

# Conveyancers Act 2006

Act No. 75/2006

## TABLE OF PROVISIONS

<i>Section</i>	<i>Page</i>
<b>PART 1—PRELIMINARY</b>	<b>1</b>
1. Purposes	1
2. Commencement	2
3. Definitions	2
4. What is conveyancing work?	5
5. Disqualified persons	7
6. Associate of a licensee	8
7. Failure to account	9
<b>PART 2—LICENSING OF CONVEYANCERS</b>	<b>10</b>
<b>Division 1—Requirement for Licensing</b>	<b>10</b>
8. Conveyancers to be licensed	10
9. Causing, permitting, aiding or abetting another to engage in unlicensed conveyancing	11
10. Person pretending to be licensee or authorised person	12
<b>Division 2—Eligibility and Qualifications</b>	<b>12</b>
11. Eligibility for licence	12
12. Competency qualifications and work experience	13
<b>Division 3—Applying for a Licence</b>	<b>14</b>
13. Person may apply to Authority for licence	14
14. Information to be included with application by natural person	14
15. Information to be included with application by company	15
16. Change to information in application	16
17. Applications after refusal	17
<b>Division 4—Investigation of Applicants</b>	<b>17</b>
18. Authority may conduct inquiries and require further information	17
19. Consent to disclosure of information	18
20. Referral of applications to Director	18
21. Referral of applications to Chief Commissioner	19

<i>Section</i>	<i>Page</i>
<b>Division 5—Determination of Applications and Conditions</b>	<b>19</b>
22. Granting or refusing to grant licence	19
23. Conditions	20
24. Conditions relating to specified transactions	20
25. Licensee must comply with conditions	20
<b>Division 6—Becoming Disqualified</b>	<b>21</b>
26. Becoming a disqualified person	21
27. Company that ceases to have licensed director	21
28. Action of Authority	21
<b>Division 7—Permission to Hold Licence</b>	<b>22</b>
29. Person involved in claim may be allowed to hold licence in exceptional circumstances	22
30. Person with criminal record may be allowed to hold licence	24
31. Company may be allowed to hold licence despite disqualifying factors	25
32. Conditions on permission	27
<b>Division 8—Inquiries and Cancellation</b>	<b>28</b>
33. Inquiries into conduct of licensees	28
34. Determination of VCAT on inquiry	29
<b>Division 9—General</b>	<b>30</b>
35. Annual licence fee and statement	30
36. Extension of time	31
37. Failure to comply with section 35	31
38. Change of details in annual statement	32
39. Name of conveyancing business	32
40. Lost licences	33
<b>PART 3—PROFESSIONAL INDEMNITY INSURANCE</b>	<b>34</b>
41. Licensee required to insure	34
42. Disclosure of insurance to clients	34
43. Licensee ceases to hold insurance	34
44. Insurer may give notice of cancellation	35

<i>Section</i>	<i>Page</i>
<b>PART 4—CONDUCT AND MANAGEMENT OF CONVEYANCING BUSINESSES</b>	<b>36</b>
<b>Division 1—Conduct of Licensees</b>	<b>36</b>
45. Conduct rules	36
46. Continuing professional development	36
47. Costs disclosure	36
48. Exception to requirement for costs disclosure	37
49. Conflicts of interest	38
50. Licensee not to act as conveyancer and estate agent	39
<b>Division 2—Management of Conveyancing Businesses</b>	<b>39</b>
51. Supervision of conveyancing business	39
52. Exemption from requirement to appoint manager	40
53. Offence to procure contravention of section 51	41
54. Management of places of business	41
55. Absence of licensee or manager	41
56. Employment of disqualified persons	42
<b>Division 3—General</b>	<b>43</b>
57. Principal place of business	43
58. Record keeping	43
59. Displaying information and licence at places of business	44
60. Letterhead	45
61. Production of licence	46
<b>PART 5—TRUST MONEY AND TRUST ACCOUNTS</b>	<b>47</b>
<b>Division 1—Preliminary</b>	<b>47</b>
62. Definitions	47
63. When money is received	51
64. Written direction for controlled money	52
65. Former licensees and associates	52
<b>Division 2—Trust Accounts and Trust Money</b>	<b>53</b>
66. Maintenance of general trust account	53
67. Trust account details to be notified to Director	54
68. Certain trust money to be deposited in general trust account	54
69. Holding, disbursing and accounting for trust money	55
70. Manner of withdrawal of trust money from general trust account	56
71. Controlled money	56
72. Manner of withdrawal of controlled money from controlled money account	57
73. Transit money	58

<i>Section</i>	<i>Page</i>
74. Trust money received in the form of cash	58
75. Protection of trust money	59
76. Intermixing money	60
77. Dealing with trust money: costs and unclaimed money	60
78. Deficiency in trust account	61
79. Reporting irregularities	61
80. Keeping trust records	61
81. False names	62
82. Reporting trust balances to the Director	62
<b>Division 3—Audit</b>	<b>63</b>
83. Approval of auditors	63
84. Annual audit of trust records	64
85. Annual report of trust records audit or statutory declaration	65
86. Final audit of trust records	65
87. Report of irregularities	66
88. Disclosure of information generally	67
89. Director's supervisory role in audits	67
90. Courses of education for auditors	68
<b>Division 4—Provisions Relating to ADIs</b>	<b>68</b>
91. Arrangements with ADIs	68
92. ADIs to notify Director of trust accounts	69
93. Reports, records and information	69
94. Freezing of trust accounts of licensee	71
<b>PART 6—EXTERNAL INTERVENTION</b>	<b>73</b>
<b>Division 1—Preliminary</b>	<b>73</b>
95. Definitions	73
<b>Division 2—Statutory Managers</b>	<b>75</b>
96. Appointment of statutory manager	75
97. Eligibility for appointment as statutory manager	77
98. Powers of statutory manager	77
99. Dealings with trust accounts during statutory management	79
100. Statutory management continues under receivership	80
101. Acts of statutory manager taken to be acts of licensee	80
102. Reimbursement of statutory manager	81
103. Payment of expenses of statutory management	81
104. Statutory manager to report to Director	81
105. Trust and controlled money rules for statutory manager	82
106. Office accounts	82
107. Appointment not affected by death of licensee	83

<i>Section</i>	<i>Page</i>
108. Participation of licensee in conveyancing business during statutory management	83
109. Cessation of appointment of statutory manager	83
<b>Division 3—Receivers</b>	<b>84</b>
110. Supreme Court may appoint receiver	84
111. Eligibility for appointment as receiver	85
112. Court may order that proceedings be closed	86
113. Court may prohibit publication of proceedings	86
114. Director to serve notice of order of appointment	86
115. Receivership may extend to property of associates	87
116. Participation of licensee in conveyancing business during receivership	87
117. Receiver may take possession of property	87
118. Information about receivable property	88
119. Stop order on account	89
120. Improper dealings with receivable property	90
121. Recovery of compensation for disposal of receivable property	91
122. Receiver may give certificate	92
123. Receiver taken to be beneficially entitled	93
124. Receiver may deal with property	94
125. Other powers of receiver	94
126. Notice to claim receivable property	95
127. Lien for costs on receivable property	95
128. Examination by receiver	96
129. Property not dealt with during receivership	97
130. Investment of money by receiver	98
131. Receiver may be reimbursed for damages	98
132. Payment of expenses of receivership	98
133. Supreme Court may review expenses of receivership	99
134. Receivable property not to be attached	99
135. Applications for directions by receiver, licensee or associate	99
136. Supreme Court may give general directions to receiver	100
137. Receiver to report to Supreme Court and Director	100
138. Termination of appointment of receiver	100
<b>Division 4—General</b>	<b>101</b>
139. Relationship of Act to Corporations legislation	101
140. External administration proceedings under Corporations Act	102
141. Incorporated licensee that is subject to external intervention under this Act and external administration under the Corporations Act	103
142. Offence to hinder or obstruct statutory manager or receiver	105

<i>Section</i>	<i>Page</i>
<b>PART 7—COMPENSATION FROM THE VICTORIAN PROPERTY FUND</b>	<b>106</b>
143. Definitions	106
144. Right to claim against Fund in respect of pecuniary loss	106
145. Claims against the Fund	107
146. Review of decision of Secretary to disallow claim	108
147. Power of Secretary to require production of securities, documents or information	108
148. Subrogation of Secretary to rights of claimant on payment from Fund	109
149. Secretary may enter into contract of insurance or indemnity	109
150. Application of insurance moneys	109
151. Money required to be paid into the Fund	110
<b>PART 8—ENFORCEMENT</b>	<b>111</b>
<b>Division 1—Preliminary</b>	<b>111</b>
152. Production of identity card	111
<b>Division 2—Inspection of Documents and Records</b>	<b>111</b>
153. Documents to be available for inspection	111
154. Specified persons to produce documents and answer questions	112
155. Third parties to produce documents and answer questions relating to conveyancing business	113
156. Specified public bodies to produce information	113
157. Certain other specified persons or bodies to produce information	114
158. ADIs to produce documents and information	115
159. Powers on production of documents	116
160. Where must documents be produced?	116
161. Order requiring supply of information and answers to questions	117
162. Service of documents	117
<b>Division 3—Entry, Search and Seizure</b>	<b>118</b>
163. Entry or search with consent	118
164. Entry without consent or warrant	119
165. Search warrants	120
166. Announcement before entry	121
167. Seizure of things not mentioned in the warrant	122
168. Embargo notice	123
169. Inspector may monitor compliance with embargo notice	123
170. Retention and return of seized documents or things	125
171. Magistrates' Court may extend 3 month period	126
172. Requirement to assist inspector during entry	126

<i>Section</i>	<i>Page</i>
<b>Division 4—General</b>	<b>127</b>
173. Offence to give false or misleading information	127
174. Confidentiality	127
175. Infringements	128
176. Protection against self-incrimination	128
177. Complaints	129
<b>PART 9—ADMINISTRATION</b>	<b>130</b>
178. Register of Licensed Conveyancers	130
179. Production of information to Authority	132
180. Verification of details supplied to Authority	132
181. Offence to give false or misleading information	132
182. Delegation	133
<b>PART 10—GENERAL</b>	<b>134</b>
183. Application of <b>Fair Trading Act 1999</b>	134
184. Service of documents	135
185. Who may bring proceedings?	136
186. Extension of time for prosecutions	136
187. Application for review	136
188. Regulations	137
189. Review of exclusion for sale of businesses	139
<b>PART 11—REPEALS, AMENDMENTS, SAVINGS AND TRANSITIONAL PROVISIONS</b>	<b>140</b>
190. Repeal	140
191. Savings and transitional provisions	140
192. Consequential amendments	140
—————	
<b>SCHEDULES</b>	<b>141</b>
SCHEDULE 1—Savings and Transitional Provisions	141
SCHEDULE 2—Consequential Amendments	147
=====	
<b>ENDNOTES</b>	<b>149</b>
<b>INDEX</b>	<b>150</b>



Victoria

No. 75 of 2006

# Conveyancers Act 2006<sup>†</sup>

[Assented to 10 October 2006]

**The Parliament of Victoria enacts as follows:**

## PART 1—PRELIMINARY

### 1. Purposes

The purposes of this Act are—

- (a) to protect the interests of consumers of conveyancing services by regulating the carrying out of conveyancing work by persons other than Australian legal practitioners;



*Conveyancers Act 2006*  
*Act No. 75/2006*

Part 1—Preliminary

s. 2

- (b) to repeal Part 7.1 of the **Legal Profession Act 2004**;
- (c) to make consequential amendments to other Acts.

## 2. Commencement

- (1) Subject to sub-section (2), this Act comes into operation on a day or days to be proclaimed.
- (2) If a provision of this Act does not come into operation before 1 July 2008, it comes into operation on that day.

## 3. Definitions

In this Act—

"**annual statement**" means a statement required under section 35(3);

"**associate of a licensee**" has the meaning given in section 6;

"**Australian Business Number**" has the same meaning as in the A New Tax System (Australian Business Number) Act 1999 of the Commonwealth;

"**Australian legal practitioner**" has the same meaning as in the **Legal Profession Act 2004**;

"**Authority**" has the same meaning as in the **Business Licensing Authority Act 1998**;

"**Chief Commissioner**" means the Chief Commissioner of Police appointed under the **Police Regulation Act 1958**;

"**company**" means a company registered under the Corporations Act;

"**Consumer Act**" has the same meaning as in the **Fair Trading Act 1999**;

*Conveyancers Act 2006*  
*Act No. 75/2006*

Part 1—Preliminary

s. 3

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**"controlled money"** has the meaning given in section 62;

**"controlled money account"** has the meaning given in section 62;

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

**"conveyancing work"** has the meaning given in section 4;

**"defalcation"** means any theft, embezzlement, failure to account, fraudulent misappropriation or other act punishable by imprisonment of or in relation to money or any other property;

**"Director"** has the same meaning as in the **Fair Trading Act 1999**;

**"director"** has the same meaning as in the Corporations Act;

**"disqualified person"** has the meaning given in section 5;

**"estate agent"** has the same meaning as in the **Estate Agents Act 1980**;

**"failure to account"** has the meaning given in section 7;

**"Fund"** means the Victorian Property Fund established under section 72 of the **Estate Agents Act 1980**;

**"incorporated legal practice"** has the same meaning as in the **Legal Profession Act 2004**;

**"inspector"** means an inspector appointed under the **Fair Trading Act 1999**;

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*Conveyancers Act 2006*  
*Act No. 75/2006*

Part 1—Preliminary

s. 3

**"legal work"** means work that, if done by a person who is not an Australian legal practitioner, would give rise to an offence under Part 2.2 of the **Legal Profession Act 2004**;

**"licence"** means a licence granted under Part 2 to carry on a conveyancing business;

**"licensee"** means a person who holds a licence other than a licence that is suspended;

**"principal place of business"** of a licensee, means the principal place at which the licensee carries on the licensee's conveyancing business and, if the licensee conducts their conveyancing business at one place only, means that place;

**"receiver"** means a receiver appointed by the Supreme Court under Division 3 of Part 6;

**"Register"** means the Register of Licensed Conveyancers established under section 178;

**"registered education and training organisation"** has the same meaning as in the **Education and Training Reform Act 2006**;

**"registered office"**, in relation to a company, has the same meaning as in the Corporations Act;

**"Registrar"** means the Registrar of the Authority under the **Business Licensing Authority Act 1998**;

**"Secretary"** means the person for the time being holding the office of Secretary to the Department of Justice under the **Public Administration Act 2004**;

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**"statutory manager"** means a statutory manager appointed by the Director under Division 2 of Part 6;

**"trust account"** has the meaning given in section 62;

**"trust money"** has the meaning given in section 62;

**"trust records"** has the meaning given in section 62.

#### **4. What is conveyancing work?**

(1) In this Act, **"conveyancing work"** means legal work carried out in connection with any transaction that creates, varies, transfers, conveys or extinguishes a legal or equitable interest in any real or personal property, such as, for example, any of the following transactions—

- (a) the sale of a freehold interest in land;
- (b) the creation, sale or assignment of a leasehold interest in land;
- (c) the grant of a mortgage or other charge.

(2) Without limiting sub-section (1), **"conveyancing work"** includes—

- (a) legal work involved in preparing any document (such as an agreement, conveyance, transfer, lease or mortgage) that is necessary to give effect to a transaction of a kind referred to in sub-section (1); and
- (b) legal work (such as the giving of advice or the preparation, perusal, exchange or registration of documents) that is consequential or ancillary to a transaction of a kind referred to in sub-section (1); and

*Conveyancers Act 2006*  
*Act No. 75/2006*

Part 1—Preliminary

s. 4

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- (c) any other legal work that is prescribed by the regulations as constituting conveyancing work for the purposes of this Act.
- (3) However, "**conveyancing work**" does not include—
- (a) legal work carried out for the purpose of—
    - (i) commencing or maintaining legal proceedings; or
    - (ii) applying for a grant of probate or letters of administration; or
    - (iii) establishing a corporation or varying the constitution of a corporation; or
    - (iv) creating, varying or extinguishing a trust; or
    - (v) preparing a testamentary instrument; or
    - (vi) giving investment or financial advice; or
    - (vii) investing money otherwise than as provided for in Part 5; or
  - (b) legal work connected with the sale of a business (including the sale of goodwill and stock-in-trade and the transfer of any business licence), other than legal work connected with a sale or lease of land or any other transaction involving land; or
  - (c) the provision of legal advice in relation to—
    - (i) obtaining the consent of a person or body under an Act or regulations to the development or use of land; or
    - (ii) an application for an order under Division 5 of Part IV of the **Transfer of Land Act 1958**; or
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(d) work prescribed by the regulations as not constituting conveyancing work for the purposes of this Act.

(4) In this section, in relation to land, "**development**" and "**use**" have the same meanings respectively as in the **Planning and Environment Act 1987**.

### **5. Disqualified persons**

In this Act, a person is a "**disqualified person**" if the person is any of the following—

- (a) a disqualified person within the meaning of section 2.2.5 of the **Legal Profession Act 2004**;
- (b) the subject of an order by a body within or outside of Victoria that disqualifies the person from carrying on a conveyancing business;
- (c) a director of a company that is a disqualified person;
- (d) an insolvent under administration;
- (e) an externally-administered body corporate within the meaning of the Corporations Act;
- (f) subject to Division 7 of Part 2, a person in relation to whom a claim against the Fund has been allowed;
- (g) subject to Division 7 of Part 2, if a claim against the Fund has been allowed in relation to a company, a person who was a director of, or otherwise concerned in the management of, the company at the time of the incident that gave rise to the claim;
- (h) a person who is a represented person within the meaning of the **Guardianship and Administration Act 1986**;

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- (i) subject to Division 7 of Part 2, a person who has, within the last 10 years in Australia or elsewhere, been convicted or found guilty of any offence involving fraud, dishonesty, drug trafficking or violence which was punishable by imprisonment for 3 months or more (whether or not a sentence of imprisonment was imposed).

**6. Associate of a licensee**

- (1) In this Act, "**associate of a licensee**" means—
- (a) a partner of the licensee; or
  - (b) an employee or agent of the licensee; or
  - (c) a company, or a member of a company, partnership, syndicate or joint venture, in which the licensee or a person referred to in paragraph (a), (b) or (d) has a beneficial interest; or
  - (d) a person who bears a prescribed relationship to the licensee or to a person referred to in paragraphs (a) to (c); or
  - (e) a company that (if a person referred to in paragraphs (b) to (d) is a company) is a subsidiary of the person within the meaning of the Corporations Act; or
  - (f) a person declared by the regulations to be an associate of the licensee or belonging to a class of persons so declared.
- (2) For the purposes of sub-section (1)(d), a person bears a prescribed relationship to a licensee or other person if the relationship is that of—
- (a) a spouse of the licensee or other person; or
  - (b) a domestic partner of the licensee or other person; or
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- (c) a child, grandchild, sibling, parent or grandparent, whether derived through paragraph (a) or (b) or otherwise; or
  - (d) a kind prescribed by the regulations for the purposes of this section.
- (3) In sub-section (2)(b), "**domestic partner**" of a person means a person to whom the person is not married but with whom the person is living as a couple on a genuine domestic basis (irrespective of gender).

#### **7. Failure to account**

- (1) In this Act, a "**failure to account**" means a failure by a licensee to account for, pay or deliver money or other valuable property—
- (a) that has been received or entrusted to the licensee, or an associate of the licensee, in the course of the licensee's conveyancing business; and
  - (b) in the case of money or other valuable property received by or entrusted to an associate of the licensee, that is under the direct or indirect control of the licensee—
- whether the failure arises from an act or omission of the licensee or an associate of the licensee.
- (2) For the purposes of sub-section (1), the reference to money or other valuable property received by or entrusted to a licensee includes a reference to money or other valuable property received by or entrusted to the licensee as trustee, agent, bailee or stakeholder, or in any other capacity.
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**PART 2—LICENSING OF CONVEYANCERS**

**Division 1—Requirement for Licensing**

**8. Conveyancers to be licensed**

- (1) A person who is not a licensee must not carry on a conveyancing business.

Penalty: For a natural person, imprisonment for a period of 2 years or 240 penalty units;

For a corporation, 1200 penalty units.

- (2) Sub-section (1) does not apply to a person who is—
- (a) an Australian legal practitioner; or
  - (b) an incorporated legal practice if the conveyancing work is carried out on its behalf by an Australian legal practitioner.
- (3) In any proceedings against a person for an offence against sub-section (1), it is evidence of the offence if a person who is not a licensee—
- (a) has possession of a licence; or
  - (b) represents himself or herself as the holder of a licence.
- (4) A person is not entitled to recover any amount in respect of anything the person did in contravention of sub-section (1).
- (5) A person may recover from another person in a court of competent jurisdiction, as a debt due to the person, any amount the person paid to the other person in respect of anything the other person did in contravention of sub-section (1).

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**9. Causing, permitting, aiding or abetting another to engage in unlicensed conveyancing**

- (1) A person must not cause, permit, aid or abet a person who is not a licensee to carry on a conveyancing business.

Penalty: For a natural person, 240 penalty units;  
For a corporation, 1200 penalty units.

- (2) Sub-section (1) does not apply to a person if the person carrying on the conveyancing business is—

- (a) an Australian legal practitioner; or
- (b) an incorporated legal practice and the conveyancing work is carried out on its behalf by an Australian legal practitioner.

- (3) It is a defence to a prosecution for an offence against sub-section (1) to prove that the defendant—

- (a) took all reasonable steps to prevent the person who is not a licensee from carrying on a conveyancing business; or
- (b) did not know and could not reasonably have been expected to have known that the person who is not a licensee was representing themselves as a licensee.

- (4) If a licensee is convicted of an offence under sub-section (1), in addition to any penalty, the court—

- (a) must order that the licensee's licence be cancelled and delivered up to the court; and
- (b) may order that the licensee be disqualified either permanently or for the period specified by the court from holding a licence.

- (5) If a licence is delivered up to a court under this section, the licence and a copy of any order of the court relating to the licence must be sent as soon as practicable by the proper officer of the court to the Authority.

**10. Person pretending to be licensee or authorised person**

A person who is not a licensee must not make a representation to the public stating or implying that the person is a licensee or is otherwise authorised under this Act to carry on a conveyancing business.

Penalty: 120 penalty units.

**Division 2—Eligibility and Qualifications**

**11. Eligibility for licence**

- (1) A natural person, other than an Australian legal practitioner, is eligible to obtain a licence if he or she—
- (a) is at least 18 years of age; and
  - (b) has the competency qualifications and work experience referred to in section 12 for the issue of the licence; and
  - (c) is not a disqualified person; and
  - (d) holds—
    - (i) the professional indemnity insurance required under section 41; or
    - (ii) if the person is, or is to be, employed by a licensee, evidence of employment with, or an offer of employment from, the licensee and evidence that the person will be covered by the professional indemnity insurance

*Conveyancers Act 2006*  
*Act No. 75/2006*

Part 2—Licensing of Conveyancers

s. 12

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required of the licensee under  
section 41; and

- (e) has paid the prescribed application fee and the prescribed licence fee.
- (2) A company, other than an incorporated legal practice, is eligible to obtain a licence if—
- (a) at least one of the directors of the company is a licensee; and
  - (b) no director of the company is a disqualified person; and
  - (c) the company holds the professional indemnity insurance required under section 41; and
  - (d) the company has paid the prescribed application fee and the prescribed licence fee.

**12. Competency qualifications and work experience**

- (1) An applicant for a licence has the competency qualifications and work experience required of a licensee under section 11(1)(b) if the applicant—
- (a) has successfully completed a course or examination provided by an approved registered education and training organisation in the prescribed core competencies; and
  - (b) either—
    - (i) has held a licence; or
    - (ii) has at least 12 months' full-time or equivalent part-time prescribed experience obtained within the period of 5 years preceding the lodgement of the applicant's application.

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- (2) The Director may, by notice published in the Government Gazette, approve a registered education and training organisation for the purposes of sub-section (1)(a).

**Division 3—Applying for a Licence**

**13. Person may apply to Authority for licence**

- (1) A natural person or a company may apply to the Authority for a licence.
- (2) An application for a licence must be in the form approved by the Authority and be accompanied by the prescribed application fee and the prescribed licence fee.

**14. Information to be included with application by natural person**

An applicant who is a natural person must include the following information with the application—

- (a) the full name and residential address of the applicant;
- (b) the proposed name of the applicant's conveyancing business or the name of the employer or proposed employer of the applicant;
- (c) the address of the applicant's principal place of business in Victoria;
- (d) if the applicant intends to carry on a conveyancing business at more than one place, the address, and the name of the proposed manager, of each other intended place of that business;
- (e) the applicant's Australian Business Number;

*Conveyancers Act 2006*  
*Act No. 75/2006*

Part 2—Licensing of Conveyancers

s. 15

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- (f) if the applicant intends to maintain an Internet site in relation to the applicant's conveyancing business, the address for the Internet site;
  - (g) if the applicant intends to carry on a conveyancing business in partnership, the names of the proposed partners;
  - (h) if the applicant intends to employ other licensees in the applicant's conveyancing business, the names of the other licensees;
  - (i) details of the applicant's competency qualifications and experience referred to in section 12;
  - (j) details of the professional indemnity insurance (including the level of insurance) held by the applicant or the evidence referred to in section 11(1)(d)(ii);
  - (k) the prescribed information (if any);
  - (l) a statement by the applicant to the effect that the information provided with the application is true and correct.

**15. Information to be included with application by company**

- (1) An applicant that is a company must include the following information with the application—
  - (a) the name of the company;
  - (b) the proposed name of the company's conveyancing business;
  - (c) the address of the company's principal place of business in Victoria;
  - (d) the address of the registered office of the company;

*Conveyancers Act 2006*  
*Act No. 75/2006*

Part 2—Licensing of Conveyancers

s. 16

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- (e) the full name and residential address of each director of the company;
  - (f) a statement setting out which of the directors of the company are licensees;
  - (g) if the company intends to carry on a conveyancing business at more than one place, the address, and the name of the proposed manager, of each other intended place of that business;
  - (h) if the company intends to employ other licensees in the company's conveyancing business, the names of the other licensees;
  - (i) if the company intends to maintain an Internet site in relation to its conveyancing business, the address for the Internet site;
  - (j) details of the professional indemnity insurance (including the level of insurance) held by the company;
  - (k) the prescribed information (if any).
- (2) A company applying for a licence must also include with the application a statement made by one of the directors of the company certifying that—
- (a) the director has authority to make the application on behalf of the company; and
  - (b) the information provided with the application is true and correct.

**16. Change to information in application**

- (1) An applicant for a licence must—
- (a) give the Authority notice of any material change during the relevant period to the information provided to the Authority by the applicant in support of the application; and
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*Conveyancers Act 2006*  
*Act No. 75/2006*

Part 2—Licensing of Conveyancers

s. 17

- (b) provide the notice referred to in paragraph (a) within 14 days after becoming aware of the change.

Penalty: 60 penalty units.

- (2) In this section—

**"material change"** includes a change of directors of an applicant that is a company;

**"relevant period"** means the period between the making of an application for a licence and the determination of the application by the Authority.

**17. Applications after refusal**

If the Authority refuses an application for a licence, the applicant is not entitled to lodge another application for a licence until the end of 2 years after the refusal unless the Authority otherwise permits in a particular case.

**Division 4—Investigation of Applicants**

**18. Authority may conduct inquiries and require further information**

- (1) In considering an application for a licence, the Authority may—
- (a) conduct any inquiries in relation to the application that it thinks fit; and
  - (b) require an applicant to provide further information in relation to the application.
- (2) The Authority may refuse to grant a licence if the applicant fails to comply with a requirement under sub-section (1)(b) within a reasonable time after the requirement is made.



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**19. Consent to disclosure of information**

- (1) In considering an application for a licence, the Authority may request the applicant to provide any consent to disclosure of information that the Authority requires to perform, or to have performed, a check on the applicant or on any information included with the applicant's application.
- (2) The Authority may refuse to consider an application for a licence if the applicant fails to comply with a request under sub-section (1) within 14 days after the request is made.
- (3) In this section, in the case of an applicant that is a company, a reference to an "**applicant**" includes a reference to a director of the applicant.

**20. Referral of applications to Director**

- (1) Before making a decision on an application for a licence, the Authority may refer the application, or any part of the application, to the Director.
  - (2) If the Authority refers an application, or any part of an application, to the Director under this section, the Director—
    - (a) may make any inquiries in relation to the application or part that the Director considers to be appropriate to enable the proper consideration of the application; and
    - (b) must give the Authority a report on the results of those inquiries.
  - (3) The Director may include in a report any recommendations relating to the application that the Director considers appropriate.
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**21. Referral of applications to Chief Commissioner**

- (1) Before making a decision on an application for a licence, the Authority must give any details of the application that the Authority considers relevant to the Chief Commissioner.
- (2) The Chief Commissioner, on receiving details of the application, must make any inquiries in relation to the application that the Chief Commissioner considers appropriate.
- (3) The Chief Commissioner, after receiving the results of the inquiries, must report to the Authority.
- (4) A report may include recommendations.

**Division 5—Determination of Applications and Conditions**

**22. Granting or refusing to grant licence**

- (1) The Authority must grant a licence to an applicant if the Authority is satisfied that the applicant is eligible under this Act to hold the licence.
- (2) The Authority must refuse to grant a licence if the Authority is satisfied that the applicant is ineligible under this Act to hold the licence.
- (3) If the Authority refuses to grant a licence, the Authority must refund the prescribed licence fee to the applicant.
- (4) A licence must be in the form approved by the Authority, and must include the number of the licence.
- (5) The Authority is not required to conduct a hearing to determine whether to grant a licence or refuse to grant a licence.

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**23. Conditions**

- (1) The Authority may at any time impose, vary or revoke any conditions on a licence that the Authority thinks fit.
- (2) If the Authority proposes to impose a new condition, or to vary or revoke a condition, on a licence, the Authority may require the relevant licensee to give the licence to the Authority.
- (3) A licensee must comply with a requirement of the Authority under sub-section (2) within the time specified by the Authority.

Penalty: 10 penalty units.

**24. Conditions relating to specified transactions**

- (1) Conditions imposed on a licence under section 23 may include—
  - (a) a condition prohibiting a licensee from carrying out conveyancing work in relation to specified kinds of transactions; or
  - (b) a condition prohibiting a licensee from carrying out conveyancing work except in relation to specified kinds of transactions—  
until the licensee completes a course of education or training relating to specified competencies.
- (2) This section does not limit any condition that may be imposed under section 23.

**25. Licensee must comply with conditions**

A licensee must comply with any conditions to which the licence is subject.

Penalty: 120 penalty units.

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**Division 6—Becoming Disqualified**

**26. Becoming a disqualified person**

If a licensee becomes a disqualified person, the licensee must immediately notify the Authority of that fact.

Penalty: For a natural person, 240 penalty units;  
For a company, 1200 penalty units.

**27. Company that ceases to have licensed director**

If a licensee that is a company ceases to have at least one director who is a licensee, the company must immediately notify the Authority of that fact.

Penalty: 1200 penalty units.

**28. Action of Authority**

- (1) If the Authority becomes aware that a licensee has become a disqualified person, or that a licensee that is a company has ceased to have at least one director who is a licensee, the Authority must—
  - (a) cancel the licensee's licence immediately; or
  - (b) if the licensee has applied for an appropriate permission under Division 7, consider the application; or
  - (c) if applicable, invite the licensee to apply for an appropriate permission under Division 7.
- (2) If a licensee in receipt of an invitation under subsection (1)(c) wishes to apply for an appropriate permission under Division 7, the licensee must make the application within 30 days after receiving the invitation, or within a different period specified by the Authority in the invitation.

*Conveyancers Act 2006*  
*Act No. 75/2006*

Part 2—Licensing of Conveyancers

s. 29

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- (3) If an application referred to in sub-section (2) is not received by the Authority within the time allowed by that sub-section, the Authority must cancel the licensee's licence.
  - (4) After considering an application referred to in sub-section (1)(b) or (2), the Authority must—
    - (a) in accordance with Division 7, grant the permission sought; or
    - (b) refuse to grant the permission sought and cancel the licensee's licence.

**Division 7—Permission to Hold Licence**

**29. Person involved in claim may be allowed to hold licence in exceptional circumstances**

- (1) This section applies to the following persons—
    - (a) a natural person in relation to whom a claim has been allowed against the Fund;
    - (b) a director of, or a person concerned in the management of, a company in relation to which a claim has been allowed against the Fund.
  - (2) The person may apply to the Authority for permission to hold, or to continue to hold, a licence.
  - (3) An application under this section must—
    - (a) be in the form approved by the Authority; and
    - (b) contain the information required by the Authority; and
    - (c) be accompanied by the documents required by the Authority; and
    - (d) be accompanied by the prescribed fee (if any).
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*Conveyancers Act 2006*  
*Act No. 75/2006*

Part 2—Licensing of Conveyancers

s. 29

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- (4) In considering an application under this section, the Authority may—
- (a) conduct any inquiries it thinks fit;
  - (b) require the applicant to provide any further information relating to the application that the Authority thinks fit in the manner required by the Authority;
  - (c) seek advice and information on the application from any other person or body as the Authority thinks fit.
- (5) The Authority may refuse to give its permission if the applicant does not provide the further information required, or his or her consent for the Authority to obtain that information, within a reasonable time after the requirement is made.
- (6) The Authority may give its permission if it is satisfied—
- (a) that the applicant has refunded, or has made arrangements to refund, all amounts paid out of the Fund in respect of the claim; and
  - (b) that there were exceptional circumstances which gave rise to the claim against the applicant; and
  - (c) that, having regard to the conduct of the applicant before and after the claim, there is no reasonable expectation that the applicant will not comply with this Act and the regulations in future; and
  - (d) that the giving of the permission is not contrary to the public interest.
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**30. Person with criminal record may be allowed to hold licence**

- (1) This section applies to a natural person who has, within the last 10 years in Australia or elsewhere, been convicted or found guilty of any offence involving fraud, dishonesty, drug trafficking or violence which was punishable by imprisonment for 3 months or more (whether or not a sentence of imprisonment was imposed).
- (2) The person may apply to the Authority for permission to hold, or to continue to hold, a licence.
- (3) An application under this section must—
  - (a) be in the form approved by the Authority; and
  - (b) contain the information required by the Authority; and
  - (c) be accompanied by the documents required by the Authority; and
  - (d) be accompanied by the prescribed fee (if any).
- (4) In considering an application under this section, the Authority may—
  - (a) conduct any inquiries it thinks fit;
  - (b) require the applicant to provide any further information relating to the application that the Authority thinks fit in the manner required by the Authority;
  - (c) seek advice and information on the application from any other person or body as the Authority thinks fit.

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- (5) The Authority may refuse to give its permission if the applicant does not provide the further information required, or his or her consent for the Authority to obtain that information, within a reasonable time after the requirement is made.
  - (6) The Authority may give its permission if it is satisfied that it is not contrary to the public interest for it to do so.

**31. Company may be allowed to hold licence despite disqualifying factors**

- (1) A company may apply to the Authority for permission to hold, or to continue to hold, a licence even though—
  - (a) it ceases to have at least one director who is a licensee; or
  - (b) it, or one of its directors, is a person in relation to whom a claim has been allowed against the Fund; or
  - (c) it has been convicted or found guilty of an offence involving fraud, dishonesty, drug trafficking or violence that, if it was a natural person, would be punishable by imprisonment for 3 months or more; or
  - (d) one of its directors is a person who has, within the last 10 years in Australia or elsewhere, been convicted or found guilty of any offence involving fraud, dishonesty, drug trafficking or violence which was punishable by imprisonment for 3 months or more, but who is still eligible to be a director of the company under the Corporations Act despite the conviction or finding of guilt.



*Conveyancers Act 2006*  
*Act No. 75/2006*

Part 2—Licensing of Conveyancers

s. 31

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- (2) An application must—
- (a) be in the form approved by the Authority;  
and
  - (b) contain the information required by the Authority; and
  - (c) be accompanied by any documents required by the Authority; and
  - (d) be accompanied by the prescribed fee (if any).
- (3) The Authority may give its permission if it is satisfied—
- (a) that the giving of the permission is not contrary to the public interest; and
  - (b) in the case of an application made in the circumstances described in sub-section (1)(b)—
    - (i) that the applicant has refunded, or has made arrangements to refund, all amounts paid out of the Fund in respect of the claim; and
    - (ii) that there were exceptional circumstances which gave rise to the claim against the applicant; and
    - (iii) that, having regard to the conduct of the applicant before and after the claim, there is no reasonable expectation that the applicant will not comply with this Act and the regulations in future; and
  - (c) in the case of an application made in the circumstances described in sub-section (1)(b) involving a director or in sub-section (1)(d), that there is a substantive reason why that person should remain a director of the company.
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*Conveyancers Act 2006*  
*Act No. 75/2006*

Part 2—Licensing of Conveyancers

s. 32

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- (4) In considering an application, the Authority may—
- (a) conduct any inquiries it thinks fit;
  - (b) require the applicant to provide any further information relating to the application that the Authority thinks fit in the manner required by the Authority;
  - (c) seek advice and information on the application from any other person or body as it thinks fit.
- (5) The Authority may refuse to give its permission if the applicant does not provide the further information required, or any consent needed by the Authority to obtain that information, within a reasonable time after the requirement is made.

**32. Conditions on permission**

- (1) In giving its permission under section 29, 30 or 31, the Authority may impose any conditions it considers appropriate to ensure the ongoing protection of the public interest.
- (2) The Authority may at any time impose conditions in respect of the permission or vary or revoke any conditions it has previously imposed.
- (3) A person to whom permission has been given must comply with any conditions to which the permission is subject.

Penalty: 25 penalty units.

- (4) If the Authority is satisfied that any condition imposed in respect of a permission has been contravened or not complied with, it may revoke the permission.

- (5) Before taking any action under this section, the Authority may seek and use information and advice from any person or body or other source as it thinks fit.

### **Division 8—Inquiries and Cancellation**

#### **33. Inquiries into conduct of licensees**

- (1) At any time the Director may apply to VCAT for the holding of an inquiry to determine whether a licensee—
- (a) has contravened or failed to comply with this Act or the regulations; or
  - (b) has contravened or failed to comply with the **Sale of Land Act 1962**; or
  - (c) remains eligible to hold a licence; or
  - (d) is guilty of conduct that renders the licensee unfit to hold a licence; or
  - (e) improperly obtained, or is improperly holding, a licence.
- (2) In the case of a licensee that is a company, at any time the Director may, in addition to making an application under sub-section (1), apply to VCAT for the holding of an inquiry to determine whether a director of the licensee—
- (a) has contravened or failed to comply with this Act or the regulations; or
  - (b) has contravened or failed to comply with the **Sale of Land Act 1962** or failed to pay a fine imposed on him or her under that Act; or
  - (c) is guilty of conduct that renders the licensee unfit to hold a licence; or
  - (d) improperly obtained, or is improperly holding, a licence.

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**34. Determination of VCAT on inquiry**

- (1) After conducting an inquiry in respect of a licensee under section 33, VCAT, if it considers it appropriate, may, by order, do any one or more of the following—
  - (a) reprimand the licensee;
  - (b) require the licensee to comply within, or for, a specified time with a requirement specified by VCAT;
  - (c) cancel any licence held by the licensee and disqualify the licensee either permanently or for a specified period from holding a licence;
  - (d) suspend any licence held by the licensee for a specified period not exceeding one year;
  - (e) impose any condition or limitation on any licence held by the licensee;
  - (f) declare any person to be ineligible to hold a licence either temporarily or permanently;
  - (g) require the licensee to enter into an undertaking to perform, or not to perform, certain tasks specified in the undertaking.
- (2) In addition to the powers conferred by sub-section (1), if VCAT determines that the licensee has contravened or failed to comply with this Act or the regulations, it may impose a penalty not exceeding \$5000 on the licensee and specify when the penalty must be paid.
- (3) Any penalty imposed under sub-section (2) must be paid into the Fund.

*Conveyancers Act 2006*  
*Act No. 75/2006*

Part 2—Licensing of Conveyancers

s. 35

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- (4) If a licensee fails to pay a penalty imposed under sub-section (2) by the required date, VCAT may, without giving the licensee an opportunity to be heard—
- (a) suspend the licence until the penalty is paid; and
  - (b) cancel the licence if the penalty has still not been paid after the end of a further period of time equal to the initial period of time the licensee had in which to pay the penalty.
- (5) A reference to a licensee in this section includes a reference to any person who was a licensee at the time of any breach or alleged breach of a law, even if the person is not a licensee at the time any action is taken under this Act.
- (6) If VCAT cancels or suspends a licence under this section, the cancellation or suspension takes effect on the date specified by VCAT.
- (7) If VCAT cancels or suspends a licence under this section, the person to whom the licence was issued must return the licence to the Authority within the period specified by VCAT, or within the period of 14 days, whichever is shorter.
- Penalty: 60 penalty units.

**Division 9—General**

**35. Annual licence fee and statement**

- (1) A licensee must pay to the Authority the prescribed annual licence fee on the anniversary of the day on which the licensee was last granted a licence under this Act.
  - (2) An annual licence fee may be paid at any time in the 6 weeks before it falls due.
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*Conveyancers Act 2006*  
*Act No. 75/2006*

Part 2—Licensing of Conveyancers

s. 36

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- (3) The payment must be accompanied by a statement in respect of the year up to the day that the payment is made that is in a form approved by the Authority.
  - (4) The annual statement must—
    - (a) contain any information required by the Authority; and
    - (b) be accompanied by—
      - (i) evidence that the licensee will be covered by the required professional indemnity insurance for the next 12 months; and
      - (ii) any other documents required by the Authority.

**36. Extension of time**

- (1) On payment of the prescribed fee (if any), a licensee may apply to the Authority for an extension of time, or a further extension of time, in which to comply with section 35.
- (2) The Authority may grant the application if it is made before the day in relation to which the extension is sought.

**37. Failure to comply with section 35**

- (1) If a licensee fails to comply with section 35, the Authority must give the licensee a written notice stating that unless the licensee complies with that section and also pays to the Authority the prescribed late payment or lodgement fee by the day specified in the notice, the licensee's licence will be suspended.
- (2) The date specified in the notice must be at least 14 days after the day on which the notice is given to the licensee.

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- (3) If the licensee has not complied with section 35 and paid the late payment or lodgement fee by the day specified in the notice, the licensee's licence is suspended until the licensee complies with section 35 and pays the late payment or lodgement fee.

**38. Change of details in annual statement**

- (1) This section applies if, after giving the Authority an annual statement, a licensee becomes aware of a material change to any information included in the statement.
- (2) Within 14 days after becoming aware of the change, the licensee must give the Authority notice of it.

Penalty: 60 penalty units.

**39. Name of conveyancing business**

- (1) This section applies if, in the opinion of the Authority, the name under which a person operates, or proposes to operate, a conveyancing business—
- (a) incorporates the name of an unlicensed person or any name which might be confused with the name already used by a licensee; or
  - (b) may mislead the public.
- (2) The Authority—
- (a) may refuse to issue the person with a licence until the person chooses a name that is acceptable to the Authority; or
  - (b) if the person already holds a licence, may require the person to change the name of the conveyancing business.
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*Conveyancers Act 2006*  
*Act No. 75/2006*

Part 2—Licensing of Conveyancers

s. 40

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- (3) A person must comply with any requirement made by the Authority under sub-section (2)(b) within the time specified by the Authority.

Penalty: 60 penalty units.

**40. Lost licences**

If the Registrar is satisfied that a licence has been lost or destroyed, the Registrar, on payment of the prescribed fee, may issue a duplicate licence.

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**PART 3—PROFESSIONAL INDEMNITY INSURANCE**

**41. Licensee required to insure**

- (1) A licensee must not carry out any conveyancing work unless the licensee is covered by professional indemnity insurance in accordance with this section.
- (2) The insurance required by this section must satisfy the conditions and requirements specified under sub-section (3).
- (3) The Minister may, by order published in the Government Gazette, specify the required insurance and the conditions and requirements that the insurance is to satisfy, including the minimum level of cover provided.
- (4) The insurance, conditions and requirements specified under sub-section (3) may vary according to classes of licensees or conveyancing work or other circumstances.

**42. Disclosure of insurance to clients**

A licensee must, before or at the time the licensee is retained by a client, disclose to the client details of the type and level of professional indemnity insurance by which the licensee is covered.

Penalty: 60 penalty units.

**43. Licensee ceases to hold insurance**

- (1) If a licensee ceases to be covered by the professional indemnity insurance required under section 41—
  - (a) the licensee must immediately notify the Authority and the Director of that fact; and
  - (b) the licensee's licence is suspended for the period for which the licensee is not covered by that insurance.

*Conveyancers Act 2006*  
*Act No. 75/2006*

Part 3—Professional Indemnity Insurance

s. 44

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- (2) A licensee who fails to notify the Authority and the Director in accordance with sub-section (1)(a) when required to do so by that sub-section is guilty of an offence and liable to a penalty not exceeding—
- (a) in the case of a natural person, 240 penalty units;
  - (b) in the case of a company, 1200 penalty units.

**44. Insurer may give notice of cancellation**

If an insurer ceases to provide professional indemnity insurance to a licensee, the insurer may notify the Authority and the Director of that fact.

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**PART 4—CONDUCT AND MANAGEMENT OF  
CONVEYANCING BUSINESSES**

**Division 1—Conduct of Licensees**

**45. Conduct rules**

- (1) The regulations may prescribe rules of professional conduct for licensees.
- (2) Without limiting their scope, rules of professional conduct may deal with any obligation of a licensee to act fairly, honestly and in the best interests of a client.

**46. Continuing professional development**

The regulations may prescribe requirements in relation to the continuing professional development of licensees.

**47. Costs disclosure**

- (1) A licensee must, in accordance with this section, disclose to a client the costs of the conveyancing work that the licensee is to carry out for the client.  
Penalty: 120 penalty units.
- (2) A licensee must give the disclosure referred to in sub-section (1)—
  - (a) before or at the time the licensee is retained by the client; or
  - (b) if it is not reasonably practicable to make the disclosure at that time, as soon as practicable after being retained by the client.

*Conveyancers Act 2006*  
*Act No. 75/2006*

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- (3) A disclosure under sub-section (1) must contain the following information—
- (a) if the amount of the costs is known, that amount;
  - (b) if the amount of the costs is not known, the basis for their calculation;
  - (c) the manner in which the client will be invoiced;
  - (d) the following avenues that are open to the client in the event of a dispute in relation to costs—
    - (i) making a complaint to the Director under Part 8 of the **Fair Trading Act 1999**;
    - (ii) making an application to VCAT under Part 9 of the **Fair Trading Act 1999**;
  - (e) any other prescribed information.
- (4) A client of a licensee is not required to pay the licensee's costs if—
- (a) the licensee does not make a disclosure to the client in accordance with this section; and
  - (b) section 48 does not apply.

**48. Exception to requirement for costs disclosure**

Disclosure under section 47 is not required to be made—

- (a) if, in the circumstances, it would not be reasonable to require that it be made; or
  - (b) in any circumstances prescribed by the regulations.
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**49. Conflicts of interest**

- (1) Before or at the time a licensee is retained by a client, the licensee must disclose to the client any actual or potential conflict of interest that the licensee has in relation to any transaction relevant to that client.

Penalty: 120 penalty units.

- (2) If, while acting for a client, an actual or potential conflict of interest arises in relation to any transaction relevant to the client, the licensee must immediately disclose that conflict of interest to the client.

Penalty: 120 penalty units.

- (3) A disclosure under sub-section (1) or (2) must be in writing and in the prescribed form (if any).
- (4) For the purposes of this section, a licensee has a potential conflict of interest in respect of a transaction if the licensee or an associate of the licensee—
- (a) is acting, or will act, for more than one party to the transaction; or
  - (b) is, or will be, a party to the transaction; or
  - (c) pays or receives, or is to pay or receive, a commission in respect of the transaction.

- (5) In this section, "**commission**", in respect of a transaction, means any valuable consideration, whether in monetary form or some other form to which a monetary value may be assigned, received from, or paid to, a person who is not a party to the transaction.

*Conveyancers Act 2006*  
*Act No. 75/2006*

Part 4—Conduct and Management of Conveyancing Businesses

**s. 50**

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**50. Licensee not to act as conveyancer and estate agent**

- (1) A licensee must not carry out any conveyancing work in relation to a particular transaction if the licensee is acting, or is to act, as an estate agent for a party to the transaction.

Penalty: 240 penalty units.

- (2) A client of a licensee is not required to pay any amount in respect of anything done by the licensee in contravention of sub-section (1).

**Division 2—Management of Conveyancing Businesses**

**51. Supervision of conveyancing business**

- (1) A licensee who carries on a conveyancing business must properly supervise the conduct of the business.

Penalty: For a natural person, 120 penalty units;  
For a corporation, 240 penalty units.

- (2) Subject to section 52, a licensee who carries on a conveyancing business from more than one place of business must appoint a natural person who is also a licensee to manage the day to day operation of each place of the business.

Penalty: 60 penalty units.

- (3) If a licensee is appointed to manage the day to day operation of a place of business forming part of a conveyancing business, the licensee must properly supervise the conduct of that part of the conveyancing business carried on at that place.

Penalty: For a natural person, 120 penalty units;  
For a corporation, 240 penalty units.

*Conveyancers Act 2006*  
*Act No. 75/2006*

s. 52

Part 4—Conduct and Management of Conveyancing Businesses

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- (4) A requirement under this section to properly supervise the conduct of a conveyancing business, or a part of a conveyancing business, includes the following requirements—
- (a) a requirement to properly supervise employees engaged in the conveyancing business;
  - (b) a requirement to take reasonable steps to ensure that employees of the conveyancing business comply with this Act and the regulations, the **Sale of Land Act 1962** and any other law relevant to the conduct of the business;
  - (c) a requirement to establish procedures designed to ensure that the conveyancing business is conducted in accordance with the law and good practice;
  - (d) a requirement to monitor the conduct of the conveyancing business in a manner that will ensure as far as practicable that the procedures referred to in paragraph (c) are complied with.
- (5) The Director may issue and notify to licensees guidelines regarding what constitutes the proper supervision of a conveyancing business.

**52. Exemption from requirement to appoint manager**

- (1) On application by a licensee who carries on a conveyancing business from more than one place of business, the Authority may exempt the licensee from the requirement in section 51(2).
  - (2) In determining an application for an exemption under sub-section (1), the Authority must take into account any matters specified for that purpose in the regulations.
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**53. Offence to procure contravention of section 51**

A person involved in the management of a conveyancing business must not—

- (a) prevent or hinder another person from complying with a requirement imposed on that person by section 51; or
- (b) induce or procure another person to contravene a requirement imposed on that person by section 51.

Penalty: 60 penalty units.

**54. Management of places of business**

- (1) A licensee who manages the day to day operation of a place of business of a conveyancing business must not act as the manager of any other place of a conveyancing business.

Penalty: 60 penalty units.

- (2) Sub-section (1) does not apply if the Authority has exempted the licensee from the requirement in section 51(2).

**55. Absence of licensee or manager**

- (1) In this section, "**manager**" means a licensee appointed under section 51(2) to manage a place at which a conveyancing business is carried on.
- (2) This section applies if—
  - (a) a licensee is to be absent from the place at which the licensee carries on the licensee's conveyancing business; or
  - (b) a manager is to be absent from the place of business that he or she manages—

for a period greater than 7 days during which time the conveyancing business is to continue to operate from the place.



*Conveyancers Act 2006*  
*Act No. 75/2006*

**s. 56**

Part 4—Conduct and Management of Conveyancing Businesses

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- (3) The licensee or the person who appointed the manager (as the case requires) must—
- (a) appoint in writing another licensee to manage the place of business during the period of absence; and
  - (b) notify the Authority in writing of the period of the proposed absence and the name of the appointed manager.

Penalty: 60 penalty units.

**56. Employment of disqualified persons**

- (1) Subject to sub-section (2), a licensee must not employ a disqualified person in a conveyancing business.

Penalty: 60 penalty units.

- (2) On application by a licensee or a person seeking employment with a licensee, the Authority may grant an exemption from the requirement of this section.
- (3) An application under this section must—
- (a) be in the form approved by the Authority; and
  - (b) contain the information required by the Authority; and
  - (c) be accompanied by the documents required by the Authority; and
  - (d) be accompanied by the prescribed fee (if any).

*Conveyancers Act 2006*  
*Act No. 75/2006*

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- (4) In considering an application under this section, the Authority may—
- (a) conduct any inquiries it thinks fit;
  - (b) require the applicant to provide any further information relating to the application that the Authority thinks fit in the manner required by the Authority;
  - (c) seek advice and information on the application from any other person or body as the Authority thinks fit.
- (5) The Authority may refuse to grant an exemption if the applicant does not provide the further information required, or his or her consent for the Authority to obtain that information, within a reasonable time after the requirement is made.
- (6) The Authority may grant an exemption if it is satisfied that it is not contrary to the public interest for it to do so.
- (7) Section 32 applies, with any necessary modifications, to an exemption granted under this section as if it were a permission given under Division 7 of Part 2.

**Division 3—General**

**57. Principal place of business**

A licensee who carries on a conveyancing business in Victoria must at all times maintain a principal place of business in Victoria.

**58. Record keeping**

- (1) Subject to sub-section (3), this section applies to the records of a conveyancing business that relate to conveyancing work undertaken by the business.

*Conveyancers Act 2006*  
*Act No. 75/2006*

**s. 59**

Part 4—Conduct and Management of Conveyancing Businesses

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- (2) A licensee must store a record to which this section applies for 7 years after the date on which the conveyancing work to which the record relates was undertaken.

Penalty: 60 penalty units.

- (3) Nothing in this section applies to the trust records kept by a licensee under Part 5.

**59. Displaying information and licence at places of business**

- (1) A licensee carrying on a conveyancing business must display the following information at each place at which the licensee carries on the business—

- (a) the licensee's name;
- (b) a statement describing the licensee as a person holding a licence under this Act;
- (c) the licence number;
- (d) if different from the licensee's name, the business name for the business that is registered under the **Business Names Act 1962**.

Penalty: 60 penalty units.

- (2) If the licensee is a company, the licensee must also display the following information at each place at which the licensee carries on the business and, if the licensee maintains one, the Internet site for the business—
- (a) the name of each director of the company who is a licensee;
  - (b) a statement describing each of those directors as a person holding a licence under this Act;

*Conveyancers Act 2006*  
*Act No. 75/2006*

- (c) the licence number for each of those directors.

Penalty: 60 penalty units.

- (3) A licensee must display a copy of the licensee's licence at each place of business at which the licensee undertakes conveyancing work in a conspicuous position that is accessible to members of the public.

Penalty: 60 penalty units.

**60. Letterhead**

- (1) A licensee must have the following information printed or shown on all correspondence from the licensee's conveyancing business—

- (a) the licensee's name;  
(b) a statement describing the licensee as a person holding a licence under this Act;  
(c) the licence number.

Penalty: 60 penalty units.

- (2) If the licensee is a company, the licensee must also have the following information printed or shown on all correspondence from the licensee's conveyancing business—

- (a) the name of each director of the company who is a licensee;  
(b) a statement describing each of those directors as a person holding a licence under this Act;  
(c) the licence number for each of those directors.

Penalty: 60 penalty units.

*Conveyancers Act 2006*  
*Act No. 75/2006*

s. 61

Part 4—Conduct and Management of Conveyancing Businesses

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**61. Production of licence**

A licensee must, on request, produce the licensee's licence to any of the following persons or bodies within 7 days after the request being made—

- (a) the Director;
- (b) the Authority;
- (c) a client of the licensee;
- (d) any other person involved in a transaction in relation to which the licensee is undertaking, or is to undertake, conveyancing work.

Penalty: 60 penalty units.

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**PART 5—TRUST MONEY AND TRUST ACCOUNTS**

**Division 1—Preliminary**

**62. Definitions**

(1) In this Part—

**"affairs"** of a licensee include the following—

- (a) all accounts and records required under this Act or the regulations to be maintained by the licensee or an associate or former associate of the licensee;
- (b) other records of the licensee or an associate or former associate of the licensee;
- (c) any transaction—
  - (i) to which the licensee or an associate or former associate of the licensee was or is a party;
  - (ii) in which the licensee or an associate or former associate of the licensee has acted for a party;

**"approved ADI"** means an ADI that has an arrangement with the Secretary under section 91;

**"approved auditor"** means a person who is an approved auditor under section 83;

**"audit period"**, for a licensee, means the year ending on 30 June or any other date fixed by the Director under sub-section (2);

*Conveyancers Act 2006*  
*Act No. 75/2006*

Part 5—Trust Money and Trust Accounts

s. 62

**"controlled money"** means money received or held by a licensee in respect of which the licensee has a written direction that is permitted under section 64 to deposit the money in an account (other than a general trust account) over which the licensee has or will have exclusive control;

**"controlled money account"** means an account maintained by a licensee with an approved ADI for the holding of controlled money received by the licensee;

**"deficiency"** in a trust account or trust ledger account includes the non-inclusion or exclusion of the whole or any part of an amount that is required to be included in the account;

**"deposit record"** includes a deposit slip or duplicate deposit slip;

**"electronic funds transfer"** includes a transfer of money over the Internet but does not include a withdrawal or transfer of money carried out by telephone banking;

**"general trust account"** means an account maintained by a licensee with an approved ADI for the holding of trust money received by the licensee, other than controlled money or transit money;

**"permanent form"**, in relation to a trust record, means printed or, on request, capable of being printed, in English on paper or other material;

**"power"** includes authority;

**"transit money"** means money received by a licensee subject to instructions to pay or deliver it to a third party, other than an associate of the licensee;

*Conveyancers Act 2006*  
*Act No. 75/2006*

Part 5—Trust Money and Trust Accounts

s. 62

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**"trust account"** means an account maintained by a licensee with an approved ADI to hold trust money;

**"trust money"** means money entrusted to a licensee in the course of or in connection with the carrying out of conveyancing work by the licensee, and includes—

- (a) money received by the licensee on account of fees and charges in advance of carrying out the work; and
- (b) controlled money received by the licensee; and
- (c) transit money received by the licensee; and
- (d) money received by the licensee, that is the subject of a power, exercisable by the licensee or an associate of the licensee, to deal with the money for or on behalf of another person;

**"trust records"** includes the following documents—

- (a) receipts;
- (b) cheque butts or cheque requisitions;
- (c) records of authorities to withdraw by electronic funds transfer;
- (d) deposit records;
- (e) ADI statements relating to trust accounts;
- (f) trust account receipts and payments cash books;
- (g) trust ledger accounts;
- (h) records of monthly trial balances;



*Conveyancers Act 2006*  
*Act No. 75/2006*

Part 5—Trust Money and Trust Accounts

---

s. 62

- (i) records of monthly reconciliations;
  - (j) trust transfer journals;
  - (k) statements of account as required to be furnished under the regulations;
  - (l) registers required to be kept under the regulations;
  - (m) monthly statements required to be kept under the regulations;
  - (n) files relating to trust transactions or invoices or both;
  - (o) written directions, authorities or other documents required to be kept under this Act or the regulations;
  - (p) supporting information required to be kept under the regulations in relation to powers to deal with trust money.
- (2) For the purposes of the definition of "**audit period**" in sub-section (1), the Director may by order in writing served on a licensee fix any date as the date on which an audit period ends for that licensee.
- (3) An order under sub-section (2) may be made—
- (a) on the initiative of the Director or on the application of the relevant licensee; and
  - (b) subject to any conditions, and with any limitations as to time or circumstances, that the Director considers to be appropriate.
- (4) A reference in this Part to a licensee's trust account or trust records includes a reference to an associate's trust account or trust records.
- (5) A reference in this Part to a power given to a licensee or an associate of the licensee to deal with money for or on behalf of another person is a
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*Conveyancers Act 2006*  
*Act No. 75/2006*

Part 5—Trust Money and Trust Accounts

s. 63

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reference to a power given to the licensee or associate that is exercisable by—

- (a) the licensee alone; or
- (b) an associate of the licensee alone (otherwise than in a private and personal capacity); or
- (c) the licensee or an associate of the licensee jointly or severally, or jointly and severally, with either or both of the following—
  - (i) one or more associates of the licensee;
  - (ii) the person, or one or more nominees of the person, for whom or on whose behalf the money may or is to be dealt with under the power.

**63. When money is received**

- (1) For the purposes of this Act, a licensee receives money when—
  - (a) the licensee obtains possession or control of it directly; or
  - (b) the licensee obtains possession or control of it indirectly as a result of its delivery to an associate of the licensee; or
  - (c) the licensee, or an associate of the licensee (otherwise than in a private and personal capacity), is given a power to deal with money for or on behalf of another person.
- (2) For the purposes of this Act, a licensee or associate of a licensee is taken to have received trust money if the money is available to the licensee or associate by means of an instrument or other way of authorising an ADI to credit or debit an amount to an account with the ADI, including, for example, an electronic funds transfer, credit card transaction or telegraphic transfer.

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**64. Written direction for controlled money**

- (1) Subject to the regulations, a person may give a written direction to a licensee to deposit money received by the licensee on behalf of the person in an account (other than a general trust account) over which the licensee has or will have exclusive control.
- (2) The regulations may prescribe the circumstances in which a direction can or cannot be made under this section.
- (3) Without limiting sub-section (2), the regulations may prescribe the circumstances in which a direction can or cannot be made under this section by reference to—
  - (a) the amount of money that may be the subject of a direction;
  - (b) the type of transaction in respect of which the money is received or held by the licensee;
  - (c) the length of time for which the money is to be deposited.

**65. Former licensees and associates**

This Part applies in relation to former licensees and former associates of licensees in relation to conduct occurring while they were respectively licensees or associates, in the same way as it applies to licensees and associates, and so applies with any necessary modifications.

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**Division 2—Trust Accounts and Trust Money**

**66. Maintenance of general trust account**

- (1) A licensee who receives trust money to which this Part applies must maintain a general trust account in Victoria.

Penalty: 120 penalty units.

- (2) A licensee who is required to maintain a general trust account must establish and maintain the account in accordance with the regulations.

Penalty: 60 penalty units.

- (3) Sub-section (1) does not apply to a licensee in respect of any period during which the licensee receives only either or both of the following—

- (a) controlled money; or
- (b) transit money received in a form other than cash.

- (4) Subject to any requirements of the regulations, a requirement of this section for a licensee to maintain, or establish and maintain, a general trust account does not prevent the licensee from maintaining, or establishing and maintaining, more than one general trust account, whether during the same period or during different periods.

- (5) Without limiting the other provisions of this section, the regulations may provide that a licensee must not close a general trust account except as permitted by the regulations, either generally or in any prescribed circumstances.

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**67. Trust account details to be notified to Director**

- (1) Within 14 days after establishing a trust account, a licensee must notify the Director of the number of the account and the name and address of the branch of the ADI at which the account is maintained.

Penalty: 60 penalty units.

- (2) A licensee must notify the Director of any changes to the information notified to the Director under sub-section (1) within 14 days after becoming aware of the change.

Penalty: 60 penalty units.

- (3) Within 14 days after closing a trust account, a licensee must notify the Director of the closure.

Penalty: 60 penalty units.

**68. Certain trust money to be deposited in general trust account**

- (1) Subject to section 74, as soon as practicable after receiving trust money, a licensee must deposit the money in a general trust account of the licensee unless—

- (a) the licensee has a written direction by an appropriate person to deal with it otherwise than by depositing it in the account; or
- (b) the money is controlled money and the licensee is permitted to deposit it in a controlled money account; or
- (c) the money is transit money; or
- (d) the money is the subject of a power given to the licensee or an associate of the licensee to deal with the money for or on behalf of another person.

Penalty: 120 penalty units.

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*Conveyancers Act 2006*  
*Act No. 75/2006*

Part 5—Trust Money and Trust Accounts

s. 69

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(2) Subject to section 74, a licensee who has received money that is the subject of a written direction mentioned in sub-section (1)(a) must deal with the money in accordance with the direction—

(a) within the period (if any) specified in the direction; or

(b) subject to paragraph (a), as soon as practicable after it is received.

Penalty: 120 penalty units.

(3) A licensee must keep a written direction mentioned in sub-section (1)(a) for the period prescribed by the regulations.

Penalty: 60 penalty units.

(4) In this section, "**appropriate person**" means a person legally entitled to give the licensee directions in respect of dealings with the trust money.

**69. Holding, disbursing and accounting for trust money**

(1) A licensee must—

(a) hold trust money deposited in a general trust account of the licensee exclusively for the person on whose behalf it is received; and

(b) disburse the trust money only in accordance with a direction given by the person.

Penalty: 120 penalty units.

(2) Sub-section (1) applies subject to an order of a court of competent jurisdiction or as authorised by law.

(3) A licensee must account for the trust money as required by the regulations.

Penalty: 60 penalty units.

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**70. Manner of withdrawal of trust money from general trust account**

- (1) A licensee must ensure that trust money is not withdrawn from a general trust account otherwise than by cheque or electronic funds transfer.

Penalty: 120 penalty units.

- (2) The regulations may make provision for or with respect to withdrawals by cheque or electronic funds transfer.
- (3) This section has effect despite anything to the contrary in any directions given to the licensee, even if the directions are given by a person who is otherwise legally entitled to give the licensee directions in respect of dealings with trust money.

**71. Controlled money**

- (1) As soon as practicable after receiving controlled money, a licensee must deposit the money in the account specified in the written direction relating to the money.

Penalty: 120 penalty units.

- (2) The licensee must hold controlled money deposited in a controlled money account in accordance with sub-section (1) exclusively for the person on whose behalf it was received.

Penalty: 120 penalty units.

- (3) A licensee that holds controlled money deposited in a controlled money account in accordance with sub-section (1) must not disburse the money except in accordance with—

- (a) the written direction mentioned in that sub-section; or

*Conveyancers Act 2006*  
*Act No. 75/2006*

Part 5—Trust Money and Trust Accounts

s. 72

- (b) a later written direction given by or on behalf of the person on whose behalf the money was received.

Penalty: 120 penalty units.

- (4) The licensee must maintain the controlled money account, and account for the controlled money, as required by the regulations.

Penalty: 60 penalty units.

- (5) The licensee must keep a written direction mentioned in this section for the period prescribed by the regulations.

Penalty: 60 penalty units.

- (6) The licensee must ensure that the controlled money account is used for the deposit of controlled money received on behalf of the person referred to in sub-section (2), and not for the deposit of controlled money received on behalf of any other person, except to the extent that the regulations otherwise permit.

Penalty: 120 penalty units.

- (7) Sub-section (3) applies subject to an order of a court of competent jurisdiction or as authorised by law.

**72. Manner of withdrawal of controlled money from controlled money account**

- (1) A licensee must ensure that controlled money is not withdrawn from a controlled money account otherwise than by cheque or electronic funds transfer.

Penalty: 120 penalty units.

- (2) The regulations may make provision for or with respect to withdrawals by cheque or electronic funds transfer.



*Conveyancers Act 2006*  
*Act No. 75/2006*

Part 5—Trust Money and Trust Accounts

s. 73

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- (3) This section has effect despite anything to the contrary in any directions given to the licensee, even if the directions are given by a person who is otherwise legally entitled to give the licensee directions in respect of dealings with trust money.

**73. Transit money**

- (1) Subject to section 74, a licensee that has received transit money must pay or deliver the money as required by the instructions relating to the money—
- (a) within the period (if any) specified in the instructions; or
  - (b) subject to paragraph (a), as soon as practicable after it is received.

Penalty: 120 penalty units.

- (2) The licensee must account for the money as required by the regulations.

Penalty: 60 penalty units.

**74. Trust money received in the form of cash**

- (1) General trust money received in the form of cash must be deposited in a general trust account of the licensee concerned.
- (2) If the licensee has a written direction by an appropriate person to deal with general trust money received in the form of cash otherwise than by first depositing it in a general trust account of the licensee—
- (a) the money must nevertheless be deposited in a general trust account of the licensee in accordance with sub-section (1); and
  - (b) the money is thereafter to be dealt with in accordance with any applicable terms of the direction so far as those terms are not inconsistent with paragraph (a).

*Conveyancers Act 2006*  
*Act No. 75/2006*

Part 5—Trust Money and Trust Accounts

s. 75

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- (3) Controlled money received in the form of cash must be deposited in a controlled money account in accordance with section 71.
  - (4) Transit money received in the form of cash must be deposited in a general trust account of the licensee before it is otherwise dealt with in accordance with the instructions relating to the money.
  - (5) This section has effect despite anything to the contrary in a relevant direction or instruction.
  - (6) In this section—
    - "appropriate person"**, in relation to trust money, means a person who is legally entitled to give the licensee concerned directions in respect of dealings with the money;
    - "general trust money"** means trust money, other than—
      - (a) controlled money; and
      - (b) transit money.

**75. Protection of trust money**

- (1) Money standing to the credit of a trust account maintained by a licensee is not available for the payment of debts of the licensee or any associate of the licensee.
  - (2) Money standing to the credit of a trust account maintained by a licensee is not liable to be attached or taken in execution for satisfying a judgment against the licensee or any associate of the licensee.
  - (3) This section does not apply to money to which a licensee or an associate of a licensee is entitled.
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**76. Intermixing money**

A licensee must not mix trust money with other money, except as authorised by the regulations.

Penalty: 120 penalty units.

**77. Dealing with trust money: costs and unclaimed money**

- (1) A licensee may do any of the following, in relation to trust money held in a general trust account or controlled money account for a person—
  - (a) exercise a lien, including a general retaining lien, for the amount of costs reasonably due and owing by the person to the licensee;
  - (b) withdraw money for payment to the licensee's account for costs owing to the licensee if the relevant procedures or requirements prescribed by this Act and the regulations are complied with;
  - (c) after deducting any costs properly owing to the licensee, deal with the balance as unclaimed money under the **Unclaimed Moneys Act 1962**.
- (2) Subject to this section, sub-section (1) applies despite any other provision of this Part.
- (3) A lien referred to in sub-section (1)(a)—
  - (a) may not be exercised for an amount in excess of the sum of the costs and unpaid disbursements; and
  - (b) may not be exercised unless—
    - (i) the licensee has disclosed to the client, in accordance with Division 1 of Part 4, the costs of the conveyancing work that the licensee has been carrying out, and is yet to carry out, for the client; or

- (ii) if disclosure is not required to be made under Division 1 of Part 4, the licensee has served an invoice for those costs and disbursements on the client.

**78. Deficiency in trust account**

- (1) A licensee must not, without reasonable excuse, cause—
  - (a) a deficiency in any trust account or trust ledger account; or
  - (b) a failure to pay or deliver any trust money.

Penalty: 1800 penalty units or 15 years imprisonment, or both.

- (2) An offence under this section is an indictable offence.
- (3) In this section, "**cause**" includes be responsible for.

**79. Reporting irregularities**

- (1) As soon as practicable after a licensee becomes aware that there is an irregularity in any of the licensee's trust accounts or trust ledger accounts, the licensee must give written notice of the irregularity to the Director.

Penalty: 60 penalty units.

- (2) A licensee is not liable for any loss or damage suffered by another person as a result of the licensee's compliance with sub-section (1).

**80. Keeping trust records**

- (1) A licensee must keep in permanent form trust records in relation to trust money received by the licensee.

Penalty: 60 penalty units.

*Conveyancers Act 2006*  
*Act No. 75/2006*

Part 5—Trust Money and Trust Accounts

---

s. 81

- (2) The licensee must keep the trust records—
- (a) in accordance with the regulations; and
  - (b) in a way that at all times discloses the true position in relation to trust money received for or on behalf of any person; and
  - (c) in a way that enables the trust records to be conveniently and properly investigated or audited; and
  - (d) for a period of 6 years, or the period determined in accordance with the regulations.

Penalty: 60 penalty units.

**81. False names**

- (1) A licensee must not knowingly receive money or record receipt of money in the licensee's trust records under a false name.

Penalty: 120 penalty units.

- (2) If a person on whose behalf trust money is received by a licensee is commonly known by more than one name, the licensee must ensure that the licensee's trust records record all names by which the person is known.

**82. Reporting trust balances to the Director**

A licensee must, at the request of the Director, inform the Director of the balance of any trust account maintained by the licensee.

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**Division 3—Audit**

**83. Approval of auditors**

- (1) For the purposes of this Act, an approved auditor is—
- (a) a person who—
    - (i) is a member of CPA Australia, the National Institute of Accountants or the Institute of Chartered Accountants in Australia; and
    - (ii) meets the requirements of one of those bodies to practise as a public accountant; and
    - (iii) has obtained a degree in commerce, accounting, business studies or a similar discipline from an Australian university or from a foreign university approved by the Director; and
    - (iv) has successfully completed any courses of education required by the Director under section 90(1)(a); and
    - (v) has completed or substantially assisted in carrying out the audit of the trust records of at least 2 (or such higher number as is prescribed) licensees or Australian legal practitioners in respect of any of the previous 3 financial years; or
  - (b) a person who—
    - (i) is approved by the Director as an approved auditor; or
    - (ii) comes within a class of persons that is approved by the Director as an approved class of auditor.
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*Conveyancers Act 2006*  
*Act No. 75/2006*

Part 5—Trust Money and Trust Accounts

s. 84

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- (2) Despite sub-section (1), a person is not an approved auditor for the purposes of this Act if he or she is subject to a direction under section 89(3).

**84. Annual audit of trust records**

- (1) A licensee who is required to keep trust records must have those records audited by an approved auditor in respect of each audit period in accordance with the regulations.
- (2) For the purposes of an audit under this section, a licensee must—
- (a) produce for inspection by the auditor any accounting or other records relating to the affairs of the licensee's business; and
  - (b) give the auditor any other information the auditor reasonably requires.

Penalty: 60 penalty units.

- (3) For the purposes of an audit under this section, an ADI, despite any duty of confidence to the contrary, must without charge—
- (a) produce for inspection by the auditor any records held by the ADI relating to a trust account of, or any trust money deposited with it by, a licensee; and
  - (b) provide the auditor with full details of any transactions relating to a trust account or trust money.

Penalty: 60 penalty units.

- (4) An auditor may make copies of, or take extracts from, any records or other documents produced to the auditor in the course of an audit.
- (5) This section does not apply to a licensee in respect of an audit period in which the only trust money received by the licensee is transit money.

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**85. Annual report of trust records audit or statutory declaration**

- (1) An approved auditor must lodge with the Director a report of each audit of a licensee's trust records carried out by the auditor under section 84 within 7 weeks after the end of the audit period to which the audit relates.

Penalty: 120 penalty units.

- (2) The Director may, by written notice, require a licensee to lodge with the Director a statutory declaration stating whether or not the licensee holds, or has held in any specified period, any trust money in the licensee's trust account.

- (3) A licensee must comply with a requirement of the Director under sub-section (2).

Penalty: 60 penalty units.

**86. Final audit of trust records**

- (1) A person who ceases to be licensed must have the person's trust records audited by an approved auditor—

- (a) in respect of the period from the end of the preceding audit period until the date of ceasing to be licensed; and
- (b) in respect of each completed period of 12 months thereafter during which the person continued to hold trust money; and
- (c) in respect of the period from the end of the last period referred to in paragraph (b) until the date on which the person ceased to hold trust money.

Penalty: 120 penalty units.



*Conveyancers Act 2006*  
*Act No. 75/2006*

Part 5—Trust Money and Trust Accounts

---

s. 87

- (2) Section 84(2), 84(3) and 84(4) apply to an audit under sub-section (1) as if a reference in those sections to the licensee were a reference to the former licensee.
- (3) An approved auditor must lodge with the Director a report of each audit under sub-section (1) within 60 days after the end of the period to which the audit relates.
- (4) A person who ceases to be licensed must lodge with the Director a statutory declaration in the prescribed form within 60 days after ceasing to hold trust money.  
Penalty: 120 penalty units.
- (5) If a licensee dies, his or her personal representative must comply with this section as if the personal representative were the licensee.

**87. Report of irregularities**

- (1) If, during an audit under this Division, an approved auditor becomes aware of—
  - (a) a deficiency in any trust account or trust ledger account of a licensee; or
  - (b) a failure by a licensee to pay or deliver any trust money; or
  - (c) any other failure by a licensee to comply with this Act or the regulations—

the auditor must report the deficiency or failure to the Director as soon as practicable after becoming aware of it.

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- (2) If, during an audit under this Division, an approved auditor forms the opinion that the trust records of a licensee are not being kept in a way that enables them to be conveniently and properly audited, the auditor must report that opinion to the Director as soon as practicable after forming the opinion.

**88. Disclosure of information generally**

An approved auditor may disclose information acquired during the course of an audit under this Division—

- (a) as is necessary for properly conducting the audit and making a report; or
- (b) to an inspector or a statutory manager or receiver appointed under this Act; or
- (c) to the licensee concerned or an associate of the licensee concerned.

**89. Director's supervisory role in audits**

- (1) The Director may issue directions and guidelines in relation to the conduct of audits under this Division.
  - (2) An approved auditor must comply with directions issued by the Director under sub-section (1).
  - (3) If the Director is satisfied that an approved auditor has failed to comply with a direction issued under sub-section (1), the Director may direct that the auditor no longer examine the trust records of licensees.
  - (4) The Director must give an approved auditor a reasonable opportunity to make written or oral submissions or both before giving a direction under sub-section (3) in relation to the auditor.
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*Conveyancers Act 2006*  
*Act No. 75/2006*

Part 5—Trust Money and Trust Accounts

s. 90

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- (5) A direction under sub-section (3) must be published in the Government Gazette, and takes effect on the day it is so published.

**90. Courses of education for auditors**

- (1) The Director, by notice published in the Government Gazette, may prescribe courses of education required to be completed by a person wishing—
- (a) to audit trust records of licensees; or
  - (b) to be employed or engaged to assist in the audit of trust records of licensees.
- (2) The Director must give a copy of a notice under sub-section (1) to CPA Australia, the National Institute of Accountants and the Institute of Chartered Accountants in Australia as soon as practicable after it is published.

**Division 4—Provisions Relating to ADIs**

**91. Arrangements with ADIs**

- (1) The Secretary may make an arrangement with an ADI for the keeping of trust accounts.
- (2) An arrangement may provide for any one or more of the following—
- (a) the payment of interest to the Secretary on the whole or any part of deposits in the trust accounts;
  - (b) the manner in which the Secretary is informed of amounts held in the trust accounts;
  - (c) the auditing of balances in the trust accounts;
  - (d) any other relevant matter.

*Conveyancers Act 2006*  
*Act No. 75/2006*

Part 5—Trust Money and Trust Accounts

**s. 92**

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- (3) An arrangement may provide for the ADI to keep any trust accounts or only trust accounts of a particular class (for example, controlled money accounts).
  - (4) Interest received by the Secretary under an arrangement must be paid into the Fund.
  - (5) A licensee must comply with an arrangement under this section.

**92. ADIs to notify Director of trust accounts**

- (1) Within 14 days after a licensee opens a trust account with an ADI, the ADI must notify the Director of the following details—
  - (a) the name of the licensee; and
  - (b) the number of the account; and
  - (c) the name and address of the branch of the ADI where the account is maintained.
- (2) An ADI must notify the Director of any changes to the information notified to the Director under sub-section (1) within 14 days after becoming aware of the change.

**93. Reports, records and information**

- (1) An ADI at which a trust account is maintained must report any deficiency in the account to the Director as soon as practicable after becoming aware of the deficiency.  
Penalty: 60 penalty units.
- (2) An ADI is not required to report a deficiency under sub-section (1) if—
  - (a) the deficiency was caused by an error of the ADI; and
  - (b) the deficiency is rectified within 2 business days after the ADI became aware of it.

*Conveyancers Act 2006*  
*Act No. 75/2006*

Part 5—Trust Money and Trust Accounts

---

s. 93

- (3) An ADI at which a trust account is maintained must report a suspected offence in relation to the trust account to the Director as soon as practicable after forming the suspicion.

Penalty: 60 penalty units.

- (4) If the Director requests, an ADI must give reports to the Director about trust accounts in accordance with the regulations.

Penalty: 60 penalty units.

- (5) An ADI at which a trust account is maintained must without charge—

(a) produce for inspection or copying by an approved auditor any records relating to the trust account or trust money deposited in the trust account; and

(b) provide the approved auditor with full details of any transactions relating to the trust account or trust money—

on demand by the approved auditor and on production of evidence of his or her identity and appointment or engagement in relation to the licensee concerned.

Penalty: 60 penalty units.

- (6) Sub-sections (1), (3), (4) and (5) apply despite any duty of confidence to the contrary.

- (7) An ADI or an officer or employee of an ADI is not liable to any action for any loss or damage suffered by another person as a result of—

(a) reporting a deficiency in accordance with sub-section (1); or

(b) making or giving a report in accordance with sub-section (3) or (4); or

*Conveyancers Act 2006*  
*Act No. 75/2006*

Part 5—Trust Money and Trust Accounts

s. 94

- (c) producing records or providing details in accordance with sub-section (5).
- (8) An ADI is not entitled to withdraw any money from a trust account maintained by it for a licensee or withhold any money from the trust account, in respect of any amount owed or claimed to be owed by the licensee to the ADI, other than an amount in respect of account-keeping fees.

**94. Freezing of trust accounts of licensee**

- (1) This section applies if—
  - (a) a claim has been made against the Fund in relation to any person who is or was a licensee; or
  - (b) on the basis of information supplied by the Secretary, the Director has reasonable grounds for believing that a person who is or was a licensee has contravened any provision of this Part.
- (2) The Director may, by notice in writing to the manager or other principal officer of any ADI with which a licensee referred to in sub-section (1) has deposited any money in a general or separate trust account, direct that all or any money standing to the credit of the account which is or may be required to satisfy a claim against the Fund—
  - (a) is not to be withdrawn or transferred from the account until further notice; and
  - (b) is to be paid into the Fund.
- (3) A manager or principal officer of an ADI who receives a direction of the Director under sub-section (2) must comply with the direction.

*Conveyancers Act 2006*  
*Act No. 75/2006*

Part 5—Trust Money and Trust Accounts

s. 94

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- (4) Despite anything to the contrary in any law, a manager or principal officer of an ADI in receipt of a direction of the Director under sub-section (2)—
- (a) is authorised to take whatever steps are reasonably required in relation to money deposited in an account at the ADI to comply with the direction; and
  - (b) is indemnified in respect of anything done in good faith by the manager or principal officer in taking those steps.
- (5) With the approval of the Minister, there may be paid out of the Fund part of any money paid into the Fund on a direction of the Director under sub-section (2) that exceeds the sum of—
- (a) the amount necessary to satisfy any claim or claims against the Fund in relation to the licensee whose trust account was the subject of the direction; and
  - (b) the legal and other expenses incurred in investigating or defending the claim or claims.
- (6) A payment out of the Fund under sub-section (5) may be made subject to any conditions determined by the Director with the approval of the Minister.
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**PART 6—EXTERNAL INTERVENTION**

**Division 1—Preliminary**

**95. Definitions**

In this Part—

**"expenses"**, of a statutory management or receivership, means any one or more of the following—

- (a) the remuneration payable to the statutory manager or receiver;
- (b) the expenses incurred in the course of the statutory management or receivership;
- (c) the costs of legal proceedings involved in the statutory management or receivership;
- (d) any reimbursement of the statutory manager or receiver under this Part;

**"former licensee"**, in relation to a licence that has been suspended or cancelled, includes the person who held the licence immediately before its suspension or cancellation;

**"licensee"** includes—

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



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**"property"** of a licensee means—

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

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

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

**"relevant associate"** means an associate of the licensee in respect of whose property a receiver is appointed;

**"relevant licensee"** means—

- (a) in relation to a statutory management, the licensee in respect of whose conveyancing business the statutory manager was appointed; and

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- (b) in relation to a receivership, the licensee in respect of whose property the receiver was appointed.

**Division 2—Statutory Managers**

**96. Appointment of statutory manager**

- (1) If the Director is satisfied that it is necessary to do so in order to protect the interests of consumers, the Director may, by instrument, appoint a statutory manager to carry on a conveyancing business in any of the following circumstances—
- (a) the relevant licensee has requested that the Director appoint a statutory manager;
  - (b) the licence of the relevant licensee has been cancelled or suspended;
  - (c) the Director is of the opinion that there has been, or may have been, a failure to account by the relevant licensee;
  - (d) the Director is of the opinion that a person is unable to obtain payment or delivery of property held by the relevant licensee because the licensee—
    - (i) is mentally or physically infirm; or
    - (ii) is an insolvent under administration; or
    - (iii) is a prisoner within the meaning of the **Corrections Act 1986**; or
    - (iv) has died; or
    - (v) has abandoned the licensee's conveyancing business.

*Conveyancers Act 2006*  
*Act No. 75/2006*

Part 6—External Intervention

s. 96

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- (2) In the case of a conveyancing business that is conducted by 2 or more licensees in partnership, a reference in sub-section (1) to a relevant licensee is to be read as a reference to all of the licensees in the partnership.
- (3) An instrument of appointment of a statutory manager under sub-section (1) must contain the following information—
- (a) the name of the person appointed as statutory manager;
  - (b) the name of the relevant conveyancing business;
  - (c) the address of the principal place of business in Victoria of the relevant conveyancing business;
  - (d) the term of the appointment;
  - (e) details of any conditions to which the appointment is subject;
  - (f) the remuneration to which the statutory manager is entitled from the conveyancing business;
  - (g) how the costs and other expenses of the conveyancing business are to be met during the appointment;
  - (h) any reporting requirements to be observed by the statutory manager.
- (4) The Director may include any other information in an instrument of appointment that the Director considers to be appropriate.
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**97. Eligibility for appointment as statutory manager**

- (1) A person is not eligible for appointment as a statutory manager unless the person is—
  - (a) a licensee; or
  - (b) a person employed under Part 3 of the **Public Administration Act 2004**; or
  - (c) an Australian legal practitioner who holds an Australian practising certificate entitling the person to engage in legal practice as a principal of a law practice.
- (2) In this section, "**Australian practising certificate**", "**engage in legal practice**", "**law practice**" and "**principal**" have the same meanings respectively as they have in the **Legal Profession Act 2004**.

**98. Powers of statutory manager**

- (1) Subject to sub-section (2), a statutory manager of a licensee's conveyancing business has the following powers in relation to the business—
  - (a) to undertake conveyancing work for the existing clients of the conveyancing business;
  - (b) to accept instructions from, and undertake conveyancing work for, new clients of the conveyancing business;
  - (c) to dispose of or deal with any property in relation to the conveyancing business;
  - (d) to exercise any right in the nature of a lien over property held by the statutory manager for a client of the conveyancing business;

*Conveyancers Act 2006*  
*Act No. 75/2006*

Part 6—External Intervention

s. 98

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- (e) to incur expenses reasonably related to the conduct of the conveyancing business;
  - (f) to do all things ancillary to the exercise of the powers set out in this sub-section—  
as if he or she were the relevant licensee.
- (2) A statutory manager may not exercise any of the powers conferred by sub-section (1) in relation to a client of a conveyancing business unless the statutory manager has obtained the client's written consent to exercise those powers.
- (3) A statutory manager of a licensee's conveyancing business also has the power—
- (a) to enter and remain on premises used by the conveyancing business but only for, or in connection with, that business; and
  - (b) after entering, to require the relevant licensee, or any person who has, or has had, control of client files and associated documents, to give the statutory manager access to those files and documents for a purpose relevant to the statutory management; and
  - (c) to operate equipment or facilities on the premises, or to require any person on the premises to operate the equipment or facilities; and
  - (d) to take possession of or otherwise secure any material for a purpose relevant to the statutory management; and
  - (e) to take possession of any computer equipment or computer file or program for a purpose relevant to the statutory management.
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- (4) A statutory manager may exercise the power under sub-section (3)(a)—
- (a) with or without the consent of the occupier during ordinary business hours; and
  - (b) with the consent of the occupier outside of ordinary business hours.
- (5) Before exercising the power under sub-section (3)(a), a statutory manager must produce for inspection by the occupier of the premises—
- (a) his or her instrument of appointment; and
  - (b) a form of identification that includes a photograph of the statutory manager and his or her signature.

**99. Dealings with trust accounts during statutory management**

- (1) If a statutory manager is appointed in respect of a conveyancing business under this Part, the Director must serve a copy of the instrument of appointment of the statutory manager on each ADI at which the relevant conveyancing business has a trust account under this Act.
- (2) If the Director serves a copy of an instrument of appointment of a statutory manager on an ADI, the ADI must not allow any funds to be withdrawn or transferred from a trust account held under this Act at the ADI by the relevant conveyancing business unless the withdrawal or transfer is made—
- (a) by cheque or other instrument drawn on the account signed by the statutory manager or a person authorised by the statutory manager; or
  - (b) by the statutory manager by means of electronic or Internet banking facilities; or

(c) in accordance with an authority to withdraw or transfer funds from the account signed by the statutory manager or a person authorised by the statutory manager.

- (3) A statutory manager may, for the purposes of sub-section (2)(b), enter into arrangements with an ADI for withdrawing money from a trust account of the relevant conveyancing business by means of electronic or Internet banking facilities.
- (4) Any money that is withdrawn or transferred in contravention of sub-section (2) may be recovered from the relevant ADI by the statutory manager as a debt in a court of competent jurisdiction, and any amount recovered is to be paid into a trust account as directed by the statutory manager.

**100. Statutory management continues under receivership**

- (1) A statutory manager may continue to exercise his or her powers under this Division even if a receiver is appointed in relation to the relevant licensee's property.
- (2) If a receiver is appointed in respect of the property of a licensee whose conveyancing business is under statutory management, the statutory manager must comply with any lawful direction given by the receiver in relation to the conduct of the conveyancing business.

**101. Acts of statutory manager taken to be acts of licensee**

- (1) An act done by a statutory manager is, for the purposes of any proceedings or transaction that relies on that act, taken to have been done by the relevant licensee.
- (2) Nothing in this section subjects a relevant licensee to any personal liability in relation to any act done by the statutory manager of the relevant licensee's conveyancing business.

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**102. Reimbursement of statutory manager**

- (1) The Director may reimburse a statutory manager for any damages and costs recovered against the statutory manager, or an employee or agent of the statutory manager, for an act done in good faith and in the performance or exercise of a function or power under this Act.
- (2) Reimbursement under this section is to be by way of payment from the Fund.
- (3) Neither the statutory manager of a conveyancing business nor the Director is liable for any loss incurred by the relevant licensee as a consequence of any act or omission of the statutory manager or the Director in the conduct of the business if the act or omission was done or omitted in good faith and in the purported performance or exercise of a function or power under this Act.

**103. Payment of expenses of statutory management**

- (1) Any expenses of the statutory management of a conveyancing business that have not been paid to the statutory manager out of the receipts of the business must be paid to the statutory manager by the Director from the Fund.
- (2) The Director may recover an amount paid under this section as a debt owed by the relevant licensee.

**104. Statutory manager to report to Director**

- (1) A statutory manager of a conveyancing business must provide a written report of the statutory management of the business to the Director.
- (2) A report under sub-section (1) must be made on the request of the Director and in accordance with any directions of the Director, and must include any information requested by the Director.



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- (3) On the conclusion of the statutory management of a conveyancing business, the statutory manager must provide the Director with a final written report of the management.
  - (4) A report under sub-section (3) must be accompanied by any records that the statutory manager kept in relation to the statutory management.

**105. Trust and controlled money rules for statutory manager**

- (1) The provisions of Part 5 apply to the records and accounts kept by a statutory manager in respect of a conveyancing business in the same way that they apply to the records and accounts kept by a licensee.
- (2) The trust records, trust accounts and controlled money accounts of a conveyancing business under statutory management must be kept separately from—
  - (a) the records and accounts of the conveyancing business that existed prior to the appointment of the statutory manager; and
  - (b) the trust records, trust accounts and controlled money accounts of any other conveyancing business in respect of which the statutory manager has been appointed.

**106. Office accounts**

The regulations may make provision with respect to—

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

- (b) the purposes for which money in any account referred to in paragraph (a) may be spent.

**107. Appointment not affected by death of licensee**

If the relevant licensee dies during the term of the appointment of a statutory manager to the licensee's conveyancing business, the statutory manager may—

- (a) continue to manage the conveyancing business in accordance with this Act; and
- (b) for that purpose, deal as necessary with the legal personal representative of the deceased licensee's estate.

**108. Participation of licensee in conveyancing business during statutory management**

During the term of the appointment of a statutory manager, the relevant licensee must not participate in the affairs of the relevant licensee's conveyancing business except under the direct supervision of the statutory manager.

Penalty: 60 penalty units.

**109. Cessation of appointment of statutory manager**

- (1) The appointment of a person as a statutory manager under this Act ceases immediately if—
- (a) the term of the appointment expires; or
- (b) the Director revokes the appointment; or
- (c) the person resigns his or her appointment.
- (2) If the appointment of a person as a statutory manager in respect of a conveyancing business ceases, any money held by the statutory manager in connection with the business (minus any payments for expenses under sections 102 and 103) becomes the property of the relevant licensee.

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**Division 3—Receivers**

**110. Supreme Court may appoint receiver**

- (1) The Supreme Court may, on the application of the Director, appoint a receiver of all or any of the property of a licensee and may make the appointment whether or not the licensee has been notified of the application or is a party to the proceedings.
- (2) An application under sub-section (1) may be made only if the Director is of the opinion that it is necessary to have a receiver appointed to protect the interests of consumers and one or more of the following applies—
  - (a) the relevant licensee has requested the Director to make the application;
  - (b) the relevant licensee's licence has been cancelled or suspended;
  - (c) the Director is of the opinion that there has been, or may have been, a failure to account by the relevant licensee;
  - (d) the Director is of the opinion that a person is unable to obtain payment or delivery of property held by the licensee because the relevant licensee—
    - (i) is mentally or physically infirm; or
    - (ii) is an insolvent under administration; or
    - (iii) is a prisoner within the meaning of the **Corrections Act 1986**; or
    - (iv) has died; or
    - (v) has abandoned the licensee's conveyancing business.

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**111. Eligibility for appointment as receiver**

- (1) A person is not eligible for appointment as a receiver unless the person is—
- (a) a licensee; or
  - (b) an Australian legal practitioner who holds an Australian practising certificate entitling the person to engage in legal practice as a principal of a law practice; or
  - (c) a person who holds accounting qualifications and who has experience in trust accounts for conveyancing businesses; or
  - (d) a liquidator registered under the Corporations Act.
- (2) If—
- (a) a statutory manager has already been appointed in respect of the relevant licensee's conveyancing business; and
  - (b) the statutory manager is otherwise eligible under this section for appointment as a receiver—

the Supreme Court may appoint the statutory manager as receiver in respect of the property of the relevant licensee.

- (3) In this section, "**Australian practising certificate**", "**engage in legal practice**", "**law practice**" and "**principal**" have the same meanings respectively as they have in the **Legal Profession Act 2004**.

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**112. Court may order that proceedings be closed**

Before commencing to hear an application under this Division, the Supreme Court may order from the Court any person who is not—

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

**113. Court may prohibit publication of proceedings**

The Supreme Court, whether or not on the application of a party, may make an order prohibiting the publication of any report relating to the evidence, or of any order made, on the hearing of an application under this Division.

**114. Director to serve notice of order of appointment**

On the appointment of a receiver, the Director must cause a copy of the order of appointment to be served on—

- (a) the relevant licensee; and
- (b) the relevant associates, if any; and

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- (c) any other person, as directed by the Supreme Court.

**115. Receivership may extend to property of associates**

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

**116. Participation of licensee in conveyancing business during receivership**

During the term of the appointment of a receiver, the relevant licensee must not participate in the affairs of the relevant licensee's conveyancing business except under the direct supervision of the receiver.

Penalty: 60 penalty units.

**117. Receiver may take possession of property**

- (1) A receiver may take possession of receivable property of the relevant licensee or, if section 115 applies, a relevant associate.
- (2) A person in possession, or having control, of receivable property must permit the receiver to take possession of the property if required by the receiver to do so.

Penalty: 60 penalty units.

- (3) If, on the application of a receiver, the Supreme Court is satisfied that a person has contravened sub-section (2), the Court may do any one or more of the following—
- (a) order the person to deliver the receivable property to which the contravention relates to the receiver;

*Conveyancers Act 2006*  
*Act No. 75/2006*

Part 6—External Intervention

s. 118

- (b) order the seizure of any receivable property located on premises specified in the order;
  - (c) make any further order in the matter that it thinks fit.
- (4) An order under sub-section (3)(b) authorises the receiver, or a person authorised by the receiver, with the assistance of a member of the police force if necessary, to enter the premises specified in the order and to search for, seize and remove any property that appears to be receivable property.
- (5) An application by a receiver under sub-section (3) may be made—
- (a) in the case of property in the possession, or under the control, of the relevant licensee, or a relevant associate—in the name of the receiver; or
  - (b) in any other case—in the name of the relevant licensee or relevant associate.
- (6) A receiver must, as soon as possible, return property seized under this section if it transpires that it is not receivable property.

**118. Information about receivable property**

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

Penalty: 120 penalty units.

- (2) A licensee who has any information referred to in sub-section (1) may not refuse to comply with a requirement of a receiver under that sub-section merely because the information was obtained in confidence from a client or former client of the licensee.

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- (3) A person who complies with a requirement under this section is not, merely because of that compliance, subject to any liability, claim or demand.
  - (4) Information given to a receiver under this section is not admissible as evidence in any legal proceedings, other than—
    - (a) proceedings taken by a receiver for the recovery of receivable property; or
    - (b) proceedings taken against a person for a breach of this Act or the regulations; or
    - (c) with the consent of the relevant licensee or relevant associate to whom the information relates.

#### **119. Stop order on account**

- (1) A receiver who believes on reasonable grounds that money held in an account with an ADI is receivable property may serve on the ADI an order (a "**stop order**") prohibiting operations on the account by any person other than the receiver.
  - (2) A stop order may be served by leaving it with the manager, accountant or other person appearing to be in charge at the branch of the ADI at which the account is kept, but has no effect unless there is annexed to it a copy of the order of appointment of the receiver.
  - (3) An ADI served with a stop order must only permit the receiver, or a person authorised by the receiver, to access, or make a withdrawal or transfer from, the account to which the order relates.
  - (4) A receiver may transfer money from an account the subject of a stop order to another account with the ADI in the name of the receiver to be dealt with as receivable property.
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- (5) The ADI has the same obligations and protections—
- (a) in relation to an account the subject of a stop order; and
  - (b) in relation to an account to which money in an account the subject of a stop order is transferred—

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

- (6) Any money that is withdrawn or transferred in contravention of sub-section (3) may be recovered from the relevant ADI by the receiver as a debt in a court of competent jurisdiction, and any amount recovered is to be paid into a trust account as directed by the receiver.

**120. Improper dealings with receivable property**

A person must not, with intent to defeat the purposes of this Division—

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

Penalty: 120 penalty units.

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**121. Recovery of compensation for disposal of receivable property**

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

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

- (2) A person from whom an amount is recovered under sub-section (1) is not liable to any other person in respect of the amount.
- (3) If receivable property has at any time been paid or transferred unlawfully or in breach of trust to, or for the benefit of, a person in respect of a cause of action the person claims to have against another person, the receiver—
- (a) may recover from the person as a debt the amount of the payment or the value of the property; or

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- (b) to the extent to which the full amount or value is not recovered from the person under paragraph (a), may take any proceedings in relation to the claimed cause of action as the person could have taken.
- (4) If a receiver takes proceedings under sub-section (3)(b) in relation to a cause of action claimed by a person, the receiver may not later take proceedings under sub-section (3)(a) to recover property paid or transferred to the person in respect of the same cause of action.
- (5) If receivable property is used unlawfully or in breach of trust to discharge a debt or liability of a person, the receiver may recover from the person as a debt the amount that was required for the discharge of the debt or liability, reduced by the value of any consideration provided by the person for the discharge.
- (6) Recovery proceedings under this section may be taken in the name of the receiver or in the name of any other person who, had the receiver not been appointed, would have been entitled to take the proceedings.

**122. Receiver may give certificate**

- (1) A receiver, or a person authorised by the Director, may give a certificate as to any one or more of the following—
- (a) the receipt of property by the relevant licensee or a relevant associate, the nature and value of the property received, the date of its receipt by the relevant licensee or relevant associate and the identity of the person from whom it was received;

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- (b) the taking or transfer of property, the nature and value of the property, the date of its taking or transfer and the identity of the person by whom it was taken or to whom it was transferred;
  - (c) the payment of money, the amount of money paid, the date of the payment and the identity of the person who received the payment;
  - (d) the entries made in the records of a relevant licensee or a relevant associate and the truth or falsity of the entries;
  - (e) the use of property unlawfully or in breach of trust.
- (2) A certificate under this section is admissible in any proceedings taken by a receiver under this Act and is evidence of the matters specified in the certificate.

**123. Receiver taken to be beneficially entitled**

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

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**124. Receiver may deal with property**

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

**125. Other powers of receiver**

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

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

- (1) A receiver must give notice to the relevant licensee, a relevant associate or any other person that any claim the licensee, associate or other person has to receivable property must be submitted to the receiver within one month after the giving of the notice or within a longer period stated in the notice.
- (2) A claim submitted in response to a notice must state—
  - (a) full particulars of the property; and
  - (b) the grounds of the claim.
- (3) A receiver may disregard a claim made by a relevant licensee, a relevant associate or other person who has been given a notice under this section if the claim is not made in accordance with the notice.
- (4) A relevant licensee or relevant associate in receipt of a notice under this section is not entitled—
  - (a) to enforce a claim to receivable property; or
  - (b) except against a client, to the benefit of a lien against a document that is receivable property—unless all other enforceable claims against the property have been satisfied and the expenses of the receivership have been paid.

**127. Lien for costs on receivable property**

- (1) If a licensee claims a lien for costs on receivable property, the receiver may serve on the licensee a written notice requiring the licensee to give to the receiver, within a specified period of not less than one month—
    - (a) particulars sufficient to identify the property; and
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- (b) a detailed itemised account relating to the amount in respect of which each lien is claimed.
- (2) If the licensee requests the receiver in writing to allow access to any records that may be reasonably necessary to enable the preparation of the itemised account, the time allowed for providing the itemised account referred to in subsection (1)(b) does not begin to run until access to those records is provided.
- (3) If a requirement of a notice under this section is not complied with, the receiver may disregard the claim in dealing with the property claimed to be subject to a lien.

**128. Examination by receiver**

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

**129. Property not dealt with during receivership**

- (1) If, during the course of a receivership, receivable property or money under the control of a receiver has not been dealt with in accordance with this Division, the receiver must advise the Director of that fact and—
- (a) if required to do so by the Director within one month after the notice is given, transfer, deliver or pay the property or money to the Director; or
  - (b) in the absence of a requirement of the Director under paragraph (a), transfer, deliver or pay the property or money to the relevant licensee or a relevant associate.
- (2) If property other than money is transferred or delivered to the Director under sub-section (1), the Director must—
- (a) deal with it as the Supreme Court directs; and
  - (b) if the property is sold, treat the proceeds as money paid to the Director under this section.
- (3) The Director must apply money paid to the Director under this section—
- (a) first, to the satisfaction of any outstanding claims against the relevant licensee or a relevant associate; and
  - (b) secondly, in payment of the expenses of the receivership.
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- (4) Any money paid to the Director under this section that is surplus to the requirements of this section must be paid to the relevant licensee or a relevant associate.

**130. Investment of money by receiver**

- (1) A receiver may invest receivable property in any manner in which trustees are authorised by the **Trustee Act 1958** to invest trust funds.
- (2) Income received from an investment under this section, and any profit made on the sale of such an investment, is receivable property.

**131. Receiver may be reimbursed for damages**

- (1) The Director may reimburse a receiver for any damages or costs recovered against the receiver, or an employee or agent of the receiver, for any act or omission performed in good faith and in the purported exercise or performance of the receiver's powers and functions under this Act.
- (2) Reimbursement under this section is to be by way of payment from the Fund.

**132. Payment of expenses of receivership**

- (1) So much of the expenses of a receivership as have not otherwise been paid to the receiver are to be paid to the receiver by the Director from the Fund.
- (2) An amount paid under this section may be recovered by the Director from the relevant licensee or a relevant associate as a debt.
- (3) If the Director and a receiver fail to agree on the remuneration to be paid to the receiver, the Supreme Court may, on the application of the Director or the receiver, determine the amount to be paid.
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- (4) The Supreme Court, on the application of the licensee in respect of whose property the receiver was appointed—
- (a) may re-open any agreement between the Director and a receiver for remuneration of the receiver; and
  - (b) may determine the amount to be paid.

**133. Supreme Court may review expenses of receivership**

If, on the application of the relevant licensee or a relevant associate, the Supreme Court is satisfied that the expenses of a receivership are excessive, the Supreme Court may—

- (a) order the taking of accounts between the Director and the receiver; and
- (b) make any adjustments to the expenses that the Court considers to be appropriate.

**134. Receivable property not to be attached**

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

**135. Applications for directions by receiver, licensee or associate**

- (1) A receiver, a relevant licensee or a relevant associate who holds receivable property, or a person who claims receivable property so held, may apply to the Supreme Court for directions as to the performance of the receiver's functions.
- (2) On an application under this section, the Supreme Court may give any directions that it considers to be appropriate.

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**136. Supreme Court may give general directions to receiver**

- (1) The Supreme Court may—
  - (a) authorise a receiver to do any things in the performance of the receiver's functions that the Supreme Court considers appropriate; and
  - (b) give directions for the exercise of any authorisation given under paragraph (a).
- (2) A receiver must exercise an authorisation given under sub-section (1)(a) in accordance with any directions given under sub-section (1)(b).

**137. Receiver to report to Supreme Court and Director**

- (1) A receiver must report to the Supreme Court and the Director as required in the order for the appointment of the receiver.
- (2) On the conclusion of a receivership, the receiver must lodge with the Supreme Court all of the receiver's records relating to the receivership.

**138. Termination of appointment of receiver**

- (1) The Supreme Court—
  - (a) may terminate the appointment of a receiver; and
  - (b) may, if it thinks fit, appoint a new receiver either immediately or at any time within the next 14 days.
- (2) The former receiver must transfer or deliver the receivable property—
  - (a) if a new receiver is appointed, to the new receiver in accordance with any directions given by the Supreme Court; or

*Conveyancers Act 2006*  
*Act No. 75/2006*

Part 6—External Intervention

s. 139

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- (b) if a new receiver is not appointed and if the relevant licensee or a relevant associate requires by notice in writing served on the receiver, to the relevant licensee or relevant associate.
- (3) Unless the expenses of the receivership have not been paid, the former receiver must, in accordance with any directions given by the Supreme Court, ensure that the receivable property is transferred or delivered as soon as possible after the former receiver's appointment is terminated.
- Penalty: 60 penalty units.
- (4) Subject to any direction given by the Supreme Court, a former receiver may transfer or deliver receivable property to the relevant licensee or relevant associate without having been given a notice under sub-section (2)(b).

**Division 4—General**

**139. Relationship of Act to Corporations legislation**

- (1) The provisions of Division 1 (insofar as they relate to statutory managers) and Division 2 are declared to be an excluded matter for the purposes of section 5F of the Corporations Act in relation to the provisions of Part 5.2 of that Act.

Note: Section 5F of the Corporations Act provides that if a State law declares a provision of a State law to be an excluded matter in relation to specified provisions of the Corporations legislation, the specified provisions of the Corporations legislation do not apply in the State in relation to that matter.

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- (2) The provisions of Division 1 (insofar as they relate to receivers) and Division 3 are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the Corporations Act.

Note: Section 5G of the Corporations Act provides that if a State law declares a provision of a State law to be a Corporations legislation displacement provision, any provision of the Corporations legislation with which the State provision would otherwise be inconsistent does not apply to the extent necessary to avoid the inconsistency.

- (3) The regulations may declare any matter relating to a licensee that is a company that is prohibited, required, authorised or permitted by or under this Act or the regulations to be an excluded matter for the purposes of section 5F of the Corporations Act.
- (4) The regulations may declare any provision of this Act or the regulations relating to a licensee that is a company to be a Corporations legislation displacement provision for the purposes of section 5G of the Corporations Act.

**140. External administration proceedings under Corporations Act**

- (1) This section applies to proceedings in any court under Chapter 5 (External administration) of the Corporations Act—
- (a) relating to a company that is an externally-administered body corporate under that Act and that is or was a licensee; or
  - (b) relating to a company that is or was a licensee becoming an externally-administered body corporate under that Act.

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- (2) The Director is entitled to intervene in the proceedings, unless the court determines that the proceedings do not concern or affect the carrying out of conveyancing work by the licensee.
  - (3) The court may, when exercising its jurisdiction in the proceedings, have regard to the interests of the clients of the licensee on whose behalf conveyancing work has been, or is to be carried out by the licensee.
  - (4) Sub-section (3) does not authorise the court to make any decision that is contrary to a specific provision of the Corporations Act.
  - (5) The provisions of sub-sections (2) and (3) are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the Corporations Act in relation to the provisions of Chapter 5 of that Act.

Note: Section 5G of the Corporations Act provides that if a State law declares a provision of a State law to be a Corporations legislation displacement provision, any provision of the Corporations legislation with which the State provision would otherwise be inconsistent does not apply to the extent necessary to avoid the inconsistency.

**141. Incorporated licensee that is subject to external intervention under this Act and external administration under the Corporations Act**

- (1) This section applies if a licensee that is a company is the subject of both—
  - (a) the appointment of an external intervener under this Act; and
  - (b) the appointment of a Corporations Act administrator.

*Conveyancers Act 2006*  
*Act No. 75/2006*

Part 6—External Intervention

s. 141

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- (2) The external intervener is under a duty to notify the Corporations Act administrator of the appointment of the external intervener, whether the appointment precedes, follows or is contemporaneous with the appointment of the Corporations Act administrator.
  - (3) The external intervener or the Corporations Act administrator (or both of them jointly) may apply to the Supreme Court for the resolution of issues arising from or in connection with the dual appointments and their respective powers, except where proceedings referred to in section 140 have been commenced.
  - (4) The Supreme Court may make any orders it considers appropriate, and no liability attaches to the external intervener or the Corporations Act administrator for any act or omission done by the external intervener or administrator in good faith for the purpose of carrying out or acting in accordance with the orders.
  - (5) The Director is entitled to intervene in the proceedings, unless the court determines that the proceedings do not concern or affect the carrying out of conveyancing work by the licensee.
  - (6) The provisions of sub-sections (3) and (4) are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the Corporations Act in relation to the provisions of Chapter 5 of that Act.

Note: Section 5G of the Corporations Act provides that if a State law declares a provision of a State law to be a Corporations legislation displacement provision, any provision of the Corporations legislation with which the State provision would otherwise be inconsistent does not apply to the extent necessary to avoid the inconsistency.

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(7) In this section—

**"Corporations Act administrator"** means—

- (a) a receiver, receiver and manager, liquidator (including a provisional liquidator), controller, administrator or deed administrator appointed under the Corporations Act; or
- (b) a person who is appointed to exercise powers under that Act and who is prescribed, or of a class prescribed, by the regulations for the purposes of this definition;

**"external intervener"** means a statutory manager or a receiver.

**142. Offence to hinder or obstruct statutory manager or receiver**

- (1) A person must not hinder, obstruct or delay a statutory manager in the exercise of his or her functions and powers under this Act.

Penalty: 120 penalty units.

- (2) A person must not hinder, obstruct or delay a receiver in the exercise of his or her functions and powers under this Act.

Penalty: 120 penalty units.

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**PART 7—COMPENSATION FROM THE VICTORIAN  
PROPERTY FUND**

**143. Definitions**

In this Part—

**"former licensee"**, in relation to a licence that has been suspended or cancelled, includes the person who held the licence immediately before its suspension or cancellation;

**"licensee"** includes a former licensee.

**144. Right to claim against Fund in respect of pecuniary loss**

- (1) Subject to this Part, a person who suffers pecuniary loss by reason of a defalcation committed by a licensee, or an officer or employee of a licensee, in the course of carrying on a conveyancing business is entitled to claim compensation from the Fund.
  - (2) Subject to this Part, the amount that a claimant is entitled to claim as compensation from the Fund is the amount of the actual pecuniary loss suffered by the claimant (including the reasonable costs of, and disbursements incidental to, the making and proof of the claim) less the amount or value of all money or other benefits received or receivable by the claimant from a source other than the Fund in reduction of the loss.
  - (3) In addition to any compensation that is payable under this Part, interest is payable out of the Fund on the amount of the compensation, less any amount attributable to costs and disbursements, at the prescribed rate calculated from and including the day on which the pecuniary loss was suffered until the day on which the claim is satisfied.
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*Conveyancers Act 2006*  
*Act No. 75/2006*

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- (4) In addition to any compensation payable under this section, there is payable out of the Fund to any claimant entitled to compensation the reasonable costs of, and disbursements incidental to, the making and proof of the claim.

**145. Claims against the Fund**

- (1) A claim under this Part for compensation from the Fund in respect of a pecuniary loss must—
- (a) be made in the form approved by the Secretary; and
  - (b) contain the prescribed information (if any); and
  - (c) be accompanied by any documents required by the Secretary.
- (2) Despite anything to the contrary in the **Limitation of Actions Act 1958** or in any other Act or law, a claim against the Fund under this Part cannot be brought more than 10 years after the date on which the defalcation to which the claim relates was committed.
- (3) The Secretary may allow and settle any proper claim under this Part for compensation from the Fund at any time after the occurrence of the pecuniary loss to which the claim relates.
- (4) If the Secretary is satisfied that there was a defalcation on which to found a claim against the Fund under this Part, the Secretary may allow the claim even though—
- (a) the person alleged to have committed the defalcation has not been convicted or prosecuted; or
  - (b) the evidence on which the Secretary acts would not be sufficient to establish the guilt of the person on a criminal trial in respect of the defalcation.
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*Conveyancers Act 2006*  
*Act No. 75/2006*

Part 7—Compensation from the Victorian Property Fund

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s. 146

- (5) If the Secretary disallows, whether wholly or partly, a claim under this Part for compensation from the Fund, the Secretary must serve notice of the disallowance in the prescribed form on the claimant or the claimant's Australian legal practitioner (if any).

**146. Review of decision of Secretary to disallow claim**

- (1) A claimant may apply to VCAT for review of a decision of the Secretary under section 145 to disallow a claim if—
- (a) the Secretary has served notice of the disallowance of the claim; and
  - (b) the claimant has exhausted all rights of action and other legal remedies for the recovery of the money or other property in respect of which the defalcation was committed available against the relevant licensee and all other persons liable in respect of the loss suffered by the claimant.
- (2) An application for review must be made before the expiration of 3 months after the service of notice of the disallowance under section 145(5).

**147. Power of Secretary to require production of securities, documents or information**

- (1) The Secretary may at any time require a person to produce and deliver any securities, documents or information necessary to support a claim made against the Fund under this Part or necessary for the purpose of—
- (a) exercising the Secretary's rights or powers against a licensee; or
  - (b) enabling criminal proceedings to be taken against a person in respect of a defalcation.
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- (2) If a person fails to comply with a requirement of the Secretary under sub-section (1), the Secretary may disallow the relevant claim.

**148. Subrogation of Secretary to rights of claimant on payment from Fund**

On payment out of the Fund of any money in respect of a claim under this Part, the Secretary is taken to be subrogated to the extent of that payment to all the rights and remedies of the claimant in relation to the loss suffered by the claimant from the relevant defalcation, including the right to benefit from a compensation order made under section 86 of the **Sentencing Act 1991**.

**149. Secretary may enter into contract of insurance or indemnity**

- (1) The Secretary may enter into a contract with a person carrying on a fidelity insurance business under which the Secretary will be insured or indemnified to the extent and in the manner provided by the contract against liability in respect of claims under this Part.
- (2) A contract under sub-section (1) may be entered into in relation to licensees generally, or in relation to particular licensees named in the contract, or in relation to licensees generally with the exclusion of particular licensees named in the contract.

**150. Application of insurance moneys**

A claimant against the Fund under this Part does not have a right of action against a person with whom a contract of insurance or indemnity is made under this Part in respect of a contract entered into by the Secretary under section 149 or a right or claim with respect to any moneys paid by the insurer in accordance with the contract.

*Conveyancers Act 2006*  
*Act No. 75/2006*

**s. 151**

Part 7—Compensation from the Victorian Property Fund

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**151. Money required to be paid into the Fund**

The following money must be paid into the Fund—

- (a) any interest received by the Secretary under an arrangement under section 91;
  - (b) all fees payable to the Authority under this Act;
  - (c) all fines and penalties payable under this Act;
  - (d) all money recovered by or on behalf of the Secretary or the Director in the exercise of any right of action conferred by this Part;
  - (e) all other money required to be paid into the Fund under this Act.
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**PART 8—ENFORCEMENT**

**Division 1—Preliminary**

**152. Production of identity card**

An inspector must produce his or her identity card for inspection—

- (a) before exercising a power under this Part, other than a power exercised by way of post; and
- (b) at any time during the exercise of a power under this Part, if asked to do so.

Penalty: 10 penalty units.

**Division 2—Inspection of Documents and Records**

**153. Documents to be available for inspection**

- (1) A licensee must at all reasonable times at each place at which the licensee carries on a conveyancing business keep all documents relating to the business available for inspection by an inspector in a form in which they can readily be inspected.

Penalty: 60 penalty units.

- (2) If the licence of a licensee has been surrendered or cancelled in the last 3 years, the former licensee must make all documents relating to the former conveyancing business available for inspection by an inspector in a form and at a place where they can readily be inspected.

Penalty: 60 penalty units.

- (3) If a person's licence has been suspended, the person whose licence is suspended must, during the period of the suspension, make all documents

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relating to the conveyancing business of the person available for inspection by an inspector in a form and at a place where they can readily be inspected.

Penalty: 60 penalty units.

**154. Specified persons to produce documents and answer questions**

- (1) For the purpose of monitoring compliance with this Act or the regulations, an inspector may, at a time and place specified by the inspector, require a licensee, specified person or other person with control over relevant documents and information—
  - (a) to answer, orally or in writing, any questions put by the inspector relating to the licensee's conveyancing business; or
  - (b) to supply, orally or in writing, information required by the inspector relating to that business; or
  - (c) to produce to the inspector specified documents or documents of a specified class relating to that business.
- (2) In this section, "**specified person**", in relation to a conveyancing business, means—
  - (a) a former licensee; or
  - (b) a person who is a director or other officer of a company that is or was a licensee; or
  - (b) a person who provides, or who has provided, professional indemnity insurance to a licensee.
- (3) Nothing in this section permits a requirement to be made of the Registrar of Titles.

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**155. Third parties to produce documents and answer questions relating to conveyancing business**

- (1) For the purpose of monitoring compliance with this Act or the regulations, an inspector may require any person who has possession, custody or control of documents relating to a licensee's conveyancing business—
  - (a) to answer, orally or in writing, any questions put by the inspector relating to the licensee's conveyancing business;
  - (b) to supply, orally or in writing, information required by the inspector relating to that business;
  - (c) to produce to the inspector specified documents or documents of a specified class relating to that business.
- (2) Sub-section (1) does not permit a requirement to be made of the Registrar of Titles.

**156. Specified public bodies to produce information**

- (1) For the purpose of monitoring compliance with this Act or the regulations, an inspector may request that, within a time specified by the inspector, a specified public body do either or both of the following—
  - (a) answer, orally or in writing, any questions put by the inspector relating to a licensee's conveyancing business;
  - (b) supply, orally or in writing, information required by the inspector relating to the business.



*Conveyancers Act 2006*  
*Act No. 75/2006*

Part 8—Enforcement

s. 157

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- (2) An inspector may only make a request under sub-section (1) with the written consent of the Director.
  - (3) A specified public body other than the Chief Commissioner must comply with a request under sub-section (1).
  - (4) The Chief Commissioner must respond to a request under sub-section (1) and may, but is not obliged to, comply with it.
  - (5) In this section—

**"public statutory authority"** means a body established by or under an Act for a public purpose;

**"specified public body"** means—

- (a) a Department Head within the meaning of the **Public Administration Act 2004**;
- (b) a public statutory authority;
- (c) a municipal council;
- (d) the Chief Commissioner.

**157. Certain other specified persons or bodies to produce information**

- (1) For the purpose of monitoring compliance with this Act or the regulations, the Director or an inspector may require a specified person or body within a time specified by the Director or inspector—
  - (a) to answer, orally or in writing, any questions put by the inspector relating to a licensee's conveyancing business;
  - (b) to supply, orally or in writing, information required by the inspector relating to that business.

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- (2) An inspector can only make a requirement under sub-section (1) with the written consent of the Director.
  - (3) A specified person or body must comply with a request under sub-section (1).
  - (4) In this section, "**specified person or body**" means—
    - (a) a person who is a publisher of a publication; or
    - (b) a person who is the owner or operator of a broadcasting service; or
    - (c) a person who is the owner or operator of a telecommunications service; or
    - (d) a person who is the owner or operator of a postal service.

**158. ADIs to produce documents and information**

- (1) For the purpose of monitoring compliance with this Act or the regulations, an inspector, by written notice served on an ADI, may require the ADI to—
  - (a) produce for inspection or copying by the inspector any documents or other information specified in the notice that the inspector reasonably believes to be relevant to the monitoring of compliance; and
  - (b) provide the inspector with full details of any transactions relating to trust accounts or trust money.
- (2) An ADI must, without charge, comply with a notice under sub-section (1) despite any duty of confidence, or any law relating to confidentiality, to the contrary.

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**159. Powers on production of documents**

If any documents are produced to an inspector under this Division, the inspector may do any one or more of the following—

- (a) inspect the documents or authorise a person to inspect the documents;
- (b) make copies of or take extracts from the documents;
- (c) seize the documents if the inspector—
  - (i) considers the documents necessary for the purpose of obtaining evidence for use in any proceedings or proposed proceedings under any Consumer Act; or
  - (ii) believes on reasonable grounds that it is necessary to seize the documents in order to prevent their concealment, loss or destruction or their use in the contravention of any Consumer Act;
- (d) secure any seized documents against interference;
- (e) retain possession of the documents.

**160. Where must documents be produced?**

An inspector may require a person to produce a document—

- (a) at the person's place of business; or
- (b) at the office of the Director; or
- (c) with the consent of the person, at any other place.

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**161. Order requiring supply of information and answers to questions**

- (1) For the purpose of monitoring compliance with this Act or the regulations, an inspector, with the written approval of the Director, may apply to the Magistrates' Court for an order requiring any person at a time and place specified by the inspector—
  - (a) to answer, orally or in writing, any questions put by the inspector relating to a licensee's conveyancing business; or
  - (b) to supply, orally or in writing, information required by the inspector relating to a licensee's conveyancing business.
- (2) If the Magistrates' Court is satisfied on the basis of evidence presented by the Director that the order is necessary for the purpose of monitoring compliance with this Act or the regulations, the Court may grant the order sought.
- (3) An order under this section must state a day, not later than 28 days after the making of the order, on which the order ceases to have effect.
- (4) An inspector who executes an order under this section must, as soon as practicable after that execution, notify the Magistrates' Court in writing of the time and place of execution of the order.

**162. Service of documents**

- (1) A written requirement by an inspector under this Division may be given personally or by registered post to a person—
    - (a) at the last known place of business, employment or residence of the person; or
    - (b) in the case of a company, at the registered office of the company.
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- (2) A person who provides a document or information in response to a requirement of an inspector under this Division may send that document or information to the Director by registered post.

### **Division 3—Entry, Search and Seizure**

#### **163. Entry or search with consent**

- (1) For the purpose of monitoring compliance with this Act or the regulations, an inspector, with the consent of the occupier of the premises, may—
- (a) enter and search any premises; and
  - (b) examine and seize any thing found on the premises which the inspector believes on reasonable grounds to be connected with a contravention of this Act or the regulations; and
  - (c) inspect and make copies of, or take extracts from, any document found on the premises.
- (2) An inspector must not enter and search any premises with the consent of the occupier unless, before the occupier consents to that entry, the inspector—
- (a) has produced his or her identity card for inspection; and
  - (b) informed the occupier—
    - (i) of the purpose of the search; and
    - (ii) that the occupier may refuse to give consent to the entry and search or to the seizure of any thing found during the search; and
    - (iii) that the occupier may refuse to consent to the taking of any copy or extract from a document found on the premises during the search; and
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- (iv) that any thing seized or taken during the search with the consent of the occupier may be used in evidence in proceedings.
- (3) If an occupier consents to an entry and search, the inspector who requested consent must, before entering the premises, ask the occupier to sign an acknowledgment stating the inspector has complied with the requirements set out in subsection (2).
- (4) If an occupier consents to the seizure or taking of any thing during a search under this section, the inspector must before seizing or taking the thing ask the occupier to sign an acknowledgment stating—
- (a) that the occupier has consented to the seizure or taking of the thing; and
  - (b) the date and time that the occupier consented.
- (5) An occupier who signs an acknowledgment must be given a copy of the signed acknowledgment before the inspector leaves the premises.

**164. Entry without consent or warrant**

For the purpose of monitoring compliance with this Act or the regulations, an inspector may (if necessary, with the assistance of another inspector) do all or any of the following—

- (a) enter and search any premises at which a licensee is carrying on a conveyancing business at any time that the premises are open for business or between the hours of 9 a.m. and 5 p.m.;

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- (b) seize or secure against interference any thing that the inspector believes on reasonable grounds to be connected with a contravention of this Act or the regulations that is found in or on the premises;
  - (c) inspect and make copies of or take extracts from any document kept in or on the premises.

**165. Search warrants**

- (1) An inspector, with the written approval of the Director, may apply to a magistrate for the issue of a search warrant in relation to particular premises.
- (2) A magistrate may issue a search warrant, in accordance with the **Magistrates' Court Act 1989**, authorising an inspector named in the warrant, together with a member of the police force or any other person or persons named or otherwise identified in the warrant and with any necessary equipment—
  - (a) to enter the premises specified in the warrant, by force if necessary; and
  - (b) to do all or any of the following—
    - (i) search for;
    - (ii) seize;
    - (iii) secure against interference;
    - (iv) examine and inspect;
    - (v) make copies of or take extracts from—  
a thing or things of a particular kind named or described in the warrant and which the inspector believes, on reasonable grounds, to be connected with a contravention of this Act or the regulations.

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- (3) A search warrant issued under this section must state—
- (a) the purpose for which the search is required; and
  - (b) any conditions to which the warrant is subject; and
  - (c) whether entry is authorised to be made at any time of the day or night or during stated hours of the day or night; and
  - (d) a day, not later than 28 days after the issue of the warrant, on which the warrant ceases to have effect.
- (4) Except as provided by this Act, the rules to be observed with respect to search warrants under the **Magistrates' Court Act 1989** extend and apply to warrants under this section.

**166. Announcement before entry**

- (1) On executing a search warrant, the inspector executing the warrant—
- (a) must announce that he or she is authorised by the warrant to enter the premises; and
  - (b) must give any person at the premises an opportunity to allow entry to the premises.
- (2) An inspector need not comply with sub-section (1) if he or she believes on reasonable grounds that immediate entry to the premises is required to ensure—
- (a) the safety of any person; or
  - (b) that the effective execution of the search warrant is not frustrated.
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*Conveyancers Act 2006*  
*Act No. 75/2006*

Part 8—Enforcement

s. 167

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- (3) If the occupier is present at premises where a search warrant is being executed, the inspector must—
- (a) identify himself or herself to the occupier; and
  - (b) give to the occupier a copy of the warrant.
- (4) If the occupier is not present at premises where a search warrant is being executed, the inspector must—
- (a) identify himself or herself to a person (if any) at the premises; and
  - (b) give to the person a copy of the warrant.

**167. Seizure of things not mentioned in the warrant**

A search warrant under section 165 authorises an inspector executing the search warrant, in addition to the seizure of any thing of the kind described in the warrant, to seize any thing which is not of the kind described in the warrant if—

- (a) the inspector believes, on reasonable grounds, that the thing—
    - (i) is of a kind which could have been included in a search warrant issued under this Division; or
    - (ii) is evidence of a contravention of any Consumer Act; and
  - (b) in the case of seizure, the inspector believes, on reasonable grounds, that it is necessary to seize that thing in order to prevent its concealment, loss or destruction or its use in the contravention of this Act or any other Consumer Act.
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**168. Embargo notice**

- (1) An inspector executing a search warrant who is authorised by that warrant to seize any thing may, if the thing cannot, or cannot readily, be physically seized and removed, issue an embargo notice in the prescribed form—
  - (a) by causing a copy of the notice to be served on the occupier; or
  - (b) if the occupier cannot be located after all reasonable steps have been taken to do so, by attaching a copy of the notice to the thing in a prominent position.
- (2) A person who knows that an embargo notice relates to a thing must not, without the written consent of the inspector who issued the embargo notice, sell, lease, transfer, move, dispose of or otherwise deal with the thing or any part of the thing.  
Penalty: 60 penalty units.
- (3) It is a defence to a prosecution for an offence against sub-section (2) to prove that the defendant moved the thing or the part of the thing for the purpose of protecting and preserving it.

**169. Inspector may monitor compliance with embargo notice**

- (1) For the purpose of monitoring compliance with an embargo notice issued under section 168, an inspector, with the written approval of the Director, may apply—
  - (a) to the Magistrates' Court for—
    - (i) an order requiring the owner of the thing to which an embargo notice under section 168 relates, or the occupier of the premises where the thing is kept or required under the notice to be kept, to

*Conveyancers Act 2006*  
*Act No. 75/2006*

Part 8—Enforcement

s. 169

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- answer questions or produce documents at a time and place specified by the inspector; and
- (ii) any other order incidental to or necessary for monitoring compliance with the embargo notice or with section 168(2); and
- (b) to a magistrate for the issue of a search warrant permitting entry to the premises where the thing to which the embargo notice relates is kept or required to be kept.
- (2) The Magistrates' Court may make the order sought under sub-section (1)(a).
- (3) If the magistrate is satisfied, by evidence, on oath or by affidavit, of the inspector that it is necessary to do so for the effective monitoring of compliance with section 168(2) in relation to a thing, the magistrate may issue a search warrant, in accordance with the **Magistrates' Court Act 1989**, authorising the inspector, together with any other person or persons named or otherwise identified in the warrant and with any necessary equipment—
- (a) to enter the premises specified in the warrant, by force if necessary; and
- (b) to search for, seize and secure against interference the thing named in the warrant.
- (4) Except as provided by this Act, the rules to be observed with respect to search warrants under the **Magistrates' Court Act 1989** extend and apply to warrants under this section.
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**170. Retention and return of seized documents or things**

- (1) If an inspector retains possession of a document taken or seized from a person under this Division, the inspector must, within 21 days of the seizure, give the person a copy of the document certified as correct by the inspector.
- (2) A copy of a document certified under subsection (1) must be received in all courts and tribunals to be evidence of equal validity to the original.
- (3) If an inspector seizes a document or other thing under this Division, the inspector must take reasonable steps to return the document or thing to the person from whom it was seized if the reason for its seizure no longer exists.
- (4) If a document or thing seized by an inspector under this Division has not been returned within 3 months after it was seized, the inspector must take reasonable steps to return it unless—
  - (a) proceedings for the purpose for which the document or thing was retained have commenced within that 3 month period and those proceedings (including any appeal) have not been completed; or
  - (b) the Magistrates' Court makes an order under section 171 extending the period during which the document or thing may be retained.

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**171. Magistrates' Court may extend 3 month period**

- (1) An inspector may apply to the Magistrates' Court—
- (a) within 3 months after seizing a document or other thing under this Division; or
  - (b) if an extension has been granted under this section, before the end of the period of the extension—

for an extension not exceeding 3 months of the period for which the inspector may retain the document or thing but so that the total period of retention does not exceed 12 months.

- (2) The Magistrates' Court may order such an extension if it is satisfied that the total period of retention does not exceed 12 months and retention of the document or other thing is necessary—
- (a) for the purposes of an investigation into whether a contravention of this Act or the regulations has occurred; or
  - (b) to enable evidence of a contravention of this Act or the regulations to be obtained for the purposes of a proceeding under this Act.
- (3) The Magistrates' Court may adjourn an application to enable notice of the application to be given to any person.

**172. Requirement to assist inspector during entry**

- (1) An inspector exercising a power of entry under this Division may require the occupier of the premises or an agent or employee of the occupier to do any one or more of the following—
- (a) give information to the inspector, orally or in writing;

- (b) produce documents to the inspector;
  - (c) give reasonable assistance to the inspector.
- (2) A person must not, without reasonable excuse, fail to comply with a requirement of an inspector under this section.

Penalty: 60 penalty units.

#### **Division 4—General**

#### **173. Offence to give false or misleading information**

A person must not—

- (a) give information to an inspector under this Part that the person believes to be false or misleading in a material particular; or
- (b) produce a document to an inspector under this Part that the person knows to be false or misleading in a material particular without indicating the respect in which it is false or misleading and, if practicable, providing correct information.

Penalty: 60 penalty units.

#### **174. Confidentiality**

- (1) An inspector must not, except to the extent necessary to carry out the inspector's functions under this Part, give to any other person, whether directly or indirectly, any information acquired by the inspector in carrying out those functions.

Penalty: 60 penalty units.

- (2) Sub-section (1) does not apply to the giving of information—
- (a) to a court or tribunal in the course of legal proceedings; or
  - (b) under an order of a court or tribunal; or

- (c) to the extent reasonably required to enable the investigation or the enforcement of a law of this State or of any other State or Territory or of the Commonwealth; or
- (d) to the Authority; or
- (e) with the written authority of the Director; or
- (f) with the written authority of the person to whom the information relates.

**175. Infringements**

- (1) An inspector may serve an infringement notice on a person in respect of a prescribed offence if the inspector has reason to believe that the person committed the offence.
- (2) A prescribed offence is an infringement offence within the meaning of the **Infringements Act 2006**.
- (3) The infringement penalty for an offence referred to in sub-section (1) is the prescribed penalty in respect of the offence.

**176. Protection against self-incrimination**

- (1) It is a reasonable excuse for a natural person to refuse or fail to give information, or do any other thing that the person is required to do, under this Part if the giving of the information or the doing of the thing would tend to incriminate the person.
- (2) Despite sub-section (1), it is not a reasonable excuse for a natural person to refuse or fail to produce a document that the person is required to produce under this Part if the production of the document would tend to incriminate the person.

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**177. Complaints**

- (1) A person may complain to the Director about the exercise of a power by an inspector under this Part.
  - (2) The Director must investigate any complaint received under this section and provide a written report on the results of the investigation to the complainant.
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**PART 9—ADMINISTRATION**

**178. Register of Licensed Conveyancers**

- (1) The Authority must establish and maintain a register to be called the Register of Licensed Conveyancers.
- (2) The Authority must record in the Register the following information in respect of each licensee—
  - (a) the licensee's full name and licence number;
  - (b) the name and address of the principal place of the licensee's conveyancing business in Victoria;
  - (c) the licensee's Australian Business Number;
  - (d) the date on which the licensee's licence was granted and, if applicable, suspended, cancelled or surrendered;
  - (e) details of any conditions to which the licence is subject;
  - (f) details of any court or VCAT orders affecting the licence of which the Authority has notice;
  - (g) details of any claims against the Fund that have been allowed in respect of the licensee;
  - (h) if the licensee maintains an Internet site in respect of the licensee's conveyancing business, the address for that Internet site;
  - (i) if the licensee is a company, the name and date of appointment of each director of the company;

*Conveyancers Act 2006*  
*Act No. 75/2006*

Part 9—Administration

s. 178

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- (j) if the licensee conducts a conveyancing business from more than one place—
    - (i) the address of each other place at which the business is conducted; and
    - (ii) the full name of the person in charge at each of those places;
  - (k) if the licensee is an employee of another licensee, the name and business address of the licensee's employer;
  - (l) if the licensee employs one or more other licensees, the name and date of commencement of employment of each of those other licensees;
  - (m) details of any other prescribed matter.
- (3) The Authority must also record the following information in the Register—
- (a) details of each application for a licence within the last 2 years in respect of which the Authority refused to grant a licence;
  - (b) details of any other prescribed matter.
- (4) On payment of the prescribed fee, a person may search, and take a copy of an extract from, or a copy of, the Register.
- (5) Subject to the **Public Records Act 1973**, the Registrar may remove information from the Register if—
- (a) the information has been on the Register for at least 12 years; and
  - (b) in the opinion of the Registrar, it is no longer necessary for the information to remain on the Register.
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**179. Production of information to Authority**

- (1) The Authority may require a licensee to answer any question or provide information relating to the licensee's conveyancing business that the Authority reasonably requires to carry out its functions in relation to that licensee.
- (2) A licensee must not refuse or fail, without reasonable excuse, to comply with a requirement made by the Authority under this section.

Penalty: 60 penalty units.

**180. Verification of details supplied to Authority**

The Authority may specify how any information supplied to it under this Act is to be verified, and without limiting the scope of this power, may require that the information be supplied in the form of, or be verified by, a statutory declaration.

**181. Offence to give false or misleading information**

A person must not—

- (a) give information to the Authority or the Registrar under this Act that the person believes to be false or misleading in a material particular; or
- (b) produce a document to the Authority or the Registrar under this Act that the person knows to be false or misleading in a material particular without indicating the respect in which it is false or misleading and, if practicable, providing correct information.

Penalty: 60 penalty units.

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**182. Delegation**

- (1) The Secretary, by instrument, may delegate any of the Secretary's functions or powers under this Act, other than this power of delegation, to the Director.
  - (2) The Director, by instrument, may delegate any of the Director's functions or powers under this Act, other than this power of delegation, to either or both of the following—
    - (a) a person engaged or appointed under section 7(2) or 15 of the **Business Licensing Authority Act 1998**;
    - (b) a person or class of person employed under Part 3 of the **Public Administration Act 2004** in the administration of this Act.
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**PART 10—GENERAL**

**183. Application of Fair Trading Act 1999**

- (1) Sections 120, 135, 136, 137 and 138 of the **Fair Trading Act 1999** apply (with any necessary modifications) in relation to the exercise or attempted exercise of a power of an inspector under Part 8 as if any reference in those sections to Part 10 of that Act were a reference to Part 8.
- (2) Sections 143 and 144 and Division 2 of Part 11 (except section 155) of the **Fair Trading Act 1999** extend and apply (with any necessary modifications) to this Act as if any reference in those provisions to the **Fair Trading Act 1999** were a reference to this Act.
- (3) For the purposes of sub-section (2), section 154 of the **Fair Trading Act 1999** applies as if a reference to prescribed proceedings were a reference to—
  - (a) proceedings for an offence against a provision of this Act; or
  - (b) proceedings on an application for an injunction under section 149, 149A or 150 of the **Fair Trading Act 1999** (as applied by sub-section (2)) against a person alleged to have contravened a provision of this Act; or
  - (c) proceedings on an application for an order under section 158, or for damages under section 159, of the **Fair Trading Act 1999** (as applied by sub-section (2)).

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**184. Service of documents**

- (1) This section applies subject to section 162.
- (2) For the purposes of this Act and the regulations, a document may be served on a licensee who is a natural person by—
  - (a) giving it to the licensee personally; or
  - (b) leaving it at the licensee's place of residence with someone who apparently resides there and is apparently over 16 years of age; or
  - (c) leaving it at the licensee's principal place of business with someone who is apparently employed there and over 16 years of age; or
  - (d) posting it in a letter addressed to the licensee at the address last known to the Director of the licensee's place of residence or principal place of business.
- (3) For the purposes of this Act and the regulations, a document may be served on a licensee that is a company by—
  - (a) giving it to a director or a secretary of the company, or to any other person concerned in the management of the company personally; or
  - (b) leaving it at the registered office or principal place of business of the company with someone who is apparently employed there and over 16 years of age; or
  - (c) posting it in a letter addressed to the company at the address last known to the Director of the company's registered office or principal place of business.

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**185. Who may bring proceedings?**

- (1) Proceedings for an offence against this Act or the regulations may only be brought by—
  - (a) the Director; or
  - (b) a person authorised by the Director for the purposes of this section.
- (2) In proceedings for an offence against this Act it must be presumed, in the absence of evidence to the contrary, that the person bringing the proceedings was authorised to bring the proceedings.

**186. Extension of time for prosecutions**

Despite anything to the contrary in any Act, a proceeding for an offence against this Act may be commenced within 3 years after the date on which the offence is alleged to have been committed.

**187. Application for review**

- (1) A person whose interests are affected by a decision of the Authority under this Act may apply to VCAT for review of the decision.
- (2) An application for review must be made within 28 days after the later of—
  - (a) the day on which the decision is made; or
  - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

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**188. Regulations**

- (1) The Governor in Council may make regulations for or with respect to any matter or thing that is required or permitted to be prescribed or that is necessary to give effect to this Act.
  - (2) Without limiting the generality of sub-section (1), the Governor in Council may make regulations for or with respect to—
    - (a) the establishment and maintenance of trust accounts; and
    - (b) prescribing fees under this Act; and
    - (c) prescribing infringement offences and infringement penalties for the purposes of section 175; and
    - (d) prescribing penalties for contraventions of the regulations, not exceeding—
      - (i) 20 penalty units in the case of a natural person; and
      - (ii) 120 penalty units in the case of a corporation.
  - (3) A power conferred by this Act to make regulations may be exercised—
    - (a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified case or class of case; and
    - (b) so as to make, as respects the cases in relation to which the power is exercised—
      - (i) the same provision for all cases in relation to which the power is exercised, or different provisions for different cases or classes of case, or different provisions for the same case
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*Conveyancers Act 2006*  
*Act No. 75/2006*

Part 10—General

s. 188

or class of case for different purposes;  
or

- (ii) any such provision either unconditionally or subject to any specified condition.

(4) Regulations under this Act may be made—

- (a) so as to apply at all times or at a specified time; and
- (b) so as to require matters affected by the regulations to be—
  - (i) in accordance with specified standards or specified requirements; or
  - (ii) approved by or to the satisfaction of specified persons or bodies or specified classes of persons or bodies; or
  - (iii) as specified in both sub-paragraphs (i) and (ii); and
- (c) so as to apply, adopt or incorporate any matter contained in any document, whether—
  - (i) wholly or partially or as amended by the regulations; or
  - (ii) as in force at a particular time or as in force from time to time; and
- (d) so as to confer a discretionary authority or impose a duty on specified persons or bodies or specified classes of persons or bodies; and
- (e) so as to provide in specified cases or classes of case for the exemption of persons or things or classes of persons or things from any of the provisions of the regulations, whether unconditionally or on specified conditions and either wholly or to such an extent as is specified.

*Conveyancers Act 2006*  
*Act No. 75/2006*

Part 10—General

s. 189

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**189. Review of exclusion for sale of businesses**

The Minister must cause a review to be made of the operation of the exclusion from conveyancing work set out in section 4(3)(b) and must cause a copy of a report of the review to be laid before each House of Parliament on or before 1 July 2009.

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*Conveyancers Act 2006*  
*Act No. 75/2006*

s. 190

Part 11—Repeals, Amendments, Savings and Transitional Provisions

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**PART 11—REPEALS, AMENDMENTS, SAVINGS AND  
TRANSITIONAL PROVISIONS**

**190. Repeal**

See:  
Act No.  
99/2004.  
Reprint No. 1  
as at  
12 December  
2005  
and  
amending  
Act Nos  
97/2005,  
14/2006 and  
29/2006.  
Law Today:  
www.dms.  
dpc.vic.  
gov.au

Part 7.1 of the **Legal Profession Act 2004** is  
**repealed.**

**191. Savings and transitional provisions**

Schedule 1 contains savings and transitional  
provisions.

**192. Consequential amendments**

On the coming into operation of an item in  
Schedule 2, the Act referred to in the heading to  
that item is amended as set out in that item.

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**SCHEDULES**

**SCHEDULE 1**

Section 191

**SAVINGS AND TRANSITIONAL PROVISIONS**

**PART 1—PRELIMINARY**

**1. Definitions**

In this Schedule—

**"application period"** means the period ending 3 months after the commencement day or such longer period as is prescribed;

**"commencement day"** means the day on which section 8 of this Act comes into operation;

**"conveyancer"** and **"conveyancing work"** have the same meanings respectively as in section 7.1.1 of the **Legal Profession Act 2004** as in force before the commencement day;

**"determination period"**, in relation to an application for a full licence or a provisional licence, means the period beginning on the day on which the application is received by the Authority and ending when the application is finally determined;

**"full licence"** means a licence granted under this Act, other than a provisional licence;

**"provisional licence"** means a provisional licence granted in accordance with Division 3 of Part 2 of this Schedule.

**2. General transitional provisions**

- (1) Except where the contrary intention appears, this Schedule does not affect or take away from the **Interpretation of Legislation Act 1984**.
- (2) Without limiting sub-clause (1), nothing in Part 2 of this Schedule limits the operation of section 13 of the **Interpretation of Legislation Act 1984**.

*Conveyancers Act 2006*  
*Act No. 75/2006*

Sch. 1

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- (3) If a provision of the **Legal Profession Act 2004** continues to apply by force of this Schedule, the following provisions also continue to apply in relation to the provision—
- (a) any other provisions of the **Legal Profession Act 2004** necessary to give effect to that continued provision;
  - (b) any regulation made under the **Legal Profession Act 2004** for the purposes of that continued provision.

**3. Savings and transitional regulations**

- (1) The regulations may contain provisions of a savings and transitional nature consequent on the enactment of this Act and the repeal of Part 7.1 of the **Legal Profession Act 2004**.
- (2) Regulations under this clause may have retrospective effect to a day on or after the day on which this Act receives Royal Assent.
- (3) Regulations under this clause have effect despite anything to the contrary in any Act (other than this Act) or in any subordinate instrument.

**PART 2—LICENCES FOR EXISTING CONVEYANCERS**

**Division 1—Application of Act**

**4. Application of Act during application period**

- (1) This Act does not apply during the application period to or in respect of a person who, immediately before the commencement day, carried on business as a conveyancer.
- (2) Despite its repeal, Part 7.1 of the **Legal Profession Act 2004** continues to apply during the application period to a person who, immediately before the commencement day, carried on business as a conveyancer.

**Division 2—Full Licences**

**5. Application of Act during determination period**

- (1) This Act (except Part 1, Divisions 2, 3, 4 and 5 of Part 2 and sections 179, 180, 181, 184 and 187) does not apply during the determination period to or in respect of the conveyancing business of a person who—

*Conveyancers Act 2006*  
*Act No. 75/2006*

Sch. 1

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- (a) has applied under Part 2 of this Act for a full licence before the end of the application period; and
  - (b) immediately before the commencement day carried on business as a conveyancer.
- (2) Despite its repeal, Part 7.1 of the **Legal Profession Act 2004** continues to apply during the determination period to a person who has made an application in accordance with sub-clause (1).

**Division 3—Provisional Licence**

**6. Existing conveyancer may apply to Authority for provisional licence**

- (1) A person may apply to the Authority for a provisional licence at any time before the end of the application period if the person—
- (a) has at least 12 months' full-time, or equivalent part-time, experience—
    - (i) in working as a conveyancer; or
    - (ii) in carrying out conveyancing work in the course of employment with a conveyancer or with an Australian legal practitioner or an incorporated legal practice; and
  - (b) carried on business as a conveyancer before the commencement day.
- (2) Despite clause 4(1), this Act applies to an application for a provisional licence and the determination of that application, and so applies—
- (a) as if the application were an application for a full licence; and
  - (b) as if any reference to the competency qualifications and work experience required under section 12 of this Act were a reference to the experience referred to in sub-clause (1)(a).

*Conveyancers Act 2006*  
*Act No. 75/2006*

Sch. 1

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**7. Application of Act during determination period**

- (1) Except as provided in clause 6(2), this Act does not apply during the determination period to or in respect of the conveyancing business of an applicant for a provisional licence.
- (2) Despite its repeal, Part 7.1 of the **Legal Profession Act 2004** continues to apply during the determination period to an applicant for a provisional licence.

**8. Authority may grant provisional licence**

- (1) The Authority may grant a provisional licence to an applicant if the Authority is satisfied that the applicant—
    - (a) has the experience referred to in clause 6(1)(a); and
    - (b) immediately before the commencement day, carried on business as a conveyancer; and
    - (c) is otherwise eligible to be granted a full licence.
  - (2) Despite sub-clause (1)(b), the Authority may grant a provisional licence to an applicant who did not, immediately before the commencement day, carry on business as a conveyancer if the Authority is satisfied that the applicant—
    - (a) carried on business as a conveyancer at some time before the commencement day; and
    - (b) did not carry on that business immediately before the commencement day because of the applicant's pregnancy or status as a parent or carer or because of an impairment; and
    - (c) otherwise satisfies the criteria set out in sub-clause (1).
  - (3) A provisional licence expires 5 years after the day it is granted.
  - (4) The Authority must ensure that a provisional licence bears the words "Provisional Licence".
  - (5) Subject to this Schedule, this Act applies to the granting and effect of a provisional licence as if it were a full licence.
  - (6) In this clause, "**carer**", "**impairment**" and "**parent**" have the same meanings respectively as they have in the **Equal Opportunity Act 1995**.
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**9. Condition on provisional licence**

- (1) Subject to this clause, the power of the Authority under section 23 of this Act to impose conditions on a full licence applies to a provisional licence.
- (2) A provisional licence is subject to the condition that the conveyancing work carried out by the licensee is limited to conveyancing work within the meaning of section 7.1.1 of the **Legal Profession Act 2004**.
- (3) If the Authority considers it appropriate to do so, the Authority may impose a condition on a provisional licence prohibiting the licensee from carrying out a specified class, or specified classes, of conveyancing work within the meaning of section 7.1.1 of the **Legal Profession Act 2004**.

**10. Notices and letterhead**

Sections 59 and 60 of this Act apply to a holder of a provisional licence as if a reference in those sections to a licence were a reference to a provisional licence.

**11. Provisional licence is cancelled on granting of full licence**

Without limiting the operation of any other provision of this Act relating to the cancellation of licences, a provisional licence is cancelled on the grant of a full licence to the licensee.

**PART 3—LEGAL PROFESSION ACT 2004**

**12. Authorisations under section 7.1.3 of the Legal Profession Act 2004**

- (1) An authorisation that was in force under section 7.1.3(1) of the **Legal Profession Act 2004** immediately before the commencement day or that is granted on an appeal referred to in clause 13 in relation to a person who is an insolvent under administration has effect under this Act as if it were an exemption under section 56.
- (2) Any other authorisation that was in force under section 7.1.3(1) of the **Legal Profession Act 2004** immediately before the commencement day or that is granted on an appeal referred to in clause 13 has effect under this Act according to its tenor as if it were a permission under Division 7 of Part 2.



*Conveyancers Act 2006*  
*Act No. 75/2006*

Sch. 1

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**13. Appeals under section 7.1.3 of the Legal Profession Act 2004**

- (1) This clause applies to an appeal under section 7.1.3(2) of the **Legal Profession Act 2004** if—
- (a) the appeal was made before the commencement day;  
and
  - (b) the Supreme Court—
    - (i) had not heard the matter; or
    - (ii) had heard the matter (either in part or in full)  
but had not handed down its decision on the  
matter—before that day.
- (2) On and after the commencement day, the Supreme Court is to continue to deal with the appeal as if Part 7.1 of the **Legal Profession Act 2004** had not been repealed by this Act.
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**SCHEDULE 2**

Section 192

**CONSEQUENTIAL AMENDMENTS**

**1. Business Licensing Authority Act 1998**

In section 3, in the definition of "business licensing Act", after paragraph (a) **insert—**

"(ab) the **Conveyancers Act 2006**; or".

**2. Estate Agents Act 1980**

2.1 In section 75(1)(ea), after "administration of the" **insert** "**Conveyancers Act 2006**, the".

2.2 After section 75(1)(he) **insert—**

"(hf) money payable out of the Fund in accordance with the **Conveyancers Act 2006**";.

2.3 At the foot of section 79 **insert—**

"Note: Claims for compensation from the Fund for defalcations by conveyancers are dealt with under Part 7 of the **Conveyancers Act 2006**".

**3. Fair Trading Act 1999**

3.1 In section 106C, in paragraph (a) of the definition of "licence", for sub-paragraph (i) **substitute—**

"(i) the **Conveyancers Act 2006**; or

(ia) the **Estate Agents Act 1980**; or".

3.2 After section 106E(9) **insert—**

"(10) If a notice is issued under this Division suspending a licensee's licence under the **Conveyancers Act 2006**, the licensee is deemed for the purposes of that Act to be prohibited from doing either or both of the following during the licence suspension period—

(a) carrying on a conveyancing business;

(b) undertaking conveyancing work as an employee of a conveyancing business."

3.3 In the list of Acts set out in Schedule 1, after "**Business Names Act 1962**" **insert** "**Conveyancers Act 2006**".

*Conveyancers Act 2006*  
*Act No. 75/2006*

Sch. 2

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**4. Property Law Act 1958**

- 4.1 In section 69(1), for "banker or legal practitioner" (wherever occurring) **substitute** "banker, legal practitioner or conveyancer".
- 4.2 After section 69(3) **insert**—
- '(4) In this section, "**conveyancer**" means a licensee under the **Conveyancers Act 2006**.'

**5. Sale of Land Act 1962**

- 5.1 In section 2(1), **insert** the following definition—
- ' "**conveyancer**" means a licensee under the **Conveyancers Act 2006**;'.
- 5.2 In sections 6(4)(b) and 9AA(1)(a)(i) and (2)(a), after "legal practitioner" (wherever occurring) **insert** ", conveyancer".
- 5.3 **Insert** the following heading to section 24—
- "Deposit moneys held by legal practitioner, conveyancer or estate agent to be held as stakeholder"**.
- 5.4 In section 24(1), after "legal practitioner" (where twice occurring) **insert** ", conveyancer".
- 5.5 In section 24(1A)—
- (a) after paragraph (a) **insert**—
- "(ab) from a conveyancer to a conveyancer acting for the vendor in relation to the sale;" ; and
- (b) after paragraph (b) **insert**—
- "(ba) from a conveyancer acting for the vendor to a legal practitioner acting for the vendor in relation to the sale;" ; and
- (c) in paragraph (d), after "vendor to" **insert** "a conveyancer,".
- 5.6 **Insert** the following heading to section 25—
- "Deposit moneys to be paid into special purpose account or held by legal practitioner, conveyancer or estate agent"**.
- 5.7 In section 25(1)(a), after "to" **insert** "a conveyancer,".
- 5.8 In sections 27(1) and (11), after "legal practitioner" (wherever occurring) **insert** ", conveyancer".
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*Conveyancers Act 2006*  
*Act No. 75/2006*

Endnotes

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**ENDNOTES**

† *Minister's second reading speech—*

*Legislative Assembly: 10 August 2006*

*Legislative Council: 14 September 2006*

The long title for the Bill for this Act was "to regulate the carrying out of conveyancing work, to repeal Part 7.1 of the **Legal Profession Act 2004**, to make consequential amendments to other Acts and for other purposes."

*Conveyancers Act 2006*  
*Act No. 75/2006*

---

**INDEX**

<i><b>Subject</b></i>	<i><b>Section</b></i>
<b>Act</b>	
application of Fair Trading Act 1999	183
commencement	2
consequential amendments	192, Sch. 2
purposes	1
repeals	190
savings and transitional provisions	191, Sch. 1
ADIs <i>See</i> <b>Authorised deposit-taking institutions</b>	
<b>Associates of licensees</b>	
conflicts of interest	49
definition	3, 6
<i>See also</i> <b>Receivers; Trust accounts and trust money</b>	
<b>Authorised deposit-taking institutions (ADIs)</b>	
approved ADI (def.)	62
duties regarding stop orders on accounts	119
duties regarding trust accounts	84, 91–94, 99
production of documents, information to inspectors	158
Authority <i>See</i> <b>Business Licensing Authority</b>	
<b>Business Licensing Authority</b>	
definition	3
establishment, maintenance of Register	178
information supplied to, required by (general)	179–181
powers regarding conveyancing businesses	39, 52, 54, 56
review of decisions of	187
<i>See also</i> <b>Licences</b>	
<b>Chief Commissioner of Police</b>	21, 156
<b>Claims for compensation</b>	
allowance	145
amount claimed	144
disallowance	145–147
freezing of trust accounts to satisfy	94
information in Register	178
insurance, indemnification of Secretary	149–150
interest	144
making of	145
persons, companies against whom claims allowed	5, 29, 31
production of documents in support of	147
review of decisions	146
right to	144
subrogation of Secretary	148
<b>Companies</b>	
applications, eligibility for licences	11, 13, 15–19
applications for permission to hold licences	28, 29, 31
ceasing to have licensed director	27–28, 31
definition	3
directors of (def.)	3
information in Register	178
information on display, in correspondence	59–60

---

*Conveyancers Act 2006*  
*Act No. 75/2006*

---

<i><b>Subject</b></i>	<i><b>Section</b></i>
inquiries into conduct of directors	33–34
relationship of this Act to Corporations legislation	139–141
<i>See also</i> <b>Receivers; Statutory managers</b>	
<b>Competency qualifications and work experience</b>	11–12, 14
<b>Consumer Acts</b> (def.)	3
Controlled money <i>See</i> <b>Trust money and accounts</b>	
<b>Conveyancing businesses</b>	
definition	3
employees	11, 51
employment of disqualified persons in	56
information, documents for inspectors	153–154
information in licence applications	14–15
information in Register	178
information, licence displayed at place of letterhead	59
management, managers	60
names	51–55
partnerships	39
principal place of business	96
proper supervision	3, 57
property of (def.)	51
records	95
unlicensed conveyancing	58
	8–10
<i>See also</i> <b>Receivers; Statutory managers</b>	
<b>Conveyancing work</b>	
conditions in licences regarding specified transactions	24
definition	3, 4
disclosure of costs	47–48, 77
legal work included, not included in	3, 4
liens over trust money for costs of	77
professional indemnity insurance	41–44
review of exclusion of sales of businesses from	189
<i>See also</i> <b>Conveyancing businesses; Licensees</b>	
<b>Corporations legislation</b>	139–141
<b>Criminal records</b>	
persons, companies with	5, 30, 31
<b>Defalcation</b>	3, 144–147
<i>See also</i> <b>Claims of compensation</b>	
<b>Definitions</b>	3–7, 16, 19, 49, 55, 62, 68, 74, 78, 95, 97, 111, 141, 143, 154, 156, 157
<b>Director</b>	
definition	3
delegation	182
powers, functions regarding	
external intervention, administration	140–141
guidelines as to supervision of businesses	51
inquiries into conduct of licensees	33
inspectors	157, 161, 165, 169, 177
licence applications	20

---

*Conveyancers Act 2006*  
*Act No. 75/2006*

---

<i><b>Subject</b></i>	<i><b>Section</b></i>
payments out of Fund	94
proceedings	185
receivers	110, 114, 129, 131–132, 137
registered education, training organisations	12
statutory managers	96, 99, 102–104, 109
<i>See also</i> <b>Trust accounts and trust money</b>	
<b>Disqualified persons</b>	
definition	3, 5
employment in conveyancing businesses	56
licensees who become	9, 26–28, 34
permission to hold licences	28–32
Entry powers <i>See</i> <b>Inspectors; Receivers</b>	
<b>Estate agents</b>	
	3, 50
<b>Evidentiary provisions</b>	
	118, 122, 128, 170
<b>External intervention</b>	
relationship of this Act to Corporations legislation	139–141
<i>See also</i> <b>Receivers; Statutory managers</b>	
<b>Fair Trading Act 1999</b>	
	183
Fund <i>See</i> <b>Victorian Property Fund</b>	
<b>Incorporated legal practices</b>	
	3, 8–9
<b>Inquiries</b>	
into applicants for licences	18–21
into applicants for permission to hold licence	29–31
into conduct of licensees	33–34
into disqualified persons seeking employment	56
<b>Inspectors</b>	
complaints about exercise of powers of	177
definition	3
disclosure of information by	174
false, misleading documents, information given to	173
identification	152, 163, 166
infringement notices served by	175
powers regarding documents, information	159–162
powers regarding documents, information held by	
ADIs	158
licensees, former licensees	153–154
occupiers of premises	169, 172
owners of embargoed things	169
specified persons or bodies	154, 157
specified public bodies	156
third parties	155
powers of entry, search and seizure	
assistance for inspectors	172
embargo notices	168–169
things seized	163–164, 167, 170–171
to monitor compliance with Act, regulations	163–164
with consent of occupier	163
with warrant	165–169
without consent or warrant	164
protection against self-incrimination	176

---

*Conveyancers Act 2006*  
*Act No. 75/2006*

---

<i><b>Subject</b></i>	<i><b>Section</b></i>
Legal practices <i>See</i> <b>Incorporated legal practices</b>	
<b>Legal practitioners</b>	8–9, 97, 111
<b>Legal proceedings</b>	123, 185–186
<b>Legal work</b>	3, 4
<b>Licences</b>	
annual licence fee, annual statements	3, 35–38
applications	
information in, required by Authority	14–16, 18–19
investigation of applicants	18–20
making of	13–15
not entitled to lodge	17
referral to Chief Commissioner, Director	20–21
refusal to consider	19
cancellation	9, 28, 34, 96, 110, 153
competency qualifications and work experience	11–12, 14
conditions	23–25, 34
definition	3
delivered up to court	9
disqualification	9, 26–28, 34
duplicates	40
eligibility	11, 33, 34
fees	11, 13, 22, 29, 30, 31, 35–37, 40
grant	22
improperly obtained, held	33
number	22
permission to hold	28–32
production for inspection	61
refusal to grant, issue	17, 18, 22, 39
Register	3, 178
requirement to be licensed	8
returned to Authority	34
review of Authority's decisions	187
surrender	153
suspension	34, 37, 43, 96, 110, 153
<b>Licensees</b>	
affairs of (def.)	62
breaches of law by	33–34
ceasing to be	86
conflicts of interest	49
continuing professional development	46
death	86, 96, 107, 110
definition	3, 95, 143
failure to account	3, 7, 96, 110
fines	34
former licensees (def.)	95, 143
inability to obtain payment, property held by	96, 110
inquiries into conduct of	33–34
not to act as conveyancer and real estate agent	50
personal representatives of	86, 107
pretending to be licensee, authorised person	10

---



*Conveyancers Act 2006*  
*Act No. 75/2006*

---

<i><b>Subject</b></i>	<i><b>Section</b></i>
production of information to Authority	179
production of licence	61
Register	178
relevant licensees (def.)	95
reprimands	34
rules of professional conduct	45
undertakings	34
unfit to hold licence	33
<i>See also</i> <b>Conveyancing businesses;</b>	
<b>Conveyancing work;</b>	
<b>Disqualified persons;</b>	
<b>Professional indemnity insurance;</b>	
<b>Receivers; Statutory managers;</b>	
<b>Trust accounts and money</b>	
<b>Minister</b>	41, 94, 189
<b>Offences and penalties</b>	
indictable offences	78
infringement notices for prescribed offences	175
proceedings	185–186
regarding	
conduct of licensees	47, 49, 50, 61
conveyancing businesses	39, 51, 53–56, 58–60
disqualified persons	26–27
information required by Authority, Registrar	179, 181
inspectors	152–153, 168, 172–174
licences	16, 23, 25, 32, 34, 38
professional indemnity insurance	42, 43
receivership	116–118, 120, 138, 142
statutory managers	108, 142
trust accounts and trust money	66–73, 76, 78–81, 84–86, 93
unlicensed conveyancing	8–10
<b>Police</b>	117, 165
<b>Professional indemnity insurance</b>	
as requirement for carrying out conveyancing work	41
as requirement for licences	11, 14–15, 35
cessation of cover	43–44
conditions and requirements of	41
disclosure of details to clients	42
production of documents, information by providers	154
<b>Public bodies</b>	156
Qualifications <i>See</i> <b>Competency qualifications and work experience</b>	
<b>Receivers</b>	
appointment	110–115
appointment to business under statutory manager	100, 111
certificates of	122
definition	3
directions from court to	135–136, 138

---

*Conveyancers Act 2006*  
*Act No. 75/2006*

---

<i><b>Subject</b></i>	<i><b>Section</b></i>
evidentiary provisions	118, 122, 128
expenses	95, 129, 132–133
grounds for	110
hearings of applications under Part 6, Division 3	112–113
hindrance, obstruction, delay	142
participation of licensees in businesses under	116
payment of surplus money to licensees, associates	129
proceedings taken by	123
receivable property	
claims to	126–127
dealings with	124
definition	95
entry, search and seizure powers	117
examinations regarding	128
improper dealings with	120
information regarding	118
investment of	130
liens	126–127
not to be attached	134
property not dealt with during receivership	129
property of associates as	115
receiver's general powers	125
recovery of compensation for disposal of	121
stop orders on money held in accounts as	119
taken, paid, transferred unlawfully	121–123
taking possession of	117
transfer, delivery to new receiver, licensee, associate	138
reimbursement for damages	131
relationship of Act to Corporations legislation	139–141
remuneration	132
reports, records of	137
termination of appointment	138
<b>Register of Licensed Conveyancers</b>	3, 178, 181
<b>Registrar</b>	3, 40, 181
<b>Regulations</b>	
power to make, matters provided for	188
regarding	
continuing professional development	46
Corporations legislation	139
businesses exempt from requirement to appoint manager	52
rules of professional conduct	45
statutory managers	106
trust accounts and money	64, 66, 68–71, 73, 80
<b>Repeals</b>	190
<b>Reviews</b>	
of decisions of Authority	187
of decisions to disallow claims	146
Search powers <i>See</i> <b>Inspectors; Receivers</b>	

---

*Conveyancers Act 2006*  
*Act No. 75/2006*

---

<b><i>Subject</i></b>	<b><i>Section</i></b>
<b>Secretary</b>	
arrangements with ADIs	91
claims against Fund	145–150
definition	3
delegation	182
Seizure <i>See</i> <b>Inspectors; Receivers</b>	
<b>Self-incrimination</b>	
protection against	176
<b>Service of documents (General)</b>	162, 184
<b>Statutory managers</b>	
accounts kept by	105–106
acts of taken to be acts of licensees	101
appointment	96–99
appointment as receivers	111
cessation of appointment	109
continuation after death of licensee	107
continuation under receivership	100
dealings with trust accounts	99, 105
definitions	3, 95
expenses	95, 103
grounds for	96
hindrance, obstruction, delay	142
identification	98
participation of licensees in businesses under	108
powers, duties	98
reimbursement for costs, damages against	102
relationship of Act to Corporations legislation	139–141
reports and records	104–105
<b>Supreme Court</b>	
powers as to external intervention, administration	141
powers as to receivers	110–115, 117, 128, 129, 132–133, 135–138 191, Sch. 1
<b>Transitional provisions</b>	
<b>Trust accounts and trust money</b>	
ADIs' duties	84, 91–94, 99, 158
application of Part 5 to former licensees, associates	65
audits	
annual audit	84–85
approved auditors	62, 83
audit period	62
courses of education for auditors	90
directions, guidelines of Director	89
disclosure of information in course of	88
final audits	86
inability to properly, conveniently conduct	87
production of records, documents for auditor	84, 93
reports of	85–87
closing of	67
construction of references	62
controlled money, accounts	3, 62, 64, 68, 71– 72, 74, 77
dealings with during statutory management	99, 105

---

*Conveyancers Act 2006*  
*Act No. 75/2006*

---

<i><b>Subject</b></i>	<i><b>Section</b></i>
deficiencies in	62, 78, 87, 93
definitions	3, 62, 68, 74
failure to pay, deliver	78, 87
freezing of	94
general trust account	62, 66–70, 74, 77
interest	91
intermixing with other money	76
liens over	77
money subject of a power given	68
money subject of written directions	64, 68, 70–74
names under which money received, recorded	81
notice to Director	67, 79, 92
opening of	67, 92
protection of trust money	75
receipt of money	63, 74
reporting of trust balances to Director	82
statutory declarations by licensees	85–86
suspected offences, contraventions in relation to	93–94
transit money	62, 68, 73, 74, 84
trust records	62, 80–81, 87
withdrawals	70, 72
<b>Victorian Civil and Administrative Tribunal</b>	
jurisdiction, powers regarding	
decisions of Authority	187
decisions to disallow claims	146
inquiries into conduct of licensees	33–34
<b>Victorian Property Fund</b>	
definition of Fund	3
payments into	34, 91, 94, 151
payments out of	94, 102–103, 131–132
<i>See also</i> <b>Claims of compensation</b>	
Work experience <i>See</i> <b>Competency qualifications and work experience</b>	

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