

South Australia

# Conveyancers Act 1994

An Act to regulate conveyancers; and for other purposes.

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## Contents

### Part 1—Preliminary

- 1 Short title
- 3 Interpretation
- 4 Commissioner to be responsible for administration of Act

### Part 2—Registration of conveyancers

- 5 Conveyancers to be registered
- 6 Application for registration
- 7 Entitlement to be registered
- 7A Appeals
- 8 Duration of registration and annual fee and return
- 9 Requirements for professional indemnity insurance

### Part 2A—Cancellation, suspension or variation of registration

- 9AA Commissioner may cancel, suspend or impose conditions on registration

### Part 3—Provisions regulating incorporated conveyancers

- 9A Company conveyancer's business to be properly managed and supervised
- 9B Improper directions etc relating to conveyancing
- 10 Non-compliance with constitution
- 11 Alteration of constitution
- 12 Companies not to carry on conveyancing business in partnership
- 13 Joint and several liability

### Part 4—Trust accounts and indemnity fund

#### Division 1—Preliminary

- 14 Interpretation of Part 4

#### Division 2—Trust accounts

- 15 Trust money to be deposited in trust account
- 16 Withdrawal of money from trust account
- 17 Payment of interest on trust accounts to Commissioner
- 18 Appointment of administrator of trust account
- 19 Appointment of temporary manager
- 20 Powers of administrator or temporary manager

21	Term of appointment of administrator or temporary manager
22	Appeal against appointment of administrator or temporary manager
23	Keeping of records
24	Audit of trust accounts
25	Appointment of examiner
26	Obtaining information for purposes of audit or examination
27	ADIs etc to report deficiencies in trust accounts
28	Confidentiality
29	ADIs etc not affected by notice of trust
30	Failing to comply with requirement of administrators etc

### Division 3—Indemnity fund

31	Indemnity fund
32	Claims on indemnity fund
33	Limitation of claims
34	Establishment and determination of claims
35	Claims by conveyancers
36	Personal representative may make claim
37	Appeal against Commissioner's determination
38	Determination, evidence and burden of proof
39	Claimant's entitlement to compensation and interest
40	Rights of Commissioner
41	Insurance in respect of claims against indemnity fund
42	Insufficiency of indemnity fund
43	Accounts and audit

### Part 5—Discipline

44	Interpretation of Part 5
45	Cause for disciplinary action
46	Complaints
47	Hearing by Court
48	Participation of assessors in disciplinary proceedings
49	Disciplinary action
50	Contravention of orders

### Part 6—Miscellaneous

51	Delegations
52	Agreement with professional organisation
53	Exemptions
54	Register of conveyancers
55	Commissioner and proceedings before Court
56	False or misleading information
57	Statutory declaration
58	Investigations
59	General defence
60	Liability for act or default of officer, employee or agent
62	Continuing offence
63	Prosecutions
64	Evidence
65	Service of documents
66	Annual report
67	Regulations

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## Schedule 1—Appointment and selection of assessors for Court

## Schedule 2—Transitional provisions

- 1 General
- 2 Mortgage financiers
- 3 Special provisions relating to Growden Investments

## Legislative history

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### The Parliament of South Australia enacts as follows:

## Part 1—Preliminary

### 1—Short title

This Act may be cited as the *Conveyancers Act 1994*.

### 3—Interpretation

- (1) In this Act, unless the contrary intention appears—

*close associate*—see subsection (2);

*Commissioner* means the Commissioner for Consumer Affairs;

*conveyancer* means a person, other than a legal practitioner, who carries on a business that consists of or involves the preparation of conveyancing instruments for fee or reward;

*conveyancing instrument* means an instrument as defined in the *Real Property Act 1886*;

*Court* means the Administrative and Disciplinary Division of the District Court of South Australia;

*director* of a company includes—

- (a) a person occupying or acting in the position of director of the company, by whatever name called and whether or not validly appointed to occupy or duly authorised to act in the position; and
- (b) any person in accordance with whose directions or instructions the directors of the company are accustomed to act;

*domestic partner* means a person who is a domestic partner within the meaning of the *Family Relationships Act 1975*, whether declared as such under that Act or not;

*indemnity fund* means the indemnity fund maintained under Part 3 of the *Land Agents Act 1994*;

*land* includes an interest in land;

*legal practitioner* has the same meaning as in the *Legal Practitioners Act 1981*;

*money* includes an instrument for the payment of money that may be negotiated by an ADI;

*mortgage* means a legal or equitable mortgage over land;

**mortgage financing** means negotiating or arranging loans secured by mortgage including receiving or dealing with payments under such transactions;

**prescribed relative**, in relation to a person, means a spouse, domestic partner, parent, child or grandchild of the person;

**spouse**—a person is the spouse of another if they are legally married.

- (2) Subject to subsection (3), 2 persons are **close associates** if—
- (a) they are in partnership; or
  - (b) they are related bodies corporate (within the meaning of the *Corporations Act 2001* of the Commonwealth); or
  - (c) one is a body corporate and the other is a director, manager, secretary or public officer of the body corporate; or
  - (d) one is a body corporate (other than a public company whose shares are quoted on a prescribed financial market) and the other is a shareholder in the body corporate; or
  - (e) one is a body corporate whose shares are quoted on a prescribed financial market and the other is a substantial shareholder (within the meaning of the *Corporations Act 2001* of the Commonwealth) in the body corporate; or
  - (f) one has a right to participate (otherwise than as a shareholder in a body corporate) in income or profits derived from a business conducted by the other; or
  - (g) one is in a position to exercise control or significant influence over the conduct of the other; or
  - (h) they fall within a class of persons prescribed by the regulations for the purposes of this subsection; or
  - (i) a chain of relationships can be traced between them under any one or more of the above paragraphs.
- (3) The Governor may, by regulation, exclude classes of persons from the ambit of subsection (2).
- (4) In subsection (2)—

**prescribed financial market** means a prescribed financial market within the meaning of section 9 of the *Corporations Act 2001* of the Commonwealth.

#### **4—Commissioner to be responsible for administration of Act**

The Commissioner is responsible, subject to the control and directions of the Minister, for the administration of this Act.

## **Part 2—Registration of conveyancers**

### **5—Conveyancers to be registered**

A person must not carry on business, or hold himself or herself out, as a conveyancer unless registered under this Act.

Maximum penalty:

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- (a) for an offence committed by a natural person—
    - (i) for a first or second offence—\$50 000; or
    - (ii) for a third or subsequent offence—\$50 000 or 12 months imprisonment or both; or
  - (b) for an offence committed by a body corporate—\$250 000.

## 6—Application for registration

- (1) An application for registration must—
  - (a) be made to the Commissioner in the manner and form approved by the Commissioner; and
  - (b) be accompanied by the fee fixed by regulation.
- (2) An applicant for registration must provide the Commissioner with such evidence as the Commissioner thinks appropriate as to the identity, age and address of the applicant and any other information required by the Commissioner for the purposes of determining the application.
- (3) If an applicant for registration has previously failed to pay a fee or penalty that became payable under this Act, the Commissioner may require the applicant to pay the whole or a specified part of the fee or penalty.
- (4) The Commissioner may, by notice in writing, require an applicant for registration, within a time fixed by the notice (which may not be less than 28 days after service of the notice), to comply with any requirement under this section to the Commissioner's satisfaction.
- (5) If the applicant fails to comply with the notice under subsection (4), the Commissioner may, without further notice, refuse the application but keep the fee that accompanied the application.

## 7—Entitlement to be registered

- (1) A natural person is entitled to be registered as a conveyancer if the person—
  - (a) has—
    - (i) the qualifications required by regulation; or
    - (ii) subject to the regulations, the qualifications that the Commissioner considers appropriate; and
  - (b) has not—
    - (i) been convicted of an indictable offence of dishonesty; or
    - (ii) during the period of 10 years preceding the application for registration, been convicted of a summary offence of dishonesty; and
  - (c) is not suspended or disqualified from practising or carrying on an occupation, trade or business under a law of this State, the Commonwealth, another State or a Territory of the Commonwealth; and
  - (d) is not an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth; and

- (e) has not, during the period of five years preceding the application for registration, been a director of a body corporate wound up for the benefit of creditors—
    - (i) when the body was being so wound up; or
    - (ii) within the period of six months preceding the commencement of the winding up; and
  - (f) is a fit and proper person to be registered as a conveyancer.
- (2) Subject to subsection (3), a company is entitled to be registered as a conveyancer if—
- (a) the company—
    - (i) is not suspended or disqualified from practising or carrying on an occupation, trade or business under a law of this State, the Commonwealth, another State or a Territory of the Commonwealth; and
    - (ii) is not being wound up and is not under official management or in receivership; and
  - (ab) no director of the company is a prescribed person; and
  - (b) no director of the company—
    - (i) has—
      - (A) been convicted of an indictable offence of dishonesty; or
      - (B) during the period of 10 years preceding the application for registration, been convicted of a summary offence of dishonesty; or
    - (ii) is suspended or disqualified from practising or carrying on an occupation, trade or business under a law of this State, the Commonwealth, another State or a Territory of the Commonwealth; or
    - (iii) has, during the period of five years preceding the application for registration, been a director of a body corporate wound up for the benefit of creditors—
      - (A) when the body was being so wound up; or
      - (B) within the period of six months preceding the commencement of the winding up; and
  - (c) each director of the company is a fit and proper person to be the director of a company that is registered as a conveyancer.
- (3) A company is not entitled to be registered as a conveyancer unless the constitution of the company contains stipulations so that—
- (a) the sole object of the company must be to carry on business as a conveyancer; and

- (b) the majority of the directors of the company must be natural persons who are registered conveyancers (but where there are only 2 directors 1 may be a registered conveyancer and the other may be a person who is not a registered conveyancer and nothing in this paragraph prevents a constitution providing that all directors of a company must be registered conveyancers); and
  - (c) no director of the company may be a prescribed person; and
  - (d) the majority of voting rights exercisable at a meeting of the members of the company must be held by registered conveyancers who are directors or employees of the company (but nothing in this paragraph prevents a constitution providing that all such rights must be held by registered conveyancers); and
  - (e) no share in the capital of the company, and no rights to participate in distribution of profits of the company, may be owned beneficially by a prescribed person.
- (4) For the purposes of this section, a person is a *prescribed person* if the person is—
- (a) a land agent; or
  - (b) a financier; or
  - (c) a close associate of a land agent or financier,
- other than where the land agent, financier or close associate is also—
- (d) a registered conveyancer; or
  - (e) a prescribed relative of a registered conveyancer who is a director of the particular company seeking registration under this section.
- (5) In this section—
- financier* means a person who carries on a business that consists of or involves—
- (a) mortgage financing; or
  - (b) lending money for the purchase of land;
- land agent* means an agent or a sales representative within the meaning of the *Land Agents Act 1994*.

## 7A—Appeals

- (1) An applicant for registration may appeal to the Court against a decision of the Commissioner refusing the application.
- (2) Subject to subsection (4), an appeal must be instituted within one month of the making of the decision appealed against.
- (3) The Commissioner must, if so required by the applicant, state in writing the reasons for the Commissioner's decision to refuse the application.
- (4) If the reasons of the Commissioner are not given in writing at the time of making the decision and the applicant (within one month of the making of the decision) requires the Commissioner to state the reasons in writing, the time for instituting an appeal runs from the time at which the applicant receives the written statement of those reasons.

## **8—Duration of registration and annual fee and return**

- (1) Registration remains in force (except for any period for which it is suspended) until—
  - (a) the registration is surrendered or cancelled; or
  - (b) the registered conveyancer dies or, in the case of a registered company, is dissolved.
- (2) A registered conveyancer must, each year not later than the date fixed by regulation—
  - (a) pay to the Commissioner the fee fixed by regulation; and
  - (b) lodge with the Commissioner a return in the manner and form required by the Commissioner.
- (3) Where a registered conveyancer fails to pay the annual fee or lodge the annual return in accordance with subsection (2), the Commissioner may, by notice in writing, require the conveyancer to make good the default and, in addition, to pay to the Commissioner the amount fixed by regulation as a penalty for default.
- (4) Where the conveyancer fails to comply with the notice within 28 days after service of the notice, the conveyancer's registration is cancelled.
- (5) The Commissioner must notify the conveyancer in writing of the cancellation of the conveyancer's registration.
- (6) A registered conveyancer may surrender registration.
- (7) In this section—

*registered conveyancer* includes a registered conveyancer whose registration has been suspended.

## **9—Requirements for professional indemnity insurance**

- (1) A person must, at all times when carrying on business as a conveyancer, be insured in accordance with the regulations.
- (2) A conveyancer's registration is suspended for any period for which the conveyancer is not insured as required under subsection (1).

## **Part 2A—Cancellation, suspension or variation of registration**

### **9AA—Commissioner may cancel, suspend or impose conditions on registration**

- (1) If the Commissioner is satisfied that events have occurred such that a registered conveyancer would not be entitled to be so registered if the person were to apply for registration, the Commissioner may, by notice served on the person—
  - (a) cancel the registration; or
  - (b) suspend the registration for a specified period or until the fulfilment of stipulated conditions; or
  - (c) impose conditions on the registration.
- (2) If the Commissioner is satisfied that the facts and circumstances that gave rise to the imposition of conditions on a registration under this section have altered, the Commissioner may, by further notice specifying the date of termination, terminate the imposition of the conditions.



- (3) If, during the suspension of a registration under this section, the Commissioner is satisfied that the facts and circumstances that gave rise to the suspension have altered, the Commissioner may, by further notice specifying the date of termination, terminate the suspension and restore the registration to the person (either in the form in which it existed prior to the suspension or subject to new conditions).
- (4) A person whose registration is cancelled, suspended or made subject to conditions under this section may appeal to the Court against the decision of the Commissioner to cancel or suspend the registration or to impose the conditions.
- (5) Subject to subsection (7), an appeal must be instituted within 1 month of the making of the decision appealed against.
- (6) The Commissioner must, if so required by the appellant, state in writing the reasons for the Commissioner's decision.
- (7) If the reasons of the Commissioner are not given in writing at the time of making the decision and the appellant (within 1 month of the making of the decision) requires the Commissioner to state the reasons in writing, the time for instituting an appeal runs from the time at which the appellant receives the written statement of those reasons.
- (8) The Court must hear and determine an appeal under this section as expeditiously as possible.
- (9) This section applies in relation to conduct occurring before or after the commencement of this section.

### **Part 3—Provisions regulating incorporated conveyancers**

#### **9A—Company conveyancer's business to be properly managed and supervised**

A company that is a registered conveyancer must ensure that the company's business as a conveyancer is properly managed and supervised by a registered conveyancer who is a natural person.

Maximum penalty: \$20 000.

#### **9B—Improper directions etc relating to conveyancing**

If a director or manager of a company that is a registered conveyancer directs or incites a registered conveyancer or other person employed by the company to act unlawfully, improperly, negligently or unfairly in the course of managing or supervising, or being employed or otherwise engaged in, the company's business as a conveyancer, the company and the director or manager are each guilty of an offence.

Maximum penalty: \$20 000.

#### **10—Non-compliance with constitution**

Where one or more of the stipulations required by Part 2 to be included in the constitution of a company registered as a conveyancer are not complied with, the company is guilty of an offence.

Maximum penalty: \$20 000.

## 11—Alteration of constitution

A company that is registered as a conveyancer must not alter its constitution so that the constitution ceases to conform to the requirements of Part 2 for registration of a company as a conveyancer.

Maximum penalty: \$20 000.

## 12—Companies not to carry on conveyancing business in partnership

A company that is a registered conveyancer must not carry on business as a conveyancer in partnership with another person without the prior approval of the Commissioner.

Maximum penalty: \$20 000.

## 13—Joint and several liability

Despite any other Act or law, a civil liability incurred by a company that is a registered conveyancer is enforceable jointly and severally against the company and the persons who were directors of the company at the time the liability was incurred.

# Part 4—Trust accounts and indemnity fund

## Division 1—Preliminary

### 14—Interpretation of Part 4

- (1) In this Part, unless the contrary intention appears—

**auditor** means a registered company auditor within the meaning of the *Corporations Act 2001* of the Commonwealth;

**fiduciary default** means a defalcation, misappropriation or misapplication of trust money occurring while the money is in the possession or control of—

- (a) a conveyancer; or
- (b) a firm of which a conveyancer is a member;

**record** includes information kept by computer, microfilm or other process;

**trust account** means an account in which trust money is required to be deposited by a conveyancer;

**trust money**, in relation to a conveyancer, means money—

- (a) that is received by the conveyancer when acting on behalf of another in connection with a dealing with land; and
- (b) to which the conveyancer is not wholly entitled in law and in equity,

but does not include money received by a conveyancer in the course of mortgage financing.

- (2) A reference in this Part to a fiduciary default extends to a fiduciary default that occurred before the commencement of this Act.

## **Division 2—Trust accounts**

### **15—Trust money to be deposited in trust account**

- (1) A conveyancer must, as soon as practicable after receiving trust money, deposit the money in an account (in the name of the conveyancer) approved by the Commissioner at an ADI.  
Maximum penalty: \$20 000.
- (2) A conveyancer must not pay any other money into the conveyancer's trust account.  
Maximum penalty: \$20 000.
- (3) A conveyancer must not withdraw, or permit another person to withdraw, money from a trust account except in accordance with this Part.  
Maximum penalty: \$20 000.
- (4) The Commissioner may, by notice in writing to an ADI—
  - (a) approve accounts of a particular class (being accounts that carry interest at a rate considered satisfactory by the Commissioner) for the purposes of this section; or
  - (b) vary or revoke any such approval.

### **16—Withdrawal of money from trust account**

A conveyancer may withdraw money from a trust account—

- (a) for payment to the person entitled to the money or for payment in accordance with the directions of that person; or
- (b) in satisfaction of a claim for commission, fees, costs or disbursements that the conveyancer has against the person on behalf of whom the money is held; or
- (c) to satisfy an order of a court against the person on behalf of whom the conveyancer is holding the money; or
- (d) for payment into a court before which proceedings have been instituted in relation to the money; or
- (e) for the purpose of dealing with the money in accordance with the *Unclaimed Moneys Act 1891*; or
- (f) for making any other payment authorised by law.

### **17—Payment of interest on trust accounts to Commissioner**

Interest that an ADI is liable to pay in respect of trust money held in a trust account must be paid by the ADI to the Commissioner on the days fixed by regulation.

### **18—Appointment of administrator of trust account**

- (1) If the Commissioner knows or suspects on reasonable grounds that a conveyancer—
  - (a) is not registered as required by law; or
  - (b) has been guilty of a fiduciary default in relation to trust money; or

- (c) has operated on the trust account in such an irregular manner as to require immediate supervision; or
- (d) has acted contrary to this Act or otherwise unlawfully or improperly or negligently in the conduct of the business; or
- (e) in the case of a natural person—
  - (i) is dead or cannot be found; or
  - (ii) is suffering from mental or physical incapacity preventing the conveyancer from properly attending to the conveyancer's affairs; or
- (f) has ceased to carry on business as a conveyancer; or
- (g) has become bankrupt or insolvent or has taken the benefit (as a debtor) of a law relating to bankrupt or insolvent debtors or, in the case of a company, is being wound up, is under official management or is in receivership,

the Commissioner may appoint a person to administer the conveyancer's trust account.

- (2) This section applies in relation to conduct occurring before or after the commencement of this Act.
- (3) The Commissioner must, as soon as practicable after appointing an administrator, give notice in writing of the appointment to—
  - (a) the conveyancer; and
  - (b) all persons who are entitled (whether solely or jointly) to withdraw money from, or deal with money in, the account; and
  - (c) the ADI at which the account is held.
- (4) A person who has been given notice of the appointment of an administrator, or who knows that an administrator has been appointed, must not withdraw money from, or deal with money in, the trust account while the appointment continues.

Maximum penalty: \$20 000.

- (5) An ADI that has been given notice of the appointment of an administrator must not, while the appointment continues, accept any withdrawal of, or dealing with, money in the trust account unless the withdrawal or dealing is at the direction, or with the written approval, of the administrator.

Maximum penalty: \$20 000.

### **19—Appointment of temporary manager**

- (1) Where an administrator is appointed under this Division, the Commissioner may appoint that person or some other person to be a temporary manager to transact any urgent or uncompleted business of the conveyancer.
- (2) The Commissioner must, as soon as practicable after appointing a temporary manager, give notice in writing of the appointment to the conveyancer.

### **20—Powers of administrator or temporary manager**

The following powers may be exercised by an administrator or temporary manager:

- (a) the administrator or manager may require any person in a position to do so—

- (i) to produce documents and records relating to the conveyancer's business including written records that reproduce in a readily understandable form information kept by computer, microfilm or other process; and
- (ii) to provide information relevant to the conveyancer's business; and
- (b) the administrator may require any person in a position to do so to provide all authorities and orders to ADIs and others that may be reasonably required for the operation of the conveyancer's trust account; and
- (c) the administrator or manager may take possession of documents and records forming part of the conveyancer's business and for that purpose may enter business premises of the conveyancer using such force as is reasonably necessary; and
- (d) such other powers as the Commissioner sets out in the instrument of appointment of the administrator or the manager.

### **21—Term of appointment of administrator or temporary manager**

- (1) The appointment of an administrator or temporary manager remains in force for such period (not exceeding 12 months) as is specified in the instrument of appointment unless sooner terminated by the Commissioner or the Court.
- (2) Subject to an order of the Court to the contrary, the Commissioner may reappoint an administrator.

### **22—Appeal against appointment of administrator or temporary manager**

- (1) A conveyancer may, within 28 days after receiving notice of the appointment of an administrator or temporary manager, appeal to the Court against the appointment.

### **23—Keeping of records**

- (1) A conveyancer must keep detailed records of all trust money received by the conveyancer and of any disbursement of, or other dealing with, that money and must compile detailed accounts of those receipts and disbursements that—
  - (a) accurately disclose the state of the trust account maintained by the conveyancer; and
  - (b) enable the receipt and disposition of trust money to be conveniently and properly audited; and
  - (c) comply with all other requirements specified by regulation.

Maximum penalty: \$20 000.

- (2) In particular, the conveyancer must, in respect of the receipt of trust money—
  - (a) make available to the person making payment a receipt that sets out the information specified by regulation in the form specified by regulation; and
  - (b) make and retain a copy of the receipt as part of the conveyancer's records.

Maximum penalty: \$20 000.

- (3) A conveyancer must, at the request of a person who has an interest in trust money, provide that person with a statement setting out details of dealings by the conveyancer with the money.

Maximum penalty: \$20 000.

- (4) A conveyancer must keep the accounts and records referred to in this section or a corresponding previous enactment in a legible written form, or so as to be readily convertible into such a form, for at least five years.

Maximum penalty: \$20 000.

## **24—Audit of trust accounts**

- (1) A conveyancer who maintains a trust account must—
- (a) have the accounts and records kept under this Division audited by an auditor in respect of each audit period specified by regulation; and
  - (b) lodge with the Commissioner a statement relating to the audit that sets out the information specified by regulation.

- (2) A conveyancer, who did not maintain a trust account during a particular audit period, must make and lodge with the Commissioner a declaration, in a form approved by the Commissioner, setting out the reasons for not maintaining a trust account during that period.

- (3) A conveyancer who—

- (a) fails to have accounts and records audited as required; or
- (b) fails to lodge the audit statement or declaration within the time allowed by or under the regulations,

is guilty of an offence.

Maximum penalty: \$20 000.

- (4) Where a conveyancer fails to lodge the audit statement or declaration within the time allowed by or under the regulations, the Commissioner may, by notice in writing, require the conveyancer to make good the default and, in addition, to pay to the Commissioner the amount fixed by the regulations as a civil penalty for the default.
- (5) Where the conveyancer fails to comply with the notice within 28 days after service of the notice, the conveyancer's registration is cancelled.
- (6) The Commissioner must notify the conveyancer of the cancellation of the conveyancer's registration.
- (7) A conveyancer is not liable to both a civil penalty and a criminal penalty in respect of the same default under this section and, consequently, payment of the civil penalty exonerates the conveyancer from liability to a criminal penalty and payment of a criminal penalty exonerates the conveyancer from liability to the civil penalty.

## **25—Appointment of examiner**

- (1) The Commissioner may, at any time, appoint a person—
- (a) to examine, either generally or in a particular case, the accounts and records kept under this Division by a conveyancer; and

- (b) to examine, either generally or in a particular case, the audit program, working papers and other documents used or prepared by an auditor in the course of auditing the trust accounts of a conveyancer; and
  - (c) to confer with an auditor in relation to audits of the trust accounts of a conveyancer.
- (2) An examiner may, and must if required by the Commissioner to do so, provide the Commissioner with a confidential report as to the state of any accounts or records subject to examination by the examiner.
  - (3) The Commissioner must, as soon as practicable, cause a copy of a report provided by an examiner to be given or sent by post to the conveyancer.
  - (4) In this section—  
*conveyancer* includes a former conveyancer.

## 26—Obtaining information for purposes of audit or examination

- (1) An auditor employed by a conveyancer to make an audit of the trust accounts of the conveyancer, or an examiner appointed under this Division, may require the conveyancer or any other person in a position to do so—
  - (a) to produce all the accounts (including accounts that are not trust accounts) relating to the business of the conveyancer and all documents and records relating to those accounts, including written records that reproduce in a readily understandable form information kept by computer, microfilm or other process; and
  - (b) to provide any relevant information relating to the operation of the accounts.
- (2) The manager or other principal officer of an ADI or other financial institution with which a conveyancer has deposited money, whether in his or her own account or in a general or separate trust account, must, on being required to do so by an auditor or examiner employed or appointed to make an audit or examination under this Division, disclose every such account (including all deposit slips, cancelled cheques and other documents relating to the operation of the account) to the auditor or examiner.  
Maximum penalty: \$20 000.
- (3) A person who is required by this section to produce documents to an auditor or examiner must permit the auditor or examiner to make a copy of the whole, or any part, of those documents.  
Maximum penalty: \$20 000.
- (4) In this section—  
*account* includes a record required to be kept under this Division in relation to the receipt and disposition of trust money;  
*conveyancer* includes a former conveyancer.

## 27—ADIs etc to report deficiencies in trust accounts

An ADI with which a trust account has been established must, as soon as practicable, and in any event within 14 days, after becoming aware of a deficiency in that account, report the deficiency to the Commissioner.

Maximum penalty: \$20 000.

## 28—Confidentiality

- (1) An administrator, temporary manager, auditor or examiner must not divulge information that has come to his or her knowledge in the course of performing functions under this Act or a corresponding previous enactment except—
- (a) to the conveyancer; or
  - (b) to the Commissioner; or
  - (c) as otherwise required by law.

Maximum penalty: \$20 000.

- (2) A person engaged in the administration of this Act, must not divulge information disclosed in a report provided under this Part or a corresponding previous enactment except—
- (a) for the purpose of confidential consideration of the report by the Minister or the Commissioner; or
  - (b) as is otherwise necessary for the proper administration of this Act; or
  - (c) as is otherwise permitted or required by law.

Maximum penalty: \$20 000.

## 29—ADIs etc not affected by notice of trust

- (1) Subject to subsection (2), an ADI is not affected by notice of a specific trust to which money deposited in a trust account is subject, and is not bound to satisfy itself of the due application of that money.
- (2) This section does not relieve an ADI of liability for negligence.

## 30—Failing to comply with requirement of administrators etc

A person must not—

- (a) refuse or fail to comply with a requirement of an administrator, temporary manager, auditor or examiner under this Division; or
- (b) hinder, delay or obstruct an administrator, temporary manager, auditor or examiner in the performance of functions under this Division by altering or destroying relevant documents or by any other means.

Maximum penalty: \$20 000.

## Division 3—Indemnity fund

### 31—Indemnity fund

- (1) The following money is to be paid into the indemnity fund:
- (a) interest paid by ADIs to the Commissioner on trust accounts; and
  - (b) money recovered by the Commissioner in relation to a fiduciary default; and
  - (c) fines recovered as a result of disciplinary proceedings under Part 5; and
  - (d) any other money required to be paid into the fund under this or any other Act.



- (2) Money standing to the credit of the indemnity fund may be applied by the Commissioner for any of the following purposes:
- (a) the costs of investigating compliance with this Act, compliance with the *Land and Business (Sale and Conveyancing) Act 1994* by conveyancers or possible misconduct of conveyancers;
  - (ab) the costs of conciliating disputes relating to the activities of conveyancers;
  - (ac) the costs of disciplinary proceedings under Part 5;
  - (b) the costs of prosecutions for offences against this Act or for alleged offences by conveyancers against the *Land and Business (Sale and Conveyancing) Act 1994*;
  - (c) costs consequent on the appointment of an administrator, temporary manager or examiner under this Act;
  - (d) the costs of processing claims under this Division and of paying out those claims to the extent authorised by this Division;
  - (e) the costs of administering and insuring the fund;
  - (f) the payment of amounts, approved by the Minister, towards the cost of—
    - (i) prescribed educational programs conducted for the benefit of conveyancers or members of the public; or
    - (ii) reviewing the operation of this Act or the operation of the *Land and Business (Sale and Conveyancing) Act 1994* insofar as it relates to conveyancers;
  - (g) any other purpose specified by or under this or any other Act.

### 32—Claims on indemnity fund

- (1) A person who has suffered a pecuniary loss as a result of a fiduciary default may make a claim for compensation to the Commissioner.
- (2) The amount of the claim cannot exceed the sum of—
  - (a) the actual pecuniary loss suffered by the claimant in consequence of the fiduciary default; and
  - (b) any reasonable legal expenses incurred in taking action to recover the loss or in making the claim to the Commissioner,
 less any amount that the claimant has received or may reasonably be expected to recover (apart from this Division) in reduction of the loss.
- (3) A person is not entitled to make a claim under this Division where—
  - (a) the conveyancer by whom the fiduciary default was committed, or to whom the fiduciary default relates, was required to be registered or licensed under this Act or a corresponding previous enactment; and
  - (b) that person knew, or ought to have known, at the time of appointing or instructing the conveyancer, that the conveyancer was not so registered or licensed.

### 33—Limitation of claims

- (1) The Commissioner may, by notice published in a newspaper circulating generally throughout the State, fix a day (not earlier than three months after the publication of the notice) on or before which claims in respect of a fiduciary default, or a series of fiduciary defaults, referred to in the notice, must be made.
- (2) A claim that is not made within the time fixed by the notice is barred unless the Court, on application, otherwise determines.
- (3) No action in defamation lies in respect of the publication, in good faith, of the notice.

### 34—Establishment and determination of claims

- (1) A claim for compensation must be made to the Commissioner in a manner and form determined by the Commissioner.
- (1a) The Commissioner may require a person making a claim—
  - (a) to furnish further information specified by the Commissioner;
  - (b) to verify, by statutory declaration, information furnished for the purposes of making or establishing a claim.
- (2) The Commissioner must, on receipt of a claim for compensation—
  - (a) give the claimant and the conveyancer or former conveyancer concerned notice of the claim in accordance with the regulations; and
  - (b) allow the claimant and the conveyancer or former conveyancer a reasonable opportunity to appear before the Commissioner personally or by representative to make submissions as to the claim.
- (3) The Commissioner may do any 1 or more of the following in response to the claim:
  - (a) require the claimant to take specified action to recover the loss (and postpone determination of the claim);
  - (b) determine the claim and, if appropriate, make a payment to the claimant from the indemnity fund;
  - (c) require the claimant to make contractual undertakings as to the assistance that the claimant must give the Commissioner in any action taken by the Commissioner to recover the loss.
- (4) In deciding whether to require the claimant to take action to recover the loss, and in deciding what action the claimant should be required to take to recover the loss, the Commissioner is to consider the size of the claim, the complexity of the case, the claimant's financial circumstances, the claimant's mental or physical health or capacity and any other factors that the Commissioner considers relevant.
- (5) The Commissioner must—
  - (a) keep the claimant informed of the progress of the claim in accordance with the regulations; and
  - (b) on making a determination on a claim, give the claimant and the conveyancer or former conveyancer written notice of the determination.

### **35—Claims by conveyancers**

- (1) A conveyancer who has paid compensation to a person for pecuniary loss suffered in consequence of a fiduciary default committed by a partner or employee of the conveyancer may make a claim for compensation to the Commissioner.
- (2) The Commissioner must, on receipt of the claim, if satisfied that—
  - (a) all legal or equitable claims in respect of the fiduciary default have been fully satisfied; and
  - (b) the claimant acted honestly and reasonably in all the circumstances of the case,determine the amount of compensation payable to the claimant and, by notice in writing, inform the claimant of the determination.
- (3) A person is not entitled to make a claim under this section where—
  - (a) the conveyancer by whom the fiduciary default was committed, or to whom the fiduciary default relates, was required to be registered or licensed under this Act or a corresponding previous enactment; and
  - (b) that person knew, or ought to have known, at the time of the default, that the conveyancer was not so registered or licensed.

### **36—Personal representative may make claim**

The personal representative of a claimant (including a deceased claimant) is entitled to make the claim on behalf of the claimant or the claimant's estate.

### **37—Appeal against Commissioner's determination**

- (1) The claimant or the conveyancer or former conveyancer by whom the fiduciary default was committed or to whom the fiduciary default relates may, within three months after receiving notice of the Commissioner's determination, appeal to the Court against the determination.
- (2) Where an appeal is not instituted within the time allowed, the claimant's entitlement to compensation is finally determined for the purposes of this Division.

### **38—Determination, evidence and burden of proof**

- (1) In determining a claim for compensation under this Division, any possible reduction to which the claimant's entitlement may be subject because of insufficiency of the indemnity fund must be disregarded.
- (2) In determining a claim for compensation under this Division—
  - (a) an admission or confession may be accepted as evidence of a fiduciary default despite the absence of the person by whom the admission or confession was made; and
  - (b) questions of fact are to be decided on the balance of probabilities.

### **39—Claimant's entitlement to compensation and interest**

- (1) Subject to any reduction because of insufficiency of the indemnity fund, a claimant is entitled to payment of the amount of compensation determined under this Division.

- (2) A claimant's entitlement to compensation will (to the extent to which it has not been satisfied or discharged) be increased by interest at the rate fixed by regulation from the first anniversary of the lodgment of the claim with the Commissioner until the entitlement is satisfied or discharged, but interest must not be calculated on any component of the claimant's entitlement that is attributable to interest that has already accrued under this subsection.

#### **40—Rights of Commissioner**

- (1) Where the Commissioner makes a payment (whether in respect of compensation or interest) to a claimant, the Commissioner is, to the extent of the payment, subrogated to the rights of the claimant against a person liable at law or in equity for the fiduciary default in respect of which the payment was made.
- (2) However, this section does not confer on the Commissioner any right to recover money from a person whose liability in respect of a fiduciary default does not arise from a wrongful or negligent act or omission on that person's part.

#### **41—Insurance in respect of claims against indemnity fund**

- (1) The Commissioner may insure the indemnity fund to such extent as the Commissioner thinks fit against claims under this Division.
- (2) The cost of the insurance will be paid from the indemnity fund.

#### **42—Insufficiency of indemnity fund**

- (1) Where the indemnity fund is insufficient to pay all outstanding amounts to which claimants are entitled, the Commissioner must make proportionate reductions in the amounts paid out in respect of those entitlements.
- (2) Where, at the time at which a claimant's entitlement to compensation is determined, other persons have made claims that have not yet been determined, the Commissioner may defer payment of the claimant's entitlement for any period (not exceeding 12 months) in order to allow time for the entitlements of those other claimants to be determined.
- (3) The Commissioner may set aside a part of the indemnity fund as the Commissioner from time to time considers necessary to protect the interests of persons who—
  - (a) have made claims against the fund that have not been determined; or
  - (b) are likely to make claims against the fund in the future,and, when determining whether payments to claimants should be reduced, the Commissioner must not take into account a part of the fund set aside by the Commissioner.
- (4) If, after a claimant's entitlement to compensation has been determined, the claimant recovers an amount (that was not allowed for in that determination) in respect of the pecuniary loss suffered by the claimant, the claimant's entitlement to compensation is reduced by the amount recovered.
- (5) Entitlements in respect of which payments are made under this section are discharged despite the fact that they may not have been satisfied in full.

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- (6) The Commissioner may, with the approval of the Minister, make payments to a person—
- (a) whose entitlement to compensation has been discharged; or
  - (b) whose entitlement to compensation is insufficient because an amount that the person was expected to recover in respect of the pecuniary loss has not been recovered; or
  - (c) whose claim is barred,
- but a payment so made does not revive or reinstate an entitlement or claim.

### 43—Accounts and audit

- (1) The Commissioner must keep proper accounts of all money received and dealt with under this Division.
- (2) The Auditor-General may at any time, and must at least once in every calendar year, audit those accounts.

## Part 5—Discipline

### 44—Interpretation of Part 5

In this Part—

*conveyancer* includes—

- (a) a former conveyancer; and
- (b) a person registered as a conveyancer, whether or not carrying on business as a conveyancer; and
- (c) a person formerly registered as a conveyancer;

*director* of a company includes a former director of a company.

### 45—Cause for disciplinary action

- (1) There is proper cause for disciplinary action against a conveyancer if—
  - (a) registration of the conveyancer was improperly obtained; or
  - (b) the conveyancer has acted contrary to an assurance accepted by the Commissioner under the *Fair Trading Act 1987*; or
  - (c) the conveyancer or any other person has acted contrary to this Act or otherwise unlawfully, or improperly, negligently or unfairly, in the course of conducting, or being employed or otherwise engaged in, the business of the conveyancer; or
  - (ca) in the case of a conveyancer who has been employed or engaged to manage and supervise a company's business as a conveyancer—the conveyancer or any other person has acted unlawfully, improperly, negligently or unfairly in the course of managing or supervising, or being employed or otherwise engaged in, that business; or
  - (cb) in the case of a conveyancer that is a company—a director or manager of the company has been convicted of an offence against section 9B; or

- (d) events have occurred such that the conveyancer would not be entitled to be registered as a conveyancer if the conveyancer were to apply for registration.
- (2) Disciplinary action may be taken against each director of a company that is a conveyancer if there is proper cause for disciplinary action against the company.
- (3) Disciplinary action may not be taken against a person in relation to the act or default of another if that person could not reasonably be expected to have prevented that act or default.
- (4) This section applies in relation to conduct occurring before or after the commencement of this Act.

#### **46—Complaints**

The Commissioner or any other person may lodge with the Court a complaint setting out matters that are alleged to constitute grounds for disciplinary action under this Part.

#### **47—Hearing by Court**

- (1) On the lodging of a complaint, the Court may conduct a hearing for the purpose of determining whether the matters alleged in the complaint constitute grounds for disciplinary action under this Part.
- (2) Without limiting the usual powers of the Court, the Court may during the hearing—
  - (a) allow an adjournment to enable the Commissioner to investigate or further investigate matters to which the complaint relates; and
  - (b) allow the modification of the complaint or additional allegations to be included in the complaint subject to any conditions as to adjournment and notice to parties and other conditions that the Court may think fit to impose.

#### **48—Participation of assessors in disciplinary proceedings**

In any proceedings under this Part, the Court will, if a Judge of the Court so determines, sit with assessors selected in accordance with Schedule 1.

#### **49—Disciplinary action**

- (1) On the hearing of a complaint, the Court may, if it is satisfied on the balance of probabilities that there is proper cause for taking disciplinary action against the person to whom the complaint relates, by an order or orders do one or more of the following:
  - (a) reprimand the person;
  - (b) impose a fine not exceeding \$20 000 on the person;
  - (c) in the case of a person who is registered as a conveyancer—
    - (ai) impose conditions or further conditions on the registration; or
    - (i) suspend the registration for a specified period or until the fulfilment of stipulated conditions or until further order; or
    - (ii) cancel the registration;
  - (d) in the case of a person whose registration is suspended—impose conditions as to the conduct of the person or the person's business as a conveyancer after the end of the period of suspension;

- (e) disqualify the person from being registered under this Act;
  - (f) prohibit the person from being employed or otherwise engaged in the business of a conveyancer;
  - (g) prohibit the person from being a director of a company that is a conveyancer.
- (2) The Court may—
- (a) stipulate that a disqualification or prohibition is to apply—
    - (i) permanently; or
    - (ii) for a specified period; or
    - (iii) until the fulfilment of stipulated conditions; or
    - (iv) until further order;
  - (b) stipulate that an order relating to a person is to have effect at a specified future time and impose conditions as to the conduct of the person or the person's business until that time.
- (3) A fine imposed under subsection (1) is payable to the Commissioner for the credit of the indemnity fund.
- (4) If—
- (a) a person has been found guilty of an offence; and
  - (b) the circumstances of the offence form, in whole or in part, the subject matter of the complaint,
- the person is not liable to a fine under this section in respect of conduct giving rise to the offence.

## **50—Contravention of orders**

- (1) If a person contravenes or fails to comply with a condition imposed by the Court as to the conduct of the person or the person's business, the person is guilty of an offence.  
Maximum penalty: \$35 000 or imprisonment for 6 months.
- (2) If a person—
- (a) is employed or otherwise engages in the business of a conveyancer; or
  - (b) becomes a director of a company that is a conveyancer,
- in contravention of an order of the Court, that person and the conveyancer are each guilty of an offence.  
Maximum penalty: \$35 000 or imprisonment for 6 months.

## **Part 6—Miscellaneous**

### **51—Delegations**

- (1) The Commissioner may delegate any of the Commissioner's functions or powers under this Act—
- (a) to a person employed in the Public Service; or

- (b) to the person for the time being holding a specified position in the Public Service; or
  - (c) to any other person under an agreement under this Act between the Commissioner and an organisation representing the interests of conveyancers.
- (2) The Minister may delegate any of the Minister's functions or powers under this Act (except the power to direct the Commissioner).
- (3) A delegation under this section—
  - (a) must be in writing; and
  - (b) may be conditional or unconditional; and
  - (c) is revocable at will; and
  - (d) does not prevent the delegator from acting in any matter.

## 52—Agreement with professional organisation

- (1) The Commissioner may, with the approval of the Minister, make an agreement with an organisation representing the interests of conveyancers under which the organisation undertakes a specified role in the administration or enforcement of this Act.
- (2) The agreement—
  - (a) must be in writing and executed by the Commissioner and the organisation; and
  - (b) may contain delegations by the Commissioner of functions or powers under this Act or the *Fair Trading Act 1987*; and
  - (c) must set out any conditions governing the performance or exercise of functions or powers conferred on the organisation; and
  - (d) must make provision for the variation and termination of the agreement by the Commissioner with the approval of the Minister or the organisation.
- (3) The Commissioner may not delegate any of the following for the purposes of the agreement:
  - (a) functions or powers under Part 2;
  - (b) the approval of classes of accounts at ADIs under Division 2 of Part 4;
  - (c) the appointment, reappointment or termination of appointment of a person to administer a conveyancer's trust account or of a temporary manager under Division 2 of Part 4;
  - (d) functions or powers under Division 3 of Part 4;
  - (e) power to request the Commissioner of Police to investigate and report on matters under Part 6;
  - (f) power to commence a prosecution for an offence against this Act.
- (4) A delegation by the Commissioner for the purposes of the agreement—
  - (a) has effect subject to the conditions specified in the agreement; and



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- (b) may be varied or revoked by the Commissioner in accordance with the terms of the agreement; and
  - (c) does not prevent the Commissioner from acting in any matter.
- (5) The Minister must, within six sitting days after the making of the agreement, cause a copy of the agreement to be laid before both Houses of Parliament.

### **53—Exemptions**

- (1) The Minister may, on application by a person, exempt the person from compliance with a specified provision of this Act.
- (2) An exemption is subject to the conditions (if any) imposed by the Minister.
- (3) The Minister may, at his or her discretion, vary or revoke an exemption.
- (4) The grant or a variation or revocation of an exemption must be notified in the Gazette.

### **54—Register of conveyancers**

- (1) The Commissioner must keep a register of persons registered as conveyancers under this Act.
- (2) The Commissioner must record on the register—
  - (a) disciplinary action taken against a person under this Act; and
  - (b) a note of any assurance accepted by the Commissioner under the *Fair Trading Act 1987* in relation to a registered conveyancer.
- (2a) If any of the following events occur in relation to a person who is registered as a conveyancer, or is a director of a company that is registered as a conveyancer, the Commissioner may record a note of the event on the register:
  - (a) the person is convicted of an offence of dishonesty;
  - (b) the person is suspended or disqualified from practising or carrying on an occupation, trade or business under a law of this State, the Commonwealth, another State or a Territory of the Commonwealth;
  - (c) the person becomes an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth;
  - (d) a body corporate is wound up for the benefit of creditors and the person was a director of the body corporate—
    - (i) when the body corporate was being so wound up; or
    - (ii) within the period of 6 months preceding the commencement of the winding up;
  - (e) the person, being a company, is being wound up or is under official management or in receivership.
- (3) A person may inspect the register on payment of the fee fixed by regulation.

### **55—Commissioner and proceedings before Court**

- (1) The Commissioner is entitled to be joined as a party to any proceedings of the Court under this Act.

- (2) The Commissioner may appear personally in any such proceedings or may be represented at the proceedings by counsel or a person employed in the Public Service.

### **56—False or misleading information**

A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information provided, or record kept, under this Act.

Maximum penalty:

- (a) If the person made the statement knowing that it was false or misleading—\$10 000.
- (b) In any other case—\$2 500.

### **57—Statutory declaration**

Where a person is required to provide information to the Commissioner, the Commissioner may require the information to be verified by statutory declaration and, in that event, the person will not be taken to have provided the information as required unless it has been verified in accordance with the requirements of the Commissioner.

### **58—Investigations**

The Commissioner of Police must, at the request of the Commissioner, investigate and report on any matter relevant to—

- (a) the determination of an application under this Act; or
- (b) a matter that might constitute proper cause for disciplinary action under this Act.

### **59—General defence**

It is a defence to a charge of an offence against this Act if the defendant proves that the offence was not committed intentionally and did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence.

### **60—Liability for act or default of officer, employee or agent**

For the purposes of this Act, an act or default of an officer, employee or agent of a person carrying on a business will be taken to be an act or default of that person unless it is proved that the officer, employee or agent acted outside the scope of his or her actual, usual and ostensible authority.

### **62—Continuing offence**

- (1) A person convicted of an offence against a provision of this Act in respect of a continuing act or omission—
- (a) is liable, in addition to the penalty otherwise applicable to the offence, to a penalty for each day during which the act or omission continued of not more than one-tenth of the maximum penalty prescribed for that offence; and

- (b) is, if the act or omission continues after the conviction, guilty of a further offence against the provision and liable, in addition to the penalty otherwise applicable to the further offence, to a penalty for each day during which the act or omission continued after the conviction of not more than one-tenth of the maximum penalty prescribed for the offence.
- (2) Where an offence consists of an omission to do something that is required to be done, the omission will be taken to continue for as long as the thing required to be done remains undone after the end of the period for compliance with the requirement.

### **63—Prosecutions**

- (1) Proceedings for an offence against this Act must be commenced—
- (a) in the case of an expiable offence—within the time limits prescribed for expiable offences by the *Summary Procedure Act 1921*;
  - (b) in any other case—within 2 years of the date on which the offence is alleged to have been committed or, with the authorisation of the Minister, at a later time within 5 years of that date.
- (2) A prosecution for an offence against this Act cannot be commenced except by—
- (a) the Commissioner; or
  - (b) an authorised officer under the *Fair Trading Act 1987*; or
  - (c) a person who has the consent of the Minister to commence the prosecution.
- (3) In any proceedings, an apparently genuine document purporting to be a certificate of the Minister certifying authorisation of, or consent to, a prosecution for an offence against this Act will be accepted, in the absence of proof to the contrary, as proof of the authorisation or consent.

### **64—Evidence**

In any proceedings, a certificate executed by the Commissioner certifying—

- (a) that a person was or was not registered as a conveyancer on a specified date; or
- (b) as to any matter relating to the appointment of an administrator, temporary manager or examiner,

constitutes proof, in the absence of proof to the contrary, of the matters so certified.

### **65—Service of documents**

- (1) Subject to this Act, a notice or document required or authorised by this Act to be given to or served on a person may—
- (a) be served on the person personally; or
  - (b) be posted in an envelope addressed to the person—
    - (i) at the person's last known address; or
    - (ii) where the person is a registered conveyancer—at the person's address for service; or

- (c) where the person is a registered conveyancer—be left for the person at the address for service with someone apparently over the age of 16 years; or
  - (d) be transmitted by facsimile transmission to a facsimile number provided by the person (in which case the notice or document will be taken to have been given or served at the time of transmission).
- (2) The address for service of a registered conveyancer is the address of which the Commissioner has been last notified in writing by the conveyancer as the conveyancer's address for service.

## 66—Annual report

- (1) The Commissioner must, on or before 31 October in each year, submit to the Minister a report on the administration of this Act during the period of 12 months ending on the preceding 30 June.
- (2) The report must contain the audited statement of accounts of the indemnity fund for the period to which the report relates.
- (3) The Minister must, within six sitting days after receipt of the report, cause a copy of the report to be laid before each House of Parliament.

## 67—Regulations

- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.
- (2) Without limiting the generality of subsection (1), the regulations may—
  - (a) require registered conveyancers to comply with a code of conduct;
  - (b) require conveyancers to lodge with the Commissioner certificates evidencing the conveyancer's insurance coverage as required under Part 2;
  - (c) fix fees to be paid in respect of any matter under this Act and regulate the recovery, refund, waiver or reduction of such fees;
  - (d) exempt (conditionally or unconditionally) classes of persons or activities from the application of this Act or specified provisions of this Act;
  - (e) impose a penalty (not exceeding \$2 500) for contravention of, or non-compliance with, a regulation;
  - (f) fix expiation fees, not exceeding \$210, for alleged offences against the regulations.
- (3) Regulations under this Act—
  - (a) may be of general application or limited application;
  - (b) may make different provision according to the matters or circumstances to which they are expressed to apply;
  - (c) may provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Commissioner or the Minister.
- (4) The regulations may operate by reference to a specified code as in force at a specified time or as in force from time to time.

- (5) If a code is referred to in the regulations—
  - (a) a copy of the code must be kept available for inspection by members of the public, without charge and during normal office hours, at an office determined by the Minister; and
  - (b) evidence of the contents of the code may be given in any legal proceedings by production of a document apparently certified by the Minister to be a true copy of the code.

## **Schedule 1—Appointment and selection of assessors for Court**

- (1) The Minister must establish a panel of persons who may sit as assessors consisting of persons representative of conveyancers.
- (2) The Minister must establish a panel of persons who may sit as assessors consisting of persons representative of members of the public who deal with conveyancers.
- (3) A member of a panel is to be appointed by the Minister for a term of office not exceeding three years and on conditions determined by the Minister and specified in the instrument of appointment.
- (4) A member of a panel is, on the expiration of a term of office, eligible for reappointment.
- (5) Subject to subclause (6), if assessors are to sit with the Court in proceedings under Part 5, a Judge of the Court on the complaint must select one member from each of the panels to sit with the Court in the proceedings.
- (6) A member of a panel who has a personal or a direct or indirect pecuniary interest in a matter before the Court is disqualified from participating in the hearing of the matter.
- (7) If an assessor dies or is for any reason unable to continue with any proceedings, the Court constituted of the judicial officer who is presiding at the proceedings and the other assessor may, if the judicial officer so determines, continue and complete the proceedings.

## **Schedule 2—Transitional provisions**

### **1—General**

- (1) A person who held a licence as a land broker under the *Land Agents, Brokers and Valuers Act 1973* immediately before the commencement of this Act will be taken to have been registered as a conveyancer under this Act.
- (2) An approval, appointment or order in force under the *Land Agents, Brokers and Valuers Act 1973* immediately before the commencement of this Act in relation to a land broker or former land broker will be taken to be an approval, appointment or order in force under the corresponding provision of this Act.
- (3) A notice given or served under the *Land Agents, Brokers and Valuers Act 1973* in relation to a land broker or former land broker has effect as a notice given or served under the corresponding provision of this Act.
- (4) A reference in an Act or other instrument to a licensed land broker will be taken to be a reference to a conveyancer registered under this Act.

## 2—Mortgage financiers

(1) In this clause—

*mortgage financier* means a person who—

- (a) is—
  - (i) a conveyancer; or
  - (ii) an associate of a conveyancer; and
- (b) engages in mortgage financing;

*trust money*, in relation to a mortgage financier, means money received by a mortgage financier in the mortgage financier's capacity as such to which the mortgage financier is not wholly entitled at law and in equity.

(2) For the purposes of this clause, a person is an associate of another if—

- (a) they are partners; or
- (b) one is a spouse, domestic partner, parent or child of the other; or
- (c) they are both trustees or beneficiaries of the same trust, or one is a trustee and the other is a beneficiary of the same trust; or
- (d) one is a body corporate and the other is a director of the body corporate; or
- (e) one is body corporate and the other is a person who has a legal or equitable interest in five per cent or more of the share capital of the body corporate; or
- (f) a chain of relationships can be traced between them under any one or more of the above paragraphs.

(3) This clause applies—

- (a) to trust money received by a mortgage financier before the commencement of this Act; and
- (b) where trust money received by a mortgage financier was lent to another on the security of a mortgage before the commencement of this Act—to trust money received by the mortgage financier (whether before or after that commencement) by way of payment of principal or interest, or both, under that loan.

(4) Part 4 applies to a mortgage financier as if—

- (a) a reference in that Part to a conveyancer were a reference to a mortgage financier; and
- (b) a reference in that Part to trust money were a reference to trust money to which this clause applies.

(5) The power of the Governor to make regulations under this Act includes power to make regulations requiring mortgage financiers to provide specified information to prospective investors or regulating or making provision with respect to any other matter relating to mortgage financiers.

### 3—Special provisions relating to Growden Investments

- (1) A failure on the part of Growden Investments to disclose material facts with respect to the investment of trust money to which clause 2 applies will be taken to be a fiduciary default for the purposes of Part 4.
- (2) Subclause (1) applies with respect to any such failure on the part of Growden Investments (and accordingly the Commissioner must, to the extent that a relevant claim based on a failure on the part of Growden Investments to disclose material facts has been rejected, on application by the claimant, reassess the claim).
- (3) Despite clause 2(4), no interest is payable under section 39(2) with respect to an entitlement to compensation arising from fiduciary default on the part of Growden Investments.
- (4) In this clause—  
*Growden Investments* means G.C. Growden Pty. Ltd. and includes any associate of G.C. Growden Pty. Ltd. (as in existence at any time).
- (5) For the purposes of this clause, a person is an associate of G.C. Growden Pty. Ltd. if the person would be an associate of that person under clause 2 (assuming (if necessary for the purposes of this provision) the continued existence of that person and that company).

## Legislative history

### Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1994	86	<i>Conveyancers Act 1994</i>	15.12.1994	1.6.1995 ( <i>Gazette</i> 25.5.1995 p2198) except s 9—15.12.1996 (s 7(5) <i>Acts Interpretation Act 1915</i> )
1995	96	<i>Statutes Amendment (Sunday Auctions and Indemnity Fund) Act 1995</i>	7.12.1995	Pt 3 (s 5)—7.12.1995: s 2(1)
1996	34	<i>Statutes Amendment and Repeal (Common Expiation Scheme) Act 1996</i>	2.5.1996	Sch (cl 13)—3.2.1997 ( <i>Gazette</i> 19.12.1996 p1923)
1998	21	<i>Statutes Amendment (Consumer Affairs) Act 1998 as amended by 22/1998</i>	2.4.1998	Pt 5 (ss 12—15) and Sch (cl 3)—28.5.1998 ( <i>Gazette</i> 28.5.1998 p2292)
1998	22	<i>Statutes Amendment (Consumer Affairs) Amendment Act 1998</i>	2.4.1998	2.4.1998
1999	33	<i>Financial Sector Reform (South Australia) Act 1999</i>	17.6.1999	Sch (item 12)—1.7.1999 being the date specified under s 3(16) of the <i>Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999</i> of the Commonwealth as the transfer date for the purposes of that Act: s 2(2)
2000	4	<i>District Court (Administrative and Disciplinary Division) Amendment Act 2000</i>	20.4.2000	Sch 1 (cl 6)—1.6.2000 ( <i>Gazette</i> 18.5.2000 p2554)
2001	47	<i>Statutes Amendment (Consumer Affairs) Act 2001</i>	11.10.2001	Pt 3 (s 10)—1.11.2001 ( <i>Gazette</i> 25.10.2001 p4686)
2003	4	<i>Statutes Amendment and Repeal (National Competition Policy) Act 2003</i>	29.5.2003	Pt 2 (ss 4 & 5)—1.7.2003 ( <i>Gazette</i> 26.6.2003 p2811)
2004	26	<i>Conveyancers (Corporate Structures) Amendment Act 2004</i>	29.7.2004	1.12.2004 ( <i>Gazette</i> 28.10.2004 p4083)
2004	29	<i>Land Agents (Indemnity Fund-Growden Default) Amendment Act 2004</i>	29.7.2004	Pt 3 (s 8)—1.9.2004: s 2



2006	43	<i>Statutes Amendment (Domestic Partners) Act 2006</i>	14.12.2006	Pt 17 (ss 53—55)—1.6.2007 ( <i>Gazette</i> 26.4.2007 p1352)
2007	28	<i>Statutes Amendment (Real Estate Industry Reform) Act 2007</i>	2.8.2007	Pt 2 (ss 4—9)—28.7.2008 ( <i>Gazette</i> 3.7.2008 p3203)
2009	39	<i>Statutes Amendment and Repeal (Fair Trading) Act 2009</i>	23.7.2009	Pt 4 (ss 9 & 10)—3.9.2009 ( <i>Gazette</i> 3.9.2009 p4367)
2013	16	<i>Statutes Amendment (Directors' Liability) Act 2013</i>	23.5.2013	Pt 11 (s 15)—17.6.2013 ( <i>Gazette</i> 6.6.2013 p2498)
2013	17	<i>Statutes Amendment (Real Estate Reform Review and Other Matters) Act 2013</i>	23.5.2013	Pt 2 (s 4)—21.11.2013 ( <i>Gazette</i> 21.11.2013 p4278)
2013	71	<i>Statutes Amendment (Occupational Licensing) Act 2013</i>	21.11.2013	<b>Pt 3 (ss 13, 14 &amp; 16)—1.11.2014 (<i>Gazette</i> 9.10.2014 p6095); s 15—21.11.2015 (<i>Gazette</i> 29.10.2015 p4742)</b>

## Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Pt 1		
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>1.7.2003</i>
s 3		
s 3(1)	s 3 redesignated as s 3(1) by 26/2004 s 4(2)	1.12.2004
close associate	inserted by 26/2004 s 4(1)	1.12.2004
domestic partner	inserted by 43/2006 s 53(1)	1.6.2007
legal practitioner	substituted by 4/2003 s 4	1.7.2003
money	amended by 33/1999 Sch (item 12(a))	1.7.1999
prescribed relative	amended by 43/2006 s 53(2)	1.6.2007
spouse	substituted by 43/2006 s 53(3)	1.6.2007
s 3(2)—(4)	inserted by 26/2004 s 4(2)	1.12.2004
Pt 2		
s 5	amended by 21/1998 Sch cl 3 as substituted by 22/1998 s 3 <b>amended by 71/2013 s 13</b>	28.5.1998 <b>1.11.2014</b>
s 6		
s 6(1)	s 6 redesignated as s 6(1) by 47/2001 s 10	1.11.2001
s 6(2)—(5)	inserted by 47/2001 s 10	1.11.2001
s 7		
s 7(1)	amended by 21/1998 s 12 amended by 4/2003 s 5(a) amended by 28/2007 s 4(1) amended by 39/2009 s 9	28.5.1998 1.7.2003 28.7.2008 3.9.2009
s 7(2)	amended by 4/2003 s 5(b)	1.7.2003

**Conveyancers Act 1994—1.11.2014 to 20.11.2015**

## Legislative history

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	amended by 26/2004 s 5(1)	1.12.2004
	amended by 28/2007 s 4(2)	28.7.2008
s 7(3)	substituted by 26/2004 s 5(2)	1.12.2004
s 7(4) and (5)	inserted by 26/2004 s 5(2)	1.12.2004
s 7A	inserted by 21/1998 s 13	28.5.1998
s 7A(2)	amended by 4/2000 s 9(1) (Sch 1 cl 6(a))	1.6.2000
s 7A(5)	<i>deleted by 4/2000 s 9(1) (Sch 1 cl 6(b))</i>	<i>1.6.2000</i>
s 7A(6)	<i>deleted by 4/2000 s 9(1) (Sch 1 cl 6(c))</i>	<i>1.6.2000</i>
<b>Pt 2A</b>	<b>inserted by 71/2013 s 14</b>	<b>1.11.2014</b>
Pt 3		
ss 9A and 9B	inserted by 26/2004 s 6	1.12.2004
s 10	amended by 21/1998 Sch cl 3 as substituted by 22/1998 s 3	28.5.1998
	amended by 26/2004 s 7	1.12.2004
s 11	amended by 21/1998 Sch cl 3 as substituted by 22/1998 s 3	28.5.1998
	amended by 26/2004 s 8	1.12.2004
s 12	amended by 21/1998 Sch cl 3 as substituted by 22/1998 s 3	28.5.1998
Pt 4		
s 14		
s 14(1)		
auditor	amended by 28/2007 s 5	28.7.2008
s 15		
s 15(1)	amended by 21/1998 Sch cl 3 as substituted by 22/1998 s 3	28.5.1998
	amended by 33/1999 Sch (item 12(b))	1.7.1999
s 15(2) and (3)	amended by 21/1998 Sch cl 3 as substituted by 22/1998 s 3	28.5.1998
s 15(4)	amended by 33/1999 Sch (item 12(c))	1.7.1999
s 17	amended by 33/1999 Sch (item 12(d))	1.7.1999
s 18		
s 18(3)	amended by 33/1999 Sch (item 12(e))	1.7.1999
s 18(4)	amended by 21/1998 Sch cl 3 as substituted by 22/1998 s 3	28.5.1998
s 18(5)	amended by 21/1998 Sch cl 3 as substituted by 22/1998 s 3	28.5.1998
	amended by 33/1999 Sch (item 12(f))	1.7.1999
s 20	amended by 33/1999 Sch (item 12(g))	1.7.1999
s 22		
s 22(2)	<i>deleted by 4/2000 s 9(1) (Sch 1 cl 6(d))</i>	<i>1.6.2000</i>
s 23		
s 23(1)—(4)	amended by 21/1998 Sch cl 3 as substituted by 22/1998 s 3	28.5.1998
s 24		

s 24(1)	amended by 71/2013 s 15(1)	uncommenced—not incorporated
s 24(1a)	inserted by 71/2013 s 15(2)	uncommenced—not incorporated
s 24(3)	amended by 21/1998 Sch cl 3 as substituted by 22/1998 s 3	28.5.1998
s 24(4)	amended by 71/2013 s 15(3)	uncommenced—not incorporated
s 26	amended by 71/2013 s 15(3)	uncommenced—not incorporated
s 26(2)	amended by 21/1998 Sch cl 3 as substituted by 22/1998 s 3	28.5.1998
s 26(3)	amended by 33/1999 Sch (item 12(h))	1.7.1999
s 27	amended by 21/1998 Sch cl 3 as substituted by 22/1998 s 3	28.5.1998
s 28	amended by 33/1999 Sch (item 12(i))	1.7.1999
s 28(1) and (2)	amended by 21/1998 Sch cl 3 as substituted by 22/1998 s 3	28.5.1998
s 29	amended by 33/1999 Sch (item 12(j))	1.7.1999
s 30	amended by 21/1998 Sch cl 3 as substituted by 22/1998 s 3	28.5.1998
s 31	amended by 33/1999 Sch (item 12(k))	1.7.1999
s 31(1)	amended by 28/2007 s 6(1)	28.7.2008
s 31(2)	substituted by 96/1995 s 5	7.12.1995
s 31(2)	amended by 28/2007 s 6(2)	28.7.2008
s 31(2)	amended by 17/2013 s 4(1)—(3)	21.11.2013
s 32	substituted by 28/2007 s 7	28.7.2008
s 34	substituted by 28/2007 s 8(1)	28.7.2008
s 34(1)	amended by 28/2007 s 8(1)	28.7.2008
s 34(1a)	inserted by 28/2007 s 8(2)	28.7.2008
s 34(2)	amended by 28/2007 s 8(3)	28.7.2008
s 34(3)	substituted by 28/2007 s 8(4)	28.7.2008
s 34(4) and (5)	inserted by 28/2007 s 8(4)	28.7.2008
s 37	deleted by 4/2000 s 9(1) (Sch 1 cl 6(e))	1.6.2000
s 45	amended by 26/2004 s 9	1.12.2004
s 45(1)	amended by 28/2007 s 9	28.7.2008
Pt 5		
s 48	amended by 21/1998 s 14	28.5.1998
s 49		

## Conveyancers Act 1994—1.11.2014 to 20.11.2015

### Legislative history

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s 49(1)	amended by 21/1998 Sch cl 3 as substituted by 22/1998 s 3	28.5.1998
	<b>amended by 71/2013 s 16</b>	<b>1.11.2014</b>
s 50		
s 50(1) and (2)	amended by 21/1998 Sch cl 3 as substituted by 22/1998 s 3	28.5.1998
Pt 6		
s 52		
s 52(3)	amended by 33/1999 Sch (item 12(l))	1.7.1999
s 54		
s 54(2a)	inserted by 39/2009 s 10	3.9.2009
s 56	amended by 21/1998 Sch cl 3 as substituted by 22/1998 s 3	28.5.1998
s 61	<i>deleted by 16/2013 s 15</i>	<i>17.6.2013</i>
s 63		
s 63(1)	substituted by 21/1998 Sch cl 3 as substituted by 22/1998 s 3	28.5.1998
s 67		
s 67(2)	amended by 34/1996 s 4 (Sch cl 13)	3.2.1997
	amended by 21/1998 Sch cl 3 as substituted by 22/1998 s 3	28.5.1998
Sch 1		
cl (5)	amended by 21/1998 s 15	28.5.1998
Sch 2		
cl 2		
cl 2(1)		
<i>spouse</i>	<i>deleted by 43/2006 s 54(1)</i>	<i>1.6.2007</i>
cl 2(2)	amended by 43/2006 s 54(2)	1.6.2007
cl 3	inserted by 29/2004 s 8	1.9.2004

## Transitional etc provisions associated with Act or amendments

### *Statutes Amendment (Sunday Auctions and Indemnity Fund) Act 1995, Sch*

#### (1)—Validation of past payments out of fund

Payments out of the indemnity fund maintained under Part 3 Division 3 of the *Land Agents Act 1994* before the commencement of this Act are to be regarded as having been lawfully made if made for a purpose of a kind referred to in section 29 of the *Land Agents Act 1994* as amended by this Act or section 31 of the *Conveyancers Act 1994* as amended by this Act.

### *Statutes Amendment and Repeal (Common Expiation Scheme) Act 1996*

#### 5—Transitional provision

An Act repealed or amended by this Act will continue to apply (as in force immediately prior to the repeal or amendment coming into operation) to an expiation notice issued under the repealed or amended Act.

## ***Conveyancers (Corporate Structures) Amendment Act 2004, Sch 1***

### **1—Interpretation**

In this Schedule—

*principal Act* means the *Conveyancers Act 1994*.

### **2—Transitional provision**

A constitution of a company that is a registered conveyancer that conforms to the requirements of subsection (3) of section 7 of the principal Act immediately before the commencement of this Act will be taken to conform to the requirements of that subsection as enacted by this Act.

## ***Statutes Amendment (Domestic Partners) Act 2006***

### **55—Transitional provision**

From the commencement of this section, a reference to a *prescribed relative, spouse* or *putative spouse* in the constitution of a company that is registered as a conveyancer under the *Conveyancers Act 1994* will, where the context so admits or requires, be taken to include a reference to a *domestic partner*.

## **Historical versions**

Reprint No 1—7.12.1995

Reprint No 2—3.2.1997

Reprint No 3—28.5.1998

Reprint No 4—1.7.1999

Reprint No 5—1.6.2000

Reprint No 6—1.11.2001

Reprint No 7—1.7.2003

1.9.2004

1.12.2004

1.6.2007

28.7.2008

3.9.2009

17.6.2013

21.11.2013