



Regulatory Impact Statement

Proposed Conveyancers Licensing Regulation 2021

June 2021

Disclaimer

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1. Background Information

Why the Conveyancers Licensing Regulation 2015 is being remade

The Conveyancers Licensing Regulation 2015 is due for automatic repeal on 1 September 2021.

Under the *Subordinate Legislation Act 1989*, most regulations are scheduled for automatic repeal after five years. This is to ensure that they remain relevant and fit for purpose. Regulations that are due for repeal can be remade (either with or without amendment), postponed or allowed to lapse.

As there is no reason to postpone the repeal of the current Regulation, the Department of Customer Service (the Department) plans to remake it and has drafted a proposed Conveyancers Licensing Regulation 2021 (the proposed Regulation) for consultation.

Remaking the Regulation requires the preparation of a regulatory impact statement (RIS) and a period of public consultation. This RIS sets out the objectives of the Regulation and options for achieving these objectives, including an assessment of the costs and benefits.

Matters outside the scope of this consultation

Matters covered by the principal Act – the *Conveyancers Licensing Act 2003* – are not part of the consultation process. This includes the qualifications required for the issue of a licence, as approved by the Minister by order and continuing professional development (CPD) requirements which are the subject of guidelines issued by the Fair Trading Commissioner.

This RIS only deals with matters within the scope of the Regulation, not provisions contained in the Act itself. This RIS does not consider the content of orders prescribed through the regulation – for example, a professional indemnity insurance policy approved by order under clause 6 of the current Regulation, or an order approving qualifications required for the issue of a licence made under section 9 of the Act.

2. Consultation Process

Public consultation on the proposed Regulation

The proposed Regulation and this RIS are publicly available on the NSW Government's Have Your Say website at www.haveyoursay.nsw.gov.au. They will be available for at least 21 days.

The Department has published a notice about the release of the proposed Regulation and RIS in the NSW Government Gazette, the Daily Telegraph and the Sydney Morning Herald. Copies have been sent directly to the stakeholders listed in **Appendix 1**.

How to make a submission

Interested individuals and organisations are invited to make a submission on any matter relevant to the proposed Regulation, whether or not it is addressed in this RIS.

We would prefer to receive your submission using the online options on the Have Your Say website, or by email in an 'accessible' format. Accessibility is about making documents more easily available to members of the public who have some form of impairment (visual, physical, cognitive). More information on how you can make your submission accessible is available on the WebAIM website at <http://webaim.org/techniques/word/>.

Submissions can be made by:

- completing the online survey and/or uploading your written submission at www.haveyoursay.nsw.gov.au/conveyancers-licensing-regulation
- emailing your written submission to: clreg@customerservice.nsw.gov.au
- posting your written submission to: **Conveyancers Licensing Regulation 2021**
Policy & Strategy, Better Regulation Division
NSW Department of Customer Service
4 Parramatta Square
12 Darcy Street
PARRAMATTA NSW 2150

The closing date for submissions is **Wednesday, 21 July 2021**.

Confidential submissions

We will make all submissions publicly available on the Have Your Say website. If you do not want your personal details or part of your submission published, please say this clearly in your submission and tell us why. Automatically generated confidentiality statements are not enough.

Even if you state that you do not want us to publish certain information, we may need to release that information by law. For example, to comply with the *Government Information (Public Access) Act 2009*. The Department will also provide all submissions to the Legislation Review Committee of NSW Parliament. This is a statutory requirement.

Evaluation of submissions

The Department will carefully consider each submission. If necessary, we will amend the proposed Regulation to address issues raised in the consultation process. If we need more information, we may consult with key stakeholders before finalising the new Regulation.

Commencement of new Regulation

Once the new Regulation has been finalised, the Department will submit it to the Governor for approval. Prior to commencing, the new Regulation will be published on the NSW legislation website at www.legislation.nsw.gov.au.

At this stage, we expect that the new Regulation will commence on 1 September 2021, at which time the current Regulation will be repealed.

3. Objective of the Act and proposed Regulation

Need for government intervention

The main purpose of the Regulation is to give legislative support and administrative detail for the operation of the *Conveyancers Licensing Act 2003* (the Act). Without it, the Act could not be as effectively administered or enforced.

The implied objectives of the Act include to:

- provide for the licensing of appropriately qualified and suitable persons and corporations as conveyancers
- regulate the conduct of licensed conveyancers and their businesses
- protect consumers using and dealing with licensed conveyancers
- provide for enforcement powers and actions in relation to breaches, including disciplinary action, offences and penalties
- provide consumers with an appropriate alternative to engaging a solicitor for conveyancing work.

The provisions in the proposed Regulation are directly related to these overall implied objectives of the Act. For example, the Regulation prescribes:

- the fees payable for the issue of a conveyancer licence
- requirements relating to professional indemnity insurance
- the rules of conduct to be observed by licensees in conducting their businesses and exercising their functions under their conveyancer licence
- procedures for determining disputes about costs charged by conveyancers
- requirements for receiving, holding and withdrawing trust monies
- requirements for keeping and retaining records
- offences under the Act and the Regulation for which penalty notices may be issued so that offences do not always need to be prosecuted in court.

The Department takes a stewardship approach to the administration of all legislation for which it is responsible. As such, conveyancers licensing laws are subject to ongoing monitoring and review to make sure they are still fit for purpose.

Options for achieving the Act's objectives

In determining how best to achieve the Act's objectives, the following options were considered.

- **Option 1 – Take no action:** allow the current Regulation to lapse under the sunset provisions of the *Subordinate Legislation Act 1989* and do not make any replacement Regulation
- **Option 2 – Maintain the status quo:** remake the existing Regulation without amendment to maintain the current regime
- **Option 3 – Make the proposed Regulation:** remake the existing Regulation with minor amendments to improve upon the current regime.

4. Impact assessment of options

Criteria used to assess the regulatory options

The following criteria have been used to evaluate the three options for achieving the Act's objectives above:

- The extent to which the option:
 - supports the implied objectives of the Act
 - improves transparency and protections for consumers
 - improves administrative efficiency.
- The cost effectiveness of the option, in terms of costs and benefits to business, consumers and government.

Summary and preferred option

Option 3 is the preferred option. Remaking the regulation with amendments will have the benefits of continuing the existing Regulation to support the operation of the Act, with the added benefits provided by minor updates. While it involves some minor additional costs, Option 3 will ensure improved consumer protection and enforcement options for offences against the Act and the Regulation. It will also clarify duties owed to former clients and provide consumers with more transparency in relation to expected costs.

Option 2 is not supported. Remaking the Regulation without amendment will not impose any new costs on industry or consumers, but it will not result in any significant benefits.

Option 1 is not supported. Allowing the current Regulation to lapse, under the base option of doing nothing, would reduce the effectiveness of the Act and make parts inoperable. This option also fails to meet the regulatory objectives and would create a high financial and intangible cost to consumers and the wider community. It would not be possible to give effect to the intention of the Act without some further action, such as amending the Act.

Table 1: Summary of costs and benefits of each option

Option		Costs	Benefits	Overall benefit
1	Take no action	High	Medium	Negative
2	Maintain status quo	Low	Low – Medium	Neutral
3	Make proposed Regulation	Low	Medium – High	Positive

Table 2: Summary of benefits of each option

Evaluation criteria	Option 1: Take no action	Option 2: Maintain status quo	Option 3: Make new Regulation
Supports the implied objectives of the Act	No	Yes	Yes
Improves transparency and protections for consumers	No	No	Yes
Improves administrative efficiency	No	No	Yes

A more detailed assessment of these options is provided in the below sections.

Detailed assessment of options

Assessment of Option 1 – Take no action (allow the current regulation to lapse)

Option 1, taking no action, would mean that the existing Regulation lapses under the sunset provisions of the *Subordinate Legislation Act 1989*. The current Regulation would not be replaced, meaning that the Act would remain without the support of regulations.

This option would not support the Act and its implied objectives. Essential provisions in the Act would be inoperable and it would not be possible to give effect to the intention of the Act without further amendment.

This option could reduce some regulatory burden for existing licensees through reduced costs – for example, existing licensees would not need to comply with the rules of conduct or trust account processes prescribed in the Regulations. They would also not need to create, maintain and retain records as prescribed in the Regulations. However, these reduced costs would be countered by increased costs for business. For example, an absence of procedures as to how trust accounts are to be managed could lead to increased uncertainty. In addition, there would be no information on the professional indemnity insurance licensees must have to satisfy that condition of their licence.

This option would result in higher risks for consumers arising from a lack of accountability in the conduct of conveyancing businesses, potentially greater risk of misappropriation of trust monies and potentially inadequate professional indemnity insurance cover. Consumers may be deterred from using conveyancers as a result of these increased risks.

Without a Regulation, the Government's capacity to quickly amend requirements, in response to problems or risks that arise for consumers and/or changes in industry practice, would be restricted. There could also be increases in complaints and investigations regarding conveyancers, resulting in higher costs for the Government.

Enforcement options would be more limited as no penalty notice offences would be prescribed in the Regulations. The administrative benefits and cost savings of penalty notices would be lost as all offences would need to be prosecuted in court and/or the subject of disciplinary action. The level of industry compliance may be reduced because of less enforcement action being taken for minor breaches.

There would also be no means of calculating the fees for licence applications that, in part enable NSW Fair Trading to carry out its functions as regulator of the licensed conveyancer industry.

Conclusion

Allowing the Regulation to lapse would result in high costs for consumers and the Government, with little to no benefits. There would be benefits to conveyancers in reduced business costs relating to complying with regulatory requirements. However, there is a possibility of losing business if consumers are deterred by the substantial risks.

Overall, the potential benefits of reduced business costs are outweighed by the high costs to consumers and the Government from:

- significantly reduced consumer protection
- reduced enforcement options and
- the removal of the capacity to collect fees while maintaining the need to administer and enforce the legislation .

For these reasons, Option 1 is not supported.

Table 3: Summary of costs and benefits for Option 1

	Business	Consumers and public	Government
Costs	<ul style="list-style-type: none"> • Administration and legal costs (direct) to: <ul style="list-style-type: none"> - assess how to meet requirements of the Act - defend action for non-compliance • Potential loss of business if consumers are deterred by increased risks 	<ul style="list-style-type: none"> • Increased financial risks due to lack of transparency over management of trust accounts • Increased risks to community (indirect) due to: <ul style="list-style-type: none"> - reduced conduct and recordkeeping obligations - reduced ability to enforce the Act and manage non-compliance 	<ul style="list-style-type: none"> • Administration and legal costs (direct) to manage: <ul style="list-style-type: none"> - likely increase in the number of disputes and enquiries - assessment of compliance with the Act - increasing pressure on the court system - staff training • Inability to collect fees (direct)

	Business	Consumers and public	Government
		<ul style="list-style-type: none"> - uncertainty over professional indemnity insurance cover 	
Benefits	<ul style="list-style-type: none"> • Business cost savings from not having to follow regulations 	<ul style="list-style-type: none"> • No identifiable benefits 	<ul style="list-style-type: none"> • Administration cost savings from not having to enforce regulations

Assessment of Option 2 – Maintain the status quo (no amendment to current regulation)

Option 2, the base case, would involve remaking the current Regulation without amendment when it lapses. This option would result in no additional direct costs for consumers, conveyancers or conveyancing businesses or the Government because the Regulation would be remade without any changes.

However, there would be a loss of opportunity from not expanding the enforcement options available for offences against the Act and the Regulations or improving transparency and protections for consumers. These changes could otherwise result in improved compliance, fewer complaints and disputes, and reduced administrative costs for the Government.

The primary benefit of this option is that neither consumers nor conveyancers would need to adapt to new legislative requirements. However, this benefit is estimated to be low as the current Regulation does not provide the same benefits to consumers and the conveyancer industry as the proposed Regulation. Further, the cost saving under this option, compared to Option 3, is relatively low as the proposed changes are modest.

Conclusion

While there are no additional direct costs imposed by this option, there would also be no significant additional benefits. There would be indirect costs due to the lost opportunities under Option 3, particularly regarding the availability of more cost-effective enforcement options. For these reasons, Option 2 is not supported.

Table 4: Summary of costs and benefits for Option 2

	Business	Consumers and public	Government
Costs	<ul style="list-style-type: none"> • No increase or reduction in actual costs 	<ul style="list-style-type: none"> • Opportunity cost (indirect) from not having improved transparency and protections 	<ul style="list-style-type: none"> • No increase or reduction in actual costs • Opportunity cost (indirect) from not:

	Business	Consumers and public	Government
			<ul style="list-style-type: none"> - having faster, more cost-effective enforcement options for more offences
Benefits	<ul style="list-style-type: none"> • Administration cost savings as no updates to processes or staff training needed 	<ul style="list-style-type: none"> • No identifiable benefits 	<ul style="list-style-type: none"> • Implementation cost savings as: <ul style="list-style-type: none"> - no updates needed to guidance material for licensees - no training needed for operational staff

Assessment of Option 3 – Make the proposed Regulation (amend current Regulation)

Option 3 would involve making the proposed Regulation to replace the current Regulation when it lapses.

This option would have a small increase in regulatory requirements and possible associated costs for licensees arising from an additional disclosure requirement. However, those costs are not estimated to be significant given licensees' existing disclosure obligations. Any staff training or adjustments needed in relation to the new requirement are likely to be minor.

There are no expected additional costs to consumers or the Government arising from this option.

Consumers will benefit from greater transparency in relation to expected costs at the time of retaining a conveyancer. Currently, if the amount of the costs is not known, a licensee must disclose the basis of calculating the costs. The proposed Regulation requires a licensee to also disclose an estimate of the costs in those circumstances.

Consumers will also benefit from improved protection arising from proposed changes relating to the conduct rules applying to conveyancers and their businesses. One of the changes clarifies a licensee's obligations in relation to duties owed to former clients. The other change makes breaking a conduct rule an offence for which a penalty notice can be issued, providing another option for compliance and enforcement action for conduct rule breaches.

The prescription of more offences as penalty notice offences will provide a faster, more cost-effective option for enforcement, particularly for minor breaches. This will also encourage compliance and reduce administrative costs for the Government.

There may be minor implementation costs for Government – for example, through communicating the changes and responding to queries.

Otherwise, the proposed Regulation continues the current regulatory framework with minor updates to improve its clarity, readability and operation.

Conclusion

The business costs of adjusting to the new Regulation for licensees would be low as conveyancers are already required to disclose the basis of calculating the costs where the amount of the costs is not known. Requiring them to also disclose an estimate of the costs is not expected to impose any significant additional expense. There are significant benefits for consumers from improved transparency and accountability of conveyancers for their conduct and the conduct of their businesses. There are also significant benefits to the Government from expanding the offences for which penalty notices can be issued as these provide a faster, more cost-effective enforcement option.

For these reasons, Option 3 provides the greatest benefit to businesses, consumers and Government in comparison to the other options listed and is the preferred option.

Table 5: Summary of costs and benefits for Option 3

	Business	Consumers & public	Government
Costs	<ul style="list-style-type: none"> Administration costs to update processes and train staff (direct) 		<ul style="list-style-type: none"> Implementation costs to communicate changes and train staff to respond to queries (direct – low)
Benefits	<ul style="list-style-type: none"> Updated conduct rules provide clarification 	<ul style="list-style-type: none"> Improved transparency of conveyancing costs Updated conduct rules provide better protection and certainty Potentially lower risks due to expanded enforcement options 	<ul style="list-style-type: none"> Overall administration cost savings due to: <ul style="list-style-type: none"> ability to issue penalty notices for more offences providing a more cost-effective option for non-compliance new penalty notice offence for breach of conduct rules provides a faster and more cost-effective option for non-compliance

5. Discussion of the proposed Regulation

Submissions are welcome on the whole of the proposed Regulation or on specific provisions or any other relevant issue. The following discussion points provide context for some provisions in the proposed Regulation, explore regulatory options and pose questions for feedback.

The appendices summarise the regulation making powers (**Appendix 3**), proposed amendments (**Appendix 4**), and the key questions posed in this section (**Appendix 5**).

Part 1 Preliminary (clauses 1 – 4)

This Part states the name of the proposed Regulation (clause 1), specifies its commencement date (clause 2), defines certain terms (clause 3) and prescribes the ‘Operating Account’ referred to in section 90 of the Act (clause 4). No significant changes have been made to this Part in the proposed Regulation other than to update the Regulation name and commencement date.

Part 2 Licensing (clauses 5 and 6)

This Part of the proposed Regulation contains provisions relating to fees and professional indemnity insurance as outlined below. Further detail about fees is provided below in the section on Schedule 1 (at page 17).

Fees

NSW Fair Trading charges fees for conveyancer licences to recover some of the costs of regulating the conveyancer industry. These costs include those incurred in processing licence applications, handling complaints and enquiries and undertaking disciplinary action, and maintaining a register of all licensed conveyancers.

The application fees charged for conveyancer licences include a fixed component as well as a processing fee. Licence applicants are also required to pay a contribution to the Property Services Compensation Fund established under the *Property and Stock Agents Act 2002*.

Discounted processing fees are available for online applications as provided by section 13 of the *Licensing and Registration (Uniform Procedures) Act 2002*.

Clause 5 of the proposed Regulation provides for fees to be calculated as set out in Schedule 1. A change has been proposed in the section in Schedule 1 at page 17 of this RIS.

Professional indemnity insurance

Section 15 of the Act requires licensed conveyancers to be insured under a professional indemnity policy as required by the Regulation. This is to protect consumers and ensure that any professional negligence on the part of a licensed conveyancer does not result in financial loss for their client.

Clause 6(1) of the proposed Regulation provides that licensees must be insured under the required professional indemnity policy 'when carrying out conveyancing work'. These words were added when the Regulation was remade in 2015 with the intention of providing flexibility and reduced costs for conveyancers who wish to maintain their licence, even while they are not carrying out conveyancing work.

Clause 6(2) provides that the required professional indemnity insurance policy is that approved by the Commissioner for Fair Trading, unless the licensee carries out conveyancing work only in their capacity as an employee of a complying law practice.

No significant changes have been made regarding professional indemnity insurance.

1. Are the professional indemnity insurance requirements clear and appropriate? If no, please explain why.

Part 3 Conduct of conveyancing business (clauses 7 – 11)

This Part:

- aims to ensure conveyancing businesses are properly supervised
- sets an expected standard for ethical and accountable conduct by licensees
- protects consumers by providing for additional disclosure requirements to ensure transparency in the provision of conveyancing services
- removes the potential for a conflict of interest due to a licensee's involvement in a real estate business.

The only significant changes made to this Part of the Proposed Regulation are outlined below and in the section of this RIS relating to Schedule 2 (rules of conduct).

Separate licensee in charge

Under section 20 of the Act, licensed conveyancers who carry on business at more than one place must ensure that there is a separate licensee-in-charge at each place of business. A licensee-in-charge is also prohibited from acting for more than one licensee at a single place of business, except where licensees are in a partnership. These requirements are primarily aimed at ensuring there is adequate supervision and accountability of conveyancing businesses.

Section 20 of the Act enables the Fair Trading Commissioner to grant exemptions from these requirements in certain circumstances. Clause 7 specifies the matters the Commissioner of Fair Trading must take into account when considering whether to grant an exemption. These matters

reflect the view that exemptions are only appropriate where a need is shown and licensees have demonstrated their capacity to properly supervise multiple businesses and maintain accountability.

Rules of conduct

The proposed Regulation provides for rules of conduct which are detailed in Schedule 2 (clause 8) and prohibits licensees from conducting, or being employed in, the business of an agent (for example, a real estate agent) while they are conducting, or employed in, a conveyancing business (clause 9).

The rules of conduct, including amendments in the proposed Regulation, are discussed further below in the section on Schedule 2.

Disclosure requirements

Part 3 Division 5 of the Act requires licensees to disclose certain information about costs and other matters to clients before or when they are retained to carry out conveyancing work. The Act allows additional disclosure requirements to be prescribed in the Regulation.

As per the current Regulation, proposed clause 10 requires a licensee who is to undertake both conveyancing work and non-conveyancing work for a client to disclose that part of the work is non-conveyancing work and the nature of this work.

Proposed amendment relating to cost disclosure of conveyancing work – where the amount of costs is not known

Proposed clause 10 prescribes an additional matter that must be disclosed to clients under section 36 of the Act where the amount of conveyancing costs is not known. In these circumstances, section 36(2)(b) of the Act requires a licensee to disclose ‘the basis of calculating the costs’. The proposed clause 10 requires a licensee to also disclose an estimate of the costs, in addition to the basis of calculating the costs. This new disclosure requirement is aimed at providing clients with greater transparency in relation to expected costs for conveyancing work before the licensed conveyancer is engaged.

- 2. Are the additional disclosure requirements in the proposed Regulation appropriate? If no, please explain why.**
- 3. Should any other disclosure requirements be prescribed? If yes, please specify the requirement/s and explain why.**

Itemised accounts

This Part also specifies how an itemised account under section 67 of the Act may be requested and provided (clause 11).

Part 4 Resolution of costs disputes (clauses 12 – 14)

This Part provides:

- Requirements for notifying the New South Wales Civil and Administrative Tribunal (the Tribunal) of costs disputes. This includes the period of time within which a notification must be made (clause 12)
- That parties must bear the costs of an assessment of a costs dispute in the way ordered by the Tribunal (clause 13)
- The manner in which proceedings in costs disputes are transferred to the Tribunal by order of the court hearing the dispute (clause 14).

No significant changes have been made to the requirements set out in this Part in the proposed Regulation.

The filing fees for costs dispute notifications to the Tribunal are low and in line with fees for other matters dealt with by the Tribunal.

4. Are the requirements relating to notification, assessment costs and transfer of costs disputes working well? If no, please explain why.

Part 5 Trust money (clauses 15 - 30)

This Part of the proposed Regulation contains requirements that ensure licensed conveyancers are accountable for their handling of money held in trust for and on behalf of their clients. It sets out general and specific requirements for recordkeeping (clauses 16 and 17), and electronic records (clause 18). It also sets out requirements for the provision of statements of account for each ledger account maintained for a client (clause 19).

This Part also specifies requirements and procedures for:

- licensees to receive and withdraw payment for their costs from trust money (clause 20)
- the banking of, and issuing receipts for, trust money (clauses 21 and 22)
- withdrawals from and deposits into a licensee's trust account (clauses 23 and 24).

It also sets out requirements for:

- maintaining cash books for trust account transactions (clause 25)
- maintaining a journal of all transfers between accounts in a trust account ledger that are not electronic transfers (clause 27)
- maintaining a separate ledger account for trust money received on behalf of or paid to each client (clause 26)
- preparing a monthly trial balance statement of all current ledger accounts (clause 28)
- signing cheques or making electronic funds transfers from trust accounts (clause 29)
- maintaining within the trust account ledger an account in the licensee's own name (clause 30).

These requirements and procedures facilitate close regulation of licensed conveyancers' management of trust accounts and trust money. They provide for the inspection of trust accounts and ensure a clear audit trail to reduce the possibility of misappropriation of funds.

No significant changes have been made to this Part of the proposed Regulation other than to change certain references to computer records to electronic records.

Potential issue arising from e-Conveyancing

The regulatory impact statement published in 2015 in relation to the current Regulation noted that, for completeness, amendments to the Act should be considered to provide for certain monies that may be received and dealt with by conveyancers in the course of an e-Conveyancing settlement. In essence, it was suggested that the amendments could provide for recognition of money that is subject to a 'power' and how that type of money is to be dealt with.

This recommendation is being considered for future Act amendment when there is an appropriate opportunity.

5. Are the provisions relating to trust money and trust account records clear and appropriate? If no, please explain why.

Part 6 Records (clauses 31 – 33)

To ensure licensed conveyancers are accountable for the records and documents they hold on behalf of their clients, clause 31 of the proposed Regulation specifies the manner and form in which records of conveyancing transactions must be kept. The aim is to ensure that all relevant records are kept on file for each client, in a consistent format for consumers and licensees, to ensure an appropriate audit trail is established.

Clause 32 of the proposed Regulation provides that records must be kept for at least seven years, and clause 33 requires all written records required to be produced for auditing purposes to be in the English language.

No significant changes have been made to this Part in the proposed Regulation.

6. Are the recordkeeping requirements clear and appropriate? If no, please explain why.

Part 7 General (clauses 34 – 39)

NSW Fair Trading maintains a register of all licensed conveyancers in accordance with section 162 of the Act. One of the purposes of the register is to help consumers make informed choices when selecting a licensed conveyancer. The proposed clause 34 specifies the details to be included in

the register. These include the details of any disciplinary action taken against a licensee, cancelled and suspended licences, and applications for a licence that have been refused on the ground that the applicant is not a fit and proper person.

The Act includes a disciplinary regime that has no effect after a licence is suspended. Under section 133(3) of the Act, certain provisions of the Act and the Regulation continue to apply to a suspended licence. Clause 35 specifies which provisions continue to apply. The aim is to ensure conveyancers whose licence has been suspended remain accountable.

If a licensed conveyancer has received or held money for a client during a particular audit period, section 77 of the Act requires that they provide NSW Fair Trading with a statutory declaration to that effect. The proposed Regulation specifies that when the licensee is a corporation, the director (or any two directors if there is more than one) must provide the required statutory declaration (clause 36).

Clause 37 sets out the circumstances in which the Fair Trading Commissioner may waive, reduce, postpone or refund a fee payable under the Act or the Regulation. Clause 38 sets out when and how a partial refund of an application fee can be sought.

Clause 39 allows for the continuation or 'saving' of matters that had effect under the current Regulation.

The main change made to this Part in the Proposed Regulation is outlined below. This change has no practical effect.

Proposed amendment to remove clause 36

Clause 36 in the current Regulation has been removed from the proposed Regulation. This clause in the current regulation provides that the licence restoration provision of the *Licensing and Registration (Uniform Procedures) Act 2002* does not apply to conveyancer licences cancelled under Part 9 of the Act. This provision is no longer needed following amendments made to the Act (alongside other legislation) by the *Fair Trading Legislation Amendment (Reform) Act 2018* which commenced on 1 July 2020. Those amendments mean the licence restoration provision does not apply to a licence under the Act and cancelled licences cannot be restored.

Schedule 1 Fees

Clause 5 of the proposed Regulation provides for fees to be calculated as set out in Schedule 1. Part 2 of Schedule 1 provides for the adjustment of future fees for inflation and for the publication of those fees.

The only substantive change made to this Schedule in the proposed Regulation is outlined below.

Proposed amendment relating to updating of fee unit amount

Schedule 1, Part 2, clause 2(1)(a) of the proposed Regulation has been updated with the fee unit for the 2021-22 financial year calculated in accordance with clause 2(1)(b).

Schedule 2 Rules of conduct

Section 22(1) of the Act permits the regulations to prescribe rules of conduct that must be followed while conducting a conveyancing business or exercising functions under a licence. Without limiting that section, section 22(2) provides that the regulations may adopt, with or without modification, any rules made by the Law Society with respect to the conduct of solicitors.

While there are some differences between the current rules of conduct applying to licensed conveyancers and solicitors in New South Wales, the two sets of rules largely cover the same issues (where relevant to conveyancers) in similar terms. Recent cases have examined aspects of the standard of care and conduct expected from conveyancers.¹ However, there is no explicit suggestion in those cases that there is a need to amend the legislation.

In addition to the rules of conduct under the conveyancers licensing legislation, conveyancers are required to comply with other legislative requirements as well, including the Conveyancing Rules and the Participation Rules for Electronic Conveyancing determined by the Registrar General.

The only significant changes made to this Schedule in the Proposed Regulation are outlined below.

Proposed amendments relating to rules of conduct

Proposed new conduct rule relating to duties to former clients

The rules of conduct set out in the current Regulation include rules relating to conflicts of interests and duties owed to clients. For example, the rules include a duty to act in the client's best interests at all times, unless it would be contrary to the legislation or would otherwise be unlawful.

The current rules of conduct also include obligations relating to confidentiality (Rule 13), conflicts between the licensee's interests and the client's interests (Rule 11) and acting for more than one party to a transaction (Rule 12).

However, there is currently no specific rule dealing with potential conflicts between the duties owed to former and current clients. The proposed Regulation introduces a new conduct rule (Rule 11(2) and (3)) that expressly requires licensees to avoid these conflicts except as permitted by the rule. The new rule provides that a licensee must not act for a current client when a licensee has confidential information from working for a former client which, if disclosed, might be material to the

¹ For example, *Gillian Fisher-Pollard by her Tutor Miles Fisher-Pollard v Piers Fisher-Pollard* [2018] NSWSC 500 and *Guirgis v JEA Developments Pty Ltd* [2019] NSWSC 164

current client's matter and detrimental to the former client's interests. However, the rule states that the licensee may act for the current client if the former client has provided written informed consent.

The proposed new rule is in similar terms to the equivalent solicitors' conduct rule². In addition, 11(4) has been added to clarify that it does not affect a licensee's obligations under Rule 13 relating to confidential information.

Proposed new offence for failure to observe rules of conduct

Section 22 of the Act does not currently make failure to observe a prescribed rule of conduct a specific offence, although it is a ground for taking disciplinary action against a licensee or former licensee under section 132(1). A contravention may also be an offence under another provision of the Act or the Regulation.

To address this, clause 8 of the proposed Regulation makes failure to observe a prescribed rule of conduct an offence, with a maximum penalty of 40 penalty units for corporations (\$4,400) and 20 penalty units (\$2,200) in any other case. These are the maximum penalties that can be imposed for offences created in the Regulation using the power in section 172(3) of the Act. A stronger penalty under the Act will be considered when the Act is next reviewed.

This new offence has also been included in the prescribed penalty notice offences in Schedule 3 of the proposed Regulation. This will provide NSW Fair Trading with a simpler and faster option for enforcing the rules of conduct, especially for minor breaches.

7. Are the changes relating to the rules of conduct in the proposed Regulation appropriate? If no, please explain why.

8. Should any other changes be made to the rules of conduct? If yes, please specify the change/s and explain why.

Schedule 3 Penalty notice offences

Section 158 of the Act permits NSW Fair Trading to issue penalty notices for offences under the Act or the Regulation. Penalty notices provide a faster and more cost-effective option for penalising non-compliance and encouraging changes in conveyancer conduct to ensure compliance with the law. Penalty notices are generally used by NSW Fair Trading for contraventions of a more minor nature and the prescribed penalty amounts are therefore significantly lower than the maximum penalties for the offences.

² *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015*, Rules 10.1 and 10.2

Proposed amendment to expand penalty notice offences

Clause 38 of the current Regulation has been moved to clause 1(1) of Schedule 3 of the proposed Regulation, which provides that offences created through Schedule 3 are offences for which penalty notices may be issued. Clause 1(2) is a standard interpretation provision that is currently being included in clauses of this type.

Schedule 3 of the proposed Regulation expands the number of offences for which penalty notices can be issued by the addition of the following offences, as follows. This is to ensure this enforcement option is available for more offences.

Offences under the Act	Offences under the Regulation
<ul style="list-style-type: none">Sections 53(1), (2) and (5) – licensee's failure to comply with requirements for holding and paying trust moniesSection 68(2) – licensee knowingly providing false or misleading informationSection 80(4) – auditor's failure to comply with requirements for audit and auditor's reportSection 104 – person hindering, obstructing or delaying a manager appointed under the ActSection 131 – person hindering, obstructing or delaying a receiver appointed under the ActSection 148 – person failing to comply with requirement of, or knowingly providing false or misleading information to, or obstructing an authorised officer under Part 10 of the Act	<ul style="list-style-type: none">Section 8(2) – licensee's failure to comply with the prescribed rules of conductSections 22(3) and (5) – licensee's failure to comply with requirements for making a copy of details on a trust money receipt and giving the original receipt on demand to the person from whom the trust money is receivedSection 23 – licensee's failure to comply with requirements for drawing money from trust account by cheque or electronic funds transferSections 25(5) and (6) (25(7) and (8) in current Regulation) – licensee's failure to comply with requirements relating to cash book balanceSections 30(2) and (3) – licensee's failure to comply with requirements relating to an account in the licensee's name

No other significant changes have been made to this Schedule.

The penalty amounts for the newly prescribed offences are in line with the penalty amounts prescribed for existing penalty notice offences in the current Regulation. No changes have been made to those existing penalty amounts. In general, the penalty amounts are consistent with other licensing schemes administered by Fair Trading, such as, the *Property and Stock Agents Act 2002* and regulations.

9. Are the prescribed penalty notice offences and penalty amounts in the proposed Regulation appropriate? If no, what should be changed?

Other issues not covered elsewhere in this RIS

The regulation-making powers of the Act are summarised in Appendix 3. Some of these powers are used in the current Regulation (and the proposed Regulation, as indicated in Appendix 3) while other powers are not currently used. A specific issue is raised for consideration below.

Scope of conveyancing work

Section 4 of the Act defines ‘conveyancing work’ as legal work carried out in connection with any transaction that creates, varies, transfers or extinguishes a legal or equitable interest in any real or personal property. It includes legal work involved in preparing a document necessary to give effect to that transaction and legal work (such as the giving of advice or preparation of documents) that is consequential or ancillary to that transaction.

Certain types of work are expressly excluded from ‘conveyancing work’ by section 4(3) of the Act, for example, commencing or maintaining legal proceedings, establishing a corporation, creating or varying a trust, and preparing a testamentary instrument.

The Act allows the regulations to prescribe other legal work that is ‘conveyancing work’ and other work that is not ‘conveyancing work’ for the purposes of the Act and Regulation.

If there are any aspects of the current scope of conveyancing work that require clarification, this might be able to be addressed in the proposed Regulation. For example, licensed conveyancers are listed as prescribed persons who can witness and certify an enduring power of attorney under the *Powers of Attorney Act 2003*. Is what a licensed conveyancer can and cannot do in relation to powers of attorney clear and appropriate?

- 10. Should any other work be expressly included in, or excluded from, ‘conveyancing work’ that can be carried out by licensed conveyancers under the Act? If yes, please specify the work and explain why.**
- 11. Do any of the other regulation-making powers not included in the proposed Regulation need to be used (see Appendix 3)? If yes, which should be used and why?**
- 12. Are there any other issues not raised in this RIS or Regulation that should be addressed? If yes, what is the issue and how could it be addressed in the Regulation?**

Appendix 1 – List of targeted stakeholders

A copy of the proposed Regulation and this RIS has been provided to current licence holders, industry bodies and other key stakeholders. These include, but are not limited to:

Industry associations and bodies

- Australian Institute of Conveyancers (NSW Division)
- The Law Society of NSW
- Real Estate Institute of NSW
- Property Council of Australia (NSW)
- Australian Property Institute (NSW)
- Property Owners Association of NSW
- Estate Agents Co-operative
- Insurance Council of Australia

Consumer groups and services

- CHOICE
- Consumer Action Law Centre
- Community Legal Centres NSW

Government and other stakeholders

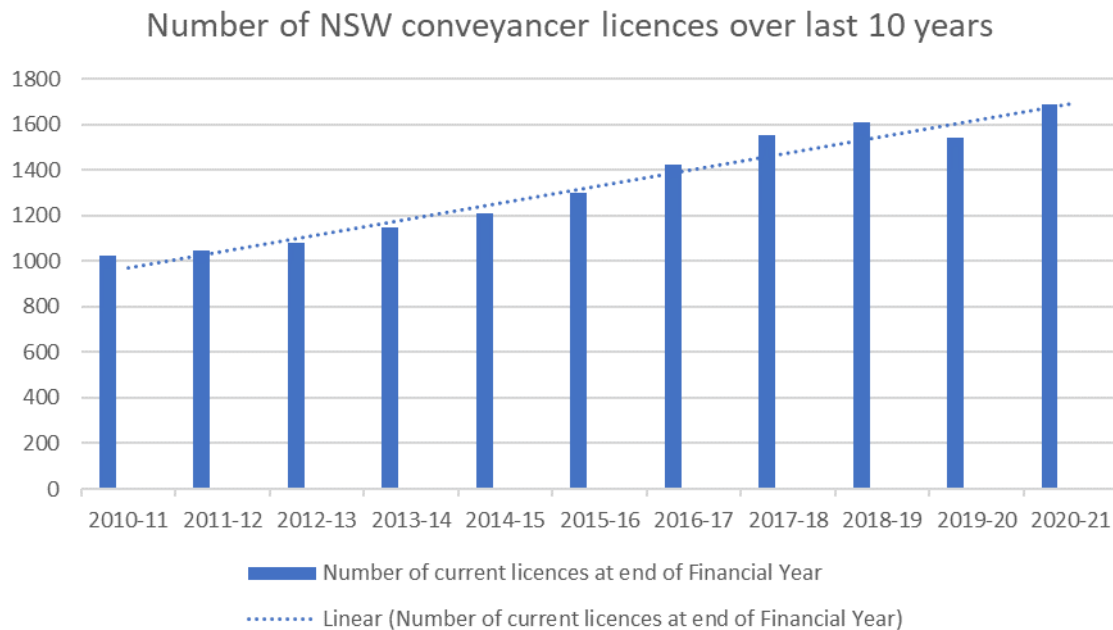
- Office of the Registrar-General
- NSW Civil and Administrative Tribunal
- NSW Small Business Commissioner
- Office of the Legal Services Commissioner
- Legal Services Council
- NSW Land Registry Services

Appendix 2 – Industry and regulatory background

Profile of the licensed conveyancer industry in New South Wales

The New South Wales (NSW) licensed conveyancer industry has grown considerably in the last 25 years. When the 1995 Act was introduced, there were 43 licensed conveyancers. When the Regulation was last remade in 2015, there were 1,194 licensed conveyancers.

As at 30 April 2021, there were 1,689 licensed conveyancers in NSW. Of these, 1,425 were individual licences and 264 were corporate licences.



Background to current conveyancers licensing legislation

Key legislative milestones in the evolution of the licensed conveyancer industry are summarised below.

- The *Conveyancers Licensing Act 1992* established a licensing and regulatory regime that enabled qualified professionals other than solicitors to undertake conveyancing work. One of the aims was to encourage increased competition in the provision of conveyancing services. However, it limited licensed conveyancers to conveyancing of residential properties of less than 10 hectares, which resulted in only partially improved consumer choice in conveyancing services.
- Introduction of the *Conveyancers Licensing Act 1995* was intended to further increase competition by expanding the scope of work allowed to be carried out by licensed conveyancers to include commercial and rural property transactions, in addition to residential conveyances.

- In 2002, a formal review of the 1995 Act was conducted under a National Competition Principles Agreement. The National Competition Policy Review concluded that continued regulation of the licensed conveyancer industry was justified given the risks faced by consumers in their dealings with conveyancers, particularly regarding conveyancers' levels of competence and the safety of money held in trust. It also found that objectives of the 1995 Act – to increase competition and protect consumers – could be further met by modification, and in some cases tightening, of the existing laws.
- The *Conveyancers Licensing Act 2003* replaced the 1993 Act and aimed to improve consumer protection. It allowed conveyancers to incorporate, introduced rules of conduct for conveyancers, reformed the disciplinary system for licensed conveyancers, and clarified and updated the pre-existing legislation.
- The Conveyancers Licensing Regulation was last remade in 2015. The main changes made during that remake were:
 - Enabling the required policy of professional indemnity insurance to be approved by the Commissioner of Fair Trading rather than the Minister.
 - Providing that a licensee must have professional indemnity insurance 'when carrying out conveyancing work' for the purposes of meeting that condition of their licence.
 - Enabling an itemised account to be requested and provided by email
 - Extending the period for which records must be kept from 6 to 7 years.

Appendix 3 – Regulation-making powers

The following table sets out the existing regulation-making powers in the Act. It also identifies the powers that are used in the proposed Regulation.

Section	Regulation-making power under Act	Scope of proposed regulation
4(2)(c)	Prescribe other legal work as constituting conveyancing work for the purposes of the Act	Not prescribed
4(3)	Prescribe other work as not constituting conveyancing work for the purposes of the Act	Not prescribed
10(1)(r)	Prescribe certain provisions in the Act and/ or regulations as a 'disqualifying breach' – a breach of one of those provisions would mean that the person is not able to hold a licence	Not prescribed
11(5)	Provide for matters concerning a licence that are relevant to the operation of Part 2 of the <i>Licensing and Registration (Uniform Procedures) Act 2002</i> (LRUPA) (subject to section 11 of the Act). This could include modifying or limiting the licensing procedures under LRUPA for the purposes of the Act	Not prescribed
12(1)	Prescribe the amount of the application fee an applicant for a licence must pay	Sections 5(1)-(3) and Schedule 1 prescribe the application fees for the granting, renewal, restoration and replacement of a licence.
15(1)	Provide that a licensee must be insured under a professional indemnity policy individually or through their employer. Makes any such requirement a condition of a licence	Section 6(1) requires licensees to be insured under a professional indemnity policy that meets the requirements in section 6(2) when carrying out conveyancing work.
15(2)	Require that the policy of insurance be a certain policy, or a type of policy approved by the Minister by order published on the NSW legislation website	Section 6(2) requires the licensee to either be insured under the policy approved by the Fair Trading Commissioner by order published on the NSW legislation website or insured to carry out conveyancing work as an employee of a complying law practice only.
18(4)(b)	Prescribe fee for application for restoration of a licence	Sections 5(1)-(3) and Schedule 1 prescribe the application fee for the restoration of a licence.
20(6)	Specify the matters to be taken into account by the Fair Trading Commissioner in considering whether to grant a person an exemption from:	Section 7(1) specifies matters the Fair Trading Commissioner must take into account in considering whether to grant an exemption from these requirements under section 20 of the Act – these include the licensee's previous experience, capacity

Section	Regulation-making power under Act	Scope of proposed regulation
	<ul style="list-style-type: none"> the requirement for a separate licensee to be in charge of each place of business the requirement that a licensee-in-charge does not exercise functions or provide services on behalf of more than one licensee at a place of business 	<p>to comply with guidelines, employer references and record of compliance.</p> <p>Section 7(2) requires the Fair Trading Commissioner to take into account additional matters in considering whether to grant an exemption from the requirement for a separate licensee to be in charge at each place of business. These include the capacity of the licensee-in-charge to properly supervise, proposed office systems staffing and office management arrangements, and whether there is a centralised trust account.</p> <p>Section 7(3) requires the Fair Trading Commissioner to take into account additional matters in considering whether to grant an exemption from the requirement that a licensee-in-charge does not exercise functions or provide services on behalf of more than one licensee at a place of business. These include the capacity of the licensee-in-charge to properly supervise, proposed fiduciary safeguards and office systems and whether there are separate trust accounts.</p>
22	Prescribe rules of conduct to be observed in the course of the conduct of conveyancing businesses or the exercise of functions under licences	Section 8(1) and Schedule 3 prescribe the rules of conduct to be observed in the course of the conduct of a conveyancing business or the exercise of functions under a licence.
26(4)	Restrict the circumstances in which a licensee may share the receipts of a conveyancing business with another person who is not a licensee	Not prescribed
27(4)	Provide for restricting the classes of persons (other than licensees) with whom a licensee may be in partnership	Not prescribed
28(1)	Prohibit a licensee who conducts, or is employed in, a conveyancing business from conducting, or being employed in, any other business or class of business	Section 9 prohibits a licensee who conducts, or is employed in, a conveyancing business from conducting, or being employed in, the business of an agent under the <i>Property and Stock Agents Act 2002</i> .
36(1) and 36(2)(e)	Prescribe kinds of conflict or beneficial interest a licensee must disclose to a client	Not prescribed
36(2)(f)	Prescribe any other matter a licensee must disclose to a client	<p>Section 10(1)(a) prescribes a new requirement to disclose to a client an estimate of the costs for conveyancing work if the amount of the costs is not known. This is in addition to the existing requirement in section 36(2)(b) of the Act to disclose the basis of calculating the costs in those circumstances.</p> <p>Section 10(1)(b) prescribes disclosure of the fact that non-conveyancing work is to be carried out for a client and the nature of that work.</p>
40	Provide for or with respect to information to be disclosed under Part 3, Division 5 of	Not prescribed

Section	Regulation-making power under Act	Scope of proposed regulation
	the Act, and when it would not be reasonable to require a disclosure to be made	
43(1)	Prescribe the procedure for notifying the Tribunal of a costs dispute	Section 12 prescribes the procedure for notifying the Tribunal of a costs dispute – notification must be in writing and in accordance with the requirements for making applications under the <i>Civil and Administrative Tribunal Act 2003</i> , and within 60 days after the licensee has provided the bill or account of costs to the client.
45(2)	Provide for the parties to a costs dispute to bear the costs of assessment by an independent expert as may be ordered by the Tribunal or in any other prescribed manner	Section 13 provides that, if the Tribunal refers a costs dispute to an independent expert for assessment, the parties are to bear the costs of the assessment in the way ordered by the Tribunal.
50(2)	Prescribe the procedure for transfer of costs dispute proceedings from a court to the Tribunal	Section 14 prescribes the procedure for the transfer of costs dispute proceedings to the Tribunal by order of the court hearing the costs dispute. It includes how notice is to be given, documents transferred, and notice served on the parties fixing a date and time for a hearing or directions hearing.
53(3)(a)	Prescribe the procedure to be followed by a licensee for withdrawing or receiving, from trust money, money due to the licensee for costs	<p>Section 20 prescribes the procedure a licensee must follow to withdraw or receive from trust money, money due to the licensee for costs.</p> <p>This includes that the licensee must:</p> <ul style="list-style-type: none"> • have disclosed to the person from whom, or on whose behalf, the licensee has received the trust money the costs and other matters required by section 36 of the Act, or be able to claim under section 39 of the Act that disclosure was not required because it was not reasonable to require it, and • give the person a bill or account of the costs together with written notice of the intended withdrawal and application of the money towards payment of the bill or account after 30 days unless the person objects, and <p>One of the following circumstances must apply:</p> <ul style="list-style-type: none"> • written authorisation of the withdrawal or receipt • lack of objection within the 30 day notice period • an objection within the notice period but no notification to the Tribunal of a costs dispute in the time required.
63(6)	Exempt money or a class of money from the operation of section 63 (trust money held by a former licensee or personal representative of a deceased licensee)	Not prescribed

Section	Regulation-making power under Act	Scope of proposed regulation
67(1)	Prescribe the manner for requesting and rendering an itemised account of a transaction by or with a licensee in connection with their conveyancing business	<p>Section 11(1) prescribes how a request for an itemised account may be served on the licensee – including by personal delivery, post or email.</p> <p>Section 11(2) prescribes how the licensee may give the itemised account to the person – including by personal delivery, post or email.</p>
69(2)	Specify requirements for making and keeping certain records and documents relating to the licensee's conveyancing business, accounts kept in connection with that business and transactions carried out by the licensee or employees of the licensee in connection with conveyancing work	As for section 172(2)(d) of the Act – below
69(3)	Impose a penalty not exceeding 50 penalty units for a contravention of a provision made under section 69(2)	Not prescribed
90	Prescribe a NSW Fair Trading account as the Operating Account for the purposes of section 90	Section 4 prescribes the Compensation Fund account as the Operating Account
91(1)(f)	Declare a person or class of persons to be an associate of a licensee	Not prescribed
91(2)(d)	Prescribe a kind of relationship as a prescribed relationship for the purposes of section 91(1)(d)	Not prescribed
102	Make provision with respect to the accounts to be kept relating to income and expenses incurred by the manager of a licensee's conveyancing business and the purposes for which money in those accounts may be spent	Not prescribed
132(1)(l)	Specify other grounds for disciplinary action to be taken against a person under the Act	Not prescribed
133(3)	Prescribe provisions of the Act or regulations that remain applicable to a suspended licence	<p>Section 35 prescribes the following provisions of the Act remain applicable to a suspended licence:</p> <ul style="list-style-type: none"> • section 66 (Secretary may require information) • section 72 (Power to require production of licensee's records) • section 75 (Requirement for audit) and section 77 (Secretary required to be notified where no money held or received on behalf of another person), except when a receiver or manager has been appointed • section 88 (Claims can be made against Compensation Fund) to the extent that it applies

Section	Regulation-making power under Act	Scope of proposed regulation
		<p>section 179 of the <i>Property and Stock Agents Act 2002</i></p> <ul style="list-style-type: none"> • section 95 (Powers of a manager) • section 152 (Fraudulent conversion and false accounts of money received by licensee) • section 153 (Fraudulent accounts for expenses, fees and other charges)
157(3)	Prescribe another maximum monetary penalty that the Local Court may impose for an offence	Not prescribed
158(2)	Prescribe an offence against the Act or regulations as a penalty notice offence	<p>Schedule 3 prescribes specified offences against the Act and regulations as penalty notice offences.</p> <p>The proposed Regulation includes the following additional offences in Schedule 3:</p> <p>Offences under sections 53(1), 53(2), 53(5), 68(2), 80(4), 104, 131 and 148 of the Act and sections 8(2), 22(3), 22(5), 23, 25(5), 25(6), 30(2) and 30(3) of the proposed Regulation.</p>
158(4)	Prescribe the amount that is payable under a penalty notice issued for an alleged offence	Schedule 3 prescribes the amounts payable under penalty notices.
161(1)(f)	Authorise disclosure of information obtained in connection with the administration or execution of the Act	Not prescribed
162(1)	Prescribe other particulars to be kept in the Register maintained by the Fair Trading Commissioner under section 162(1)	Section 34 prescribes details that must be entered and kept in the Register for each licence issued under the Act.
164	Authorise the Fair Trading Commissioner to delegate the exercise of any function to any person or class of persons	Not prescribed
167(2)	Authorise another method for giving a notices or direction	Not prescribed
172(1)	Prescribe any matter that is necessary or convenient to be prescribed for carrying out or giving effect to the Act	<p>Sections 5(4) and (5) provide for payment of the contribution to the Compensation Fund under the <i>Property and Stock Agents Act 2002</i> in addition to the total application fee, as required by section 89 of the Act.</p> <p>Section 21 prescribes the time for payment of trust money into a licensee's trust account, as required by section 53(1) of the Act.</p> <p>Section 36 prescribes requirements for notifications lodged by corporate licensees under section 77 of the Act.</p>
172(2)(a)	Prescribe the procedure to be followed in respect of applications under the Act	Not prescribed

Section	Regulation-making power under Act	Scope of proposed regulation
172(2)(b)	Fix the maximum amount of remuneration to which a licensee is entitled, by way of fee, gain or reward, for services performed by him or her as a licensee	Not prescribed
172(2)(c)	Require licensees to display or otherwise publicise or notify of particulars of their remuneration and prescribe the consequences of a failure to comply with any such requirement	Not prescribed
172(2)(d)	Prescribe the accounts and other records to be kept by a licensee and the manner in which they are to be kept	<p>Sections 16 to 19 and 22 to 30 prescribe requirements for certain accounts and records relating to trust money and licensees' trust accounts, and the manner in which they are to be kept.</p> <p>Section 31 prescribes the records that licensees must keep in relation to transactions carried out by the licensee or their employees in connection with conveyancing work that they carried out. It also prescribes how the records are to be kept.</p> <p>Section 32 requires records to be kept for at least 7 years unless passed to another licensee or solicitor as a result of the licensee's conveyancing business being transferred.</p> <p>Section 33 requires all written records licensees must make or produce under the Act or the Regulation to be in English.</p>
172(2)(e)	Prescribe a method of service of any notice, statement of claim, order or other document authorised or required to be served by or under the Act (in addition to or alternatively to any method of service prescribed)	Not prescribed
172(2)(f)	Prescribe exemptions from the operation of the Act or specified provisions of the Act	Not prescribed
172(2)(g)	Provide for the waiver, reduction, postponement or refund by the Fair Trading Commissioner of fees payable or paid under the Act or the regulations	<p>Section 37 provides that the Fair Trading Commissioner may waive, reduce, postpone or refund all or part of a fee if satisfied it is appropriate because the payer is suffering financial hardship or special circumstances exist.</p> <p>Section 38 provides for applications for a partial refund of an application fee paid for a 3 or 5 year licence in certain limited circumstances.</p>
172(3)	Create an offence punishable by a penalty not exceeding 40 penalty units in the case of a corporation, or 20 penalty units in any other case	<p>The following sections create these offences in the proposed Regulation: 8(2), 16, 18(1), 19, 21, 22, 23, 24(1), 25, 26, 27, 28, 29(8)-(9), 30, 31, 32(1) and 33.</p> <p>The proposed Regulation includes a new offence in section 8(2) relating to the rules of conduct to be observed in the course of the conduct of</p>

Section	Regulation-making power under Act	Scope of proposed regulation
		conveyancing businesses or the exercise of functions under licences.
Schedule 1 Part 1 Clause 2	Make savings or transitional provisions	Section 39 provides that any act, matter or thing that had effect under the Conveyancers Licensing Regulation 2015 continues to have effect under the new Regulation.

Appendix 4 – Summary of main changes

The following table sets out the main changes in the proposed Regulation, compared to the current Regulation. It does not include minor updates that have been made – for example, changes to improve clarity or readability without altering meaning.

Issue	Current Regulation	Proposed Regulation
Offence for failure to observe rules of conduct	No current offence. Note: The Act also does not currently include this offence although it is a ground for disciplinary action under Part 9 of the Act	Introduces new offence for failure to observe a prescribed rule of conduct with a Maximum Penalty of 40 penalty units (\$4,400) for corporations and 20 penalty units (\$2,200) in any other case [section 8(2)]
Additional matters that must be disclosed to a client	Requires licensees who are to carry out both conveyancing work and non-conveyancing work for a client to disclose that and the nature of the non-conveyancing work to the client [clause 10]	Introduces a new requirement for licensees to disclose to the client an estimate of the costs, as well as the basis for calculating the costs, if the amount of the conveyancing costs is not known [section 10(1)(a)]
Computer records references updated to electronic records	Provides certain requirements in relation to records kept by a licensee using a computer system [for example, clauses 16 and 18]	Provides certain requirements in relation to records kept by a licensee electronically [for example, sections 16 and 18]
Modification of application of <i>Licensing and Registration (Uniform Procedures) Act 2002</i> (the LRUP Act)	Provides that section 10 of the LRUP Act, relating to applications for restoration of licences, does not apply to a licence cancelled under Part 9 of the Act [clause 36]	Omits this clause as amendments to the Act that commenced in July 2020 have the same effect

Issue	Current Regulation	Proposed Regulation
Conduct rule regarding conflicts between duties owed to former and current clients	No conduct rule specifically dealing with conflicts between duties owed to current and former clients	Introduces a new conduct rule which specifically requires licensees to avoid conflicts between their duties to current and former clients, except as permitted by the rule [Schedule 2, rule 11(2)-(3)]
Penalty notice offences	Offences for which penalty notices can be issued are set out in Schedule 4	<p>Increases the number of offences under the Act and the Regulation for which penalty notice offences can be issued (now set out in Schedule 3) by including:</p> <ul style="list-style-type: none"> • offences under sections 53(1), 53(2), 53(5), 68(2), 80(4), 104, 131 and 148 of the Act, and • offences under sections 8(2), 22(3), 22(5), 23, 25(5), 25(6), 30(2) and 30(3) of the proposed Regulation <p>See further detail on page 20 of this RIS</p>

Appendix 5 – List of discussion questions in this RIS

Questions	Clause	Page
1. Are the professional indemnity insurance requirements clear and appropriate? If no, please explain why.	6	13
2. Are the additional disclosure requirements in the proposed Regulation appropriate? If no, please explain why.	10	14
3. Should any other disclosure requirements be prescribed? If yes, please specify the requirement/s and explain why.	--	14
4. Are the requirements relating to notification, assessment costs and transfer of costs disputes working well? If no, please explain why.	12-14	15
5. Are the provisions relating to trust money and trust account records clear and appropriate? If no, please explain why.	15-30	16
6. Are the recordkeeping requirements clear and appropriate? If no, please explain why.	31-33	16
7. Are the changes relating to the rules of conduct in the proposed Regulation appropriate? If no, please explain why.	Sch 2	19
8. Should any other changes be made to the rules of conduct? If yes, please specify the change/s and explain why.	Sch 2	19
9. Are the prescribed penalty notice offences and penalty amounts in the proposed Regulation appropriate? If no, what should be changed?	Sch 3	20
10. Should any other work be expressly included in, or excluded from, 'conveyancing work' that can be carried out by licensed conveyancers under the Act? If yes, please specify the work and explain why.	--	21
11. Do any of the other regulation-making powers not included in the proposed Regulation need to be used (see Appendix 3)? If yes, which should be used and, why?	--	21
12. Are there any other issues not raised in this RIS or Regulation that should be addressed? If yes, what is the issue and how could it be addressed in the Regulation?	--	21