name of the receiver to be dealt with as receivable property.

(5) The bank has the same obligations and protections: 30

- (a) in relation to an account the subject of a stop order; and
- (b) in relation to an account to which money in such an account is transferred,

as if the receiver were the relevant licensee or relevant associate.

Improper dealing with property 35

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

- (a) operate on a bank account; or
 - (b) destroy or conceal receivable property or property that is likely to become receivable property; or
 - 5 (c) move receivable property, or property that is likely to become receivable property, from one place to another; or
 - (d) deliver possession of receivable property, or property that is likely to become receivable property, to another person; or
 - (e) deliver control of receivable property, or property that is likely to become receivable property, to another person.
- 10 Maximum penalty: 20 penalty units.

Recovery of compensation for disposal of receivable property

82. (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:

- 15 (a) the person knew or believed at the time that the taking, payment or transfer was unlawful or in breach of trust; or
- (b) there was no consideration for the taking, payment or transfer; or
- (c) there was inadequate consideration for the taking, payment or transfer; or
- 20 (d) the person became indebted or otherwise liable to the relevant licensee or relevant associate, or to a client of the licensee, as a result of the taking, payment or transfer,

the receiver may recover from the person, as a debt, the amount taken, paid or transferred, the amount of the inadequacy or the amount of the
25 debt, as the case may be.

(2) A person from whom an amount is recovered under subsection (1) is not liable to any other person in respect of the amount.

(3) If receivable property has at any time been paid or transferred unlawfully or in breach of trust to, or for the benefit of, a person in
30 respect of a cause of action the person claims to have against another person, the receiver:

- (a) may recover from the person as a debt the amount of the payment or the value of the property; or
- 35 (b) to the extent to which the full amount or value is not recovered from the person under paragraph (a)—may take such proceedings in relation to the claimed cause of action as the person could have taken.

(4) If a receiver takes proceedings under subsection (3) (b) in relation to a cause of action claimed by a person, the receiver may not later take proceedings under subsection (3) (a) to recover property paid or transferred to the person in respect of the same cause of action.

(5) If receivable property is used unlawfully or in breach of trust to discharge a debt or liability of a person, the receiver may recover from the person as a debt the amount that was required for the discharge of the debt or liability, reduced by the value of any consideration provided by the person for the discharge.

(6) Recovery proceedings under this section may be taken in the name of the receiver or in the name of any other person who, had the receiver not been appointed, would have been entitled to take the proceedings.

Receiver may give certificate

83. (1) A receiver, or a person authorised by the Council, may give a certificate as to any one or more of the following:

- (a) the receipt of property by a licensee or a licensee's associate, the nature and value of the property received, the date of its receipt by the licensee or associate and the identity of the person from whom it was received;
- (b) the taking or transfer of property, the nature and value of the property, the date of its taking or transfer and the identity of the person by whom it was taken or to whom it was transferred;
- (c) the payment of money, the amount of money paid, the date of the payment and the identity of the person who received the payment;
- (d) the entries made in the records of a licensee or a licensee's associate and the truth or falsity of the entries;
- (e) the use of property unlawfully or in breach of trust.

(2) A certificate under this section is admissible in any proceedings taken by a receiver under this Division and is evidence of the matters specified in the certificate.

Receiver taken to be beneficially entitled to property

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

(2) If receivable property has been taken by, or paid or transferred to, a person or otherwise used unlawfully or in breach of trust, a receiver may

take proceedings in the name of the receiver as if the receiver were beneficially entitled to the property at the time the property was so taken, paid, transferred or used.

Receiver may deal with property

- 5 **85.** (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.

- 10 (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.

Other powers of receiver

- 15 **86.** (1) A receiver:
- (a) may prove, grant, claim or draw a dividend in respect of a debt that is receivable property; and
 - 15 (b) may take proceedings to recover damages for a tort committed in relation to receivable property; and
 - (c) may give a receipt for money that is receivable property; and
 - (d) may employ a person to advise or act in relation to receivable property,
- 20 in the name of the receiver or in the name of the relevant licensee or relevant associate.

(2) A receipt given to a person under subsection (1) (c) discharges the person from any responsibility to see the application of the money for which the receipt was given.

- 25 **(3)** A receiver is not, in the exercise of his or her functions as a receiver, a personal representative of a deceased licensee.

Notice to claim receivable property

- 30 **87.** (1) A receiver may give notice to:
- (a) the relevant licensee or relevant associate; or
 - (b) any other person,

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

- (2) A claim submitted in response to such a notice must state:
 - (a) full particulars of the property; and
 - (b) the grounds of the claim.
- (3) A receiver may disregard a claim made by a licensee, a licensee's associate or any other person who has been given a notice under this section if the claim is not made in accordance with the notice. 5
- (4) The relevant licensee or relevant associate is not entitled:
 - (a) to enforce a claim to receivable property; or
 - (b) except against a client—to the benefit of a lien against a document that is receivable property, 10
 unless all other enforceable claims against the property have been satisfied and the expenses of the receivership paid.

Lien for costs on receivable property

- 88. (1) If a licensee claims a lien for costs on receivable property, the receiver may serve on the licensee a written notice requiring the licensee to give to the receiver, within a specified period of not less than 1 month: 15
 - (a) particulars sufficient to identify the property; and
 - (b) a detailed bill of costs.
- (2) The notice, or a subsequent written notice served on the licensee, may require the licensee to tax the bill of costs within a reasonable time specified in the notice. 20
- (3) If the licensee requests the receiver in writing to allow access to receivable property to enable the licensee to tax a bill of costs, the time allowed for taxation does not begin to run until access is provided.
- (4) If a requirement of a notice under this section is not complied with, the receiver may disregard the claim in dealing with the property claimed to be subject to a lien. 25

Examination by receiver

- 89. (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. 30
- (2) On an examination under this section:
 - (a) the licensee or other person may be represented by a solicitor or barrister; and
 - (b) the Supreme Court may put, or allow to be put, to the licensee or other person such questions as it thinks fit. 35

(3) The licensee or other person may be examined on oath or affirmation.

(4) The licensee or other person is compellable to answer all questions asked in the course of the examination, including any question to which
5 an objection is made on the ground that the answer would tend to incriminate the licensee or other person.

(5) An answer given by a licensee or other person to a question to which such an objection is made is not admissible in any criminal proceedings other than proceedings relating to the falsity of the answer.

10 **Property not dealt with by receiver**

90. (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 Council and:

(a) if the Council so requires within 1 month after the notice is
15 given—must transfer and deliver the property to the Law Society;
or

(b) if no such requirement is made—must transfer and deliver the property to the relevant licensee or relevant associate.

(2) If property other than money is transferred or delivered to the Law
20 Society under this section, the Law Society:

(a) must deal with it as the Supreme Court directs; and

(b) if the property is sold—must treat the proceeds as money paid to it under this section.

(3) The Law Society must apply money paid to it under this section:

25 (a) firstly—towards the satisfaction of wholly or partly unsatisfied claims against the relevant licensee; and

(b) secondly—in payment of the expenses of the receivership.

(4) Any money paid to the Law Society under this section that is surplus to the requirements of this section must be paid to the relevant
30 licensee or relevant associate.

Investment of money by receiver

91. (1) A receiver may invest receivable property in any manner in which trustees are authorised by the Trustee Act 1925 to invest trust funds.

35 (2) Income received from an investment under this section, and any profit made on the sale of such an investment, is receivable property.

Receiver may be reimbursed for damages

92. (1) The Law Society 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.

5

(2) Reimbursement under this section is to be by way of payment from the Statutory Interest Account.

Payment of expenses of receivership

93. (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 Law Society from the Statutory Interest Account.

10

(2) An amount paid under this section may be recovered by the Law Society from the relevant licensee as a debt.

(3) If the Law Society and a receiver fail to agree on the remuneration to be paid to the receiver, the Supreme Court may, on the application of the Law Society or the receiver, determine the amount to be paid.

15

(4) The Supreme Court, on the application of the relevant licensee:

(a) may re-open any agreement between the Law Society and a receiver for remuneration of the receiver; and

(b) may determine the amount to be paid.

20

Supreme Court may review expenses of receivership

94. (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 Law Society and the receiver.

25

(2) After the taking of accounts, the Supreme Court:

(a) may relieve the relevant licensee from payment of any amount in excess of that determined by the Supreme Court to be fairly payable; or

(b) if the receiver has been paid, or allowed on account, an amount that includes such an excess—may order the receiver to repay the excess.

30

Receivable property not to be attached

95. 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.

35

Applications for directions by receiver, licensee etc.

96. (1) A receiver, a licensee or a licensee's associate who holds receivable property, or a person who claims receivable property so held, may apply to the Supreme Court for directions as to the performance of the receiver's functions.

(2) On an application under this section, the Supreme Court may give such directions as it thinks fit.

Supreme Court may give general directions to receiver

97. (1) The Supreme Court:

- 10 (a) may authorise a receiver to do such things in the exercise of the receiver's functions as the Supreme Court considers appropriate; and
(b) may give directions for the exercise of any such authority.

15 (2) A receiver must exercise any authority so conferred in accordance with any direction so given.

Receiver to report to the Supreme Court etc.

98. (1) A receiver must, at such times and in respect of such periods as the Supreme Court directs, submit to the Supreme Court, and to the Council and the Association, reports on the receivership.

20 (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.

25 (3) On the conclusion of a receivership, the receiver must lodge with the Supreme Court all of the receiver's records that relate to the receivership.

(4) Unless the Supreme Court orders their destruction, records lodged under this section are to remain in the custody of the Court.

Termination of appointment of receiver

99. (1) The Supreme Court:

- 30 (a) may terminate the appointment of a receiver; and
(b) may, if it thinks fit, appoint a new receiver either immediately or at any time within the next 14 days.
(2) The former receiver must transfer or deliver the receivable property:
35 (a) if a new receiver is appointed—to the new receiver in accordance with any directions given by the Supreme Court; or

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- (b) if a new receiver is not appointed and if the relevant licensee or relevant associate so requires by notice in writing served on the receiver—to the licensee or associate.

Maximum penalty: 10 penalty units.

- (3) The receivable property must, in accordance with any directions given by the Supreme Court, be transferred or delivered as soon as possible after the former receiver's appointment is terminated. 5

- (4) A former receiver is not required to comply with the requirements of this section unless:

- (a) the expenses of the receivership have been paid to the Law Society; or 10

- (b) the Council otherwise directs in relation to those expenses.

- (5) Subject to any direction given by the Supreme Court, a former receiver may transfer or deliver receivable property to the relevant licensee or relevant associate without having been given a notice under subsection (2) (b). 15

Obstruction of receivers

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

Maximum penalty: 50 penalty units. 20

PART 6—DISCIPLINARY PROCEEDINGS

Division 1—Preliminary

Application to ex-licensees

101. This Part applies to and in respect of a person against whom a complaint of unsatisfactory professional conduct or professional misconduct has been made (being a person who was a licensee when the conduct allegedly occurred but who is no longer a licensee) as if the person were still a licensee. 25

Conduct amounting to an offence

102. Action may be taken under this Part in relation to any conduct that is alleged to be unsatisfactory professional conduct or professional misconduct: 30

- (a) whether or not the conduct constitutes an offence; and

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- (b) whether or not the person against whom the action is taken has been prosecuted or convicted for an offence arising out of the conduct.

The Legal Profession Conduct Review Panel

- 5 **103.** (1) The Legal Profession Conduct Review Panel may include, for the purposes of this Act, 1 or more licensees.
- (2) A reference to a solicitor in Schedule 4 to the Legal Profession Act 1987 is to be read as including a reference to a licensee.
- 10 (3) In this section, a reference to a licensee is a reference to the holder of a licence that is free of any conditions other than conditions of the kind referred to in section 13 (2) (d).

The Legal Profession Standards Board

- 104.** (1) The Legal Profession Standards Board may include, for the purposes of this Act, 1 or more licensees.
- 15 (2) A reference to a solicitor in Schedule 5 to the Legal Profession Act 1987 is to be read as including a reference to a licensee.
- (3) In this section, a reference to a licensee is a reference to the holder of a licence that is free of any conditions other than conditions of the kind referred to in section 13 (2) (d).

20 **The Legal Profession Disciplinary Tribunal**

- 105.** (1) The Legal Profession Disciplinary Tribunal may include, for the purposes of this Act, 1 or more licensees.
- (2) A reference to a solicitor in Schedule 6 to the Legal Profession Act 1987 is to be read as including a reference to a licensee.
- 25 (3) In this section, a reference to a licensee is a reference to the holder of a licence that is free of any conditions other than conditions of the kind referred to in section 13 (2) (d).

Division 2—Complaints against licensees

Complaints

- 30 **106.** (1) A person may make a complaint to the Council alleging that a licensee is guilty of conduct that may constitute unsatisfactory professional conduct or professional misconduct.
- (2) A complaint:
- (a) must be in writing; and

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- (b) must identify the complainant and the licensee against whom the complaint is made; and
- (c) must give particulars of the unsatisfactory professional conduct or professional misconduct that is alleged to have occurred.
- (3) A complainant who has suffered loss as a consequence of the alleged unsatisfactory professional conduct or professional misconduct may, in the complaint, request the making of any one or more of the following orders: 5
 - (a) an order that the licensee waive or repay the whole or part of the fees charged by the licensee in respect of work carried out by the licensee for the complainant; 10
 - (b) an order that the licensee carry out specified work for the complainant free of charge;
 - (c) an order that the licensee waive any lien in respect of a specified document or class of documents; 15
 - (d) an order that the licensee pay to the complainant an amount by way of compensation.
- (4) A complaint that requests the making of such an order must give particulars of the loss suffered by the complainant as a consequence of the alleged unsatisfactory professional conduct or professional misconduct. 20
- (5) The Council must take all reasonable steps to ensure that a person who wishes to make a complaint is given such assistance as is necessary to enable the person to make the complaint in accordance with this section. 25

Council may require further particulars

107. The Council, by notice in writing served on the complainant:
- (a) may require further particulars of any complaint to be given; and
 - (b) may require the complaint, or any further particulars, to be verified by statutory declaration, 30
- within such time as it may specify in the notice.

Summary dismissal of complaints

108. The Council may dismiss a complaint without further investigation:
- (a) if further particulars of the complaint are not furnished, or the complaint or the further particulars are not verified, as required by the Council; or 35
 - (b) if the complaint is frivolous or vexatious.

Investigation of complaints

109. (1) The Council is to conduct an investigation into each complaint made to it under this Division, other than a complaint that has been dismissed under section 108.

- 5 (2) The Council must cause a record of its decision, together with the reasons for its decision, to be kept in respect of each investigation conducted by it under this section.

Consultation with the Committee

110. The Council is not to make any decision with respect to a
10 complaint against a licensee unless:

- (a) it has caused notice to be given to the Committee of the fact that it is conducting an investigation into the complaint and of its preliminary findings with respect to the complaint; and
- 15 (b) it has given the Committee a reasonable opportunity (at least 14 days) within which to comment on those findings; and
- (c) it has given due consideration to any comments made to it by the Committee.

Decisions of the Council

111. (1) If, after it has completed an investigation into a complaint
20 against a licensee, the Council is satisfied:

- (a) that the complaint does not involve any question of unsatisfactory professional conduct or professional misconduct—it must dismiss the complaint; or
- 25 (b) that the complaint involves a question of unsatisfactory professional conduct:
 - it must refer the complaint to the Board; or
 - it must dismiss the complaint; or
- (c) that the complaint involves a question of professional misconduct—it must refer the complaint to the Tribunal.

- 30 (2) The Council may not dismiss a complaint pursuant to subsection (1) (b) unless it is satisfied that the licensee concerned is generally competent and diligent and that no other material complaints have been made against the licensee.

Council may make complaint after consultation with the Committee

- 35 112. The Council may, after consultation with the Committee, make a complaint to the Board or the Tribunal against any licensee if it appears

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to the Council that the licensee may be guilty of unsatisfactory professional conduct or professional misconduct.

Division 3—Review of the Council's decisions

Applications for reviews

113. (1) A complainant may apply to the Panel for a review of a decision by the Council to dismiss a complaint made by the complainant, other than a decision to dismiss a complaint the subject of a notice given to the Council under section 116 (2). 5

(2) Such an application must be made, in writing, within 2 months after the decision is made or is deemed to have been made. 10

Composition of the Panel

114. (1) The Panel is, for the purpose of conducting a review under this Division, to be constituted by 1 of its licensee members and 2 of its lay members.

(2) The Chairperson of the Panel is to nominate the persons to constitute the Panel for the purposes of any particular review. 15

(3) The Chairperson of the Panel is to preside at any review for which the Panel is so constituted as to include the Chairperson.

(4) In the case of a review for which the Panel is so constituted as not to include the Chairperson of the Panel, the Chairperson is to nominate one of the other lay members to preside at the review. 20

(5) More than one review may be conducted by the Panel at the same time.

Reviews

115. (1) The Panel is to review each decision to dismiss a complaint the subject of an application made to it under this Division. 25

(2) The Panel must consult with the Council before it completes its review of the decision to dismiss a complaint.

(3) For the purpose of enabling it to review a decision to dismiss a complaint, the Panel is entitled to view: 30

(a) the record of the Council's investigation of the complaint; and

(b) all other documents held by the Council in relation to that investigation.

Recommendations of the Panel

116. (1) When the Panel has completed its review of a decision to dismiss a complaint:

- (a) it may uphold the decision; or
- 5 (b) it may recommend to the Attorney General that the matter be referred to the Board; or
- (c) it may recommend to the Attorney General that the matter be referred to the Tribunal,

as it thinks fit.

- 10 (2) Before making a recommendation under subsection (1) (b) or (c), the Panel is to give notice to the Council of its intention to make the recommendation and of the Panel's reasons for making the recommendation.

(3) The Panel may make such a recommendation only if:

- 15 (a) a period of one month or more has elapsed since notice of its intention to do so was given to the Council under subsection (2); and

(b) the matter has not been referred to the Board or the Tribunal.

- 20 (4) Such a recommendation must be accompanied by a statement of the Panel's reasons for making the recommendation.

Determinations by the Attorney General

117. (1) On receiving a recommendation from the Panel in connection with a complaint, the Attorney General:

- 25 (a) may uphold the decision of the Council with respect to the complaint; or
- (b) may refer the complaint to the Board; or
 - (c) may refer the complaint to the Tribunal,

as the Attorney General thinks fit.

- 30 (2) In exercising the Attorney General's functions under this section, the Attorney General is to take into consideration, but is not bound to follow, the recommendation made by the Panel.

(3) The Attorney General is to cause his or her decision with respect to a complaint, together with his or her reasons for the decision, to be notified to the complainant.

Division 4—Unsatisfactory professional conduct**Composition of the Board**

118. (1) The Board is, for the purpose of conducting a hearing into a complaint, to be constituted by 1 of its solicitor members, 1 of its licensee members and 1 of its lay members. 5
- (2) The Chairperson of the Board is to nominate the persons to constitute the Board for the purposes of any particular hearing.
- (3) The Chairperson of the Board is to preside at any hearing for which the Board is so constituted as to include the Chairperson.
- (4) In the case of a hearing for which the Board is so constituted as not to include the Chairperson of the Board, the Chairperson is to nominate the solicitor member to preside at the hearing. 10
- (5) More than one hearing may be conducted by the Board at the same time.

Hearings 15

119. (1) The Board is to conduct a hearing into any complaint made or referred to it under Division 2 or 3.
- (2) For the purpose of conducting such a hearing, the Board is not bound to observe the rules of law governing the admission of evidence, but may inform itself of any matter in such manner as it thinks fit. 20
- (3) If, in the course of conducting a hearing into a complaint, the Board considers that the complaint involves a question of professional misconduct, the Board:
- (a) must terminate the hearing; and
 - (b) must refer the complaint to the Tribunal to be dealt with in accordance with Division 6. 25
- (4) The Board must cause a record of its determination, together with the reasons for its determination, to be kept in respect of each hearing conducted by it under this Division.
- (5) If one of the members (not being the presiding member) constituting the Board for the purpose of conducting a hearing under this Division vacates office for any reason referred to in clause 8 of Schedule 5 to the Legal Profession Act 1987: 30
- (a) before the Board has completed the hearing; or
 - (b) before the Board has made a determination in respect of the hearing, 35

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the hearing may be continued, or a determination may be made, by the remaining members of the Board.

- 5 (6) If the remaining members are divided in opinion as to the determination to be made in respect of the hearing, the opinion of the presiding member is to prevail.

(7) However, if the presiding member or more than one other member vacates office for any such reason before the Board has completed the hearing or made a determination in respect of the hearing, the hearing is terminated.

- 10 (8) The Board may, for the purpose of conducting a new hearing into the complaint concerned, be reconstituted in accordance with this Division.

Parties

- 15 120. (1) The following persons are entitled to appear at a hearing into a complaint:

- (a) the licensee against whom the complaint has been made;
- (b) the Council;
- (c) the Attorney General;
- (d) the complainant (if any).

- 20 (2) A complainant is entitled to appear at a hearing only if the complainant has, in his or her complaint, requested the making of an order referred to in section 106 (3).

- 25 (3) A complainant's entitlement to appear at a hearing is limited to those aspects of the hearing that deal with the loss (if any) suffered by the complainant as a consequence of the conduct the subject of the hearing.

(4) The Board may grant leave to any other person to appear at a hearing if the Board is satisfied that it is appropriate for that person to appear at the hearing.

- 30 (5) Any person who is entitled to appear at a hearing, or who is granted leave to appear at a hearing, may appear personally or be represented by a solicitor or barrister or, with the leave of the Board, by any other person.

(6) Any person who appears (otherwise than as a witness) at a hearing is taken to be a party to the hearing.

Hearings to be conducted in camera

- 35 121. (1) A hearing is to be held in the absence of the public.

(2) No persons other than the parties to a hearing and their representatives are entitled to be present at the hearing.

Power to summon witnesses and take evidence

122. (1) A member of the Board or the Registrar of the Board may summon a person to appear at a hearing to give evidence and to produce such documents (if any) as are referred to in the summons. 5

(2) The member of the Board presiding at a hearing may require a person appearing at the hearing to produce a document.

(3) The Board may, at a hearing, take evidence on oath or affirmation and, for that purpose: 10

(a) a member of the Board may require a person appearing at the hearing to give evidence either to take an oath or to make an affirmation in a form approved by the member of the Board presiding at the hearing; and

(b) a member of the Board may administer an oath or affirmation to a person so appearing at the hearing. 15

(4) A person served with a summons to appear at a hearing to give evidence must not, without reasonable excuse:

(a) fail to attend as required by the summons; or

(b) fail to attend from day to day unless excused, or released from further attendance, by a member of the Board. 20

Maximum penalty: 20 penalty units.

(5) A person appearing at a hearing to give evidence must not, without reasonable excuse:

(a) when required to take an oath or make an affirmation—fail to comply with the requirement; or 25

(b) fail to answer a question that the person is required to answer by the member of the Board presiding at the hearing; or

(c) fail to produce a document that the person is required to produce by a summons served under this section. 30

Maximum penalty: 20 penalty units.

Power to obtain documents

123. (1) A member of the Board or the Registrar of the Board may, by notice in writing served on a person, require the person:

(a) to attend, at a time and place specified in the notice, before a person so specified, being a member of the Board or the Registrar of the Board or a person authorised by the Board in that behalf; and 35

(b) to produce, at that time and place, to the person so specified a document specified in the notice.

(2) A person must not, without reasonable excuse, fail to comply with a notice served on the person under this section.

5 Maximum penalty: 20 penalty units.

Release of information

124. (1) The Board may give directions preventing or restricting the publication of evidence given at a hearing or of matter contained in documents produced at a hearing.

10 (2) A person must not make a publication in contravention of a direction given under this section.

Maximum penalty: 20 penalty units.

Determinations of the Board

15 125. (1) If, after it has completed a hearing into a complaint against a licensee, the Board is satisfied that the licensee is guilty of unsatisfactory professional conduct, the Board may do any one or more of the following:

- (a) it may reprimand the licensee;
- 20 (b) it may order that the licensee undertake and complete such course of further legal education as it may specify in the order;
- (c) it may order that the licensee's conveyancing business be subject to periodic inspection by such person or persons, and for such period, as it may specify in the order;
- 25 (d) it may order that the licensee seek advice in relation to the management of his or her conveyancing business from such person or persons as it may specify in the order;
- (e) it may order that the licensee cease to employ in his or her conveyancing business such person or persons as it may specify in the order;
- 30 (f) it may order that the licensee employ in his or her conveyancing business a person belonging to such class of persons as it may specify in the order;
- (g) it may order that the licensee cease to accept instructions in relation to such class of work as it may specify in the order;
- 35 (h) it may order that the licensee pay a fine of such amount (not exceeding 20 penalty units) as it may specify in the order.

(2) If, after it has completed a hearing into a complaint against a licensee, the Board is satisfied that the licensee is guilty of unsatisfactory professional conduct and that the complainant has suffered loss as a consequence of the conduct, the Board may do any one or more of the following:

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- (a) it may order that the licensee waive or repay the whole, or such part as it may specify in the order, of the fees charged to the complainant by the licensee in respect of such work as it may so specify;
- (b) it may order that the licensee carry out for the complainant such work as it may specify in the order, either free of charge or for such fee as it may so specify;
- (c) it may order that the licensee waive any lien in respect of such document or class of documents as it may specify in the order;
- (d) it may order that the licensee pay to the complainant such amount by way of compensation as it may specify in the order.

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(3) An order (other than an order for the payment of compensation not exceeding \$2,000) may not be made under subsection (2) unless:

- (a) the complainant has, in his or her complaint, requested the making of the order; and
- (b) the complainant and the licensee both consent to the making of the order,

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nor may such an order be made in respect of any loss for which the complainant has received, or is entitled to receive, compensation pursuant to an order of a court.

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(4) The recovery of compensation awarded under this section does not affect any other remedy available to the complainant, but any compensation so awarded is to be taken into account in any other proceedings by or on behalf of the complainant in respect of the same loss.

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(5) In addition to any other order that the Board may make under this section with respect to a licensee whom it has found guilty of unsatisfactory professional conduct, the Board:

- (a) may make ancillary orders; and
- (b) may make orders requiring the licensee to pay such amounts by way of costs (including the costs of the Council and the complainant) as it may determine.

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(6) If, after it has completed a hearing into a complaint against a licensee, the Board is satisfied that the licensee is not guilty of

unsatisfactory professional conduct, the Board may (but only if it considers that special circumstances so warrant) order payment from the Statutory Interest Account to the licensee of such amount, by way of costs, as it may determine.

5 **Division 5—Review of the Board's decisions**

Applications for reviews

126. (1) Any party to a hearing conducted by the Board may apply to the Tribunal for a review of the Board's determination of a complaint.

10 (2) The complainant at a hearing conducted by the Board may not make an application under this section except with respect to those aspects of the hearing that deal with the loss (if any) suffered by the complainant as a consequence of the conduct the subject of the hearing.

(3) An application under this section must be made in accordance with the rules of the Tribunal.

15 **Composition of the Tribunal**

127. (1) The Tribunal is, for the purpose of conducting a review of the Board's determination of a complaint, to be constituted by 1 of its solicitor members, 1 of its licensee members and 1 of its lay members.

20 (2) The President of the Tribunal is to nominate the persons to constitute the Tribunal for the purposes of any particular review.

(3) The President of the Tribunal is to nominate the solicitor member to preside at the review.

(4) More than one review may be conducted by the Tribunal at the same time.

25 **Parties**

128. The parties to a hearing the subject of a review under this Division are taken to be the parties to the review.

Reviews

30 129. (1) The Tribunal is to conduct a review of each determination the subject of an application made to it under this Division.

(2) An application is to be dealt with by way of a new hearing and fresh evidence, or evidence in addition to or in substitution for the evidence received at the original hearing, may be given.

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(3) Sections 119–124 apply to and in respect of a review conducted by the Tribunal in the same way as they apply to and in respect of a hearing conducted by the Board.

(4) The Tribunal must cause a record of its decision, together with the reasons for its decision, to be kept in respect of each review conducted by it under this Division. 5

Decisions of the Tribunal

130. (1) The Tribunal:

- (a) may uphold the Board's determination of a complaint; or
- (b) may make any one or more of the orders that the Board could have made in relation to the complaint. 10

(2) The Tribunal's decision in respect of a complaint is final and is to be given effect to as if it were a determination by the Board.

Professional misconduct

131. If the Tribunal considers that a complaint the subject of a determination under review involves a question of professional misconduct, the Tribunal: 15

- (a) may terminate the review; and
- (b) may deal with the complaint in accordance with Division 6 as if the complaint had been made or referred to it under Division 2, 3 or 4. 20

Division 6—Professional misconduct**Composition of the Tribunal**

132. (1) The Tribunal is, for the purpose of conducting a hearing into a complaint, to be constituted by 1 of its solicitor members, 1 of its licensee members and 1 of its lay members. 25

(2) The President of the Tribunal is to nominate the persons to constitute the Tribunal for the purposes of any particular hearing.

(3) The President of the Tribunal is to nominate the solicitor member to preside at the hearing.

(4) More than one hearing may be conducted by the Tribunal at the same time. 30

Hearings

133. (1) The Tribunal is to conduct a hearing into any complaint made or referred to it under Division 2, 3 or 4.

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(2) For the purpose of conducting such a hearing, the Tribunal must observe the rules of law governing the admission of evidence.

(3) The Tribunal must cause a record of its determination, together with the reasons for its determination, to be kept in respect of each hearing
5 conducted by it under this Division.

(4) If one of the members (not being the presiding member) constituting the Tribunal for the purpose of conducting a hearing under this Division vacates office for any reason referred to in clause 7 of Schedule 6 to the Legal Profession Act 1987:

- 10 (a) before the Tribunal has completed the hearing; or
(b) before the Tribunal has made a determination in respect of the hearing,

the hearing may be continued, or a determination may be made, by the remaining members of the Tribunal.

15 (5) If the remaining members are divided in opinion as to the determination to be made in respect of the hearing, the opinion of the presiding member is to prevail.

(6) However, if the presiding member or more than one other member vacates office for any such reason before the Tribunal has completed the
20 hearing or made a determination in respect of the hearing, the hearing is terminated.

(7) The Tribunal may, for the purpose of conducting a new hearing into the complaint concerned, be reconstituted in accordance with this Division.

25 **Parties**

134. (1) The following persons are entitled to appear at a hearing into a complaint:

- (a) the licensee against whom the complaint has been made;
(b) the Council;
30 (c) the Attorney General;
(d) the complainant (if any).

(2) A complainant is entitled to appear at a hearing only if the complainant has, in his or her complaint, requested the making of an order referred to in section 106 (3).

35 (3) A complainant's entitlement to appear at a hearing is limited to those aspects of the hearing that deal with the loss (if any) suffered by the complainant as a consequence of the conduct the subject of the hearing.

(4) The Tribunal may grant leave to any other person to appear at a hearing if the Tribunal is satisfied that it is appropriate for that person to appear at the hearing.

(5) Any person who is entitled to appear at a hearing, or who is granted leave to appear at a hearing, may appear personally or be represented by a solicitor or barrister or, with the leave of the Tribunal, by any other person. 5

(6) Any person who appears at a hearing (otherwise than as a witness) is taken to be a party to the inquiry.

Hearings to be conducted in public 10

135. (1) A hearing is to be held in the presence of the public.

(2) The Tribunal may, however, direct that a hearing be held in the absence of the public if it is of the opinion that the absence of the public will be in the interests of justice.

(3) When a hearing is held in the absence of the public, no persons other than the parties to the hearing and their representatives are entitled to be present at the hearing. 15

Power to summon witnesses and take evidence

136. (1) A member of the Tribunal or the Registrar of the Tribunal may summon a person to appear at a hearing to give evidence and to produce such documents (if any) as are referred to in the summons. 20

(2) The member of the Tribunal presiding at a hearing may require a person appearing at the hearing to produce a document.

(3) The Tribunal may, at a hearing, take evidence on oath or affirmation and, for that purpose: 25

(a) a member of the Tribunal may require a person appearing at the hearing to give evidence either to take an oath or to make an affirmation in a form approved by the member of the Tribunal presiding at the hearing; and

(b) a member of the Tribunal may administer an oath or affirmation to a person so appearing at the hearing. 30

(4) A person served with a summons to appear at a hearing to give evidence must not, without reasonable excuse:

(a) fail to attend as required by the summons; or

(b) fail to attend from day to day unless excused, or released from further attendance, by a member of the Tribunal. 35

Maximum penalty: 20 penalty units.

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(5) A person appearing at a hearing to give evidence must not, without reasonable excuse:

- (a) when required to take an oath or make an affirmation—fail to comply with the requirement; or
- 5 (b) fail to answer a question that the person is required to answer by the member of the Tribunal presiding at the hearing; or
- (c) fail to produce a document that the person is required to produce by a summons served under this section.

Maximum penalty: 20 penalty units.

10 Power to obtain documents

137. (1) A member of the Tribunal or the Registrar of the Tribunal may, by notice in writing served on a person, require the person:

- 15 (a) to attend, at a time and place specified in the notice, before a person specified in the notice, being a member of the Tribunal or the Registrar of the Tribunal or a person authorised by the Tribunal in that behalf; and
- (b) to produce, at that time and place, to the person so specified a document specified in the notice.

20 (2) A person must not, without reasonable excuse, fail to comply with a notice served on the person under this section.

Maximum penalty: 20 penalty units.

Release of information

138. (1) The Tribunal may give directions preventing or restricting the publication of evidence given at a hearing or of matter contained in documents produced at a hearing.

(2) A person must not make a publication in contravention of a direction given under this section.

Maximum penalty: 20 penalty units.

Determinations of the Tribunal

30 139. (1) If, after it has completed a hearing into a complaint against a licensee, the Tribunal is satisfied that the licensee is guilty of professional misconduct, the Tribunal may do any one or more of the following:

- (a) it may order that the licensee's certificate of eligibility and licence be cancelled;

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- (b) it may order that a certificate of eligibility or licence not be granted to the licensee until the expiration of such period as it may specify in the order;
 - (c) it may order that the licensee pay a fine of such amount (not exceeding 250 penalty units) as it may specify in the order. 5
 - (2) If, after it has completed a hearing into a complaint against a licensee, the Tribunal is satisfied that the licensee is guilty of unsatisfactory professional conduct, the Tribunal may do any one or more of the things referred to in section 125 (1).
 - (3) If, after it has completed a hearing into a complaint against a licensee, the Tribunal is satisfied that the licensee is guilty of unsatisfactory professional conduct or professional misconduct and that the complainant has suffered loss as a consequence of the conduct or misconduct, the Tribunal may do any one or more of the following: 10
 - (a) it may order that the licensee waive or repay the whole, or such part as it may specify in the order, of the fees charged to the complainant by the licensee in respect of such work as it may so specify; 15
 - (b) it may order that the licensee carry out for the complainant such work as it may specify in the order, either free of charge or for such fee as it may so specify; 20
 - (c) it may order that the licensee waive any lien in respect of such document or class of documents as it may specify in the order; or
 - (d) it may order that the licensee pay to the complainant such amount by way of compensation as it may specify in the order. 25
 - (4) An order (other than an order for the payment of compensation not exceeding \$2,000) may not be made under subsection (3) unless:
 - (a) the complainant has, in his or her complaint, requested the making of the order; and
 - (b) the complainant and the licensee both consent to the making of the order, 30
- nor may such an order be made in respect of any loss for which the complainant has received, or is entitled to receive, compensation pursuant to an order of a court.
- (5) The recovery of compensation awarded under this section does not affect any other remedy available to the complainant, but any compensation so awarded is to be taken into account in any other proceedings by or on behalf of the complainant in respect of the same loss. 35

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(6) In addition to any other order that the Tribunal may make under this section with respect to a licensee whom it has found guilty of unsatisfactory professional conduct or professional misconduct, the Tribunal:

- 5 (a) may make ancillary orders; and
 (b) may make orders requiring the licensee to pay such amounts by way of costs (including the costs of the Council and the complainant) as it may determine.

- 10 (7) If, after it has completed a hearing into a complaint against a licensee, the Tribunal is satisfied that the licensee is not guilty of professional misconduct, the Tribunal may (but only if it considers that special circumstances so warrant) order payment from the Statutory Interest Account to the licensee of such amount, by way of costs, as it may determine.

15 **Appeals from orders of the Tribunal**

140. (1) Any party to a hearing conducted by the Tribunal under this Division may appeal to the Supreme Court against the Tribunal's determination of a complaint.

- 20 (2) The complainant at a hearing conducted by the Tribunal may not make such an appeal except with respect to those aspects of the hearing that deal with the loss (if any) suffered by the complainant as a consequence of the conduct the subject of the hearing.

(3) The Supreme Court is to hear and determine an appeal under this section.

- 25 (4) An appeal is to be by way of a new hearing and fresh evidence, or evidence in addition to or in substitution for the evidence received at the original hearing, may be given.

Division 7—Miscellaneous

Enforcement of orders

- 30 141. An order of the Board or the Tribunal under this Part is enforceable in the same way as a judgment or order of the Supreme Court.

Payment of fines and costs

- 35 142. Any fine imposed on a person under this Part is to be paid to the Law Society for credit of the Statutory Interest Account.

Costs of administering Part 6

143. All costs incurred by the Board and the Tribunal in administering this Part are, in accordance with section 67 of the Legal Profession Act 1987, to be paid from the Statutory Interest Account to the Treasurer for credit of the Consolidated Fund.

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Reports

144. (1) The Council must submit to the Attorney General, at such times and in respect of such periods as the Attorney General directs, a report on its investigations into complaints dealt with by it under this Part.

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(2) A report is to deal with such matters as the Attorney General directs and with such other matters as the Council considers appropriate to include in the report.

Protection from liability

145. No matter or thing done by:

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(a) the Council, the Committee, the Panel, the Board or the Tribunal; or

(b) any member of the Council, the Committee, the Panel, the Board or the Tribunal; or

(c) the Registrar of the Board or the Registrar of the Tribunal, 20

subjects any such member or Registrar personally to any action, liability, claim or demand if the matter or thing was done in good faith for the purpose of executing this Part.

PART 7—THE CONVEYANCERS LICENSING COMMITTEE**Constitution of the Committee**

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146. (1) There is constituted by this Act a corporation under the name of the Conveyancers Licensing Committee.

(2) The Committee is not a statutory body representing the Crown and is not subject to the control or direction of the Minister.

Membership of the Committee

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147. (1) The Committee is to consist of 7 members appointed by the Minister, of whom:

(a) 2 are to be appointed from a panel of at least 4 practising solicitors nominated by the Law Society; and

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- (b) 2 are to be appointed from a panel of at least 4 licensees nominated by the Association; and
- (c) 2 are to be persons appointed to represent the interests of consumers; and
- 5 (d) 1 is to be a person who, in the opinion of the Minister, has appropriate qualifications and experience in business or commerce.

(2) In subsection (1) (b), a reference to a licensee is a reference to the holder of a licence that is free of any conditions other than conditions of the kind referred to in section 13 (2) (d).

- 10 (3) The member referred to in subsection (1) (d) is to be the Chairperson of the Committee.

(4) Schedule 1 has effect with respect to the Committee.

Functions of the Committee

148. The Committee has the following functions:

- 15 (a) the function of determining the educational qualifications, practical training and conveyancing experience that are suitable to qualify a person for a licence;
- (b) the function of accrediting courses of studies leading to such educational qualifications;
- 20 (c) the function of dealing with applications for certificates of eligibility;
- (d) the function of approving policies of professional indemnity and fidelity insurance;
- 25 (e) the function of establishing guidelines as to the manner in which conveyancing businesses should be conducted;
- (f) the function of dealing with complaints referred to it by the Council;
- (g) the function of reporting to the Minister on the operation of this Act;
- 30 (h) such other functions as are conferred or imposed on it by or under this or any other Act.

Education subcommittee

149. (1) For the purpose of exercising its functions in relation to:

- 35 (a) determining the educational qualifications, practical training and conveyancing experience that are suitable to qualify a person for a licence; and

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- (b) accrediting courses of study leading to such educational qualifications,
- the Committee is to establish an education subcommittee.
- (2) The education subcommittee is to consist of 6 members, of whom:
- (a) 1 is to be the Chairperson of the Committee; and 5
 - (b) 3 are to comprise 1 each of the members referred to in section 147 (1) (a), (b) and (c) appointed by the Chairperson of the Committee; and
 - (c) 1 is to be the Dean of the Faculty of Law at the University of Technology, Sydney; and 10
 - (d) 1 is to be a person appointed by the Minister for Conservation and Land Management.
- (3) The Chairperson of the Committee is to be the chairperson of the education subcommittee.
- (4) Schedule 1 has effect with respect to the education subcommittee as if references in that Schedule to the Committee were references to the subcommittee. 15
- (5) The functions of the education subcommittee are:
- (a) to investigate such matters in relation to the determination of educational qualifications and the accreditation of courses of study leading to such educational qualifications as are referred to it by the Committee; and 20
 - (b) to report to the Committee on the results of its investigations.

Insurance subcommittee

150. (1) For the purpose of exercising its functions in relation to approving policies of professional indemnity and fidelity insurance, the Committee is to establish an insurance subcommittee. 25
- (2) The insurance subcommittee is to consist of 6 members, of whom:
- (a) 1 is to be the Chairperson of the Committee; and
 - (b) 3 are to comprise 1 each of the members referred to in section 147 (1) (a), (b) and (c) appointed by the Chairperson of the Committee; and 30
 - (c) 1 is to be a person appointed by the Insurance Council of Australia; and
 - (d) 1 is to be a person appointed by the Minister. 35

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(3) The Chairperson of the Committee is to be the chairperson of the insurance subcommittee.

(4) Schedule 1 has effect with respect to the insurance subcommittee as if references in that Schedule to the Committee were references to the subcommittee.

(5) The functions of the insurance subcommittee are:

(a) to investigate such matters in relation to the approval of policies of professional indemnity and fidelity insurance as are referred to it by the Committee; and

(b) to report to the Committee on the results of its investigations.

Advisory subcommittees

151. (1) The Committee may appoint such other subcommittees as it considers appropriate to assist it in the exercise of its functions.

(2) The members of any such subcommittee may include persons who are not members of the Committee.

(3) The chairperson of any such subcommittee must be a person who is a member of the Committee.

(4) The regulations may make provision with respect to the constitution and procedure of any subcommittee appointed under this section.

20 Staff etc. of the Committee

152. The Committee:

(a) may employ a Registrar and such other staff as it requires to exercise its functions; and

(b) may fix the salary, wages and other conditions of employment of its staff in so far as they are not fixed by or under any other Act or law; and

(c) may arrange for the use of the services of any staff (by secondment or otherwise) or facilities of a government department, an administrative office or a public or local authority; and

(d) may engage such consultants as it requires to exercise its functions.

PART 8—MISCELLANEOUS

Committee and Association to submit annual reports

153. (1) As soon as practicable after 30 June, but on or before 31 October, in each year, the Committee and the Association must each

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prepare and forward to the Minister reports of their work and activities under this Act for the 12 months ending on 30 June in that year.

(2) The Minister must lay the reports, or cause them to be laid, before both Houses of Parliament as soon as practicable after receiving the reports.

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(3) A report is to deal with such matters as may be prescribed by the regulations and with such other matters as the Committee or Association considers appropriate to include in the report.

Functions of the Council

154. For the purpose of exercising its functions under this Act, the Council:

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

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Functions of the Association

155. The Association has the following functions:

- (a) the function of advising the Committee in connection with the approval by the Committee of the policies of indemnity insurance to be held by licensees;
- (b) the function of maintaining a policy of fidelity insurance in accordance with the requirements of Part 4;
- (c) the function of determining, in accordance with the requirements of Part 4, the contributions payable by licensees in respect of that policy;
- (d) the function of dealing with claims for compensation made against the Association under Part 4;
- (e) the function of reporting to the Minister on the operation of this Act;
- (f) such other functions as are conferred or imposed on it by or under this Act.

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Delivery up of documents

156. (1) On the application of a licensee's client, the Supreme Court may order the licensee:

- 5 (a) to give to the client a bill of costs in respect of any conveyancing business transacted by the licensee; and
- (b) to give to the client, on such conditions as the Supreme Court may determine, such of the client's documents as are held by the licensee in relation to that business.

10 (2) This section does not affect the provisions of Division 5 of Part 11 of the Legal Profession Act 1987 with respect to the taxation of bills of costs.

Auditors

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

Register of licensees

158. (1) The Council must maintain at its offices a register of licensees in the form required by the regulations.

20 (2) The register is to be open to public inspection, on payment of such fee as may be prescribed by the regulations, during normal office hours.

Evidentiary certificates

159. A certificate that is issued by the Council and that states that, on a date or during a period specified in the certificate:

- 25 (a) a specified person was or was not a licensee; or
- (b) a specified licence was or was not subject to a specified condition,
- is admissible in any legal proceedings and is evidence of the fact or facts so stated.

Proceedings for offences

30 160. (1) Proceedings for an offence against this Act or the regulations are to be taken before a Local Court constituted by a Magistrate sitting alone.

(2) Proceedings for an offence against this Act or the regulations may be brought at any time within 12 months after the date of the alleged offence.

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Order restraining breach of this Act

161. (1) Any person may bring proceedings in the Supreme Court for an order to restrain a breach of this Act.

(2) If satisfied that a breach of this Act has been committed or will, unless restrained by order of the Court, be committed, the Supreme Court may make such order as it considers appropriate to restrain the breach. 5

Regulations

162. (1) The Governor may, on the recommendation of the Minister, 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. 10

(2) Such a recommendation may not be given by the Minister except after consultation with the Committee.

(3) A regulation may create an offence punishable by a penalty not exceeding 20 penalty units. 15

Amendment of other Acts

163. Each Act specified in Schedule 2 is amended as set out in that Schedule.

Savings, transitional and other provisions 20

164. Schedule 3 has effect.

*Conveyancers Licensing 1992***SCHEDULE 1—THE CONVEYANCERS LICENSING
COMMITTEE**

(Secs. 147, 149, 150)

Part 1—Members of the Committee**5 Reserve members**

1. (1) The Minister may, for each appointed member of the Committee, appoint one or more reserve members to act in the office of the appointed member during the illness or absence of the appointed member, and the reserve member, while so acting, has and may exercise all the functions of the appointed member and is taken to be a member of the Committee.

(2) A person, in order to be appointed as a reserve member of the Committee, must be qualified for appointment in the same way as the appointed member for whom he or she is the reserve member.

(3) The Minister may remove any person from any office to which the person was appointed under this clause.

(4) A person while acting in the office of a member of the Committee is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

(5) For the purposes of this clause, a vacancy in the office of a member of the Committee is taken to be an absence from office of the member.

Terms of office

2. Subject to this Schedule, a member of the Committee holds office for such period, not exceeding 7 years, as may be specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.

25 Remuneration

3. A member of the Committee is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

Filling of vacancy in office of a member

4. If the office of any member of the Committee becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

Casual vacancies

5. (1) A member of the Committee is taken to have vacated office if the member:
(a) dies; or

*Conveyancers Licensing 1992***SCHEDULE 1—THE CONVEYANCERS LICENSING COMMITTEE—continued**

- (b) absents himself or herself from 4 consecutive meetings of the Committee of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Minister (which leave the Minister is authorised to grant) or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for being absent from those meetings; or 5
- (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or 10
- (d) becomes a mentally incapacitated person; or
- (e) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or upwards, or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable; or 15
- (f) resigns office by instrument in writing addressed to the Minister; or
- (g) is removed from office by the Minister under subclause (2).
- (2) The Minister may remove a member of the Committee from office for incapacity, incompetence or misbehaviour.
- (3) The Chairperson of the Committee is taken to have vacated office as Chairperson if the person: 20
 - (a) resigns office by instrument in writing addressed to the Minister; or
 - (b) ceases to be a member of the Committee.
- Conflict of interests** 25
 - 6. (1) If:
 - (a) a member of the Committee has an interest in a matter being considered or about to be considered at a meeting of the Committee; and
 - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,
 the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Committee. 30
 - (2) A disclosure by a member at a meeting of the Committee that the member:
 - (a) is a member, or is in the employment, of a specified company or other body; or
 - (b) is a partner, or is in the employment, of a specified person; or
 - (c) has some other specified interest relating to a specified company or other body or to a specified person, 35
 is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

*Conveyancers Licensing 1992***SCHEDULE 1—THE CONVEYANCERS LICENSING COMMITTEE—*continued***

(3) Particulars of any disclosure made under this clause must be recorded by the Committee in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person.

5 (4) After a member of the Committee has disclosed the nature of an interest in any matter, the member must not, unless the Committee otherwise determines:

(a) be present during any deliberation of the Committee with respect to the matter; or

(b) take part in any decision of the Committee with respect to the matter.

10 (5) For the purpose of the making of a determination by the Committee under subclause (4), a member of the Committee who has an interest in a matter to which the disclosure relates must not:

(a) be present during any deliberation of the Committee for the purpose of making the determination; or

15 (b) take part in the making by the Committee of the determination.

(6) A contravention of this clause does not invalidate any decision of the Committee.

Effect of certain other Acts

7. (1) Part 2 of the Public Sector Management Act 1988 does not apply to or in respect of the appointment of a member of the Committee and a member of the
20 Committee is not, as a member, subject to that Act.

(2) If by or under any other Act provision is made:

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or

25 (b) prohibiting the person from engaging in employment outside the duties of that office,

that provision does not operate to disqualify the person from holding that office and also the office of a member of the Committee or from accepting and retaining any remuneration payable to the person under this Act as a member of the Committee.

Part 2—Procedure of the Committee**30 General procedure**

8. The procedure for the calling of meetings of the Committee and for the conduct of business at those meetings is, subject to this Act, to be as determined by the Committee.

Quorum

35 9. The quorum for a meeting of the Committee is 4 members, of whom 1 must be the Chairperson or a member referred to in section 147 (1) (c).

Conveyancers Licensing 1992

SCHEDULE 1—THE CONVEYANCERS LICENSING COMMITTEE—*continued*

Presiding member

10. (1) The Chairperson of the Committee or, in the absence of the Chairperson, a member of the Committee referred to in section 147 (1) (c) elected by the members present is to preside at a meeting of the Committee. 5

(2) The person presiding at a meeting of the Committee has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

Voting

11. A decision supported by a majority of the votes cast at a meeting of the Committee at which a quorum is present is the decision of the Committee. 10

Minutes

12. The Committee must cause full and accurate minutes to be kept of the proceedings of each meeting of the Committee.

First meeting

13. The Minister may call the first meeting of the Committee in such manner as the Minister thinks fit. 15

SCHEDULE 2—AMENDMENT OF OTHER ACTS

(Sec. 163)

Auctioneers and Agents Act 1941 No. 28

Section 84AB (Contracts for sale of residential property):

20

After section 84AB (9), insert:

(10) In this section, a reference to a solicitor includes a reference to a licensee within the meaning of the Conveyancers Licensing Act 1992.

Conveyancing Act 1919 No. 6

(1) Section 7 (Definitions):

25

In section 7 (1), insert in alphabetical order:

“Licensed conveyancer” means the holder of a licence in force under the Conveyancers Licensing Act 1992.

(2) Section 53 (Obligation to show title etc.):

In section 53 (2) (e) after “solicitor” wherever occurring, insert “or licensed conveyancer”. 30

Conveyancers Licensing 1992

SCHEDULE 2—AMENDMENT OF OTHER ACTS—*continued*

- (3) Section 59 (Rights of purchaser as to execution):
 In section 59 (1) after “solicitor” wherever occurring, insert “or licensed conveyancer”.
- 5 (4) Section 66P (Definitions):
 In the definition of “solicitor” in section 66P (1), after “Territory”, insert “, and includes a licensed conveyancer”.
- 10 (5) Section 66Z (Definitions):
 In the definition of “solicitor” in section 66Z (1), after “Territory”, insert “, and includes a licensed conveyancer”.
- (6) Section 96 (Power for mortgagor to inspect title deeds):
 In section 96 (1), after “solicitor”, insert “or licensed conveyancer”.
- (7) Section 176 (Protection of solicitors, licensed conveyancers, trustees etc.):
 After “solicitor” wherever occurring, insert “or licensed conveyancer”.
- 15 (8) Section 197 (Official searches):
 In section 197 (4), after “solicitor” wherever occurring, insert “or licensed conveyancer”.
- (9) Schedule 3 (Conditions of sale):
 After “solicitor” wherever occurring, insert “or licensed conveyancer”.
- 20 Land Sales Act 1964 No. 12
- (1) Section 2 (Definitions):
 Insert in alphabetical order:
 “Licensed conveyancer” means the holder of a licence in force under the Conveyancers Licensing Act 1992.
- 25 (2) Section 7 (Trust deeds):
 In section 7 (2), after “solicitor”, insert “or licensed conveyancer”.
- Legal Profession Act 1987 No. 109
- (1) Section 3 (Definitions):
 In section 3 (1), insert in alphabetical order:
 “licensed conveyancer” means the holder of a licence in force under the Conveyancers Licensing Act 1992;
- 30

Conveyancers Licensing 1992

SCHEDULE 2—AMENDMENT OF OTHER ACTS—*continued*

(2) Section 54 (Functions of Law Society Council):

After section 54 (2), insert:

(3) The Law Society Council also has such functions as are conferred or imposed on it by or under the Conveyancers Licensing Act 1992.

5

(3) Section 65 (Repayment of deposit with Law Society):

After "section 64" wherever occurring, insert "of this Act or section 36 of the Conveyancers Licensing Act 1992".

(4) Section 66 (Accounts to be kept by Law Society):

From section 66 (a), omit "and repaid or invested by it under section 65", insert instead "of this Act or section 36 of the Conveyancers Licensing Act 1992".

10

(5) Section 67 (Statutory Interest Account):

Omit section 67 (2) (a), insert instead:

(a) for the purposes authorised by subsection (3) (c), (c1), (d), (e), (e1), (e2) and (e3)—such amounts as are from time to time incurred under Parts 9 and 10 of this Act or under the Conveyancers Licensing Act 1992 in relation to those purposes; and

15

After section 67 (3) (c), insert:

20

(c1) the payment under section 143 of the Conveyancers Licensing Act 1992 of the costs related to the administration of Part 6 of that Act;

After section 67 (3) (e1), insert:

(e2) the costs incurred by the Law Society Council in exercising its functions for the purposes of the Conveyancers Licensing Act 1992;

25

(e3) the costs incurred by the Conveyancers Licensing Committee in exercising its functions for the purposes of the Conveyancers Licensing Act 1992;

30

(6) Section 115 (Person acting as a barrister or solicitor):

After section 115 (2), insert:

(2A) Subsection (2) does not prevent a licensed conveyancer from carrying out conveyancing work in accordance with a licence in force under the Conveyancers Licensing Act 1992.

35

(7) Section 117 (Limitation on general legal work and probate work):

(a) In the definition of "general legal work" in section 117 (1), after the words "preparing an instrument", insert "or other document".

Conveyancers Licensing 1992

SCHEDULE 2—AMENDMENT OF OTHER ACTS—*continued*

- (b) Omit paragraph (b) of the definition of “general legal work” in section 117 (1), insert instead:
- (b) creates, regulates or affects, or purports to create, regulate or affect, rights between parties;
- (c) At the end of section 117 (4) (c), insert:
- ; or
- (d) a licensed conveyancer acting in accordance with a licence in force under the Conveyancers Licensing Act 1992.
- (8) Section 121 (Employment of disqualified or convicted persons):
- (a) From paragraph (c) of the definition of “disqualified person” in section 121 (8), omit “or” where lastly occurring.
- (b) At the end of paragraph (d) of the definition of “disqualified person” in section 121 (8), insert:
- ; or
- (e) who is disqualified from holding a licence under the Conveyancers Licensing Act 1992 by virtue of an order in force under section 139 of that Act.
- (9) Section 122:
- Omit the section, insert instead:
- Order restraining breach of this Act**
122. (1) Any person may bring proceedings in the Supreme Court for an order to restrain a breach of this Act.
- (2) If satisfied that a breach of this Act has been committed or will, unless restrained by order of the Court, be committed, the Supreme Court may make such order as it considers appropriate to restrain the breach.
- (10) After section 209A, insert:
- Council to report on its work and activities under the Conveyancers Licensing Act 1992**
- 209B. (1) As soon as practicable after 30 June, but on or before 31 October, in each year, the Law Society Council must prepare and forward to the Attorney General a report of its work and activities under the Conveyancers Licensing Act 1992 for the 12 months ending on 30 June in that year.
- (2) The Attorney General must lay the report, or cause it to be laid, before both Houses of Parliament as soon as practicable after receiving the report.
- (3) A report is to deal with such matters as may be prescribed by the regulations and with such other matters as the Law Society Council considers appropriate to include in the report.

Conveyancers Licensing 1992

SCHEDULE 2—AMENDMENT OF OTHER ACTS—*continued*

(11) Section 212 (Offences):

At the end of section 212, insert:

(2) Proceedings for an offence against this Act or the regulations may be brought at any time within 12 months after the date of the alleged offence.

5

(12) Section 213A:

After section 213, insert:

Evidentiary certificates

213A. (1) A certificate that is issued by the Bar Council and that states that, on a date or during a period specified in the certificate:

10

(a) a specified person was or was not the holder of a barristers' practising certificate; or

(b) a specified barrister's practising certificate was or was not subject to a specified condition,

15

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

(2) A certificate that is issued by the Law Society Council and that states that, on a date or during a period specified in the certificate:

(a) a specified person was or was not the holder of a solicitor's practising certificate; or

20

(b) a specified solicitor's practising certificate was or was not subject to a specified condition,

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

25

Real Property Act 1900 No. 25

(1) Section 3 (Definitions):

In section 3 (1) (a), insert in alphabetical order:

"Licensed conveyancer"—The holder of a licence in force under the Conveyancers Licensing Act 1992.

30

(2) Section 74N (Service of notices on the caveator for the purposes of this Part):

In section 74N (1), after "solicitor" wherever occurring, insert "or licensed conveyancer".

(3) Section 96I (Effect of official searches):

35

In section 96I (2), after "solicitor" wherever occurring, insert "or licensed conveyancer".

DICTIONARY OF WORDS AND EXPRESSIONS

(Sec. 3)

affairs, in relation to a licensee, includes:

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

Association means the Association of Property Conveyancers.

Board means the Legal Profession Standards Board constituted under Part 10 of the Legal Profession Act 1987.

- 15 **Committee** means the Conveyancers Licensing Committee constituted under section 146.

- controlled money** means money required to be dealt with in accordance with section 33 (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 in New South Wales.
- 20

- 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.
- 25

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

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

Council means the Law Society Council.

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

exercise a function includes, where the function is a duty, to perform the duty.

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

- 35 **function** includes a power, authority and duty.

Law Society means the Law Society of New South Wales.

licence means a licence in force under this Act.

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

DICTIONARY OF WORDS AND EXPRESSIONS—*continued*

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

money received, in relation to a licensee, includes:

- (a) money coming under the direct control of the licensee, whether or not by the exercise of an express power or authority or by operation of law; and 5
- (b) money paid to an associate of the licensee on the advice of the licensee, but only if the money is under the direct or indirect control of the licensee; and 10
- (c) money in relation to which the licensee (whether or not through an associate) has a power of disposal exercisable jointly and severally with the person on whose behalf it was received or a nominee of that person.

Panel means the Legal Profession Conduct Review Panel constituted under Part 10 of the Legal Profession Act 1987. 15

professional misconduct includes:

- (a) unsatisfactory professional conduct, if the conduct is such that it involves a substantial or consistent failure to reach reasonable standards of competence and diligence; and 20
- (b) conduct (whether consisting of an act or omission) occurring otherwise than in connection with a conveyancing business which, if established, would justify a finding that a licensee is not of good fame and character; and
- (c) conduct that is declared to be professional misconduct by any provision of this Act. 25

record includes any book, account, document, paper or other source of information compiled, recorded or stored in written form or on microfilm, or by electronic process, or in any other manner or by any other means. 30

Statutory Interest Account means the Statutory Interest Account maintained by the Law Society under Part 6 of the Legal Profession Act 1987.

Tribunal means the Legal Profession Disciplinary Tribunal constituted under Part 10 of the Legal Profession Act 1987. 35

DICTIONARY OF WORDS AND EXPRESSIONS—*continued*

trust money means money required to be dealt with in accordance with section 33 (1) (a).

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

LEGISLATIVE COUNCIL

CONVEYANCERS LICENSING BILL 1992

Third Print

Amendments to be moved in Committee

1. Page 11, clause 20, lines 10-15. Omit all words on those lines, insert instead:
 - (3) A licence may not be suspended or cancelled (otherwise than on a ground referred to in subsection (1) (a), (c) or (j)) unless:
 - (a) the Committee concurs with the proposed suspension or cancellation; or
 - (b) the Council is of the opinion that there has been, or that there may have been, a failure to account (within the meaning of Part 5) by the licensee.
2. Page 79. After line 38, insert:

SCHEDULE 3 - SAVINGS, TRANSITIONAL AND OTHER PROVISIONS
(Sec. 164)

Part 1 - Preliminary

Regulations

1. (1) The regulations may include provisions of a savings or transitional nature consequent on the enactment of this Act.
- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the commencement of this Act or from a later date.
- (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or

- (b) to impose liabilities on any person (other than the State or an authority of the State), in respect of anything done or omitted to be done before the date of its publication.

Part 2 - Provisions consequent on enactment of this Act

Definition

2. (1) In this Part:

"appointed day", in relation to a provision of this Part, means the day occurring 12 months after the date of assent or such earlier day as may be appointed by proclamation for the purposes of that provision.

(2) The Governor may make proclamations for the purposes of the provisions of this Part.

Interim constitution of the Committee

3. The members of the Committee referred to in section 147 (1) (b) are, until the appointed day, to comprise the Director-General of the Attorney General's Department and the Director of the Land Titles Office, rather than 2 licensees nominated by the Association.

Interim constitution of the Panel

4. For the purposes of section 114, the Panel is, until the appointed day, to be constituted by 1 of its solicitor members and 2 of its lay members rather than by 1 of its licensee members and 2 of its lay members, and is to include (as an additional member) the Director of the Land Titles Office.

Interim constitution of the Board

5. For the purposes of section 118, the Board is, until the appointed day, to be constituted by 2 of its solicitor members and 1 of its lay members rather than by 1 of its solicitor members, 1 of its licensee members and 1 of its lay members, and is to include (as an additional member) the Director of the Land Titles Office.

Interim constitution of the Tribunal

6. For the purposes of sections 127 and 132, the Tribunal is, until the appointed day, to be constituted by 2 of its solicitor members and 1 of its lay members rather than by 1 of its solicitor members, 1 of its licensee members and 1 of its lay members, and is to include (as an additional member) the Director of the Land Titles Office.

Interim certificates of eligibility

7. (1) For the purposes of Division 2 of Part 2, any person:

- (a) who was conducting a conveyancing business (as a principal of the business or as a person responsible for the day to day management of the business) immediately before the commencement of Part 2; and

(b) who had conducted a conveyancing business (as a principal of the business or as a person responsible for the day to day management of the business) for at least 2 years prior to 1 March 1992; and

(c) who, when applying for a certificate of eligibility to hold a licence, satisfies the Committee that the person is sufficiently knowledgeable in relation to the law and practice of conveyancing to warrant being granted a licence by virtue of this clause, is, subject to section 5, qualified to hold a licence even if the person does not have the educational qualifications, practical training or conveyancing experience approved by the Committee for the purposes of Part 2.

(2) The Committee may, for the purposes of this clause, examine any applicant as to his or her knowledge in relation to the law and practice of conveyancing and cause an inspection to be made of the accounts in relation to his or her conveyancing business.

(3) A person is not entitled to be granted a certificate of eligibility to hold a licence by virtue of this clause unless the person lodges an application for such a certificate within 6 months after the commencement of Part 2.

(4) A member of the Committee (as constituted in accordance with clause 3) is not entitled to be granted a certificate of eligibility to hold a licence by virtue of this clause.

THIRD PRINT

CONVEYANCERS LICENSING BILL 1992

NEW SOUTH WALES



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SCHEDULE 2—AMENDMENT OF OTHER ACTS

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affairs	Law Society
Association	licence
Board	licensee
Committee	money
controlled money	money received
conveyancing business	Panel
conveyancing work	professional misconduct
costs	record
Council	Statutory Interest Account
disqualified person	Tribunal
exercise a function	trust money
firm of licensees	unsatisfactory professional conduct
function	

This PUBLIC BILL, originated in the LEGISLATIVE ASSEMBLY and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

Legislative Assembly

Clerk of the Legislative Assembly.

NEW SOUTH WALES



Act No. , 1992

An Act to provide for the licensing and regulation of conveyancers; and for other purposes.

Conveyancers Licensing 1992

The Legislature of New South Wales enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the Conveyancers Licensing Act 1992.

5 Commencement

2. (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).

(2) The following provisions commence on the date of assent:

- (a) Parts 1 and 7;
- 10 (b) Schedules 1, 2 and 3 (except for item (9) of the matter in Schedule 2 that relates to the Legal Profession Act 1987);
- (c) the Dictionary at the end of the Act.

Definitions

3. (1) In this Act, the words and expressions appearing in the
15 Dictionary at the end of this Act have the meanings given to them in that Dictionary.

(2) Certain words and expressions used in Part 4 (Claims arising from Failures to Account) are defined in Division 1 of that Part.

(3) Certain words and expressions used in Part 5 (Management and
20 Receivership) are defined in Division 1 of that Part.

Conveyancing work

4. (1) For the purposes of this Act, **conveyancing work** is legal work carried out in connection with any transaction that creates, varies, transfers or extinguishes a legal or equitable interest in residential
25 property or that otherwise affects residential property.

(2) Without limitation, **conveyancing work** includes:

- (a) legal work involved in preparing any document (such as an agreement, conveyance, transfer, lease or mortgage) that is necessary to give effect to any such transaction; and
- 30 (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

Conveyancers Licensing 1992

(c) any other legal work that is prescribed by the regulations as constituting conveyancing work for the purposes of this Act.

(3) However, **conveyancing work** does not include the carrying out of any work for the purpose of:

- (a) commencing or maintaining legal proceedings; or 5
- (b) establishing a corporation or varying the memorandum or articles of association of a corporation; or
- (c) preparing a mortgage otherwise than where the mortgage is prepared in connection with an agreement for sale of residential property and: 10
 - the mortgagee is the vendor of the property; or
 - the mortgagee has nominated the purchaser of the property as the mortgagor and has specified the terms of the mortgage independently of any advice given by the person by whom the mortgage is being prepared; or 15
- (d) creating, varying or extinguishing a trust; or
- (e) preparing a testamentary instrument; or
- (f) creating, varying, transferring or extinguishing a legal or equitable interest in animals or in the goodwill or stock-in-trade of a business; or 20
- (g) obtaining the consent of any public or local authority to the subdivision of land, the erection of a building or the carrying out of development (within the meaning of the Environmental Planning and Assessment Act 1979) on land;
- (h) giving investment or financial advice; or 25
- (i) investing money otherwise than as provided for by Division 2 of Part 3,

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

(4) In this section: 30

“**legal work**” means work that, if done for fee or reward by a person who is neither a solicitor nor a barrister, would give rise to an offence under Part 9 of the Legal Profession Act 1987;

“**residential property**” has the same meaning as it has in Division 8 of Part 4 of the Conveyancing Act 1919, except that it includes land having an area of up to, but not more than, 10 hectares. 35

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Disqualified persons

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

- (a) is a corporation; or
- 5 (b) is an undischarged bankrupt; or
- (c) has been convicted in New South Wales or elsewhere of an offence involving dishonesty; or
- (d) is a mentally incapacitated person; or
- 10 (e) has been removed (otherwise than at his or her own request) from the roll of solicitors or the roll of barristers kept by the Supreme Court or from a corresponding roll of legal practitioners kept by a superior court of another State or Territory; or
- (f) is disqualified from holding a licence under this Act by virtue of an order in force under section 139; or
- 15 (g) is disqualified from being employed in a solicitor's office by virtue of an order in force under section 120 of the Legal Profession Act 1987; or
- 20 (h) is disqualified from holding a licence or certificate of registration under the Auctioneers and Agents Act 1941 by virtue of an order in force under section 29 or 60 of that Act.

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

- (a) is the holder of a barrister's or a solicitor's practising certificate under the Legal Profession Act 1987; or
- 25 (b) is the holder of a licence or certificate of registration under the Auctioneers and Agents Act 1941.

PART 2—LICENSING

Division 1—Preliminary

Effect of licence

- 30 6. (1) A licensee is not guilty of an offence under Part 9 (Unqualified Practitioners) of the Legal Profession Act 1987 in respect of conveyancing work that the licensee carries out in accordance with this Act, the regulations and the conditions of the licence.

- 35 (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.

Procedure for obtaining a licence

7. (1) A person is qualified to hold a licence if the person is the holder of a current certificate of eligibility to hold a licence.

(2) A person is qualified to be granted a certificate of eligibility to hold a licence if the person:

(a) is of or above the age of 18 years; and

(b) has such educational qualifications, practical training and conveyancing experience as may be approved by the Committee; and

(c) is not a disqualified person.

(3) Certificates of eligibility are granted by the Committee under Division 2.

(4) Licences are granted by the Council under Division 3.

Licensee to have paid fidelity contribution

8. A person is not entitled to be granted a licence unless the person has paid such part of any contribution under Division 2 of Part 4 as is due and payable on the granting of a licence.

Licensee to be covered by an approved policy of professional indemnity insurance

9. (1) The regulations may identify particular licensees or classes of licensees as persons who are required to be insured under a policy of professional indemnity insurance.

(2) A person who would, as a result of being granted a licence, become a licensee identified in such a regulation is not entitled to be granted a licence unless an approved policy of professional indemnity insurance will be in force with respect to the person for the whole of the period of the licence.

(3) A policy of professional indemnity insurance is an approved policy if the insurer and the terms of the policy (including the financial limits of any cover provided by the policy) are approved by the Committee.

(4) The Committee must consult with the Council and the Association before approving an insurance policy for the purposes of this section and must consider any representations made by the Council or the Association as to the form of, and as to the terms to be included in, the policy.

(5) An insurance policy may not be approved for the purposes of this section unless it indemnifies the insured person against all liabilities incurred by the person during any period that the person is a licensee,

including any period during which the licence is of no effect by virtue of section 19 (2) or (3), regardless of when any claim is made in respect of any such liability.

Division 2—Certificates of eligibility

5 Applications for certificates of eligibility

10. (1) An application for a certificate of eligibility to hold a licence may be made to the Committee by any person.

(2) An application must be in the form approved by the Committee and must be accompanied by:

- 10 (a) an application fee of an amount prescribed by the regulations; and
- (b) in the case of an initial application—evidence that the applicant has the educational qualifications, practical training and conveyancing experience approved by the Committee.

(3) The application fee is to be paid into the Statutory Interest Account.

15 Committee may require further particulars

11. The Committee, by notice in writing served on the applicant:

- (a) may require further information to be given in connection with the application; and
- 20 (b) may require the application, or any further information, to be verified by statutory declaration,

within such time as it may specify in the notice.

Determination of applications

12. (1) After considering an application, the Committee may determine:

- 25 (a) to grant a certificate of eligibility to the applicant; or
- (b) to refuse the application.

(2) A certificate of eligibility may not be granted to an applicant unless the Committee is satisfied that the applicant:

- (a) is of or above the age of 18 years; and
- 30 (b) has such educational qualifications, practical training and conveyancing experience as may be approved by the Committee; and
- (c) is not a disqualified person.

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(3) A certificate of eligibility may not, except after consultation with the Council, be granted to an applicant who has been the holder of a licence that has been cancelled (otherwise than at the request of the applicant) since the previous certificate of eligibility was granted.

(4) A certificate of eligibility may not, except after consultation with the Association, be granted to an applicant who has been the holder of a licence that has been cancelled on a ground referred to in section 20 (1) (d), (e) or (f) since the previous certificate of eligibility was granted. 5

(5) For the purpose of determining whether or not a person is a disqualified person by virtue of section 5 (1) (c), the Committee: 10

(a) may determine whether an offence committed by the person was or was not, in the circumstances of the case, an offence involving dishonesty; and

(b) may determine to ignore the fact that the person has committed such an offence if (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) it considers it appropriate to do so. 15

Imposition of conditions

13. (1) A certificate of eligibility may specify conditions to which a licence granted to the applicant should be subject. 20

(2) The conditions so specified may include conditions of the following kind:

(a) a condition prohibiting the proposed licensee from carrying out conveyancing work otherwise than as an employee of a licensee whose licence does not contain such a condition; 25

(b) a condition requiring the proposed licensee to undertake or complete a specified course of studies within a specified period of time;

(c) a condition prohibiting the proposed licensee from carrying out conveyancing work in relation to specified kinds of transaction; 30

(d) a condition requiring the proposed licensee to undertake or complete a specified course of further legal education during each year for which he or she remains a licensee.

Notice of Committee's decision to be given 35

14. (1) The Committee must cause notice of its decision on an application (including reasons for the decision, if the decision is to refuse the application) to be given to the applicant within 14 days after the decision is made.

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(2) For the purposes only of any appeal proceedings arising in connection with an application under this section, the Committee is taken to have refused the application if it has not finally disposed of the application within 6 weeks after the application was made.

5 Duration of certificates of eligibility

15. A certificate of eligibility remains in force until it is withdrawn or until it is replaced by another certificate of eligibility.

Withdrawal of certificates of eligibility

10 16. The Committee, by notice in writing served on the holder of a certificate of eligibility, may withdraw the certificate on any of the following grounds:

- (a) that the holder of the certificate has ceased to hold a licence for a single period of more than 6 months since the certificate was granted;
- 15 (b) that a licence held by the holder of the certificate has been cancelled otherwise than at the request of the licensee;
- (c) that the holder of the certificate has failed to comply with the conditions of any licence issued by virtue of the certificate;
- 20 (d) that the holder of the certificate is disqualified from holding a licence by virtue of an order in force under section 139;
- (e) that the Tribunal has cancelled the certificate under section 139.

Division 3—Licences

Applications for licences

25 17. (1) An application for a licence may be made to the Council by any person who holds a current certificate of eligibility.

(2) An application must be in the form approved by the Council and must be accompanied by:

- (a) an application fee of an amount prescribed by the regulations; and
- (b) the applicant's current certificate of eligibility to hold a licence; and
- 30 (c) evidence that the applicant has paid such part of any contribution under Division 2 of Part 4 as is due and payable on the granting of a licence; and

- (d) in the case of an applicant who would, as a result of being granted a licence, be required to be covered by an approved policy of professional indemnity insurance—evidence that such a policy will be in force with respect to the applicant for the whole of the period of the licence; and 5
- (e) in the case of an application for the renewal of an expiring licence—the most recent auditor's certificate in relation to the licensee's accounts.
- (3) The application fee is to be paid into the Statutory Interest Account.
- (4) The Council may require an application to be verified by statutory declaration. 10
- (5) The applicant's current certificate of eligibility to hold a licence is to be returned to the applicant as soon as the application has been dealt with.
- Determination of applications** 15
- 18. (1) After considering an application, the Council may determine:
 - (a) to grant a licence to the applicant; or
 - (b) to refuse the application.
- (2) A licence may not be granted to an applicant unless the Council is satisfied: 20
 - (a) that the applicant is not a disqualified person; and
 - (b) that the applicant is the holder of a current certificate of eligibility to hold a licence; and
 - (c) that the applicant has paid such part of any contribution under Division 2 of Part 4 as is due and payable on the granting of a licence; and 25
 - (d) in the case of an applicant who would, as a result of being granted a licence, be required to be covered by an approved policy of professional indemnity insurance—that such a policy will be in force with respect to the applicant for the whole of the period of the licence. 30
- (3) The Council may refuse an application on any of the grounds (listed in section 20 (1)) on which it may suspend or cancel a licence.
- (4) The licence is to be in a form approved by the Council and is to be granted subject to the conditions set out in the current certificate of eligibility. 35

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(5) For the purposes only of any appeal proceedings arising in connection with an application under this section, the Council is taken to have refused the application if it has not finally disposed of the application within 8 weeks after the application was made.

5 Duration of licences

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

(2) A licence is of no effect during any period for which any part of a contribution under Division 2 of Part 4 remains due and payable by the licensee.

15 (3) A licence held by a licensee who is required to be covered by an approved policy of professional indemnity insurance is of no effect during any period for which such a policy is not in force with respect to the licensee.

Suspension and cancellation of licences

20 20. (1) The Council may suspend or cancel a licence on any of the following grounds:

- (a) that the licensee has requested the suspension or cancellation of the licence;
- (b) that the licensee has failed to comply with a condition of the licence;
- 25 (c) that the licensee has failed to comply with an order in force under section 125, 130 or 139;
- (d) that the licensee has failed to comply with the requirements of Division 2 of Part 3 in relation to trust money or controlled money;
- 30 (e) that the licensee has failed to pay any part of a contribution due and payable under Division 2 of Part 4;
- (f) in the case of a licensee who is required to be covered by an approved policy of professional indemnity insurance—that such a policy is no longer in force with respect to the licensee;
- (g) that the licensee has become a disqualified person;
- 35 (h) that the licensee has failed to comply with a requirement under this Act to furnish any record, document or information or if any record, document or information so furnished fails to give a satisfactory explanation of the licensee's conduct;

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- (i) that the licensee has been convicted of an offence against this Act;
 - (j) that the licensee is a prisoner within the meaning of the Prisons Act 1952;
 - (k) that the licensee is (because of illness or infirmity) unfit to carry out conveyancing work and that it is in the public interest that the licence be suspended or cancelled. 5
- (2) A licence may not be suspended or cancelled on a ground referred to in subsection (1) (d), (e) or (f) except after consultation with the Association.
- (3) A licence may not be suspended or cancelled on the ground referred to in subsection (1) (b), (g) or (k) except after consultation with the Committee and the Council has obtained the concurrence of the Committee or the Council certifies that the suspension or cancellation was occasioned by a failure to account (as defined in section 46) on the part of the licensee. 10
15
- (4) Before suspending or cancelling a licence on the ground referred to in subsection (1) (k), the Council:
- (a) may hold an inquiry; and
 - (b) may require the licensee to be examined by a medical practitioner nominated by the Council. 20
- (5) An inquiry under this section is to be conducted in accordance with the procedures prescribed by the regulations.
- (6) The Council must cause notice of its decision to suspend or cancel a licence to be given to the licensee, to the Committee and (if the decision is based on a ground referred to in subsection (1) (d), (e) or (f)) to the Association within 14 days after the decision is made. 25
- (7) The notice must include the reasons for the decision if the decision is based on a ground referred to in subsection (1) (b)–(k).
- (8) A suspension or cancellation of a licence takes effect when notice of the suspension or cancellation is served on the licensee or on such later date as may be specified in the notice. 30

Division 4—Appeals

Appeals

21. (1) An appeal lies to the Supreme Court against the following decisions: 35
- (a) a decision of the Committee refusing to grant a certificate of eligibility for a licence;

- (b) a decision of the Committee requiring the imposition of a condition on a licence;
 - (c) a decision of the Council refusing to grant a licence;
 - (d) a decision of the Council suspending or cancelling a licence.
- 5 (2) Such an appeal must be made within 28 days after the date on which the decision was made or is taken to have been made.
- (3) The making of an appeal does not operate to stay the decision appealed against except to the extent (if any) to which the Supreme Court orders.

10 **PART 3—CONVEYANCING PRACTICE**
 Division 1—General

Effect of contravention of Division 1

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

23. (1) If a maximum fee for the carrying out of work by a solicitor (or a maximum rate according to which such a fee may be calculated) is fixed by a determination of the Legal Fees and Costs Board, the maximum fee for the carrying out of the same kind of work by a licensee (or the maximum rate according to which such a fee may be calculated) is the same as that fixed by the determination.
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- (2) Despite any Act or law to the contrary, a licensee is not entitled to charge or recover, in respect of any work, any amount in excess of the maximum amount payable, in respect of that work, in accordance with subsection (1).
- 25

- (3) A licensee must not enter into an agreement that attempts to exclude, modify or restrict the operation of this section.

- (4) Any agreement that attempts to exclude, modify or restrict the operation of this section is void to the extent to which it attempts to do so.
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- (5) Division 5 of Part 11 of the Legal Profession Act 1987 applies to the fees charged by a licensee in the same way as it applies to the fees charged by a solicitor.
- 35

Nature of conveyancing business

24. (1) A licensee must not conduct a conveyancing business, or be involved in the conduct of a conveyancing business, otherwise than as a sole practitioner, in partnership with other licensees or as an employee of another licensee.

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(2) A licensee must not falsely represent, or permit any other person to falsely represent, that another person is a partner of the licensee.

Attendance at business premises

25. A licensee must not permit conveyancing work to be carried out at any premises at which the licensee conducts a conveyancing business unless the licensee, or some other licensee, gives reasonable attendance at those premises.

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Business names

26. (1) A licensee must not conduct a conveyancing business under a business name that is not approved by the Committee.

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

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

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Sharing of receipts with unqualified persons

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27. (1) A licensee must not share the receipts of a conveyancing business with another person unless:

- (a) the other person is a licensee; or
- (b) the sharing of those receipts with that other person is approved by the Committee.

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(2) An approval may not be given under this section unless the Committee is satisfied that the sharing of the receipts of the conveyancing business in accordance with the approval:

- (a) will not result in a person other than a licensee gaining control of the business; and

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(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.

- 5 (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.

Employment of disqualified persons

- 10 28. (1) A licensee must not, in connection with his or her conveyancing business, employ or pay a person whom the licensee knows to be a disqualified person.

(2) Subsection (1) does not apply in relation to a person who is employed or paid in accordance with leave given by the Committee or by the Supreme Court.

- 15 (3) If the Committee refuses an application by a person for leave under this section, the person may appeal against the decision to the Supreme Court which may either confirm the decision appealed against or else give leave for the appellant to be employed or paid in connection with the conveyancing business.

- 20 (4) Leave given under this section may be limited as to time or given subject to specified conditions.

(5) A disqualified person must not seek employment or payment in connection with a licensee's conveyancing business unless he or she has informed the licensee of the fact of his or her disqualification.

- 25 Maximum penalty (subsection (5)): 10 penalty units.

Sharing staff of legal practitioners and real estate agents etc.

29. A licensee must not employ any person in the conduct of a conveyancing business if the person, while so employed, is employed also:

- 30 (a) by the holder of a barrister's or solicitor's practising certificate under the Legal Profession Act 1987; or
(b) by the the holder of a licence or certificate of registration under the Auctioneers and Agents Act 1941.

Advertising

- 35 30. (1) The regulations may make provision with respect to advertising in connection with the carrying out of conveyancing work and the conduct of a conveyancing business.

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(2) In particular, the regulations may make provision with respect to the manner in which a licensee may advertise, the subject-matter of advertisements and the manner in which a licensee must represent himself or herself in correspondence arising in the conduct of a conveyancing business.

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(3) A licensee must not advertise otherwise than in accordance with the regulations under this section.

Conduct of other businesses

31. (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.

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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.

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Committee may establish guidelines for conduct of conveyancing business

32. (1) The Committee may, by order published in the Gazette, establish guidelines as to the manner in which conveyancing businesses should be conducted.

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(2) The guidelines may adopt, with or without modification, the provisions of any rules made by the Law Society with respect to the conduct of solicitors.

(3) A licensee must not conduct a conveyancing business in contravention of any guidelines in force under this section.

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Division 2—Trust money and controlled money

Money received by licensee on behalf of another

33. (1) A licensee who, in the course of conducting a conveyancing business, receives money on behalf of another person:

- (a) must pay the money, within the time prescribed by the regulations, into a general trust account at a bank in New South Wales and must hold the money in accordance with the regulations relating to trust money; or

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- 5 (b) if the person on whose behalf the money is received directs that it be paid otherwise than into a general trust account, must pay the money as directed and (if the money is to be held under the direct or indirect control of the licensee for more than the period prescribed by the regulations) must hold the money in accordance with the regulations relating to controlled money.

(2) In either case, the licensee must hold the money exclusively for, and must disburse the money in accordance with the directions of, the person on whose behalf it is held.

- 10 (3) This section:

- (a) does not prevent a licensee from depositing money with the Law Society in accordance with section 36, but continues to apply to any money so deposited that is repaid to the licensee; and
15 (b) does not prevent a licensee from withdrawing or receiving, from trust money or controlled money:

- reimbursement for disbursements paid by the licensee; or
- money for disbursements to be paid by the licensee; or
- money due, or to accrue due, to the licensee for costs,

20 so long as the procedure prescribed by the regulations is followed; and

- (c) does not affect any enforceable lien or claim that a licensee has to any money; and
(d) does not prevent a licensee from exercising a general retaining lien for unpaid costs and disbursements in respect of money in a trust
25 account or a controlled money account (other than money received subject to an express direction by the client with respect to the purposes for which the money is to be applied).

- (4) A lien referred to in subsection (3) (d):

- 30 (a) may not be exercised for an amount in excess of the sum of the costs and disbursements unpaid; and
(b) may not be exercised unless the licensee has delivered an outline bill of costs and disbursements to the client on whose behalf the money is held.

- (5) Money received by a licensee on behalf of another person:

- 35 (a) is not available for payment to a creditor of the licensee; and
(b) is not liable to be taken in execution of any judgment, order or other process of any court or tribunal at the instance of a creditor of the licensee,

40 unless the creditor is the person on whose behalf the money is held by the licensee.

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(6) If a trust account kept by a licensee is, as authorised by or under the regulations, operated on by a person other than the licensee, section 53 of the Trustee Act 1925 does not apply to the person in relation to the operation on the trust account.

(7) It is professional misconduct for a licensee to contravene this section. 5

Keeping of accounts

34. (1) A licensee must keep accounting records that disclose at all times the true position in relation to money received by the licensee on behalf of another person. 10

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

(3) It is professional misconduct for a licensee to contravene this section. 15

Audits

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

- (a) the auditing of a licensee's records; and
- (b) the reports to be made by auditors; and
- (c) the submission of auditors' reports to the Council and to the Association. 20

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

- (a) to produce for the auditor's inspection any accounting or other records relating to the licensee's conveyancing business;
- (b) to give the auditor such other information as is reasonably necessary for the purposes of the audit; 25
- (c) to furnish the auditor with such authorities or orders on bankers and others as relate to the licensee's conveyancing business.

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

- (a) must not fail to comply with the requirement; and 30
- (b) must not, in purported compliance with the requirement, provide information that the person knows to be false or misleading in a material particular.

Maximum penalty: 10 penalty units.

(4) If a record:

- (a) is not in writing; or
- (b) is not written in English; or
- (c) is not decipherable on sight,

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

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

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

Deposit of trust funds with Law Society

15 36. (1) Out of the money that is paid into a licensee's trust account, the licensee must cause to be deposited with the Law Society, and to be kept deposited with the Law Society, an amount calculated as prescribed by the regulations.

20 (2) This section applies to each member of a firm of licensees, and to money paid into a trust account kept by such a firm, in the same way as it applies to a licensee and to money paid into a trust account kept by a licensee.

(3) This section does not apply to a separate trust account kept on the instructions of a client for the exclusive use of the client.

25 (4) This section does not affect any enforceable lien or claim that a licensee has to any money.

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

Money not claimed from licensee

30 37. (1) If a licensee holding money in a trust account cannot find the person on whose behalf the money is held or any other person authorised to receive the money, the licensee:

(a) may pay the money to the Treasurer for payment into the Consolidated Fund; and

35 (b) must in that event, provide the Treasurer with such information as the Treasurer requires in relation to the money and the person on whose behalf the money was held.

(2) If a licensee pays money to the Treasurer under this section, the licensee is relieved from any further liability in relation to the money.

(3) The Treasurer may pay money deposited under this section to any person who satisfies the Treasurer as to his or her entitlement to the money.

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(4) Payment of money to such a person discharges the Crown and the Treasurer from any liability in relation to the money, but does not discharge the person from any liability to any other person who establishes an entitlement to the money.

(5) The Treasurer may require a person to provide any information that the person has, or can reasonably obtain, about the entitlement of any other person to money paid to the Treasurer under this section and about any attempts that have been made to locate that other person.

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

(a) must not fail to comply with the requirement; and

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

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

Relief for bankers

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38. (1) A bank, in relation to a transaction on an account kept by a licensee at that or any other bank:

(a) does not incur any obligation to make inquiries, or any other obligation or liability, other than an obligation or liability to which it would be subject apart from this Act; and

25

(b) does not have imputed to it any knowledge of the entitlement of a person to money credited to the account,

that it would not incur, or have imputed to it, if the account were kept by the bank for a person absolutely entitled to the money held in the account.

(2) A bank at which a licensee keeps an account for clients' money has no recourse (whether by way of set-off, counter-claim, charge or otherwise) against money held in the account in respect of any liability of the licensee to the bank other than a liability in respect of the account.

30

Division 3—Inspection of trust accounts and investigations generally**Appointment of trust account inspectors etc.**

39. (1) The Council:

- 5 (a) may appoint trust account inspectors to inspect, either generally or in a particular case, the accounts kept by licensees under Division 2; and
- (b) may, after consultation with the Association, appoint an investigator to investigate the affairs of a particular licensee.
- 10 (2) A trust account inspector may exercise the functions of an investigator in the course of any inspection of accounts carried out by the inspector.
- (3) A trust account inspector or an investigator may appoint an assistant to assist in the conduct of inspections or investigations.
- 15 (4) Trust account inspectors and investigators are referred to in this Division as inspectors.

Production of records

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

Maximum penalty: 10 penalty units.

(3) If a record:

- 35 (a) is not in writing; or
- (b) is not written in English; or
- (c) is not decipherable on sight,

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

(4) A person who complies with a requirement under this section is not subject, merely because of that compliance, to any liability, claim or demand. 5

Inspectors' reports

41. An inspector:

- (a) must send a copy of his or her report to the licensee (at the address of the licensee last known to the Council) and further copies to the Association and the Council; and 10
- (b) must provide the Minister with a copy of the report if the report indicates that there are reasonable grounds for suspecting professional misconduct, unsatisfactory professional conduct or irregularity in relation to the affairs of the licensee. 15

Costs of inspection and investigation

42. (1) The amount of the costs of an inspection or investigation, as certified by the Council, is a debt due to the Law Society by the licensee under inspection or investigation:

- (a) if the inspector states in his or her report that there is evidence that the licensee is guilty of professional misconduct or unsatisfactory professional conduct in relation to the affairs investigated or is guilty of an offence against this Act or the regulations; and 20
- (b) if the Council is of the opinion that the conduct or breach was wilful or of a substantial nature. 25

(2) The Council may waive payment of costs under this section.

(3) If the inspection or investigation concerned relates to the accounts or affairs of a firm of licensees, the Council may determine the proportion or amount (if any) of the debt due to the Law Society payable by each licensee involved. 30

Secrecy

43. (1) It is an offence for an inspector, unless making a requirement under this Division, or for an inspector's assistant, to make an unauthorised disclosure:

- (a) of the appointment of the inspector or assistant; or 35
- (b) of any matter that comes to his or her notice in the course of the inspection or investigation; or

(c) of anything in the inspector's report.

Maximum penalty: 10 penalty units.

(2) Subsection (1) is not contravened:

(a) if an inspector discloses anything to his or her assistant; or

5 (b) if an inspector's assistant discloses anything to the inspector.

(3) A member of the Council, or a solicitor, officer or agent of the Law Society, must not make an unauthorised disclosure:

(a) of the appointment of an inspector or of an inspector's assistant; or

(b) of anything in an inspector's report.

10 Maximum penalty: 10 penalty units.

(4) Subsection (3) is not contravened:

(a) if an inspector states in his or her report that there is evidence of professional misconduct, unsatisfactory professional conduct or irregularity in relation to the affairs inspected or investigated; and

15 (b) if a member of the Council, or a solicitor, officer or agent of the Law Society, discloses information in the report to a person to whom the Council decides that the information should be disclosed.

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

20 (a) the Minister; or

(b) a member of the Committee, the Association or the Council; or

(c) any insurer of the Association; or

(d) a solicitor, agent or officer of the Committee, the Law Society, the Association or any insurer of the Association; or

25 (e) the Supreme Court; or

(f) the Panel, the Board or the Tribunal; or

(g) a police officer; or

(h) a person to whom a copy of the report is required by this Act to be sent.

30 **Obstruction of inspectors etc.**

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

Maximum penalty: 10 penalty units.

PART 4—CLAIMS ARISING FROM FAILURES TO ACCOUNT

Division 1—Preliminary

Definitions

45. In this Part:

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“associate” has the same meaning as it has in Part 5;

“failure to account” has the meaning given to it by section 46;

“pecuniary loss” includes:

(a) the costs of a claimant that are due to a failure to account; and

(b) the costs involved in making a claim; and

10

(c) interest that, but for a failure to account, would have been received by a claimant, calculated to the date on which the claim succeeds, being interest at a rate up to, but not exceeding, the rate prescribed by the Supreme Court Rules in respect of unpaid judgments as at that date.

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Failure to account

46. (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

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(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:

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(c) for which the licensee or associate has been convicted of an offence involving dishonesty; or

(d) which the Association has found to be dishonest.

(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.

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(3) A finding by the Association that an act or omission is, or is not, dishonest is conclusive for the purposes of subsection (1).

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Division 2—Fidelity insurance**Association to take out fidelity insurance**

47. (1) The Association must ensure that an approved policy of fidelity insurance is in force at all times in relation to all licensees.
- 5 (2) A policy of fidelity insurance is an approved policy if the insurer and the terms of the policy (including the financial limits of any cover provided by the policy) are approved by the Committee.
- (3) The Committee must consult with the Council and the Association before approving an insurance policy for the purposes of this section and must consider any representations made by the Council or the Association as to the form of, and as to the terms to be included in, the policy.
- 10 (4) An insurance policy may not be approved for the purposes of this section unless it is in the form of a master policy of fidelity insurance, being a policy that is held by the Association and that indemnifies the Association against all liabilities incurred by the Association under
- 15 Division 3, regardless of when any claim is made in respect of any such liability.

Contributions by licensees

- 20 48. (1) A licensee is liable to pay a contribution to the Association with respect to the approved policy of fidelity insurance held by the Association in respect of any year during which the licensee holds a licence.
- (2) The appropriate contribution is the amount determined from time to time by the Association, with the approval of the Committee, in relation to the licensee or to the class of licensees to which the licensee belongs.
- 25 (3) The appropriate contribution for a licence that is to take effect on or after 1 January in any year is half the contribution that would otherwise be payable.
- (4) The Association may determine different contributions for different licensees or for different classes of licensees and may determine the manner in which, and the time or times at which, a contribution, or an instalment of a contribution, is to be paid.
- 30 (5) The Association is to notify the Committee in the event that any part of a contribution remains due and unpaid.

*Conveyancers Licensing 1992***Division 3—Claims against the Association in respect of failures to account****Claims against the Association**

49. (1) Any person who suffers pecuniary loss as a result of a failure to account by a licensee is entitled to be compensated for the loss by the Association. 5

(2) The Association must notify the Council and the Committee of any claim made against it under this section.

(3) A person is not prevented from making a claim merely because, after the act or omission from which a failure to account arises, a licensee: 10

(a) dies; or

(b) ceases to conduct a conveyancing business; or

(c) ceases to hold a licence.

(4) If a licensee authorises a person to operate on an account for clients' money kept by the licensee at a bank, an act or omission by the person in relation to those operations is, for the purposes of this Division, an act or omission of an agent of the licensee. 15

(5) A claim must be made:

(a) within 3 months after the claimant becomes aware of the failure to account; or 20

(b) within such further time as the Association allows; or

(c) if the Association refuses to allow further time—within such further time as the Supreme Court allows.

Reimbursement of licensees and others 25

50. (1) If, in respect of a failure to account by a licensee's associate:

(a) all claims (other than claims under this section) have been met; and

(b) the licensee has paid compensation for a pecuniary loss due to the failure to account; and

(c) the licensee has, in the opinion of the Association, at all times acted honestly and reasonably in relation to the failure to account, 30

the licensee may make a claim as if the compensation paid by the licensee were a pecuniary loss suffered as a result of the failure to account.

(2) A reference in this section to a licensee includes a reference to:

(a) a former licensee; and 35

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- (b) in relation to the payment of compensation and the making of a claim—the personal representative of a deceased licensee or a deceased former licensee.

Final date for making claims

- 5 **51.** (1) If the Association has reason to believe that there has been or may have been a failure to account, it may publish:
- (a) in a newspaper published and circulating in the district in which the licensee is, or was, carrying on business; and
 - (b) in a newspaper published and circulating in Sydney,
- 10 a notice that fixes a date on or before which claims relating to the failure must be made.
- (2) The date fixed by the notice must be a date that is not earlier than 3 months after its first or only publication and a claim made after that date is barred unless:
- 15 (a) further time is allowed by the Association; or
- (b) if the Association refuses to allow further time, further time is allowed by the Supreme Court.
- (3) The publication in a newspaper in good faith of a notice under this section does not subject:
- 20 (a) the Association; or
- (b) a member, employee or agent of the Association; or
- (c) the proprietor, editor or publisher of the newspaper,
- to a liability to any person.
- (4) The Association may, after such date as it may fix in each case, pay
- 25 successful claims.

Claims must be pursued

- 52.** (1) The Association may give a claimant not less than 21 days' written notice requiring the claimant:
- (a) to take such steps for the purpose of pursuing the claim; or
 - 30 (b) to supply such particulars in connection with the claim; or
 - (c) to produce or deliver to it any securities or documents necessary or available to support the claim or to enable it to establish any rights of the Association against a licensee or an associate of the licensee; or
 - 35 (d) to do such things in connection with the claim,
- as are specified in the notice.

- (2) If the claimant fails to comply with the notice, the Association:
- (a) may wholly or partly disallow the claim; or
 - (b) may direct that the whole, or a specified part, of any interest otherwise payable be not paid.

Determination of claims

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53. (1) After considering a claim, the Association may determine the claim:

- (a) by allowing the claim, either wholly or in part; or
- (b) by disallowing the claim.

(2) A claim is not to be allowed, either wholly or in part, unless the Association is satisfied that there has been a failure to account by the licensee to whom the claim relates and that the claimant has suffered pecuniary loss as a result of that failure. 10

(3) If a claim is allowed in part only, there is to be paid to the claimant by the Association, in respect of costs incurred by the claimant as a result of the failure to account, an amount assessed: 15

- (a) by agreement between the claimant and the Association; or
- (b) in default of agreement—as if taxed on a reference for taxation under Division 5 of Part 11 of the Legal Profession Act 1987.

(4) If a claim is disallowed but the Association determines that a specified amount should be paid in respect of costs incurred by the claimant as a result of the failure to account, that amount is to be paid to the claimant by the Association. 20

(5) The Association must cause notice to be given to the Council of any determination under this section within 7 days after the determination is made. 25

(6) Even if a successful claim does not include a claim for interest, there is payable to the claimant by the Association interest at the rate prescribed by the regulations on:

- (a) the amount allowed by the Association; or 30
- (b) the amount of the judgment recovered against the Association,

from the date on which the claim was made until the date on which it succeeded.

Avoidance of double compensation

54. (1) If, in respect of a claim, a claimant: 35
- (a) receives a payment from the Association; and

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(b) receives or recovers from another source a payment on account of the pecuniary loss,

the claimant is liable to pay to the Association the amount of surplus (if any) after deducting from the total amount received or recovered by the claimant the amount of the pecuniary loss.

(2) If, in respect of a claim, a claimant:

(a) receives or recovers from a source other than the Association a payment on account of the pecuniary loss; and

(b) recovers judgment against the Association,

the amount of any such judgment against the Association is reduced by the amount of surplus (if any) after deducting from the total amount received or recovered (including the amount of the judgment) by the claimant the amount of the pecuniary loss.

(3) Any amount payable to the Association under subsection (1) is a debt due to the Association by the licensee.

Ceiling on payments by the Association

55. (1) The maximum aggregate amount that is payable by the Association in respect of all failures to account by the same licensee or firm of licensees is such amount as the Association may, after consultation with the Committee, determine.

(2) The Association may make a payment that, but for this subsection, could not be made because of the limit imposed by subsection (1) if it is satisfied, after taking into account all of its ascertained and contingent liabilities, that it would be reasonable to do so.

Proceedings against the Association

56. (1) An action does not lie against the Association in respect of its determination of a claim otherwise than as provided by this section.

(2) If the Association wholly or partly disallows a claim relating to a failure to account in respect of which a licensee or associate has been convicted of an offence involving dishonesty:

(a) the claimant may take proceedings in the Supreme Court as for a debt due by the Association; and

(b) in any such proceedings, the defences that would have been available to the licensee are available to the Association.

(3) If the Association wholly or partly disallows a claim, it must, without delay, give written notice of the disallowance to the claimant or the claimant's solicitor.

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(4) A claimant whose claim is wholly or partly disallowed, or whose claim is not determined by the Association within the time prescribed by the regulations, may appeal to the Supreme Court against the disallowance of or the failure to determine the claim.

(5) On an appeal under this section, the Supreme Court may make such order as it thinks fit. 5

(6) A claimant may take proceedings under either subsection (2) or subsection (4).

Association subrogated to rights etc. of claimants

57. (1) On payment being made under a claim, the Association is subrogated to all the rights and remedies of the claimant against: 10

(a) the licensee or associate in respect of whom the claim was made; or

(b) the person authorised to administer the estate of any such licensee who is deceased or bankrupt; or

(c) any other person, 15

in relation to the failure to account.

(2) This section does not extend to a right or remedy against a licensee who is a partner of a claimant and who, in the opinion of the Association, acted honestly and reasonably in relation to the failure to account.

(3) The Association may exercise its rights or remedies under this section in its own name or the name of the claimant. 20

(4) If the Association brings proceedings under this section in the name of a claimant, the Association indemnifies the claimant against any costs awarded against the claimant in the proceedings.

Insufficiency of the assets of the Association 25

58. (1) If the assets of the Association are at any time insufficient to meet the liabilities to which the Association is subject under this Division:

(a) the Association may determine the manner of division among the successful claimants, or any of them to the exclusion of the others, of the money for the time being available; and 30

(b) the judgments and claims are, subject to any limitations imposed by this Act, to be finally satisfied from future assets of the Association.

(2) Proceedings based on, or for the enforcement of, a judgment against the Association in respect of a claim may not be taken without the leave of the Supreme Court. 35

PART 5—MANAGEMENT AND RECEIVERSHIP**Division 1—Preliminary****Definitions**

59. In this Part:

- 5 **“associate”**, in relation to a licensee, has the meaning given to it by section 60;
- “expenses”**, in relation to management or receivership, means:
- (a) the remuneration payable to the manager or receiver; or
- 10 (b) the expenses incurred in the course of the management or receivership; or
- (c) the costs of legal proceedings involved in the management or receivership; or
- (d) any reimbursement of the manager or receiver under section 67 or 92;
- 15 **“failure to account”** has the meaning given to it by section 61;
- “licensee”** includes:
- (a) a firm of licensees; and
- (b) a former licensee; and
- 20 (c) in relation to anything done or omitted by a licensee—a deceased licensee and a deceased former licensee; and
- (d) except in relation to anything done or omitted by a licensee—the personal representative of a deceased licensee or a deceased former licensee;
- “property”**, in relation to a licensee, means:
- 25 (a) money or other property received by the licensee on behalf of another person in the conduct of a conveyancing business; or
- (b) interest, dividends, income, profits or other property derived from or acquired with money or other property referred to in paragraph (a); or
- 30 (c) documents and records of any description relating to anything referred to in paragraph (a) or (b) or to the licensee’s conveyancing business; or
- (d) any means by which any records referred to in paragraph (c) that are not written may be reproduced in writing,
- 35 and, in relation to a licensee whose conveyancing business is under management, includes any property of the business;

- “receivable property”** means property of a licensee or an associate of a licensee that is the subject of an order appointing a receiver, and includes property that, but for its having being taken, paid or transferred unlawfully or in breach of trust, would be receivable property; 5
- “receiver”** means a receiver appointed by the Supreme Court under section 74;
- “relevant associate”** means a licensee’s associate of whose property a receiver has been appointed under section 75;
- “relevant licensee”** means a licensee of whose property a receiver has been appointed. 10

Associate

60. (1) In this Part, a reference to a licensee’s associate is a reference to:

- (a) a partner of the licensee; or 15
- (b) an employee or agent of the licensee; or
- (c) a corporation, or a member of a corporation, partnership, syndicate or joint venture, in which the licensee or a person referred to in paragraph (a), (b) or (d) has a beneficial interest; or
- (d) a person who bears a prescribed relationship to the licensee or to a person referred to in paragraphs (a)–(c); or 20
- (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 Law; or
- (f) a person declared by the regulations to be an associate of the licensee or belonging to a class of persons so declared. 25

(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 within the meaning of the De Facto Relationships Act 1984; or 30
- (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.

Failure to account

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61. (1) In this Part, **“failure to account”** means a failure by a licensee to account for, pay or deliver money or other valuable property:

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- (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
- 5 (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:

- 10 (c) for which the licensee or associate has been convicted, or is likely to be convicted, of an offence involving dishonesty; or
- (d) which the Council has found, or is likely to find, to be dishonest.

(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
15 received by or entrusted to the licensee as trustee, agent, bailee or stakeholder, or in any other capacity.

(3) A finding by the Council that an act or omission is, or is not, dishonest is conclusive for the purposes of subsection (1).

Division 2—Management**20 Appointment of manager**

62. (1) The Council may appoint a manager for a licensee's conveyancing business if:

- (a) the licensee has made a request to the Council for the appointment of a manager; or
- 25 (b) the Council has suspended or cancelled the licensee's licence under section 20; or
- (c) the Council is of the opinion (whether as a consequence of a determination by the Association under Part 4 or otherwise) that there has been, or that there may have been, a failure to account by
30 the licensee; or
- (d) the Council is of the opinion that a person is unable to obtain payment or delivery of property held by the licensee because the licensee:
 - is mentally or physically infirm; or
 - 35 • 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

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- is a prisoner within the meaning of the Prisons Act 1952; or
- has died; or
- has abandoned his or her conveyancing business,

and if the Council is of the opinion that it is necessary to make the appointment in order to protect the interests of other persons. 5

(2) In the case of a conveyancing business that is conducted by 2 or more licensees in partnership, a reference in subsection (1) to a licensee is to be read as a reference to all of the licensees in the partnership.

(3) The terms of appointment of a manager must specify the remuneration to which the manager is to be entitled in connection with the management of the conveyancing business for which the manager is appointed. 10

(4) The Council must cause notice to be given to the Committee and the Association of any appointment under this section within 7 days after the appointment is made. 15

Qualifications for appointment as manager

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

Powers of manager 20

64. (1) The manager of a licensee's conveyancing business may, subject to subsection (2) and to the terms of his or her appointment:

- (a) carry out conveyancing work on behalf of the existing clients of the business; and
- (b) accept instructions from, and carry out conveyancing work on behalf of, new clients; and 25
- (c) dispose of, and otherwise deal with, any property in relation to the business; and
- (d) exercise any right in the nature of a lien over property held by the manager on behalf of the clients of the business; and 30
- (e) incur such expenses as are reasonably related to the conduct of the business; and
- (f) do all such things as are ancillary to the exercise of the powers referred to in paragraphs (a)–(e),

as if he or she were the licensee to whom the business belongs. 35

(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.

5 Management continues under receivership

65. (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.

- 10 (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.

Acts of manager to be taken as acts of licensee

- 15 66. (1) An act done by the manager of a licensee's conveyancing business is, for the purposes of any proceedings or transaction that relies on that act, taken to have been done by the licensee.

(2) Nothing in this section subjects a licensee to any personal liability in relation to any act done by the manager of the licensee's conveyancing business.

20 Manager may be reimbursed for damages

67. (1) The Law Society 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.

- 25 (2) Reimbursement under this section is to be by way of payment from the Statutory Interest Account.

- 30 (3) Neither the manager of a licensee's conveyancing business nor the Law Society is liable for any loss incurred by the licensee as a consequence of any act or omission of the manager or the Council 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.

Payment of expenses of management

- 35 68. (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 Law Society from the Statutory Interest Account.

(2) An amount paid under this section is recoverable by the Law Society as a debt owed by the relevant licensee.

Manager to report to Council and Association

69. (1) The manager of a licensee's conveyancing business must:

(a) at such times as are fixed by the Council; and

(b) in accordance with any directions given by the Council,

report to the Council and to the Association on the management of the business.

(2) A report is to include such information as the Council directs.

(3) On the conclusion of the management of a licensee's conveyancing business, the manager must, when giving the Council his or her final report, lodge with the Council all the manager's records that relate to the management.

Trust money

70. (1) Division 2 of Part 3 applies to the accounts kept by a manager in the same way as it applies to the accounts kept by a licensee.

(2) The trust accounts and controlled money accounts of a conveyancing business under management are to be maintained separately from the trust accounts and controlled money accounts of any other conveyancing business under management.

Office accounts

71. The regulations may make provision with respect to:

(a) the accounts that are to be kept in relation to the income accrued, and the expenses incurred, by the manager of a licensee's conveyancing business in connection with the conduct of the business; and

(b) the purposes for which money in any such account may be expended.

Termination of management

72. 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 Statutory Interest 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.

Obstruction of managers

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

Maximum penalty: 50 penalty units.

5 **Division 3—Receivership**

Supreme Court may appoint receiver

74. (1) The Supreme Court may, on the application of the Law Society, 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
10 of the application or is a party to the proceedings.

(2) Such an application may be made by the Law Society only if:

- (a) the licensee has made a request to the Council for the appointment of a receiver; or
- 15 (b) the Council has suspended or cancelled the licensee's licence under section 20; or
- (c) the Council is of the opinion (whether as a consequence of a determination by the Association under Part 4 or otherwise) that there has been, or that there may have been, a failure to account by the licensee; or
- 20 (d) the Council is of the opinion that a person is unable to obtain payment or delivery of property held by the licensee because the licensee:
 - is mentally or physically infirm; or
 - 25 • is bankrupt, has applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, has compounded with his or her creditors or has made an assignment of his or her remuneration for their benefit; or
 - is a prisoner within the meaning of the Prisons Act 1952; or
 - has died; or
 - 30 • has abandoned his or her conveyancing business,

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

(3) The Council must cause notice to be given to the Committee and the Association of any application under this section within 7 days after
35 the application is made.

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

Receivership may extend to property of licensee's associate

75. If, on the application of a receiver, the Supreme Court is satisfied that all or any of the property of a licensee's associate should be declared to be receivable property, the Court may appoint the receiver to be the receiver of all or any of that property. 5

Court to be closed

76. (1) Before commencing to hear an application for the appointment of a receiver, the Supreme Court may order from the precincts of the Court any person who is not: 10

- (a) an officer of the Court; or
- (b) a party, a legal representative of a party or a clerk of such a legal representative; or 15
- (c) a member of the same firm of licensees as the respondent; or
- (d) a person who is in the course of giving evidence; or
- (e) a person permitted by the Court to be present in the interests of justice.

(2) The Supreme Court may, whether or not at the instance of a party, prohibit the publication of any report relating to the evidence or other proceedings or of any order made on the hearing of an application for the appointment of a receiver. 20

Order to be served

77. (1) On the appointment of a receiver, the Council is to cause a copy of the order of appointment to be served on: 25

- (a) the relevant licensee or relevant associate; and
- (b) any other person on whom the Supreme Court directs a copy of the order to be served.

(2) The Supreme Court may give directions as to the manner of service and may dispense with service if it thinks fit. 30

Receiver may take possession of property

78. (1) A receiver may take possession of receivable property of the relevant licensee or relevant associate.

(2) A person in possession, or having control, of receivable property must permit the receiver to take possession of the property if required by the receiver to do so.

5 (3) If a person fails to comply with such a requirement, the Supreme Court may, on the application of the receiver, order the person to deliver the property to the receiver.

(4) If, on the application of a receiver, the Supreme Court is satisfied that such an order has not been complied with, the Court:

10 (a) may order the seizure of any receivable property located on premises specified in the order; and

(b) may make such further order in the matter as it thinks fit.

(5) An order under subsection (4) (a) authorises:

(a) any police officer; or

15 (b) the receiver, or a person authorised by the receiver, together with any police officer,

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

(6) An application by a receiver under subsection (3) may be made:

20 (a) in the case of property in the possession, or under the control, of the relevant licensee or relevant associate—in the name of the receiver; or

(b) in any other case—in the name of the relevant licensee or relevant associate.

25 (7) A receiver must, as soon as possible, return property seized under this section if it transpires that it is not receivable property.

Information about receivable property

30 79. (1) A person who has information relating to receivable property, or property that a receiver believes on reasonable grounds to be receivable property, must give the information to the receiver if required by the receiver to do so.

Maximum penalty: 50 penalty units.

(2) A licensee who has any such information may not refuse to comply with such a requirement merely because the information was obtained in confidence from a client or former client of the licensee.

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

(4) Information given to a receiver under this section is not admissible as evidence in any legal proceedings, other than:

- (a) proceedings taken by a receiver for the recovery of receivable property; or
- (b) proceedings taken under this Part; or 5
- (c) proceedings taken under Part 6 against a licensee:
 - if the information was given to the receiver otherwise than by the licensee; or
 - if the information was given to the receiver by the licensee and is given in evidence in those proceedings with the licensee's consent. 10

Stop order on bank account

80. (1) A receiver who believes on reasonable grounds that money held in a bank account is receivable property may serve on the bank 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. 15

(2) A stop order may be served by leaving it with the manager, accountant or other person appearing to be in charge at the branch of the bank at which the account is kept, but has no effect unless there is annexed to it a copy of the order appointing the receiver. 20

(3) A bank served with a stop order:

- (a) must permit the receiver, or a person authorised by the receiver, to operate on the account to which the order relates; and
- (b) must not permit any withdrawal from the account otherwise than by, or by the authority of, the receiver. 25

(4) A receiver may transfer money from an account the subject of a stop order to another account with the bank in the name of the receiver to be dealt with as receivable property.

(5) The bank has the same obligations and protections: 30

- (a) in relation to an account the subject of a stop order; and
- (b) in relation to an account to which money in such an account is transferred,

as if the receiver were the relevant licensee or relevant associate.

Improper dealing with property 35

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

- (a) operate on a bank account; or
- (b) destroy or conceal receivable property or property that is likely to become receivable property; or
- 5 (c) move receivable property, or property that is likely to become receivable property, from one place to another; or
- (d) deliver possession of receivable property, or property that is likely to become receivable property, to another person; or
- (e) deliver control of receivable property, or property that is likely to become receivable property, to another person.
- 10 Maximum penalty: 20 penalty units.

Recovery of compensation for disposal of receivable property

82. (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:

- 15 (a) the person knew or believed at the time that the taking, payment or transfer was unlawful or in breach of trust; or
- (b) there was no consideration for the taking, payment or transfer; or
- (c) there was inadequate consideration for the taking, payment or transfer; or
- 20 (d) the person became indebted or otherwise liable to the relevant licensee or relevant associate, or to a client of the licensee, as a result of the taking, payment or transfer,

the receiver may recover from the person, as a debt, the amount taken, paid or transferred, the amount of the inadequacy or the amount of the debt, as the case may be.

(2) A person from whom an amount is recovered under subsection (1) is not liable to any other person in respect of the amount.

(3) If receivable property has at any time been paid or transferred unlawfully or in breach of trust to, or for the benefit of, a person in respect of a cause of action the person claims to have against another person, the receiver:

- (a) may recover from the person as a debt the amount of the payment or the value of the property; or
- 35 (b) to the extent to which the full amount or value is not recovered from the person under paragraph (a)—may take such proceedings in relation to the claimed cause of action as the person could have taken.

(4) If a receiver takes proceedings under subsection (3) (b) in relation to a cause of action claimed by a person, the receiver may not later take proceedings under subsection (3) (a) to recover property paid or transferred to the person in respect of the same cause of action.

(5) If receivable property is used unlawfully or in breach of trust to discharge a debt or liability of a person, the receiver may recover from the person as a debt the amount that was required for the discharge of the debt or liability, reduced by the value of any consideration provided by the person for the discharge. 5

(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

Receiver may give certificate

83. (1) A receiver, or a person authorised by the Council, may give a certificate as to any one or more of the following: 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;
- (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
- (c) the payment of money, the amount of money paid, the date of the payment and the identity of the person who received the payment;
- (d) the entries made in the records of a licensee or a licensee's associate and the truth or falsity of the entries; 25
- (e) the use of property unlawfully or in breach of trust.

(2) A certificate under this section is admissible in any proceedings taken by a receiver under this Division and is evidence of the matters specified in the certificate. 30

Receiver taken to be beneficially entitled to property

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

(2) If receivable property has been taken by, or paid or transferred to, a person or otherwise used unlawfully or in breach of trust, a receiver may 35

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.

Receiver may deal with property

- 5 **85.** (1) A receiver may deal with receivable property in any manner in which the relevant licensee or relevant associate could, had the receiver not been appointed, have dealt with it.

- (2) A receiver must, as soon as possible after receiving receivable property, vest the property in the person on whose behalf it was held by
10 the relevant licensee or relevant associate.

Other powers of receiver

- 86.** (1) A receiver:
- (a) may prove, grant, claim or draw a dividend in respect of a debt that is receivable property; and
 - 15 (b) may take proceedings to recover damages for a tort committed in relation to receivable property; and
 - (c) may give a receipt for money that is receivable property; and
 - (d) may employ a person to advise or act in relation to receivable property,
 - 20 in the name of the receiver or in the name of the relevant licensee or relevant associate.

 (2) A receipt given to a person under subsection (1) (c) discharges the person from any responsibility to see the application of the money for which the receipt was given.

- 25 (3) A receiver is not, in the exercise of his or her functions as a receiver, a personal representative of a deceased licensee.

Notice to claim receivable property

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

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

- (2) A claim submitted in response to such a notice must state:
- (a) full particulars of the property; and
 - (b) the grounds of the claim.
- (3) A receiver may disregard a claim made by a licensee, a licensee's associate or any other person who has been given a notice under this section if the claim is not made in accordance with the notice. 5
- (4) The relevant licensee or relevant associate is not entitled:
- (a) to enforce a claim to receivable property; or
 - (b) except against a client—to the benefit of a lien against a document that is receivable property, 10
- unless all other enforceable claims against the property have been satisfied and the expenses of the receivership paid.

Lien for costs on receivable property

88. (1) If a licensee claims a lien for costs on receivable property, the receiver may serve on the licensee a written notice requiring the licensee to give to the receiver, within a specified period of not less than 1 month: 15
- (a) particulars sufficient to identify the property; and
 - (b) a detailed bill of costs.
- (2) The notice, or a subsequent written notice served on the licensee, may require the licensee to tax the bill of costs within a reasonable time specified in the notice. 20
- (3) If the licensee requests the receiver in writing to allow access to receivable property to enable the licensee to tax a bill of costs, the time allowed for taxation does not begin to run until access is provided.
- (4) If a requirement of a notice under this section is not complied with, the receiver may disregard the claim in dealing with the property claimed to be subject to a lien. 25

Examination by receiver

89. (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. 30
- (2) On an examination under this section:
- (a) the licensee or other person may be represented by a solicitor or barrister; and
 - (b) the Supreme Court may put, or allow to be put, to the licensee or other person such questions as it thinks fit. 35

(3) The licensee or other person may be examined on oath or affirmation.

(4) The licensee or other person is compellable to answer all questions asked in the course of the examination, including any question to which
5 an objection is made on the ground that the answer would tend to incriminate the licensee or other person.

(5) An answer given by a licensee or other person to a question to which such an objection is made is not admissible in any criminal proceedings other than proceedings relating to the falsity of the answer.

10 **Property not dealt with by receiver**

90. (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 Council and:

15 (a) if the Council so requires within 1 month after the notice is given—must transfer and deliver the property to the Law Society; or

(b) if no such requirement is made—must transfer and deliver the property to the relevant licensee or relevant associate.

20 (2) If property other than money is transferred or delivered to the Law Society under this section, the Law Society:

(a) must deal with it as the Supreme Court directs; and

(b) if the property is sold—must treat the proceeds as money paid to it under this section.

(3) The Law Society must apply money paid to it under this section:

25 (a) firstly—towards the satisfaction of wholly or partly unsatisfied claims against the relevant licensee; and

(b) secondly—in payment of the expenses of the receivership.

(4) Any money paid to the Law Society under this section that is surplus to the requirements of this section must be paid to the relevant
30 licensee or relevant associate.

Investment of money by receiver

91. (1) A receiver may invest receivable property in any manner in which trustees are authorised by the Trustee Act 1925 to invest trust funds.

35 (2) Income received from an investment under this section, and any profit made on the sale of such an investment, is receivable property.

Receiver may be reimbursed for damages

92. (1) The Law Society 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. 5

(2) Reimbursement under this section is to be by way of payment from the Statutory Interest Account.

Payment of expenses of receivership

93. (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 Law Society from the Statutory Interest Account. 10

(2) An amount paid under this section may be recovered by the Law Society from the relevant licensee as a debt.

(3) If the Law Society and a receiver fail to agree on the remuneration to be paid to the receiver, the Supreme Court may, on the application of the Law Society or the receiver, determine the amount to be paid. 15

(4) The Supreme Court, on the application of the relevant licensee:

(a) may re-open any agreement between the Law Society and a receiver for remuneration of the receiver; and

(b) may determine the amount to be paid. 20

Supreme Court may review expenses of receivership

94. (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 Law Society and the receiver. 25

(2) After the taking of accounts, the Supreme Court:

(a) may relieve the relevant licensee from payment of any amount in excess of that determined by the Supreme Court to be fairly payable; or

(b) if the receiver has been paid, or allowed on account, an amount that includes such an excess—may order the receiver to repay the excess. 30

Receivable property not to be attached

95. 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. 35

Applications for directions by receiver, licensee etc.

5 **96.** (1) A receiver, a licensee or a licensee's associate who holds receivable property, or a person who claims receivable property so held, may apply to the Supreme Court for directions as to the performance of the receiver's functions.

 (2) On an application under this section, the Supreme Court may give such directions as it thinks fit.

Supreme Court may give general directions to receiver

97. (1) The Supreme Court:

- 10 (a) may authorise a receiver to do such things in the exercise of the receiver's functions as the Supreme Court considers appropriate; and
 (b) may give directions for the exercise of any such authority.

15 (2) A receiver must exercise any authority so conferred in accordance with any direction so given.

Receiver to report to the Supreme Court etc.

98. (1) A receiver must, at such times and in respect of such periods as the Supreme Court directs, submit to the Supreme Court, and to the Council and the Association, reports on the receivership.

20 (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.

25 (3) On the conclusion of a receivership, the receiver must lodge with the Supreme Court all of the receiver's records that relate to the receivership.

 (4) Unless the Supreme Court orders their destruction, records lodged under this section are to remain in the custody of the Court.

Termination of appointment of receiver

99. (1) The Supreme Court:

- 30 (a) may terminate the appointment of a receiver; and
 (b) may, if it thinks fit, appoint a new receiver either immediately or at any time within the next 14 days.

 (2) The former receiver must transfer or deliver the receivable property:

- 35 (a) if a new receiver is appointed—to the new receiver in accordance with any directions given by the Supreme Court; or

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- (b) if a new receiver is not appointed and if the relevant licensee or relevant associate so requires by notice in writing served on the receiver—to the licensee or associate.

Maximum penalty: 10 penalty units.

- (3) The receivable property must, in accordance with any directions given by the Supreme Court, be transferred or delivered as soon as possible after the former receiver's appointment is terminated. 5

- (4) A former receiver is not required to comply with the requirements of this section unless:

- (a) the expenses of the receivership have been paid to the Law Society; or 10

- (b) the Council otherwise directs in relation to those expenses.

- (5) Subject to any direction given by the Supreme Court, a former receiver may transfer or deliver receivable property to the relevant licensee or relevant associate without having been given a notice under subsection (2) (b). 15

Obstruction of receivers

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

Maximum penalty: 50 penalty units. 20

PART 6—DISCIPLINARY PROCEEDINGS

Division 1—Preliminary

Application to ex-licensees

101. This Part applies to and in respect of a person against whom a complaint of unsatisfactory professional conduct or professional misconduct has been made (being a person who was a licensee when the conduct allegedly occurred but who is no longer a licensee) as if the person were still a licensee. 25

Conduct amounting to an offence

102. Action may be taken under this Part in relation to any conduct that is alleged to be unsatisfactory professional conduct or professional misconduct: 30

- (a) whether or not the conduct constitutes an offence; and

- (b) whether or not the person against whom the action is taken has been prosecuted or convicted for an offence arising out of the conduct.

The Legal Profession Conduct Review Panel

- 5 **103.** (1) The Legal Profession Conduct Review Panel may include, for the purposes of this Act, 1 or more licensees.
- (2) A reference to a solicitor in Schedule 4 to the Legal Profession Act 1987 is to be read as including a reference to a licensee.
- 10 (3) In this section, a reference to a licensee is a reference to the holder of a licence that is free of any conditions other than conditions of the kind referred to in section 13 (2) (d).

The Legal Profession Standards Board

- 104.** (1) The Legal Profession Standards Board may include, for the purposes of this Act, 1 or more licensees.
- 15 (2) A reference to a solicitor in Schedule 5 to the Legal Profession Act 1987 is to be read as including a reference to a licensee.
- (3) In this section, a reference to a licensee is a reference to the holder of a licence that is free of any conditions other than conditions of the kind referred to in section 13 (2) (d).

20 The Legal Profession Disciplinary Tribunal

- 105.** (1) The Legal Profession Disciplinary Tribunal may include, for the purposes of this Act, 1 or more licensees.
- (2) A reference to a solicitor in Schedule 6 to the Legal Profession Act 1987 is to be read as including a reference to a licensee.
- 25 (3) In this section, a reference to a licensee is a reference to the holder of a licence that is free of any conditions other than conditions of the kind referred to in section 13 (2) (d).

Division 2—Complaints against licensees

Complaints

- 30 **106.** (1) A person may make a complaint to the Council alleging that a licensee is guilty of conduct that may constitute unsatisfactory professional conduct or professional misconduct.
- (2) A complaint:
- (a) must be in writing; and

- (b) must identify the complainant and the licensee against whom the complaint is made; and
- (c) must give particulars of the unsatisfactory professional conduct or professional misconduct that is alleged to have occurred.
- (3) A complainant who has suffered loss as a consequence of the alleged unsatisfactory professional conduct or professional misconduct may, in the complaint, request the making of any one or more of the following orders: 5
 - (a) an order that the licensee waive or repay the whole or part of the fees charged by the licensee in respect of work carried out by the licensee for the complainant; 10
 - (b) an order that the licensee carry out specified work for the complainant free of charge;
 - (c) an order that the licensee waive any lien in respect of a specified document or class of documents; 15
 - (d) an order that the licensee pay to the complainant an amount by way of compensation.
- (4) A complaint that requests the making of such an order must give particulars of the loss suffered by the complainant as a consequence of the alleged unsatisfactory professional conduct or professional misconduct. 20
- (5) The Council must take all reasonable steps to ensure that a person who wishes to make a complaint is given such assistance as is necessary to enable the person to make the complaint in accordance with this section. 25

Council may require further particulars

107. The Council, by notice in writing served on the complainant:
- (a) may require further particulars of any complaint to be given; and
 - (b) may require the complaint, or any further particulars, to be verified by statutory declaration, 30
- within such time as it may specify in the notice.

Summary dismissal of complaints

108. The Council may dismiss a complaint without further investigation:
- (a) if further particulars of the complaint are not furnished, or the complaint or the further particulars are not verified, as required by the Council; or 35
 - (b) if the complaint is frivolous or vexatious.

Investigation of complaints

109. (1) The Council is to conduct an investigation into each complaint made to it under this Division, other than a complaint that has been dismissed under section 108.

- 5 (2) The Council must cause a record of its decision, together with the reasons for its decision, to be kept in respect of each investigation conducted by it under this section.

Consultation with the Committee

110. The Council is not to make any decision with respect to a
10 complaint against a licensee unless:

- (a) it has caused notice to be given to the Committee of the fact that it is conducting an investigation into the complaint and of its preliminary findings with respect to the complaint; and
- 15 (b) it has given the Committee a reasonable opportunity (at least 14 days) within which to comment on those findings; and
- (c) it has given due consideration to any comments made to it by the Committee.

Decisions of the Council

111. (1) If, after it has completed an investigation into a complaint
20 against a licensee, the Council is satisfied:

- (a) that the complaint does not involve any question of unsatisfactory professional conduct or professional misconduct—it must dismiss the complaint; or
- 25 (b) that the complaint involves a question of unsatisfactory professional conduct:
 - it must refer the complaint to the Board; or
 - it must dismiss the complaint; or
- (c) that the complaint involves a question of professional misconduct—it must refer the complaint to the Tribunal.

- 30 (2) The Council may not dismiss a complaint pursuant to subsection (1) (b) unless it is satisfied that the licensee concerned is generally competent and diligent and that no other material complaints have been made against the licensee.

Council may make complaint after consultation with the Committee

- 35 112. The Council may, after consultation with the Committee, make a complaint to the Board or the Tribunal against any licensee if it appears

to the Council that the licensee may be guilty of unsatisfactory professional conduct or professional misconduct.

Division 3—Review of the Council's decisions

Applications for reviews

113. (1) A complainant may apply to the Panel for a review of a decision by the Council to dismiss a complaint made by the complainant, other than a decision to dismiss a complaint the subject of a notice given to the Council under section 116 (2). 5

(2) Such an application must be made, in writing, within 2 months after the decision is made or is deemed to have been made. 10

Composition of the Panel

114. (1) The Panel is, for the purpose of conducting a review under this Division, to be constituted by 1 of its licensee members and 2 of its lay members.

(2) The Chairperson of the Panel is to nominate the persons to constitute the Panel for the purposes of any particular review. 15

(3) The Chairperson of the Panel is to preside at any review for which the Panel is so constituted as to include the Chairperson.

(4) In the case of a review for which the Panel is so constituted as not to include the Chairperson of the Panel, the Chairperson is to nominate one of the other lay members to preside at the review. 20

(5) More than one review may be conducted by the Panel at the same time.

Reviews

115. (1) The Panel is to review each decision to dismiss a complaint the subject of an application made to it under this Division. 25

(2) The Panel must consult with the Council before it completes its review of the decision to dismiss a complaint.

(3) For the purpose of enabling it to review a decision to dismiss a complaint, the Panel is entitled to view: 30

- (a) the record of the Council's investigation of the complaint; and
- (b) all other documents held by the Council in relation to that investigation.

Recommendations of the Panel

116. (1) When the Panel has completed its review of a decision to dismiss a complaint:

- (a) it may uphold the decision; or
 - 5 (b) it may recommend to the Attorney General that the matter be referred to the Board; or
 - (c) it may recommend to the Attorney General that the matter be referred to the Tribunal,
- as it thinks fit.

10 (2) Before making a recommendation under subsection (1) (b) or (c), the Panel is to give notice to the Council of its intention to make the recommendation and of the Panel's reasons for making the recommendation.

(3) The Panel may make such a recommendation only if:

- 15 (a) a period of one month or more has elapsed since notice of its intention to do so was given to the Council under subsection (2); and
- (b) the matter has not been referred to the Board or the Tribunal.

(4) Such a recommendation must be accompanied by a statement of the
20 Panel's reasons for making the recommendation.

Determinations by the Attorney General

117. (1) On receiving a recommendation from the Panel in connection with a complaint, the Attorney General:

- 25 (a) may uphold the decision of the Council with respect to the complaint; or
 - (b) may refer the complaint to the Board; or
 - (c) may refer the complaint to the Tribunal,
- as the Attorney General thinks fit.

30 (2) In exercising the Attorney General's functions under this section, the Attorney General is to take into consideration, but is not bound to follow, the recommendation made by the Panel.

(3) The Attorney General is to cause his or her decision with respect to a complaint, together with his or her reasons for the decision, to be notified to the complainant.

Division 4—Unsatisfactory professional conduct**Composition of the Board**

118. (1) The Board is, for the purpose of conducting a hearing into a complaint, to be constituted by 1 of its solicitor members, 1 of its licensee members and 1 of its lay members. 5

(2) The Chairperson of the Board is to nominate the persons to constitute the Board for the purposes of any particular hearing.

(3) The Chairperson of the Board is to preside at any hearing for which the Board is so constituted as to include the Chairperson.

(4) In the case of a hearing for which the Board is so constituted as not to include the Chairperson of the Board, the Chairperson is to nominate the solicitor member to preside at the hearing. 10

(5) More than one hearing may be conducted by the Board at the same time.

Hearings 15

119. (1) The Board is to conduct a hearing into any complaint made or referred to it under Division 2 or 3.

(2) For the purpose of conducting such a hearing, the Board is not bound to observe the rules of law governing the admission of evidence, but may inform itself of any matter in such manner as it thinks fit. 20

(3) If, in the course of conducting a hearing into a complaint, the Board considers that the complaint involves a question of professional misconduct, the Board:

(a) must terminate the hearing; and

(b) must refer the complaint to the Tribunal to be dealt with in accordance with Division 6. 25

(4) The Board must cause a record of its determination, together with the reasons for its determination, to be kept in respect of each hearing conducted by it under this Division.

(5) If one of the members (not being the presiding member) constituting the Board for the purpose of conducting a hearing under this Division vacates office for any reason referred to in clause 8 of Schedule 5 to the Legal Profession Act 1987: 30

(a) before the Board has completed the hearing; or

(b) before the Board has made a determination in respect of the hearing, 35

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the hearing may be continued, or a determination may be made, by the remaining members of the Board.

- 5 (6) If the remaining members are divided in opinion as to the determination to be made in respect of the hearing, the opinion of the presiding member is to prevail.

(7) However, if the presiding member or more than one other member vacates office for any such reason before the Board has completed the hearing or made a determination in respect of the hearing, the hearing is terminated.

- 10 (8) The Board may, for the purpose of conducting a new hearing into the complaint concerned, be reconstituted in accordance with this Division.

Parties

- 15 120. (1) The following persons are entitled to appear at a hearing into a complaint:

- (a) the licensee against whom the complaint has been made;
- (b) the Council;
- (c) the Attorney General;
- (d) the complainant (if any).

- 20 (2) A complainant is entitled to appear at a hearing only if the complainant has, in his or her complaint, requested the making of an order referred to in section 106 (3).

- 25 (3) A complainant's entitlement to appear at a hearing is limited to those aspects of the hearing that deal with the loss (if any) suffered by the complainant as a consequence of the conduct the subject of the hearing.

(4) The Board may grant leave to any other person to appear at a hearing if the Board is satisfied that it is appropriate for that person to appear at the hearing.

- 30 (5) Any person who is entitled to appear at a hearing, or who is granted leave to appear at a hearing, may appear personally or be represented by a solicitor or barrister or, with the leave of the Board, by any other person.

(6) Any person who appears (otherwise than as a witness) at a hearing is taken to be a party to the hearing.

Hearings to be conducted in camera

- 35 121. (1) A hearing is to be held in the absence of the public.

(2) No persons other than the parties to a hearing and their representatives are entitled to be present at the hearing.

Power to summon witnesses and take evidence

122. (1) A member of the Board or the Registrar of the Board may summon a person to appear at a hearing to give evidence and to produce such documents (if any) as are referred to in the summons. 5

(2) The member of the Board presiding at a hearing may require a person appearing at the hearing to produce a document.

(3) The Board may, at a hearing, take evidence on oath or affirmation and, for that purpose: 10

(a) a member of the Board may require a person appearing at the hearing to give evidence either to take an oath or to make an affirmation in a form approved by the member of the Board presiding at the hearing; and

(b) a member of the Board may administer an oath or affirmation to a person so appearing at the hearing. 15

(4) A person served with a summons to appear at a hearing to give evidence must not, without reasonable excuse:

(a) fail to attend as required by the summons; or

(b) fail to attend from day to day unless excused, or released from further attendance, by a member of the Board. 20

Maximum penalty: 20 penalty units.

(5) A person appearing at a hearing to give evidence must not, without reasonable excuse:

(a) when required to take an oath or make an affirmation—fail to comply with the requirement; or 25

(b) fail to answer a question that the person is required to answer by the member of the Board presiding at the hearing; or

(c) fail to produce a document that the person is required to produce by a summons served under this section. 30

Maximum penalty: 20 penalty units.

Power to obtain documents

123. (1) A member of the Board or the Registrar of the Board may, by notice in writing served on a person, require the person:

(a) to attend, at a time and place specified in the notice, before a person so specified, being a member of the Board or the Registrar of the Board or a person authorised by the Board in that behalf; and 35

(b) to produce, at that time and place, to the person so specified a document specified in the notice.

(2) A person must not, without reasonable excuse, fail to comply with a notice served on the person under this section.

5 Maximum penalty: 20 penalty units.

Release of information

124. (1) The Board may give directions preventing or restricting the publication of evidence given at a hearing or of matter contained in documents produced at a hearing.

10 (2) A person must not make a publication in contravention of a direction given under this section.

Maximum penalty: 20 penalty units.

Determinations of the Board

15 125. (1) If, after it has completed a hearing into a complaint against a licensee, the Board is satisfied that the licensee is guilty of unsatisfactory professional conduct, the Board may do any one or more of the following:

- (a) it may reprimand the licensee;
- 20 (b) it may order that the licensee undertake and complete such course of further legal education as it may specify in the order;
- (c) it may order that the licensee's conveyancing business be subject to periodic inspection by such person or persons, and for such period, as it may specify in the order;
- 25 (d) it may order that the licensee seek advice in relation to the management of his or her conveyancing business from such person or persons as it may specify in the order;
- (e) it may order that the licensee cease to employ in his or her conveyancing business such person or persons as it may specify in the order;
- 30 (f) it may order that the licensee employ in his or her conveyancing business a person belonging to such class of persons as it may specify in the order;
- (g) it may order that the licensee cease to accept instructions in relation to such class of work as it may specify in the order;
- 35 (h) it may order that the licensee pay a fine of such amount (not exceeding 20 penalty units) as it may specify in the order.

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(2) If, after it has completed a hearing into a complaint against a licensee, the Board is satisfied that the licensee is guilty of unsatisfactory professional conduct and that the complainant has suffered loss as a consequence of the conduct, the Board may do any one or more of the following:

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- (a) it may order that the licensee waive or repay the whole, or such part as it may specify in the order, of the fees charged to the complainant by the licensee in respect of such work as it may so specify;
- (b) it may order that the licensee carry out for the complainant such work as it may specify in the order, either free of charge or for such fee as it may so specify;
- (c) it may order that the licensee waive any lien in respect of such document or class of documents as it may specify in the order;
- (d) it may order that the licensee pay to the complainant such amount by way of compensation as it may specify in the order.

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(3) An order (other than an order for the payment of compensation not exceeding \$2,000) may not be made under subsection (2) unless:

- (a) the complainant has, in his or her complaint, requested the making of the order; and
- (b) the complainant and the licensee both consent to the making of the order,

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nor may such an order be made in respect of any loss for which the complainant has received, or is entitled to receive, compensation pursuant to an order of a court.

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(4) The recovery of compensation awarded under this section does not affect any other remedy available to the complainant, but any compensation so awarded is to be taken into account in any other proceedings by or on behalf of the complainant in respect of the same loss.

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(5) In addition to any other order that the Board may make under this section with respect to a licensee whom it has found guilty of unsatisfactory professional conduct, the Board:

- (a) may make ancillary orders; and
- (b) may make orders requiring the licensee to pay such amounts by way of costs (including the costs of the Council and the complainant) as it may determine.

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(6) If, after it has completed a hearing into a complaint against a licensee, the Board is satisfied that the licensee is not guilty of

unsatisfactory professional conduct, the Board may (but only if it considers that special circumstances so warrant) order payment from the Statutory Interest Account to the licensee of such amount, by way of costs, as it may determine.

5 Division 5—Review of the Board's decisions

Applications for reviews

126. (1) Any party to a hearing conducted by the Board may apply to the Tribunal for a review of the Board's determination of a complaint.

(2) The complainant at a hearing conducted by the Board may not
10 make an application under this section except with respect to those aspects of the hearing that deal with the loss (if any) suffered by the complainant as a consequence of the conduct the subject of the hearing.

(3) An application under this section must be made in accordance with the rules of the Tribunal.

15 Composition of the Tribunal

127. (1) The Tribunal is, for the purpose of conducting a review of the Board's determination of a complaint, to be constituted by 1 of its solicitor members, 1 of its licensee members and 1 of its lay members.

(2) The President of the Tribunal is to nominate the persons to
20 constitute the Tribunal for the purposes of any particular review.

(3) The President of the Tribunal is to nominate the solicitor member to preside at the review.

(4) More than one review may be conducted by the Tribunal at the same time.

25 Parties

128. The parties to a hearing the subject of a review under this Division are taken to be the parties to the review.

Reviews

129. (1) The Tribunal is to conduct a review of each determination
30 the subject of an application made to it under this Division.

(2) An application is to be dealt with by way of a new hearing and fresh evidence, or evidence in addition to or in substitution for the evidence received at the original hearing, may be given.

(3) Sections 119–124 apply to and in respect of a review conducted by the Tribunal in the same way as they apply to and in respect of a hearing conducted by the Board.

(4) The Tribunal must cause a record of its decision, together with the reasons for its decision, to be kept in respect of each review conducted by it under this Division. 5

Decisions of the Tribunal

130. (1) The Tribunal:

- (a) may uphold the Board's determination of a complaint; or
- (b) may make any one or more of the orders that the Board could have made in relation to the complaint. 10

(2) The Tribunal's decision in respect of a complaint is final and is to be given effect to as if it were a determination by the Board.

Professional misconduct

131. If the Tribunal considers that a complaint the subject of a determination under review involves a question of professional misconduct, the Tribunal: 15

- (a) may terminate the review; and
- (b) may deal with the complaint in accordance with Division 6 as if the complaint had been made or referred to it under Division 2, 3 or 4. 20

Division 6—Professional misconduct

Composition of the Tribunal

132. (1) The Tribunal is, for the purpose of conducting a hearing into a complaint, to be constituted by 1 of its solicitor members, 1 of its licensee members and 1 of its lay members. 25

(2) The President of the Tribunal is to nominate the persons to constitute the Tribunal for the purposes of any particular hearing.

(3) The President of the Tribunal is to nominate the solicitor member to preside at the hearing.

(4) More than one hearing may be conducted by the Tribunal at the same time. 30

Hearings

133. (1) The Tribunal is to conduct a hearing into any complaint made or referred to it under Division 2, 3 or 4.

(2) For the purpose of conducting such a hearing, the Tribunal must observe the rules of law governing the admission of evidence.

5 (3) The Tribunal must cause a record of its determination, together with the reasons for its determination, to be kept in respect of each hearing conducted by it under this Division.

(4) If one of the members (not being the presiding member) constituting the Tribunal for the purpose of conducting a hearing under this Division vacates office for any reason referred to in clause 7 of Schedule 6 to the Legal Profession Act 1987:

- 10 (a) before the Tribunal has completed the hearing; or
(b) before the Tribunal has made a determination in respect of the hearing,

the hearing may be continued, or a determination may be made, by the remaining members of the Tribunal.

15 (5) If the remaining members are divided in opinion as to the determination to be made in respect of the hearing, the opinion of the presiding member is to prevail.

(6) However, if the presiding member or more than one other member vacates office for any such reason before the Tribunal has completed the
20 hearing or made a determination in respect of the hearing, the hearing is terminated.

(7) The Tribunal may, for the purpose of conducting a new hearing into the complaint concerned, be reconstituted in accordance with this Division.

25 Parties

134. (1) The following persons are entitled to appear at a hearing into a complaint:

- (a) the licensee against whom the complaint has been made;
(b) the Council;
30 (c) the Attorney General;
(d) the complainant (if any).

(2) A complainant is entitled to appear at a hearing only if the complainant has, in his or her complaint, requested the making of an order referred to in section 106 (3).

35 (3) A complainant's entitlement to appear at a hearing is limited to those aspects of the hearing that deal with the loss (if any) suffered by the complainant as a consequence of the conduct the subject of the hearing.

(4) The Tribunal may grant leave to any other person to appear at a hearing if the Tribunal is satisfied that it is appropriate for that person to appear at the hearing.

(5) Any person who is entitled to appear at a hearing, or who is granted leave to appear at a hearing, may appear personally or be represented by a solicitor or barrister or, with the leave of the Tribunal, by any other person.

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(6) Any person who appears at a hearing (otherwise than as a witness) is taken to be a party to the inquiry.

Hearings to be conducted in public

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135. (1) A hearing is to be held in the presence of the public.

(2) The Tribunal may, however, direct that a hearing be held in the absence of the public if it is of the opinion that the absence of the public will be in the interests of justice.

(3) When a hearing is held in the absence of the public, no persons other than the parties to the hearing and their representatives are entitled to be present at the hearing.

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Power to summon witnesses and take evidence

136. (1) A member of the Tribunal or the Registrar of the Tribunal may summon a person to appear at a hearing to give evidence and to produce such documents (if any) as are referred to in the summons.

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(2) The member of the Tribunal presiding at a hearing may require a person appearing at the hearing to produce a document.

(3) The Tribunal may, at a hearing, take evidence on oath or affirmation and, for that purpose:

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(a) a member of the Tribunal may require a person appearing at the hearing to give evidence either to take an oath or to make an affirmation in a form approved by the member of the Tribunal presiding at the hearing; and

(b) a member of the Tribunal may administer an oath or affirmation to a person so appearing at the hearing.

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(4) A person served with a summons to appear at a hearing to give evidence must not, without reasonable excuse:

(a) fail to attend as required by the summons; or

(b) fail to attend from day to day unless excused, or released from further attendance, by a member of the Tribunal.

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Maximum penalty: 20 penalty units.

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(5) A person appearing at a hearing to give evidence must not, without reasonable excuse:

- (a) when required to take an oath or make an affirmation—fail to comply with the requirement; or
- 5 (b) fail to answer a question that the person is required to answer by the member of the Tribunal presiding at the hearing; or
- (c) fail to produce a document that the person is required to produce by a summons served under this section.

Maximum penalty: 20 penalty units.

10 **Power to obtain documents**

137. (1) A member of the Tribunal or the Registrar of the Tribunal may, by notice in writing served on a person, require the person:

- 15 (a) to attend, at a time and place specified in the notice, before a person specified in the notice, being a member of the Tribunal or the Registrar of the Tribunal or a person authorised by the Tribunal in that behalf; and
- (b) to produce, at that time and place, to the person so specified a document specified in the notice.

20 (2) A person must not, without reasonable excuse, fail to comply with a notice served on the person under this section.

Maximum penalty: 20 penalty units.

Release of information

25 138. (1) The Tribunal may give directions preventing or restricting the publication of evidence given at a hearing or of matter contained in documents produced at a hearing.

(2) A person must not make a publication in contravention of a direction given under this section.

Maximum penalty: 20 penalty units.

Determinations of the Tribunal

30 139. (1) If, after it has completed a hearing into a complaint against a licensee, the Tribunal is satisfied that the licensee is guilty of professional misconduct, the Tribunal may do any one or more of the following:

- (a) it may order that the licensee's certificate of eligibility and licence be cancelled;

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- (b) it may order that a certificate of eligibility or licence not be granted to the licensee until the expiration of such period as it may specify in the order;
- (c) it may order that the licensee pay a fine of such amount (not exceeding 250 penalty units) as it may specify in the order. 5
- (2) If, after it has completed a hearing into a complaint against a licensee, the Tribunal is satisfied that the licensee is guilty of unsatisfactory professional conduct, the Tribunal may do any one or more of the things referred to in section 125 (1).
- (3) If, after it has completed a hearing into a complaint against a licensee, the Tribunal is satisfied that the licensee is guilty of unsatisfactory professional conduct or professional misconduct and that the complainant has suffered loss as a consequence of the conduct or misconduct, the Tribunal may do any one or more of the following: 10
- (a) it may order that the licensee waive or repay the whole, or such part as it may specify in the order, of the fees charged to the complainant by the licensee in respect of such work as it may so specify; 15
- (b) it may order that the licensee carry out for the complainant such work as it may specify in the order, either free of charge or for such fee as it may so specify; 20
- (c) it may order that the licensee waive any lien in respect of such document or class of documents as it may specify in the order; or
- (d) it may order that the licensee pay to the complainant such amount by way of compensation as it may specify in the order. 25
- (4) An order (other than an order for the payment of compensation not exceeding \$2,000) may not be made under subsection (3) unless:
- (a) the complainant has, in his or her complaint, requested the making of the order; and
- (b) the complainant and the licensee both consent to the making of the order, 30
- nor may such an order be made in respect of any loss for which the complainant has received, or is entitled to receive, compensation pursuant to an order of a court.
- (5) The recovery of compensation awarded under this section does not affect any other remedy available to the complainant, but any compensation so awarded is to be taken into account in any other proceedings by or on behalf of the complainant in respect of the same loss. 35

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(6) In addition to any other order that the Tribunal may make under this section with respect to a licensee whom it has found guilty of unsatisfactory professional conduct or professional misconduct, the Tribunal:

- 5 (a) may make ancillary orders; and
 (b) may make orders requiring the licensee to pay such amounts by way of costs (including the costs of the Council and the complainant) as it may determine.

10 (7) If, after it has completed a hearing into a complaint against a licensee, the Tribunal is satisfied that the licensee is not guilty of professional misconduct, the Tribunal may (but only if it considers that special circumstances so warrant) order payment from the Statutory Interest Account to the licensee of such amount, by way of costs, as it may determine.

15 **Appeals from orders of the Tribunal**

 140. (1) Any party to a hearing conducted by the Tribunal under this Division may appeal to the Supreme Court against the Tribunal's determination of a complaint.

20 (2) The complainant at a hearing conducted by the Tribunal may not make such an appeal except with respect to those aspects of the hearing that deal with the loss (if any) suffered by the complainant as a consequence of the conduct the subject of the hearing.

 (3) The Supreme Court is to hear and determine an appeal under this section.

25 (4) An appeal is to be by way of a new hearing and fresh evidence, or evidence in addition to or in substitution for the evidence received at the original hearing, may be given.

Division 7—Miscellaneous

Enforcement of orders

30 141. An order of the Board or the Tribunal under this Part is enforceable in the same way as a judgment or order of the Supreme Court.

Payment of fines and costs

35 142. Any fine imposed on a person under this Part is to be paid to the Law Society for credit of the Statutory Interest Account.

Costs of administering Part 6

143. All costs incurred by the Board and the Tribunal in administering this Part are, in accordance with section 67 of the Legal Profession Act 1987, to be paid from the Statutory Interest Account to the Treasurer for credit of the Consolidated Fund.

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Reports

144. (1) The Council must submit to the Attorney General, at such times and in respect of such periods as the Attorney General directs, a report on its investigations into complaints dealt with by it under this Part.

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(2) A report is to deal with such matters as the Attorney General directs and with such other matters as the Council considers appropriate to include in the report.

Protection from liability

145. No matter or thing done by:

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(a) the Council, the Committee, the Panel, the Board or the Tribunal; or

(b) any member of the Council, the Committee, the Panel, the Board or the Tribunal; or

(c) the Registrar of the Board or the Registrar of the Tribunal,

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subjects any such member or Registrar personally to any action, liability, claim or demand if the matter or thing was done in good faith for the purpose of executing this Part.

PART 7—THE CONVEYANCERS LICENSING COMMITTEE**Constitution of the Committee**

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146. (1) There is constituted by this Act a corporation under the name of the Conveyancers Licensing Committee.

(2) The Committee is not a statutory body representing the Crown and is not subject to the control or direction of the Minister.

Membership of the Committee

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147. (1) The Committee is to consist of 7 members appointed by the Minister, of whom:

(a) 2 are to be appointed from a panel of at least 4 practising solicitors nominated by the Law Society; and

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- (b) 2 are to be appointed from a panel of at least 4 licensees nominated by the Association; and
- (c) 2 are to be persons appointed to represent the interests of consumers; and
- 5 (d) 1 is to be a person who, in the opinion of the Minister, has appropriate qualifications and experience in business or commerce.
- (2) In subsection (1) (b), a reference to a licensee is a reference to the holder of a licence that is free of any conditions other than conditions of the kind referred to in section 13 (2) (d).
- 10 (3) The member referred to in subsection (1) (d) is to be the Chairperson of the Committee.
- (4) Schedule 1 has effect with respect to the Committee.

Functions of the Committee

148. The Committee has the following functions:
- 15 (a) the function of determining the educational qualifications, practical training and conveyancing experience that are suitable to qualify a person for a licence;
- (b) the function of accrediting courses of studies leading to such educational qualifications;
- 20 (c) the function of dealing with applications for certificates of eligibility;
- (d) the function of approving policies of professional indemnity and fidelity insurance;
- 25 (e) the function of establishing guidelines as to the manner in which conveyancing businesses should be conducted;
- (f) the function of dealing with complaints referred to it by the Council;
- (g) the function of reporting to the Minister on the operation of this Act;
- 30 (h) such other functions as are conferred or imposed on it by or under this or any other Act.

Education subcommittee

149. (1) For the purpose of exercising its functions in relation to:
- 35 (a) determining the educational qualifications, practical training and conveyancing experience that are suitable to qualify a person for a licence; and

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- (b) accrediting courses of study leading to such educational qualifications,

the Committee is to establish an education subcommittee.

- (2) The education subcommittee is to consist of 6 members, of whom:

- (a) 1 is to be the Chairperson of the Committee; and 5
- (b) 3 are to comprise 1 each of the members referred to in section 147 (1) (a), (b) and (c) appointed by the Chairperson of the Committee; and
- (c) 1 is to be the Dean of the Faculty of Law at the University of Technology, Sydney; and 10
- (d) 1 is to be a person appointed by the Minister for Conservation and Land Management.

- (3) The Chairperson of the Committee is to be the chairperson of the education subcommittee.

- (4) Schedule 1 has effect with respect to the education subcommittee as if references in that Schedule to the Committee were references to the subcommittee. 15

- (5) The functions of the education subcommittee are:

- (a) to investigate such matters in relation to the determination of educational qualifications and the accreditation of courses of study leading to such educational qualifications as are referred to it by the Committee; and 20
- (b) to report to the Committee on the results of its investigations.

Insurance subcommittee

150. (1) For the purpose of exercising its functions in relation to approving policies of professional indemnity and fidelity insurance, the Committee is to establish an insurance subcommittee. 25

- (2) The insurance subcommittee is to consist of 6 members, of whom:

- (a) 1 is to be the Chairperson of the Committee; and
- (b) 3 are to comprise 1 each of the members referred to in section 147 (1) (a), (b) and (c) appointed by the Chairperson of the Committee; and 30
- (c) 1 is to be a person appointed by the Insurance Council of Australia; and
- (d) 1 is to be a person appointed by the Minister. 35

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(3) The Chairperson of the Committee is to be the chairperson of the insurance subcommittee.

(4) Schedule 1 has effect with respect to the insurance subcommittee as if references in that Schedule to the Committee were references to the subcommittee.

(5) The functions of the insurance subcommittee are:

- (a) to investigate such matters in relation to the approval of policies of professional indemnity and fidelity insurance as are referred to it by the Committee; and
- (b) to report to the Committee on the results of its investigations.

Advisory subcommittees

151. (1) The Committee may appoint such other subcommittees as it considers appropriate to assist it in the exercise of its functions.

(2) The members of any such subcommittee may include persons who are not members of the Committee.

(3) The chairperson of any such subcommittee must be a person who is a member of the Committee.

(4) The regulations may make provision with respect to the constitution and procedure of any subcommittee appointed under this section.

20 Staff etc. of the Committee

152. The Committee:

- (a) may employ a Registrar and such other staff as it requires to exercise its functions; and
- (b) may fix the salary, wages and other conditions of employment of its staff in so far as they are not fixed by or under any other Act or law; and
- (c) may arrange for the use of the services of any staff (by secondment or otherwise) or facilities of a government department, an administrative office or a public or local authority; and
- (d) may engage such consultants as it requires to exercise its functions.

PART 8—MISCELLANEOUS**Committee and Association to submit annual reports**

153. (1) As soon as practicable after 30 June, but on or before 31 October, in each year, the Committee and the Association must each

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prepare and forward to the Minister reports of their work and activities under this Act for the 12 months ending on 30 June in that year.

(2) The Minister must lay the reports, or cause them to be laid, before both Houses of Parliament as soon as practicable after receiving the reports.

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(3) A report is to deal with such matters as may be prescribed by the regulations and with such other matters as the Committee or Association considers appropriate to include in the report.

Functions of the Council

154. For the purpose of exercising its functions under this Act, the Council:

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

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Functions of the Association

155. The Association has the following functions:

- (a) the function of advising the Committee in connection with the approval by the Committee of the policies of indemnity insurance to be held by licensees;
- (b) the function of maintaining a policy of fidelity insurance in accordance with the requirements of Part 4;
- (c) the function of determining, in accordance with the requirements of Part 4, the contributions payable by licensees in respect of that policy;
- (d) the function of dealing with claims for compensation made against the Association under Part 4;
- (e) the function of reporting to the Minister on the operation of this Act;
- (f) such other functions as are conferred or imposed on it by or under this Act.

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Delivery up of documents

156. (1) On the application of a licensee's client, the Supreme Court may order the licensee:

- 5 (a) to give to the client a bill of costs in respect of any conveyancing business transacted by the licensee; and
(b) to give to the client, on such conditions as the Supreme Court may determine, such of the client's documents as are held by the licensee in relation to that business.

- 10 (2) This section does not affect the provisions of Division 5 of Part 11 of the Legal Profession Act 1987 with respect to the taxation of bills of costs.

Auditors

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

Register of licensees

158. (1) The Council must maintain at its offices a register of licensees in the form required by the regulations.

- 20 (2) The register is to be open to public inspection, on payment of such fee as may be prescribed by the regulations, during normal office hours.

Evidentiary certificates

159. A certificate that is issued by the Council and that states that, on a date or during a period specified in the certificate:

- 25 (a) a specified person was or was not a licensee; or
(b) a specified licence was or was not subject to a specified condition,
is admissible in any legal proceedings and is evidence of the fact or facts so stated.

Proceedings for offences

- 30 160. (1) Proceedings for an offence against this Act or the regulations are to be taken before a Local Court constituted by a Magistrate sitting alone.

- (2) Proceedings for an offence against this Act or the regulations may be brought at any time within 12 months after the date of the alleged
35 offence.

Order restraining breach of this Act

161. (1) Any person may bring proceedings in the Supreme Court for an order to restrain a breach of this Act.

(2) If satisfied that a breach of this Act has been committed or will, unless restrained by order of the Court, be committed, the Supreme Court may make such order as it considers appropriate to restrain the breach. 5

Regulations

162. (1) The Governor may, on the recommendation of the Minister, 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. 10

(2) Such a recommendation may not be given by the Minister except after consultation with the Committee.

(3) A regulation may create an offence punishable by a penalty not exceeding 20 penalty units. 15

Amendment of other Acts

163. Each Act specified in Schedule 2 is amended as set out in that Schedule.

Savings, transitional and other provisions 20

164. Schedule 3 has effect.

*Conveyancers Licensing 1992***SCHEDULE 1—THE CONVEYANCERS LICENSING
COMMITTEE**

(Secs. 147, 149, 150)

Part 1—Members of the Committee**5 Reserve members**

1. (1) The Minister may, for each appointed member of the Committee, appoint one or more reserve members to act in the office of the appointed member during the illness or absence of the appointed member, and the reserve member, while so acting, has and may exercise all the functions of the appointed member and is taken to be a member of the Committee.

(2) A person, in order to be appointed as a reserve member of the Committee, must be qualified for appointment in the same way as the appointed member for whom he or she is the reserve member.

(3) The Minister may remove any person from any office to which the person was appointed under this clause.

(4) A person while acting in the office of a member of the Committee is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

(5) For the purposes of this clause, a vacancy in the office of a member of the Committee is taken to be an absence from office of the member.

Terms of office

2. Subject to this Schedule, a member of the Committee holds office for such period, not exceeding 7 years, as may be specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.

25 Remuneration

3. A member of the Committee is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

Filling of vacancy in office of a member

4. If the office of any member of the Committee becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

Casual vacancies

5. (1) A member of the Committee is taken to have vacated office if the member:
(a) dies; or

*Conveyancers Licensing 1992*SCHEDULE 1—THE CONVEYANCERS LICENSING COMMITTEE—*continued*

- (b) absents himself or herself from 4 consecutive meetings of the Committee of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Minister (which leave the Minister is authorised to grant) or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for being absent from those meetings; or 5
 - (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or 10
 - (d) becomes a mentally incapacitated person; or
 - (e) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or upwards, or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable; or 15
 - (f) resigns office by instrument in writing addressed to the Minister; or
 - (g) is removed from office by the Minister under subclause (2).
 - (2) The Minister may remove a member of the Committee from office for incapacity, incompetence or misbehaviour.
 - (3) The Chairperson of the Committee is taken to have vacated office as Chairperson if the person: 20
 - (a) resigns office by instrument in writing addressed to the Minister; or
 - (b) ceases to be a member of the Committee.
- Conflict of interests**
- 6. (1) If: 25
 - (a) a member of the Committee has an interest in a matter being considered or about to be considered at a meeting of the Committee; and
 - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,
 the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Committee. 30
 - (2) A disclosure by a member at a meeting of the Committee that the member:
 - (a) is a member, or is in the employment, of a specified company or other body; or
 - (b) is a partner, or is in the employment, of a specified person; or
 - (c) has some other specified interest relating to a specified company or other body or to a specified person, 35
 is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

*Conveyancers Licensing 1992***SCHEDULE 1—THE CONVEYANCERS LICENSING COMMITTEE—*continued***

(3) Particulars of any disclosure made under this clause must be recorded by the Committee in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person.

5 (4) After a member of the Committee has disclosed the nature of an interest in any matter, the member must not, unless the Committee otherwise determines:

(a) be present during any deliberation of the Committee with respect to the matter; or

(b) take part in any decision of the Committee with respect to the matter.

10 (5) For the purpose of the making of a determination by the Committee under subclause (4), a member of the Committee who has an interest in a matter to which the disclosure relates must not:

(a) be present during any deliberation of the Committee for the purpose of making the determination; or

15 (b) take part in the making by the Committee of the determination.

(6) A contravention of this clause does not invalidate any decision of the Committee.

Effect of certain other Acts

7. (1) Part 2 of the Public Sector Management Act 1988 does not apply to or in respect of the appointment of a member of the Committee and a member of the Committee is not, as a member, subject to that Act.

(2) If by or under any other Act provision is made:

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or

25 (b) prohibiting the person from engaging in employment outside the duties of that office,

that provision does not operate to disqualify the person from holding that office and also the office of a member of the Committee or from accepting and retaining any remuneration payable to the person under this Act as a member of the Committee.

Part 2—Procedure of the Committee**30 General procedure**

8. The procedure for the calling of meetings of the Committee and for the conduct of business at those meetings is, subject to this Act, to be as determined by the Committee.

Quorum

35 9. The quorum for a meeting of the Committee is 4 members, of whom 1 must be the Chairperson or a member referred to in section 147 (1) (c).

Conveyancers Licensing 1992

SCHEDULE 1—THE CONVEYANCERS LICENSING COMMITTEE—*continued*

Presiding member

10. (1) The Chairperson of the Committee or, in the absence of the Chairperson, a member of the Committee referred to in section 147 (1) (c) elected by the members present is to preside at a meeting of the Committee. 5

(2) The person presiding at a meeting of the Committee has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

Voting

11. A decision supported by a majority of the votes cast at a meeting of the Committee at which a quorum is present is the decision of the Committee. 10

Minutes

12. The Committee must cause full and accurate minutes to be kept of the proceedings of each meeting of the Committee.

First meeting

13. The Minister may call the first meeting of the Committee in such manner as the Minister thinks fit. 15

SCHEDULE 2—AMENDMENT OF OTHER ACTS

(Sec. 163)

Auctioneers and Agents Act 1941 No. 28

Section 84AB (Contracts for sale of residential property): 20

After section 84AB (9), insert:

(10) In this section, a reference to a solicitor includes a reference to a licensee within the meaning of the Conveyancers Licensing Act 1992.

Conveyancing Act 1919 No. 6

(1) Section 7 (Definitions): 25

In section 7 (1), insert in alphabetical order:

“Licensed conveyancer” means the holder of a licence in force under the Conveyancers Licensing Act 1992.

(2) Section 53 (Obligation to show title etc.):

In section 53 (2) (e) after “solicitor” wherever occurring, insert “or licensed conveyancer”. 30

Conveyancers Licensing 1992

SCHEDULE 2—AMENDMENT OF OTHER ACTS—*continued*

- (3) Section 59 (Rights of purchaser as to execution):
 In section 59 (1) after “solicitor” wherever occurring, insert “or licensed conveyancer”.
- 5 (4) Section 66P (Definitions):
 In the definition of “solicitor” in section 66P (1), after “Territory”, insert “, and includes a licensed conveyancer”.
- 10 (5) Section 66Z (Definitions):
 In the definition of “solicitor” in section 66Z (1), after “Territory”, insert “, and includes a licensed conveyancer”.
- (6) Section 96 (Power for mortgagor to inspect title deeds):
 In section 96 (1), after “solicitor”, insert “or licensed conveyancer”.
- (7) Section 176 (Protection of solicitors, licensed conveyancers, trustees etc.):
 After “solicitor” wherever occurring, insert “or licensed conveyancer”.
- 15 (8) Section 197 (Official searches):
 In section 197 (4), after “solicitor” wherever occurring, insert “or licensed conveyancer”.
- (9) Schedule 3 (Conditions of sale):
 After “solicitor” wherever occurring, insert “or licensed conveyancer”.
- 20 Land Sales Act 1964 No. 12
- (1) Section 2 (Definitions):
 Insert in alphabetical order:
 “Licensed conveyancer” means the holder of a licence in force under the Conveyancers Licensing Act 1992.
- 25 (2) Section 7 (Trust deeds):
 In section 7 (2), after “solicitor”, insert “or licensed conveyancer”.
- Legal Profession Act 1987 No. 109
- (1) Section 3 (Definitions):
 In section 3 (1), insert in alphabetical order:
 “licensed conveyancer” means the holder of a licence in force under the Conveyancers Licensing Act 1992;
- 30

Conveyancers Licensing 1992

SCHEDULE 2—AMENDMENT OF OTHER ACTS—*continued*

- (2) Section 54 (Functions of Law Society Council):
 After section 54 (2), insert:
 (3) The Law Society Council also has such functions as are conferred or imposed on it by or under the Conveyancers Licensing Act 1992. 5
- (3) Section 65 (Repayment of deposit with Law Society):
 After "section 64" wherever occurring, insert "of this Act or section 36 of the Conveyancers Licensing Act 1992".
- (4) Section 66 (Accounts to be kept by Law Society):
 From section 66 (a), omit "and repaid or invested by it under section 65", insert instead "of this Act or section 36 of the Conveyancers Licensing Act 1992". 10
- (5) Section 67 (Statutory Interest Account):
 Omit section 67 (2) (a), insert instead:
 (a) for the purposes authorised by subsection (3) (c), (c1), (d), (e), (e1), (e2) and (e3)—such amounts as are from time to time incurred under Parts 9 and 10 of this Act or under the Conveyancers Licensing Act 1992 in relation to those purposes; and 15
 After section 67 (3) (c), insert: 20
 (c1) the payment under section 143 of the Conveyancers Licensing Act 1992 of the costs related to the administration of Part 6 of that Act;
 After section 67 (3) (e1), insert:
 (e2) the costs incurred by the Law Society Council in exercising its functions for the purposes of the Conveyancers Licensing Act 1992; 25
 (e3) the costs incurred by the Conveyancers Licensing Committee in exercising its functions for the purposes of the Conveyancers Licensing Act 1992; 30
- (6) Section 115 (Person acting as a barrister or solicitor):
 After section 115 (2), insert:
 (2A) Subsection (2) does not prevent a licensed conveyancer from carrying out conveyancing work in accordance with a licence in force under the Conveyancers Licensing Act 1992. 35
- (7) Section 117 (Limitation on general legal work and probate work):
 (a) In the definition of "general legal work" in section 117 (1), after the words "preparing an instrument", insert "or other document".

Conveyancers Licensing 1992

SCHEDULE 2—AMENDMENT OF OTHER ACTS—*continued*

- (b) Omit paragraph (b) of the definition of "general legal work" in section 117 (1), insert instead:
- (b) creates, regulates or affects, or purports to create, regulate or affect, rights between parties;
- (c) At the end of section 117 (4) (c), insert:
- ; or
- (d) a licensed conveyancer acting in accordance with a licence in force under the Conveyancers Licensing Act 1992.
- (8) Section 121 (Employment of disqualified or convicted persons):
- (a) From paragraph (c) of the definition of "disqualified person" in section 121 (8), omit "or" where lastly occurring.
- (b) At the end of paragraph (d) of the definition of "disqualified person" in section 121 (8), insert:
- ; or
- (e) who is disqualified from holding a licence under the Conveyancers Licensing Act 1992 by virtue of an order in force under section 139 of that Act.
- (9) Section 122:
- Omit the section, insert instead:
- Order restraining breach of this Act**
122. (1) Any person may bring proceedings in the Supreme Court for an order to restrain a breach of this Act.
- (2) If satisfied that a breach of this Act has been committed or will, unless restrained by order of the Court, be committed, the Supreme Court may make such order as it considers appropriate to restrain the breach.
- (10) After section 209A, insert:
- Council to report on its work and activities under the Conveyancers Licensing Act 1992**
- 209B. (1) As soon as practicable after 30 June, but on or before 31 October, in each year, the Law Society Council must prepare and forward to the Attorney General a report of its work and activities under the Conveyancers Licensing Act 1992 for the 12 months ending on 30 June in that year.
- (2) The Attorney General must lay the report, or cause it to be laid, before both Houses of Parliament as soon as practicable after receiving the report.
- (3) A report is to deal with such matters as may be prescribed by the regulations and with such other matters as the Law Society Council considers appropriate to include in the report.

Conveyancers Licensing 1992

SCHEDULE 2—AMENDMENT OF OTHER ACTS—*continued*

(11) Section 212 (Offences):

At the end of section 212, insert:

(2) Proceedings for an offence against this Act or the regulations may be brought at any time within 12 months after the date of the alleged offence.

5

(12) Section 213A:

After section 213, insert:

Evidentiary certificates

213A. (1) A certificate that is issued by the Bar Council and that states that, on a date or during a period specified in the certificate:

10

(a) a specified person was or was not the holder of a barristers' practising certificate; or

(b) a specified barrister's practising certificate was or was not subject to a specified condition,

15

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

(2) A certificate that is issued by the Law Society Council and that states that, on a date or during a period specified in the certificate:

(a) a specified person was or was not the holder of a solicitor's practising certificate; or

20

(b) a specified solicitor's practising certificate was or was not subject to a specified condition,

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

25

Real Property Act 1900 No. 25

(1) Section 3 (Definitions):

In section 3 (1) (a), insert in alphabetical order:

"Licensed conveyancer"—The holder of a licence in force under the Conveyancers Licensing Act 1992.

30

(2) Section 74N (Service of notices on the caveator for the purposes of this Part):

In section 74N (1), after "solicitor" wherever occurring, insert "or licensed conveyancer".

(3) Section 96I (Effect of official searches):

35

In section 96I (2), after "solicitor" wherever occurring, insert "or licensed conveyancer".

DICTIONARY OF WORDS AND EXPRESSIONS

(Sec. 3)

affairs, in relation to a licensee, includes:

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

Association means the Association of Property Conveyancers.

Board means the Legal Profession Standards Board constituted under Part 10 of the Legal Profession Act 1987.

- 15 **Committee** means the Conveyancers Licensing Committee constituted under section 146.

- controlled money** means money required to be dealt with in accordance with section 33 (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 in New South Wales.
- 20

- 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.
- 25

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

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

Council means the Law Society Council.

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

exercise a function includes, where the function is a duty, to perform the duty.

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

- 35 **function** includes a power, authority and duty.

Law Society means the Law Society of New South Wales.

licence means a licence in force under this Act.

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

DICTIONARY OF WORDS AND EXPRESSIONS—*continued*

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

money received, in relation to a licensee, includes:

- (a) money coming under the direct control of the licensee, whether or not by the exercise of an express power or authority or by operation of law; and 5
- (b) money paid to an associate of the licensee on the advice of the licensee, but only if the money is under the direct or indirect control of the licensee; and 10
- (c) money in relation to which the licensee (whether or not through an associate) has a power of disposal exercisable jointly and severally with the person on whose behalf it was received or a nominee of that person.

Panel means the Legal Profession Conduct Review Panel constituted under Part 10 of the Legal Profession Act 1987. 15

professional misconduct includes:

- (a) unsatisfactory professional conduct, if the conduct is such that it involves a substantial or consistent failure to reach reasonable standards of competence and diligence; and 20
- (b) conduct (whether consisting of an act or omission) occurring otherwise than in connection with a conveyancing business which, if established, would justify a finding that a licensee is not of good fame and character; and
- (c) conduct that is declared to be professional misconduct by any provision of this Act. 25

record includes any book, account, document, paper or other source of information compiled, recorded or stored in written form or on microfilm, or by electronic process, or in any other manner or by any other means. 30

Statutory Interest Account means the Statutory Interest Account maintained by the Law Society under Part 6 of the Legal Profession Act 1987.

Tribunal means the Legal Profession Disciplinary Tribunal constituted under Part 10 of the Legal Profession Act 1987. 35

DICTIONARY OF WORDS AND EXPRESSIONS—*continued*

trust money means money required to be dealt with in accordance with section 33 (1) (a).

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

CONVEYANCERS LICENSING ACT 1992 No. 55

NEW SOUTH WALES



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SCHEDULE 1—THE CONVEYANCERS LICENSING COMMITTEE

SCHEDULE 2—AMENDMENT OF OTHER ACTS

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DICTIONARY OF WORDS AND EXPRESSIONS

affairs	Law Society
Association	licence
Board	licensee
Committee	money
controlled money	money received
conveyancing business	Panel
conveyancing work	professional misconduct
costs	record
Council	Statutory Interest Account
disqualified person	Tribunal
exercise a function	trust money
firm of licensees	unsatisfactory professional conduct
function	

CONVEYANCERS LICENSING ACT 1992 No. 55

NEW SOUTH WALES



Act No. 55, 1992

An Act to provide for the licensing and regulation of conveyancers; and for other purposes. [Assented to 8 October 1992]

The Legislature of New South Wales enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the Conveyancers Licensing Act 1992.

Commencement

2. (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).
(2) The following provisions commence on the date of assent:
 - (a) Parts 1 and 7;
 - (b) Schedules 1, 2 and 3 (except for item (9) of the matter in Schedule 2 that relates to the Legal Profession Act 1987);
 - (c) the Dictionary at the end of the Act.

Definitions

3. (1) In this Act, the words and expressions appearing in the Dictionary at the end of this Act have the meanings given to them in that Dictionary.
(2) Certain words and expressions used in Part 4 (Claims arising from Failures to Account) are defined in Division 1 of that Part.
(3) Certain words and expressions used in Part 5 (Management and Receivership) are defined in Division 1 of that Part.

Conveyancing work

4. (1) For the purposes of this Act, **conveyancing work** is legal work carried out in connection with any transaction that creates, varies, transfers or extinguishes a legal or equitable interest in residential property or that otherwise affects residential property.
(2) Without limitation, **conveyancing work** includes:
 - (a) legal work involved in preparing any document (such as an agreement, conveyance, transfer, lease or mortgage) that is necessary to give effect to any such transaction; and
 - (b) legal work (such as the giving of advice or the preparation, perusal, exchange or registration of documents) that is consequential or ancillary to any such transaction; and

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- (c) any other legal work that is prescribed by the regulations as constituting conveyancing work for the purposes of this Act.

(3) However, **conveyancing work** does not include the carrying out of any work for the purpose of:

- (a) commencing or maintaining legal proceedings; or
- (b) establishing a corporation or varying the memorandum or articles of association of a corporation; or
- (c) preparing a mortgage otherwise than where the mortgage is prepared in connection with an agreement for sale of residential property and:
 - the mortgagee is the vendor of the property; or
 - the mortgagee has nominated the purchaser of the property as the mortgagor and has specified the terms of the mortgage independently of any advice given by the person by whom the mortgage is being prepared; or
- (d) creating, varying or extinguishing a trust; or
- (e) preparing a testamentary instrument; or
- (f) creating, varying, transferring or extinguishing a legal or equitable interest in animals or in the goodwill or stock-in-trade of a business; or
- (g) obtaining the consent of any public or local authority to the subdivision of land, the erection of a building or the carrying out of development (within the meaning of the Environmental Planning and Assessment Act 1979) on land;
- (h) giving investment or financial advice; or
- (i) investing money otherwise than as provided for by Division 2 of Part 3,

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

(4) In this section:

“**legal work**” means work that, if done for fee or reward by a person who is neither a solicitor nor a barrister, would give rise to an offence under Part 9 of the Legal Profession Act 1987;

“**residential property**” has the same meaning as it has in Division 8 of Part 4 of the Conveyancing Act 1919, except that it includes land having an area of up to, but not more than, 10 hectares.

Disqualified persons

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

- (a) is a corporation; or
- (b) is an undischarged bankrupt; or
- (c) has been convicted in New South Wales or elsewhere of an offence involving dishonesty; or
- (d) is a mentally incapacitated person; or
- (e) has been removed (otherwise than at his or her own request) from the roll of solicitors or the roll of barristers kept by the Supreme Court or from a corresponding roll of legal practitioners kept by a superior court of another State or Territory; or
- (f) is disqualified from holding a licence under this Act by virtue of an order in force under section 139; or
- (g) is disqualified from being employed in a solicitor's office by virtue of an order in force under section 120 of the Legal Profession Act 1987; or
- (h) is disqualified from holding a licence or certificate of registration under the Auctioneers and Agents Act 1941 by virtue of an order in force under section 29 or 60 of that Act.

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

- (a) is the holder of a barrister's or a solicitor's practising certificate under the Legal Profession Act 1987; or
- (b) is the holder of a licence or certificate of registration under the Auctioneers and Agents Act 1941.

PART 2—LICENSING**Division 1—Preliminary****Effect of licence**

6. (1) A licensee is not guilty of an offence under Part 9 (Unqualified Practitioners) of the Legal Profession Act 1987 in respect of conveyancing work that the licensee carries out in accordance with this Act, the regulations and the conditions of the licence.

(2) This section does not permit a licensee to do anything, or to allow anything to be done, that is calculated to imply that the licensee is qualified to act as a solicitor.

Procedure for obtaining a licence

7. (1) A person is qualified to hold a licence if the person is the holder of a current certificate of eligibility to hold a licence.

(2) A person is qualified to be granted a certificate of eligibility to hold a licence if the person:

- (a) is of or above the age of 18 years; and
- (b) has such educational qualifications, practical training and conveyancing experience as may be approved by the Committee; and
- (c) is not a disqualified person.

(3) Certificates of eligibility are granted by the Committee under Division 2.

(4) Licences are granted by the Council under Division 3.

Licensee to have paid fidelity contribution

8. A person is not entitled to be granted a licence unless the person has paid such part of any contribution under Division 2 of Part 4 as is due and payable on the granting of a licence.

Licensee to be covered by an approved policy of professional indemnity insurance

9. (1) The regulations may identify particular licensees or classes of licensees as persons who are required to be insured under a policy of professional indemnity insurance.

(2) A person who would, as a result of being granted a licence, become a licensee identified in such a regulation is not entitled to be granted a licence unless an approved policy of professional indemnity insurance will be in force with respect to the person for the whole of the period of the licence.

(3) A policy of professional indemnity insurance is an approved policy if the insurer and the terms of the policy (including the financial limits of any cover provided by the policy) are approved by the Committee.

(4) The Committee must consult with the Council and the Association before approving an insurance policy for the purposes of this section and must consider any representations made by the Council or the Association as to the form of, and as to the terms to be included in, the policy.

(5) An insurance policy may not be approved for the purposes of this section unless it indemnifies the insured person against all liabilities incurred by the person during any period that the person is a licensee,

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including any period during which the licence is of no effect by virtue of section 19 (2) or (3), regardless of when any claim is made in respect of any such liability.

Division 2—Certificates of eligibility

Applications for certificates of eligibility

10. (1) An application for a certificate of eligibility to hold a licence may be made to the Committee by any person.

(2) An application must be in the form approved by the Committee and must be accompanied by:

- (a) an application fee of an amount prescribed by the regulations; and
- (b) in the case of an initial application—evidence that the applicant has the educational qualifications, practical training and conveyancing experience approved by the Committee.

(3) The application fee is to be paid into the Statutory Interest Account.

Committee may require further particulars

11. The Committee, by notice in writing served on the applicant:

- (a) may require further information to be given in connection with the application; and
- (b) may require the application, or any further information, to be verified by statutory declaration,

within such time as it may specify in the notice.

Determination of applications

12. (1) After considering an application, the Committee may determine:

- (a) to grant a certificate of eligibility to the applicant; or
- (b) to refuse the application.

(2) A certificate of eligibility may not be granted to an applicant unless the Committee is satisfied that the applicant:

- (a) is of or above the age of 18 years; and
- (b) has such educational qualifications, practical training and conveyancing experience as may be approved by the Committee; and
- (c) is not a disqualified person.

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(3) A certificate of eligibility may not, except after consultation with the Council, be granted to an applicant who has been the holder of a licence that has been cancelled (otherwise than at the request of the applicant) since the previous certificate of eligibility was granted.

(4) A certificate of eligibility may not, except after consultation with the Association, be granted to an applicant who has been the holder of a licence that has been cancelled on a ground referred to in section 20 (1) (d), (e) or (f) since the previous certificate of eligibility was granted.

(5) For the purpose of determining whether or not a person is a disqualified person by virtue of section 5 (1) (c), the Committee:

- (a) may determine whether an offence committed by the person was or was not, in the circumstances of the case, an offence involving dishonesty; and
- (b) may determine to ignore the fact that the person has committed such an offence if (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) it considers it appropriate to do so.

Imposition of conditions

13. (1) A certificate of eligibility may specify conditions to which a licence granted to the applicant should be subject.

(2) The conditions so specified may include conditions of the following kind:

- (a) a condition prohibiting the proposed licensee from carrying out conveyancing work otherwise than as an employee of a licensee whose licence does not contain such a condition;
- (b) a condition requiring the proposed licensee to undertake or complete a specified course of studies within a specified period of time;
- (c) a condition prohibiting the proposed licensee from carrying out conveyancing work in relation to specified kinds of transaction;
- (d) a condition requiring the proposed licensee to undertake or complete a specified course of further legal education during each year for which he or she remains a licensee.

Notice of Committee's decision to be given

14. (1) The Committee must cause notice of its decision on an application (including reasons for the decision, if the decision is to refuse the application) to be given to the applicant within 14 days after the decision is made.

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(2) For the purposes only of any appeal proceedings arising in connection with an application under this section, the Committee is taken to have refused the application if it has not finally disposed of the application within 6 weeks after the application was made.

Duration of certificates of eligibility

15. A certificate of eligibility remains in force until it is withdrawn or until it is replaced by another certificate of eligibility.

Withdrawal of certificates of eligibility

16. The Committee, by notice in writing served on the holder of a certificate of eligibility, may withdraw the certificate on any of the following grounds:

- (a) that the holder of the certificate has ceased to hold a licence for a single period of more than 6 months since the certificate was granted;
- (b) that a licence held by the holder of the certificate has been cancelled otherwise than at the request of the licensee;
- (c) that the holder of the certificate has failed to comply with the conditions of any licence issued by virtue of the certificate;
- (d) that the holder of the certificate is disqualified from holding a licence by virtue of an order in force under section 139;
- (e) that the Tribunal has cancelled the certificate under section 139.

Division 3—Licences

Applications for licences

17. (1) An application for a licence may be made to the Council by any person who holds a current certificate of eligibility.

(2) An application must be in the form approved by the Council and must be accompanied by:

- (a) an application fee of an amount prescribed by the regulations; and
- (b) the applicant's current certificate of eligibility to hold a licence; and
- (c) evidence that the applicant has paid such part of any contribution under Division 2 of Part 4 as is due and payable on the granting of a licence; and

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- (d) in the case of an applicant who would, as a result of being granted a licence, be required to be covered by an approved policy of professional indemnity insurance—evidence that such a policy will be in force with respect to the applicant for the whole of the period of the licence; and
 - (e) in the case of an application for the renewal of an expiring licence—the most recent auditor's certificate in relation to the licensee's accounts.
- (3) The application fee is to be paid into the Statutory Interest Account.
- (4) The Council may require an application to be verified by statutory declaration.
- (5) The applicant's current certificate of eligibility to hold a licence is to be returned to the applicant as soon as the application has been dealt with.

Determination of applications

18. (1) After considering an application, the Council may determine:
- (a) to grant a licence to the applicant; or
 - (b) to refuse the application.
- (2) A licence may not be granted to an applicant unless the Council is satisfied:
- (a) that the applicant is not a disqualified person; and
 - (b) that the applicant is the holder of a current certificate of eligibility to hold a licence; and
 - (c) that the applicant has paid such part of any contribution under Division 2 of Part 4 as is due and payable on the granting of a licence; and
 - (d) in the case of an applicant who would, as a result of being granted a licence, be required to be covered by an approved policy of professional indemnity insurance—that such a policy will be in force with respect to the applicant for the whole of the period of the licence.
- (3) The Council may refuse an application on any of the grounds (listed in section 20 (1)) on which it may suspend or cancel a licence.
- (4) The licence is to be in a form approved by the Council and is to be granted subject to the conditions set out in the current certificate of eligibility.

(5) For the purposes only of any appeal proceedings arising in connection with an application under this section, the Council is taken to have refused the application if it has not finally disposed of the application within 8 weeks after the application was made.

Duration of licences

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

(2) A licence is of no effect during any period for which any part of a contribution under Division 2 of Part 4 remains due and payable by the licensee.

(3) A licence held by a licensee who is required to be covered by an approved policy of professional indemnity insurance is of no effect during any period for which such a policy is not in force with respect to the licensee.

Suspension and cancellation of licences

20. (1) The Council may suspend or cancel a licence on any of the following grounds:

- (a) that the licensee has requested the suspension or cancellation of the licence;
- (b) that the licensee has failed to comply with a condition of the licence;
- (c) that the licensee has failed to comply with an order in force under section 125, 130 or 139;
- (d) that the licensee has failed to comply with the requirements of Division 2 of Part 3 in relation to trust money or controlled money;
- (e) that the licensee has failed to pay any part of a contribution due and payable under Division 2 of Part 4;
- (f) in the case of a licensee who is required to be covered by an approved policy of professional indemnity insurance—that such a policy is no longer in force with respect to the licensee;
- (g) that the licensee has become a disqualified person;
- (h) that the licensee has failed to comply with a requirement under this Act to furnish any record, document or information or if any record, document or information so furnished fails to give a satisfactory explanation of the licensee's conduct;

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- (i) that the licensee has been convicted of an offence against this Act;
 - (j) that the licensee is a prisoner within the meaning of the Prisons Act 1952;
 - (k) that the licensee is (because of illness or infirmity) unfit to carry out conveyancing work and that it is in the public interest that the licence be suspended or cancelled.
- (2) A licence may not be suspended or cancelled on a ground referred to in subsection (1) (d), (e) or (f) except after consultation with the Association.
- (3) A licence may not be suspended or cancelled (otherwise than on a ground referred to in subsection (1) (a), (c) or (j)) unless:
- (a) the Committee concurs with the proposed suspension or cancellation; or
 - (b) the Council is of the opinion that there has been, or that there may have been, a failure to account (within the meaning of Part 5) by the licensee.
- (4) Before suspending or cancelling a licence on the ground referred to in subsection (1) (k), the Council:
- (a) may hold an inquiry; and
 - (b) may require the licensee to be examined by a medical practitioner nominated by the Council.
- (5) An inquiry under this section is to be conducted in accordance with the procedures prescribed by the regulations.
- (6) The Council must cause notice of its decision to suspend or cancel a licence to be given to the licensee, to the Committee and (if the decision is based on a ground referred to in subsection (1) (d), (e) or (f)) to the Association within 14 days after the decision is made.
- (7) The notice must include the reasons for the decision if the decision is based on a ground referred to in subsection (1) (b)–(k).
- (8) A suspension or cancellation of a licence takes effect when notice of the suspension or cancellation is served on the licensee or on such later date as may be specified in the notice.

Division 4—Appeals**Appeals**

21. (1) An appeal lies to the Supreme Court against the following decisions:

- (a) a decision of the Committee refusing to grant a certificate of eligibility for a licence;

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(b) a decision of the Committee requiring the imposition of a condition on a licence;

(c) a decision of the Council refusing to grant a licence;

(d) a decision of the Council suspending or cancelling a licence.

(2) Such an appeal must be made within 28 days after the date on which the decision was made or is taken to have been made.

(3) The making of an appeal does not operate to stay the decision appealed against except to the extent (if any) to which the Supreme Court orders.

PART 3—CONVEYANCING PRACTICE

Division 1—General

Effect of contravention of Division 1

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

Fees

23. (1) If a maximum fee for the carrying out of work by a solicitor (or a maximum rate according to which such a fee may be calculated) is fixed by a determination of the Legal Fees and Costs Board, the maximum fee for the carrying out of the same kind of work by a licensee (or the maximum rate according to which such a fee may be calculated) is the same as that fixed by the determination.

(2) Despite any Act or law to the contrary, a licensee is not entitled to charge or recover, in respect of any work, any amount in excess of the maximum amount payable, in respect of that work, in accordance with subsection (1).

(3) A licensee must not enter into an agreement that attempts to exclude, modify or restrict the operation of this section.

(4) Any agreement that attempts to exclude, modify or restrict the operation of this section is void to the extent to which it attempts to do so.

(5) Division 5 of Part 11 of the Legal Profession Act 1987 applies to the fees charged by a licensee in the same way as it applies to the fees charged by a solicitor.

Nature of conveyancing business

24. (1) A licensee must not conduct a conveyancing business, or be involved in the conduct of a conveyancing business, otherwise than as a sole practitioner, in partnership with other licensees or as an employee of another licensee.

(2) A licensee must not falsely represent, or permit any other person to falsely represent, that another person is a partner of the licensee.

Attendance at business premises

25. A licensee must not permit conveyancing work to be carried out at any premises at which the licensee conducts a conveyancing business unless the licensee, or some other licensee, gives reasonable attendance at those premises.

Business names

26. (1) A licensee must not conduct a conveyancing business under a business name that is not approved by the Committee.

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

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

Sharing of receipts with unqualified persons

27. (1) A licensee must not share the receipts of a conveyancing business with another person unless:

- (a) the other person is a licensee; or
- (b) the sharing of those receipts with that other person is approved by the Committee.

(2) An approval may not be given under this section unless the Committee is satisfied that the sharing of the receipts of the conveyancing business in accordance with the approval:

- (a) will not result in a person other than a licensee gaining control of the business; and

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- (b) will not adversely affect the independent conduct of the licensee's business or give rise to a conflict between the interests of the licensee and the interests of any of the licensee's clients.

(3) This section does not prevent a party to a transaction from recovering from any other person the costs of conveyancing work carried out by a licensee who is employed by the party under a contract of service.

Employment of disqualified persons

28. (1) A licensee must not, in connection with his or her conveyancing business, employ or pay a person whom the licensee knows to be a disqualified person.

(2) Subsection (1) does not apply in relation to a person who is employed or paid in accordance with leave given by the Committee or by the Supreme Court.

(3) If the Committee refuses an application by a person for leave under this section, the person may appeal against the decision to the Supreme Court which may either confirm the decision appealed against or else give leave for the appellant to be employed or paid in connection with the conveyancing business.

(4) Leave given under this section may be limited as to time or given subject to specified conditions.

(5) A disqualified person must not seek employment or payment in connection with a licensee's conveyancing business unless he or she has informed the licensee of the fact of his or her disqualification.

Maximum penalty (subsection (5)): 10 penalty units.

Sharing staff of legal practitioners and real estate agents etc.

29. A licensee must not employ any person in the conduct of a conveyancing business if the person, while so employed, is employed also:

- (a) by the holder of a barrister's or solicitor's practising certificate under the Legal Profession Act 1987; or
- (b) by the the holder of a licence or certificate of registration under the Auctioneers and Agents Act 1941.

Advertising

30. (1) The regulations may make provision with respect to advertising in connection with the carrying out of conveyancing work and the conduct of a conveyancing business.

(2) In particular, the regulations may make provision with respect to the manner in which a licensee may advertise, the subject-matter of advertisements and the manner in which a licensee must represent himself or herself in correspondence arising in the conduct of a conveyancing business.

(3) A licensee must not advertise otherwise than in accordance with the regulations under this section.

Conduct of other businesses

31. (1) The regulations may prohibit a licensee who conducts a conveyancing business, or who is employed in the conduct of a conveyancing business, from conducting, or being employed in the conduct of, any other business or class of businesses.

(2) A licensee must not conduct any business, or be employed in the conduct of any business, in contravention of the regulations under this section.

Committee may establish guidelines for conduct of conveyancing business

32. (1) The Committee may, by order published in the Gazette, establish guidelines as to the manner in which conveyancing businesses should be conducted.

(2) The guidelines may adopt, with or without modification, the provisions of any rules made by the Law Society with respect to the conduct of solicitors.

(3) A licensee must not conduct a conveyancing business in contravention of any guidelines in force under this section.

Division 2—Trust money and controlled money

Money received by licensee on behalf of another

33. (1) A licensee who, in the course of conducting a conveyancing business, receives money on behalf of another person:

- (a) must pay the money, within the time prescribed by the regulations, into a general trust account at a bank in New South Wales and must hold the money in accordance with the regulations relating to trust money; or

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- (b) if the person on whose behalf the money is received directs that it be paid otherwise than into a general trust account, must pay the money as directed and (if the money is to be held under the direct or indirect control of the licensee for more than the period prescribed by the regulations) must hold the money in accordance with the regulations relating to controlled money.

(2) In either case, the licensee must hold the money exclusively for, and must disburse the money in accordance with the directions of, the person on whose behalf it is held.

(3) This section:

- (a) does not prevent a licensee from depositing money with the Law Society in accordance with section 36, but continues to apply to any money so deposited that is repaid to the licensee; and
- (b) does not prevent a licensee from withdrawing or receiving, from trust money or controlled money:

- reimbursement for disbursements paid by the licensee; or
 - money for disbursements to be paid by the licensee; or
 - money due, or to accrue due, to the licensee for costs,
- so long as the procedure prescribed by the regulations is followed; and

- (c) does not affect any enforceable lien or claim that a licensee has to any money; and
- (d) does not prevent a licensee from exercising a general retaining lien for unpaid costs and disbursements in respect of money in a trust account or a controlled money account (other than money received subject to an express direction by the client with respect to the purposes for which the money is to be applied).

(4) A lien referred to in subsection (3) (d):

- (a) may not be exercised for an amount in excess of the sum of the costs and disbursements unpaid; and
- (b) may not be exercised unless the licensee has delivered an outline bill of costs and disbursements to the client on whose behalf the money is held.

(5) Money received by a licensee on behalf of another person:

- (a) is not available for payment to a creditor of the licensee; and
- (b) is not liable to be taken in execution of any judgment, order or other process of any court or tribunal at the instance of a creditor of the licensee,

unless the creditor is the person on whose behalf the money is held by the licensee.

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(6) If a trust account kept by a licensee is, as authorised by or under the regulations, operated on by a person other than the licensee, section 53 of the Trustee Act 1925 does not apply to the person in relation to the operation on the trust account.

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

Keeping of accounts

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

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

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

Audits

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

- (a) the auditing of a licensee's records; and
- (b) the reports to be made by auditors; and
- (c) the submission of auditors' reports to the Council and to the Association.

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

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

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

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

Maximum penalty: 10 penalty units.

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(4) If a record:

- (a) is not in writing; or
- (b) is not written in English; or
- (c) is not decipherable on sight,

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

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

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

Deposit of trust funds with Law Society

36. (1) Out of the money that is paid into a licensee's trust account, the licensee must cause to be deposited with the Law Society, and to be kept deposited with the Law Society, an amount calculated as prescribed by the regulations.

(2) This section applies to each member of a firm of licensees, and to money paid into a trust account kept by such a firm, in the same way as it applies to a licensee and to money paid into a trust account kept by a licensee.

(3) This section does not apply to a separate trust account kept on the instructions of a client for the exclusive use of the client.

(4) This section does not affect any enforceable lien or claim that a licensee has to any money.

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

Money not claimed from licensee

37. (1) If a licensee holding money in a trust account cannot find the person on whose behalf the money is held or any other person authorised to receive the money, the licensee:

- (a) may pay the money to the Treasurer for payment into the Consolidated Fund; and
- (b) must in that event, provide the Treasurer with such information as the Treasurer requires in relation to the money and the person on whose behalf the money was held.

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(2) If a licensee pays money to the Treasurer under this section, the licensee is relieved from any further liability in relation to the money.

(3) The Treasurer may pay money deposited under this section to any person who satisfies the Treasurer as to his or her entitlement to the money.

(4) Payment of money to such a person discharges the Crown and the Treasurer from any liability in relation to the money, but does not discharge the person from any liability to any other person who establishes an entitlement to the money.

(5) The Treasurer may require a person to provide any information that the person has, or can reasonably obtain, about the entitlement of any other person to money paid to the Treasurer under this section and about any attempts that have been made to locate that other person.

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

(a) must not fail to comply with the requirement; and

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

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

Relief for bankers

38. (1) A bank, in relation to a transaction on an account kept by a licensee at that or any other bank:

(a) does not incur any obligation to make inquiries, or any other obligation or liability, other than an obligation or liability to which it would be subject apart from this Act; and

(b) does not have imputed to it any knowledge of the entitlement of a person to money credited to the account,

that it would not incur, or have imputed to it, if the account were kept by the bank for a person absolutely entitled to the money held in the account.

(2) A bank at which a licensee keeps an account for clients' money has no recourse (whether by way of set-off, counter-claim, charge or otherwise) against money held in the account in respect of any liability of the licensee to the bank other than a liability in respect of the account.

Division 3—Inspection of trust accounts and investigations generally**Appointment of trust account inspectors etc.****39. (1) The Council:**

- (a) may appoint trust account inspectors to inspect, either generally or in a particular case, the accounts kept by licensees under Division 2; and
- (b) may, after consultation with the Association, appoint an investigator to investigate the affairs of a particular licensee.

(2) A trust account inspector may exercise the functions of an investigator in the course of any inspection of accounts carried out by the inspector.

(3) A trust account inspector or an investigator may appoint an assistant to assist in the conduct of inspections or investigations.

(4) Trust account inspectors and investigators are referred to in this Division as inspectors.

Production of records

40. (1) An inspector may require a licensee, or any other person who has possession or control of any records of a licensee or relating to the affairs of a licensee, to do any of the following:

- (a) to produce for the inspector's inspection such of those records as relate to the accounts being inspected or the affairs being investigated;
- (b) to give the inspector such other information as the licensee or other person is able to give in relation to those accounts or affairs;
- (c) to furnish the inspector with such authorities or orders on bankers and others as relate to those accounts or affairs.

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

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

Maximum penalty: 10 penalty units.

(3) If a record:

- (a) is not in writing; or
- (b) is not written in English; or
- (c) is not decipherable on sight,

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

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

Inspectors' reports

41. An inspector:

- (a) must send a copy of his or her report to the licensee (at the address of the licensee last known to the Council) and further copies to the Association and the Council; and
- (b) must provide the Minister with a copy of the report if the report indicates that there are reasonable grounds for suspecting professional misconduct, unsatisfactory professional conduct or irregularity in relation to the affairs of the licensee.

Costs of inspection and investigation

42. (1) The amount of the costs of an inspection or investigation, as certified by the Council, is a debt due to the Law Society by the licensee under inspection or investigation:

- (a) if the inspector states in his or her report that there is evidence that the licensee is guilty of professional misconduct or unsatisfactory professional conduct in relation to the affairs investigated or is guilty of an offence against this Act or the regulations; and
- (b) if the Council is of the opinion that the conduct or breach was wilful or of a substantial nature.

(2) The Council may waive payment of costs under this section.

(3) If the inspection or investigation concerned relates to the accounts or affairs of a firm of licensees, the Council may determine the proportion or amount (if any) of the debt due to the Law Society payable by each licensee involved.

Secrecy

43. (1) It is an offence for an inspector, unless making a requirement under this Division, or for an inspector's assistant, to make an unauthorised disclosure:

- (a) of the appointment of the inspector or assistant; or
- (b) of any matter that comes to his or her notice in the course of the inspection or investigation; or

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(c) of anything in the inspector's report.

Maximum penalty: 10 penalty units.

(2) Subsection (1) is not contravened:

(a) if an inspector discloses anything to his or her assistant; or

(b) if an inspector's assistant discloses anything to the inspector.

(3) A member of the Council, or a solicitor, officer or agent of the Law Society, must not make an unauthorised disclosure:

(a) of the appointment of an inspector or of an inspector's assistant; or

(b) of anything in an inspector's report.

Maximum penalty: 10 penalty units.

(4) Subsection (3) is not contravened:

(a) if an inspector states in his or her report that there is evidence of professional misconduct, unsatisfactory professional conduct or irregularity in relation to the affairs inspected or investigated; and

(b) if a member of the Council, or a solicitor, officer or agent of the Law Society, discloses information in the report to a person to whom the Council decides that the information should be disclosed.

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

(a) the Minister; or

(b) a member of the Committee, the Association or the Council; or

(c) any insurer of the Association; or

(d) a solicitor, agent or officer of the Committee, the Law Society, the Association or any insurer of the Association; or

(e) the Supreme Court; or

(f) the Panel, the Board or the Tribunal; or

(g) a police officer; or

(h) a person to whom a copy of the report is required by this Act to be sent.

Obstruction of inspectors etc.

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

Maximum penalty: 10 penalty units.

**PART 4—CLAIMS ARISING FROM FAILURES TO
ACCOUNT**

Division 1—Preliminary

Definitions

45. In this Part:

“**associate**” has the same meaning as it has in Part 5;

“**failure to account**” has the meaning given to it by section 46;

“**pecuniary loss**” includes:

- (a) the costs of a claimant that are due to a failure to account; and
- (b) the costs involved in making a claim; and
- (c) interest that, but for a failure to account, would have been received by a claimant, calculated to the date on which the claim succeeds, being interest at a rate up to, but not exceeding, the rate prescribed by the Supreme Court Rules in respect of unpaid judgments as at that date.

Failure to account

46. (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:

- (c) for which the licensee or associate has been convicted of an offence involving dishonesty; or
- (d) which the Association has found to be dishonest.

(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.

(3) A finding by the Association that an act or omission is, or is not, dishonest is conclusive for the purposes of subsection (1).

Division 2—Fidelity insurance

Association to take out fidelity insurance

47. (1) The Association must ensure that an approved policy of fidelity insurance is in force at all times in relation to all licensees.

(2) A policy of fidelity insurance is an approved policy if the insurer and the terms of the policy (including the financial limits of any cover provided by the policy) are approved by the Committee.

(3) The Committee must consult with the Council and the Association before approving an insurance policy for the purposes of this section and must consider any representations made by the Council or the Association as to the form of, and as to the terms to be included in, the policy.

(4) An insurance policy may not be approved for the purposes of this section unless it is in the form of a master policy of fidelity insurance, being a policy that is held by the Association and that indemnifies the Association against all liabilities incurred by the Association under Division 3, regardless of when any claim is made in respect of any such liability.

Contributions by licensees

48. (1) A licensee is liable to pay a contribution to the Association with respect to the approved policy of fidelity insurance held by the Association in respect of any year during which the licensee holds a licence.

(2) The appropriate contribution is the amount determined from time to time by the Association, with the approval of the Committee, in relation to the licensee or to the class of licensees to which the licensee belongs.

(3) The appropriate contribution for a licence that is to take effect on or after 1 January in any year is half the contribution that would otherwise be payable.

(4) The Association may determine different contributions for different licensees or for different classes of licensees and may determine the manner in which, and the time or times at which, a contribution, or an instalment of a contribution, is to be paid.

(5) The Association is to notify the Committee in the event that any part of a contribution remains due and unpaid.

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Division 3—Claims against the Association in respect of failures to account

Claims against the Association

49. (1) Any person who suffers pecuniary loss as a result of a failure to account by a licensee is entitled to be compensated for the loss by the Association.

(2) The Association must notify the Council and the Committee of any claim made against it under this section.

(3) A person is not prevented from making a claim merely because, after the act or omission from which a failure to account arises, a licensee:

- (a) dies; or
- (b) ceases to conduct a conveyancing business; or
- (c) ceases to hold a licence.

(4) If a licensee authorises a person to operate on an account for clients' money kept by the licensee at a bank, an act or omission by the person in relation to those operations is, for the purposes of this Division, an act or omission of an agent of the licensee.

(5) A claim must be made:

- (a) within 3 months after the claimant becomes aware of the failure to account; or
- (b) within such further time as the Association allows; or
- (c) if the Association refuses to allow further time—within such further time as the Supreme Court allows.

Reimbursement of licensees and others

50. (1) If, in respect of a failure to account by a licensee's associate:

- (a) all claims (other than claims under this section) have been met; and
- (b) the licensee has paid compensation for a pecuniary loss due to the failure to account; and
- (c) the licensee has, in the opinion of the Association, at all times acted honestly and reasonably in relation to the failure to account,

the licensee may make a claim as if the compensation paid by the licensee were a pecuniary loss suffered as a result of the failure to account.

(2) A reference in this section to a licensee includes a reference to:

- (a) a former licensee; and

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- (b) in relation to the payment of compensation and the making of a claim—the personal representative of a deceased licensee or a deceased former licensee.

Final date for making claims

51. (1) If the Association has reason to believe that there has been or may have been a failure to account, it may publish:

- (a) in a newspaper published and circulating in the district in which the licensee is, or was, carrying on business; and
- (b) in a newspaper published and circulating in Sydney,

a notice that fixes a date on or before which claims relating to the failure must be made.

(2) The date fixed by the notice must be a date that is not earlier than 3 months after its first or only publication and a claim made after that date is barred unless:

- (a) further time is allowed by the Association; or
- (b) if the Association refuses to allow further time, further time is allowed by the Supreme Court.

(3) The publication in a newspaper in good faith of a notice under this section does not subject:

- (a) the Association; or
- (b) a member, employee or agent of the Association; or
- (c) the proprietor, editor or publisher of the newspaper,

to a liability to any person.

(4) The Association may, after such date as it may fix in each case, pay successful claims.

Claims must be pursued

52. (1) The Association may give a claimant not less than 21 days' written notice requiring the claimant:

- (a) to take such steps for the purpose of pursuing the claim; or
- (b) to supply such particulars in connection with the claim; or
- (c) to produce or deliver to it any securities or documents necessary or available to support the claim or to enable it to establish any rights of the Association against a licensee or an associate of the licensee;
or
- (d) to do such things in connection with the claim,

as are specified in the notice.

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- (2) If the claimant fails to comply with the notice, the Association:
- (a) may wholly or partly disallow the claim; or
 - (b) may direct that the whole, or a specified part, of any interest otherwise payable be not paid.

Determination of claims

53. (1) After considering a claim, the Association may determine the claim:

- (a) by allowing the claim, either wholly or in part; or
- (b) by disallowing the claim.

(2) A claim is not to be allowed, either wholly or in part, unless the Association is satisfied that there has been a failure to account by the licensee to whom the claim relates and that the claimant has suffered pecuniary loss as a result of that failure.

(3) If a claim is allowed in part only, there is to be paid to the claimant by the Association, in respect of costs incurred by the claimant as a result of the failure to account, an amount assessed:

- (a) by agreement between the claimant and the Association; or
- (b) in default of agreement—as if taxed on a reference for taxation under Division 5 of Part 11 of the Legal Profession Act 1987.

(4) If a claim is disallowed but the Association determines that a specified amount should be paid in respect of costs incurred by the claimant as a result of the failure to account, that amount is to be paid to the claimant by the Association.

(5) The Association must cause notice to be given to the Council of any determination under this section within 7 days after the determination is made.

(6) Even if a successful claim does not include a claim for interest, there is payable to the claimant by the Association interest at the rate prescribed by the regulations on:

- (a) the amount allowed by the Association; or
- (b) the amount of the judgment recovered against the Association, from the date on which the claim was made until the date on which it succeeded.

Avoidance of double compensation

54. (1) If, in respect of a claim, a claimant:

- (a) receives a payment from the Association; and

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- (b) receives or recovers from another source a payment on account of the pecuniary loss,

the claimant is liable to pay to the Association the amount of surplus (if any) after deducting from the total amount received or recovered by the claimant the amount of the pecuniary loss.

- (2) If, in respect of a claim, a claimant:

- (a) receives or recovers from a source other than the Association a payment on account of the pecuniary loss; and

- (b) recovers judgment against the Association,

the amount of any such judgment against the Association is reduced by the amount of surplus (if any) after deducting from the total amount received or recovered (including the amount of the judgment) by the claimant the amount of the pecuniary loss.

- (3) Any amount payable to the Association under subsection (1) is a debt due to the Association by the licensee.

Ceiling on payments by the Association

55. (1) The maximum aggregate amount that is payable by the Association in respect of all failures to account by the same licensee or firm of licensees is such amount as the Association may, after consultation with the Committee, determine.

(2) The Association may make a payment that, but for this subsection, could not be made because of the limit imposed by subsection (1) if it is satisfied, after taking into account all of its ascertained and contingent liabilities, that it would be reasonable to do so.

Proceedings against the Association

56. (1) An action does not lie against the Association in respect of its determination of a claim otherwise than as provided by this section.

(2) If the Association wholly or partly disallows a claim relating to a failure to account in respect of which a licensee or associate has been convicted of an offence involving dishonesty:

- (a) the claimant may take proceedings in the Supreme Court as for a debt due by the Association; and

- (b) in any such proceedings, the defences that would have been available to the licensee are available to the Association.

(3) If the Association wholly or partly disallows a claim, it must, without delay, give written notice of the disallowance to the claimant or the claimant's solicitor.

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(4) A claimant whose claim is wholly or partly disallowed, or whose claim is not determined by the Association within the time prescribed by the regulations, may appeal to the Supreme Court against the disallowance of or the failure to determine the claim.

(5) On an appeal under this section, the Supreme Court may make such order as it thinks fit.

(6) A claimant may take proceedings under either subsection (2) or subsection (4).

Association subrogated to rights etc. of claimants

57. (1) On payment being made under a claim, the Association is subrogated to all the rights and remedies of the claimant against:

- (a) the licensee or associate in respect of whom the claim was made; or
- (b) the person authorised to administer the estate of any such licensee who is deceased or bankrupt; or
- (c) any other person,

in relation to the failure to account.

(2) This section does not extend to a right or remedy against a licensee who is a partner of a claimant and who, in the opinion of the Association, acted honestly and reasonably in relation to the failure to account.

(3) The Association may exercise its rights or remedies under this section in its own name or the name of the claimant.

(4) If the Association brings proceedings under this section in the name of a claimant, the Association indemnifies the claimant against any costs awarded against the claimant in the proceedings.

Insufficiency of the assets of the Association

58. (1) If the assets of the Association are at any time insufficient to meet the liabilities to which the Association is subject under this Division:

- (a) the Association may determine the manner of division among the successful claimants, or any of them to the exclusion of the others, of the money for the time being available; and
- (b) the judgments and claims are, subject to any limitations imposed by this Act, to be finally satisfied from future assets of the Association.

(2) Proceedings based on, or for the enforcement of, a judgment against the Association in respect of a claim may not be taken without the leave of the Supreme Court.

PART 5—MANAGEMENT AND RECEIVERSHIP**Division 1—Preliminary****Definitions**

59. In this Part:

“associate”, in relation to a licensee, has the meaning given to it by section 60;

“expenses”, in relation to management or receivership, means:

- (a) the remuneration payable to the manager or receiver; or
- (b) the expenses incurred in the course of the management or receivership; or
- (c) the costs of legal proceedings involved in the management or receivership; or
- (d) any reimbursement of the manager or receiver under section 67 or 92;

“failure to account” has the meaning given to it by section 61;

“licensee” includes:

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

“property”, in relation to a licensee, means:

- (a) money or other property received by the licensee on behalf of another person in the conduct of a conveyancing business; or
- (b) interest, dividends, income, profits or other property derived from or acquired with money or other property referred to in paragraph (a); or
- (c) documents and records of any description relating to anything referred to in paragraph (a) or (b) or to the licensee's conveyancing business; or
- (d) any means by which any records referred to in paragraph (c) that are not written may be reproduced in writing,

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

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

“receiver” means a receiver appointed by the Supreme Court under section 74;

“relevant associate” means a licensee’s associate of whose property a receiver has been appointed under section 75;

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

Associate

60. (1) In this Part, a reference to a licensee’s associate is a reference to:

- (a) a partner of the licensee; or
- (b) an employee or agent of the licensee; or
- (c) a corporation, or a member of a corporation, partnership, syndicate or joint venture, in which the licensee or a person referred to in paragraph (a), (b) or (d) has a beneficial interest; or
- (d) a person who bears a prescribed relationship to the licensee or to a person referred to in paragraphs (a)–(c); or
- (e) a corporation that (if a person referred to in paragraphs (b)–(d) is a corporation) is a subsidiary of the person within the meaning of the Corporations Law; or
- (f) a person declared by the regulations to be an associate of the licensee or belonging to a class of persons so declared.

(2) For the purposes of subsection (1) (d), a person bears a prescribed relationship to a licensee or other person if the relationship is that of:

- (a) a spouse; or
- (b) a de facto partner within the meaning of the De Facto Relationships Act 1984; 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.

Failure to account

61. (1) In this Part, **“failure to account”** means a failure by a licensee to account for, pay or deliver money or other valuable property:

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- (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:

- (c) for which the licensee or associate has been convicted, or is likely to be convicted, of an offence involving dishonesty; or
- (d) which the Council has found, or is likely to find, to be dishonest.

(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.

(3) A finding by the Council that an act or omission is, or is not, dishonest is conclusive for the purposes of subsection (1).

Division 2—Management

Appointment of manager

62. (1) The Council may appoint a manager for a licensee's conveyancing business if:

- (a) the licensee has made a request to the Council for the appointment of a manager; or
- (b) the Council has suspended or cancelled the licensee's licence under section 20; or
- (c) the Council is of the opinion (whether as a consequence of a determination by the Association under Part 4 or otherwise) that there has been, or that there may have been, a failure to account by the licensee; or
- (d) the Council is of the opinion that a person is unable to obtain payment or delivery of property held by the licensee because the licensee:
 - is mentally or physically infirm; or
 - is bankrupt, has applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, has compounded with his or her creditors or has made an assignment of his or her remuneration for their benefit; or

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- is a prisoner within the meaning of the Prisons Act 1952; or
- has died; or
- has abandoned his or her conveyancing business,

and if the Council is of the opinion that it is necessary to make the appointment in order to protect the interests of other persons.

(2) In the case of a conveyancing business that is conducted by 2 or more licensees in partnership, a reference in subsection (1) to a licensee is to be read as a reference to all of the licensees in the partnership.

(3) The terms of appointment of a manager must specify the remuneration to which the manager is to be entitled in connection with the management of the conveyancing business for which the manager is appointed.

(4) The Council must cause notice to be given to the Committee and the Association of any appointment under this section within 7 days after the appointment is made.

Qualifications for appointment as manager

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

Powers of manager

64. (1) The manager of a licensee's conveyancing business may, subject to subsection (2) and to the terms of his or her appointment:

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

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

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(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.

Management continues under receivership

65. (1) The manager of a licensee's conveyancing business may continue to exercise his or her functions under this Division even if a receiver is appointed under Division 3 in respect of the licensee's property.

(2) The manager of a licensee's conveyancing business for which a receiver is appointed must comply with any lawful direction given by the receiver in connection with the conduct of the business.

Acts of manager to be taken as acts of licensee

66. (1) An act done by the manager of a licensee's conveyancing business is, for the purposes of any proceedings or transaction that relies on that act, taken to have been done by the licensee.

(2) Nothing in this section subjects a licensee to any personal liability in relation to any act done by the manager of the licensee's conveyancing business.

Manager may be reimbursed for damages

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

(2) Reimbursement under this section is to be by way of payment from the Statutory Interest Account.

(3) Neither the manager of a licensee's conveyancing business nor the Law Society is liable for any loss incurred by the licensee as a consequence of any act or omission of the manager or the Council 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.

Payment of expenses of management

68. (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 Law Society from the Statutory Interest Account.

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(2) An amount paid under this section is recoverable by the Law Society as a debt owed by the relevant licensee.

Manager to report to Council and Association

69. (1) The manager of a licensee's conveyancing business must:

- (a) at such times as are fixed by the Council; and
- (b) in accordance with any directions given by the Council,

report to the Council and to the Association on the management of the business.

(2) A report is to include such information as the Council directs.

(3) On the conclusion of the management of a licensee's conveyancing business, the manager must, when giving the Council his or her final report, lodge with the Council all the manager's records that relate to the management.

Trust money

70. (1) Division 2 of Part 3 applies to the accounts kept by a manager in the same way as it applies to the accounts kept by a licensee.

(2) The trust accounts and controlled money accounts of a conveyancing business under management are to be maintained separately from the trust accounts and controlled money accounts of any other conveyancing business under management.

Office accounts

71. The regulations may make provision with respect to:

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

Termination of management

72. 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 Statutory Interest 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.

Obstruction of managers

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

Maximum penalty: 50 penalty units.

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

74. (1) The Supreme Court may, on the application of the Law Society, appoint a receiver of all or any of the property of a licensee and may make the appointment whether or not the licensee has been notified of the application or is a party to the proceedings.

(2) Such an application may be made by the Law Society only if:

- (a) the licensee has made a request to the Council for the appointment of a receiver; or
- (b) the Council has suspended or cancelled the licensee's licence under section 20; or
- (c) the Council is of the opinion (whether as a consequence of a determination by the Association under Part 4 or otherwise) that there has been, or that there may have been, a failure to account by the licensee; or
- (d) the Council is of the opinion that a person is unable to obtain payment or delivery of property held by the licensee because the licensee:
 - is mentally or physically infirm; or
 - is bankrupt, has applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, has compounded with his or her creditors or has made an assignment of his or her remuneration for their benefit; or
 - is a prisoner within the meaning of the Prisons Act 1952; or
 - has died; or
 - has abandoned his or her conveyancing business,

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

(3) The Council must cause notice to be given to the Committee and the Association of any application under this section within 7 days after the application is made.

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

Receivership may extend to property of licensee's associate

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

Court to be closed

76. (1) Before commencing to hear an application for the appointment of a receiver, the Supreme Court may order from the precincts of the Court any person who is not:

- (a) an officer of the Court; or
- (b) a party, a legal representative of a party or a clerk of such a legal representative; or
- (c) a member of the same firm of licensees as the respondent; or
- (d) a person who is in the course of giving evidence; or
- (e) a person permitted by the Court to be present in the interests of justice.

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

Order to be served

77. (1) On the appointment of a receiver, the Council is to cause a copy of the order of appointment to be served on:

- (a) the relevant licensee or relevant associate; and
- (b) any other person on whom the Supreme Court directs a copy of the order to be served.

(2) The Supreme Court may give directions as to the manner of service and may dispense with service if it thinks fit.

Receiver may take possession of property

78. (1) A receiver may take possession of receivable property of the relevant licensee or relevant associate.

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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.

(3) If a person fails to comply with such a requirement, the Supreme Court may, on the application of the receiver, order the person to deliver the property to the receiver.

(4) If, on the application of a receiver, the Supreme Court is satisfied that such an order has not been complied with, the Court:

- (a) may order the seizure of any receivable property located on premises specified in the order; and
- (b) may make such further order in the matter as it thinks fit.

(5) An order under subsection (4) (a) authorises:

- (a) any police officer; or
- (b) the receiver, or a person authorised by the receiver, together with any police officer,

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

(6) An application by a receiver under subsection (3) may be made:

- (a) in the case of property in the possession, or under the control, of the relevant licensee or relevant associate—in the name of the receiver; or
- (b) in any other case—in the name of the relevant licensee or relevant associate.

(7) A receiver must, as soon as possible, return property seized under this section if it transpires that it is not receivable property.

Information about receivable property

79. (1) A person who has information relating to receivable property, or property that a receiver believes on reasonable grounds to be receivable property, must give the information to the receiver if required by the receiver to do so.

Maximum penalty: 50 penalty units.

(2) A licensee who has any such information may not refuse to comply with such a requirement merely because the information was obtained in confidence from a client or former client of the licensee.

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

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(4) Information given to a receiver under this section is not admissible as evidence in any legal proceedings, other than:

- (a) proceedings taken by a receiver for the recovery of receivable property; or
- (b) proceedings taken under this Part; or
- (c) proceedings taken under Part 6 against a licensee:
 - if the information was given to the receiver otherwise than by the licensee; or
 - if the information was given to the receiver by the licensee and is given in evidence in those proceedings with the licensee's consent.

Stop order on bank account

80. (1) A receiver who believes on reasonable grounds that money held in a bank account is receivable property may serve on the bank an order (in this section referred to as a “**stop order**”) prohibiting operations on the account by any person other than the receiver or a person authorised by the receiver.

(2) A stop order may be served by leaving it with the manager, accountant or other person appearing to be in charge at the branch of the bank at which the account is kept, but has no effect unless there is annexed to it a copy of the order appointing the receiver.

(3) A bank served with a stop order:

- (a) must permit the receiver, or a person authorised by the receiver, to operate on the account to which the order relates; and
- (b) must not permit any withdrawal from the account otherwise than by, or by the authority of, the receiver.

(4) A receiver may transfer money from an account the subject of a stop order to another account with the bank in the name of the receiver to be dealt with as receivable property.

(5) The bank has the same obligations and protections:

- (a) in relation to an account the subject of a stop order; and
- (b) in relation to an account to which money in such an account is transferred,

as if the receiver were the relevant licensee or relevant associate.

Improper dealing with property

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

- (a) operate on a bank account; or
- (b) destroy or conceal receivable property or property that is likely to become receivable property; or
- (c) move receivable property, or property that is likely to become receivable property, from one place to another; or
- (d) deliver possession of receivable property, or property that is likely to become receivable property, to another person; or
- (e) deliver control of receivable property, or property that is likely to become receivable property, to another person.

Maximum penalty: 20 penalty units.

Recovery of compensation for disposal of receivable property

82. (1) If receivable property has at any time been taken by, or paid or transferred to, a person unlawfully or in breach of trust in circumstances in which:

- (a) the person knew or believed at the time that the taking, payment or transfer was unlawful or in breach of trust; or
- (b) there was no consideration for the taking, payment or transfer; or
- (c) there was inadequate consideration for the taking, payment or transfer; or
- (d) the person became indebted or otherwise liable to the relevant licensee or relevant associate, or to a client of the licensee, as a result of the taking, payment or transfer,

the receiver may recover from the person, as a debt, the amount taken, paid or transferred, the amount of the inadequacy or the amount of the debt, as the case may be.

(2) A person from whom an amount is recovered under subsection (1) is not liable to any other person in respect of the amount.

(3) If receivable property has at any time been paid or transferred unlawfully or in breach of trust to, or for the benefit of, a person in respect of a cause of action the person claims to have against another person, the receiver:

- (a) may recover from the person as a debt the amount of the payment or the value of the property; or
- (b) to the extent to which the full amount or value is not recovered from the person under paragraph (a)—may take such proceedings in relation to the claimed cause of action as the person could have taken.

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(4) If a receiver takes proceedings under subsection (3) (b) in relation to a cause of action claimed by a person, the receiver may not later take proceedings under subsection (3) (a) to recover property paid or transferred to the person in respect of the same cause of action.

(5) If receivable property is used unlawfully or in breach of trust to discharge a debt or liability of a person, the receiver may recover from the person as a debt the amount that was required for the discharge of the debt or liability, reduced by the value of any consideration provided by the person for the discharge.

(6) Recovery proceedings under this section may be taken in the name of the receiver or in the name of any other person who, had the receiver not been appointed, would have been entitled to take the proceedings.

Receiver may give certificate

83. (1) A receiver, or a person authorised by the Council, may give a certificate as to any one or more of the following:

- (a) the receipt of property by a licensee or a licensee's associate, the nature and value of the property received, the date of its receipt by the licensee or associate and the identity of the person from whom it was received;
- (b) the taking or transfer of property, the nature and value of the property, the date of its taking or transfer and the identity of the person by whom it was taken or to whom it was transferred;
- (c) the payment of money, the amount of money paid, the date of the payment and the identity of the person who received the payment;
- (d) the entries made in the records of a licensee or a licensee's associate and the truth or falsity of the entries;
- (e) the use of property unlawfully or in breach of trust.

(2) A certificate under this section is admissible in any proceedings taken by a receiver under this Division and is evidence of the matters specified in the certificate.

Receiver taken to be beneficially entitled to property

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

(2) If receivable property has been taken by, or paid or transferred to, a person or otherwise used unlawfully or in breach of trust, a receiver may

take proceedings in the name of the receiver as if the receiver were beneficially entitled to the property at the time the property was so taken, paid, transferred or used.

Receiver may deal with property

85. (1) A receiver may deal with receivable property in any manner in which the relevant licensee or relevant associate could, had the receiver not been appointed, have dealt with it.

(2) A receiver must, as soon as possible after receiving receivable property, vest the property in the person on whose behalf it was held by the relevant licensee or relevant associate.

Other powers of receiver

86. (1) A receiver:

- (a) may prove, grant, claim or draw a dividend in respect of a debt that is receivable property; and
- (b) may take proceedings to recover damages for a tort committed in relation to receivable property; and
- (c) may give a receipt for money that is receivable property; and
- (d) may employ a person to advise or act in relation to receivable property,

in the name of the receiver or in the name of the relevant licensee or relevant associate.

(2) A receipt given to a person under subsection (1) (c) discharges the person from any responsibility to see the application of the money for which the receipt was given.

(3) A receiver is not, in the exercise of his or her functions as a receiver, a personal representative of a deceased licensee.

Notice to claim receivable property

87. (1) A receiver may give notice to:

- (a) the relevant licensee or relevant associate; or
- (b) any other person,

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

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(2) A claim submitted in response to such a notice must state:

- (a) full particulars of the property; and
- (b) the grounds of the claim.

(3) A receiver may disregard a claim made by a licensee, a licensee's associate or any other person who has been given a notice under this section if the claim is not made in accordance with the notice.

(4) The relevant licensee or relevant associate is not entitled:

- (a) to enforce a claim to receivable property; or
- (b) except against a client—to the benefit of a lien against a document that is receivable property,

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

Lien for costs on receivable property

88. (1) If a licensee claims a lien for costs on receivable property, the receiver may serve on the licensee a written notice requiring the licensee to give to the receiver, within a specified period of not less than 1 month:

- (a) particulars sufficient to identify the property; and
- (b) a detailed bill of costs.

(2) The notice, or a subsequent written notice served on the licensee, may require the licensee to tax the bill of costs within a reasonable time specified in the notice.

(3) If the licensee requests the receiver in writing to allow access to receivable property to enable the licensee to tax a bill of costs, the time allowed for taxation does not begin to run until access is provided.

(4) If a requirement of a notice under this section is not complied with, the receiver may disregard the claim in dealing with the property claimed to be subject to a lien.

Examination by receiver

89. (1) The Supreme Court may, on the application of a receiver, make such order as it thinks fit for the examination by the receiver of a licensee or other person in relation to receivable property.

(2) On an examination under this section:

- (a) the licensee or other person may be represented by a solicitor or barrister; and
- (b) the Supreme Court may put, or allow to be put, to the licensee or other person such questions as it thinks fit.

(3) The licensee or other person may be examined on oath or affirmation.

(4) The licensee or other person is compellable to answer all questions asked in the course of the examination, including any question to which an objection is made on the ground that the answer would tend to incriminate the licensee or other person.

(5) An answer given by a licensee or other person to a question to which such an objection is made is not admissible in any criminal proceedings other than proceedings relating to the falsity of the answer.

Property not dealt with by receiver

90. (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 Council and:

- (a) if the Council so requires within 1 month after the notice is given—must transfer and deliver the property to the Law Society; or
- (b) if no such requirement is made—must transfer and deliver the property to the relevant licensee or relevant associate.

(2) If property other than money is transferred or delivered to the Law Society under this section, the Law Society:

- (a) must deal with it as the Supreme Court directs; and
- (b) if the property is sold—must treat the proceeds as money paid to it under this section.

(3) The Law Society must apply money paid to it under this section:

- (a) firstly—towards the satisfaction of wholly or partly unsatisfied claims against the relevant licensee; and
- (b) secondly—in payment of the expenses of the receivership.

(4) Any money paid to the Law Society under this section that is surplus to the requirements of this section must be paid to the relevant licensee or relevant associate.

Investment of money by receiver

91. (1) A receiver may invest receivable property in any manner in which trustees are authorised by the Trustee Act 1925 to invest trust funds.

(2) Income received from an investment under this section, and any profit made on the sale of such an investment, is receivable property.

Receiver may be reimbursed for damages

92. (1) The Law Society may reimburse a receiver for any damages or costs recovered against the receiver, or an employee or agent of the receiver, for any act or omission done or omitted in good faith and in the purported exercise of the receiver's functions.

(2) Reimbursement under this section is to be by way of payment from the Statutory Interest Account.

Payment of expenses of receivership

93. (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 Law Society from the Statutory Interest Account.

(2) An amount paid under this section may be recovered by the Law Society from the relevant licensee as a debt.

(3) If the Law Society and a receiver fail to agree on the remuneration to be paid to the receiver, the Supreme Court may, on the application of the Law Society or the receiver, determine the amount to be paid.

(4) The Supreme Court, on the application of the relevant licensee:

(a) may re-open any agreement between the Law Society and a receiver for remuneration of the receiver; and

(b) may determine the amount to be paid.

Supreme Court may review expenses of receivership

94. (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 Law Society and the receiver.

(2) After the taking of accounts, the Supreme Court:

(a) may relieve the relevant licensee from payment of any amount in excess of that determined by the Supreme Court to be fairly payable; or

(b) if the receiver has been paid, or allowed on account, an amount that includes such an excess—may order the receiver to repay the excess.

Receivable property not to be attached

95. 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.

Applications for directions by receiver, licensee etc.

96. (1) A receiver, a licensee or a licensee's associate who holds receivable property, or a person who claims receivable property so held, may apply to the Supreme Court for directions as to the performance of the receiver's functions.

(2) On an application under this section, the Supreme Court may give such directions as it thinks fit.

Supreme Court may give general directions to receiver.

97. (1) The Supreme Court:

(a) may authorise a receiver to do such things in the exercise of the receiver's functions as the Supreme Court considers appropriate; and

(b) may give directions for the exercise of any such authority.

(2) A receiver must exercise any authority so conferred in accordance with any direction so given.

Receiver to report to the Supreme Court etc.

98. (1) A receiver must, at such times and in respect of such periods as the Supreme Court directs, submit to the Supreme Court, and to the Council and the Association, reports on the receivership.

(2) A report is to deal with such matters as the Supreme Court directs and with such other matters as the receiver considers appropriate to include in the report.

(3) On the conclusion of a receivership, the receiver must lodge with the Supreme Court all of the receiver's records that relate to the receivership.

(4) Unless the Supreme Court orders their destruction, records lodged under this section are to remain in the custody of the Court.

Termination of appointment of receiver

99. (1) The Supreme Court:

(a) may terminate the appointment of a receiver; and

(b) may, if it thinks fit, appoint a new receiver either immediately or at any time within the next 14 days.

(2) The former receiver must transfer or deliver the receivable property:

(a) if a new receiver is appointed—to the new receiver in accordance with any directions given by the Supreme Court; or

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- (b) if a new receiver is not appointed and if the relevant licensee or relevant associate so requires by notice in writing served on the receiver—to the licensee or associate.

Maximum penalty: 10 penalty units.

(3) The receivable property must, in accordance with any directions given by the Supreme Court, be transferred or delivered as soon as possible after the former receiver's appointment is terminated.

(4) A former receiver is not required to comply with the requirements of this section unless:

- (a) the expenses of the receivership have been paid to the Law Society; or
- (b) the Council otherwise directs in relation to those expenses.

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

Obstruction of receivers

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

Maximum penalty: 50 penalty units.

PART 6—DISCIPLINARY PROCEEDINGS

Division 1—Preliminary

Application to ex-licensees

101. This Part applies to and in respect of a person against whom a complaint of unsatisfactory professional conduct or professional misconduct has been made (being a person who was a licensee when the conduct allegedly occurred but who is no longer a licensee) as if the person were still a licensee.

Conduct amounting to an offence

102. Action may be taken under this Part in relation to any conduct that is alleged to be unsatisfactory professional conduct or professional misconduct:

- (a) whether or not the conduct constitutes an offence; and

- (b) whether or not the person against whom the action is taken has been prosecuted or convicted for an offence arising out of the conduct.

The Legal Profession Conduct Review Panel

103. (1) The Legal Profession Conduct Review Panel may include, for the purposes of this Act, 1 or more licensees.

(2) A reference to a solicitor in Schedule 4 to the Legal Profession Act 1987 is to be read as including a reference to a licensee.

(3) In this section, a reference to a licensee is a reference to the holder of a licence that is free of any conditions other than conditions of the kind referred to in section 13 (2) (d).

The Legal Profession Standards Board

104. (1) The Legal Profession Standards Board may include, for the purposes of this Act, 1 or more licensees.

(2) A reference to a solicitor in Schedule 5 to the Legal Profession Act 1987 is to be read as including a reference to a licensee.

(3) In this section, a reference to a licensee is a reference to the holder of a licence that is free of any conditions other than conditions of the kind referred to in section 13 (2) (d).

The Legal Profession Disciplinary Tribunal

105. (1) The Legal Profession Disciplinary Tribunal may include, for the purposes of this Act, 1 or more licensees.

(2) A reference to a solicitor in Schedule 6 to the Legal Profession Act 1987 is to be read as including a reference to a licensee.

(3) In this section, a reference to a licensee is a reference to the holder of a licence that is free of any conditions other than conditions of the kind referred to in section 13 (2) (d).

Division 2—Complaints against licensees

Complaints

106. (1) A person may make a complaint to the Council alleging that a licensee is guilty of conduct that may constitute unsatisfactory professional conduct or professional misconduct.

(2) A complaint:

(a) must be in writing; and

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- (b) must identify the complainant and the licensee against whom the complaint is made; and
- (c) must give particulars of the unsatisfactory professional conduct or professional misconduct that is alleged to have occurred.

(3) A complainant who has suffered loss as a consequence of the alleged unsatisfactory professional conduct or professional misconduct may, in the complaint, request the making of any one or more of the following orders:

- (a) an order that the licensee waive or repay the whole or part of the fees charged by the licensee in respect of work carried out by the licensee for the complainant;
- (b) an order that the licensee carry out specified work for the complainant free of charge;
- (c) an order that the licensee waive any lien in respect of a specified document or class of documents;
- (d) an order that the licensee pay to the complainant an amount by way of compensation.

(4) A complaint that requests the making of such an order must give particulars of the loss suffered by the complainant as a consequence of the alleged unsatisfactory professional conduct or professional misconduct.

(5) The Council must take all reasonable steps to ensure that a person who wishes to make a complaint is given such assistance as is necessary to enable the person to make the complaint in accordance with this section.

Council may require further particulars

107. The Council, by notice in writing served on the complainant:

- (a) may require further particulars of any complaint to be given; and
- (b) may require the complaint, or any further particulars, to be verified by statutory declaration,

within such time as it may specify in the notice.

Summary dismissal of complaints

108. The Council may dismiss a complaint without further investigation:

- (a) if further particulars of the complaint are not furnished, or the complaint or the further particulars are not verified, as required by the Council; or
- (b) if the complaint is frivolous or vexatious.

Investigation of complaints

109. (1) The Council is to conduct an investigation into each complaint made to it under this Division, other than a complaint that has been dismissed under section 108.

(2) The Council must cause a record of its decision, together with the reasons for its decision, to be kept in respect of each investigation conducted by it under this section.

Consultation with the Committee

110. The Council is not to make any decision with respect to a complaint against a licensee unless:

- (a) it has caused notice to be given to the Committee of the fact that it is conducting an investigation into the complaint and of its preliminary findings with respect to the complaint; and
- (b) it has given the Committee a reasonable opportunity (at least 14 days) within which to comment on those findings; and
- (c) it has given due consideration to any comments made to it by the Committee.

Decisions of the Council

111. (1) If, after it has completed an investigation into a complaint against a licensee, the Council is satisfied:

- (a) that the complaint does not involve any question of unsatisfactory professional conduct or professional misconduct—it must dismiss the complaint; or
- (b) that the complaint involves a question of unsatisfactory professional conduct:
 - it must refer the complaint to the Board; or
 - it must dismiss the complaint; or
- (c) that the complaint involves a question of professional misconduct—it must refer the complaint to the Tribunal.

(2) The Council may not dismiss a complaint pursuant to subsection (1) (b) unless it is satisfied that the licensee concerned is generally competent and diligent and that no other material complaints have been made against the licensee.

Council may make complaint after consultation with the Committee

112. The Council may, after consultation with the Committee, make a complaint to the Board or the Tribunal against any licensee if it appears

to the Council that the licensee may be guilty of unsatisfactory professional conduct or professional misconduct.

Division 3—Review of the Council's decisions

Applications for reviews

113. (1) A complainant may apply to the Panel for a review of a decision by the Council to dismiss a complaint made by the complainant, other than a decision to dismiss a complaint the subject of a notice given to the Council under section 116 (2).

(2) Such an application must be made, in writing, within 2 months after the decision is made or is deemed to have been made.

Composition of the Panel

114. (1) The Panel is, for the purpose of conducting a review under this Division, to be constituted by 1 of its licensee members and 2 of its lay members.

(2) The Chairperson of the Panel is to nominate the persons to constitute the Panel for the purposes of any particular review.

(3) The Chairperson of the Panel is to preside at any review for which the Panel is so constituted as to include the Chairperson.

(4) In the case of a review for which the Panel is so constituted as not to include the Chairperson of the Panel, the Chairperson is to nominate one of the other lay members to preside at the review.

(5) More than one review may be conducted by the Panel at the same time.

Reviews

115. (1) The Panel is to review each decision to dismiss a complaint the subject of an application made to it under this Division.

(2) The Panel must consult with the Council before it completes its review of the decision to dismiss a complaint.

(3) For the purpose of enabling it to review a decision to dismiss a complaint, the Panel is entitled to view:

- (a) the record of the Council's investigation of the complaint; and
- (b) all other documents held by the Council in relation to that investigation.

Recommendations of the Panel

116. (1) When the Panel has completed its review of a decision to dismiss a complaint:

- (a) it may uphold the decision; or
- (b) it may recommend to the Attorney General that the matter be referred to the Board; or
- (c) it may recommend to the Attorney General that the matter be referred to the Tribunal,

as it thinks fit.

(2) Before making a recommendation under subsection (1) (b) or (c), the Panel is to give notice to the Council of its intention to make the recommendation and of the Panel's reasons for making the recommendation.

(3) The Panel may make such a recommendation only if:

- (a) a period of one month or more has elapsed since notice of its intention to do so was given to the Council under subsection (2); and
- (b) the matter has not been referred to the Board or the Tribunal.

(4) Such a recommendation must be accompanied by a statement of the Panel's reasons for making the recommendation.

Determinations by the Attorney General

117. (1) On receiving a recommendation from the Panel in connection with a complaint, the Attorney General:

- (a) may uphold the decision of the Council with respect to the complaint; or
- (b) may refer the complaint to the Board; or
- (c) may refer the complaint to the Tribunal,

as the Attorney General thinks fit.

(2) In exercising the Attorney General's functions under this section, the Attorney General is to take into consideration, but is not bound to follow, the recommendation made by the Panel.

(3) The Attorney General is to cause his or her decision with respect to a complaint, together with his or her reasons for the decision, to be notified to the complainant.

Division 4—Unsatisfactory professional conduct**Composition of the Board**

118. (1) The Board is, for the purpose of conducting a hearing into a complaint, to be constituted by 1 of its solicitor members, 1 of its licensee members and 1 of its lay members.

(2) The Chairperson of the Board is to nominate the persons to constitute the Board for the purposes of any particular hearing.

(3) The Chairperson of the Board is to preside at any hearing for which the Board is so constituted as to include the Chairperson.

(4) In the case of a hearing for which the Board is so constituted as not to include the Chairperson of the Board, the Chairperson is to nominate the solicitor member to preside at the hearing.

(5) More than one hearing may be conducted by the Board at the same time.

Hearings

119. (1) The Board is to conduct a hearing into any complaint made or referred to it under Division 2 or 3.

(2) For the purpose of conducting such a hearing, the Board is not bound to observe the rules of law governing the admission of evidence, but may inform itself of any matter in such manner as it thinks fit.

(3) If, in the course of conducting a hearing into a complaint, the Board considers that the complaint involves a question of professional misconduct, the Board:

- (a) must terminate the hearing; and
- (b) must refer the complaint to the Tribunal to be dealt with in accordance with Division 6.

(4) The Board must cause a record of its determination, together with the reasons for its determination, to be kept in respect of each hearing conducted by it under this Division.

(5) If one of the members (not being the presiding member) constituting the Board for the purpose of conducting a hearing under this Division vacates office for any reason referred to in clause 8 of Schedule 5 to the Legal Profession Act 1987:

- (a) before the Board has completed the hearing; or
- (b) before the Board has made a determination in respect of the hearing,

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the hearing may be continued, or a determination may be made, by the remaining members of the Board.

(6) If the remaining members are divided in opinion as to the determination to be made in respect of the hearing, the opinion of the presiding member is to prevail.

(7) However, if the presiding member or more than one other member vacates office for any such reason before the Board has completed the hearing or made a determination in respect of the hearing, the hearing is terminated.

(8) The Board may, for the purpose of conducting a new hearing into the complaint concerned, be reconstituted in accordance with this Division.

Parties

120. (1) The following persons are entitled to appear at a hearing into a complaint:

- (a) the licensee against whom the complaint has been made;
- (b) the Council;
- (c) the Attorney General;
- (d) the complainant (if any).

(2) A complainant is entitled to appear at a hearing only if the complainant has, in his or her complaint, requested the making of an order referred to in section 106 (3).

(3) A complainant's entitlement to appear at a hearing is limited to those aspects of the hearing that deal with the loss (if any) suffered by the complainant as a consequence of the conduct the subject of the hearing.

(4) The Board may grant leave to any other person to appear at a hearing if the Board is satisfied that it is appropriate for that person to appear at the hearing.

(5) Any person who is entitled to appear at a hearing, or who is granted leave to appear at a hearing, may appear personally or be represented by a solicitor or barrister or, with the leave of the Board, by any other person.

(6) Any person who appears (otherwise than as a witness) at a hearing is taken to be a party to the hearing.

Hearings to be conducted in camera

121. (1) A hearing is to be held in the absence of the public.

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(2) No persons other than the parties to a hearing and their representatives are entitled to be present at the hearing.

Power to summon witnesses and take evidence

122. (1) A member of the Board or the Registrar of the Board may summon a person to appear at a hearing to give evidence and to produce such documents (if any) as are referred to in the summons.

(2) The member of the Board presiding at a hearing may require a person appearing at the hearing to produce a document.

(3) The Board may, at a hearing, take evidence on oath or affirmation and, for that purpose:

(a) a member of the Board may require a person appearing at the hearing to give evidence either to take an oath or to make an affirmation in a form approved by the member of the Board presiding at the hearing; and

(b) a member of the Board may administer an oath or affirmation to a person so appearing at the hearing.

(4) A person served with a summons to appear at a hearing to give evidence must not, without reasonable excuse:

(a) fail to attend as required by the summons; or

(b) fail to attend from day to day unless excused, or released from further attendance, by a member of the Board.

Maximum penalty: 20 penalty units.

(5) A person appearing at a hearing to give evidence must not, without reasonable excuse:

(a) when required to take an oath or make an affirmation—fail to comply with the requirement; or

(b) fail to answer a question that the person is required to answer by the member of the Board presiding at the hearing; or

(c) fail to produce a document that the person is required to produce by a summons served under this section.

Maximum penalty: 20 penalty units.

Power to obtain documents

123. (1) A member of the Board or the Registrar of the Board may, by notice in writing served on a person, require the person:

(a) to attend, at a time and place specified in the notice, before a person so specified, being a member of the Board or the Registrar of the Board or a person authorised by the Board in that behalf; and

(b) to produce, at that time and place, to the person so specified a document specified in the notice.

(2) A person must not, without reasonable excuse, fail to comply with a notice served on the person under this section.

Maximum penalty: 20 penalty units.

Release of information

124. (1) The Board may give directions preventing or restricting the publication of evidence given at a hearing or of matter contained in documents produced at a hearing.

(2) A person must not make a publication in contravention of a direction given under this section.

Maximum penalty: 20 penalty units.

Determinations of the Board

125. (1) If, after it has completed a hearing into a complaint against a licensee, the Board is satisfied that the licensee is guilty of unsatisfactory professional conduct, the Board may do any one or more of the following:

- (a) it may reprimand the licensee;
- (b) it may order that the licensee undertake and complete such course of further legal education as it may specify in the order;
- (c) it may order that the licensee's conveyancing business be subject to periodic inspection by such person or persons, and for such period, as it may specify in the order;
- (d) it may order that the licensee seek advice in relation to the management of his or her conveyancing business from such person or persons as it may specify in the order;
- (e) it may order that the licensee cease to employ in his or her conveyancing business such person or persons as it may specify in the order;
- (f) it may order that the licensee employ in his or her conveyancing business a person belonging to such class of persons as it may specify in the order;
- (g) it may order that the licensee cease to accept instructions in relation to such class of work as it may specify in the order;
- (h) it may order that the licensee pay a fine of such amount (not exceeding 20 penalty units) as it may specify in the order.

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(2) If, after it has completed a hearing into a complaint against a licensee, the Board is satisfied that the licensee is guilty of unsatisfactory professional conduct and that the complainant has suffered loss as a consequence of the conduct, the Board may do any one or more of the following:

- (a) it may order that the licensee waive or repay the whole, or such part as it may specify in the order, of the fees charged to the complainant by the licensee in respect of such work as it may so specify;
- (b) it may order that the licensee carry out for the complainant such work as it may specify in the order, either free of charge or for such fee as it may so specify;
- (c) it may order that the licensee waive any lien in respect of such document or class of documents as it may specify in the order;
- (d) it may order that the licensee pay to the complainant such amount by way of compensation as it may specify in the order.

(3) An order (other than an order for the payment of compensation not exceeding \$2,000) may not be made under subsection (2) unless:

- (a) the complainant has, in his or her complaint, requested the making of the order; and
- (b) the complainant and the licensee both consent to the making of the order,

nor may such an order be made in respect of any loss for which the complainant has received, or is entitled to receive, compensation pursuant to an order of a court.

(4) The recovery of compensation awarded under this section does not affect any other remedy available to the complainant, but any compensation so awarded is to be taken into account in any other proceedings by or on behalf of the complainant in respect of the same loss.

(5) In addition to any other order that the Board may make under this section with respect to a licensee whom it has found guilty of unsatisfactory professional conduct, the Board:

- (a) may make ancillary orders; and
- (b) may make orders requiring the licensee to pay such amounts by way of costs (including the costs of the Council and the complainant) as it may determine.

(6) If, after it has completed a hearing into a complaint against a licensee, the Board is satisfied that the licensee is not guilty of

unsatisfactory professional conduct, the Board may (but only if it considers that special circumstances so warrant) order payment from the Statutory Interest Account to the licensee of such amount, by way of costs, as it may determine.

Division 5—Review of the Board's decisions

Applications for reviews

126. (1) Any party to a hearing conducted by the Board may apply to the Tribunal for a review of the Board's determination of a complaint.

(2) The complainant at a hearing conducted by the Board may not make an application under this section except with respect to those aspects of the hearing that deal with the loss (if any) suffered by the complainant as a consequence of the conduct the subject of the hearing.

(3) An application under this section must be made in accordance with the rules of the Tribunal.

Composition of the Tribunal

127. (1) The Tribunal is, for the purpose of conducting a review of the Board's determination of a complaint, to be constituted by 1 of its solicitor members, 1 of its licensee members and 1 of its lay members.

(2) The President of the Tribunal is to nominate the persons to constitute the Tribunal for the purposes of any particular review.

(3) The President of the Tribunal is to nominate the solicitor member to preside at the review.

(4) More than one review may be conducted by the Tribunal at the same time.

Parties

128. The parties to a hearing the subject of a review under this Division are taken to be the parties to the review.

Reviews

129. (1) The Tribunal is to conduct a review of each determination the subject of an application made to it under this Division.

(2) An application is to be dealt with by way of a new hearing and fresh evidence, or evidence in addition to or in substitution for the evidence received at the original hearing, may be given.

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(3) Sections 119–124 apply to and in respect of a review conducted by the Tribunal in the same way as they apply to and in respect of a hearing conducted by the Board.

(4) The Tribunal must cause a record of its decision, together with the reasons for its decision, to be kept in respect of each review conducted by it under this Division.

Decisions of the Tribunal

130. (1) The Tribunal:

- (a) may uphold the Board's determination of a complaint; or
- (b) may make any one or more of the orders that the Board could have made in relation to the complaint.

(2) The Tribunal's decision in respect of a complaint is final and is to be given effect to as if it were a determination by the Board.

Professional misconduct

131. If the Tribunal considers that a complaint the subject of a determination under review involves a question of professional misconduct, the Tribunal:

- (a) may terminate the review; and
- (b) may deal with the complaint in accordance with Division 6 as if the complaint had been made or referred to it under Division 2, 3 or 4.

Division 6—Professional misconduct

Composition of the Tribunal

132. (1) The Tribunal is, for the purpose of conducting a hearing into a complaint, to be constituted by 1 of its solicitor members, 1 of its licensee members and 1 of its lay members.

(2) The President of the Tribunal is to nominate the persons to constitute the Tribunal for the purposes of any particular hearing.

(3) The President of the Tribunal is to nominate the solicitor member to preside at the hearing.

(4) More than one hearing may be conducted by the Tribunal at the same time.

Hearings

133. (1) The Tribunal is to conduct a hearing into any complaint made or referred to it under Division 2, 3 or 4.

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(2) For the purpose of conducting such a hearing, the Tribunal must observe the rules of law governing the admission of evidence.

(3) The Tribunal must cause a record of its determination, together with the reasons for its determination, to be kept in respect of each hearing conducted by it under this Division.

(4) If one of the members (not being the presiding member) constituting the Tribunal for the purpose of conducting a hearing under this Division vacates office for any reason referred to in clause 7 of Schedule 6 to the Legal Profession Act 1987:

(a) before the Tribunal has completed the hearing; or

(b) before the Tribunal has made a determination in respect of the hearing,

the hearing may be continued, or a determination may be made, by the remaining members of the Tribunal.

(5) If the remaining members are divided in opinion as to the determination to be made in respect of the hearing, the opinion of the presiding member is to prevail.

(6) However, if the presiding member or more than one other member vacates office for any such reason before the Tribunal has completed the hearing or made a determination in respect of the hearing, the hearing is terminated.

(7) The Tribunal may, for the purpose of conducting a new hearing into the complaint concerned, be reconstituted in accordance with this Division.

Parties

134. (1) The following persons are entitled to appear at a hearing into a complaint:

(a) the licensee against whom the complaint has been made;

(b) the Council;

(c) the Attorney General;

(d) the complainant (if any).

(2) A complainant is entitled to appear at a hearing only if the complainant has, in his or her complaint, requested the making of an order referred to in section 106 (3).

(3) A complainant's entitlement to appear at a hearing is limited to those aspects of the hearing that deal with the loss (if any) suffered by the complainant as a consequence of the conduct the subject of the hearing.

(4) The Tribunal may grant leave to any other person to appear at a hearing if the Tribunal is satisfied that it is appropriate for that person to appear at the hearing.

(5) Any person who is entitled to appear at a hearing, or who is granted leave to appear at a hearing, may appear personally or be represented by a solicitor or barrister or, with the leave of the Tribunal, by any other person.

(6) Any person who appears at a hearing (otherwise than as a witness) is taken to be a party to the inquiry.

Hearings to be conducted in public

135. (1) A hearing is to be held in the presence of the public.

(2) The Tribunal may, however, direct that a hearing be held in the absence of the public if it is of the opinion that the absence of the public will be in the interests of justice.

(3) When a hearing is held in the absence of the public, no persons other than the parties to the hearing and their representatives are entitled to be present at the hearing.

Power to summon witnesses and take evidence

136. (1) A member of the Tribunal or the Registrar of the Tribunal may summon a person to appear at a hearing to give evidence and to produce such documents (if any) as are referred to in the summons.

(2) The member of the Tribunal presiding at a hearing may require a person appearing at the hearing to produce a document.

(3) The Tribunal may, at a hearing, take evidence on oath or affirmation and, for that purpose:

(a) a member of the Tribunal may require a person appearing at the hearing to give evidence either to take an oath or to make an affirmation in a form approved by the member of the Tribunal presiding at the hearing; and

(b) a member of the Tribunal may administer an oath or affirmation to a person so appearing at the hearing.

(4) A person served with a summons to appear at a hearing to give evidence must not, without reasonable excuse:

(a) fail to attend as required by the summons; or

(b) fail to attend from day to day unless excused, or released from further attendance, by a member of the Tribunal.

Maximum penalty: 20 penalty units.

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(5) A person appearing at a hearing to give evidence must not, without reasonable excuse:

- (a) when required to take an oath or make an affirmation—fail to comply with the requirement; or
- (b) fail to answer a question that the person is required to answer by the member of the Tribunal presiding at the hearing; or
- (c) fail to produce a document that the person is required to produce by a summons served under this section.

Maximum penalty: 20 penalty units.

Power to obtain documents

137. (1) A member of the Tribunal or the Registrar of the Tribunal may, by notice in writing served on a person, require the person:

- (a) to attend, at a time and place specified in the notice, before a person specified in the notice, being a member of the Tribunal or the Registrar of the Tribunal or a person authorised by the Tribunal in that behalf; and
- (b) to produce, at that time and place, to the person so specified a document specified in the notice.

(2) A person must not, without reasonable excuse, fail to comply with a notice served on the person under this section.

Maximum penalty: 20 penalty units.

Release of information

138. (1) The Tribunal may give directions preventing or restricting the publication of evidence given at a hearing or of matter contained in documents produced at a hearing.

(2) A person must not make a publication in contravention of a direction given under this section.

Maximum penalty: 20 penalty units.

Determinations of the Tribunal

139. (1) If, after it has completed a hearing into a complaint against a licensee, the Tribunal is satisfied that the licensee is guilty of professional misconduct, the Tribunal may do any one or more of the following:

- (a) it may order that the licensee's certificate of eligibility and licence be cancelled;

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- (b) it may order that a certificate of eligibility or licence not be granted to the licensee until the expiration of such period as it may specify in the order;
 - (c) it may order that the licensee pay a fine of such amount (not exceeding 250 penalty units) as it may specify in the order.
- (2) If, after it has completed a hearing into a complaint against a licensee, the Tribunal is satisfied that the licensee is guilty of unsatisfactory professional conduct, the Tribunal may do any one or more of the things referred to in section 125 (1).
- (3) If, after it has completed a hearing into a complaint against a licensee, the Tribunal is satisfied that the licensee is guilty of unsatisfactory professional conduct or professional misconduct and that the complainant has suffered loss as a consequence of the conduct or misconduct, the Tribunal may do any one or more of the following:
- (a) it may order that the licensee waive or repay the whole, or such part as it may specify in the order, of the fees charged to the complainant by the licensee in respect of such work as it may so specify;
 - (b) it may order that the licensee carry out for the complainant such work as it may specify in the order, either free of charge or for such fee as it may so specify;
 - (c) it may order that the licensee waive any lien in respect of such document or class of documents as it may specify in the order; or
 - (d) it may order that the licensee pay to the complainant such amount by way of compensation as it may specify in the order.
- (4) An order (other than an order for the payment of compensation not exceeding \$2,000) may not be made under subsection (3) unless:
- (a) the complainant has, in his or her complaint, requested the making of the order; and
 - (b) the complainant and the licensee both consent to the making of the order,
- nor may such an order be made in respect of any loss for which the complainant has received, or is entitled to receive, compensation pursuant to an order of a court.
- (5) The recovery of compensation awarded under this section does not affect any other remedy available to the complainant, but any compensation so awarded is to be taken into account in any other proceedings by or on behalf of the complainant in respect of the same loss.

(6) In addition to any other order that the Tribunal may make under this section with respect to a licensee whom it has found guilty of unsatisfactory professional conduct or professional misconduct, the Tribunal:

- (a) may make ancillary orders; and
- (b) may make orders requiring the licensee to pay such amounts by way of costs (including the costs of the Council and the complainant) as it may determine.

(7) If, after it has completed a hearing into a complaint against a licensee, the Tribunal is satisfied that the licensee is not guilty of professional misconduct, the Tribunal may (but only if it considers that special circumstances so warrant) order payment from the Statutory Interest Account to the licensee of such amount, by way of costs, as it may determine.

Appeals from orders of the Tribunal

140. (1) Any party to a hearing conducted by the Tribunal under this Division may appeal to the Supreme Court against the Tribunal's determination of a complaint.

(2) The complainant at a hearing conducted by the Tribunal may not make such an appeal except with respect to those aspects of the hearing that deal with the loss (if any) suffered by the complainant as a consequence of the conduct the subject of the hearing.

(3) The Supreme Court is to hear and determine an appeal under this section.

(4) An appeal is to be by way of a new hearing and fresh evidence, or evidence in addition to or in substitution for the evidence received at the original hearing, may be given.

Division 7—Miscellaneous

Enforcement of orders

141. An order of the Board or the Tribunal under this Part is enforceable in the same way as a judgment or order of the Supreme Court.

Payment of fines and costs

142. Any fine imposed on a person under this Part is to be paid to the Law Society for credit of the Statutory Interest Account.

Costs of administering Part 6

143. All costs incurred by the Board and the Tribunal in administering this Part are, in accordance with section 67 of the Legal Profession Act 1987, to be paid from the Statutory Interest Account to the Treasurer for credit of the Consolidated Fund.

Reports

144. (1) The Council must submit to the Attorney General, at such times and in respect of such periods as the Attorney General directs, a report on its investigations into complaints dealt with by it under this Part.

(2) A report is to deal with such matters as the Attorney General directs and with such other matters as the Council considers appropriate to include in the report.

Protection from liability

145. No matter or thing done by:

- (a) the Council, the Committee, the Panel, the Board or the Tribunal; or
- (b) any member of the Council, the Committee, the Panel, the Board or the Tribunal; or
- (c) the Registrar of the Board or the Registrar of the Tribunal,

subjects any such member or Registrar personally to any action, liability, claim or demand if the matter or thing was done in good faith for the purpose of executing this Part.

PART 7—THE CONVEYANCERS LICENSING COMMITTEE**Constitution of the Committee**

146. (1) There is constituted by this Act a corporation under the name of the Conveyancers Licensing Committee.

(2) The Committee is not a statutory body representing the Crown and is not subject to the control or direction of the Minister.

Membership of the Committee

147. (1) The Committee is to consist of 7 members appointed by the Minister, of whom:

- (a) 2 are to be appointed from a panel of at least 4 practising solicitors nominated by the Law Society; and

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- (b) 2 are to be appointed from a panel of at least 4 licensees nominated by the Association; and
- (c) 2 are to be persons appointed to represent the interests of consumers; and
- (d) 1 is to be a person who, in the opinion of the Minister, has appropriate qualifications and experience in business or commerce.

(2) In subsection (1) (b), a reference to a licensee is a reference to the holder of a licence that is free of any conditions other than conditions of the kind referred to in section 13 (2) (d).

(3) The member referred to in subsection (1) (d) is to be the Chairperson of the Committee.

(4) Schedule 1 has effect with respect to the Committee.

Functions of the Committee

148. The Committee has the following functions:

- (a) the function of determining the educational qualifications, practical training and conveyancing experience that are suitable to qualify a person for a licence;
- (b) the function of accrediting courses of studies leading to such educational qualifications;
- (c) the function of dealing with applications for certificates of eligibility;
- (d) the function of approving policies of professional indemnity and fidelity insurance;
- (e) the function of establishing guidelines as to the manner in which conveyancing businesses should be conducted;
- (f) the function of dealing with complaints referred to it by the Council;
- (g) the function of reporting to the Minister on the operation of this Act;
- (h) such other functions as are conferred or imposed on it by or under this or any other Act.

Education subcommittee

149. (1) For the purpose of exercising its functions in relation to:

- (a) determining the educational qualifications, practical training and conveyancing experience that are suitable to qualify a person for a licence; and

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- (b) accrediting courses of study leading to such educational qualifications,

the Committee is to establish an education subcommittee.

- (2) The education subcommittee is to consist of 6 members, of whom:

- (a) 1 is to be the Chairperson of the Committee; and

- (b) 3 are to comprise 1 each of the members referred to in section 147 (1) (a), (b) and (c) appointed by the Chairperson of the Committee; and

- (c) 1 is to be the Dean of the Faculty of Law at the University of Technology, Sydney; and

- (d) 1 is to be a person appointed by the Minister for Conservation and Land Management.

- (3) The Chairperson of the Committee is to be the chairperson of the education subcommittee.

- (4) Schedule 1 has effect with respect to the education subcommittee as if references in that Schedule to the Committee were references to the subcommittee.

- (5) The functions of the education subcommittee are:

- (a) to investigate such matters in relation to the determination of educational qualifications and the accreditation of courses of study leading to such educational qualifications as are referred to it by the Committee; and

- (b) to report to the Committee on the results of its investigations.

Insurance subcommittee

150. (1) For the purpose of exercising its functions in relation to approving policies of professional indemnity and fidelity insurance, the Committee is to establish an insurance subcommittee.

- (2) The insurance subcommittee is to consist of 6 members, of whom:

- (a) 1 is to be the Chairperson of the Committee; and

- (b) 3 are to comprise 1 each of the members referred to in section 147 (1) (a), (b) and (c) appointed by the Chairperson of the Committee; and

- (c) 1 is to be a person appointed by the Insurance Council of Australia; and

- (d) 1 is to be a person appointed by the Minister.

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(3) The Chairperson of the Committee is to be the chairperson of the insurance subcommittee.

(4) Schedule 1 has effect with respect to the insurance subcommittee as if references in that Schedule to the Committee were references to the subcommittee.

(5) The functions of the insurance subcommittee are:

- (a) to investigate such matters in relation to the approval of policies of professional indemnity and fidelity insurance as are referred to it by the Committee; and
- (b) to report to the Committee on the results of its investigations.

Advisory subcommittees

151. (1) The Committee may appoint such other subcommittees as it considers appropriate to assist it in the exercise of its functions:

(2) The members of any such subcommittee may include persons who are not members of the Committee.

(3) The chairperson of any such subcommittee must be a person who is a member of the Committee.

(4) The regulations may make provision with respect to the constitution and procedure of any subcommittee appointed under this section.

Staff etc. of the Committee

152. The Committee:

- (a) may employ a Registrar and such other staff as it requires to exercise its functions; and
- (b) may fix the salary, wages and other conditions of employment of its staff in so far as they are not fixed by or under any other Act or law; and
- (c) may arrange for the use of the services of any staff (by secondment or otherwise) or facilities of a government department, an administrative office or a public or local authority; and
- (d) may engage such consultants as it requires to exercise its functions.

PART 8—MISCELLANEOUS

Committee and Association to submit annual reports

153. (1) As soon as practicable after 30 June, but on or before 31 October, in each year, the Committee and the Association must each

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prepare and forward to the Minister reports of their work and activities under this Act for the 12 months ending on 30 June in that year.

(2) The Minister must lay the reports, or cause them to be laid, before both Houses of Parliament as soon as practicable after receiving the reports.

(3) A report is to deal with such matters as may be prescribed by the regulations and with such other matters as the Committee or Association considers appropriate to include in the report.

Functions of the Council

154. For the purpose of exercising its functions under this Act, the Council:

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

Functions of the Association

155. The Association has the following functions:

- (a) the function of advising the Committee in connection with the approval by the Committee of the policies of indemnity insurance to be held by licensees;
- (b) the function of maintaining a policy of fidelity insurance in accordance with the requirements of Part 4;
- (c) the function of determining, in accordance with the requirements of Part 4, the contributions payable by licencees in respect of that policy;
- (d) the function of dealing with claims for compensation made against the Association under Part 4;
- (e) the function of reporting to the Minister on the operation of this Act;
- (f) such other functions as are conferred or imposed on it by or under this Act.

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Delivery up of documents

156. (1) On the application of a licensee's client, the Supreme Court may order the licensee:

- (a) to give to the client a bill of costs in respect of any conveyancing business transacted by the licensee; and
- (b) to give to the client, on such conditions as the Supreme Court may determine, such of the client's documents as are held by the licensee in relation to that business.

(2) This section does not affect the provisions of Division 5 of Part 11 of the Legal Profession Act 1987 with respect to the taxation of bills of costs.

Auditors

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

Register of licensees

158. (1) The Council must maintain at its offices a register of licensees in the form required by the regulations.

(2) The register is to be open to public inspection, on payment of such fee as may be prescribed by the regulations, during normal office hours.

Evidentiary certificates

159. A certificate that is issued by the Council and that states that, on a date or during a period specified in the certificate:

- (a) a specified person was or was not a licensee; or
 - (b) a specified licence was or was not subject to a specified condition,
- is admissible in any legal proceedings and is evidence of the fact or facts so stated.

Proceedings for offences

160. (1) Proceedings for an offence against this Act or the regulations are to be taken before a Local Court constituted by a Magistrate sitting alone.

(2) Proceedings for an offence against this Act or the regulations may be brought at any time within 12 months after the date of the alleged offence.

Order restraining breach of this Act

161. (1) Any person may bring proceedings in the Supreme Court for an order to restrain a breach of this Act.

(2) If satisfied that a breach of this Act has been committed or will, unless restrained by order of the Court, be committed, the Supreme Court may make such order as it considers appropriate to restrain the breach.

Regulations

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

(2) Such a recommendation may not be given by the Minister except after consultation with the Committee.

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

Amendment of other Acts

163. Each Act specified in Schedule 2 is amended as set out in that Schedule.

Savings, transitional and other provisions

164. Schedule 3 has effect.

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**SCHEDULE 1—THE CONVEYANCERS LICENSING
COMMITTEE**

(Secs. 147, 149, 150)

Part 1—Members of the Committee

Reserve members

1. (1) The Minister may, for each appointed member of the Committee, appoint one or more reserve members to act in the office of the appointed member during the illness or absence of the appointed member, and the reserve member, while so acting, has and may exercise all the functions of the appointed member and is taken to be a member of the Committee.

(2) A person, in order to be appointed as a reserve member of the Committee, must be qualified for appointment in the same way as the appointed member for whom he or she is the reserve member.

(3) The Minister may remove any person from any office to which the person was appointed under this clause.

(4) A person while acting in the office of a member of the Committee is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

(5) For the purposes of this clause, a vacancy in the office of a member of the Committee is taken to be an absence from office of the member.

Terms of office

2. Subject to this Schedule, a member of the Committee holds office for such period, not exceeding 7 years, as may be specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.

Remuneration

3. A member of the Committee is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

Filling of vacancy in office of a member

4. If the office of any member of the Committee becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

Casual vacancies

5. (1) A member of the Committee is taken to have vacated office if the member:
(a) dies; or

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SCHEDULE 1—THE CONVEYANCERS LICENSING COMMITTEE—*continued*

- (b) absents himself or herself from 4 consecutive meetings of the Committee of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Minister (which leave the Minister is authorised to grant) or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for being absent from those meetings; or
 - (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
 - (d) becomes a mentally incapacitated person; or
 - (e) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or upwards, or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable; or
 - (f) resigns office by instrument in writing addressed to the Minister; or
 - (g) is removed from office by the Minister under subclause (2).
- (2) The Minister may remove a member of the Committee from office for incapacity, incompetence or misbehaviour.
- (3) The Chairperson of the Committee is taken to have vacated office as Chairperson if the person:
- (a) resigns office by instrument in writing addressed to the Minister; or
 - (b) ceases to be a member of the Committee.

Conflict of interests

6. (1) If:
- (a) a member of the Committee has an interest in a matter being considered or about to be considered at a meeting of the Committee; and
 - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,
- the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Committee.
- (2) A disclosure by a member at a meeting of the Committee that the member:
- (a) is a member, or is in the employment, of a specified company or other body; or
 - (b) is a partner, or is in the employment, of a specified person; or
 - (c) has some other specified interest relating to a specified company or other body or to a specified person,
- is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

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SCHEDULE 1—THE CONVEYANCERS LICENSING COMMITTEE—*continued*

(3) Particulars of any disclosure made under this clause must be recorded by the Committee in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person.

(4) After a member of the Committee has disclosed the nature of an interest in any matter, the member must not, unless the Committee otherwise determines:

(a) be present during any deliberation of the Committee with respect to the matter; or

(b) take part in any decision of the Committee with respect to the matter.

(5) For the purpose of the making of a determination by the Committee under subclause (4), a member of the Committee who has an interest in a matter to which the disclosure relates must not:

(a) be present during any deliberation of the Committee for the purpose of making the determination; or

(b) take part in the making by the Committee of the determination.

(6) A contravention of this clause does not invalidate any decision of the Committee.

Effect of certain other Acts

7. (1) Part 2 of the Public Sector Management Act 1988 does not apply to or in respect of the appointment of a member of the Committee and a member of the Committee is not, as a member, subject to that Act.

(2) If by or under any other Act provision is made:

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or

(b) prohibiting the person from engaging in employment outside the duties of that office,

that provision does not operate to disqualify the person from holding that office and also the office of a member of the Committee or from accepting and retaining any remuneration payable to the person under this Act as a member of the Committee.

Part 2—Procedure of the Committee

General procedure

8. The procedure for the calling of meetings of the Committee and for the conduct of business at those meetings is, subject to this Act, to be as determined by the Committee.

Quorum

9. The quorum for a meeting of the Committee is 4 members, of whom 1 must be the Chairperson or a member referred to in section 147 (1) (c).

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SCHEDULE 1—THE CONVEYANCERS LICENSING COMMITTEE—*continued*

Presiding member

10. (1) The Chairperson of the Committee or, in the absence of the Chairperson, a member of the Committee referred to in section 147 (1) (c) elected by the members present is to preside at a meeting of the Committee.

(2) The person presiding at a meeting of the Committee has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

Voting

11. A decision supported by a majority of the votes cast at a meeting of the Committee at which a quorum is present is the decision of the Committee.

Minutes

12. The Committee must cause full and accurate minutes to be kept of the proceedings of each meeting of the Committee.

First meeting

13. The Minister may call the first meeting of the Committee in such manner as the Minister thinks fit.

SCHEDULE 2—AMENDMENT OF OTHER ACTS

(Sec. 163)

Auctioneers and Agents Act 1941 No. 28

Section 84AB (Contracts for sale of residential property):

After section 84AB (9), insert:

(10) In this section, a reference to a solicitor includes a reference to a licensee within the meaning of the Conveyancers Licensing Act 1992.

Conveyancing Act 1919 No. 6

(1) Section 7 (Definitions):

In section 7 (1), insert in alphabetical order:

“Licensed conveyancer” means the holder of a licence in force under the Conveyancers Licensing Act 1992.

(2) Section 53 (Obligation to show title etc.):

In section 53 (2) (c) after “solicitor” wherever occurring, insert “or licensed conveyancer”.

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SCHEDULE 2—AMENDMENT OF OTHER ACTS—*continued*

(3) Section 59 (Rights of purchaser as to execution):

In section 59 (1) after “solicitor” wherever occurring, insert “or licensed conveyancer”.

(4) Section 66P (Definitions):

In the definition of “solicitor” in section 66P (1), after “Territory”, insert “, and includes a licensed conveyancer”.

(5) Section 66Z (Definitions):

In the definition of “solicitor” in section 66Z (1), after “Territory”, insert “, and includes a licensed conveyancer”.

(6) Section 96 (Power for mortgagor to inspect title deeds):

In section 96 (1), after “solicitor”, insert “or licensed conveyancer”.

(7) Section 176 (Protection of solicitors, licensed conveyancers, trustees etc.):

After “solicitor” wherever occurring, insert “or licensed conveyancer”.

(8) Section 197 (Official searches):

In section 197 (4), after “solicitor” wherever occurring, insert “or licensed conveyancer”.

(9) Schedule 3 (Conditions of sale):

After “solicitor” wherever occurring, insert “or licensed conveyancer”.

Land Sales Act 1964 No. 12

(1) Section 2 (Definitions):

Insert in alphabetical order:

“Licensed conveyancer” means the holder of a licence in force under the Conveyancers Licensing Act 1992.

(2) Section 7 (Trust deeds):

In section 7 (2), after “solicitor”, insert “or licensed conveyancer”.

Legal Profession Act 1987 No. 109

(1) Section 3 (Definitions):

In section 3 (1), insert in alphabetical order:

“licensed conveyancer” means the holder of a licence in force under the Conveyancers Licensing Act 1992;

Conveyancers Licensing Act 1992 No. 55

SCHEDULE 2—AMENDMENT OF OTHER ACTS—*continued*

(2) Section 54 (Functions of Law Society Council):

After section 54 (2), insert:

(3) The Law Society Council also has such functions as are conferred or imposed on it by or under the Conveyancers Licensing Act 1992.

(3) Section 65 (Repayment of deposit with Law Society):

After "section 64" wherever occurring, insert "of this Act or section 36 of the Conveyancers Licensing Act 1992".

(4) Section 66 (Accounts to be kept by Law Society):

From section 66 (a), omit "and repaid or invested by it under section 65", insert instead "of this Act or section 36 of the Conveyancers Licensing Act 1992".

(5) Section 67 (Statutory Interest Account):

Omit section 67 (2) (a), insert instead:

(a) for the purposes authorised by subsection (3) (c), (c1), (d), (e), (e1), (e2) and (e3)—such amounts as are from time to time incurred under Parts 9 and 10 of this Act or under the Conveyancers Licensing Act 1992 in relation to those purposes; and

After section 67 (3) (c), insert:

(c1) the payment under section 143 of the Conveyancers Licensing Act 1992 of the costs related to the administration of Part 6 of that Act;

After section 67 (3) (e1), insert:

(e2) the costs incurred by the Law Society Council in exercising its functions for the purposes of the Conveyancers Licensing Act 1992;

(e3) the costs incurred by the Conveyancers Licensing Committee in exercising its functions for the purposes of the Conveyancers Licensing Act 1992;

(6) Section 115 (Person acting as a barrister or solicitor):

After section 115 (2), insert:

(2A) Subsection (2) does not prevent a licensed conveyancer from carrying out conveyancing work in accordance with a licence in force under the Conveyancers Licensing Act 1992.

(7) Section 117 (Limitation on general legal work and probate work):

(a) In the definition of "general legal work" in section 117 (1), after the words "preparing an instrument", insert "or other document".

Conveyancers Licensing Act 1992 No. 55

SCHEDULE 2—AMENDMENT OF OTHER ACTS—*continued*

- (b) Omit paragraph (b) of the definition of “general legal work” in section 117 (1), insert instead:
 - (b) creates, regulates or affects, or purports to create, regulate or affect, rights between parties;
- (c) At the end of section 117 (4) (c), insert:
 - ; or
 - (d) a licensed conveyancer acting in accordance with a licence in force under the Conveyancers Licensing Act 1992.
- (8) Section 121 (Employment of disqualified or convicted persons):
 - (a) From paragraph (c) of the definition of “disqualified person” in section 121 (8), omit “or” where lastly occurring.
 - (b) At the end of paragraph (d) of the definition of “disqualified person” in section 121 (8), insert:
 - ; or
 - (e) who is disqualified from holding a licence under the Conveyancers Licensing Act 1992 by virtue of an order in force under section 139 of that Act.
- (9) Section 122:
 - Omit the section, insert instead:

Order restraining breach of this Act

122. (1) Any person may bring proceedings in the Supreme Court for an order to restrain a breach of this Act.

(2) If satisfied that a breach of this Act has been committed or will, unless restrained by order of the Court, be committed, the Supreme Court may make such order as it considers appropriate to restrain the breach.
- (10) After section 209A, insert:

Council to report on its work and activities under the Conveyancers Licensing Act 1992

209B. (1) As soon as practicable after 30 June, but on or before 31 October, in each year, the Law Society Council must prepare and forward to the Attorney General a report of its work and activities under the Conveyancers Licensing Act 1992 for the 12 months ending on 30 June in that year.

(2) The Attorney General must lay the report, or cause it to be laid, before both Houses of Parliament as soon as practicable after receiving the report.

(3) A report is to deal with such matters as may be prescribed by the regulations and with such other matters as the Law Society Council considers appropriate to include in the report.

Conveyancers Licensing Act 1992 No. 55

SCHEDULE 2—AMENDMENT OF OTHER ACTS—*continued*

(11) Section 212 (Offences):

At the end of section 212, insert:

(2) Proceedings for an offence against this Act or the regulations may be brought at any time within 12 months after the date of the alleged offence.

(12) Section 213A:

After section 213, insert:

Evidentiary certificates

213A. (1) A certificate that is issued by the Bar Council and that states that, on a date or during a period specified in the certificate:

- (a) a specified person was or was not the holder of a barristers' practising certificate; or
- (b) a specified barrister's practising certificate was or was not subject to a specified condition,

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

(2) A certificate that is issued by the Law Society Council and that states that, on a date or during a period specified in the certificate:

- (a) a specified person was or was not the holder of a solicitor's practising certificate; or
- (b) a specified solicitor's practising certificate was or was not subject to a specified condition,

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

Real Property Act 1900 No. 25

(1) Section 3 (Definitions):

In section 3 (1) (a), insert in alphabetical order:

“Licensed conveyancer”—The holder of a licence in force under the Conveyancers Licensing Act 1992.

(2) Section 74N (Service of notices on the caveator for the purposes of this Part):

In section 74N (1), after “solicitor” wherever occurring, insert “or licensed conveyancer”.

(3) Section 96I (Effect of official searches):

In section 96I (2), after “solicitor” wherever occurring, insert “or licensed conveyancer”.

Conveyancers Licensing Act 1992 No. 55

SCHEDULE 3—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

(Sec. 164)

Part 1—Preliminary**Regulations**

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

Part 2—Provisions consequent on enactment of this Act**Definition**

2. (1) In this Part:
“appointed day”, in relation to a provision of this Part, means the day occurring 12 months after the date of assent or such earlier day as may be appointed by proclamation for the purposes of that provision.
- (2) The Governor may make proclamations for the purposes of the provisions of this Part.

Interim constitution of the Committee

3. The members of the Committee referred to in section 147 (1) (b) are, until the appointed day, to comprise the Director-General of the Attorney General's Department and the Director of the Land Titles Office, rather than 2 licensees nominated by the Association.

Interim constitution of the Panel

4. For the purposes of section 114, the Panel is, until the appointed day, to be constituted by 1 of its solicitor members and 2 of its lay members rather than by 1 of its licensee members and 2 of its lay members, and is to include (as an additional member) the Director of the Land Titles Office.

Conveyancers Licensing Act 1992 No. 55

SCHEDULE 3—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
*continued***Interim constitution of the Board**

5. For the purposes of section 118, the Board is, until the appointed day, to be constituted by 2 of its solicitor members and 1 of its lay members rather than by 1 of its solicitor members, 1 of its licensee members and 1 of its lay members, and is to include (as an additional member) the Director of the Land Titles Office.

Interim constitution of the Tribunal

6. For the purposes of sections 127 and 132, the Tribunal is, until the appointed day, to be constituted by 2 of its solicitor members and 1 of its lay members rather than by 1 of its solicitor members, 1 of its licensee members and 1 of its lay members, and is to include (as an additional member) the Director of the Land Titles Office.

Interim certificates of eligibility

7. (1) For the purposes of Division 2 of Part 2, any person:

- (a) who was conducting a conveyancing business (as a principal of the business or as a person responsible for the day to day management of the business) immediately before the commencement of Part 2; and
- (b) who had conducted a conveyancing business (as a principal of the business or as a person responsible for the day to day management of the business) for at least 2 years prior to 1 March 1992; and
- (c) who, when applying for a certificate of eligibility to hold a licence, satisfies the Committee that the person is sufficiently knowledgeable in relation to the law and practice of conveyancing to warrant being granted a licence by virtue of this clause,

is, subject to section 5, qualified to hold a licence even if the person does not have the educational qualifications, practical training or conveyancing experience approved by the Committee for the purposes of Part 2.

(2) The Committee may, for the purposes of this clause, examine any applicant as to his or her knowledge in relation to the law and practice of conveyancing and cause an inspection to be made of the accounts in relation to his or her conveyancing business.

(3) A person is not entitled to be granted a certificate of eligibility to hold a licence by virtue of this clause unless the person lodges an application for such a certificate within 6 months after the commencement of Part 2.

(4) A member of the Committee (as constituted in accordance with clause 3) is not entitled to be granted a certificate of eligibility to hold a licence by virtue of this clause.

DICTIONARY OF WORDS AND EXPRESSIONS

(Sec. 3)

affairs, in relation to a licensee, includes:

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

Association means the Association of Property Conveyancers.**Board** means the Legal Profession Standards Board constituted under Part 10 of the Legal Profession Act 1987.**Committee** means the Conveyancers Licensing Committee constituted under section 146.**controlled money** means money required to be dealt with in accordance with section 33 (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 in New South Wales.**conveyancing business** means any business in the course of which conveyancing work is carried out for fee or reward, whether or not the carrying out of conveyancing work is the sole or dominant purpose of the business.**conveyancing work** has the meaning given to it by section 4.**costs** includes fees, charges, disbursements, expenses and remuneration.**Council** means the Law Society Council.**disqualified person** has the meaning given to it by section 5.**exercise a function** includes, where the function is a duty, to perform the duty.**firm of licensees** includes any licensees who share remuneration as licensees, whether or not on the same basis for each of them.**function** includes a power, authority and duty.**Law Society** means the Law Society of New South Wales.**licence** means a licence in force under this Act.**licensee** means the holder of a licence in force under this Act.

Conveyancers Licensing Act 1992 No. 55

DICTIONARY OF WORDS AND EXPRESSIONS—continued

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

money received, in relation to a licensee, includes:

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

Panel means the Legal Profession Conduct Review Panel constituted under Part 10 of the Legal Profession Act 1987.

professional misconduct includes:

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

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

Statutory Interest Account means the Statutory Interest Account maintained by the Law Society under Part 6 of the Legal Profession Act 1987.

Tribunal means the Legal Profession Disciplinary Tribunal constituted under Part 10 of the Legal Profession Act 1987.

Conveyancers Licensing Act 1992 No. 55

DICTIONARY OF WORDS AND EXPRESSIONS—*continued*

trust money means money required to be dealt with in accordance with section 33 (1) (a).

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

[Minister's second reading speech made in—
Legislative Assembly on 30 June 1992
Legislative Council on 16 September 1992]