

TASMANIA

CONVEYANCING BILL 2004

CONTENTS

PART 1 – PRELIMINARY

1. Short title
2. Commencement
3. Interpretation

PART 2 – REGULATION OF CONVEYANCERS

Division 1 – Licences

4. Conveyancers to be licensed
5. Ineligibility to be licensed
6. Application
7. Character report
8. Grant or refusal of application
9. Conditions of licence
10. Grant of licence to unqualified person
11. Validity of licence
12. Form and content of licences

Division 2 – Professional indemnity insurance

13. Requirement for professional indemnity insurance

Division 3 – Duties of conveyancers

14. Conflict of interest

15. Prohibition on commissions
16. Conduct of other businesses

PART 3 – TRUST ACCOUNTS

Division 1 – Trust accounts

17. Trust accounts
18. Protection of trust money
19. Accounting documents to be kept
20. Financial documents

Division 2 – Receivers and managers

21. Appointment of receiver or manager
22. Term of appointment of receiver or manager
23. Remuneration of receivers and managers
24. Duty of receiver
25. Receiver may require delivery of trust money and supply of information
26. Court may give directions, &c., to receiver or manager
27. Powers of manager
28. Obligations of manager
29. Receiver and manager to report to Director

Division 3 – Audit of trust accounts

30. Audit of trust accounts

Division 4 – Duties of receivers, managers and auditors

31. Confidentiality
32. Failing to comply with requirement of receiver, &c.
33. Obtaining information for purposes of audit

Division 5 – Annual returns

34. Annual returns

PART 4 – DISCIPLINARY PROVISIONS

35. Power of Director to receive complaints
36. Powers of authorised officers

37. Grounds for disciplinary action
38. Suspension or cancellation of licence on illness or infirmity
39. Disciplinary action
40. Ancillary powers of Director
41. Contravention of order
42. Reviews by Magistrates Court (Administrative Appeals Division)

PART 5 – MISCELLANEOUS AND SUPPLEMENTAL

43. Delegations
44. Register of conveyancers
45. False or misleading information
46. Continuing offence
47. Evidentiary provisions
48. Regulations
49. Administration of Act

PART 6 – AUCTIONEERS AND REAL ESTATE AGENTS ACT 1991 AMENDED

50. Principal Act
51. Section 4 amended (Interpretation)
52. Section 86 amended (Auctioneers and Real Estate Agents Guarantee Fund)
53. Section 87 amended (Level of Guarantee Fund)
54. Section 89 amended (Use of surplus money in Guarantee Fund)
55. Section 94 amended (Right to claim compensation)

PART 7 – LEGAL PROFESSION ACT 1993 AMENDED

56. Principal Act
57. Section 54 amended (Offence to practise unless admitted)

CONVEYANCING BILL 2004

(Brought in by the Minister for Justice and Industrial Relations, the Honourable Judith Louise Jackson)

A BILL FOR

An Act to regulate the business of conveyancing, to amend the *Auctioneers and Real Estate Agents Act 1991* so as to provide for a guarantee fund for claims against conveyancers and also to amend the *Legal Profession Act 1993*

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 - PRELIMINARY

Short title

1. This Act may be cited as the *Conveyancing Act 2004*.

Commencement

2. This Act commences on a day to be proclaimed.

Interpretation

3. (1) In this Act –

“approved institution” has the same meaning as in the *Auctioneers and Real Estate Agents Act 1991*;

“authorised officer” means an authorized officer within the meaning of the *Consumer Affairs Act 1988*;

“commission” means any monetary consideration or any other form of consideration to which a monetary value may be assigned;

“conveyancer” means a person who is not a legal practitioner and who carries on a business that involves the preparation for fee or reward of –

- (a) dealings within the meaning of the *Land Titles Act 1980*; or
- (b) instruments for the purposes of any other Act or law as provided by an order made under subsection (2);

“Court” means the Magistrates Court (Administrative Appeals Division);

“Director” means the Director of Consumer Affairs and Fair Trading;

“document” means any record of information, and includes –

- (a) anything on which there is writing; and
- (b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and

- (c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else; and
- (d) a map, plan, drawing or photograph –
and a reference in this Act to a document includes a reference to –
- (e) any part of the document; and
- (f) any copy, reproduction or duplicate of the document or of any part of the document; and
- (g) any part of such a copy, reproduction or duplicate;

“fiduciary default” means –

- (a) a defalcation, misappropriation or misapplication of trust money held by a conveyancer; or
- (b) the failure of a conveyancer to account for trust money held by the conveyancer; or
- (c) a breach of any duty by a conveyancer as trustee in respect of trust money held by the conveyancer;

“legal practitioner” has the same meaning as in the *Legal Profession Act 1993*;

“licence” means a licence granted and in force under this Act to carry on business as a conveyancer;

“prescribed offence” means –

- (a) an offence involving dishonesty, whether committed in Tasmania or elsewhere; or
- (b) an offence involving violence, whether committed in Tasmania or elsewhere; or
- (c) an offence under Part V of the *Poisons Act 1971* or a similar offence under the law of another State; or
- (d) an offence relating to the possession and use of a firearm, or any other weapon, that would disqualify the applicant from holding a licence under the *Firearms Act 1996*; or
- (e) an offence against this Act;

“professional indemnity insurance” means insurance against civil liability arising in connection with carrying on business as a conveyancer (whether the liability arises from an act or omission on the part of the insured conveyancer or on the part of another person);

“regulations” means regulations made and in force under this Act;

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

“trust money”, in respect of a conveyancer, means money –

- (a) that is received by the conveyancer on behalf of another person when acting as a conveyancer; and
- (b) to which the conveyancer is not wholly entitled.

(2) The Minister may, by order published in the *Gazette*, extend the application of this Act to instruments prepared for the purposes of any other Act or law.

PART 2 – REGULATION OF CONVEYANCERS***Division 1 – Licences*****Conveyancers to be licensed**

4. A person who is not a legal practitioner must not carry on business as a conveyancer for fee or reward unless he or she holds a licence.

Penalty: Fine not exceeding 200 penalty units or imprisonment for a term not exceeding 2 years, or both.

Ineligibility to be licensed

5. (1) A person is ineligible to hold a licence if –

- (a) he or she does not hold the prescribed qualifications and have the prescribed experience; or
- (b) he or she is an undischarged bankrupt or a person who has made an arrangement with creditors that has not been carried out; or
- (c) his or her licence has been suspended or cancelled under Part 4; or
- (d) he or she is disqualified from acting as a legal practitioner under the *Legal Profession Act 1993*; or
- (e) he or she holds a licence under the *Auctioneers and Real Estate Agents Act 1991*; or
- (f) he or she has, within the preceding period of 5 years, been convicted in Tasmania or

elsewhere of an indictable offence and sentenced to –

- (i) imprisonment for a term or terms in the aggregate of 3 years or more; or
- (ii) a period of detention for 3 years or more under a restriction order made under section 75(1)(e) of the *Sentencing Act 1997* or an equivalent order made in any jurisdiction outside Tasmania.

(2) For the purposes of subsection (1)(f) –

- (a) a conviction in respect of which a free pardon has been granted is to be disregarded; and
- (b) a person who is on parole is taken to be serving a sentence of imprisonment.

Application

6. (1) A person who is eligible to hold a licence may apply to the Director for a licence.

(2) An application for a licence –

- (a) is to be in an approved form; and
- (b) is to be accompanied by the prescribed fee.

Character report

7. On receipt of an application for a licence, the Director must –

- (a) forward the application to the Commissioner of Police; and

- (b) request the Commissioner of Police to provide a report as to whether, in the opinion of the Commissioner, the applicant is a fit and proper person to hold a licence.

Grant or refusal of application

8. The Director may refuse to grant an application for a licence where he or she is satisfied that –

- (a) the applicant is not a fit and proper person to hold a licence having regard to the report under section 7(b); or
- (b) the applicant has been convicted of a prescribed offence; or
- (c) if the applicant were the holder of a licence –
 - (i) there would be grounds for disciplinary action against the applicant under section 37; or
 - (ii) there would be grounds for suspension or cancellation of the licence under section 38.

Conditions of licence

9. A licence may be granted subject to conditions, including (but not limited to) conditions of the following kind:

- (a) a condition prohibiting the licensee from acting as a conveyancer in specified kinds of transactions;

- (b) a condition prohibiting the licensee from acting as a conveyancer except in specified kinds of transactions;
- (c) a condition requiring the licensee to undertake or complete a specified course of studies within a specified period of time;
- (d) a condition requiring the licensee to undertake, by way of professional development, specified further education or training during the term of the licence.

Grant of licence to unqualified person

10. If, during a period of 2 years after the commencement of this Act, the Director is satisfied that a person holds qualifications comparable to the prescribed qualifications and has experience comparable to the prescribed experience, the Director may, notwithstanding section 5, grant a licence to that person, but in that case the Director must impose conditions on the type of work that he or she may undertake.

Validity of licence

11. (1) In this section –

“**conveyancer**” includes a conveyancer whose licence has been suspended.

(2) A licence is valid for the period of 3 years commencing on the date on which it is granted.

(3) A licence ceases to be valid if –

- (a) the conveyancer surrenders it to the Director;
- or

- (b) it is suspended or cancelled in accordance with this Act; or
- (c) the conveyancer dies; or
- (d) the conveyancer ceases to be qualified to hold the licence.

Form and content of licences

12. (1) A licence –

- (a) is to be in a form approved by the Director; and
- (b) is to specify the full name and address of the conveyancer and, where applicable, the business name under which he or she proposes to carry on business as a conveyancer.

(2) If there is any change in any matter specified in a licence under subsection (1)(b), the conveyancer must, within 14 days after the change, notify the Director of the change in writing.

Penalty: Fine not exceeding 10 penalty units.

Division 2 – Professional indemnity insurance

Requirement for professional indemnity insurance

13. (1) A person must, at all times when carrying on business as a conveyancer, be insured under a policy of professional indemnity insurance approved by the Director to a prescribed minimum amount.

(2) A conveyancer's licence is taken to be suspended for any period for which the conveyancer is not insured as required under subsection (1).

Division 3 - Duties of conveyancers

Conflict of interest

14. (1) A conveyancer must –

- (a) disclose any conflict of interest arising in the course of his or her work to any person who may be affected by the matter; and
- (b) take all reasonable steps to avoid any such conflict of interest.

Penalty: Fine not exceeding 100 penalty units.

(2) A person who has suffered loss arising from a conflict of interest on the part of a conveyancer may make an application for compensation under section 94(1) of the *Auctioneers and Real Estate Agents Act 1991*.

(3) For the purposes of this section, a conveyancer is taken to have a conflict of interest in respect of a transaction if –

- (a) the conveyancer is obliged, in fulfilling his or her duty to one party to the transaction, to withhold information or advice from another party that, by reason of the conveyancer's duty to that other party, he or she should not withhold; or
- (b) for any other reason, the duties owed by the conveyancer to one party to the transaction conflict with the duties owed by the conveyancer to another party to the transaction; or

- (c) the conveyancer has a personal or pecuniary interest in the transaction arising otherwise than from his or her services as a conveyancer.

Prohibition on commissions

15. A conveyancer must not receive from any person other than a party to the transaction in respect of which the conveyancer is acting, or pay to any such person, a commission in respect of work carried out as a conveyancer.

Penalty: Fine not exceeding 100 penalty units.

Conduct of other businesses

16. The regulations may prohibit a conveyancer from being employed in a class of business that is prescribed in the regulations.

PART 3 – TRUST ACCOUNTS***Division 1 – Trust accounts*****Trust accounts**

17. (1) A conveyancer must –

- (a) maintain a trust account in an approved institution; and
- (b) deposit any money received for, or on behalf of, a client in that trust account; and
- (c) keep that money in that trust account until it is paid as the client directs.

Penalty: Fine not exceeding 100 penalty units.

(2) A conveyancer must not use money in a trust account of the conveyancer –

- (a) for the payment of debts of the conveyancer; or
- (b) for the payment of any creditor of the conveyancer; or
- (c) for an attachment or execution under an order of a court at the instance of any creditor of the conveyancer.

Penalty: Fine not exceeding 100 penalty units.

(3) The Director may, by notice in writing, require the holder or previous holder of a licence to provide any information that the Director considers necessary to investigate whether or not an offence has been committed under this section.

(4) A conveyancer who becomes entitled to money held in the conveyancer's trust account in or towards satisfaction of the conveyancer's fees, costs or disbursements must, as soon as practicable and in any event within 3 months, transfer the money to an account maintained by the conveyancer for receipts other than trust money.

Protection of trust money

18. (1) The Director may, if he or she considers it necessary to do so to protect trust money held by a conveyancer, serve on an authorised deposit-taking institution in which the conveyancer maintains a trust account a notice, signed by the Director, that –

- (a) gives details of the trust account; and
- (b) instructs the authorised deposit-taking institution that, until the Director otherwise directs, it is not to permit any withdrawal to be made from the account without the Director's written consent.

(2) An authorised deposit-taking institution must comply with an instruction contained in a notice served on it under subsection (1).

Penalty: Fine not exceeding 50 penalty units.

Accounting documents to be kept

19. (1) A conveyancer must keep documents which –

- (a) correctly record and explain the conveyancer's business transactions; and

- (b) correctly record and explain the conveyancer's receipts and payments of trust money; and
- (c) enable the conveyancer's trust accounts and accounting records to be properly audited.

(2) A conveyancer must keep the documents referred to in this section for a period of 6 years after the date of the last relevant transaction.

Penalty: Fine not exceeding 20 penalty units.

Financial documents

20. (1) The Director, by notice in writing, may require the manager of an authorised deposit-taking institution to –

- (a) provide written information as to –
 - (i) whether or not there is, or was, any trust account in the name of a specified person; and
 - (ii) the address at which any document relating to that trust account is kept; and
- (b) produce for inspection to an authorised person any document relating to that trust account; and
- (c) allow an authorised person to inspect, and take copies of, or extracts from, any such document.

(2) A manager of an authorised deposit-taking institution must comply with a requirement under subsection (1).

Penalty: Fine not exceeding 20 penalty units.

(3) A requirement under subsection (1)(b) is taken to have been contravened if the document is not produced at the address given by the authorised deposit-taking institution under subsection (1)(a)(ii) as the address at which the document is kept.

Division 2 – Receivers and managers

Appointment of receiver or manager

21. (1) The Director, in accordance with this section, may appoint a receiver or manager for a conveyancer's business if –

- (a) the conveyancer has become bankrupt or insolvent or has taken the benefit, as a debtor, of a law relating to bankrupt or insolvent debtors; or
- (b) there are grounds for the exercise of the Director's powers under section 38; or
- (c) the conveyancer's licence has been cancelled or suspended under this Act; or
- (d) the conveyancer has died or disappeared; or
- (e) the Director is of the opinion that a fiduciary default has been, or may have been, committed in respect of the conveyancer's trust account; or
- (f) the Director is of the opinion that the conveyancer has acted contrary to this Act or has otherwise acted unlawfully, improperly or negligently in the conduct of his or her business; or
- (g) the conveyancer has requested it.

(2) For the purposes of subsection (1), the Director may appoint –

- (a) a person who holds a licence under this Act, other than the conveyancer to whom subsection (1) relates; or
- (b) a legal practitioner –

to manage the conveyancer's business for such period as the Director specifies or to carry on that business with a view to winding it up in the interests of the conveyancer's clients.

(3) For the purposes of subsection (1), the Director may appoint a suitable person to be a receiver of the trust money held by the conveyancer.

(4) If a receiver is appointed, the Director may serve on an authorised deposit-taking institution in which the conveyancer maintains a trust account a notice that instructs the institution not to permit any withdrawal to be made from the trust account except by, or with the authority of, the receiver.

(5) An authorised deposit-taking institution must comply with an instruction contained in a notice served on it under subsection (4).

Penalty: Fine not exceeding 50 penalty units.

Term of appointment of receiver or manager

22. The appointment of a receiver or manager is to be on such terms and conditions as are specified by the Director in the instrument of appointment but may be terminated at any time by the Director.

Remuneration of receivers and managers

23. A receiver or manager appointed under this Division is entitled to be paid by way of remuneration, and in repayment of any cost incurred by him or her, such amount as is approved by the Director.

Duty of receiver

24. A receiver appointed in respect of trust money held by a conveyancer must –

- (a) take control of any trust money in the conveyancer's possession or under his or her control; and
- (b) gather in any trust money not in the conveyancer's possession or under his or her control; and
- (c) distribute that money to any person entitled to it, as and when he or she becomes entitled to it, and in the meantime act as trustee of that money in the same capacity as that in which the conveyancer was acting, and subject to the same obligations; and
- (d) report to the Director any insufficiency in respect of the trust money.

Penalty: Fine not exceeding 20 penalty units.

Receiver may require delivery of trust money and supply of information

25. (1) A receiver appointed in respect of trust money held by a conveyancer may require the conveyancer or any other person –

- (a) to deliver up to the receiver –
 - (i) all trust money; and
 - (ii) all accounts and documents relating to that money –

in his or her possession or under his or her control; and
- (b) to give to the receiver any other information in his or her possession concerning that trust money.

(2) A conveyancer or other person must comply with a requirement made by a receiver under subsection (1).

Penalty: Fine not exceeding 50 penalty units.

Court may give directions, &c., to receiver or manager

26. The Court may, on the application of –

- (a) a receiver appointed in respect of trust money held by a conveyancer; or
- (b) a manager appointed to manage a conveyancer's business –

authorise the receiver or manager to do such things as the Court thinks necessary for the administration of the trust money, the management of the conveyancer's business or otherwise for the purposes of this Act, and may give any directions considered necessary or desirable for that purpose.

Powers of manager

27. (1) A manager appointed to manage a conveyancer's business may do all acts and things in respect of that business that the conveyancer might lawfully have done.

(2) Without limiting the generality of subsection (1), a manager may, in his or her own name or in the name of the conveyancer –

- (a) charge fees and recover disbursements for work undertaken for clients of the conveyancer in the course of the conveyancer's business; and
- (b) pay from the assets of the business any outgoings payable in connection with the business; and
- (c) administer the trust account of the conveyancer and pay money from that account as and when a person becomes entitled to it.

Obligations of manager

28. A manager appointed to manage a conveyancer's business must, in the course of managing the business, perform all functions and carry out all duties that the conveyancer would have been required to perform or carry out by this Act or any other law, or by any agreement.

Receiver and manager to report to Director

29. A receiver or manager appointed under this Division must report to the Director when required to do so by the Director and the report is to contain such information relating to the business of the relevant conveyancer as the Director requires.

Penalty: Fine not exceeding 20 penalty units.

Division 3 – Audit of trust accounts

Audit of trust accounts

30. (1) A conveyancer who is required to maintain a trust account must arrange for the trust account to be audited in accordance with this section within 2 months after 30 June in each year.

Penalty: Fine not exceeding 100 penalty units.

(2) An audit is to be carried out –

(a) by a person who is a member of –

(i) the Institute of Chartered Accountants;
or

(ii) the Australian Society of Certified Practising Accountants; or

(iii) the National Institute of Accountants;
and

(b) in accordance with any requirements that the Director determines relating to the matters to be examined.

(3) The auditor is to provide the conveyancer with a certified report of the audit, stating whether the conveyancer has, in the opinion of the auditor, kept –

(a) proper accounting documents in respect of the trust account as required under section 19;
and

(b) such statements as are adequate to explain the financial transactions of the trust account

both during and at the end of the preceding financial year.

(4) If the Director considers it appropriate to do so, the Director may, by notice in writing given to a conveyancer, receiver or manager, require the conveyancer, receiver or manager to arrange for any trust account maintained by the conveyancer to be audited within such period as the Director specifies and at the expense of the conveyancer.

(5) An audit required by the Director under this section is to provide such information as the Director considers appropriate for the purposes of this Act.

(6) A conveyancer, receiver or manager must comply with a requirement under this section.

Penalty: Fine not exceeding 100 penalty units.

Division 4 – Duties of receivers, managers and auditors

Confidentiality

31. (1) A receiver, manager or auditor appointed in respect of a conveyancer's business must not divulge information that has come to his or her knowledge in the course of performing functions under this Act except –

- (a) to the conveyancer; or
- (b) to the Director; or
- (c) as otherwise required by law.

Penalty: Fine not exceeding 20 penalty units.

(2) A person engaged in the administration of this Act must not divulge information disclosed in a report provided under this Part except –

- (a) for the purpose of consideration of the report by the Director; or
- (b) as is otherwise necessary for the proper administration of this Act; or
- (c) as is otherwise permitted or required by law.

Penalty: Fine not exceeding 20 penalty units.

Failing to comply with requirement of receiver, &c.

32. A person must not –

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

Penalty: Fine not exceeding 50 penalty units.

Obtaining information for purposes of audit

33. (1) An auditor employed by a conveyancer under section 30 may require the conveyancer or any other person who is able to do so –

- (a) to produce all the accounts (whether or not trust accounts) relating to the business of the conveyancer and all documents relating to those accounts; and

- (b) to provide any relevant information relating to the operation of the accounts.

(2) The manager or other principal officer of an authorised deposit-taking institution in 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 under subsection (1), disclose every such account, and provide any documents relating to that account, as required by the auditor.

Penalty: Fine not exceeding 50 penalty units.

(3) A person who is required by this section to produce documents to an auditor must permit the auditor to make a copy of the whole, or any part, of those documents.

Penalty: Fine not exceeding 20 penalty units.

(4) In this section –

“**conveyancer**” includes a former conveyancer;

“**document**” includes, but is not limited to, a document required to be kept under section 19 in respect of the receipt and disposition of trust money.

Division 5 – Annual returns

Annual returns

34. (1) A conveyancer must, before 30 September in each year, provide the Director with a return for the period ending on 30 June in that year.

(2) The return is to contain any information that the Director requires and, in particular –

- (a) the name and location of any trust account in which trust money has been deposited; and
- (b) the total amount of all contributions to the trust account; and
- (c) a statement of the balance of the trust account; and
- (d) a copy of the relevant report prepared under section 30(3).

(3) The Director may, in writing, require a conveyancer to provide further and better particulars of any information referred to in subsection (2) and the conveyancer must, within a reasonable period specified by the Director, comply with the requirement.

Penalty: Fine not exceeding 20 penalty units.

(4) If a conveyancer fails to comply with this section, his or her licence is taken to be suspended until he or she provides a return in accordance with this section.

PART 4 – DISCIPLINARY PROVISIONS

Power of Director to receive complaints

35. (1) The Director may receive a complaint with respect to the conduct of a conveyancer under this Act.

(2) On receipt of a complaint, the Director must consider whether there are grounds for disciplinary action against the conveyancer and, for that purpose, may conduct such investigation as he or she thinks fit.

(3) If the Director considers that the public interest so requires, the Director may suspend a conveyancer's licence during the investigation.

Powers of authorised officers

36. An authorised officer has the same powers of entry to premises and obtaining documents and other information as are conferred by sections 30 and 31 of the *Fair Trading Act 1990*, and the offences and penalties provided by section 32 of that Act apply accordingly.

Grounds for disciplinary action

37. There are grounds for disciplinary action against a conveyancer if –

- (a) he or she has acted contrary to any provision of this Act; or
- (b) he or she has contravened a condition of his or her licence; or
- (c) his or her licence was obtained through fraud or by mistake; or

- (d) he or she has contravened any rules of conduct prescribed in the regulations; or
- (e) he or she has acted unlawfully, improperly, negligently or unfairly in the course of carrying on, or being employed or otherwise engaged in, the business of a conveyancer; or
- (f) he or she has been found guilty of a prescribed offence; or
- (g) he or she is ineligible to hold a licence as mentioned in section 5; or
- (h) he or she has acted contrary to the *Fair Trading Act 1990*.

Suspension or cancellation of licence on illness or infirmity

38. Where the Director is satisfied, on receiving reports from 2 legally-qualified medical practitioners, that, owing to physical or mental illness or infirmity, it is in the public interest that a conveyancer should cease to act as such, the Director may –

- (a) cancel the conveyancer's licence; or
- (b) suspend the conveyancer's licence for a specified period or until any conditions imposed by the Director are met.

Disciplinary action

39. (1) Where the Director determines that there are grounds for taking disciplinary action against a conveyancer, the Director may, by order, do one or more of the following:

- (a) cancel the conveyancer's licence;
- (b) suspend the conveyancer's licence for a specified period or until any conditions imposed by the Director are met;
- (c) reprimand the conveyancer;
- (d) require the conveyancer to pay the reasonable costs of any hearing conducted by the Director or any investigation conducted for the purposes of the hearing, or both.

(2) An order may provide that it is to have effect at a specified time and impose conditions as to the conduct of the conveyancer who is subject to the order, or his or her business, until that time.

(3) An order takes effect on the day on which it is served on the conveyancer to whom it relates.

(4) If an amount ordered to be paid by a conveyancer as costs under subsection (1)(d) is not paid as directed by the order, that amount may be recovered by the Director as a debt due to the Crown in any court of competent jurisdiction.

Ancillary powers of Director

40. For the purpose of exercising his or her powers under this Part, the Director has the same powers as the Court to administer an oath and compel the attendance of witnesses and production of documents.

Contravention of order

41. If a person carries on business as a conveyancer in contravention of an order of the Director made under section 39 he or she is guilty of an offence.

Penalty: Fine not exceeding 200 penalty units or imprisonment for a term not exceeding 6 months.

Reviews by Magistrates Court (Administrative Appeals Division)

42. (1) A person who is aggrieved by –

- (a) a decision of the Director refusing to grant a licence to the person; or
- (b) a decision of the Director to impose a condition on a licence or vary a condition on a licence of the person; or
- (c) a decision of the Director suspending or cancelling a licence of the person; or
- (d) a decision of the Director to appoint a receiver or manager in respect of the person's business; or
- (e) an order made by the Director under section 39 –

may apply to the Court for a review of the decision or order.

(2) The application is to be made in accordance with the *Magistrates Court (Administrative Appeals Division) Act 2001*.

(3) The review is to be heard and determined under the *Magistrates Court (Administrative Appeals Division) Act 2001*.

PART 5 – MISCELLANEOUS AND SUPPLEMENTAL**Delegations**

43. The Director may delegate any of the Director's functions or powers under this Act other than this power of delegation.

Register of conveyancers

44. (1) The Director must keep a register of persons licensed as conveyancers under this Act.

(2) The register is to contain details of the following:

- (a) the date on which a licence was granted;
- (b) the name and business address of the licensed conveyancer;
- (c) any cancellation or suspension of a licence;
- (d) any surrender of a licence;
- (e) any orders made under section 39 in respect of a licence;
- (f) any other matter that the Director considers appropriate.

(3) Any person may inspect the register during normal business hours and on payment of the prescribed fee.

(4) The Director may publish a list of all current licences in any manner or form that the Director determines.

False or misleading information

45. 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 document kept, under this Act.

Penalty: Fine not exceeding 50 penalty units.

Continuing offence

46. 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 continues 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 continues after the conviction of not more than one-tenth of the maximum penalty prescribed for the offence.

Evidentiary provisions

47. (1) In any proceedings, a document purporting to be a licence is admissible as evidence of that fact.

(2) A certificate purporting to be signed by the Director stating that a person named in the certificate was

or was not, at any date specified in the certificate, the holder of a licence is admissible as evidence of that fact.

(3) A certified copy of any entry in the register kept under section 44 signed by the Director is admissible as evidence of the facts stated in that copy.

Regulations

48. (1) The Governor may make regulations for the purposes of this Act.

(2) Without limiting the generality of subsection (1), the regulations may –

- (a) provide for the fee to be paid to the Director for the grant of a licence; and
- (b) establish rules of conduct to be observed by conveyancers; and
- (c) be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstances or otherwise, specified in the regulations; and
- (d) apply generally or be limited in their application by reference to specified exemptions or specified factors; and
- (e) authorise any matter to be from time to time determined, applied or regulated by the Director; and
- (f) provide for penalties not exceeding a fine of 100 penalty units for offences against the regulations.

Administration of Act

49. Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Justice and Industrial Relations; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Justice.

**PART 6 – AUCTIONEERS AND REAL ESTATE
AGENTS ACT 1991 AMENDED**

Principal Act

50. In this Part, the *Auctioneers and Real Estate Agents Act 1991** is referred to as the Principal Act.

Section 4 amended (Interpretation)

51. Section 4 of the Principal Act is amended by inserting after the definition of “commencing day” the following definition:

“**conveyancer**” has the same meaning as in the *Conveyancing Act 2004*;

Section 86 amended (Auctioneers and Real Estate Agents Guarantee Fund)

52. Section 86(2) of the Principal Act is amended by inserting after paragraph (a) the following paragraph:

(ab) under the *Conveyancing Act 2004*; or

Section 87 amended (Level of Guarantee Fund)

53. Section 87 of the Principal Act is amended by inserting “or the *Conveyancing Act 2004*,” after “Act”.

*No. 37 of 1991

Section 89 amended (Use of surplus money in Guarantee Fund)

54. Section 89 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

(1) Any surplus money in the Guarantee Fund above the amount agreed or determined under section 87 is to be distributed, with the agreement of the Council and the Minister, as follows:

- (a) firstly, in the payment of costs incurred in administering the *Residential Tenancy Act 1997*;
- (b) secondly, to the Council for the uses specified in subsection (2);
- (c) thirdly, in the payment of costs incurred in administering the *Conveyancing Act 2004*.

Section 94 amended (Right to claim compensation)

55. Section 94 of the Principal Act is amended as follows:

- (a) by inserting the following subsection after subsection (1):

(1A) A person may, on giving notice to the Director of Consumer Affairs and Fair Trading, apply to the Council for compensation for –

- (a) pecuniary loss; or
- (b) loss of property –

suffered by that person arising from the criminal or fraudulent conduct of a

conveyancer in the course of the conveyancer's business.

- (b) by omitting from subsection (2) "subsection (1)" and substituting "subsection (1) or (1A)".

**PART 7 – LEGAL PROFESSION ACT 1993
AMENDED**

Principal Act

56. In this Part, the *Legal Profession Act 1993** is referred to as the Principal Act.

Section 54 amended (Offence to practise unless admitted)

57. Section 54(2) of the Principal Act is amended by inserting after paragraph (da) the following paragraph:

- (db) acting as a conveyancer, within the meaning of the *Conveyancing Act 2004*, if he or she is authorised to do so under that Act; or

*No. 90 of 1993