

South Australia

# Conveyancers (Corporate Structures) Amendment Act 2004

An Act to amend the *Conveyancers Act 1994*.

---

## Contents

### Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Amendment provisions

### Part 2—Amendment of *Conveyancers Act 1994*

- 4 Amendment of section 3—Interpretation
- 5 Amendment of section 7—Entitlement to be registered
- 6 Insertion of sections 9A and 9B
  - 9A Company conveyancer's business to be properly managed and supervised
  - 9B Improper directions etc relating to conveyancing
- 7 Amendment of section 10—Non-compliance with constitution
- 8 Amendment of section 11—Alteration of constitution
- 9 Amendment of section 45—Cause for disciplinary action

### Schedule 1—Transitional provisions

- 1 Interpretation
  - 2 Transitional provision
- 

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

## Part 1—Preliminary

### 1—Short title

This Act may be cited as the *Conveyancers (Corporate Structures) Amendment Act 2004*.

### 2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

### 3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

## Part 2—Amendment of *Conveyancers Act 1994*

### 4—Amendment of section 3—Interpretation

- (1) Section 3, before the definition of *Commissioner* insert:  
*close associate*—see subsection (2);
- (2) Section 3—after its present contents as amended by this section (now to be designated as subsection (1)) insert:
  - (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.

### 5—Amendment of section 7—Entitlement to be registered

- (1) Section 7(2)—after paragraph (a) insert:
  - (ab) no director of the company is a prescribed person; and

- (2) Section 7(3)—delete subsection (3) and substitute:
- (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*.

## **6—Insertion of sections 9A and 9B**

Before section 10 insert:

### **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.

## **7—Amendment of section 10—Non-compliance with constitution**

Section 10—delete "memorandum and articles of association" and substitute:  
constitution

## **8—Amendment of section 11—Alteration of constitution**

Section 11—delete "memorandum or articles of association so that the memorandum and articles cease" and substitute:

constitution so that the constitution ceases

## **9—Amendment of section 45—Cause for disciplinary action**

Section 45(1)—after paragraph (c) insert:

- (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

## **Schedule 1—Transitional provisions**

### **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.