



New South Wales

# Conveyancers Licensing Bill 1995

## Explanatory note

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

### Overview of Bill

The object of this Bill is to repeal and re-enact the Conveyancers Licensing Act 1992 (“**the existing Act**”) with the following changes of substance:

- The scope of the conveyancing work that can be performed by licensed conveyancers is extended to encompass all real and personal property transactions, including the sale or lease of land, the sale of a business (including goodwill and stock-in-trade) and the grant of a mortgage or other charge. At present conveyancing work is limited to residential land transactions. Existing restrictions on the drawing up of mortgages and obtaining consents to subdivision, building and development are also removed.
  - Existing provisions that require licensed conveyancers to have fidelity insurance (to protect clients from defalcations) are replaced with provisions requiring licensed conveyancers to contribute to the Real Estate Services Council Compensation Fund and providing for defalcations to be compensated from that Fund. That Fund is currently the fidelity fund for licensees (such as real estate agents) under the
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*Property, Stock and Business Agents Act 1941*. The existing requirement that licensed conveyancers have professional indemnity insurance is not affected.

- Provision is included that will permit multidisciplinary partnerships involving licensed conveyancers but only with the consent of the Real Estate Services Council (“**the Council**”) and subject to any regulations that may be made restricting multidisciplinary partnerships. Partnership between a licensed conveyancer and a real estate agent or other agent under the *Property, Stock and Business Agents Act 1941* will not be permitted.
- The licensing and regulatory functions conferred by the existing Act on the Conveyancers Licensing Committee, the Association of Property Conveyancers and the Law Society Council are transferred to the Real Estate Services Council (to be exercised by the General Manager of the Council). The membership of that Council is expanded by one part-time member to include a person nominated to represent the licensed conveyancing industry. As a consequence of this transfer of functions, the existing 2-stage licensing process whereby the grant of a certificate of eligibility is a precondition to the grant of a licence is simplified and replaced with a 1-stage process. The Conveyancers Licensing Committee is abolished.

Consequential savings and transitional provisions are enacted and consequential amendments are made to other Acts.

The name of the Real Estate Services Council is changed to the Property Services Council.

## Outline of provisions

### **Part 1 Preliminary**

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

**Clause 2** provides that the proposed Act will commence on a day or days to be proclaimed.

**Clause 3** provides that certain words and expressions used in the proposed Act are defined in the Dictionary at the end of the proposed Act. Important definitions include *conveyancing business*, *Council*, *professional misconduct* and *unsatisfactory professional conduct*.



**Clause 4** defines the expression *conveyancing work*. As explained above, the expression will now include all real and personal property transactions, including the sale or lease of land, the sale of a business (including goodwill and stock-in-trade) and the grant of a mortgage or other charge. At present conveyancing work is limited to residential land transactions. Existing restrictions on the drawing up of mortgages and obtaining consents to subdivision, building and development are also removed.

**Clause 5** explains who is a disqualified person for the purposes of the proposed Act. A disqualified person may not hold a licence under the proposed Act. Disqualified persons include corporations, bankrupts, disqualified legal practitioners and persons who have been convicted of an offence involving dishonesty.

## **Part 2      Licensing**

### **Division 1      Preliminary**

**Clause 6** provides for the effect of a licence under the proposed Act. A licensee is not liable for an offence under Part 3A (Unqualified practitioners) of the *Legal Profession Act 1987* in respect of conveyancing work done in accordance with the proposed Act and regulations and the conditions of his or her licence.

**Clause 7** sets out the qualifications for a licence under the proposed Act. This includes a requirement that the licensee be covered by an approved policy of professional indemnity insurance, unless exempted by the regulations from the need for professional indemnity insurance.

**Clause 8** sets out the requirements for an approved policy of professional indemnity insurance.

### **Division 2      Procedure for obtaining a licence**

**Clause 9** provides for the making of applications for licences under the proposed Act to the Council.

**Clause 10** provides for the determination of applications by the Council. The Council may refuse to grant a licence on any of the grounds on which the Council may suspend or cancel a licence (see clause 13).

**Clause 11** provides that a licence may be granted subject to conditions. Possible conditions include a condition prohibiting the licensee from carrying out conveyancing work otherwise than as an employee, a condition requiring the licensee to undertake further studies and a condition limiting the type of transactions that the licensee may work on.

**Clause 12** provides for the duration of licences. A licence has no effect during any period in which the licensee does not have any professional indemnity insurance that is required.

**Clause 13** sets out the grounds on which the Council may suspend or cancel a licence. These include failure to comply with licence conditions and failure to comply with requirements contained in the proposed Act.

### **Division 3 Appeals**

**Clause 14** provides that an appeal may be made to the Commercial Tribunal in respect of a decision of the Council to refuse a licence, suspend or cancel a licence or impose a condition on a licence.

## **Part 3 Conveyancing practice**

### **Division 1 General**

**Clause 15** provides that a contravention of a provision of the Division may constitute unsatisfactory professional conduct or professional misconduct but does not constitute an offence unless a penalty is specified in respect of the provision.

**Clause 16** provides that Part 11 of the *Legal Profession Act 1987* applies to fees charged by a licensee in the same way as it applies to costs charged by solicitors.

**Clause 17** allows regulations to be made in respect of the conduct of a conveyancing business.

**Clause 18** provides that a licensee must not share the receipts of a conveyancing business with another person who is not a licensee unless the Council approves it and that sharing does not contravene the regulations. The clause sets out circumstances in which the Council may not approve a sharing of receipts.

**Clause 19** provides that a licensee must not be in partnership with another person who is not a licensee unless the Council approves the partnership and



the partnership does not contravene the regulations. The clause sets out circumstances in which the Council may not approve a partnership and provides that a partner who is not a licensee is not, by reason of being a partner in a business that includes a conveyancing business, liable for certain offences under the proposed Act and the *Legal Profession Act 1987*.

**Clause 20** provides for the making of regulations prohibiting licensees from conducting other businesses.

**Clause 21** restricts the employment of disqualified persons by licensee. It also makes it an offence for a disqualified person to seek employment or payment in connection with a licensee's conveyancing business unless the person has informed the licensee of his or her disqualification.

**Clause 22** restricts the sharing of staff by licensees with real estate agents and legal practitioners.

**Clause 23** contains general requirements as to advertising by licensees.

**Clause 24** provides that the regulations may establish guidelines (or adopt Law Society guidelines) as to the manner in which a conveyancing business should be conducted.

## **Division 2 Trust money and controlled money**

**Clause 25** sets out how a licensee is to deal with money received by the licensee, in the course of conducting a conveying business, on behalf of another person. Contravention of the requirements constitutes professional misconduct.

**Clause 26** requires a licensee to keep proper accounting records in respect of money received on behalf of another person. Contravention of accounting requirements constitutes professional misconduct.

**Clause 27** provides for the auditing of licensee's records.

**Clause 28** provides that unclaimed money held by a licensee is to be paid to the Treasurer for payment into the Consolidated Fund.

**Clause 29** requires banks to pay a prescribed rate of interest on certain trust accounts held by licensees into a statutory fund kept under the *Property, Stock and Business Agents Act 1941*.

**Clause 30** limits the liability of a bank in respect of trust money held by a licensee in an account at the bank.



### **Division 3      Inspection of trust accounts and investigations generally**

**Clause 31** provides that the Council may appoint trust account inspectors to inspect the accounts or investigate the affairs of a licensee.

**Clause 32** gives inspectors the power to require the production of records and information.

**Clause 33** requires an inspector to provide a copy of his or her report on a licensee to the licensee and the Council.

**Clause 34** provides that in circumstances where an inspector's report evidences serious misconduct by the licensee, the licensee may be required to pay the cost of the inspection or investigation to the Council.

**Clause 35** requires the appointment of an inspector and matters relating to an inspection or investigation to be kept secret.

**Clause 36** makes it an offence to interfere with an inspector in the exercise of his or her functions under Division 3.

### **Part 4      Claims arising from failures to account**

**Clause 37** defines PSBA Act (the *Property, Stock and Business Agents Act 1941*).

**Clause 38** allows claims to be made against the Compensation Fund established under the PSBA Act in respect of a failure to account by a licensee.

**Clause 39** requires licensees to contribute to the Compensation Fund established under that Act.

### **Part 5      Management and receivership**

#### **Division 1      Preliminary**

**Clause 40** contains definitions of terms used in Part 5.

**Clause 41** defines *associate* of a licensee. An associate includes a partner of a licensee, an employee or agent of a licensee and a corporation in which the licensee has a beneficial interest.

**Clause 42** explains the meaning of failure to account by a licensee.

## **Division 2     Management**

**Clause 43** allows the Council to appoint a manager for a licensee's conveyancing business in certain circumstances.

**Clause 44** provides that a manager must be a person who is a licensee or a solicitor who holds an unrestricted practising certificate.

**Clause 45** sets out the powers of a manager.

**Clause 46** provides that management of a licensee's business can continue during receivership.

**Clause 47** provides that an act done by a manager in the course of managing a licensee's business is taken to have been done by the licensee. However, the licensee is not personally liable for any acts of the manager.

**Clause 48** allows a manager to be reimbursed by the Council in respect of damages and costs recovered against the manager in relation to the exercise of his or her functions under the proposed Act. It also limits the liability of the manager and the Council for acts or omissions by the manager or Council in the exercise of functions under the proposed Act.

**Clause 49** provides for the payment of a manager's expenses.

**Clause 50** requires a manager to report to the Council on the management of a licensee's business.

**Clause 51** applies Division 2 of Part 3 (trust account requirements) to accounts kept by a manager.

**Clause 52** allows regulations to be made with respect to accounts kept by a manager in connection with the conduct of a conveyancing business.

**Clause 53** provides for the return of money held by a manager in connection with a licensee's business to the licensee after termination of the management of the licensee's business.

**Clause 54** makes it an offence to interfere with a manager in the exercise of his or her functions under Division 2.

## **Division 3     Receivership**

**Clause 55** allows the Supreme Court to appoint a receiver in respect of all or any of the property of a licensee on application of the Council.

**Clause 56** provides that receivership may extend to the property of an associate of the licensee.

**Clause 57** provides that an application for the appointment of a receiver may be heard in closed court.

**Clause 58** provides for the service of a copy of a court order for the appointment of a receiver on the relevant licensee or associate.

**Clause 59** allows a receiver to take possession of receivable property of a licensee or associate.

**Clause 60** requires a person who has information relating to receivable property to give that information to the receiver if required by the receiver to do so.

**Clause 61** allows a receiver who believes that money held in a bank account is receivable property to serve on the bank an order prohibiting operations on the bank account. A bank must comply with such an order.

**Clause 62** contains offences relating to improper dealings with receivable property.

**Clause 63** allows a receiver, in certain circumstances, to recover compensation from a person who improperly took or received receivable property.

**Clause 64** allows a receiver or the Council to certify certain matters relating to receivership.

**Clause 65** allows a receiver to take proceedings in relation to any receivable property as if the receiver were beneficially entitled to the property.

**Clause 66** permits a receiver to deal with receivable property in any manner in which a licensee or associate could deal with it.

**Clause 67** sets out certain other general powers of a receiver.

**Clause 68** provides that a receiver may give notice to any person that any claim the person has to receivable property must be submitted to the receiver in accordance with the notice. The receiver may disregard any claim not made in accordance with the notice.

**Clause 69** provides that a receiver may give notice to a licensee that any claim the licensee has to a lien for costs on receivable property must be submitted to the receiver in accordance with the notice. The receiver may disregard any claim not made in accordance with the notice.

**Clause 70** allows the Supreme Court to make an order for the examination of a licensee by a receiver.



**Clause 71** contains requirements as to how the receiver should deal with receivable property under the control of the receiver that has not been dealt with in accordance with Division 3.

**Clause 72** allows a receiver to invest receivable property in any manner in which trustees are authorised to invest by the *Trustee Act 1925*. Income received from an investment is receivable property.

**Clause 73** allows the Council to reimburse a receiver for any damages or costs recovered against the receiver by reason of the exercise of his or her functions under the proposed Act.

**Clause 74** provides for the payment of the expenses of a receiver by the Council.

**Clause 75** provides that the Supreme Court may, on application by the relevant licensee, review the expenses of the receivership.

**Clause 76** provides that the receivable property of a licensee or associate is not liable to be taken in execution of any judgment, order or other process of any court or tribunal.

**Clause 77** provides that an application may be made to the Supreme Court for a direction as to the performance of the receiver's functions.

**Clause 78** provides that the Supreme Court may give directions to a receiver.

**Clause 79** requires a receiver to report on a receivership to the Supreme Court and the Council.

**Clause 80** provides for the termination of the appointment of a receiver by the Supreme Court and the transfer of receivable property to a new receiver.

**Clause 81** makes it an offence to interfere with a receiver in the performance of his or her functions under Division 3.

## **Part 6     Disciplinary proceedings**

**Clause 82** applies Part 10 of the *Legal Profession Act 1987* to licensees in the same way as it applies to solicitors. (Part 10 deals with professional misconduct and unsatisfactory professional conduct by solicitors.)

**Clause 83** provides for the composition of the Legal Services Tribunal when conducting a hearing into a complaint against a licensee.

## **Part 7    Miscellaneous**

**Clause 84** sets out the powers of the Council in relation to the exercise of its functions under the proposed Act and Part 10 of the *Legal Profession Act 1987*.

**Clause 85** allows the client of a licensee to apply to the Supreme Court for a bill of costs in relation to any conveyancing work done by the licensee and for the return of any of the client's documents.

**Clause 86** requires auditors appointed under the proposed Act to be registered company auditors under the *Corporations Law*.

**Clause 87** requires the Council to maintain a register of licensees, which is to be open to public inspection.

**Clause 88** provides that the Council may certify whether or not a person is a licensee and the conditions of his or her licence.

**Clause 89** requires proceedings for an offence against the proposed Act or the regulations to be taken before a Local Court. Proceedings may be brought within 12 months after the date of the alleged offence.

**Clause 90** allows the Supreme Court to make an order restraining a person from breaching the proposed Act.

**Clause 91** contains a general regulation making power.

**Clause 92** repeals the *Conveyancers Licensing Act 1992*.

**Clause 93** gives effect to Schedule 1, which contains amendments to other laws.

**Clause 94** gives effect to Schedule 2, which contains savings, transitional and other provisions.

**Clause 95** provides for the review of the proposed Act by the Minister after 5 years from the date of assent to this Act.

## **Schedules**

**Schedule 1** makes consequential amendments to other Acts and to the regulations under the existing Act.

**Schedule 2** contains savings, transitional and other provisions.

## **Dictionary**

The dictionary defines various words and expressions used in the proposed Act.



New South Wales

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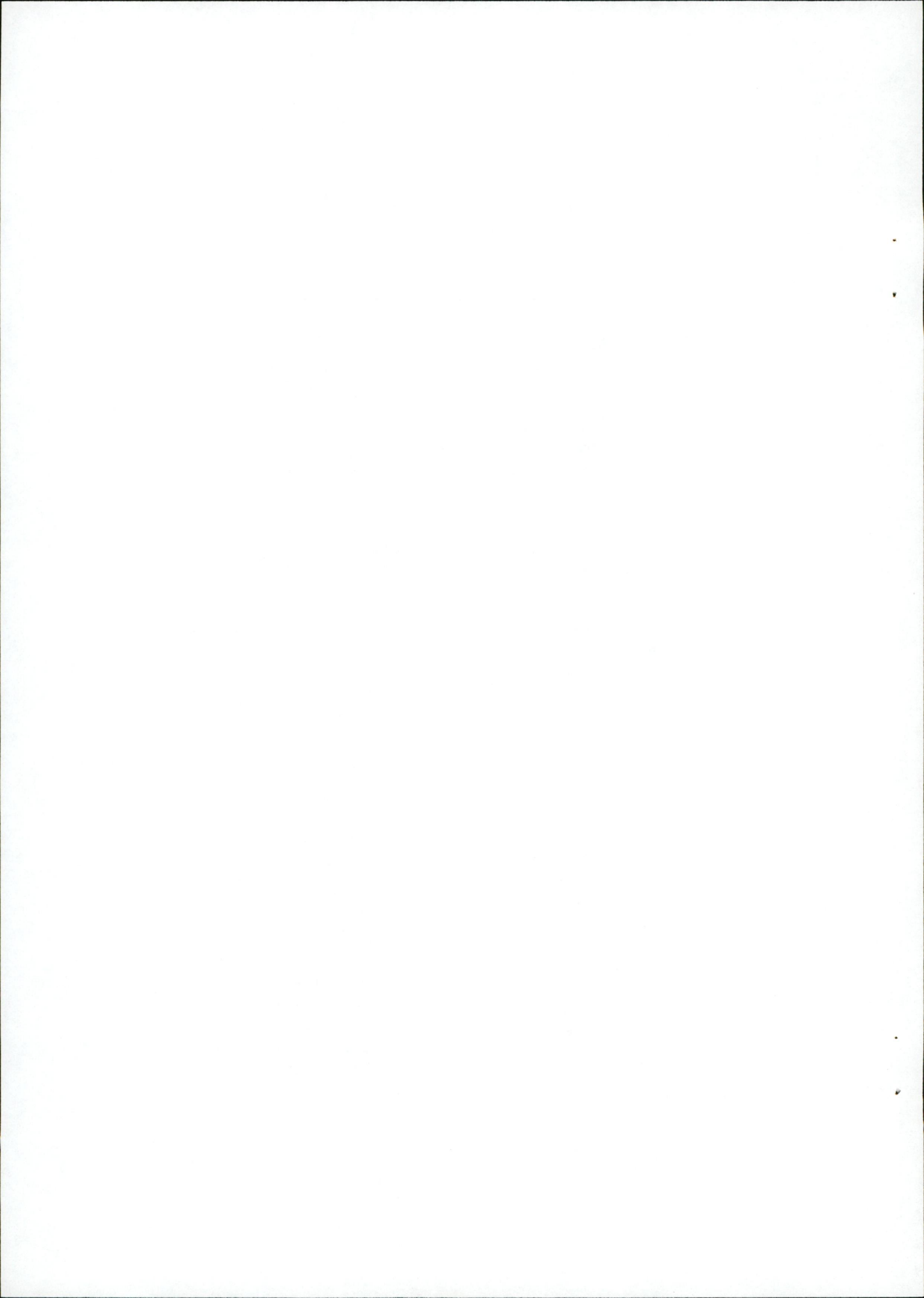
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**Dictionary**

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The dictionary defines the following words and expressions

affairs	firm of licensees
approved policy of professional indemnity insurance	function
controlled money	licence
conveyancing business	licensee
conveyancing work	money
costs	money received
Council	professional misconduct
disqualified person	record
exercise	trust money
	unsatisfactory professional conduct





New South Wales

## Conveyancers Licensing Bill 1995

No. , 1995

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### **A Bill for**

An Act to provide for the licensing and regulation of conveyancers, to repeal the *Conveyancers Licensing Act 1992*, and for other purposes.

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The Legislature of New South Wales enacts:

## Part 1      Preliminary

### 1    Name of Act

This Act is the *Conveyancers Licensing Act 1995*.

### 2    Commencement

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

### 3    Definitions

- (1) In this Act, the words and expressions appearing in the Dictionary at the end of this Act have the meanings given to them in that Dictionary. 10
- (2) Certain words and expressions used in Part 5 (Management and receivership) are defined in Division 1 of that Part.

### 4    Conveyancing work

- (1) For the purposes of this Act, **conveyancing work** is legal work carried out in connection with any transaction that creates, varies, transfers or extinguishes a legal or equitable interest in any real or personal property, such as (for example) any of the following transactions: 15
- (a) a sale or lease of land, 20
- (b) the sale of a business (including the sale of goodwill and stock-in-trade), whether or not a sale or lease of land or any other transaction involving land is involved,
- (c) the grant of a mortgage or other charge.
- (2) Without limiting subsection (1), **conveyancing work** includes: 25
- (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

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- (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. 5
- (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 10
- (c) creating, varying or extinguishing a trust, or
- (d) preparing a testamentary instrument, or
- (e) giving investment or financial advice, or
- (f) 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: 20
- legal work** means work that, if done for fee or reward by a person who is neither a solicitor nor a barrister, would give rise to an offence under Part 3A of the *Legal Profession Act 1987*.

## 5 Disqualified persons

- (1) A person is a disqualified person for the purposes of this Act if the person: 25
- (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 legal practitioners kept by the Supreme Court or from a corresponding roll of legal practitioners kept by a superior court of another State or Territory, or 5
  - (f) is disqualified from holding a licence under this Act or the *Conveyancers Licensing Act 1992* by virtue of an order in force under section 171C of the *Legal Profession Act 1987* (as applying under section 82 of this Act), or
  - (g) is disqualified from being employed in a solicitor's office by virtue of an order in force under section 48I of the *Legal Profession Act 1987*, or 10
  - (h) is disqualified from holding a licence or certificate of registration under the *Property, Stock and Business Agents Act 1941* by virtue of an order in force under section 29, 29A, 60AA or 60A of that Act. 15
- (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 20
  - (b) is the holder of a licence or certificate of registration under the *Property, Stock and Business Agents Act 1941*.
- (3) On an appeal against a decision of the Council refusing to grant a licence to a person because the person is a disqualified person under subsection (1) (c), the Commercial Tribunal may determine that the fact that the person has committed the offence concerned should be ignored because of the time that has passed since the offence was committed or because of the triviality of the acts or omissions giving rise to the offence. 25



## Part 2 Licensing

### Division 1 Preliminary

#### 6 Effect of licence

- (1) A licensee is not guilty of an offence under Part 3A (Unqualified Practitioners) of the *Legal Profession Act 1987* in respect of conveyancing work that the licensee carries out in accordance with this Act, the regulations and the conditions of the licence. 5
- (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. 10

#### 7 Qualifications for a licence

- (1) To be qualified to be granted a licence a person must satisfy the Council that he or she:
- (a) is at least 18 years of age, and
  - (b) has such educational qualifications, practical training and conveyancing experience as the Minister approves by order published in the Gazette, and 15
  - (c) is not a disqualified person, and
  - (d) has paid such part of any contribution or levy payable under Part 4 as is due and payable on the granting of the licence, and 20
  - (e) will, for the whole of the period of the licence, be insured under an approved policy of professional indemnity insurance in force with respect to the person or his or her employer, or will as a licensee be exempt under the regulations from the requirement for professional indemnity insurance. 25
- (2) Under this section the Minister can approve educational qualifications, practical training and conveyancing experience for a limited class of transactions specified in the approval, so as to enable a person who has the qualifications, training and experience concerned to be granted a licence subject to conditions that limit the licensee to carrying out conveyancing work in relation to that limited class of transactions. 30

- (3) Such a limited approval can be expressed to apply only to persons who obtained the qualifications, training and experience concerned before a specified day or during a specified period.

**8 What constitutes approved policy of professional indemnity insurance** 5

- (1) A policy of professional indemnity insurance is an approved policy for the purposes of this Act if the insurer and the terms of the policy (including the financial limits of any cover provided by the policy) are approved by the Council.
- (2) An insurance policy cannot be approved unless it indemnifies a person insured under the policy against 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 12 (2) or (3), regardless of when any claim is made in respect of any such liability. 10  
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**Division 2 Procedure for obtaining a licence**

**9 Applications for licences**

- (1) An application for a licence is to be made to the Council in a form approved by the Council.
- (2) An application is to be accompanied by: 20
- (a) an application fee of an amount prescribed by the regulations, and
- (b) such information and evidence as the Council may request for the purposes of determining the application.
- (3) The Council may require further information and evidence to be given in connection with an application. 25
- (4) The Council may require the application, and any such information or evidence, to be verified by statutory declaration.
- (5) An application is not duly made until any requirement under this section is complied with. 30

- (6) The prescribed proportion of the application fees received by the Council under this section is to be paid by the Council to the Law Society for payment to the credit of the Statutory Interest Account maintained by the Law Society under section 67 of the *Legal Profession Act 1987*, to be applied as authorised by that section. 5

**10 Determination of applications**

- (1) After considering an application, the Council may determine to grant a licence to the applicant, or to refuse the application.
- (2) A licence must not be granted to an applicant unless the applicant is qualified to be granted a licence (as provided by section 7). 10
- (3) The Council may refuse an application on any of the grounds (listed in section 13) on which it may suspend or cancel a licence.
- (4) The Council 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. 15
- (5) For the purposes only of any appeal proceedings arising in connection with an application for a licence, 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 duly made. 20

**11 Imposition of conditions**

- (1) A licence may be granted subject to conditions.
- (2) The conditions may include conditions of the following kind: 25
- (a) a condition prohibiting the licensee from carrying out conveyancing work otherwise than as an employee of a licensee whose licence does not contain such a condition,
- (b) a condition requiring the licensee to undertake or complete a specified course of studies within a specified period of time, 30
- (c) a condition prohibiting the licensee from carrying out conveyancing work in relation to specified kinds of transaction,



- (d) a condition prohibiting the licensee from carrying out conveyancing work except in relation to specified kinds of transaction,
- (e) a condition requiring the proposed licensee to undertake or complete a specified course of further education during each year for which he or she remains a licensee. 5

## 12 Duration of licences

- (1) A licence takes effect on the date on which it is granted, or on such later date as may be specified in the licence, and (unless sooner suspended or cancelled) remains in force until the following 30 June or, if an application for a further licence is duly made before the following 30 June, until the date on which the application is finally disposed of. 10
- (2) A licence is of no effect during any period for which any part of a contribution or levy payable under Part 4 remains due and payable by the licensee. 15
- (3) A licence is of no effect during any period for which the licensee is not insured under an approved policy of professional indemnity insurance in force with respect to the licensee or his or her employer, unless the licensee is exempt under the regulations from the requirement for professional indemnity insurance. 20

## 13 Suspension and cancellation of licences

- (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, 25
  - (b) that the licensee has failed to comply with a condition of the licence,
  - (c) that the licensee has failed to comply with an order in force under Part 10 of the *Legal Profession Act 1987* (as applying under section 82), 30

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- (d) that the licensee has failed to comply with the requirements of Division 2 of Part 3 in relation to trust money or controlled money,
- (e) that the licensee has failed to pay any part of a contribution or levy due and payable under Part 4, 5
- (f) that there is no approved policy of professional indemnity insurance in force with respect to the licensee (unless the licensee is exempt under the regulations from the requirement for professional indemnity insurance),
- (g) that the licensee has become a disqualified person, 10
- (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, 15
- (i) that the licensee has been convicted of an offence against this Act or the regulations,
- (j) that the licensee is a prisoner within the meaning of the *Prisons Act 1952*,
- (k) that the licensee is (because of physical or mental illness or infirmity) unfit to carry out conveyancing work and that it is in the public interest that the licence be suspended or cancelled. 20
- (2) Before suspending or cancelling a licence on the ground referred to in subsection (1) (k), the Council may hold an inquiry and may require the licensee to be examined by a medical practitioner nominated by the Council. 25
- (3) An inquiry under this section is to be conducted in accordance with such procedures as the Council determines.
- (4) The Council must cause notice of its decision to suspend or cancel a licence to be given to the licensee. The notice must include the reasons for the decision (except when the suspension or cancellation is at the request of the licensee). 30

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

### Division 3 Appeals

#### 14 Appeals

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- (1) An appeal lies to the Commercial Tribunal against the following decisions:
- (a) a decision of the Council refusing to grant a licence,
  - (b) a decision of the Council to impose a condition on a licence, 10
  - (c) 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) Despite subsection (2), an appeal may, with the leave of the Commercial Tribunal, be made after the end of the period referred to in that subsection, but only if: 15
- (a) within 30 days after the end of that period, an application is made to the Tribunal for leave to lodge the appeal out of time, and 20
  - (b) the Tribunal grants that leave.
- (4) The Commercial Tribunal must give leave applied for under this section if satisfied that there is sufficient explanation as to why the appeal was not lodged in time.
- (5) The making of an appeal does not operate to stay the decision appealed against except to the extent (if any) that the Commercial Tribunal otherwise orders. 25



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## Part 3 Conveyancing practice

### Division 1 General

#### 15 Effect of contravention of Division 1

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

#### 16 Fees

Part 11 of the *Legal Profession Act 1987* applies to the fees charged by a licensee in the same way as it applies to the costs charged by a solicitor, subject to such modifications as are prescribed by the regulations. 10

#### 17 Conduct of conveyancing businesses

- (1) The regulations may make provision for or with respect to the following matters: 15
- (a) the manner or capacity in which a licensee may conduct a conveyancing business,
  - (b) attendance of licensees at premises on which a conveyancing business is conducted,
  - (c) use of business names by licensees and approval of business names by the Council. 20
- (2) A licensee must not conduct a conveyancing business in contravention of the regulations under this section.

#### 18 Sharing of receipts with unqualified persons

- (1) A licensee must not share the receipts of a conveyancing business with another person unless: 25
- (a) the other person is a licensee, or
  - (b) the sharing of those receipts with that other person is approved by the Council and does not contravene the provisions of any regulation under this section. 30

- (2) An approval may not be given under this section unless the Council 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 5
  - (b) will not adversely affect the independent conduct of the licensee's business or give rise to a conflict between the interests of the licensee and the interests of any of the licensee's clients, and
  - (c) will be on the same basis as that on which receipts may be shared under section 48F of the *Legal Profession Act 1987*. 10
- (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. 15
- (4) The regulations may make provision for or with respect to restricting the circumstances in which a licensee may share the receipts of a conveyancing business with another person who is not a licensee. 20

### 19 Multidisciplinary partnerships

- (1) A licensee must not be in partnership with another person unless:
- (a) the other person is a licensee, or
  - (b) the partnership with that other person is approved by the Council and does not contravene the provisions of any regulation under this section. 25
- (2) An approval for a partnership may not be given under this section unless the Council is satisfied that the business of the partnership concerned will include conveyancing business.
- (3) An approval may not be given for a partnership with a person who is the holder of a licence or certificate of registration under the *Property, Stock and Business Agents Act 1941*. 30
- (4) The regulations may make provision for or with respect to restricting the classes of persons (other than licensees) with whom a licensee may be in partnership. 35

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- (5) The following provisions apply in respect of a partnership in which a licensee is a member:
- (a) A partner who is not a licensee is not guilty of an offence under Part 3A (Unqualified practitioners) of the *Legal Profession Act 1987* merely because the partner conducts business of the partnership that is conveyancing business. 5
  - (b) A partner who is not a licensee is not guilty of an offence under Part 3A of the *Legal Profession Act 1987* merely because the partner receives any fee, gain or reward for business of the partnership that is conveyancing business. 10
  - (c) A partner who is not a licensee is not guilty of an offence under Part 3A of the *Legal Profession Act 1987* merely because the partner holds out, advertises or represents himself or herself as a member of a partnership conducting conveyancing business. 15
  - (d) A partner who is a licensee does not contravene this Part merely because the partner shares with any other partner the receipts of business of the partnership that is conveyancing business.
  - (e) Division 2 (Trust money and controlled money) of Part 3, Part 4 (Claims arising from failures to account) and Part 5 (Management and receivership) apply, subject to the regulations, as if each partner who is not a licensee were a licensee. Those provisions so apply in connection with any business of the partnership (whether or not it is conveyancing business). 20  
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## 20 Conduct of other businesses

- (1) The regulations may prohibit a licensee who conducts a conveyancing business, or who is employed in the conduct of a conveyancing business, from conducting, or being employed in the conduct of, any other business or class of businesses. 30
- (2) A licensee must not conduct any business, or be employed in the conduct of any business, in contravention of the regulations under this section.



**21    Employment of disqualified persons**

- (1)    A licensee must not, in connection with his or her conveyancing business, employ or pay a person whom the licensee knows to be a disqualified person.
- (2)    Subsection (1) does not apply in relation to a person who is employed or paid in accordance with leave given by the Council or by the Commercial Tribunal.      5
- (3)    If the Council refuses an application by a person for leave under this section, the person may appeal against the decision to the Commercial Tribunal 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.      10
- (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.      15

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

**22    Sharing staff of legal practitioners and real estate and other agents**      20

- (1)    A licensee must not employ a person in the conduct of a conveyancing business if the person, while so employed, is employed also by the holder of a licence or certificate of registration under the *Property, Stock and Business Agents Act 1941*.      25
- (2)    A licensee must not employ a person in the conduct of a conveyancing business if the person, while so employed, is employed also by a barrister or solicitor, unless the licensee is in partnership with the barrister or solicitor.      30

**23    Advertising**

- (1)    A licensee may advertise in any way the licensee thinks fit.

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- (2) However, an advertisement must not be of a kind that is or that might reasonably be regarded as:
- (a) false, misleading or deceptive, or
  - (b) in contravention of the *Trade Practices Act 1974* of the Commonwealth, the *Fair Trading Act 1987* or any similar legislation, or 5
  - (c) in contravention of any requirements of the regulations.
- (3) The regulations may make provision for or with respect to advertising by licensees.

**24 Regulations may establish guidelines for conduct of conveyancing business** 10

- (1) The regulations may establish guidelines as to the manner in which conveyancing businesses should be conducted.
- (2) The guidelines may adopt, with or without modification, the provisions of any rules or guidelines made by the Law Society with respect to the conduct of solicitors. 15
- (3) The regulations may, in establishing guidelines, specify whether the guidelines are mandatory or for guidance only. If a regulation does not specify whether a guideline is mandatory or for guidance only, it is taken to be mandatory. 20
- (4) A guideline which is for guidance only is not required to be complied with.
- (5) A licensee must not conduct a conveyancing business in contravention of any mandatory guidelines in force under the regulations. 25

**Division 2 Trust money and controlled money**

**25 Money received by licensee on behalf of another**

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

- (a) must pay the money, within the time prescribed by the regulations, into a general trust account at a bank in New South Wales and must hold the money in accordance with the regulations relating to trust money, or
  - (b) if the person on whose behalf the money is received directs that it be paid otherwise than into a general trust account, must pay the money as directed and (if the money is to be held under the direct or indirect control of the licensee for more than the period prescribed by the regulations) must hold the money in accordance with the regulations relating to controlled money. 5 10
- (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: 15
- (a) does not prevent a licensee from withdrawing or receiving, from trust money or controlled money:
    - (i) reimbursement for disbursements paid by the licensee, or
    - (ii) money for disbursements to be paid by the licensee, or 20
    - (iii) money due, or to accrue due, to the licensee for costs,so long as the procedure prescribed by the regulations is followed, and 25
  - (b) does not affect any enforceable lien or claim that a licensee has to any money, and
  - (c) does not prevent a licensee from exercising a general retaining lien for unpaid costs and disbursements in respect of money in a trust account or a controlled money account (other than money received subject to an express direction by the client with respect to the purposes for which the money is to be applied), and 30



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- (d) does not prevent a licensee from holding, or disposing of, a cheque or other negotiable instrument payable to a third party if the licensee does so on behalf of a client and in accordance with directions given by the client.
- (4) A lien referred to in subsection (3) (c): 5
- (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. 10
- (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, 15
- unless the creditor is the person on whose behalf the money is held by the licensee.
- (6) If a trust account kept by a licensee is, as authorised by or under the regulations, operated on by a person other than the licensee, section 53 of the *Trustee Act 1925* does not apply to the person in relation to the operation on the trust account. 20
- (7) It is professional misconduct for a licensee to contravene this section.
- 26 Keeping of accounts** 25
- (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 30
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regulations so require, must be kept in such manner as the regulations prescribe.

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

**27 Audits**

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- (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.
- (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, 10
  - (b) to give the auditor such other information as is reasonably necessary for the purposes of the audit, 15
  - (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 20
  - (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: 25
- (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. 30

- (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.

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**28 Money not claimed from licensee**

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

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



## 29 Bankers to pay interest to Statutory Interest Account

- (1) Sections 36AC (Interest earned on trust accounts to be paid to Statutory Interest Account) and 36AD (Prescribed financial institutions to provide the Council with certain information) of the *Property, Stock and Business Agents Act 1941* apply in respect of all money held in a general trust account under this Division as if: 5
- (a) the trust account were a trust account opened and kept under section 36 of that Act, and
  - (b) the licensee who opened and keeps the trust account were a licensee under that Act. 10
- (2) A licensee must when opening a trust account at a bank under this Division ensure that the bank is notified that the trust account is for the purposes of sections 36AC and 36AD of that Act to be regarded as a trust account required by that Act. Such a notification is for the purposes of those sections to be regarded as a notification that the trust account concerned is required by that Act. 15

## 30 Relief for bankers

- (1) A bank, in relation to a transaction on an account kept by a licensee at that or any other bank: 20
- (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. 30
- (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**

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#### **31 Appointment of trust account inspectors and investigators**

- (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 10
  - (b) may appoint an investigator to investigate the affairs of a particular licensee.
- (2) A trust account inspector may exercise the functions of an investigator in the course of any inspection of accounts carried out by the inspector. 15
- (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.

#### **32 Production of records**

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- (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. 30

- (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. 5
- 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, 10
- 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. 15

### **33 Inspectors' reports**

An inspector must send a copy of his or her report to the licensee (at the address of the licensee last known to the Council) and to the Council. 20

### **34 Costs of inspection and investigation**

- (1) The amount of the costs of an inspection or investigation, as certified by the Council, is a debt due to the Council by the licensee under inspection or investigation if: 25
- (a) the inspector states in his or her report that there is evidence that the licensee is guilty of professional misconduct or unsatisfactory professional conduct in relation to the affairs investigated or is guilty of an offence against this Act or the regulations, and 30
  - (b) 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 Council payable by each licensee involved. 5

**35 Secrecy**

- (1) It is an offence for an inspector, unless making a requirement under this Division, or for an inspector's assistant, to make an unauthorised disclosure:
- (a) of the appointment of the inspector or assistant, or 10
- (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: 15
- (a) if an inspector discloses anything to his or her assistant, or
- (b) if an inspector's assistant discloses anything to the inspector.
- (3) A member, solicitor, officer or agent of the Council must not make an unauthorised disclosure: 20
- (a) of the appointment of an inspector or of an inspector's assistant, or
- (b) of anything in an inspector's report.
- Maximum penalty: 10 penalty units.
- (4) Subsection (3) is not contravened if: 25
- (a) an inspector states in his or her report that there is evidence of professional misconduct, unsatisfactory professional conduct or irregularity in relation to the affairs inspected or investigated, and
- (b) a member, solicitor, officer or agent of the Council, 30  
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 Council, or
  - (c) an agent or officer of the Council or a legal practitioner acting for or on behalf of the Council, or 5
  - (d) the Supreme Court or the Commercial Tribunal, or
  - (e) the Legal Services Commissioner or the Legal Services Tribunal, or
  - (f) a police officer, or 10
  - (g) a person to whom a copy of the report is required by this Act to be sent.

### **36 Obstruction of inspectors**

A person must not hinder, obstruct or delay an inspector in the exercise of his or her functions. 15

Maximum penalty: 10 penalty units.

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## **Part 4      Claims arising from failures to account**

### **37    Definition**

In this Part:

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

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### **38    Claims can be made against Compensation Fund**

- (1) Division 1 of Part 6 (Property Services Council Compensation Fund) of the PSBA Act applies to and in respect of a failure to account (within the meaning of that Part) arising from any act or omission of a licensee under this Act that occurs on or after the commencement of this Act, as if the licensee were a licensee under the PSBA Act. 10
- (2) For that purpose, a licensee under this Act is taken to be a licensee within the meaning of the PSBA Act and a licence under this Act is taken to be a licence within the meaning of the PSBA Act. 15
- (3) Section 72 (3) of the PSBA Act is not applicable to a person as a licensee under this Act.

### **39    Contributions by licensees**

A licensee is liable to pay the contribution and any levy required to be paid from time to time under section 71 or 72 of the PSBA Act. 20



## Part 5 Management and receivership

### Division 1 Preliminary

#### 40 Definitions

In this Part:

**Administration Account** means the Property Services Council Administration Account under the *Property, Stock and Business Agents Act 1941*. 5

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

**expenses**, in relation to management or receivership, means: 10

- (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 15
- (d) any reimbursement of the manager or receiver under section 48 or 73.

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

**licensee** includes:

- (a) a firm of licensees, and 20
- (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 25  
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 30

- (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 5
- (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. 10
- 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 been taken, paid or transferred unlawfully or in breach of trust, would be receivable property. 15
- receiver** means a receiver appointed by the Supreme Court under section 55.
- relevant associate** means a licensee's associate of whose property a receiver has been appointed under section 56.
- relevant licensee** means a licensee of whose property a receiver has been appointed. 20

#### 41 Associate

- (1) In this Part, a reference to a licensee's associate is a reference to:
- (a) a partner of the licensee, or
- (b) an employee or agent of the licensee, or 25
- (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 30
- (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. 35

- (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 5
  - (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. 10

#### 42 Failure to account

- (1) In this Part, **failure to account** means a failure by a licensee to account for, pay or deliver money or other valuable property:
- (a) that has been received by or entrusted to the licensee, or an associate of the licensee, in the course of the licensee's conveyancing business, and 15
  - (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. 20
- (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. 25

### Division 2 Management

#### 43 Appointment of manager

- (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 13, or
- (c) the Council is of the opinion (whether as a consequence of a determination by the Council under Part 6 of the *Property, Stock and Business Agents Act 1941* or otherwise) that there has been, or that there may have been, a failure to account by the licensee, or 5
- (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: 10
  - 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 15
  - is a prisoner within the meaning of the *Prisons Act 1952*, or
  - has died, or
  - has abandoned his or her conveyancing business, 20

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. 25
- (3) The terms of appointment of a manager must specify the remuneration to which the manager is to be entitled in connection with the management of the conveyancing business for which the manager is appointed. 30

**44 Qualifications for appointment as manager**

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

**45 Powers of manager**

- (1) The manager of a licensee's conveyancing business may, subject to subsection (2) and to the terms of his or her appointment:
- (a) carry out conveyancing work on behalf of the existing clients of the business, and 5
  - (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 10
  - (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), 15
- as if he or she were the licensee to whom the business belongs.
- (2) The manager of a licensee's conveyancing business may not exercise any of the functions conferred by this section in relation to the affairs of a client of the business unless the client's consent has been obtained to the manager's exercise of those functions. 20

**46 Management continues under receivership**

- (1) The manager of a licensee's conveyancing business may continue to exercise his or her functions under this Division even if a receiver is appointed under Division 3 in respect of the licensee's property. 25
- (2) The manager of a licensee's conveyancing business for which a receiver is appointed must comply with any lawful direction given by the receiver in connection with the conduct of the business.

**47 Acts of manager to be taken as acts of licensee** 30

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

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

**48 Manager may be reimbursed for damages**

- (1) The Council 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. 5
- (2) Reimbursement under this section is to be by way of payment from the Administration Account. 10
- (3) Neither the manager of a licensee's conveyancing business nor the Council 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. 15

**49 Payment of expenses of management**

- (1) So much of the expenses of the management of a licensee's conveyancing business as have not otherwise been paid to the manager out of the receipts of the business are to be paid to the manager by the Council from the Administration Account. 20
- (2) An amount paid under this section is recoverable by the Council as a debt owed by the relevant licensee.

**50 Manager to report to Council**

- (1) The manager of a licensee's conveyancing business must report to the Council on the management of the business. A report must be made at such times as the Council directs and be in accordance with any directions given by the Council. 25
- (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.

**51 Trust money** 5

- (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. 10

**52 Office accounts**

The regulations may make provision with respect to:

- (a) the accounts that are to be kept in relation to the income accrued, and the expenses incurred, by the manager of a licensee's conveyancing business in connection with the conduct of the business, and 15
- (b) the purposes for which money in any such account may be expended.

**53 Termination of management** 20

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 Administration 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. 25

**54 Obstruction of managers**

A person must not hinder, obstruct or delay a manager in the exercise of his or her functions under this Division. 30

Maximum penalty: 50 penalty units.

### Division 3 Receivership

#### 55 Supreme Court may appoint receiver

- (1) The Supreme Court may, on the application of the Council, 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. 5
- (2) Such an application may be made by the Council 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 13, or 10
  - (c) the Council is of the opinion (whether as a consequence of a determination by the Council under Part 6 of the *Property, Stock and Business Agents Act 1941* or otherwise) that there has been, or that there may have been, a failure to account by the licensee, or 15
  - (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 20
    - 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 25
    - 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. 30

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

**56 Receivership may extend to property of licensee's associate**

If, on the application of a receiver, the Supreme Court is satisfied that all or any of the property of a licensee's associate should be declared to be receivable property, the Court may appoint the receiver to be the receiver of all or any of that property. 5

**57 Court to be closed**

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

**58 Order to be served** 25

- (1) On the appointment of a receiver, the Council is to cause a copy of the order of appointment to be served on: 30
- (a) the relevant licensee or relevant associate, and
  - (b) any other person on whom the Supreme Court directs a copy of the order to be served.



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

### 59 Receiver may take possession of property

- (1) A receiver may take possession of receivable property of the relevant licensee or relevant associate. 5
- (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. 10
- (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 15
- (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, 20
- 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 25
- (b) in any other case—in the name of the relevant licensee or relevant associate.

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

### 60 Information about receivable property

- (1) A person who has information relating to receivable property, or property that a receiver believes on reasonable grounds to be receivable property, must give the information to the receiver if required by the receiver to do so. 5

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. 10

- (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. 15

- (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 20

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

(i) if the information was given to the receiver otherwise than by the licensee, or

(ii) if the information was given to the receiver by the licensee and is given in evidence in those proceedings with the licensee's consent. 25

### 61 Stop order on bank account

- (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. 30

- (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. 5
- (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. 10
- (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: 15
  - (a) in relation to an account the subject of a stop order, and
  - (b) in relation to an account to which money in such an account is transferred,

as if the receiver were the relevant licensee or relevant associate.

**62 Improper dealing with property** 20

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 25
- (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 30
- (e) deliver control of receivable property, or property that is likely to become receivable property, to another person.

Maximum penalty: 20 penalty units.



**63 Recovery of compensation for disposal of receivable property**

- (1) If receivable property has at any time been taken by, or paid or transferred to, a person unlawfully or in breach of trust in circumstances in which:
- (a) the person knew or believed at the time that the taking, payment or transfer was unlawful or in breach of trust, or 5
  - (b) there was no consideration for the taking, payment or transfer, or
  - (c) there was inadequate consideration for the taking, payment or transfer, or 10
  - (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. 15
- (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: 20
- (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. 25
- (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. 30

- (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.

**64 Receiver may give certificate** 10

- (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, 15
- (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.

**65 Receiver taken to be beneficially entitled to property** 30

- (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. 5

#### **66 Receiver may deal with property**

- (1) A receiver may deal with receivable property in any manner in which the relevant licensee or relevant associate could, had the receiver not been appointed, have dealt with it.
- (2) A receiver must, as soon as possible after receiving receivable property, vest the property in the person on whose behalf it was held by the relevant licensee or relevant associate. 10

#### **67 Other powers of receiver**

- (1) A receiver:
- (a) may prove, grant, claim or draw a dividend in respect of a debt that is receivable property, and 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 20
  - (d) may employ a person to advise or act in relation to receivable property,
- in the name of the receiver or in the name of the relevant licensee or relevant associate.
- (2) A receipt given to a person under subsection (1) (c) discharges the person from any responsibility to see to the application of the money for which the receipt was given. 25
- (3) A receiver is not, in the exercise of his or her functions as a receiver, a personal representative of a deceased licensee.



**68 Notice to claim receivable property**

- (1) A receiver may give notice to:
- (a) the relevant licensee or relevant associate, or
  - (b) any other person,
- that any claim the licensee, associate or other person has to receivable property must be submitted to the receiver within 1 month after the giving of the notice or within such longer period as is stated in the notice. 5
- (2) A claim submitted in response to such a notice must state:
- (a) full particulars of the property, and 10
  - (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. 15
- (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. 20

**69 Lien for costs on receivable property**

- (1) If a licensee claims a lien for costs on receivable property, the receiver may serve on the licensee a written notice requiring the licensee to give to the receiver, within a specified period of not less than 1 month: 25
- (a) particulars sufficient to identify the property, and
  - (b) a detailed bill of costs.
- (2) The notice, or a subsequent written notice served on the licensee, may require the licensee to apply for an assessment under Part 11 of the *Legal Profession Act 1987* of the bill of costs within a reasonable time specified in the notice. 30

- (3) If the licensee requests the receiver in writing to allow access to receivable property to enable the licensee to have a bill of costs assessed, the time allowed for taxation does not begin to run until access is provided.
- (4) If a requirement of a notice under this section is not complied with, the receiver may disregard the claim in dealing with the property claimed to be subject to a lien. 5

#### **70 Examination by receiver**

- (1) The Supreme Court may, on the application of a receiver, make such order as it thinks fit for the examination by the receiver of a licensee or other person in relation to receivable property. 10
- (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. 15
- (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. 20
- (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. 25

#### **71 Property not dealt with by receiver**

- (1) If receivable property under the control of the receiver has not been dealt with in accordance with this Division, the receiver must cause notice of that fact to be given to the Council and:
  - (a) if the Council so requires within 1 month after the notice is given—must transfer and deliver the property to the Council, or 30

- 
- (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 Council under this section, the Council:
- (a) must deal with it as the Supreme Court directs, and 5
- (b) if the property is sold—must treat the proceeds as money paid to it under this section.
- (3) The Council 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 10
- (b) secondly—in payment of the expenses of the receivership.
- (4) Any money paid to the Council under this section that is surplus to the requirements of this section must be paid to the relevant licensee or relevant associate.
- 72 Investment of money by receiver 15**
- (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. 20
- 73 Receiver may be reimbursed for damages**
- (1) The Council 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. 25
- (2) Reimbursement under this section is to be by way of payment from the Administration Account.
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**74 Payment of expenses of receivership**

- (1) So much of the expenses of receivership as have not otherwise been paid to the receiver are to be paid to the receiver by the Council from the Administration Account.
- (2) An amount paid under this section may be recovered by the Council from the relevant licensee as a debt. 5
- (3) If the Council and a receiver fail to agree on the remuneration to be paid to the receiver, the Supreme Court may, on the application of the Council or the receiver, determine the amount to be paid. 10
- (4) The Supreme Court, on the application of the relevant licensee:
  - (a) may re-open any agreement between the Council and a receiver for remuneration of the receiver, and
  - (b) may determine the amount to be paid.

**75 Supreme Court may review expenses of receivership**

- (1) If, on the application of the relevant licensee, the Supreme Court is satisfied that the expenses of the receivership are excessive, the Supreme Court may order the taking of accounts between the Council and the receiver. 15
- (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. 20 25

**76 Receivable property not to be attached**

The receivable property of a relevant licensee or relevant associate is not liable to be taken in execution of any judgment, order or other process of any court or tribunal. 30

**77 Applications for directions by receiver, licensee etc**

- (1) A receiver, a licensee or a licensee's associate who holds receivable property, or a person who claims receivable property so held, may apply to the Supreme Court for directions as to the performance of the receiver's functions. 35

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

**78 Supreme Court may give general directions to receiver**

- (1) The Supreme Court:
- (a) may authorise a receiver to do such things in the exercise of the receiver's functions as the Supreme Court considers appropriate, and 5
  - (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. 10

**79 Receiver to report to Supreme Court and Council**

- (1) A receiver must, at such times and in respect of such periods as the Supreme Court directs, submit reports on the receivership to the Supreme Court and the Council.
- (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. 15
- (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. 20
- (4) Unless the Supreme Court orders their destruction, records lodged under this section are to remain in the custody of the Court.

**80 Termination of appointment of receiver**

- (1) The Supreme Court: 25
- (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 5
  - (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. 10
- (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: 15
- (a) the expenses of the receivership have been paid to the Council, 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). 20

### **81 Obstruction of receivers**

A person must not hinder, obstruct or delay a receiver in the exercise of his or her functions under this Division. 25

Maximum penalty: 50 penalty units.



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## Part 6 Disciplinary proceedings

### 82 Application of Legal Profession Act 1987

- (1) Part 10 of the *Legal Profession Act 1987* applies to licensees and to professional misconduct and unsatisfactory professional conduct of a licensee in the same way as it applies to solicitors and any such misconduct or conduct of a solicitor, subject to this Part and to such modifications as are prescribed by the regulations. 5
- (2) For the purposes of the application of the provisions of that Part:
- (a) references in those provisions to professional misconduct and unsatisfactory professional conduct are to be read as references to professional misconduct and unsatisfactory professional conduct within the meaning of this Act, and 10
- (b) references in those provisions to “a Council” and to “the appropriate Council” are to be read as references to the Council under this Act, and 15
- (c) references in those provisions to a solicitor is to be read as a reference to a licensee, and
- (d) references in those provisions to the practising certificate of a solicitor is to be read as a reference to the licence of a licensee. 20

### 83 Composition of Legal Services Tribunal

- (1) For the purposes of the application of Part 10 of the *Legal Profession Act 1987* under this Part, the Legal Services Tribunal is to include one or more members who are licensees and who are appointed by the Attorney General after consultation with the Council. 25
- (2) For the purposes of conducting a hearing into a complaint against a licensee, the Legal Services Tribunal is to be constituted by 1 of its solicitor members, 1 of its licensee members and 1 of its lay members. 30
- (3) The solicitor member is to preside at the hearing.

Clause 83 Conveyancers Licensing Bill 1995

Part 6 Disciplinary proceedings

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- (4) A person is not eligible to be a licensee member of the Legal Services Tribunal unless the person is the holder of a licence that is free of any conditions other than conditions of the kind referred to in section 11 (2) (e)).

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## Part 7 Miscellaneous

### 84 Functions of the Council

For the purpose of exercising its functions under this Act or under Part 10 of the *Legal Profession Act 1987* (as applying under section 82), 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 or the Commercial Tribunal in the exercise of the Court's or Tribunal's functions under this Act in relation to licensees, and 10
- (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 Council any money payable to the Council under this Act or the regulations. 15

### 85 Delivery up of documents

- (1) On the application of a licensee's client, the Supreme Court may order the licensee:
  - (a) to give to the client a bill of costs in respect of any conveyancing business transacted by the licensee, and 20
  - (b) to give to the client, on such conditions as the Supreme Court may determine, such of the client's documents as are held by the licensee in relation to that business.
- (2) This section does not affect the provisions of Division 6 of Part 11 of the *Legal Profession Act 1987* (as applying under section 16) with respect to the assessment of costs. 25

### 86 Auditors

A person is not qualified to be appointed, or to act, as auditor of any accounts required by or under this Act to be audited unless the person is a registered company auditor within the meaning of the *Corporations Law*. 30



**87 Register of licensees**

- (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. 5

**88 Evidentiary certificates**

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

- (a) a specified person was or was not a licensee, or 10
- (b) a specified licence was or was not subject to a specified condition,

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

**89 Proceedings for offences** 15

- (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. 20

**90 Order restraining breach of this Act**

- (1) Any person may bring proceedings in the Supreme Court for an order to restrain a breach of this Act.
- (2) If satisfied that a breach of this Act has been committed or will, unless restrained by order of the Court, be committed, the Supreme Court may make such order as it considers appropriate to restrain the breach. 25

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**91 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act. 5
- (2) A regulation may create an offence punishable by a penalty not exceeding 20 penalty units.

**92 Repeal of Conveyancers Licensing Act 1992 No 55**

The *Conveyancers Licensing Act 1992* is repealed.

**93 Amendment of other laws** 10

Each law specified in Schedule 1 is amended as set out in that Schedule.

**94 Savings, transitional and other provisions**

Schedule 2 has effect.

**95 Review of Act** 15

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act. 20
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

## **Schedule 1 Amendment of other laws**

(Section 93)

### **1.1 Conveyancers Licensing Regulation 1993**

#### **[1] Clause 3 Definitions**

Omit "*Conveyancers Licensing Act 1992*".

5

Insert instead "*Conveyancers Licensing Act 1995*".

#### **[2] Division 1 (Preliminary) of Part 2**

Omit the Division.

#### **[3] Division 2 (Certificates of eligibility) of Part 2**

Omit the Division.

10

#### **[4] Clause 8 Refusal of licence**

Omit the clause.

#### **[5] Clause 10 Surrender and replacement of licence**

Omit "section 17". Insert instead "section 9".

#### **[6] Clause 11 Register of licences**

15

Omit "section 158 (2)". Insert instead "section 87 (2)".

#### **[7] Clause 14A Nature of conveyancing business**

Omit clause 14A (1).



- 
- [8] Part 4 Deposits with Law Society**  
Omit the Part.
- [9] Part 5 Claims arising from failures to account**  
Omit the Part.
- [10] Part 6 Trust money and controlled money** 5  
Omit "section 33" wherever occurring.  
Insert instead "section 25".
- [11] Clause 50 Money received before licence is granted**  
Omit "of the Act".  
Insert instead "of the *Conveyancers Licensing Act 1992*". 10
- 1.2 Legal Profession Act 1987 No 109**
- [1] Section 3 Definitions**  
Omit "*Conveyancers Licensing Act 1992*" from the definition of  
"licensed conveyancer" in section 3 (1).  
Insert instead "*Conveyancers Licensing Act 1995*". 15
- [2] Section 48B Unqualified person acting as a barrister or solicitor**  
Omit "*Conveyancers Licensing Act 1992*" from section 48B (2).  
Insert instead "*Conveyancers Licensing Act 1995*".
- [3] Section 48E Limitation on general legal work and probate work**  
Omit "*Conveyancers Licensing Act 1992*" from section 48E (4) (d). 20  
Insert instead "*Conveyancers Licensing Act 1995*".

Conveyancers Licensing Bill 1995

Schedule 1 Amendment of other laws

---

- [4] Section 48K Associates who are disqualified or convicted persons**
- Omit paragraph (e) of the definition of “disqualified person” in section 48K (7).  
Insert instead: 5
- (e) who is disqualified from holding a licence under the *Conveyancers Licensing Act 1995* by virtue of an order in force under Part 10 of this Act (as applying under Part 6 of that Act).
- [5] Section 54 Functions of the Law Society** 10
- Omit section 54 (3).
- [6] Section 65 Repayment of deposit with Law Society**
- Omit “of this Act or section 36 of the *Conveyancers Licensing Act 1992*” wherever occurring.
- [7] Section 66 Accounts to be kept by Law Society** 15
- Omit “of this Act or section 36 of the *Conveyancers Licensing Act 1992*”.
- [8] Section 67 Statutory Interest Account**
- Omit “*Conveyancers Licensing Act 1992*” from section 67 (2) (a).  
Insert instead “*Conveyancers Licensing Act 1995*”. 20
- [9] Section 67**
- Omit section 67 (3) (c1). Insert instead:
- (c1) the payment under section 82 of the *Conveyancers Licensing Act 1995* of the costs related to the administration of Part 6 of that Act; 25

- 
- [10] Section 67**  
Omit section 67 (3) (e2) and (e3).
- [11] Section 131 Functions of Commissioner**  
Omit “*Conveyancers Licensing Act 1992*” from the note to the section. 5  
Insert instead “*Conveyancers Licensing Act 1995*”.
- [12] Section 208U Costs of administering Part etc**  
Omit “*Conveyancers Licensing Act 1992*” from the note to the section.  
Insert instead “*Conveyancers Licensing Act 1995*”. 10
- [13] Section 209B Council to report on its work and activities under the Conveyancers Licensing Act 1992**  
Omit the section.
- 1.3 Property, Stock and Business Agents Act 1941 No 28**
- [1] Section 25 RESC Administration Account** 15  
Insert “, the *Conveyancers Licensing Act 1995*” after “this Act” in section 25 (4) (b).
- [2] Section 25 (5) (a)**  
Insert “, the *Conveyancers Licensing Act 1995*” after “Act 1975”.
- [3] Section 25 (5) (b)** 20  
Omit “both of those Acts”.  
Insert instead “the other Acts referred to in paragraph (a), including amounts required to be paid by Part 5 (Management and receivership) of the *Conveyancers Licensing Act 1995*”.



**[4] Section 25 (5) (c)**

Insert “or the *Conveyancers Licensing Act 1995*” after “this Act”.

**[5] Sections 3, 23B, 25, 63B, 63D, 66, headings to Part 4A and Part 6**

Omit “Real Estate Services Council” and “REAL ESTATE SERVICES COUNCIL” wherever occurring.

5

Insert instead “Property Services Council” or “PROPERTY SERVICES COUNCIL”, as appropriate.

**[6] Schedule 2 Savings and transitional provisions**

Insert after Part 3:

**Part 4 Provisions consequential on the  
Conveyancers Licensing Act 1995**

10

**22 Change of name of Accounts and Fund**

(1) The Property Services Council Administration Account is a continuation of the Real Estate Services Council Administration Account. A reference in an existing instrument to the Real Estate Services Council Administration Account is to be read as a reference to the Property Services Council Administration Account.

15

(2) The Property Services Council Statutory Interest Account is a continuation of the Real Estate Services Council Statutory Interest Account. A reference in an existing instrument to the Real Estate Services Council Statutory Interest Account is to be read as a reference to the Property Services Council Statutory Interest Account.

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25

(3) The Property Services Council Compensation Fund is a continuation of the Real Estate Services Council Compensation Fund. A reference in an existing instrument to the Real Estate Services Council Compensation Fund is to be read as a reference to the Property Services Council Compensation Fund.

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- 
- (4) In this clause existing instrument means each of the following:
- (a) another Act enacted before the commencement of this clause,
  - (b) an instrument made under an Act before the commencement of this clause, 5
  - (c) an instrument of any other kind executed before the commencement of this clause.

**1.4 Public Finance and Audit Act 1983 No 152**

**Schedule 2 Statutory Bodies**

10

Omit "Real Estate Services Council."  
Insert instead "Property Services Council".

**1.5 Public Sector Management Act 1988 No 33**

**Schedule 3B Senior Executive Positions**

Omit "Real Estate Services Council" from the matter relating to the Department of Housing. 15  
Insert instead "Property Services Council".

**1.6 Real Estate Services Council Act 1990 No 14**

**[1] Section 6 Membership of Council**

Omit "10 members" from section 6 (1). 20  
Insert instead "11 members".

**[2] Section 6 (1) (b)**

Omit "9 part-time members".  
Insert instead "10 part-time members".

**[3] Section 6**

Insert after section 6 (3) (g):

- (h) 1 is to be selected by the Minister from a panel of persons nominated by the Association of Property Conveyancers or such other conveyancing industry bodies as the Minister may invite nominations from. 5

**[4] Section 7 Associate members**

Omit "*Auctioneers and Agents Act 1941*" from section 7 (1) (a). Insert instead "*Property, Stock and Business Agents Act 1941, the Conveyancers Licensing Act 1995*". 10

**[5] Section 8 Functions and objects of Council**

Omit "*Auctioneers and Agents Act 1941*" from section 8 (1) (b). Insert instead "*Property, Stock and Business Agents Act 1941, the Conveyancers Licensing Act 1995*". 15

**[6] Section 8**

Omit "*Auctioneers and Agents Act 1941*" from section 8 (4). Insert instead "*Property, Stock and Business Agents Act 1941*".

**[7] Section 8**

Insert ", or which are provided by the holders of licences under the *Conveyancers Licensing Act 1995*" after "Act 1975" in section 8 (4). 20

**[8] Section 10 Corporate functions of General Manager**

Insert after section 10 (1) (b):

- (b1) any matters in relation to which functions are conferred on the Council under the *Conveyancers Licensing Act 1995*; 25



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**[9] Section 10**

Omit "*Auctioneers and Agents Act 1941*" wherever occurring.  
Insert instead "*Property, Stock and Business Agents Act 1941*".

**[10] Schedule 1 Provisions relating to members and procedure of the Council**

5

Omit "or (g)" from clause 1 (3).  
Insert instead ", (g) or (h)".

**[11] Long title, sections 1, 3, 4, 10, heading to Part 2**

Omit "Real Estate Services Council" and "REAL ESTATE SERVICES COUNCIL" wherever occurring.  
Insert instead "Property Services Council" or "PROPERTY SERVICES COUNCIL", as appropriate.

10

**[12] Schedule 2 Savings and transitional provisions**

Insert before clause 1:  
**Part 1 Provisions consequent on the enactment of this Act**

15

**[13] Schedule 2**

Insert after clause 6:

**Part 2 Provisions consequent on enactment of Conveyancers Licensing Act 1995**

**7 Changes of name**

20

The Property Services Council is a continuation of and the same legal entity as the Real Estate Services Council constituted under this Act immediately before the commencement of this clause.

## **8 References to RESC**

A reference to the Real Estate Services Council in any of the following instruments, or a reference in any instrument that is required by clause 4 (2) to be read as a reference to the Real Estate Services Council, is to be read as a reference to the Property Services Council: 5

- (a) another Act enacted before the commencement of this clause,
- (b) an instrument made under an Act before the commencement of this clause, 10
- (c) an instrument of any other kind executed before the commencement of this clause.

### **1.7 Valuers Registration Act 1975 No 92**

#### **Long title, section 4 (definition of "Council")**

Omit "Real Estate Services Council." wherever occurring. 15  
Insert instead "Property Services Council."

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## Schedule 2 Savings, transitional and other provisions

(Section 94)

### Part 1 Preliminary

#### 1 Regulations

5

(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.

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(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

15

(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

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#### 2 Definitions

In this Part:

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

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#### 3 Holders of licences under the former Act

(1) A person who held a licence (a **superseded licence**) under the former Act immediately before its repeal is taken to have been granted a licence (a **transitional licence**) under this Act on the commencement of this clause.

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- (2) The transitional licence is subject to the same conditions as the superseded licence and is also subject to a condition that the licensee is prohibited from carrying out any conveyancing work except in relation to a transaction mentioned in section 4 (1) of the former Act. 5

**4 Continuation of approved qualifications, training and experience**

- (1) The Minister is taken to have approved by order published in the Gazette under section 7 (Qualifications for a licence) of this Act, to the following effect: 10
- (a) the educational qualifications, practical training and conveyancing experience approved by the Committee under section 12 of the former Act are approved for the purposes of section 7 of this Act but only for the limited class of transactions that comprises the transactions mentioned in section 4 (1) of the former Act, 15
- (b) this approval applies only to a person who, immediately before the repeal of the former Act, held a certificate of eligibility under the former Act or was attending a course of instruction leading to the award of the educational qualifications concerned. 20
- (2) The Minister may by order published in the Gazette revoke the approval provided for by subclause (1) but may not do so for at least 12 months after the commencement of section 7 of this Act. 25
- (3) A certificate of eligibility granted pursuant to an appeal referred to in clause 6 is for the purposes of this clause taken to have been granted immediately before the repeal of the former Act.

**5 Effect of certificates of eligibility**

- (1) A certificate of eligibility under the former Act is evidence sufficient to satisfy the Council under this Act that the holder of the certificate has the educational qualifications, practical training and conveyancing experience approved by the Minister as referred to in clause 4. 30

- 
- (2) This clause applies only for the purposes of the making and determination of an application for a licence under this Act made within 12 months after the commencement of this clause or within 12 months after the grant of the certificate of eligibility pursuant to the determination of an appeal referred to in clause 6, whichever is later. 5

## **6 Pending appeals to the Supreme Court**

- (1) An appeal pending under section 21 of the former Act immediately before its repeal is to continue and be determined as if the former Act had not been repealed. 10
- (2) For the purpose of giving effect to a decision on any such appeal, the Council under this Act may exercise any function of the Committee or Council under the former Act, including the function of granting a certificate of eligibility or a licence under the former Act. 15
- (3) A licence granted pursuant to such an appeal is granted subject to a condition (in addition to any other condition to which it is subject) that the licensee is prohibited from carrying out any conveyancing work except in relation to a transaction mentioned in section 4 (1) of the former Act. 20

## **7 Actions of the former Committee**

- (1) If anything done or commenced by or in relation to the Committee under the former Act could have been done or commenced by or in relation to the Council under this Act if this Act had been in force when it was done or commenced, it has effect on and after the repeal of the former Act as if it had been done or commenced by or in relation to the Council under this Act. 25
- (2) In particular, any approval or leave given or granted by the Committee under the former Act and having effect immediately before the repeal of that Act is taken to have been given or granted by the Council under this Act. 30

**8 Claims arising from failures to account**

- (1) In this clause:

*prior defalcation* means a failure to account within the meaning of Part 4 of the former Act where the act or omission from which the failure to account arose occurred before the repeal of the former Act. 5

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

**9 Time for payment of first contributions to Compensation Fund**

The first contribution payable under section 39 by a licensee who is taken to have been granted a licence under clause 3 is payable within 30 days after a notice requiring payment is served on the licensee by the Council. 10

**10 Management and receivership under the former Act**

- (1) Any management or receivership in effect under the former Act immediately before its repeal is to continue as a management or receivership under this Act. 15

- (2) For that purpose, a receiver or manager appointed under a provision of the former Act and holding office as such immediately before the repeal of the former Act is taken to have been appointed under the corresponding provision of this Act and acts or omissions by such a manager or receiver under the former Act are taken to be acts or omissions under this Act. 20

- (3) The protections and immunities afforded to a manager or receiver in respect of acts or omissions under this Act extend to acts or omissions under the former Act. 25

- (4) The reference in section 53 to the Administration Account includes a reference to the Statutory Interest Account (within the meaning of the former Act).



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**11 Management and receivership under this Act**

- (1) The provisions of Part 5 (Management and receivership) of this Act extend to apply to and in respect of matters (in particular, an act or omission by a licensee, or associate of a licensee, under the former Act) that occurred before the repeal of the former Act. 5
- (2) For that purpose, the expression “former licensee” in Part 5 includes a licensee under the former Act.
- (3) Part 5 extends to authorise payment out of the Administration Account in respect of acts, matters or things that occurred before the repeal of the former Act. 10
- (4) Anything done or commenced by or in relation to the Law Society Council under the former Act that could have been done or commenced by or in relation to the Council under this Act if this Act had been in force when it was done or commenced, has effect on and after the repeal of the former Act as if it had been done or commenced by or in relation to the Council under this Act. 15
- (5) In particular, an application by the Law Society Council for the appointment of a receiver that is pending under the former Act immediately before its repeal is taken to be an application made by the Council under this Act. 20

**12 Pending disciplinary proceedings**

- (1) Any act, matter or thing done or commenced under Part 10 of the *Legal Profession Act 1987* (as applying under Part 6 of the former Act) and having effect immediately before the repeal of the former Act is taken to have been done or commenced under Part 10 of the *Legal Profession Act 1987* as applying under Part 6 of this Act. 25
- (2) In determining for the purposes of section 83 (4) the conditions to which a licence is subject, a condition to which the licence is subject because of clause 3 (2) is to be disregarded. 30

**13 Return of trust money deposited with Law Society**

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

**14 Notice to banks of responsibilities with respect to trust accounts**

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(1) Section 29 (Bankers to pay interest to Statutory Interest Account) of this Act extends to a trust account opened before the commencement of this clause.

(2) As soon as practicable after the commencement of this clause, the Council is by notice in writing to each licensee to require the licensee to notify the bank at which the licensee keeps a general trust account under this Act that the trust account is for the purposes of sections 36AC and 36AD of the *Property, Stock and Business Agents Act 1941* to be regarded as a trust account required by that Act.

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(3) A licensee who receives such a notice must comply with it within the period (not less than 30 days) required by the notice.

(4) Alternatively, the Council may notify a bank on behalf of a licensee and such a notification given by the Council is taken to have been given by the licensee.

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(5) Notification to a bank as provided by this clause is taken to be a notification that the trust account concerned is required by the *Property, Stock and Business Agents Act 1941*.

**15 Offences under former Act or regulations**

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

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**16 Disclosures under the former Act**

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

5

**17 Records etc under former Act**

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

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**18 Final reports of Committee and Association**

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

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**19 Final reports of Law Society Council**

- (1) As soon as practicable after the repeal of the former Act, the Law Society Council must prepare and forward to the Attorney General a report of its work and activities under the former Act for the period beginning on 1 July 1995 and ending on the repeal of the former Act.
- (2) The Attorney General must lay the report, or cause it to be laid, before both Houses of Parliament as soon as practicable after receiving the report.

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- (3) A report is to deal with such matters as may be prescribed by the regulations in force under the *Legal Profession Act 1987* for the purposes of section 209B of that Act (before its repeal), and with such other matters as the Law Society Council considers appropriate to include in the report. 5

**20 Continuation of Conveyancers Licensing Committee**

The Conveyancers Licensing Committee under the former Act continues in existence but only for the purposes of the exercise of functions in respect of appeals and other proceedings pending under the former Act. Provisions of the former Act with respect to the Committee continue for that purpose. 10

**21 Former regulations**

- (1) The regulations in force under the former Act immediately before its repeal, amended as provided by Schedule 1 to this Act, are taken to have been made under this Act. This does not prevent the future amendment or repeal of those regulations. 15
- (2) For the purposes of the *Subordinate Legislation Act 1989*, those regulations are taken to have been made when they were made under the former Act.

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**Dictionary**

(Section 3)

*affairs*, in relation to a licensee, includes:

- (a) accounts kept by or on behalf of the licensee or an associate of the licensee, and 5
- (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. 10

*approved policy of professional indemnity insurance* means a policy of professional indemnity insurance approved under section 8.

*controlled money* means money required to be dealt with in accordance with section 25 (1) (b) that, while under the direct or indirect control of the licensee by or on whose behalf it is received, is for the time being held otherwise than in a general trust account at a bank in New South Wales. 15

*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. 20

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

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

*Council* means the Property Services Council constituted by the *Property Services Council Act 1990*. 25

*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. 30

*function* includes a power, authority or duty.

*licence* means a licence in force under this Act.

Dictionary

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

**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. 15

**professional misconduct** includes: 15

- (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 20
- (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. 25

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

**unsatisfactory professional conduct** includes conduct (whether consisting of an act or omission) occurring in connection with a conveyancing business that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent licensee. 30



**CONVEYANCERS LICENSING BILL 1995**

**SECOND READING SPEECH**

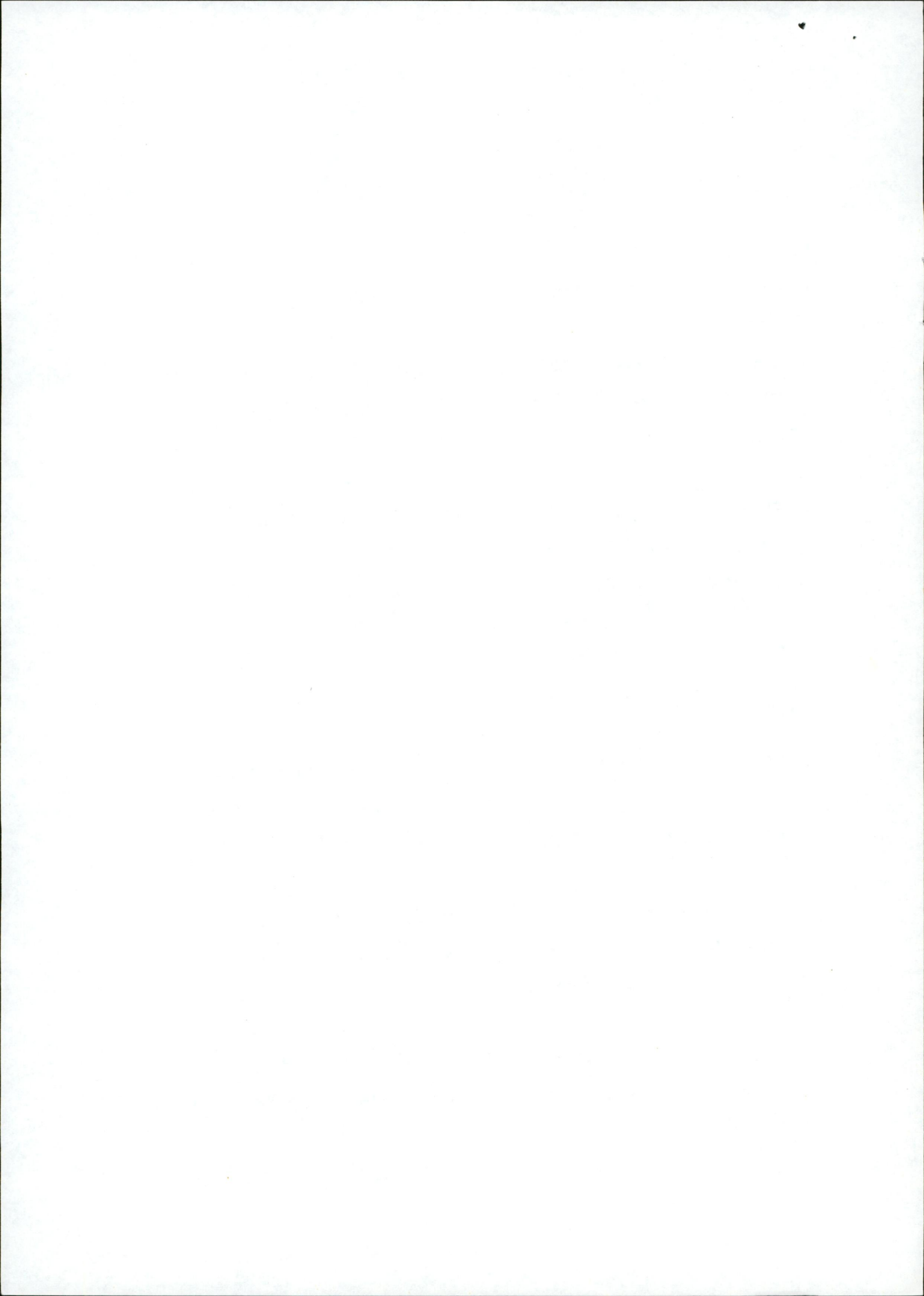
**LEGISLATIVE COUNCIL**

**MR PRESIDENT**

**I MOVE THAT THIS BILL BE NOW READ A SECOND TIME.**

**THE PURPOSE OF THIS BILL IS TO REPEAL THE CONVEYANCERS LICENSING ACT 1992 AND REPLACE IT WITH A NEW CONVEYANCERS LICENSING ACT WHICH WILL:**

- TRANSFER ALL ADMINISTRATIVE FUNCTIONS RELATING TO THE LICENSING AND REGULATION OF CONVEYANCERS FROM THE CONVEYANCERS LICENSING COMMITTEE, THE ASSOCIATION OF PROPERTY CONVEYANCERS AND THE LAW SOCIETY COUNCIL TO THE GENERAL MANAGER OF THE PROPERTY SERVICES COUNCIL (FORMERLY THE REAL ESTATE SERVICES COUNCIL);**
- ESTABLISH REPRESENTATION FOR CONVEYANCERS ON THE PROPERTY SERVICES COUNCIL BY THE APPOINTMENT OF AN ADDITIONAL PART-TIME MEMBER REPRESENTING LICENSED CONVEYANCERS;**
- ENABLE CONVEYANCERS TO CONTRIBUTE TO THE PROPERTY SERVICES COUNCIL COMPENSATION FUND IN LIEU OF PRESENT FIDELITY INSURANCE ARRANGEMENTS;**
- DEFINE "CONVEYANCING WORK" TO ALLOW CONVEYANCERS TO UNDERTAKE WORK IN RELATION TO COMMERCIAL AND RURAL (AS WELL**



AS RESIDENTIAL) PROPERTY AND THE TRANSFER OF GOODWILL, STOCK-IN-TRADE AND OTHER PERSONAL PROPERTY (WHETHER OR NOT CONNECTED TO A LAND TRANSACTION);

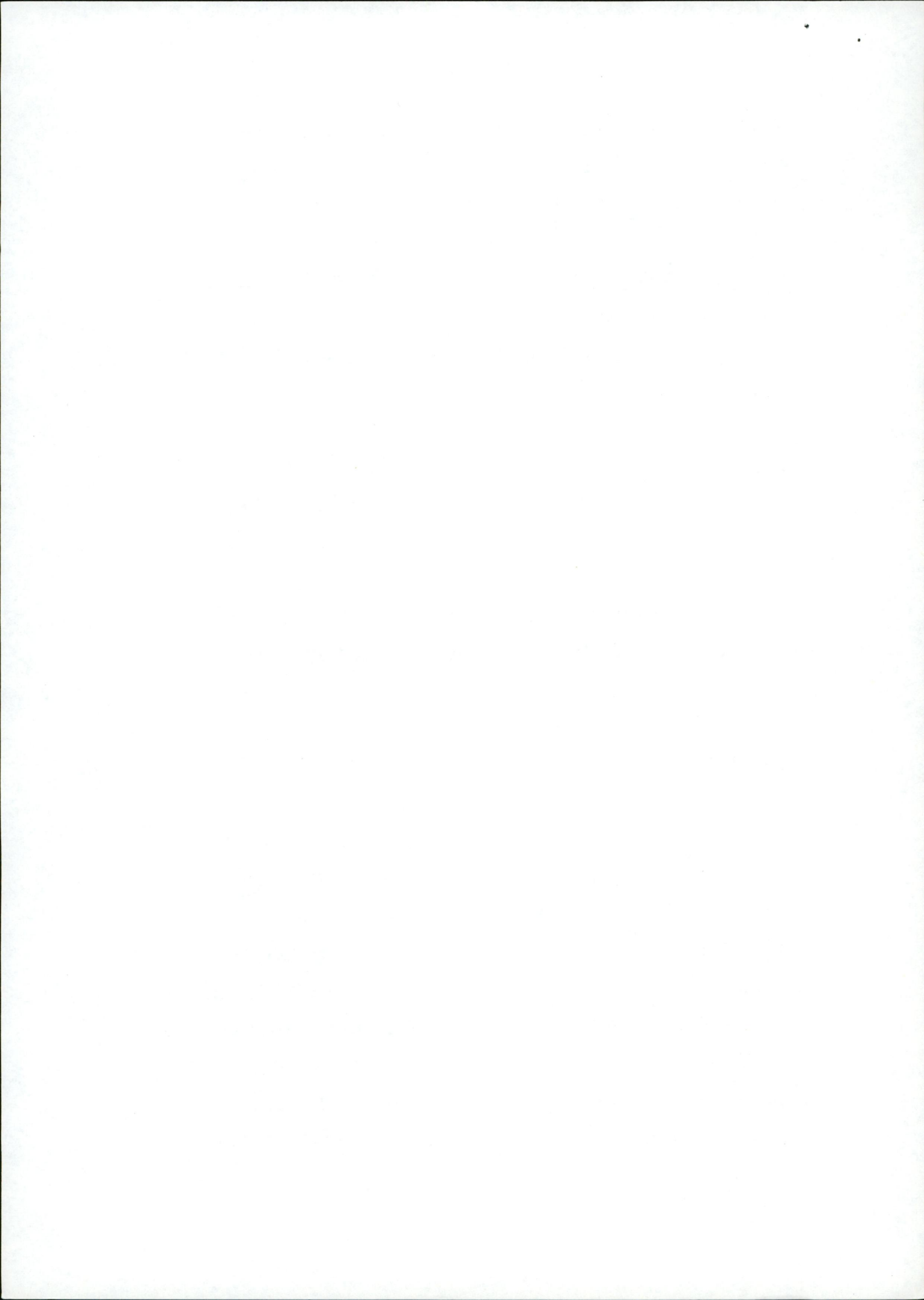
- PERMIT CONVEYANCERS TO ESTABLISH MULTI-DISCIPLINARY PARTNERSHIPS (EXCEPT WITH REAL ESTATE AGENTS), SUBJECT TO COUNCIL APPROVAL AND ANY REQUIREMENTS UNDER REGULATIONS; AND
- MAKE THE NECESSARY COGNATE AMENDMENTS TO THE REAL ESTATE SERVICES COUNCIL ACT 1990, THE PROPERTY, STOCK AND BUSINESS AGENTS ACT 1941 AND THE LEGAL PROFESSION ACT 1987.

THESE ARE THE MAIN CHANGES OF SUBSTANCE. THE REMAINING PROVISIONS OF THE CONVEYANCERS LICENSING ACT 1992 WILL BE RE-ENACTED WITH APPROPRIATE VARIATIONS.

#### BACKGROUND

WHEN THE GOVERNMENT OF THE TIME BROUGHT IN THE CURRENT SYSTEM OF CONVEYANCERS LICENSING A COUPLE OF YEARS AGO, THEY ACKNOWLEDGED THAT THERE WAS A ROLE FOR NON-LAWYER CONVEYANCING OF REAL ESTATE. THEY ADOPTED THE VIEW THAT THERE SHOULD BE INVOLVEMENT BY THE LAW SOCIETY IN THE REGULATION OF CONVEYANCERS BECAUSE THE WORK WAS THE SAME AS THAT DONE BY SOLICITORS AND BECAUSE THERE WERE NOT ENOUGH CONVEYANCERS TO REGULATE THEMSELVES. IT WAS CONSIDERED THAT THE SYSTEM ALREADY IN PLACE FOR THE LEGAL PROFESSION SHOULD BE ADAPTED BECAUSE IT





WAS LONG-ESTABLISHED AND SUPPORTED BY ADEQUATE NUMBERS AND WELL-FUNDED.

THE LICENSING ACT WAS PROMOTED AS BEING INTENDED TO ENCOURAGE A WIDER MARKET FOR CONVEYANCING THROUGH THE STATUTORY RECOGNITION OF CONVEYANCERS. IT WAS TO PROVIDE GREATER CONSUMER CHOICE. IT WAS SUPPOSED TO INTRODUCE COMPETITION BY BREAKING THE MONOPOLY THAT SOLICITORS HAD ON CONVEYANCING.

IT WOULD APPEAR, HOWEVER, THAT THE CONSEQUENCES SO FAR HAVE BEEN THE OPPOSITE. THE STATUTORY SCHEME HAS HAD THE EFFECT OF REDUCING THE NUMBER OF CONVEYANCING BUSINESSES BY PREVENTING A NUMBER OF PREVIOUSLY EXISTING CONVEYANCERS FROM BEING IN BUSINESS BECAUSE THEY OSTENSIBLY CANNOT MEET THE CRITERIA FOR LICENSING.

FOLLOWING INTENSE LOBBYING, THE SCOPE OF CONVEYANCERS' WORK WAS RESTRICTED, AND REGULATION OF THEIR CONDUCT WAS LEFT TO THE PEAK ORGANISATION REPRESENTING SOLICITORS. THE SCHEME THAT RESULTED WAS ONE WHERE THE LEGAL PROFESSION HAS SIGNIFICANT CONTROL, AND IS PERCEIVED TO HAVE INORDINATE INFLUENCE OVER, THE CONVEYANCING PROFESSION OR INDUSTRY.

NOTHING I SAY IS TO IMPUGN THE INTEGRITY OF ANY REPRESENTATIVE ON THE EXISTING REGULATORY BODIES. THE PROBLEM IS WITH THE BASIC STRUCTURE OF THE SYSTEM WHICH REGULATES CONVEYANCERS.





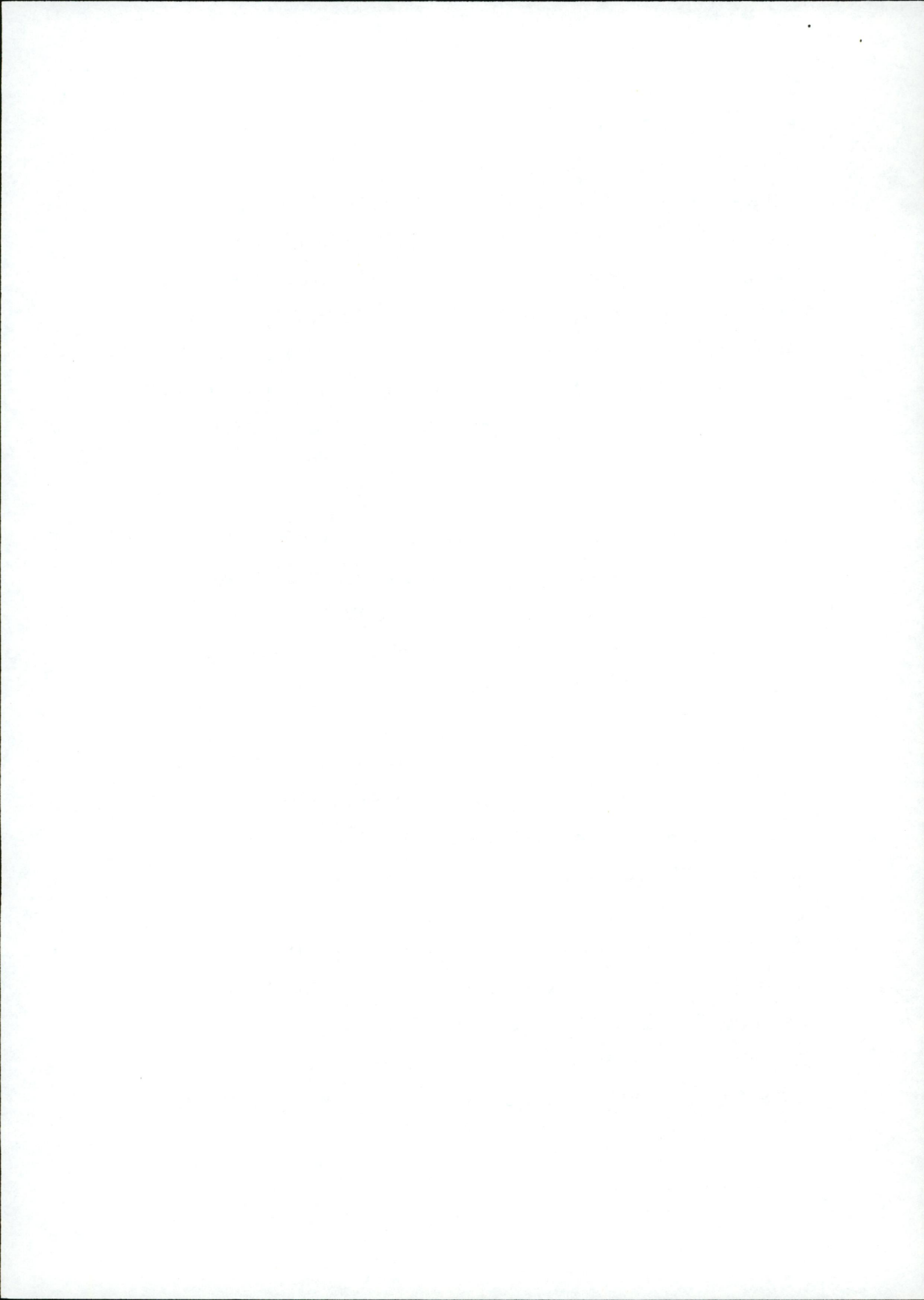
## TRANSFER OF REGULATION

WHILE THIS GOVERNMENT ACCEPTS THAT IT IS PRIMARILY LEGAL WORK THAT LINKS THE TWO PROFESSIONS OF SOLICITORS AND CONVEYANCERS, THAT OF ITSELF DOES NOT REQUIRE COMMON REGULATION AT ALL LEVELS. IN LIGHT OF THIS IT WAS DECIDED TO TRANSFER THE LICENSING AND ASSOCIATED FUNCTIONS TO A BODY INDEPENDENT OF BOTH THE LEGAL PROFESSION AND THE CONVEYANCING INDUSTRY. THESE FUNCTIONS WILL BE EXERCISED BY THE GENERAL MANAGER OF THE PROPERTY SERVICES COUNCIL.

THE PROPERTY SERVICES COUNCIL IS THE NEW NAME FOR THE REAL ESTATE SERVICES COUNCIL. CHANGING THE NAME TO THE PROPERTY SERVICES COUNCIL WILL INDICATE TO THE PUBLIC THE NEW FUNCTIONS OF THE REGULATORY BODY AND ITS BROADER SCOPE AND REPRESENTATION. I WILL OUTLINE THESE CHANGES SHORTLY.

THE PROPOSED REFORMS WILL INTEGRATE THE LICENSING SCHEME WITH AN EXISTING SYSTEM, WILL MINIMISE THE NUMBER OF AGENCIES INVOLVED BY ABOLISHING THE CONVEYANCERS LICENSING COMMITTEE, AND WILL SIMPLIFY ADMINISTRATION.

THE GENERAL MANAGER OF THE PROPERTY SERVICES COUNCIL WILL BE RESPONSIBLE FOR GRANTING A LICENCE (WITH OR WITHOUT CONDITIONS) ON GROUNDS SIMILAR TO THOSE CURRENT. THESE INCLUDE THAT THE APPLICANT HAS THE APPROPRIATE EDUCATIONAL QUALIFICATIONS AND EXPERIENCE, HAS PAID THE RELEVANT FUND CONTRIBUTIONS, HAS THE



REQUIRED INSURANCE COVERAGE, AND IS NOT FOR OTHER REASONS DISQUALIFIED.

THE BILL GENERALLY RETAINS THE EXISTING GROUNDS UNDER WHICH THE LICENSING AUTHORITY MAY SUSPEND OR CANCEL A LICENCE. THE BILL MAKES PROVISION FOR APPEALS AGAINST DECISIONS OF THE LICENSING AUTHORITY TO THE COMMERCIAL TRIBUNAL.

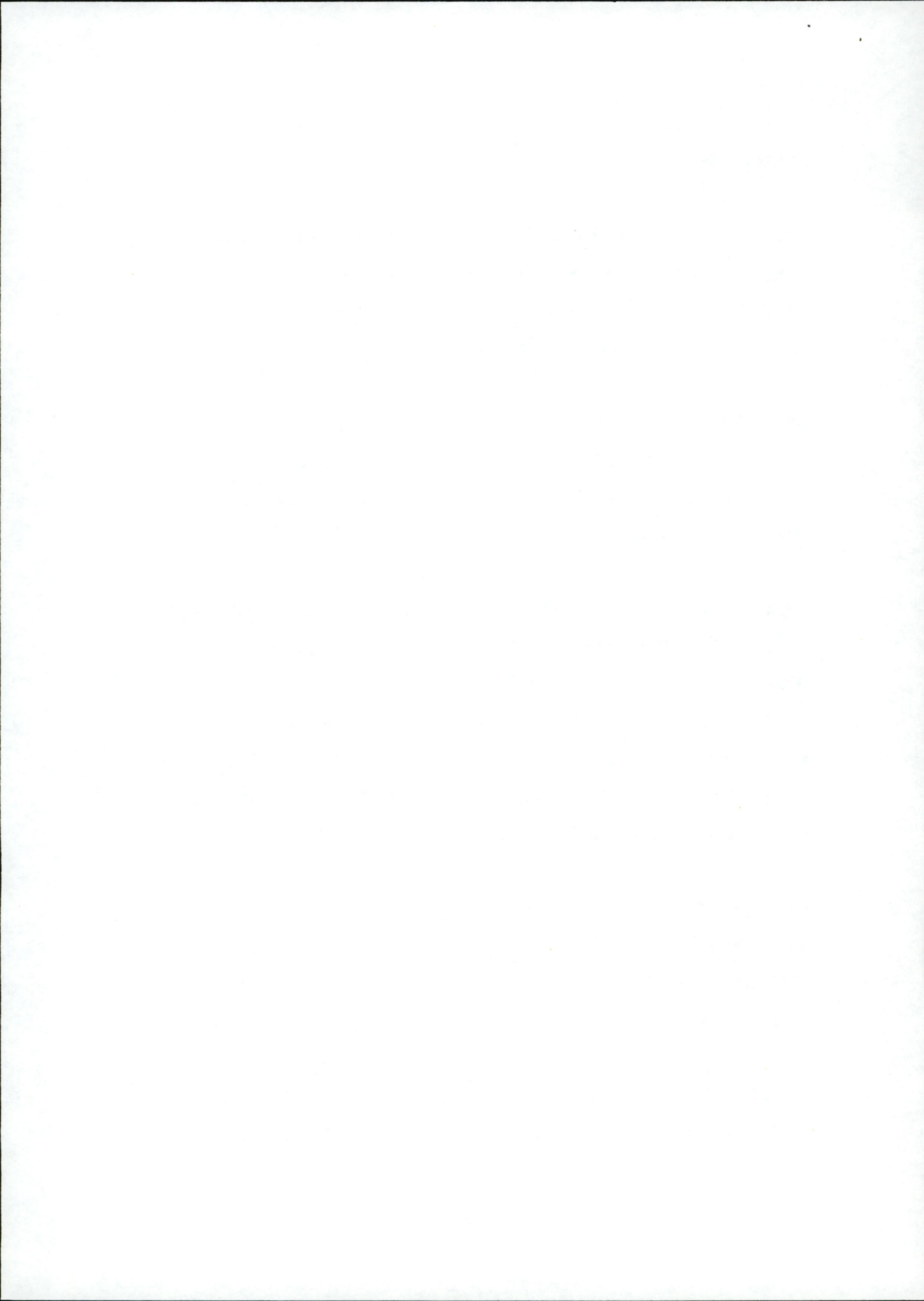
APART FROM DEALING WITH LICENCE APPLICATIONS, THE GENERAL MANAGER, AS LICENSING AUTHORITY, MAY ALSO TAKE WHATEVER STEPS ARE NECESSARY OR PROPER IN RESPECT TO THE INVESTIGATION OF ANY QUESTION AS TO THE CONDUCT OF A LICENSEE.

THE GENERAL MANAGER WILL BE RESPONSIBLE FOR INSPECTING TRUST ACCOUNTS, UNDERTAKING RELEVANT INVESTIGATIONS TO ASSIST THE LEGAL SERVICES COMMISSIONER IN ANY DISCIPLINARY ENQUIRIES, APPOINTING A MANAGER OF A LICENSEE'S CONVEYANCING BUSINESS IF NECESSARY TO PROTECT THE INTERESTS OF OTHER PERSONS (AS IN THE CURRENT SCHEME) AND APPLYING TO THE SUPREME COURT TO APPOINT A RECEIVER IN CASE OF ANY DEFALCATION OF TRUST ACCOUNTS.

THE LICENSING AUTHORITY WILL ALSO BE RESPONSIBLE FOR APPROVING ANY DEPARTURE FROM THE GENERAL REQUIREMENTS THAT A LICENSEE CANNOT SHARE THE RECEIPTS OF A CONVEYANCING BUSINESS WITH AN UNLICENSED PERSON.

THE BILL RETAINS EXISTING PROVISIONS WHOSE CONTRAVENTION CONSTITUTES PROFESSIONAL MISCONDUCT OR UNSATISFACTORY





PROFESSIONAL CONDUCT. THE CURRENT LICENSING ACT LINKS COMPLAINTS AND DISCIPLINE TO THE LEGAL PROFESSION ACT BY PROVIDING THAT DISCIPLINARY PROVISIONS ON MATTERS OF PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT APPLY TO CONVEYANCERS IN THE SAME WAY AS THEY APPLY TO SOLICITORS.

THE BILL RETAINS THIS LINK BECAUSE THE PROFESSIONAL CONDUCT OF CONVEYANCERS IS THE SAME AS THAT EXPECTED OF SOLICITORS. LICENSED CONVEYANCERS MUST MAINTAIN THE HIGH ETHICAL STANDARDS WHICH THEIR CLIENTS AND THE COMMUNITY EXPECT.

THERE SHOULD BE NO PROBLEM WITH MAINTAINING THIS LINK CONSIDERING THAT THE COMPLAINTS AND INVESTIGATION SCHEME IS SUBJECT TO THE SUPERVISION OF AN INDEPENDENT LEGAL SERVICES COMMISSIONER. THE COMMISSIONER WILL BE ABLE TO REFER MATTERS TO THE GENERAL MANAGER OF THE PROPERTY SERVICES COUNCIL AS CAN CURRENTLY BE DONE IN RESPECT OF THE LAW SOCIETY AND BAR COUNCIL. THERE IS PROVISION FOR SERIOUS MATTERS TO BE DEALT WITH BY A DISCIPLINARY TRIBUNAL CONSTITUTED IN A MANNER SIMILARLY UNDER THE CURRENT SCHEME, WITH ONE SOLICITOR MEMBER, ONE LICENSED CONVEYANCER MEMBER AND ONE LAY MEMBER. THERE IS ALSO PROVISION TO PRESCRIBE THE PAYMENT OF A PORTION OF CONVEYANCERS' LICENCE APPLICATION FEES TO THE STATUTORY INTEREST ACCOUNT MAINTAINED BY THE LAW SOCIETY, FOR THE PURPOSES OF MEETING THE COSTS OF DISCIPLINARY PROCEEDINGS.

THE PROVISIONS OF THE EXISTING REGULATORY SCHEME IN RELATION TO FEES CHARGED BY A CONVEYANCER WILL BE CARRIED FORWARD. THESE





ARE THE SAME AS APPLY TO SOLICITORS. THEY REQUIRE THE PROVISION OF INFORMATION TO CONSUMERS SO THEY CAN MAKE INFORMED DECISIONS ABOUT THE ACQUISITION OF SERVICES. MECHANISMS FOR THE RESOLUTION OF DISPUTES OVER FEES ARE ALSO ESTABLISHED.

#### CONVEYANCER REPRESENTATION ON COUNCIL

THE BILL PROVIDES FOR REPRESENTATION OF CONVEYANCERS ON THE COUNCIL. THE REAL ESTATE SERVICES COUNCIL (TO BE RE-NAMED THE PROPERTY SERVICES COUNCIL) FUNCTIONS MAINLY AS AN ADVISORY BODY. THE MAIN ROLE OF THE COUNCIL IN RELATION TO THE REGULATION OF CONVEYANCERS WILL BE THE MAKING OF RECOMMENDATIONS FOR THE APPROVAL OF THE MINISTER ON THE EDUCATIONAL QUALIFICATIONS, EXPERIENCE AND PRACTICAL TRAINING FOR CONVEYANCERS. THE CONVEYANCER ON THE COUNCIL WILL BE APPOINTED BY THE GOVERNOR ON THE MINISTER'S RECOMMENDATION. PROVISION HAS BEEN MADE FOR THE MINISTER TO SELECT FROM A NUMBER OF PERSONS NOMINATED BY RECOGNISED CONVEYANCING INDUSTRY ASSOCIATIONS.

IT IS ANTICIPATED THAT A REPRESENTATIVE OR REPRESENTATIVES FROM THE LAW SOCIETY WILL BE INVITED TO PARTICIPATE IN COUNCIL'S FORMULATION OF ADVICE TO THE MINISTER.

#### CONVEYANCER CONTRIBUTION TO COMPENSATION FUND

CONVEYANCERS WILL BE REQUIRED TO CONTRIBUTE TO THE PROPERTY SERVICES COMPENSATION FUND IN LIEU OF THE PRESENT FIDELITY INSURANCE ARRANGEMENTS. THE FUND WILL BE USED TO COMPENSATE



ANY PERSON WHO SUFFERS FINANCIAL LOSS BY REASON OF THE FAILURE TO ACCOUNT BY A LICENSEE OR A LICENSEE'S EMPLOYEE OR AGENT.

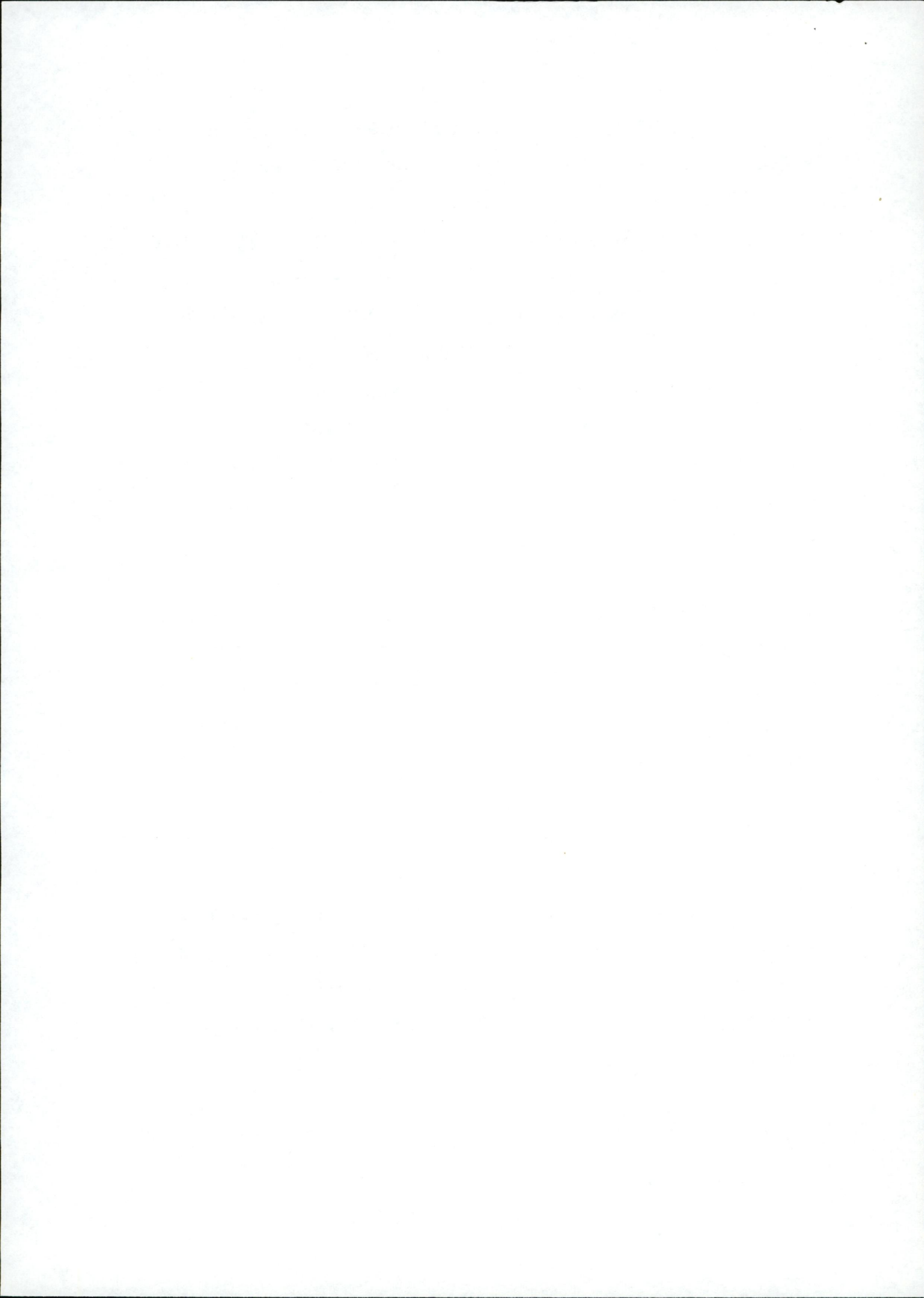
THE EXISTING FIDELITY INSURANCE FOR CONVEYANCERS IS PAID FOR BY LICENSEE CONTRIBUTIONS TO THE ASSOCIATION OF PROPERTY CONVEYANCERS. IT IS UNDERWRITTEN BY THE INSURANCE COMPANY APPROVED BY THE CONVEYANCERS LICENSING COMMITTEE AFTER CONSULTATION WITH THE LAW SOCIETY COUNCIL. THE INSURANCE IS IN THE FORM OF A MASTER POLICY HELD BY, AND INDEMNIFYING, THE ASSOCIATION OF PROPERTY CONVEYANCERS. THE ASSOCIATION CAN CHARGE LICENSEES AN ADMINISTRATIVE FEE AS APPROVED BY THE COMMITTEE.

SOME CONVEYANCERS ARE QUESTIONING WHETHER THEY ARE GETTING VALUE FOR MONEY. IT IS ANTICIPATED THAT THE NEW ARRANGEMENTS WILL MINIMISE DISPUTATION BY PLACING CONVEYANCERS IN A SIMILAR POSITION TO THAT OF REAL ESTATE AGENTS AND OTHERS AS MEMBERS OF THE COMPENSATION FUND.

#### PROFESSIONAL INDEMNITY INSURANCE

THE BILL RETAINS THE REQUIREMENT FOR PROFESSIONAL INDEMNITY INSURANCE FOR LICENSED CONVEYANCERS. A COMPLAINT ABOUT THE CURRENT SYSTEM IS THAT CONVEYANCERS COULD OBTAIN PROFESSIONAL INDEMNITY INSURANCE MORE CHEAPLY THAN UNDER THE EXISTING MASTER POLICY.





CONVEYANCERS SHOULD BE GIVEN THE CHOICE TO NEGOTIATE THEIR OWN POLICIES EITHER INDIVIDUALLY OR AS A GROUP. THE BILL PERMITS THIS. SUCH POLICIES WOULD HAVE TO COMPLY WITH REQUIREMENTS SET BY THE GENERAL MANAGER OF THE COUNCIL AS TO NATURE OF THE INSURANCE AND THE CONTENT AND EXTENT OF COVERAGE. PROPER CONSUMER PROTECTION IS ESSENTIAL.

#### EXPANSION OF SCOPE OF CONVEYANCING WORK

THE CURRENT DEFINITION OF "CONVEYANCING WORK" CONFINES LICENSED CONVEYANCERS TO WORK RELATING TO RESIDENTIAL PROPERTY UP TO 10 HECTARES. CONVEYANCERS ARE NOT PERMITTED TO CONDUCT CONVEYANCING TRANSACTIONS RELATING TO COMMERCIAL PROPERTY OR RURAL PROPERTY.

THE PROPOSAL TO EXPAND THE ROLE OF CONVEYANCERS TAKES ACCOUNT OF THE GOVERNMENT'S COMMITMENT TO PERMIT CONVEYANCERS TO UNDERTAKE TRANSACTIONS FOR SMALL BUSINESSES, INCLUDING THE TRANSFER OF "GOODWILL" AND "STOCK-IN-TRADE".

THE EXPANDED ROLE WILL PERMIT CONVEYANCERS TO CARRY OUT A BROAD RANGE OF COMMERCIAL PROPERTY TRANSFERS, WHETHER IT BE THE SALE OR PURCHASE OF FACTORY UNITS OR VACANT SHOPS IN A SHOPPING CENTRE OR THE WHOLE SHOPPING CENTRE ITSELF. THEY COULD ALSO ACT ON THE SALE OF FARMS AND OTHER RURAL PROPERTY, REGARDLESS OF WHETHER THE PROPERTY IS ZONED OR USED WHOLLY OR PARTLY AS COMMERCIAL OR RESIDENTIAL. THE SCOPE OF WORK WOULD ALSO EXTEND TO PROPERTIES SUCH AS CITY APARTMENT BLOCKS WHICH ARE STILL UNDER



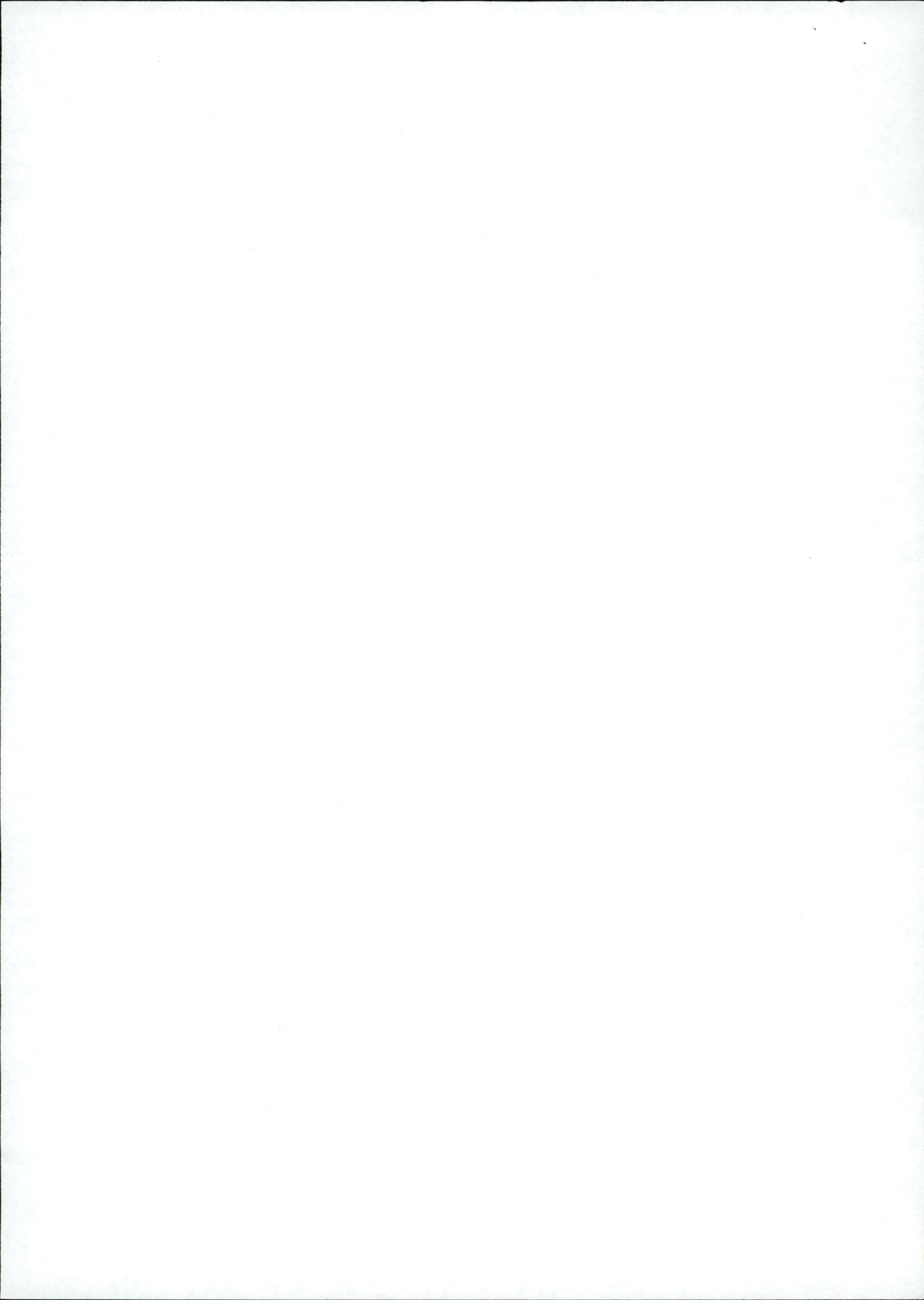


"COMPANY TITLE", WHICH APPARENTLY IS NOT COVERED BY THE CURRENT DEFINITION OF CONVEYANCING WORK.

THE NEW DEFINITION OF CONVEYANCING WORK WILL ALSO PERMIT THE TRANSFER OF GOODWILL, STOCK-IN-TRADE AND OTHER PERSONAL PROPERTY WITHOUT THERE BEING A RELATED SALE OF LAND. THIS WILL CATER FOR TRANSACTIONS WHICH MAY BE SIMPLER TO UNDERTAKE THAN THE CONVEYANCING OF LARGER PROPERTIES, PREMISES AND BUSINESSES. EXAMPLES ARE: A LAWN-MOWING BUSINESS OR THAT OF A MOBILE MECHANIC, WORKING FROM HOME AND/OR FROM A TRUCK OR VAN. THAT PERSON WILL BE ABLE TO USE A CONVEYANCER TO SELL THAT BUSINESS (USUALLY THE NAME, GOODWILL AND STOCK-IN-TRADE) WITHOUT HAVING TO SELL LAND WITH IT.

AS THESE TRANSACTIONS WOULD BE PERMITTED TO BE UNDERTAKEN BY LICENSED CONVEYANCERS IN CONNECTION WITH THE TRANSFER OF LAND, THERE SHOULD BE NO REASON TO PREVENT CONVEYANCERS FROM UNDERTAKING THE SAME TYPES OF TRANSACTIONS SEPARATELY FROM TRANSFERRING REAL PROPERTY.

THE PROPOSED LEGISLATION WILL NOT IMPOSE RESTRICTIONS ON THE NATURE OF CONVEYANCING WORK THAT CAN BE UNDERTAKEN. IT IS ANTICIPATED THAT THE MARKETPLACE WILL SORT ITSELF OUT AS TO WHAT TYPES OF DEALINGS WILL BE UNDERTAKEN BY CONVEYANCERS IN PRACTICE. BUSINESSES OR PERSONS WISHING TO DEAL IN PROPERTIES WHICH ARE HIGH IN COST OR INVOLVE COMMERCIALY COMPLEX MATTERS WILL PROBABLY EITHER RETAIN A LEGAL PRACTITIONER OR ENSURE THAT



THE CONVEYANCERS SELECTED HAS EXPERIENCE AND SKILL IN THAT TYPE OF TRANSACTION.

THE EXPANSION OF THE SCOPE OF WORK FOR CONVEYANCERS WILL, OF COURSE, HAVE IMPLICATIONS FOR EDUCATION AND TRAINING. WHILE THE PRINCIPLES OF CONVEYANCING MAY BE THE SAME FOR MANY TRANSACTIONS, THE EXPANDED SCOPE OF WORK WILL ALSO HIGHLIGHT VARIATIONS AND COMPLEXITIES WHICH WILL CALL FOR ADDITIONAL TRAINING OR ONGOING EDUCATION.

AS ALREADY MENTIONED, THE BILL PROVIDES FOR CONVEYANCER REPRESENTATION ON THE PROPERTY SERVICES COUNCIL, WHICH WILL BE CHARGED WITH THE TASK OF SETTING UP AN EDUCATION SUBCOMMITTEE TO ASSESS WHAT ADDITIONAL TRAINING MAY BE REQUIRED FOR THE EXISTING LICENSED CONVEYANCERS, AND WHAT TYPE OF EDUCATIONAL COURSES AND PRACTICAL EXPERIENCE WOULD BE NECESSARY FOR NEW LICENSEES. THIS SUBCOMMITTEE WILL HAVE THE BENEFIT OF REPRESENTATION BY CONVEYANCERS AND LEGAL PRACTITIONERS TO ENSURE THAT APPROPRIATE COMPETENCY STANDARDS ARE MAINTAINED.

#### MULTI-DISCIPLINARY PARTNERSHIPS

THE BILL PERMITS MULTI-DISCIPLINARY PARTNERSHIPS INVOLVING CONVEYANCERS. MULTI-DISCIPLINARY PARTNERSHIPS MUST HAVE THE CONSENT OF THE LICENSING AUTHORITY AND BE SUBJECT TO ANY REGULATION THAT MAY BE MADE RESTRICTING MULTI-DISCIPLINARY PARTNERSHIPS. THE PROVISION PROHIBITS A PARTNERSHIP BETWEEN A LICENSED CONVEYANCER AND A REAL ESTATE AGENT OR ANY OTHER



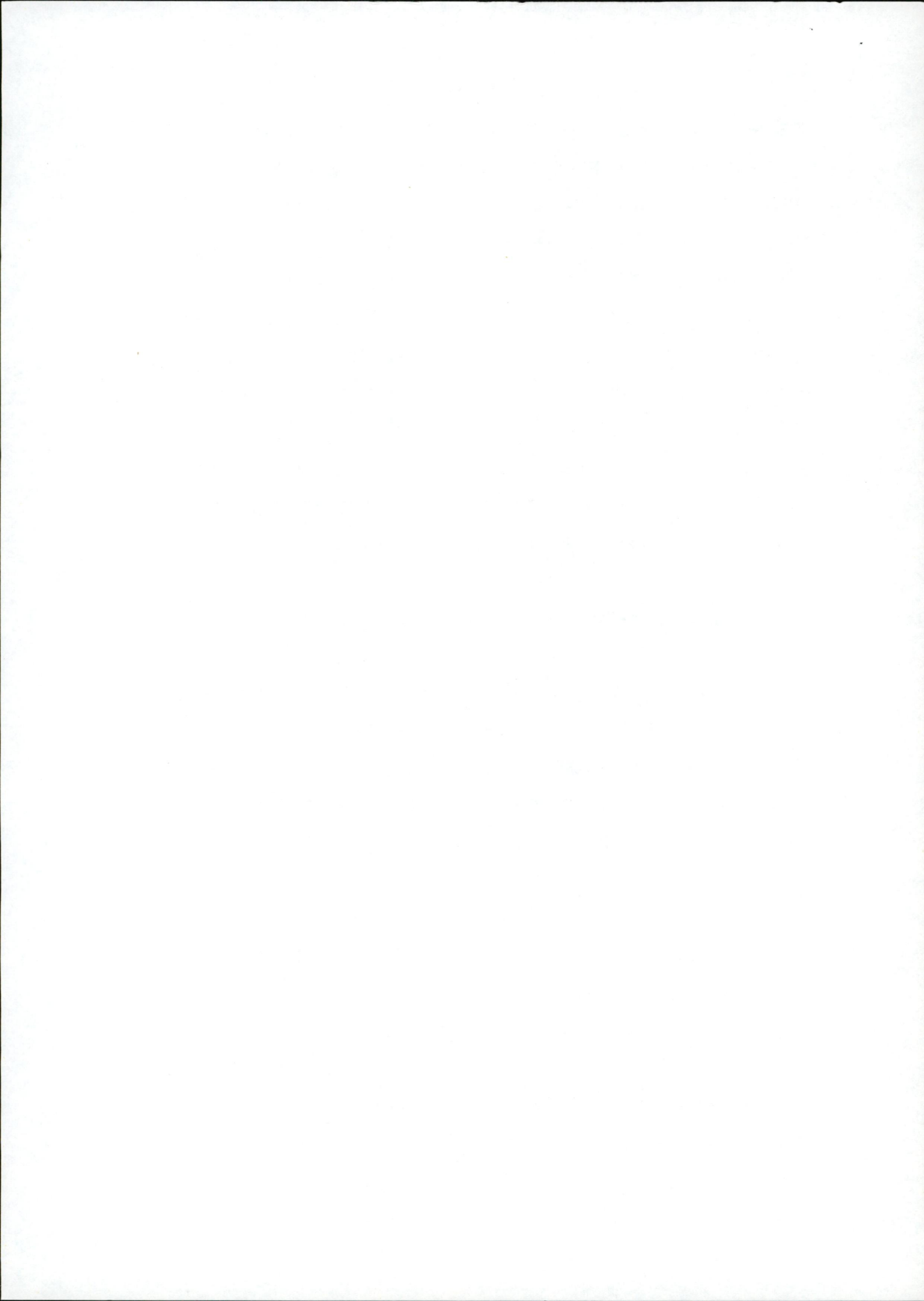


LICENSEE UNDER THE PROPERTY, STOCK AND BUSINESS AGENTS ACT. THIS IS BECAUSE SUCH PARTNERSHIPS ARE SEEN TO INVOLVE A POTENTIAL CONFLICT OF INTEREST. FOR EXAMPLE, A CONVEYANCER MIGHT NOT BE, OR MIGHT BE PERCEIVED NOT TO BE, PROVIDING SERVICE AND ADVICE INDEPENDENTLY OF THE REAL ESTATE AGENT PARTNER IF THEY ARE WORKING ON THE SAME PROPERTY. CONVEYANCERS WILL BE PERMITTED TO PARTNER WITH SOLICITORS, AND IT IS EXPECTED THAT THE LICENSING AUTHORITY WILL PERMIT PARTNERSHIPS WITH OTHER PROPERTY-RELATED CONSULTANTS SUCH AS BUILDING/ENGINEERING INSPECTORS. THE PROVISION IS CONSISTENT WITH EQUIVALENT PROVISIONS IN THE LEGAL PROFESSION ACT 1987, AND IS CONSISTENT WITH THE GENERAL IDEA OF REMOVING UNNECESSARY RESTRICTIONS ON BUSINESS.

I NOW COME TO THE PROVISIONS OF THE BILL.

PART 1 (CLAUSES 1-5) CONTAINS THE PRELIMINARY PROVISIONS, PROVIDES FOR CERTAIN WORDS AND EXPRESSIONS TO BE DEFINED IN THE DICTIONARY AT THE END OF THE ACT AND DEFINES THE EXPRESSION "CONVEYANCING WORK". THE DICTIONARY DEFINES "COUNCIL" AS THE PROPERTY SERVICES COUNCIL CONSTITUTED BY THE PROPERTY SERVICES COUNCIL ACT 1990.

PART 2 (CLAUSES 6-14) COVERS THE LICENSING PROVISIONS, WHICH ARE SIMILAR TO THE EXISTING PROVISIONS IN RESPECT OF THE EFFECT OF A LICENCE, THE QUALIFICATIONS FOR A LICENCE, THE PROCEDURES FOR MAKING AN APPLICATION, THE DETERMINATION OF APPLICATIONS BY THE COUNCIL AND GROUNDS FOR SUSPENSION OR CANCELLATION. APPEALS AGAINST DECISIONS OF THE GENERAL MANAGER OF THE COUNCIL MAY BE MADE TO THE COMMERCIAL TRIBUNAL. THE CURRENT SCHEME ALLOWS





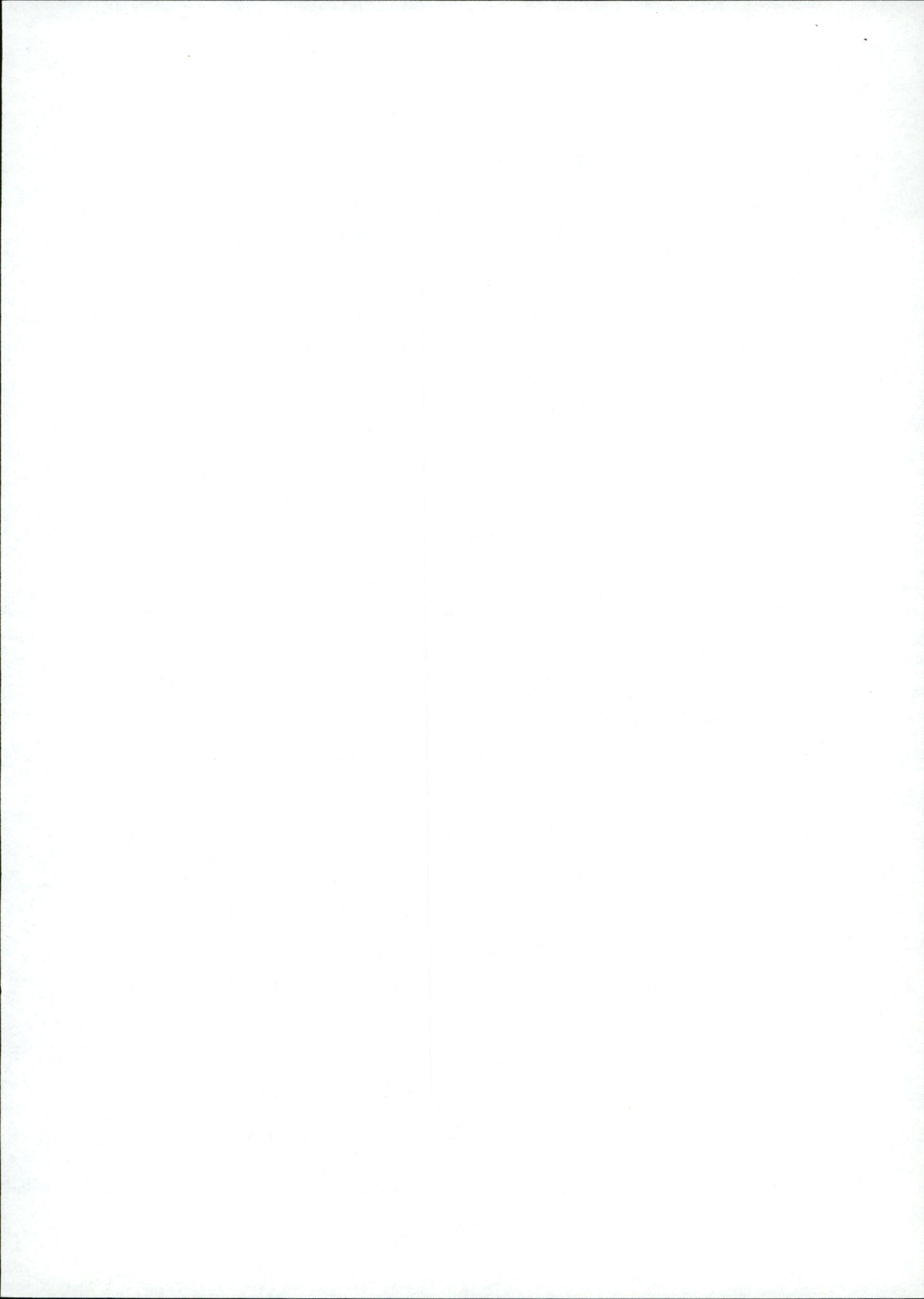
APPEALS TO THE SUPREME COURT, BUT THE NEW PROVISION AIMS AT SIMPLIFYING AND SPEEDING UP THESE TYPES OF PROCESSES.

PART 3 (CLAUSES 15-36) - DIVISION 1 MAKES GENERAL PROVISIONS REGARDING CONVEYANCING PRACTICE, PROVIDING THAT CONTRAVENTION OF THE CERTAIN PROVISIONS OF DIVISION 1 MAY CONSTITUTE UNSATISFACTORY PROFESSIONAL CONDUCT OR PROFESSIONAL MISCONDUCT. THIS COVERS MATTERS RELATED TO FEES, SHARING OF RECEIPT, PARTNERSHIPS, AND EMPLOYMENT OF DISQUALIFIED PERSONS. THESE PROVISIONS ARE SIMILAR TO THOSE UNDER THE EXISTING ACT, EXCEPT THAT THE PROPOSED NEW LAW WILL PERMIT CONVEYANCERS TO SET UP MULTI-DISCIPLINARY PARTNERSHIPS.

PART 3, DIVISION 2 DEALS WITH TRUST MONEY AND CONTROLLED MONEY. DIVISION 3 PROVIDES FOR THE INSPECTION OF TRUST ACCOUNTS AND INVESTIGATIONS GENERALLY. THE PROVISIONS ARE THE SAME AS CURRENT PROVISIONS, EXCEPT THAT INSPECTIONS AND INVESTIGATIONS WILL BE CARRIED OUT BY THE NEW INDEPENDENT LICENSING AUTHORITY.

PART 4 (CLAUSES 37-39) PROVIDES FOR CONTRIBUTIONS BY CONVEYANCERS TO THE PROPERTY SERVICES COMPENSATION FUND AND ALLOWS CLIENTS TO MAKE CLAIMS AGAINST THE FUND IN RESPECT OF A FAILURE TO ACCOUNT BY A LICENSEE OR HIS/HER EMPLOYEE OR AGENT. THESE PROVISIONS REPLACE THE CURRENT REQUIREMENT FOR FIDELITY INSURANCE.

PART 5 (CLAUSES 40 -81) MAKES PROVISION FOR MANAGEMENT AND RECEIVERSHIP. THESE PROVISIONS ARE GENERALLY THE SAME AS THE



CURRENT ONES EXCEPT WITH ADJUSTMENTS WHICH ACKNOWLEDGE THE PROPERTY SERVICES COUNCIL AS THE LICENSING AUTHORITY RESPONSIBLE FOR UNDERTAKING APPROPRIATE MEASURES.

PART 6 (CLAUSES 82-83) PROVIDES FOR DISCIPLINARY PROCEEDINGS. IT APPLIES PART 10 OF THE LEGAL PROFESSION ACT 1987 TO LICENSEES IN THE SAME WAY AS IT APPLIES TO SOLICITORS. (PART 10 DEALS WITH PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT.) THIS PART ALSO PROVIDES FOR THE COMPOSITION OF THE LEGAL SERVICES TRIBUNAL WHEN CONDUCTING A HEARING INTO A COMPLAINT AGAINST A LICENSEE. I HAVE EXPLAINED PREVIOUSLY THE RATIONALE FOR RETAINING THESE PROVISIONS.

PART 7 (CLAUSES 84-95) COVERS MISCELLANEOUS PROVISIONS, SETTING OUT THE POWERS OF THE COUNCIL IN RELATION TO THE EXERCISE OF ITS FUNCTIONS (FOR EXAMPLE, INSPECTIONS AND INVESTIGATIONS), PROVIDING FOR AUDITORS, PROVIDING FOR A PUBLIC REGISTER OF LICENSEES, AND PROVIDING FOR A GENERAL REGULATION-MAKING POWER. AGAIN, THE PROVISIONS ARE SIMILAR TO THOSE CURRENT, EXCEPT IN RELATION TO THE NEW COUNCIL. THIS PART ALSO REPEALS THE CONVEYANCERS LICENSING ACT 1992, WHICH IN EFFECT ABOLISHES THE CONVEYANCERS LICENSING COMMITTEE.

SCHEDULE 1 MAKES CONSEQUENTIAL AMENDMENTS TO OTHER ACTS AND TO THE REGULATIONS UNDER THE EXISTING ACT.

SCHEDULE 2 CONTAINS SAVINGS AND TRANSITIONAL PROVISIONS. THESE PROVISIONS WILL ENSURE THAT EXISTING LICENSEES CAN CONTINUE IN



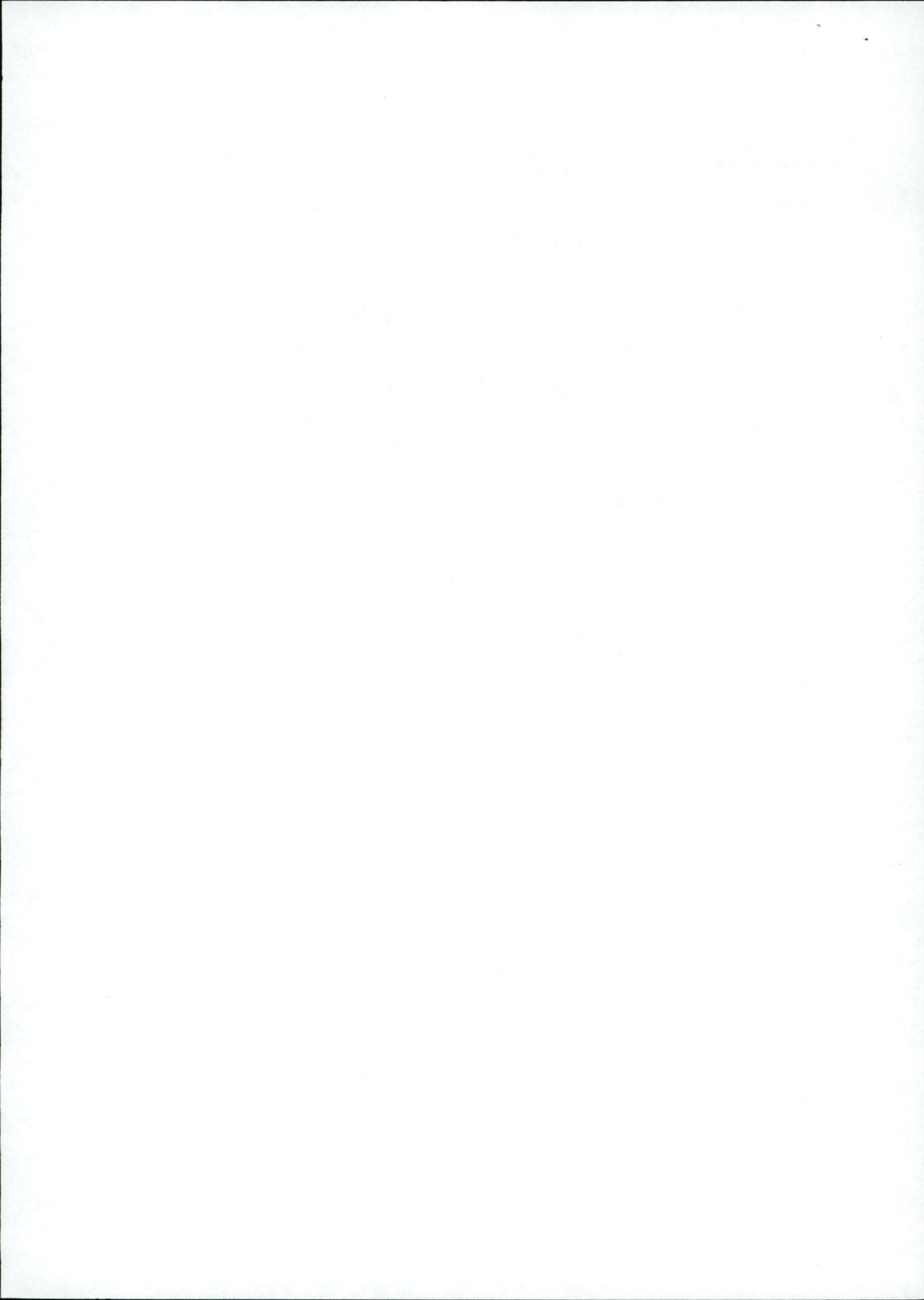


BUSINESS, CARRYING OUT THE CURRENT SCOPE OF LICENSED CONVEYANCING WORK (RESIDENTIAL CONVEYANCING). PERSONS HOLDING CURRENT CERTIFICATES OF ELIGIBILITY FOR A LICENCE WILL STILL BE ELIGIBLE FOR A LICENCE TO UNDERTAKE THE CURRENT SCOPE OF WORK. THERE IS ALSO PROVISION TO LOOK AFTER THE INTERESTS OF PERSONS WHO STARTED AN EDUCATIONAL COURSE IN CONVEYANCING UNDER CURRENT RULES, SO THAT, WHEN THEY GRADUATE, THEIR QUALIFICATIONS WILL BE TAKEN INTO ACCOUNT FOR A LICENCE TO CARRY OUT THE CURRENT SCOPE OF WORK.

ALTHOUGH COMMENCEMENT OF THE NEW ACT WILL BE ON A DAY OR DAYS TO BE SET BY PROCLAMATION, PROBABLY EARLY IN THE NEW YEAR, IT WILL BE SOME TIME BEFORE THE MARKETPLACE WILL BENEFIT FROM THE EXPANDED RANGE OF WORK CONVEYANCERS CAN UNDERTAKE. THE PUBLIC MUST BE ASSURED THAT CONVEYANCERS POSSESS THE COMPETENCIES TO PERFORM THIS WIDER RANGE OF WORK.

#### BENEFITS OF PROPOSED AMENDMENTS

IN CONCLUSION, THIS BILL CREATES A REGULATORY SCHEME WHICH IS MORE STREAMLINED THAN THE PRESENT ONE AND IS BETTER DESIGNED TO SERVE THE PUBLIC INTEREST. THE CONVEYANCING INDUSTRY IS TOO SMALL AND IMMATURE TO PERFORM REGULATORY FUNCTIONS IN ITS OWN RIGHT. IT IS IMPORTANT, HOWEVER, THAT IT BE INVOLVED, TOGETHER WITH CONSUMERS, IN NECESSARY REGULATION. THE BILL PROVIDES THIS. IT ALSO MAINTAINS COMPARABILITY WITH CERTAIN FEATURES OF THE REGULATORY SCHEME FOR SOLICITORS. THIS IS IMPORTANT IN LIGHT OF THE EXPANDED ROLE OF CONVEYANCERS.





THE MAIN BENEFITS OF THE PROPOSAL TO EXPAND THE SCOPE OF LICENSED CONVEYANCING ACTIVITY ARE CONSUMER CHOICE AND BUSINESS COMPETITION. HAVING A BROADER SCOPE OF WORK, CONVEYANCERS WILL BE MORE COMPETITIVE WITH EACH OTHER AND WITH THOSE MEMBERS OF THE LEGAL PROFESSION WHO SPECIALISE IN CONVEYANCING. THE AVAILABILITY OF A WIDER RANGE OF WORK SHOULD ATTRACT MORE ENTRANTS TO THE INDUSTRY AND PROVIDE GREATER OPPORTUNITIES FOR THOSE COMPLETING EDUCATIONAL PROGRAMS. ALL THIS WILL FOSTER A MORE VIABLE INDUSTRY AND BENEFIT CONSUMERS. INCLUDING SMALL BUSINESS, ESPECIALLY THROUGH REDUCED COSTS.

I COMMEND THE BILL.



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## LEGISLATIVE COUNCIL

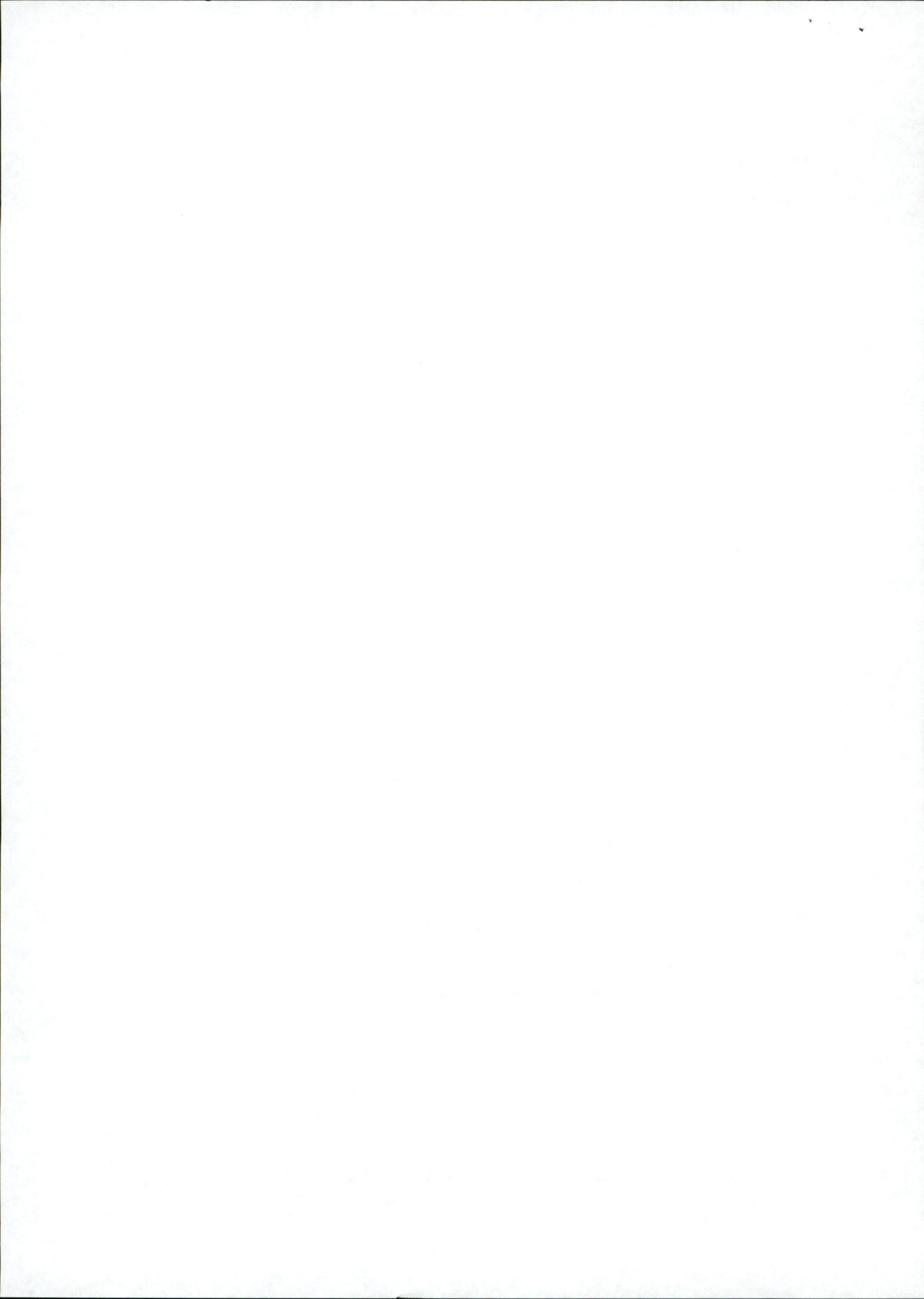
CONVEYANCERS LICENSING BILL 1995

## First Print

## Amendments to be moved in Committee

- 
- No. 1 Page 3, clause 4 (3). After line 8, insert:
- (a) a mortgage on non-residential property where the amount secured by the mortgage exceeds 7 million dollars (with non-residential property being any property that is not residential property for the purposes of Division 8 of Part 4 of the Conveyancing Act 1919), or
- No. 2 Page 57, Schedule 1, line 21. Omit "11 members", insert instead "12 members".
- No. 3 Page 57, Schedule 1, line 24. Omit "10 members", insert instead "11 members".
- No. 4 Page 58, Schedule 1. After line 7, insert:
- (i) 1 is to be selected by the Minister from a panel of persons nominated by the Law Society of New South Wales.
- No. 5 Page 59, Schedule 1, line 7. Omit "(g) or (h)", insert instead "(g), (h) or (i)".
- No. 6 Page 59, Schedule 1. After line 7, insert:
- [11] Schedule 1, clause 10 (a)  
Omit "6 members". Insert instead "7 members."

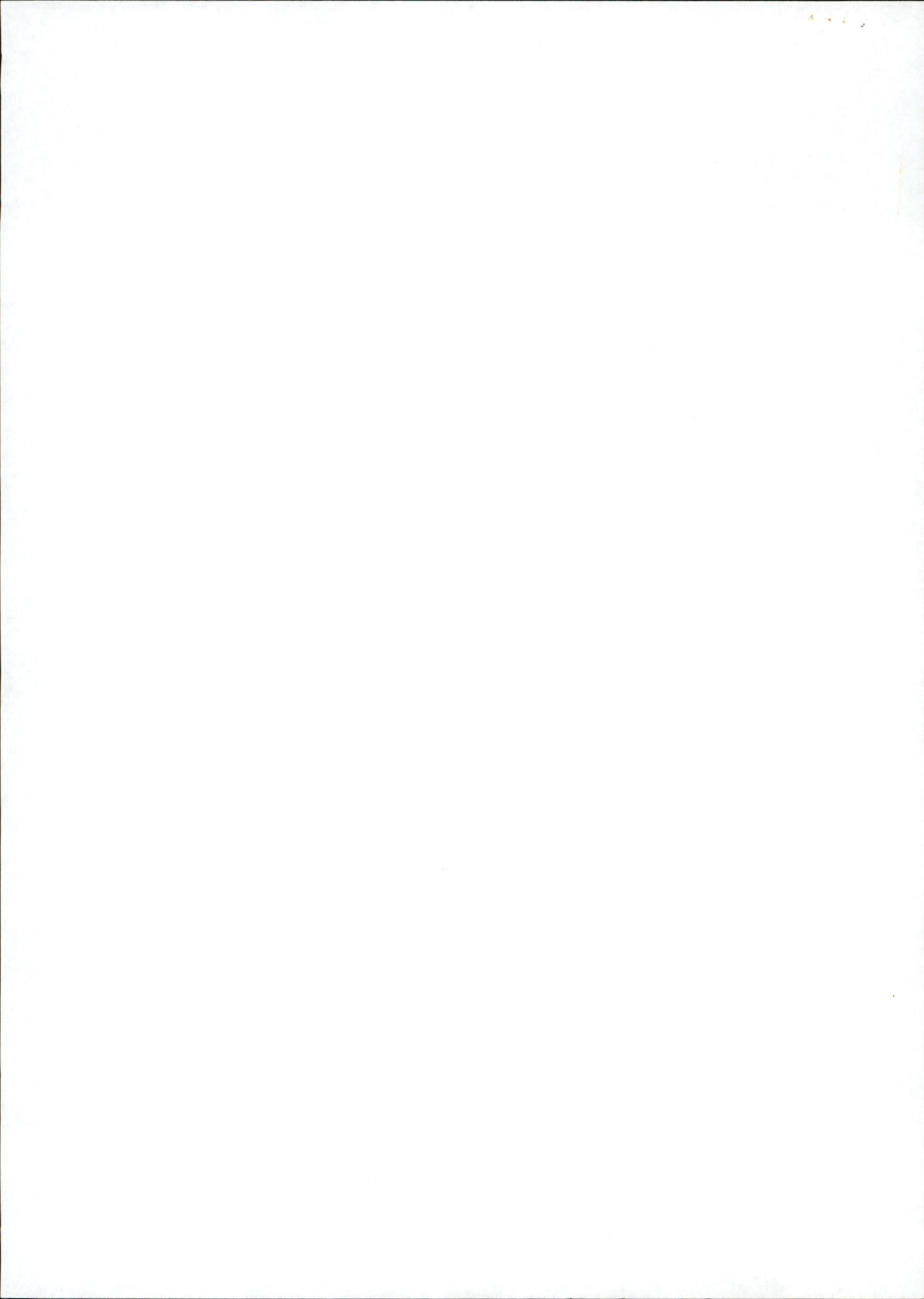




[12] **Schedule 1, clause 14 (2A)**

After clause 14 (2), insert:

- (2A) If the Council establishes a committee to assist it in connection with the exercise of any functions with respect to the educational qualifications of licensed conveyancers, the members of the Council referred to in section 6 (3) (h) and (i) must be members of the committee.







New South Wales

# Conveyancers Licensing Act 1995 No 57

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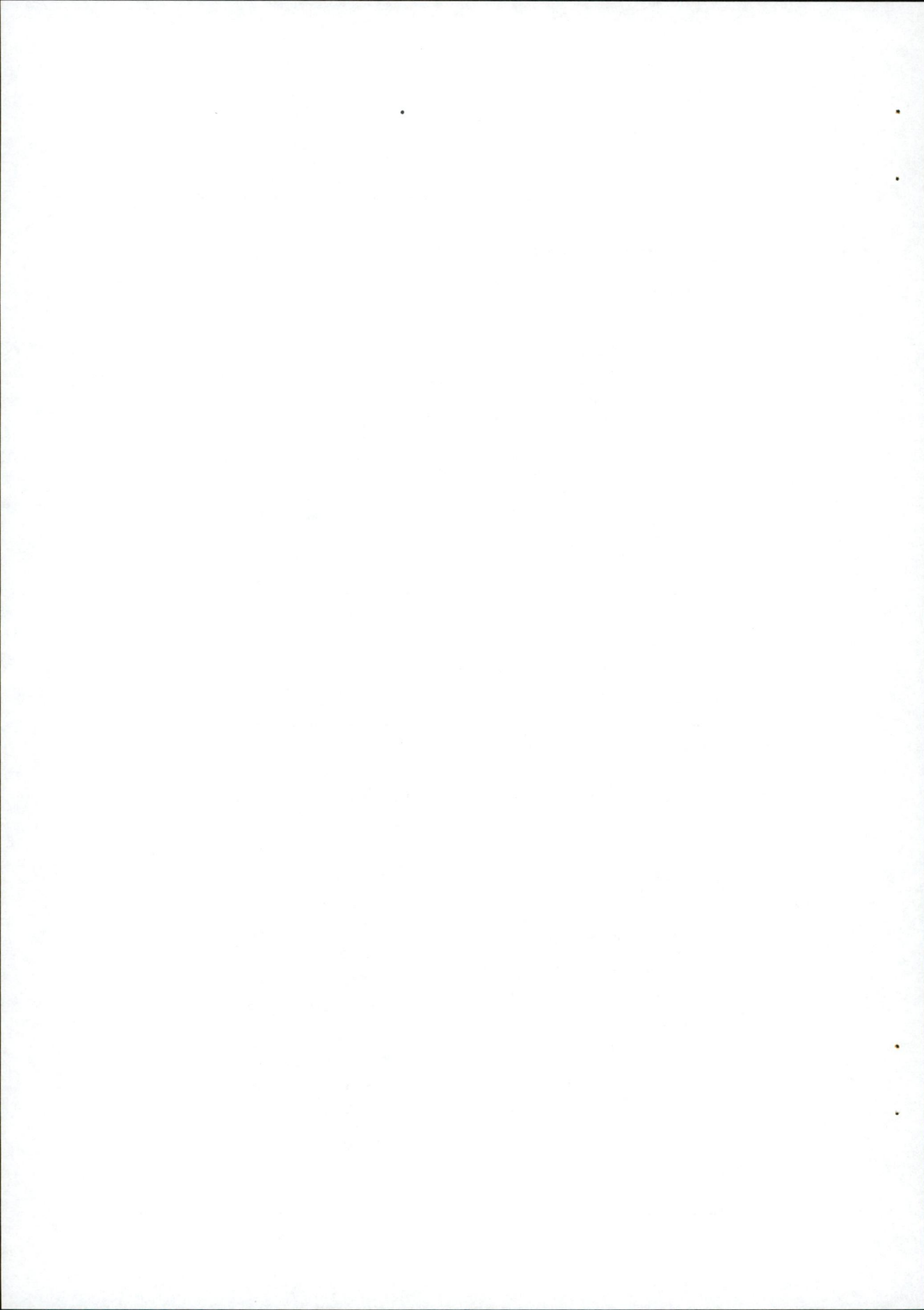
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**Dictionary**

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The dictionary defines the following words and expressions

affairs	firm of licensees
approved policy of professional indemnity insurance	function
controlled money	licence
conveyancing business	licensee
conveyancing work	money
costs	money received
Council	professional misconduct
disqualified person	record
exercise	trust money
	unsatisfactory professional conduct







New South Wales

# Conveyancers Licensing Act 1995 No 57

Act No 57, 1995

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An Act to provide for the licensing and regulation of conveyancers, to repeal the *Conveyancers Licensing Act 1992*, and for other purposes. [Assented to 30 November 1995]

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

## **Part 1 Preliminary**

### **1 Name of Act**

This Act is the *Conveyancers Licensing Act 1995*.

### **2 Commencement**

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

### **3 Definitions**

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

### **4 Conveyancing work**

- (1) For the purposes of this Act, **conveyancing work** is legal work carried out in connection with any transaction that creates, varies, transfers or extinguishes a legal or equitable interest in any real or personal property, such as (for example) any of the following transactions:
  - (a) a sale or lease of land,
  - (b) the sale of a business (including the sale of goodwill and stock-in-trade), whether or not a sale or lease of land or any other transaction involving land is involved,
  - (c) the grant of a mortgage or other charge.
- (2) Without limiting subsection (1), **conveyancing work** includes:
  - (a) legal work involved in preparing any document (such as an agreement, conveyance, transfer, lease or mortgage) that is necessary to give effect to any such transaction, and

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- (b) legal work (such as the giving of advice or the preparation, perusal, exchange or registration of documents) that is consequential or ancillary to any such transaction, and
  - (c) any other legal work that is prescribed by the regulations as constituting conveyancing work for the purposes of this Act.
- (3) However, **conveyancing work** does not include the carrying out of any work for the purpose of:
- (a) a mortgage on non-residential property where the amount secured by the mortgage exceeds 7 million dollars (with non-residential property being any property that is not residential property for the purposes of Division 8 of Part 4 of the *Conveyancing Act 1919*), or
  - (b) commencing or maintaining legal proceedings, or
  - (c) establishing a corporation or varying the memorandum or articles of association of a corporation, or
  - (d) creating, varying or extinguishing a trust, or
  - (e) preparing a testamentary instrument, or
  - (f) giving investment or financial advice, or
  - (g) investing money otherwise than as provided for by Division 2 of Part 3,

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

- (4) In this section:

**legal work** means work that, if done for fee or reward by a person who is neither a solicitor nor a barrister, would give rise to an offence under Part 3A of the *Legal Profession Act 1987*.

## 5 Disqualified persons

- (1) A person is a disqualified person for the purposes of this Act if the person:
- (a) is a corporation, or
  - (b) is an undischarged bankrupt, or
  - (c) has been convicted in New South Wales or elsewhere of an offence involving dishonesty, or
  - (d) is a mentally incapacitated person, or



- (e) has been removed (otherwise than at his or her own request) from the roll of legal practitioners kept by the Supreme Court or from a corresponding roll of legal practitioners kept by a superior court of another State or Territory, or
  - (f) is disqualified from holding a licence under this Act or the *Conveyancers Licensing Act 1992* by virtue of an order in force under section 171C of the *Legal Profession Act 1987* (as applying under section 82 of this Act), or
  - (g) is disqualified from being employed in a solicitor's office by virtue of an order in force under section 481 of the *Legal Profession Act 1987*, or
  - (h) is disqualified from holding a licence or certificate of registration under the *Property, Stock and Business Agents Act 1941* by virtue of an order in force under section 29, 29A, 60AA or 60A of that Act.
- (2) A person is also a disqualified person for the purposes of this Act if the person:
- (a) is the holder of a barrister's or a solicitor's practising certificate under the *Legal Profession Act 1987*, or
  - (b) is the holder of a licence or certificate of registration under the *Property, Stock and Business Agents Act 1941*.
- (3) On an appeal against a decision of the Council refusing to grant a licence to a person because the person is a disqualified person under subsection (1) (c), the Commercial Tribunal may determine that the fact that the person has committed the offence concerned should be ignored because of the time that has passed since the offence was committed or because of the triviality of the acts or omissions giving rise to the offence.

## Part 2 Licensing

### Division 1 Preliminary

#### 6 Effect of licence

- (1) A licensee is not guilty of an offence under Part 3A (Unqualified Practitioners) of the *Legal Profession Act 1987* in respect of conveyancing work that the licensee carries out in accordance with this Act, the regulations and the conditions of the licence.
- (2) This section does not permit a licensee to do anything, or to allow anything to be done, that is calculated to imply that the licensee is qualified to act as a solicitor.

#### 7 Qualifications for a licence

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

- (3) Such a limited approval can be expressed to apply only to persons who obtained the qualifications, training and experience concerned before a specified day or during a specified period.

## **8 What constitutes approved policy of professional indemnity insurance**

- (1) A policy of professional indemnity insurance is an approved policy for the purposes of this Act if the insurer and the terms of the policy (including the financial limits of any cover provided by the policy) are approved by the Council.
- (2) An insurance policy cannot be approved unless it indemnifies a person insured under the policy against 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 12 (2) or (3), regardless of when any claim is made in respect of any such liability.

## **Division 2 Procedure for obtaining a licence**

### **9 Applications for licences**

- (1) An application for a licence is to be made to the Council in a form approved by the Council.
- (2) An application is to be accompanied by:
  - (a) an application fee of an amount prescribed by the regulations, and
  - (b) such information and evidence as the Council may request for the purposes of determining the application.
- (3) The Council may require further information and evidence to be given in connection with an application.
- (4) The Council may require the application, and any such information or evidence, to be verified by statutory declaration.
- (5) An application is not duly made until any requirement under this section is complied with.



- (6) The prescribed proportion of the application fees received by the Council under this section is to be paid by the Council to the Law Society for payment to the credit of the Statutory Interest Account maintained by the Law Society under section 67 of the *Legal Profession Act 1987*, to be applied as authorised by that section.

## **10 Determination of applications**

- (1) After considering an application, the Council may determine to grant a licence to the applicant, or to refuse the application.
- (2) A licence must not be granted to an applicant unless the applicant is qualified to be granted a licence (as provided by section 7).
- (3) The Council may refuse an application on any of the grounds (listed in section 13) on which it may suspend or cancel a licence.
- (4) The Council 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.
- (5) For the purposes only of any appeal proceedings arising in connection with an application for a licence, 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 duly made.

## **11 Imposition of conditions**

- (1) A licence may be granted subject to conditions.
- (2) The conditions may include conditions of the following kind:
- (a) a condition prohibiting the licensee from carrying out conveyancing work otherwise than as an employee of a licensee whose licence does not contain such a condition,
  - (b) a condition requiring the licensee to undertake or complete a specified course of studies within a specified period of time,
  - (c) a condition prohibiting the licensee from carrying out conveyancing work in relation to specified kinds of transaction,

- (d) a condition prohibiting the licensee from carrying out conveyancing work except in relation to specified kinds of transaction,
- (e) a condition requiring the proposed licensee to undertake or complete a specified course of further education during each year for which he or she remains a licensee.

## 12 Duration of licences

- (1) A licence takes effect on the date on which it is granted, or on such later date as may be specified in the licence, and (unless sooner suspended or cancelled) remains in force until the following 30 June or, if an application for a further licence is duly made before the following 30 June, until the date on which the application is finally disposed of.
- (2) A licence is of no effect during any period for which any part of a contribution or levy payable under Part 4 remains due and payable by the licensee.
- (3) A licence is of no effect during any period for which the licensee is not insured under an approved policy of professional indemnity insurance in force with respect to the licensee or his or her employer, unless the licensee is exempt under the regulations from the requirement for professional indemnity insurance.

## 13 Suspension and cancellation of licences

- (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 Part 10 of the *Legal Profession Act 1987* (as applying under section 82),

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- (d) that the licensee has failed to comply with the requirements of Division 2 of Part 3 in relation to trust money or controlled money,
  - (e) that the licensee has failed to pay any part of a contribution or levy due and payable under Part 4,
  - (f) that there is no approved policy of professional indemnity insurance in force with respect to the licensee (unless the licensee is exempt under the regulations from the requirement for professional indemnity insurance),
  - (g) that the licensee has become a disqualified person,
  - (h) that the licensee has failed to comply with a requirement under this Act to furnish any record, document or information or if any record, document or information so furnished fails to give a satisfactory explanation of the licensee's conduct,
  - (i) that the licensee has been convicted of an offence against this Act or the regulations,
  - (j) that the licensee is a prisoner within the meaning of the *Prisons Act 1952*,
  - (k) that the licensee is (because of physical or mental illness or infirmity) unfit to carry out conveyancing work and that it is in the public interest that the licence be suspended or cancelled.
- (2) Before suspending or cancelling a licence on the ground referred to in subsection (1) (k), the Council may hold an inquiry and may require the licensee to be examined by a medical practitioner nominated by the Council.
- (3) An inquiry under this section is to be conducted in accordance with such procedures as the Council determines.
- (4) The Council must cause notice of its decision to suspend or cancel a licence to be given to the licensee. The notice must include the reasons for the decision (except when the suspension or cancellation is at the request of the licensee).



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

### **Division 3 Appeals**

#### **14 Appeals**

- (1) An appeal lies to the Commercial Tribunal against the following decisions:
- (a) a decision of the Council refusing to grant a licence,
  - (b) a decision of the Council to impose a condition on a licence,
  - (c) 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) Despite subsection (2), an appeal may, with the leave of the Commercial Tribunal, be made after the end of the period referred to in that subsection, but only if:
- (a) within 30 days after the end of that period, an application is made to the Tribunal for leave to lodge the appeal out of time, and
  - (b) the Tribunal grants that leave.
- (4) The Commercial Tribunal must give leave applied for under this section if satisfied that there is sufficient explanation as to why the appeal was not lodged in time.
- (5) The making of an appeal does not operate to stay the decision appealed against except to the extent (if any) that the Commercial Tribunal otherwise orders.

## **Part 3 Conveyancing practice**

### **Division 1 General**

#### **15 Effect of contravention of Division 1**

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

#### **16 Fees**

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

#### **17 Conduct of conveyancing businesses**

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

#### **18 Sharing of receipts with unqualified persons**

- (1) A licensee must not share the receipts of a conveyancing business with another person unless:
  - (a) the other person is a licensee, or
  - (b) the sharing of those receipts with that other person is approved by the Council and does not contravene the provisions of any regulation under this section.

- (2) An approval may not be given under this section unless the Council is satisfied that the sharing of the receipts of the conveyancing business in accordance with the approval:
  - (a) will not result in a person other than a licensee gaining control of the business, and
  - (b) will not adversely affect the independent conduct of the licensee's business or give rise to a conflict between the interests of the licensee and the interests of any of the licensee's clients, and
  - (c) will be on the same basis as that on which receipts may be shared under section 48F of the *Legal Profession Act 1987*.
- (3) This section does not prevent a party to a transaction from recovering from any other person the costs of conveyancing work carried out by a licensee who is employed by the party under a contract of service.
- (4) The regulations may make provision for or with respect to restricting the circumstances in which a licensee may share the receipts of a conveyancing business with another person who is not a licensee.

## **19 Multidisciplinary partnerships**

- (1) A licensee must not be in partnership with another person unless:
  - (a) the other person is a licensee, or
  - (b) the partnership with that other person is approved by the Council and does not contravene the provisions of any regulation under this section.
- (2) An approval for a partnership may not be given under this section unless the Council is satisfied that the business of the partnership concerned will include conveyancing business.
- (3) An approval may not be given for a partnership with a person who is the holder of a licence or certificate of registration under the *Property, Stock and Business Agents Act 1941*.
- (4) The regulations may make provision for or with respect to restricting the classes of persons (other than licensees) with whom a licensee may be in partnership.



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- (5) The following provisions apply in respect of a partnership in which a licensee is a member:
- (a) A partner who is not a licensee is not guilty of an offence under Part 3A (Unqualified practitioners) of the *Legal Profession Act 1987* merely because the partner conducts business of the partnership that is conveyancing business.
  - (b) A partner who is not a licensee is not guilty of an offence under Part 3A of the *Legal Profession Act 1987* merely because the partner receives any fee, gain or reward for business of the partnership that is conveyancing business.
  - (c) A partner who is not a licensee is not guilty of an offence under Part 3A of the *Legal Profession Act 1987* merely because the partner holds out, advertises or represents himself or herself as a member of a partnership conducting conveyancing business.
  - (d) A partner who is a licensee does not contravene this Part merely because the partner shares with any other partner the receipts of business of the partnership that is conveyancing business.
  - (e) Division 2 (Trust money and controlled money) of Part 3, Part 4 (Claims arising from failures to account) and Part 5 (Management and receivership) apply, subject to the regulations, as if each partner who is not a licensee were a licensee. Those provisions so apply in connection with any business of the partnership (whether or not it is conveyancing business).

## 20 Conduct of other businesses

- (1) The regulations may prohibit a licensee who conducts a conveyancing business, or who is employed in the conduct of a conveyancing business, from conducting, or being employed in the conduct of, any other business or class of businesses.
- (2) A licensee must not conduct any business, or be employed in the conduct of any business, in contravention of the regulations under this section.

## **21 Employment of disqualified persons**

- (1) A licensee must not, in connection with his or her conveyancing business, employ or pay a person whom the licensee knows to be a disqualified person.
- (2) Subsection (1) does not apply in relation to a person who is employed or paid in accordance with leave given by the Council or by the Commercial Tribunal.
- (3) If the Council refuses an application by a person for leave under this section, the person may appeal against the decision to the Commercial Tribunal 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.

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

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

## **23 Advertising**

- (1) A licensee may advertise in any way the licensee thinks fit.

- (2) However, an advertisement must not be of a kind that is or that might reasonably be regarded as:
  - (a) false, misleading or deceptive, or
  - (b) in contravention of the *Trade Practices Act 1974* of the Commonwealth, the *Fair Trading Act 1987* or any similar legislation, or
  - (c) in contravention of any requirements of the regulations.
- (3) The regulations may make provision for or with respect to advertising by licensees.

**24 Regulations may establish guidelines for conduct of conveyancing business**

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

**Division 2 Trust money and controlled money**

**25 Money received by licensee on behalf of another**

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



- (a) must pay the money, within the time prescribed by the regulations, into a general trust account at a bank in New South Wales and must hold the money in accordance with the regulations relating to trust money, or
  - (b) if the person on whose behalf the money is received directs that it be paid otherwise than into a general trust account, must pay the money as directed and (if the money is to be held under the direct or indirect control of the licensee for more than the period prescribed by the regulations) must hold the money in accordance with the regulations relating to controlled money.
- (2) In either case, the licensee must hold the money exclusively for, and must disburse the money in accordance with the directions of, the person on whose behalf it is held.
- (3) This section:
  - (a) does not prevent a licensee from withdrawing or receiving, from trust money or controlled money:
    - (i) reimbursement for disbursements paid by the licensee, or
    - (ii) money for disbursements to be paid by the licensee, or
    - (iii) money due, or to accrue due, to the licensee for costs,so long as the procedure prescribed by the regulations is followed, and
  - (b) does not affect any enforceable lien or claim that a licensee has to any money, and
  - (c) does not prevent a licensee from exercising a general retaining lien for unpaid costs and disbursements in respect of money in a trust account or a controlled money account (other than money received subject to an express direction by the client with respect to the purposes for which the money is to be applied), and

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- (d) does not prevent a licensee from holding, or disposing of, a cheque or other negotiable instrument payable to a third party if the licensee does so on behalf of a client and in accordance with directions given by the client.
- (4) A lien referred to in subsection (3) (c):
- (a) may not be exercised for an amount in excess of the sum of the costs and disbursements unpaid, and
- (b) may not be exercised unless the licensee has delivered an outline bill of costs and disbursements to the client on whose behalf the money is held.
- (5) Money received by a licensee on behalf of another person:
- (a) is not available for payment to a creditor of the licensee, and
- (b) is not liable to be taken in execution of any judgment, order or other process of any court or tribunal at the instance of a creditor of the licensee,
- unless the creditor is the person on whose behalf the money is held by the licensee.
- (6) If a trust account kept by a licensee is, as authorised by or under the regulations, operated on by a person other than the licensee, section 53 of the *Trustee Act 1925* does not apply to the person in relation to the operation on the trust account.
- (7) It is professional misconduct for a licensee to contravene this section.

## 26 Keeping of accounts

- (1) A licensee must keep accounting records that disclose at all times the true position in relation to money received by the licensee on behalf of another person.
- (2) The accounting records must be kept in a manner that enables them to be conveniently and properly audited and, if the regulations so require, must be kept in such manner as the regulations prescribe.

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

## 27 Audits

- (1) The regulations may make provision with respect to:
- (a) the auditing of a licensee's records, and
  - (b) the reports to be made by auditors, and
  - (c) the submission of auditors' reports to the Council.
- (2) An auditor may require a licensee to do any of the following:
- (a) to produce for the auditor's inspection any accounting or other records relating to the licensee's conveyancing business,
  - (b) to give the auditor such other information as is reasonably necessary for the purposes of the audit,
  - (c) to furnish the auditor with such authorities or orders on bankers and others as relate to the licensee's conveyancing business.
- (3) A person of whom such a requirement is made:
- (a) must not fail to comply with the requirement, and
  - (b) must not, in purported compliance with the requirement, provide information that the person knows to be false or misleading in a material particular.

Maximum penalty: 10 penalty units.

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

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



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

## **28 Money not claimed from licensee**

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

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

## **29 Bankers to pay interest to Statutory Interest Account**

- (1) Sections 36AC (Interest earned on trust accounts to be paid to Statutory Interest Account) and 36AD (Prescribed financial institutions to provide the Council with certain information) of the *Property, Stock and Business Agents Act 1941* apply in respect of all money held in a general trust account under this Division as if:
  - (a) the trust account were a trust account opened and kept under section 36 of that Act, and
  - (b) the licensee who opened and keeps the trust account were a licensee under that Act.
- (2) A licensee must when opening a trust account at a bank under this Division ensure that the bank is notified that the trust account is for the purposes of sections 36AC and 36AD of that Act to be regarded as a trust account required by that Act. Such a notification is for the purposes of those sections to be regarded as a notification that the trust account concerned is required by that Act.

## **30 Relief for bankers**

- (1) A bank, 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**

#### **31 Appointment of trust account inspectors and investigators**

- (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 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.

#### **32 Production of records**

- (1) An inspector may require a licensee, or any other person who has possession or control of any records of a licensee or relating to the affairs of a licensee, to do any of the following:
  - (a) to produce for the inspector's inspection such of those records as relate to the accounts being inspected or the affairs being investigated,
  - (b) to give the inspector such other information as the licensee or other person is able to give in relation to those accounts or affairs,
  - (c) to furnish the inspector with such authorities or orders on bankers and others as relate to those accounts or affairs.



- (2) A person of whom such a requirement is made:
- (a) must not fail to comply with the requirement, and
  - (b) must not, in purported compliance with the requirement, provide information that the person knows to be false or misleading in a material particular.

Maximum penalty: 10 penalty units.

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

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

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

### **33 Inspectors' reports**

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

### **34 Costs of inspection and investigation**

- (1) The amount of the costs of an inspection or investigation, as certified by the Council, is a debt due to the Council by the licensee under inspection or investigation if:
- (a) the inspector states in his or her report that there is evidence that the licensee is guilty of professional misconduct or unsatisfactory professional conduct in relation to the affairs investigated or is guilty of an offence against this Act or the regulations, and
  - (b) the Council is of the opinion that the conduct or breach was wilful or of a substantial nature.

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- (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 Council payable by each licensee involved.

### **35 Secrecy**

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

Maximum penalty: 10 penalty units.

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

Maximum penalty: 10 penalty units.

- (4) Subsection (3) is not contravened if:
  - (a) an inspector states in his or her report that there is evidence of professional misconduct, unsatisfactory professional conduct or irregularity in relation to the affairs inspected or investigated, and
  - (b) a member, solicitor, officer or agent of the Council, 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 Council, or
  - (c) an agent or officer of the Council or a legal practitioner acting for or on behalf of the Council, or
  - (d) the Supreme Court or the Commercial Tribunal, or
  - (e) the Legal Services Commissioner or the Legal Services Tribunal, or
  - (f) a police officer, or
  - (g) a person to whom a copy of the report is required by this Act to be sent.

### **36 Obstruction of inspectors**

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

Maximum penalty: 10 penalty units.



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## **Part 4 Claims arising from failures to account**

### **37 Definition**

In this Part:

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

### **38 Claims can be made against Compensation Fund**

- (1) Division 1 of Part 6 (Property Services Council Compensation Fund) of the PSBA Act applies to and in respect of a failure to account (within the meaning of that Part) arising from any act or omission of a licensee under this Act that occurs on or after the commencement of this Act, as if the licensee were a licensee under the PSBA Act.
- (2) For that purpose, a licensee under this Act is taken to be a licensee within the meaning of the PSBA Act and a licence under this Act is taken to be a licence within the meaning of the PSBA Act.
- (3) Section 72 (3) of the PSBA Act is not applicable to a person as a licensee under this Act.

### **39 Contributions by licensees**

A licensee is liable to pay the contribution and any levy required to be paid from time to time under section 71 or 72 of the PSBA Act.

## Part 5 Management and receivership

### Division 1 Preliminary

#### 40 Definitions

In this Part:

**Administration Account** means the Property Services Council Administration Account under the *Property, Stock and Business Agents Act 1941*.

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

**expenses**, in relation to management or receivership, means:

- (a) the remuneration payable to the manager or receiver, or
- (b) the expenses incurred in the course of the management or receivership, or
- (c) the costs of legal proceedings involved in the management or receivership, or
- (d) any reimbursement of the manager or receiver under section 48 or 73.

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

**licensee** includes:

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

**property**, in relation to a licensee, means:

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

- (b) interest, dividends, income, profits or other property derived from or acquired with money or other property referred to in paragraph (a), or
- (c) documents and records of any description relating to anything referred to in paragraph (a) or (b) or to the licensee's conveyancing business, or
- (d) any means by which any records referred to in paragraph (c) that are not written may be reproduced in writing,

and, in relation to a licensee whose conveyancing business is under management, includes any property of the business.

**receivable property** means property of a licensee or an associate of a licensee that is the subject of an order appointing a receiver, and includes property that, but for its having been taken, paid or transferred unlawfully or in breach of trust, would be receivable property.

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

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

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

#### 41 Associate

- (1) In this Part, a reference to a licensee's associate is a reference to:
  - (a) a partner of the licensee, or
  - (b) an employee or agent of the licensee, or
  - (c) a corporation, or a member of a corporation, partnership, syndicate or joint venture, in which the licensee or a person referred to in paragraph (a), (b) or (d) has a beneficial interest, or
  - (d) a person who bears a prescribed relationship to the licensee or to a person referred to in paragraphs (a)–(c), or
  - (e) a corporation that (if a person referred to in paragraphs (b)–(d) is a corporation) is a subsidiary of the person within the meaning of the *Corporations 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.

#### 42 Failure to account

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

### Division 2 Management

#### 43 Appointment of manager

- (1) The 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 13, or
- (c) the Council is of the opinion (whether as a consequence of a determination by the Council under Part 6 of the *Property, Stock and Business Agents Act 1941* or otherwise) that there has been, or that there may have been, a failure to account by the licensee, or
- (d) the 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.

#### **44 Qualifications for appointment as manager**

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

#### **45 Powers of manager**

- (1) The manager of a licensee's conveyancing business may, subject to subsection (2) and to the terms of his or her appointment:
  - (a) carry out conveyancing work on behalf of the existing clients of the business, and
  - (b) accept instructions from, and carry out conveyancing work on behalf of, new clients, and
  - (c) dispose of, and otherwise deal with, any property in relation to the business, and
  - (d) exercise any right in the nature of a lien over property held by the manager on behalf of the clients of the business, and
  - (e) incur such expenses as are reasonably related to the conduct of the business, and
  - (f) do all such things as are ancillary to the exercise of the powers referred to in paragraphs (a)–(e),as if he or she were the licensee to whom the business belongs.
- (2) The manager of a licensee's conveyancing business may not exercise any of the functions conferred by this section in relation to the affairs of a client of the business unless the client's consent has been obtained to the manager's exercise of those functions.

#### **46 Management continues under receivership**

- (1) The manager of a licensee's conveyancing business may continue to exercise his or her functions under this Division even if a receiver is appointed under Division 3 in respect of the licensee's property.
- (2) The manager of a licensee's conveyancing business for which a receiver is appointed must comply with any lawful direction given by the receiver in connection with the conduct of the business.

#### **47 Acts of manager to be taken as acts of licensee**

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



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

#### **48 Manager may be reimbursed for damages**

- (1) The Council 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 Administration Account.
- (3) Neither the manager of a licensee's conveyancing business nor the Council 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.

#### **49 Payment of expenses of management**

- (1) So much of the expenses of the management of a licensee's conveyancing business as have not otherwise been paid to the manager out of the receipts of the business are to be paid to the manager by the Council from the Administration Account.
- (2) An amount paid under this section is recoverable by the Council as a debt owed by the relevant licensee.

#### **50 Manager to report to Council**

- (1) The manager of a licensee's conveyancing business must report to the Council on the management of the business. A report must be made at such times as the Council directs and be in accordance with any directions given by the Council.
- (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.

### **51 Trust money**

- (1) Division 2 of Part 3 applies to the accounts kept by a manager in the same way as it applies to the accounts kept by a licensee.
- (2) The trust accounts and controlled money accounts of a conveyancing business under management are to be maintained separately from the trust accounts and controlled money accounts of any other conveyancing business under management.

### **52 Office accounts**

The regulations may make provision with respect to:

- (a) the accounts that are to be kept in relation to the income accrued, and the expenses incurred, by the manager of a licensee's conveyancing business in connection with the conduct of the business, and
- (b) the purposes for which money in any such account may be expended.

### **53 Termination of management**

When a licensee's conveyancing business ceases to be under management, any money held by the manager in connection with the business (after reimbursement of any money paid out of the Administration Account in connection with the management of the business and after payment of the expenses of the management of the business) becomes the property of the licensee.

### **54 Obstruction of managers**

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

Maximum penalty: 50 penalty units.

### Division 3 Receivership

#### 55 Supreme Court may appoint receiver

- (1) The Supreme Court may, on the application of the Council, 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 Council 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 13, or
  - (c) the Council is of the opinion (whether as a consequence of a determination by the Council under Part 6 of the *Property, Stock and Business Agents Act 1941* or otherwise) that there has been, or that there may have been, a failure to account by the licensee, or
  - (d) the 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) Nothing in this Division prevents a manager of a licensee's conveyancing business from being appointed as a receiver of the licensee's property.

#### **56 Receivership may extend to property of licensee's associate**

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

#### **57 Court to be closed**

- (1) Before commencing to hear an application for the appointment of a receiver, the Supreme Court may order from the precincts of the Court any person who is not:
- (a) an officer of the Court, or
  - (b) a party, a legal representative of a party or a clerk of such a legal representative, or
  - (c) a member of the same firm of licensees as the respondent, or
  - (d) a person who is in the course of giving evidence, or
  - (e) a person permitted by the Court to be present in the interests of justice.
- (2) The Supreme Court may, whether or not at the instance of a party, prohibit the publication of any report relating to the evidence or other proceedings or of any order made on the hearing of an application for the appointment of a receiver.

#### **58 Order to be served**

- (1) On the appointment of a receiver, the 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.

### **59 Receiver may take possession of property**

- (1) A receiver may take possession of receivable property of the relevant licensee or relevant associate.
- (2) A person in possession, or having control, of receivable property must permit the receiver to take possession of the property if required by the receiver to do so.
- (3) If a person fails to comply with such a requirement, the Supreme Court may, on the application of the receiver, order the person to deliver the property to the receiver.
- (4) If, on the application of a receiver, the Supreme Court is satisfied that such an order has not been complied with, the Court:
- (a) may order the seizure of any receivable property located on premises specified in the order, and
  - (b) may make such further order in the matter as it thinks fit.
- (5) An order under subsection (4) (a) authorises:
- (a) any police officer, or
  - (b) the receiver, or a person authorised by the receiver, together with any police officer,
- to enter the premises specified in the order and to search for, seize and remove any property that appears to be receivable property.
- (6) An application by a receiver under subsection (3) may be made:
- (a) in the case of property in the possession, or under the control, of the relevant licensee or relevant associate—in the name of the receiver, or
  - (b) in any other case—in the name of the relevant licensee or relevant associate.

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

## 60 Information about receivable property

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

Maximum penalty: 50 penalty units.

- (2) A licensee who has any such information may not refuse to comply with such a requirement merely because the information was obtained in confidence from a client or former client of the licensee.
- (3) A person who complies with a requirement under this section is not, merely because of that compliance, subject to any liability, claim or demand.
- (4) Information given to a receiver under this section is not admissible as evidence in any legal proceedings, other than:
- (a) proceedings taken by a receiver for the recovery of receivable property, or
  - (b) proceedings taken under this Part, or
  - (c) proceedings taken under Part 6 against a licensee:
    - (i) if the information was given to the receiver otherwise than by the licensee, or
    - (ii) if the information was given to the receiver by the licensee and is given in evidence in those proceedings with the licensee's consent.

## 61 Stop order on bank account

- (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.

## **62 Improper dealing with property**

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.

### **63 Recovery of compensation for disposal of receivable property**

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

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

- (2) A person from whom an amount is recovered under subsection (1) is not liable to any other person in respect of the amount.
- (3) If receivable property has at any time been paid or transferred unlawfully or in breach of trust to, or for the benefit of, a person in respect of a cause of action the person claims to have against another person, the receiver:
  - (a) may recover from the person as a debt the amount of the payment or the value of the property, or
  - (b) to the extent to which the full amount or value is not recovered from the person under paragraph (a)—may take such proceedings in relation to the claimed cause of action as the person could have taken.
- (4) If a receiver takes proceedings under subsection (3) (b) in relation to a cause of action claimed by a person, the receiver may not later take proceedings under subsection (3) (a) to recover property paid or transferred to the person in respect of the same cause of action.

- (5) If receivable property is used unlawfully or in breach of trust to discharge a debt or liability of a person, the receiver may recover from the person as a debt the amount that was required for the discharge of the debt or liability, reduced by the value of any consideration provided by the person for the discharge.
- (6) Recovery proceedings under this section may be taken in the name of the receiver or in the name of any other person who, had the receiver not been appointed, would have been entitled to take the proceedings.

#### **64 Receiver may give certificate**

- (1) A receiver, or a person authorised by the 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.

#### **65 Receiver taken to be beneficially entitled to property**

- (1) Proceedings taken under this Division in the name of a receiver in relation to any property may be so taken as if the receiver were beneficially entitled to the property.



- (2) If receivable property has been taken by, or paid or transferred to, a person or otherwise used unlawfully or in breach of trust, a receiver may take proceedings in the name of the receiver as if the receiver were beneficially entitled to the property at the time the property was so taken, paid, transferred or used.

#### **66 Receiver may deal with property**

- (1) A receiver may deal with receivable property in any manner in which the relevant licensee or relevant associate could, had the receiver not been appointed, have dealt with it.
- (2) A receiver must, as soon as possible after receiving receivable property, vest the property in the person on whose behalf it was held by the relevant licensee or relevant associate.

#### **67 Other powers of receiver**

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

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

- (2) A receipt given to a person under subsection (1) (c) discharges the person from any responsibility to see to the application of the money for which the receipt was given.
- (3) A receiver is not, in the exercise of his or her functions as a receiver, a personal representative of a deceased licensee.

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**68 Notice to claim receivable property**

(1) A receiver may give notice to:

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

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

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

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

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

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

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

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

**69 Lien for costs on receivable property**

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

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

(2) The notice, or a subsequent written notice served on the licensee, may require the licensee to apply for an assessment under Part 11 of the *Legal Profession Act 1987* of the bill of costs within a reasonable time specified in the notice.

- (3) If the licensee requests the receiver in writing to allow access to receivable property to enable the licensee to have a bill of costs assessed, the time allowed for taxation does not begin to run until access is provided.
- (4) If a requirement of a notice under this section is not complied with, the receiver may disregard the claim in dealing with the property claimed to be subject to a lien.

#### **70 Examination by receiver**

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

#### **71 Property not dealt with by receiver**

- (1) If receivable property under the control of the receiver has not been dealt with in accordance with this Division, the receiver must cause notice of that fact to be given to the Council and:
  - (a) if the Council so requires within 1 month after the notice is given—must transfer and deliver the property to the Council, 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 Council under this section, the Council:
    - (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 Council 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 Council under this section that is surplus to the requirements of this section must be paid to the relevant licensee or relevant associate.

## **72 Investment of money by receiver**

- (1) A receiver may invest receivable property in any manner in which trustees are authorised by the *Trustee Act 1925* to invest trust funds.
- (2) Income received from an investment under this section, and any profit made on the sale of such an investment, is receivable property.

## **73 Receiver may be reimbursed for damages**

- (1) The Council 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 Administration Account.

**74 Payment of expenses of receivership**

- (1) So much of the expenses of receivership as have not otherwise been paid to the receiver are to be paid to the receiver by the Council from the Administration Account.
- (2) An amount paid under this section may be recovered by the Council from the relevant licensee as a debt.
- (3) If the Council and a receiver fail to agree on the remuneration to be paid to the receiver, the Supreme Court may, on the application of the Council 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 Council and a receiver for remuneration of the receiver, and
  - (b) may determine the amount to be paid.

**75 Supreme Court may review expenses of receivership**

- (1) If, on the application of the relevant licensee, the Supreme Court is satisfied that the expenses of the receivership are excessive, the Supreme Court may order the taking of accounts between the Council and the receiver.
- (2) After the taking of accounts, the Supreme Court:
  - (a) may relieve the relevant licensee from payment of any amount in excess of that determined by the Supreme Court to be fairly payable, or
  - (b) if the receiver has been paid, or allowed on account, an amount that includes such an excess—may order the receiver to repay the excess.

**76 Receivable property not to be attached**

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

**77 Applications for directions by receiver, licensee etc**

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

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

#### **78 Supreme Court may give general directions to receiver**

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

#### **79 Receiver to report to Supreme Court and Council**

- (1) A receiver must, at such times and in respect of such periods as the Supreme Court directs, submit reports on the receivership to the Supreme Court and the Council.
- (2) A report is to deal with such matters as the Supreme Court directs and with such other matters as the receiver considers appropriate to include in the report.
- (3) On the conclusion of a receivership, the receiver must lodge with the Supreme Court all of the receiver's records that relate to the receivership.
- (4) Unless the Supreme Court orders their destruction, records lodged under this section are to remain in the custody of the Court.

#### **80 Termination of appointment of receiver**

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



- (2) The former receiver must transfer or deliver the receivable property:
- (a) if a new receiver is appointed—to the new receiver in accordance with any directions given by the Supreme Court, or
  - (b) if a new receiver is not appointed and if the relevant licensee or relevant associate so requires by notice in writing served on the receiver—to the licensee or associate.

Maximum penalty: 10 penalty units.

- (3) The receivable property must, in accordance with any directions given by the Supreme Court, be transferred or delivered as soon as possible after the former receiver's appointment is terminated.
- (4) A former receiver is not required to comply with the requirements of this section unless:
- (a) the expenses of the receivership have been paid to the Council, 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).

### **81 Obstruction of receivers**

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

Maximum penalty: 50 penalty units.

## Part 6      Disciplinary proceedings

### 82    Application of Legal Profession Act 1987

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

### 83    Composition of Legal Services Tribunal

- (1) For the purposes of the application of Part 10 of the *Legal Profession Act 1987* under this Part, the Legal Services Tribunal is to include one or more members who are licensees and who are appointed by the Attorney General after consultation with the Council.
- (2) For the purposes of conducting a hearing into a complaint against a licensee, the Legal Services Tribunal is to be constituted by 1 of its solicitor members, 1 of its licensee members and 1 of its lay members.
- (3) The solicitor member is to preside at the hearing.

- (4) A person is not eligible to be a licensee member of the Legal Services Tribunal unless the person is the holder of a licence that is free of any conditions other than conditions of the kind referred to in section 11 (2) (e).



## Part 7      Miscellaneous

### 84    Functions of the Council

For the purpose of exercising its functions under this Act or under Part 10 of the *Legal Profession Act 1987* (as applying under section 82), 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 or the Commercial Tribunal in the exercise of the Court's or Tribunal'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 Council any money payable to the Council under this Act or the regulations.

### 85    Delivery up of documents

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

### 86    Auditors

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

### **87 Register of licensees**

- (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.

### **88 Evidentiary certificates**

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

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

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

### **89 Proceedings for offences**

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

### **90 Order restraining breach of this Act**

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

## **91 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) A regulation may create an offence punishable by a penalty not exceeding 20 penalty units.

## **92 Repeal of Conveyancers Licensing Act 1992 No 55**

The *Conveyancers Licensing Act 1992* is repealed.

## **93 Amendment of other laws**

Each law specified in Schedule 1 is amended as set out in that Schedule.

## **94 Savings, transitional and other provisions**

Schedule 2 has effect.

## **95 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.



## **Schedule 1 Amendment of other laws**

(Section 93)

### **1.1 Conveyancers Licensing Regulation 1993**

#### **[1] Clause 3 Definitions**

Omit "*Conveyancers Licensing Act 1992*".  
Insert instead "*Conveyancers Licensing Act 1995*".

#### **[2] Division 1 (Preliminary) of Part 2**

Omit the Division.

#### **[3] Division 2 (Certificates of eligibility) of Part 2**

Omit the Division.

#### **[4] Clause 8 Refusal of licence**

Omit the clause.

#### **[5] Clause 10 Surrender and replacement of licence**

Omit "section 17". Insert instead "section 9".

#### **[6] Clause 11 Register of licences**

Omit "section 158 (2)". Insert instead "section 87 (2)".

#### **[7] Clause 14A Nature of conveyancing business**

Omit clause 14A (1).

**[8] Part 4 Deposits with Law Society**

Omit the Part.

**[9] Part 5 Claims arising from failures to account**

Omit the Part.

**[10] Part 6 Trust money and controlled money**

Omit "section 33" wherever occurring.  
Insert instead "section 25".

**[11] Clause 50 Money received before licence is granted**

Omit "of the Act".  
Insert instead "of the *Conveyancers Licensing Act 1992*".

**1.2 Legal Profession Act 1987 No 109**

**[1] Section 3 Definitions**

Omit "*Conveyancers Licensing Act 1992*" from the definition of "licensed conveyancer" in section 3 (1).  
Insert instead "*Conveyancers Licensing Act 1995*".

**[2] Section 48B Unqualified person acting as a barrister or solicitor**

Omit "*Conveyancers Licensing Act 1992*" from section 48B (2).  
Insert instead "*Conveyancers Licensing Act 1995*".

**[3] Section 48E Limitation on general legal work and probate work**

Omit "*Conveyancers Licensing Act 1992*" from section 48E (4) (d).  
Insert instead "*Conveyancers Licensing Act 1995*".

**[4] Section 48K Associates who are disqualified or convicted persons**

Omit paragraph (e) of the definition of “disqualified person” in section 48K (7).

Insert instead:

- (e) who is disqualified from holding a licence under the *Conveyancers Licensing Act 1995* by virtue of an order in force under Part 10 of this Act (as applying under Part 6 of that Act).

**[5] Section 54 Functions of the Law Society**

Omit section 54 (3).

**[6] Section 65 Repayment of deposit with Law Society**

Omit “of this Act or section 36 of the *Conveyancers Licensing Act 1992*” wherever occurring.

**[7] Section 66 Accounts to be kept by Law Society**

Omit “of this Act or section 36 of the *Conveyancers Licensing Act 1992*”.

**[8] Section 67 Statutory Interest Account**

Omit “*Conveyancers Licensing Act 1992*” from section 67 (2) (a).  
Insert instead “*Conveyancers Licensing Act 1995*”.

**[9] Section 67**

Omit section 67 (3) (c1). Insert instead:

- (c1) the payment under section 82 of the *Conveyancers Licensing Act 1995* of the costs related to the administration of Part 6 of that Act;



**[10] Section 67**

Omit section 67 (3) (e2) and (e3).

**[11] Section 131 Functions of Commissioner**

Omit "*Conveyancers Licensing Act 1992*" from the note to the section.

Insert instead "*Conveyancers Licensing Act 1995*".

**[12] Section 208U Costs of administering Part etc**

Omit "*Conveyancers Licensing Act 1992*" from the note to the section.

Insert instead "*Conveyancers Licensing Act 1995*".

**[13] Section 209B Council to report on its work and activities under the Conveyancers Licensing Act 1992**

Omit the section.

**1.3 Property, Stock and Business Agents Act 1941 No 28**

**[1] Section 25 RESC Administration Account**

Insert ", the *Conveyancers Licensing Act 1995*" after "this Act" in section 25 (4) (b).

**[2] Section 25 (5) (a)**

Insert ", the *Conveyancers Licensing Act 1995*" after "Act 1975".

**[3] Section 25 (5) (b)**

Omit "both of those Acts".

Insert instead "the other Acts referred to in paragraph (a), including amounts required to be paid by Part 5 (Management and receivership) of the *Conveyancers Licensing Act 1995*".

**[4] Section 25 (5) (c)**

Insert “or the *Conveyancers Licensing Act 1995*” after “this Act”.

**[5] Sections 3, 23B, 25, 63B, 63D, 66, headings to Part 4A and Part 6**

Omit “Real Estate Services Council” and “REAL ESTATE SERVICES COUNCIL” wherever occurring.

Insert instead “Property Services Council” or “PROPERTY SERVICES COUNCIL”, as appropriate.

**[6] Schedule 2 Savings and transitional provisions**

Insert after Part 3:

**Part 4 Provisions consequential on the  
Conveyancers Licensing Act 1995**

**22 Change of name of Accounts and Fund**

- (1) The Property Services Council Administration Account is a continuation of the Real Estate Services Council Administration Account. A reference in an existing instrument to the Real Estate Services Council Administration Account is to be read as a reference to the Property Services Council Administration Account.
- (2) The Property Services Council Statutory Interest Account is a continuation of the Real Estate Services Council Statutory Interest Account. A reference in an existing instrument to the Real Estate Services Council Statutory Interest Account is to be read as a reference to the Property Services Council Statutory Interest Account.
- (3) The Property Services Council Compensation Fund is a continuation of the Real Estate Services Council Compensation Fund. A reference in an existing instrument to the Real Estate Services Council Compensation Fund is to be read as a reference to the Property Services Council Compensation Fund.

- (4) In this clause existing instrument means each of the following:
- (a) another Act enacted before the commencement of this clause,
  - (b) an instrument made under an Act before the commencement of this clause,
  - (c) an instrument of any other kind executed before the commencement of this clause.

#### **1.4 Public Finance and Audit Act 1983 No 152**

##### **Schedule 2 Statutory Bodies**

Omit "Real Estate Services Council."  
Insert instead "Property Services Council".

#### **1.5 Public Sector Management Act 1988 No 33**

##### **Schedule 3B Senior Executive Positions**

Omit "Real Estate Services Council" from the matter relating to the Department of Housing.  
Insert instead "Property Services Council".

#### **1.6 Real Estate Services Council Act 1990 No 14**

##### **[1] Section 6 Membership of Council**

Omit "10 members" from section 6 (1).  
Insert instead "12 members".

##### **[2] Section 6 (1) (b)**

Omit "9 part-time members".  
Insert instead "11 part-time members".



**[3] Section 6**

Insert after section 6 (3) (g):

- (h) 1 is to be selected by the Minister from a panel of persons nominated by the Association of Property Conveyancers or such other conveyancing industry bodies as the Minister may invite nominations from,
- (i) 1 is to be selected by the Minister from a panel of persons nominated by the Law Society of New South Wales.

**[4] Section 7 Associate members**

Omit "*Auctioneers and Agents Act 1941*" from section 7 (1) (a).  
Insert instead "*Property, Stock and Business Agents Act 1941, the Conveyancers Licensing Act 1995*".

**[5] Section 8 Functions and objects of Council**

Omit "*Auctioneers and Agents Act 1941*" from section 8 (1) (b).  
Insert instead "*Property, Stock and Business Agents Act 1941, the Conveyancers Licensing Act 1995*".

**[6] Section 8**

Omit "*Auctioneers and Agents Act 1941*" from section 8 (4).  
Insert instead "*Property, Stock and Business Agents Act 1941*".

**[7] Section 8**

Insert ", or which are provided by the holders of licences under the *Conveyancers Licensing Act 1995*" after "Act 1975" in section 8 (4).

**[8] Section 10 Corporate functions of General Manager**

Insert after section 10 (1) (b):

- (b1) any matters in relation to which functions are conferred on the Council under the *Conveyancers Licensing Act 1995*;

**[9] Section 10**

Omit "*Auctioneers and Agents Act 1941*" wherever occurring.  
Insert instead "*Property, Stock and Business Agents Act 1941*".

**[10] Schedule 1 Provisions relating to members and procedure of the Council**

Omit "or (g)" from clause 1 (3).  
Insert instead ", (g), (h) or (i)".

**[11] Schedule 1, clause 10 (a)**

Omit "6 members". Insert instead "7 members".

**[12] Schedule 1, clause 14 (2A)**

After clause 14 (2), insert:

(2A) If the Council establishes a committee to assist it in connection with the exercise of any functions with respect to the educational qualifications of licensed conveyancers, the members of the Council referred to in section 6 (3) (h) and (i) must be members of the committee.

**[13] Long title, sections 1, 3, 4, 10, heading to Part 2**

Omit "Real Estate Services Council" and "REAL ESTATE SERVICES COUNCIL" wherever occurring.

Insert instead "Property Services Council" or "PROPERTY SERVICES COUNCIL", as appropriate.

**[14] Schedule 2 Savings and transitional provisions**

Insert before clause 1:

**Part 1 Provisions consequent on the enactment of this Act**

**[15] Schedule 2**

Insert after clause 6:

**Part 2 Provisions consequent on enactment of  
Conveyancers Licensing Act 1995**

**7 Changes of name**

The Property Services Council is a continuation of and the same legal entity as the Real Estate Services Council constituted under this Act immediately before the commencement of this clause.

**8 References to RESC**

A reference to the Real Estate Services Council in any of the following instruments, or a reference in any instrument that is required by clause 4 (2) to be read as a reference to the Real Estate Services Council, is to be read as a reference to the Property Services Council:

- (a) another Act enacted before the commencement of this clause,
- (b) an instrument made under an Act before the commencement of this clause,
- (c) an instrument of any other kind executed before the commencement of this clause.

**1.7 Valuers Registration Act 1975 No 92**

**Long title, section 4 (definition of "Council")**

Omit "Real Estate Services Council." wherever occurring.  
Insert instead "Property Services Council."



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## Schedule 2 Savings, transitional and other provisions

(Section 94)

### Part 1 Preliminary

#### 1 Regulations

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

#### 2 Definitions

In this Part:

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

#### 3 Holders of licences under the former Act

- (1) A person who held a licence (a **superseded licence**) under the former Act immediately before its repeal is taken to have been granted a licence (a **transitional licence**) under this Act on the commencement of this clause.

- (2) The transitional licence is subject to the same conditions as the superseded licence and is also subject to a condition that the licensee is prohibited from carrying out any conveyancing work except in relation to a transaction mentioned in section 4 (1) of the former Act.

#### **4 Continuation of approved qualifications, training and experience**

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

#### **5 Effect of certificates of eligibility**

- (1) A certificate of eligibility under the former Act is evidence sufficient to satisfy the Council under this Act that the holder of the certificate has the educational qualifications, practical training and conveyancing experience approved by the Minister as referred to in clause 4.

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

## **6 Pending appeals to the Supreme Court**

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

## **7 Actions of the former Committee**

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



## **8 Claims arising from failures to account**

- (1) In this clause:

*prior defalcation* means a failure to account within the meaning of Part 4 of the former Act where the act or omission from which the failure to account arose occurred before the repeal of the former Act.

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

## **9 Time for payment of first contributions to Compensation Fund**

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

## **10 Management and receivership under the former Act**

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

## **11 Management and receivership under this Act**

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

## **12 Pending disciplinary proceedings**

- (1) Any act, matter or thing done or commenced under Part 10 of the *Legal Profession Act 1987* (as applying under Part 6 of the former Act) and having effect immediately before the repeal of the former Act is taken to have been done or commenced under Part 10 of the *Legal Profession Act 1987* as applying under Part 6 of this Act.
- (2) In determining for the purposes of section 83 (4) the conditions to which a licence is subject, a condition to which the licence is subject because of clause 3 (2) is to be disregarded.

### **13 Return of trust money deposited with Law Society**

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

### **14 Notice to banks of responsibilities with respect to trust accounts**

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

### **15 Offences under former Act or regulations**

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



## **16 Disclosures under the former Act**

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

## **17 Records etc under former Act**

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

## **18 Final reports of Committee and Association**

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

## **19 Final reports of Law Society Council**

- (1) As soon as practicable after the repeal of the former Act, the Law Society Council must prepare and forward to the Attorney General a report of its work and activities under the former Act for the period beginning on 1 July 1995 and ending on the repeal of the former Act.
- (2) The Attorney General must lay the report, or cause it to be laid, before both Houses of Parliament as soon as practicable after receiving the report.

- (3) A report is to deal with such matters as may be prescribed by the regulations in force under the *Legal Profession Act 1987* for the purposes of section 209B of that Act (before its repeal), and with such other matters as the Law Society Council considers appropriate to include in the report.

## **20 Continuation of Conveyancers Licensing Committee**

The Conveyancers Licensing Committee under the former Act continues in existence but only for the purposes of the exercise of functions in respect of appeals and other proceedings pending under the former Act. Provisions of the former Act with respect to the Committee continue for that purpose.

## **21 Former regulations**

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

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## Dictionary

(Section 3)

*affairs*, in relation to a licensee, includes:

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

*approved policy of professional indemnity insurance* means a policy of professional indemnity insurance approved under section 8.

*controlled money* means money required to be dealt with in accordance with section 25 (1) (b) that, while under the direct or indirect control of the licensee by or on whose behalf it is received, is for the time being held otherwise than in a general trust account at a bank 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 Property Services Council constituted by the *Property Services Council Act 1990*.

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

*exercise* a function includes, where the function is a duty, to perform the duty.

*firm of licensees* includes any licensees who share remuneration as licensees, whether or not on the same basis for each of them.



***function*** includes a power, authority or duty.

***licence*** means a licence in force under this Act.

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

***money*** includes an instrument enabling a bank 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.

***professional misconduct*** includes:

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

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

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

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

[Minister's second reading speech made in—  
Legislative Assembly on 20 September 1995  
Legislative Council on 11 October 1995]

