

1993—No. 470

**CONVEYANCERS LICENSING ACT 1992—REGULATION**

(Conveyancers Licensing Regulation 1993)

NEW SOUTH WALES



*[Published in Gazette No. 100 of 10 September 1993]*

HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Conveyancers Licensing Act 1992, has been pleased to make the Regulation set forth hereunder.

J. P. HANNAFORD, M.L.C.,  
Attorney General.

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**PART 1—PRELIMINARY**

**Citation**

1. This Regulation may be cited as the Conveyancers Licensing Regulation 1993.

**Commencement**

2. This Regulation commences on 10 September 1993.

**Definitions**

3. (1) In this Regulation:

“**registered company auditor**” has the same meaning as in the Corporations Law;

“**the Act**” means the Conveyancers Licensing Act 1992.

(2) In this Regulation, a reference to a Form is a reference to a Form set out in Schedule 1.

**PART 2—LICENSING****Division 1—Preliminary****Licensees to be covered by approved policy of professional indemnity insurance**

4. For the purposes of section 9 (1) of the Act, licensees who are required to be insured under a policy of professional indemnity insurance are:

- (a) each licensee who conducts a conveyancing business; and
- (b) each licensee who is employed by the licensee of a conveyancing business unless the employed licensee is insured under the policy of professional indemnity insurance in force with respect to his or her employer.

**Division 2—Certificates of eligibility****Application fee for certificate of eligibility**

5. For the purposes of section 10 (2) (a) of the Act, the application fee for a certificate of eligibility to hold a licence is \$200.

**Notice of application for certificate of eligibility to be given to Council**

6. The Committee must cause notice of the receipt of an application for a certificate of eligibility to be given to the Council within 14 days after the application for the certificate is made to the Committee.

**Division 3—Licences****Application fee for licence**

7. (1) For the purposes of section 17 (2) (a) of the Act, the prescribed application fee payable for a licence of 12 months' duration:

- (a) by a person who conducts a conveyancing business is \$490; and
- (b) by a person who is employed by the licensee of a conveyancing business is \$325.

(2) The prescribed application fee payable for a licence of less than 12 months' duration is a proportionate amount (calculated on a monthly basis with part of a month being treated as a whole month) of the fee specified in subclause (1) (a) or (b).

**Refusal of licence**

8. If the Council refuses an application by an applicant for a licence, the Council must, within 14 days after its decision, serve on the applicant notice, in writing, of the decision.

**Notification of change in particulars**

9. (1) A licensee must notify the Council, in writing, of any change in the particulars relating to the licensee as disclosed in the licensee's last application for a licence within 21 days after the event effecting the change.

(2) The notification must include such particulars as the Council may require of any change or dissolution of partnership, the formation of a new partnership or the acquisition of the conveyancing business of another licensee.

**Surrender and replacement of licence**

10. (1) The Council may accept from a licensee the surrender of a licence and an application for a new licence and may issue a new licence for the balance of the term of the surrendered licence.

(2) The Council may refund such part of the fee paid in respect of the surrendered licence as the Council may determine if the Council is of the opinion that a refund should be made.

(3) This clause does not affect the operation of section 17 of the Act.

**Register of licensees**

11. For the purposes of section 158 (2) of the Act, the prescribed fee for inspection of the register of licensees is \$10.

**Information to be included in the register**

12. The Council may include in the register such of the information furnished by licensees in their applications for licences as the Council may determine.

**Removal of name from the register**

13. (1) The Council is to remove a licensee's name from the register if it is requested, in writing, to do so by the licensee and the licensee surrenders his or her licence for cancellation.

(2) The Council may refund such part of the fee paid in respect of the surrendered licence as the Council may determine if the Council is of the opinion that a refund should be made.

### **PART 3—CONVEYANCING PRACTICE**

#### **Licensee's stationery**

14. (1) A licensee must show on the letterhead of the conveyancing business:

- (a) the name of each licensed conveyancer who is a proprietor of the conveyancing business; and
- (b) the address at which the conveyancing business is conducted; and
- (c) the words "licensed conveyancers" or "licensed property conveyancers" (or, if the licensee is practising on his or her own account, "licensed conveyancer" or "licensed property conveyancer").

(2) The Council may, subject to such conditions (if any) as it may determine, excuse a licensee from complying with subclause (1).

(3) A licensee may show on the licensee's stationery or that of the licensee's firm, under appropriate designations, the names of:

- (a) licensees employed by the firm; and
- (b) any conveyancing business or businesses to which the licensee or the licensee's business has succeeded.

(4) A licensee may show on the licensee's stationery or that of the licensee's firm such other information as the Council may from time to time approve, either generally or in relation to a particular licensee or firm.

#### **Advertising**

15. (1) A licensee may advertise his or her conveyancing business.

(2) An advertisement concerning costs may state that the licensee is prepared to undertake any conveyancing work at less than the maximum costs or scales of maximum costs prescribed by a determination of the Legal Fees and Costs Board made under Part 11 of the Legal Profession Act 1987.

(3) An advertisement referred to in subclause (2) may specify the cost at which the licensee is prepared to undertake any conveyancing business.

(4) Nothing in this clause permits:

- (a) advertisements that might reasonably be regarded as being false, misleading or deceptive; or
- (b) advertisements that might reasonably be regarded as being offensively vulgar or obscene or sensational; or
- (c) advertisements that claim that the licensee concerned is able to obtain advantages for clients if the only means by which those advantages could be obtained are improper means.

(5) A licensee who conducts a conveyancing business must show, or cause to be shown, in any advertisement placed by the licensee for the conveyancing business the matter referred to in clause 14 (1) (a), (c) and (d).

(6) A licensee must not do anything, or permit or allow anything to be done, that holds out, advertises or represents that the licensee is qualified to act as a barrister or solicitor.

(7) A licensee must not advertise, or allow it to be advertised in any manner, that the licensee is a partner of any person who is not a partner of the licensee.

#### **PART 4—DEPOSITS WITH LAW SOCIETY**

##### **Definition**

16. In this Part, “**applicable period**” means the period mentioned in clause 19.

##### **Amount of deposit with Law Society (section 36)**

17. (1) The amount to be deposited and kept deposited with the Law Society in respect of an applicable period is an amount that is not less than two-thirds of the sum of:

- (a) the lowest balance recorded in the trust account during the previous applicable period; and
- (b) the amount (if any) on deposit by the licensee or firm of licensees with the Law Society under section 36 of the Act on the day on which that lowest balance is recorded.

(2) Despite subclause (1), if during an applicable period money is repaid to the licensee or firm under section 65 of the Legal Profession Act 1987, the amount to be deposited or kept deposited with the Law Society in respect of that period becomes an amount that is not less than two-thirds of the sum of:

- (a) the lowest balance recorded in the trust account during the period beginning with the start of that applicable period and ending with the 15th banking day after the repayment or during the previous applicable period; and
  - (b) the amount (if any) on deposit by the licensee or firm with the Law Society under section 36 of the Act on the day on which that lowest balance is recorded.
- (3) If during an applicable period money is repaid to the licensee or firm under section 65 of the Legal Profession Act 1987 on more than one occasion, subclause (2) operates in relation to each such repayment.
- (4) A reference in this clause to the lowest balance recorded in the trust account during a period is a reference to the lowest balance recorded during that period in a statement of account issued by a bank in relation to the trust account.
- (5) If, but for this subclause, a deposit with the Law Society would be required to be made or maintained under subclause (1) or (2), the deposit is not so required if the sum referred to in that subclause is less than \$10,000.

#### **Time of deposit with Law Society**

18. (1) The licensee or firm of licensees must have the amount calculated under clause 17 (1) in respect of an applicable period on deposit with the Law Society not later than 20 banking days after the previous applicable period.
- (2) The licensee or firm of licensees must have the amount calculated under clause 17 (2) on deposit with the Law Society not later than 20 banking days after the day on which the money was repaid under section 65 of the Legal Profession Act 1987.

#### **Applicable periods**

19. (1) For a licensee who, or a firm of licensees which, commences business before 1 April 1994:
- (a) the period starting with the date of commencement of business and ending on 31 March 1995 (both dates inclusive) is an applicable period; and
  - (b) each year ending on a subsequent 31 March is an applicable period.
- (2) For a licensee who, or a firm of licensees which, commences business after 1 April 1994:

- (a) the period starting with the date of commencement of business and ending on the next succeeding 31 March (both dates inclusive) is an applicable period; and
- (b) each year ending on a subsequent 31 March is an applicable period.

## **PART 5—CLAIMS ARISING FROM FAILURES TO ACCOUNT**

### **Interest rate payable on claims against Association**

20. The rate of interest prescribed for the purposes of section 53 (6) of the Act is 5 per cent per annum.

### **Appeal against failure to determine claims against Association**

21. For the purposes of section 56 (4) of the Act, the prescribed time is the period of 28 days after the day on which the claim is received by the Association.

## **PART 6—TRUST MONEY AND CONTROLLED MONEY**

### **Division 1—General**

#### **Definitions**

22. (1) In this Part:

**“associate”**, in relation to a licensee, has the same meaning as it has in Part 5 of the Act;

**“computer control records”** means the records required to be kept under clause 24;

**“controlled money”** has the same meaning as it has in the Dictionary at the end of the Act;

**“controlled money records”** means a Controlled Money Register maintained under clause 38, a controlled money ledger maintained under clause 39, a listing of accounts under clause 40 and any pass books, statements or other documents relating to controlled money;

**“outline bill”** means a statement in writing sufficient to identify the general nature of conveyancing work or services, whether performed or to be performed, and the amount and purpose of any disbursement;

**“trust money”** has the same meaning as it has in the Dictionary at the end of the Act;

**“trust records”** includes records of the following:

- (a) receipts;
- (b) bank deposits;
- (c) cheques;
- (d) withdrawals by electronic funds transfer;
- (e) bank statements;
- (f) daily receipt and cheque transactions;
- (g) ledger account journal transfers and adjustments;
- (h) ledger transactions;
- (i) ledger trial balance statements;
- (j) monthly bank reconciliations;

**“visible form”** means any record of information by means of which the information can be produced on demand in permanent legible form in the English language.

(2) A reference in this Part to money received by a licensee has the same meaning as it has in the Dictionary at the end of the Act.

(3) A reference in this Part to an account or deposit of controlled money includes a reference to:

- (a) an account established in respect of controlled money at a bank, building society or other financial institution; and
- (b) an interest bearing deposit or other deposit of controlled money.

### **Keeping of records**

23. (1) A licensee must maintain, or cause to be maintained, in visible form at an office at which the licensee’s conveyancing business is conducted and of which the Council has been notified:

- (a) trust records and controlled money records; and
- (b) if those records are maintained by means of a computer system—computer control records.

(2) A licensee may, at any other office at which the licensee’s conveyancing business is conducted and of which the Council has been notified, maintain, or cause to be maintained, for that office in visible form separate records of the kind referred to in subclause (1).

(3) A licensee who maintains records under subclause (2) must, within 21 days after the end of each named month:

- (a) compile with the records kept under subclause (1) the original, or a true copy, of each trial balance statement prepared by the licensee in accordance with clauses 34 and 40 for that month; and



(b) maintain a monthly summary of the total of trust money and controlled money disclosed in the trial balance statements.

(4) A licensee who has custody of a record, statement or summary referred to in subclause (1), (2) or (3) must retain it for not less than 6 years after it is made.

### **Computer systems control**

24. (1) Without limiting the generality of any other provision of this Part, if a licensee maintains trust records or controlled money records by means of a computer system, the licensee must comply with this clause in relation to the records.

(2) The licensee must maintain a record, compiled in chronological sequence, of all changes (by creation, amendment or deletion) to any of the following information:

- (a) client name;
- (b) client address;
- (c) matter number;
- (d) matter description;
- (e) client number;
- (f) bank account number;
- (g) details referred to in clause 39 (2), (3), (4) and (5),

disclosing the details of the information before and after the change.

(3) The licensee must ensure in respect of any journal:

- (a) that entries balance before entries are made to the ledger; and
- (b) that any journal reference numbers are allocated in sequence under program control.

(4) The licensee must ensure in respect of any ledger that no program is capable of accepting the entry of a transaction resulting in a debit balance to an account unless a contemporaneous record of the transaction is made in such a manner as to enable the production in permanent legible form, on demand, of a separate chronological report of all such occurrences.

(5) The licensee must ensure in respect of any ledger that no program enables the deletion of an account unless:

- (a) the balance of the account is zero; and
- (b) the account when deleted is retained in visible form.

(6) The licensee must ensure that any entry in a record produced in visible form appears in chronological sequence.

(7) The licensee must ensure that a report, or each page or entry in a report, is numbered sequentially under program control in a manner which enables the completeness of the records required to be kept by this Part to be conveniently verified.

(8) The licensee must ensure that no amendment to the particulars of a transaction already recorded can be made otherwise than by a separate transaction effecting the amendment.

(9) The licensee must ensure that each program requires input in each field of a data entry screen intended to receive information required by this Part to be included in trust records or controlled money records.

(10) The licensee must ensure:

- (a) that a back-up copy of all records to which this clause refers is made not less frequently than once each month; and
- (b) that the most recent back-up copy is kept in a separate location such that any incident which could adversely affect the records would not also affect the back-up copy.

### **Money in transit**

25. (1) A licensee who is authorised or instructed by another person, from whom or on whose behalf the licensee has received money, to pay or deliver the money to a third party (not an associate of the licensee) free of the licensee's control must comply with subclause (2).

(2) The licensee complies with this subclause if the money is paid or delivered:

- (a) before the end of the next banking day or, if that is not practicable, as soon as practicable after the next banking day; or
- (b) no later than the day allowed by the licensee's authority or instructions if it is a day that is later than the day allowed under paragraph (a).

### **Statements of account**

26. (1) A licensee who is required to maintain a trust ledger or a controlled money ledger must furnish to each person for whom, or on whose behalf, money is held or controlled by the licensee, a separate statement of account in respect of each ledger account maintained for the person.

(2) A statement of account must be furnished under subclause (1) as soon as practicable after:

- (a) the licensee receives a written request for the statement; and

- (b) completion of the matter to which the ledger account relates; and
- (c) the closure and removal of the account from the relevant ledger; and
- (d) except as provided by subclause (3)—31 March and 30 September in each year.

(3) A licensee is not required to furnish a statement of account under subclause (2) (d) if, at the relevant day:

- (a) the account has been open for less than 6 months; or
- (b) the balance of the account is zero and no transaction affecting the account has taken place within the last preceding 6 months; or
- (c) a statement of account has been furnished within the last preceding 6 months and there has been no subsequent transaction affecting the account; or
- (d) the licensee has received a notice under subclause (4) waiving compliance with the requirement and has not received notice of revocation of the waiver.

(4) A person for whom, or on whose behalf, money is held or controlled by a licensee:

- (a) may, by written notice to the licensee in accordance with Form 2, waive compliance by the licensee with the requirements of subclause (2) (d); and
- (b) may, by written notice to the licensee, revoke the waiver.

(5) The statement of account must contain particulars of:

- (a) the money received and held or controlled by the licensee for or on behalf of the person in the course of the licensee's conveyancing business; and
- (b) the disbursement of the money; and
- (c) the remaining balance of the money,

and must identify the transactions to which the particulars relate.

(6) A licensee must retain a copy of a statement of account with the file to which it relates.

### **Receipt and withdrawal of money for costs and disbursements**

27. (1) A licensee must comply with this clause in respect of all money to which section 33 (3) (b) of the Act applies.

(2) A licensee must, on receipt, or as soon as practicable after receipt, of money from which the licensee is authorised to receive costs or disbursements, deliver to the client an outline bill unless a bill or account

of the costs or disbursements has been delivered to the client before receipt of the money by the licensee.

(3) A licensee must not withdraw trust money or controlled money in satisfaction of any costs or disbursements unless:

- (a) the person for whom the money is held has authorised the withdrawal and the licensee has delivered to the person an outline bill; or
- (b) the licensee has delivered to the person an outline bill together with written notice that, unless the person objects, the licensee intends to withdraw the money and apply it towards payment of the bill at the expiration of 1 month, and the month has expired without any objection being made; or
- (c) the licensee, having received from the person an objection to an outline bill delivered under paragraph (b), has served on the person a bill of costs, or an account, in a form which would enable it to be taxed under the provisions of an applicable Act, rule or regulation and the person has not, within the time limited by the provisions, applied for taxation of the bill or account.

## **Division 2—Trust Accounts**

### **Deposits**

28. (1) A licensee who receives trust money must pay it into his or her trust bank account:

- (a) before the end of the next banking day after the day of its receipt, if that is practicable; or
- (b) if that is not practicable, as soon as practicable after that day.

(2) A licensee who makes a deposit to his or her trust bank account must ensure:

- (a) that a bank deposit record is produced to the bank at the time the deposit is made; and
- (b) that the particulars referred to in subclause (3) are then entered in the record.

(3) A bank deposit record must include provision for the entry of particulars of:

- (a) the date of the deposit; and
- (b) the amount of the deposit; and
- (c) whether the deposit consists of cheques, notes or coins; and
- (d) in the case of cheques, the name of the drawer, bank and branch and the amount of each cheque.

(4) A bank deposit record is not required in the case of money credited directly to a bank account electronically or otherwise.

### **Receipts**

29. (1) A licensee must, as soon as practicable after receipt of trust money (not being a transfer by journal entry), make out, or cause to be made out, a receipt that complies with subclause (2).

(2) Receipts must be in duplicate, must be machine numbered in series, must contain the name of the licensee's conveyancing business and the expression "Trust Account" or "Trust A/c" and must include provision for, and on being made out must include:

- (a) the date of receipt; and
- (b) the amount of money received and the form in which it is received; and
- (c) the name of the person from whom, and of the client on whose behalf, the money is received; and
- (d) details identifying the ledger account to be credited; and
- (e) particulars sufficient to identify the purpose for which the money is received.

(3) If the licensee maintains an accounting system which (at the same time as that at which, and in the same operation as that in which, a receipt is made out) causes the particulars required by subclause (2) to be entered in the cash book required to be kept under clause 31, the entry of the particulars in the cash book is a sufficient compliance with the requirement of subclause (2) for a duplicate receipt.

(4) A licensee must issue the original of a receipt on demand or, if the original is not issued, must retain it.

### **Payment of trust money by cheque**

36. (1) Trust money must not be drawn from a licensee's trust bank account otherwise than by cheque or electronic funds transfer.

(2) A cheque must:

- (a) be machine numbered in series; and
- (b) include a general or special crossing; and
- (c) not be payable to cash; and
- (d) contain the name of the licensee's firm and the expression "Trust Account" or "Trust A/c" and
- (e) be signed by the licensee, a partner of the licensee or 2 persons authorised under clause 35 to sign the cheque.

- (3) The licensee must ensure that, for each cheque, a record is kept of:
  - (a) details identifying the ledger account to be debited and the name of the client on whose behalf the cheque is drawn; and
  - (b) brief particulars of the subject-matter and purpose for which the cheque is drawn; and
  - (c) particulars of the date of issue, the payee and the amount.
- (4) If the licensee maintains an accounting system which (at the same time as that at which, and in the same operation as that in which, a cheque is drawn) causes the particulars required by subclause (3) to be entered directly in the cash book required to be kept under clause 31, the entry of the particulars in the cash book is a sufficient compliance with subclause (3).
- (5) An electronic funds transfer is to be effected by, or under the direction or with the authority of:
  - (a) the licensee; or
  - (b) a partner of the licensee; or
  - (c) 2 persons authorised under clause 35 to effect an electronic funds transfer from the trust account concerned.
- (6) The licensee must ensure that, for each electronic funds transfer, a record is kept of the following particulars:
  - (a) the name of the person effecting the transfer and, if the transfer is effected under the direction or with the authority of some other person, of the person under whose direction or with whose authority the transfer is effected;
  - (b) details identifying the ledger account debited and the name of the person on whose behalf the amount is transferred;
  - (c) brief particulars of the subject-matter and purpose for which the money is transferred;
  - (d) the reference number or other means of identification of the transfer;
  - (e) the name or style of the bank account to which the money is paid, its number and the identifying numbers of the receiving bank and its branch;
  - (f) the date of the transfer and the amount transferred.

**Daily receipt and payment transactions**

31. (1) A licensee must keep a record of daily receipt and payment transactions.

(2) The record must be in the nature of a cash book the pages of which are consecutively numbered and on the respective pages of which are shown the consecutive numbers of receipts issued or cheques drawn or, in the case of money received or disbursed by means of electronic funds transfer, the reference number or other means of identification of the transfer.

(3) The licensee must:

- (a) in respect of a receipt of money—enter in the cash book the particulars required by clause 29 (2) to be entered in a receipt for the money together with the date of deposit of the money to the trust bank account and the amount of the deposit; and
- (b) in respect of a payment of money—enter in the cash book the particulars required by clause 30 (3) to be recorded for a cheque or required by clause 30 (6) to be recorded for an electronic funds transfer.

(4) At the end of each named month, the licensee must balance the cash book and:

- (a) carry forward the balance to the commencement of the next month; or
- (b) carry forward the balance to a ledger account provided for the purpose.

(5) The licensee must, at the end of each named month, prepare a statement reconciling the balance of his or her trust bank account with the balance of the related cash book.

### **Journal**

32. (1) A licensee must record in a journal all transfers between accounts in a ledger that are not effected by cheque.

(2) The recording must include:

- (a) the date of the transfer; and
- (b) the amount transferred to and from each ledger account; and
- (c) the names of all ledger accounts to be debited or credited; and
- (d) the relevant reference number or other identification; and
- (e) sufficient particulars to identify the transfer and the reason for the transfer.

### **Ledger**

33. (1) A licensee must maintain a. separate ledger account for each matter for each client in respect of trust money.

(2) The ledger account must include the name of the client, a reference number or other identification and particulars of each transaction affecting trust money in relation to the matter, including:

- (a) the date of the transaction; and
- (b) a description of the transaction; and
- (c) particulars sufficient to identify the trust record originating the transaction; and
- (d) the amount of the transaction; and
- (e) the resulting current balance of account arising from the transaction.

#### **Ledger trial balance statement**

34. (I) A licensee must, within 21 days after the end of each named month, prepare a trial balance statement of all ledger accounts effective as at the end of that month.

(2) The trial balance statement must:

- (a) state the month to which it refers and the date of its preparation; and
- (b) list each ledger account that does not have a zero balance at the end of that month by stating the name of the client, the reference number or other identification and the balance of the account at the end of that month; and
- (c) show the total of the ledger account balances at the end of that month; and
- (d) show a comparison between that total and the balance in the cash book reconciled with the balance in the trust bank account as required by clause 31 (5).

#### **Delegation**

35. (1) A licensee may delegate his or her authority to sign a cheque drawn on, or to effect an electronic funds transfer from, the trust bank account maintained by the licensee or his or her conveyancing business under section 33 of the Act:

- (a) if the licensee is practising on his or her own account or there is no partner of the licensee available to sign the cheque or effect the transfer with due expedition; and
- (b) if subclause (2) is complied with; and
- (c) if the Council is immediately notified of the delegation.



(2) The delegation must be in writing signed by the licensee and must be to any 2 of the following persons:

- (a) a licensee holding a current licence;
- (b) a registered company auditor within the meaning of the Corporations Law;
- (c) a bank manager;
- (d) any other person approved or nominated by the Council.

(3) A delegation does not authorise the signing of a cheque or the effecting of an electronic funds transfer unless:

- (a) the delegator is unable to sign the cheque or effect the transfer with due expedition because of his or her illness, injury or absence for good reason; and
- (b) no licensee practising in partnership with the delegator is available to sign the cheque or effect the transfer with due expedition; and
- (c) the cheque is signed or the transfer is effected by 2 delegates.

(4) A delegation ceases to have effect if the Council notifies the delegate that the delegation has been cancelled by the Council.

(5) A notification of such a cancellation of a delegation may be given by the Council at any time and with or without notice to the delegator.

#### **Account in the name of a licensee**

36. (1) A licensee may maintain in his or her trust ledger an account in his or her name:

- (a) for the purpose of aggregating in the account, by transfer from other accounts in the trust ledger, money properly due to the licensee for costs and disbursements; and
- (b) in respect of money in which the licensee has a personal and beneficial interest as a vendor, purchaser, mortgagor, mortgagee, lessor, lessee or other like capacity.

(2) A licensee must withdraw the money held in an account under subclause (1) (a) not later than 7 days after the day on which the money is transferred to the account.

(3) A licensee must withdraw money held in an account under subclause (1) (b):

- (a) at the conclusion of any matter to which the money relates; or
- (b) if it comprises rent, interest, instalments of principal or other periodic payment—not later than 6 months after the date on which the money was credited to the account.

**Division 3—Controlled Money****Notice to client**

37. (1) A licensee must, as soon as practicable after receiving controlled money, issue to the client on whose behalf it was received, a notice that is in or to the effect of Part 1 of Form 3 and contains the particulars required to complete the Form.

(2) If the licensee, as authorised or instructed by the client, pays any controlled money to a third party while continuing to control the money directly or through an associate, the licensee must, as soon as practicable after the payment, complete in duplicate, and issue to the client the original of, a notice that is in or to the effect of Part 2 of Form 3 and contains the particulars required to complete the Form.

(3) A notice under subclause (2) must, if practicable, be included as part of the notice under subclause (1).

(4) If:

- (a) a licensee pays controlled money to a third party as referred to in subclause (2); and
- (b) while the licensee continues to control the money directly or through an associate, a change occurs in the arrangements under which the money is held or deposited,

the licensee must, as soon as practicable after the change, complete in duplicate, and issue to the client the original of, a notice in or to the effect of Form 3 containing such of the particulars specified in Parts 1 and 2 of that Form as are applicable.

(5) Forms of notice kept by a licensee for issue under this clause:

- (a) must comprise both Parts 1 and 2 of Form 3; and
- (b) must be in duplicate; and
- (c) must be machine numbered in series.

(6) A licensee need not issue to a client a notice under subclause (1) or

(2) in respect of money received by way of interest or for deposit, if:

- (a) the money is, as soon as practicable, credited to, or deposited in, an account for which an initial notice has been issued and for which a ledger account has been opened; and
- (b) the particulars of the money received are recorded in the ledger account as soon as practicable.

**Controlled Money Register**

38. A licensee must maintain a Controlled Money Register comprising a compilation in numerical sequence of the duplicate copies of the notices issued under clause 37.

**Controlled money ledger for money received**

39. (1) A licensee must, for each client and in accordance with this clause, open and maintain a separate ledger account for each account or deposit of controlled money received on behalf of, or held for, the client.

(2) The ledger account must bear the name of the client and any relevant reference number or other identification.

(3) If the controlled money received is a specific sum, the initial entry to the ledger account must record:

- (a) the amount of money, its source and the date of receipt; and
- (b) the date and amount of any payment or deposit from the money to or with a third party, the identity of the third party and the terms on which the money was so paid or deposited.

(4) The entry made under subclause (3) (b) must include particulars of:

- (a) the term and duration of the deposit; and
- (b) the rate of interest; and
- (c) the date from which the interest is calculated and the dates on which interest is payable; and
- (d) a description of the security (if any) held for the deposit.

(5) If controlled money is comprised in one or more accounts or deposits in respect of which a licensee or an associate has a power or authority exercisable independently of the licensee's client, or jointly and severally with the client or a nominee of the client, the initial entry to the ledger account must record particulars of the nature, description and date of the power or authority and particulars of the accounts or deposits including:

- (a) the name and address of the person holding each account or deposit; and
- (b) the name in which each account or deposit is maintained and any relevant identifying number; and
- (c) if applicable, the particulars required by subclause (4).

(6) All transactions affecting the receipt or disbursement of controlled money by the licensee or an associate must be recorded in the ledger by the entry in the relevant account of:

- (a) the date of each transaction; and

- (b) a description of each transaction; and
- (c) a reference to the source of each transaction; and
- (d) the amount of each transaction; and
- (e) if it is ascertainable from the licensee's records, the current balance of the account.

(7) If controlled money is deposited with a person who issues to the licensee a document of record or pass book which remains in the possession of the licensee and in which are recorded all transactions affecting the money in a manner which, together with other written records of the licensee, shows the required particulars of the transactions, those documents collectively may constitute a ledger account for the purposes of this clause.

#### **Listing of accounts**

40. (1) A licensee must, within 21 days after the end of each named month, prepare a statement in the nature of a trial balance statement that relates to the ledger accounts required to be maintained under clause 39 and is effective at the end of that month.

(2) The statement must:

- (a) state the period to which it refers and the date of preparation; and
- (b) list each ledger account by name of client and reference number or other identification and by balance of account at the end of the month if that is indicated in the account.

(3) If controlled money is deposited with a person who issues periodical statements of account, those statements must be maintained with the trial balance statements prepared for the periods to which they relate and they form part of the licensee's controlled money records.

#### **Payment of controlled money by cheque**

48. Controlled money must not be withdrawn or received from any account in which it is held or deposited otherwise than by cheque or electronic funds transfer.

#### **Delegation**

49. Clause 35 applies in relation to an account in which controlled money is held or deposited by a licensee in the same way as it applies in relation to a trust bank account maintained by the licensee.

**Division 4—Registered Company Auditor's Report****Registered company auditor's report to be lodged with Council**

43. (1) If a licensee received money to which section 33 (1) of the Act applies at any time during the year ending on 31 March that last preceded an application by the licensee for the issue or renewal of a licence, the licensee must ensure that, on or before the making of the application, there is lodged with the Council a registered company auditor's report in respect of:

(a) each conveyancing business conducted by the licensee as a sole practitioner; and

(b) each business of which the licensee was a partner,  
at any time during that year.

(2) The registered company auditor's report must be in or to the effect of Form 1.

(3) If the Council so requires, a licensee must:

(a) obtain, and pay for, another report that complies with subclause (2); and

(b) forthwith on its receipt, lodge the report with Council.

(4) The Council may require the report under subclause (3) to be made by a registered company auditor nominated by the Council.

(5) It is a sufficient compliance with this clause by a licensee practising in partnership if one registered company auditor's report is lodged for the partnership.

**Check list to be provided**

44. The registered company auditor who makes a report under clause 43 must, at the time of making the report, complete and leave in the custody of the licensee a check list in a form approved by the Council.

**Duties regarding check list**

45. A licensee must:

(a) retain a completed check list provided under clause 44 with his or her trust account records and controlled money records for the same period of time as those records are required to be retained; and

(b) permit a trust account inspector of the Law Society to inspect the check list at any time.

**Adverse or qualified reports**

46. A registered company auditor who makes an adverse or qualified report under clause 43 must, within 7 days after completing the report, forward a copy to the Chief Trust Account Inspector of the Law Society.

**Cessation of practice or change of partnership**

47. (1) This clause applies to a licensee who:

- (a) ceases to practice as a licensee; or
- (b) enters into partnership with another licensee; or
- (c) is a party to a dissolution or change of partnership.

(2) If a licensee to whom this clause applies:

- (a) ceases to operate a trust account and the trust account is not continued; or
- (b) ceases to hold or control controlled money and the controlled money is not held or controlled by a former partner who is, or former partners of the licensee who are, continuing to practise,

the licensee must, within the next 21 days, lodge with the Council a report by a registered company auditor that complies with clause 43 in respect of all trust money and controlled money held or controlled by the licensee on behalf of another person.

(3) The report must be lodged in addition to the notification of change in the particulars of the conveyancing business to be provided to the Council under clause 9.

**Information to be provided to Council**

48. A licensee must, at such time as the Council determines, furnish to the Council such information as the Council requires with respect to:

- (a) the amount of trust money or controlled money held or controlled by the licensee; and
- (b) the accounts or institutions in which the money is held; and
- (c) the licensee's records and books of account that relate to the money.

**Suspected irregularities etc. concerning trust money or controlled money**

49. (1) If a licensee has reasonable grounds for suspecting that another licensee has default with trust money or controlled money in a manner that may be dishonest or irregular, the licensee must, as soon as practicable,

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notify the President of the Law Society, in writing, of the name and address of the other licensee and of the grounds on which the suspicion is based.

(2) The President must cause the matter to be investigated by the Council.

**Division 5—Transitional****Money received by licensee before licence is granted**

50. (1) Clauses 33 and 39 do not apply in respect of money received by a licensee as referred to in section 33 of the Act before his or her licence takes effect until 21 days after the first day of the month succeeding the month in which the licence takes effect.

(2) This clause applies only in respect of licences granted within the period of 6 months after the commencement of section 6 (2) of the Act.

**SCHEDULE 1—FORMS****FORM 1**

Conveyancers Licensing Act 1992

Conveyancers Licensing Regulation 1993

(Cl. 43)

**REGISTERED COMPANY AUDITOR'S REPORT**

FOR THE PERIOD     /     /     TO     /     /

To: The Council of the Law Society of New South Wales

1. (a) Business Name:

The name(s) of the licensee(s) who at any time during the period carried on practice solely or in partnership under the above name and the period of practice are as follows:

Name	Period
.....	From ..... To .....
.....	From ..... To .....
.....	From ..... To .....
.....	From ..... To .....

- 
- (b) The Trust Records referred to in this report relate to that/those Bank Account(s) conducted under the above business name and described in Schedule 1 to this report.
  - (c) The Controlled Money Records referred to in this report relate to the accounts and money recorded in any controlled money ledger accounts closed during the 12 months ended 31/3/19 and in any ledger accounts current at that date.
2. The limited examination of the Trust Records and Controlled Money Records conducted for the purpose of completing this Report does not constitute an audit.
  3. In my opinion, based on appropriate examinations and sampling techniques, throughout the period covered by the report and subject to the qualifications (if any) noted below:
    - (a) The accounting systems and internal controls used by the licensee(s) to ensure that Trust Money has been properly accounted for were:
      - (1) Appropriate/inappropriate for the business conducted; and
      - (2) Operated/did not operate satisfactorily.
    - (b) The methods and controls used by the licensee(s) to record the receipt and disbursement of Controlled Money were:
      - (1) Appropriate/inappropriate for the business conducted; and
      - (2) Operated/did not operate satisfactorily.
    - (c) Trust Money and Controlled Money recorded as received, held and/or disbursed during the period have/have not been accurately recorded in the manner prescribed.
    - (d) The records prescribed for the recording of Trust Money and Controlled Money have/have not been maintained regularly and properly.
  4. Particulars of any letter of credit issued in respect of the deposit made under the provisions of section 36 of the Act are contained in Schedule 3 to this report.
  5. I have completed and signed the Reporting Auditor's Check List in the form approved by the Council of the Law Society of New South Wales.
  6. True copies of the Summary of Breaches of Regulation and of the Summary Review Memorandum concluding the Check List are respectively Schedules 4 and 5 to this report.
  7. The qualifications referred to in paragraph 3, or my reasons for reporting adversely in that paragraph, are set out in Schedule 5 to this report.

(Where qualifications are made/an adverse report is given, a copy of this report is to be forwarded direct to the Chief Trust Account Inspector c/- Law Society of N.S.W.)  
Delete as appropriate.



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Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19 .

Signed .....

Full name ..... (Block letters)

Certificate of Registration No. ....

Firm Name (if any) .....

Address .....

Phone No. ....

**SCHEDULE 1**

Business Name: .....

1. Trust Bank Account Number: .....

Bank: .....

Branch Address: .....

Period from ..... to .....

Reconciled Trial Balance total as at 31/3/19 : \$.....

Number of Trust Ledger Accounts as at 31/3/19 : .....

2. \*Trust Bank Account number: .....

Bank: .....

Branch Address: .....

Period from ..... to .....

Reconciled Trial Balance total as at 31/3/19 : \$ .....

Number of Trust Ledger Accounts as at 31/3/19 : .....

\* Delete where appropriate/attach separate list if space is insufficient.

**SCHEDULE 2**

Business Name: .....

**CONTROLLED MONEY***Controlled Money Ledger*

(1) Trial balance total as at 31/3/19 : \$ .....

(2) Number of Ledger Accounts as at 31/3/19 : \$ .....

**1993—No. 470****SCHEDULE 3**

Business Name: .....

**LETTER OF CREDIT DETAILS**

(a) Letter of Credit Details as at 31 March 19 ..

Bank	Letter of Credit Number	\$
.....	.....	.....
.....	.....	.....
.....	.....	.....

(b) Movement Schedule

	Date	\$	
Adjustment during period:	.....	.....	
	.....	.....	
	.....	.....	.....
Balance at 31 March 19 ..			
(c) April 19 Adjustment			\$
Balance at 1 April 19 ..			
Adjustment:	Date	\$	
	.....	.....	.....
Balance and date of report	/	/	

**SCHEDULE 4****SUMMARY OF BREACHES OF REGULATION**

Business Name: .....

Period Ended: .....

Checklist Item Reference	Regulation	Description and Extent of Breach
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Attach additional schedule if space is insufficient.

**SCHEDULE 5****SUMMARY REVIEW MEMORANDUM**

Business Name:.....

Period Ended: .....

This memorandum should document the Reporting Auditor's reasons for qualification/non-qualification of the Auditor's Report or reporting adversely after consideration of the matters noted on the Summary of Breaches of Regulation Schedule.

.....  
Auditor.....  
Date

Attach additional schedule if space is insufficient.

**FORM 2**

Conveyancers Licensing Act 1992

Conveyancers Licensing Regulation 1993

(Cl. 26)

To .....

Licensed Conveyancer,

..... (address)

Re:

We acknowledge that I/we have instructed you to hold or control money on my/our behalf.

I/We am/are aware that while you continue to hold or control my/our money I/we am/are entitled to receive from you a periodical statement of account in accordance with the provisions of clause 26 of the Conveyancers Licensing Regulation 1993, the terms of which are set out on, or attached to, this form.

I/We do not require you to furnish to me/us the periodical statement of account provided for by clause 26 (2) (d) of the Regulation.

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This waiver continues until .....  
unless revoked earlier in writing.

OR

This waiver continues until revoked in writing.

Dated                                      day of                                      19 .

**FORM 3**

Conveyancers Licensing Act 1992  
Conveyancers Licensing Regulation 1993

(Cl. 37)

**NOTICE TO CLIENT**

**PART 1**

(This notice is issued when a licensee acquires control of a client's money or deposits or invests money for a client and retains control of the money.)

1. Name and address of client
2. [Where specific sum of money received]
  - (a) Amount of money received.
  - (b) When money received.
  - (c) From whom money received.
  - (d) How/where money is held by licensee.

or

[Where licensee has power or authority over money in client's accounts/deposits]

- (e) Names and numbers of accounts/deposits.
  - (f) Names and addresses of financial institutions or persons where or with whom accounts or deposits are held.
  - (g) Date, registration particulars (if any) and nature of instrument granting power or authority to licensee.
3. Licensee's instructions received from:  
on:  
to deal with money received or held in accounts/deposits] noted in paragraph 2,  
as follows:

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**PART 2**

Particulars as to the payment or investment of money referred to in Part 1 of this notice (or in Part 1 of Notice No.        dated        ).

Client's name and address:

1. Amount of money paid/invested.
2. Date of payment/deposit.
3. Name and address of person or institution holding the money paid or deposited.
4. Name and number of the account or deposit.
5. Terms on which money is deposited or invested:
  - (i) Term or maturity date of deposit:
  - (ii) The rate of interest:
  - (iii) Date from which interest is computed:
  - (iv) The deposit or investment is unsecured:

or

The deposit or investment is secured and particulars of the security are as shown in the attached epitome:

- (v) Special terms (if any).

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**NOTES****TABLE OF PROVISIONS****PART 1—PRELIMINARY**

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5. Application fee for certificate of eligibility
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Division 5—Transitional

- 50. Money received by licensee before licence is granted

**SCHEDULE 1—FORMS**

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**EXPLANATORY NOTE**

The object of this Regulation is to provide mainly administrative detail for the purposes of the Conveyancers Licensing Act 1992.

The Regulation includes provisions relating to the following matters:

- (a) professional indemnity insurance for licensees;
- (b) application fees for certificates of eligibility and licences;
- (c) advertising by licensees;
- (d) deposits with the Law Society;
- (e) claims against the Association of Property Conveyancers relating to failures to account;
- (f) regulation of trust money and controlled money.

The Regulation adopts the same scheme for dealings with trust money and controlled money by licensed conveyancers as applies to dealings with trust money and controlled money by solicitors.

The Regulation is made under the Conveyancers Licensing Act 1992, including section 162 (the general regulation making power) and the other sections mentioned in the Regulation.

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