



New South Wales

Valuers Regulation 2010

under the

Valuers Act 2003

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Valuers Act 2003*.

VIRGINIA JUDGE, MP
Minister for Fair Trading

Explanatory note

The object of this Regulation is to remake, with minor amendments, the provisions of the *Valuers Regulation 2005*, which is repealed on 1 September 2010 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation makes provision with respect to the following:

- (a) the licences and entitlements under the *Fisheries Management Act 1994* that are taken to be property,
- (b) the disqualification of valuers,
- (c) the fees payable under the *Valuers Act 2003* (**the Act**),
- (d) the particulars that must be kept in the Register under the Act,
- (e) the rules of conduct that must be observed by a valuer,
- (f) the offences under the Act that are to be penalty notice offences and their penalty notice amounts,
- (g) savings and formal matters.

This Regulation is made under the *Valuers Act 2003*, including sections 3 (definition of **property**), 9 (1) (h), 10 (4), 14 (1), 15 (4), 17, 19 (h), 42 and 48 (the general regulation-making power).

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Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Valuers Regulation 2010*.

2 Commencement

This Regulation commences on 1 September 2010 and is required to be published on the NSW legislation website.

Note. This Regulation replaces the *Valuers Regulation 2005* which is repealed on 1 September 2010 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definition

(1) In this Regulation:

the Act means the *Valuers Act 2003*.

(2) Notes included in this Regulation do not form part of this Regulation.

4 Meaning of property

(1) For the purposes of paragraph (d) of the definition of *property* in section 3 of the Act, the following are prescribed as property for the purposes of the Act:

- (a) a share in a share management fishery within the meaning of the *Fisheries Management Act 1994*,
- (b) an endorsement on a commercial fishing licence in relation to a restricted fishery within the meaning of that Act,
- (c) a charter fishing boat licence within the meaning of that Act,
- (d) a fishing business within the meaning of that Act.

(2) For the avoidance of doubt, an interest in land that is an aquaculture lease under the *Fisheries Management Act 1994* is prescribed as property for the purposes of paragraph (d) of the definition of *property* in section 3 of the Act.

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Part 2 Registration

Part 2 Registration

5 Disqualification from registration

For the purposes of section 9 (1) (h) of the Act, the Director-General may determine that the fact that a person is in partnership as a valuer with a disqualified person should be ignored if the Director-General is satisfied that the disqualified person (while in the partnership) will have no active role in the valuation of property.

6 Fees

- (1) For the purposes of section 10 (4) of the Act, the application fees payable for the purposes of the Act are the fees listed in Column 4 of the table to this clause.
- (2) The amount of each application fee is calculated by adding together the various components set out in Columns 2 and 3 of the table in relation to that fee.
- (3) An amount specified in relation to an application fee in Column 3 of the table under the heading "Processing component" is taken to be a fee to cover the costs incurred by the Director-General in processing the application.

Note. This amount is consequently a processing fee for the purposes of Part 3 of the *Licensing and Registration (Uniform Procedures) Act 2002*.

Column 1	Column 2	Column 3	Column 4
Nature of fee payable	Fixed component	Processing component	Total fee payable
Application fee for 3 year registration as a valuer	\$600	\$181	\$781
Application fee for renewal of registration	\$600	\$59	\$659
Application fee for restoration of registration	\$600	\$120	\$720
Application fee for a replacement of lost, damaged or destroyed certificate of registration	Nil	\$39	\$39

7 Refund of fees

- (1) This clause applies to any registration application fee paid by or on behalf of a person who has had his or her registration as a valuer cancelled by the Director-General because:
 - (a) the person requested that the registration as a valuer be cancelled, or
 - (b) the person died.
- (2) A person may apply to the Director-General for a refund of a registration application fee to which this clause applies if the person:
 - (a) paid the registration application fee, or
 - (b) is the legal personal representative of a deceased person who paid the registration application fee, or
 - (c) is applying for or on behalf of the person that paid the registration application fee.
- (3) A person who makes an application under subclause (2) is:
 - (a) in the case of an application in relation to a registration that was cancelled not more than one year after the registration date—to be refunded two-thirds of the fixed component of the registration application fee paid by the person, or
 - (b) in the case of an application in relation to a registration that was cancelled more than one year but not more than two years after the registration date—to be refunded one-third of the fixed component of the registration application fee paid by the person.
- (4) In this clause:

fixed component of a registration application fee is the amount set out in Column 2 of the table to clause 6 in relation to the fee.

registration application fee means any of the following:

 - (a) an application fee for 3-year registration as a valuer,
 - (b) an application fee for renewal of registration,
 - (c) an application fee for restoration of registration.

8 Register

For the purposes of section 14 (1) of the Act, the following particulars are to be entered and kept in the Register:

- (a) the particulars set out in section 14 (1) (a)–(g) of the Act,
- (b) in relation to each registered valuer, the following particulars:
 - (i) the valuer's name,

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Part 2 Registration

- (ii) the valuer's registration number,
- (iii) the registration date and the registration's expiry date.

9 Maximum fee

For the purposes of section 15 (4) of the Act, the maximum fee that the Director-General may direct to be paid for the restoration under that subsection of a cancelled registration is \$784.

10 Rules of conduct

- (1) For the purposes of section 17 of the Act, the rules set out in Schedule 1 are prescribed as rules of conduct that must be observed by a valuer in the course of his or her practice as a valuer.
- (2) For the purposes of section 19 (h) of the Act and for the avoidance of doubt, disciplinary action under Part 3 of the Act may be taken against a person who has contravened a provision of the rules of conduct prescribed by this clause.

Part 3 Miscellaneous

11 Penalty notice offences and penalties

- (1) For the purposes of section 42 of the Act:
 - (a) each offence created by a provision specified in Column 1 of Schedule 2 is an offence for which a penalty notice may be served, and
 - (b) the penalty prescribed for each such offence is the amount specified opposite the provision in Column 2 of that Schedule.
- (2) If the reference to a provision in Column 1 of Schedule 2 is qualified by words that restrict its operation to specified kinds of offences, an offence created by the provision is a prescribed offence only if it is an offence of a kind so specified or committed in the circumstances so specified.

12 Saving

Any act, matter or thing that, immediately before the repeal of the *Valuers Regulation 2005*, had effect under that Regulation continues to have effect under this Regulation.

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Schedule 1 Rules of conduct

Schedule 1 Rules of conduct

(Clause 10 (1))

1 Valuation must not be predetermined

A valuer must not accept instructions to make a valuation of property which is contingent on a predetermined result or finding.

2 Valuation not to be contingent on amount of compensation

If retained to make a valuation which will, or may, be used to determine or assess monetary compensation relating to the resolution of a dispute, a valuer must not require payment of a fee the amount of which is contingent on, or a percentage of, the amount of the compensation.

3 Matters to be included in a written valuation or report

If a valuer makes a written valuation or report, or is responsible for making a written valuation or report as a supervisor of another valuer, he or she must:

- (a) sign the valuation or report, and
- (b) disclose any relevant limitations or qualifications to the valuation or report, and
- (c) state the valuer's registration number and any conditions on the valuer's registration.

4 Valuer must provide client with a written confirmation of instructions and disclosure of costs

- (1) A valuer must not value property for another person (a *client*) unless the valuer has provided the client with the following:
 - (a) a written confirmation of the client's instructions,
 - (b) a written disclosure of the cost of the valuation or the basis of calculating the cost of the valuation.
- (2) The documents referred to in this rule are to be provided to the client by hand, post, electronic mail or facsimile.

5 Knowledge of Act and regulations

A valuer must have a knowledge and understanding of the Act and the regulations under the Act, and such other laws as may be necessary to enable the valuer to properly exercise his or her functions as a valuer.

6 Honesty, fairness and professionalism

- (1) A valuer must act honestly, fairly and professionally in the course of practice as a valuer.

- (2) A valuer must not mislead or deceive any person in the course of practice as a valuer.

7 Skill, care and diligence

A valuer must exercise reasonable skill, care and diligence in the course of practice as a valuer.

8 High pressure tactics, harassment or unconscionable conduct

A valuer must not engage in high pressure tactics, harassment or harsh or unconscionable conduct in the course of practice as a valuer.

9 Confidentiality

- (1) A valuer must not, at any time, use or disclose any confidential information obtained while acting on behalf of a client, unless:
- (a) the client authorises the use or disclosure, or
 - (b) the valuer is permitted or compelled by law to disclose the information.
- (2) In this rule, *confidential information* means information that:
- (a) has not previously been published or made available to the public at the time of its proposed use or disclosure, and
 - (b) relates to the personal or business affairs of a client, and
 - (c) is information:
 - (i) that was supplied in confidence, or
 - (ii) the publication of which would reveal a trade secret.

10 Conflicts of interest

A valuer must not enter into an agreement to undertake valuation work, or continue to undertake valuation work, if doing so would place the valuer's interests in conflict with the client's interests.

11 Inducements

A valuer must not offer to provide to a person any gift, favour or benefit, whether monetary or otherwise, so that the person induces another person to engage the services of the valuer as valuer in respect of any matter.

12 Soliciting through false or misleading advertisements or communications

A valuer must not solicit clients through advertisements or other communications that the valuer knows or ought to know are false or misleading.

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Schedule 1 Rules of conduct

13 Representations about Act or regulations

A valuer must not falsely represent to a person the nature or effect of a provision of the Act or any regulation under the Act.

14 Valuer to keep documents

A valuer must keep:

- (a) a copy of every written confirmation of client's instructions and every written disclosure of costs or the basis of calculating costs required to be provided to a client under rule 4 (1), and
- (b) adequate file notes and documentation that substantiate a valuation by way of inquiry, objective comparison, deduction, calculation and opinions formed by the valuer in the preparation of the valuation, and
- (c) a copy of each valuation or report prepared by the valuer, for a period of 3 years after the agreement is entered into or the valuation is completed (whichever is the later).

Schedule 2 Penalty notice offences

(Clause 11)

Column 1	Column 2
Provision	Penalty
Offences under the Act	
section 6	\$1,100
section 7	\$2,200
section 13	\$550
section 16	\$550
section 30 (if the offence is committed by a corporation)	\$1,100
section 30 (if the offence is committed by a person other than a corporation)	\$550
section 34 (a)	\$550
section 38 (1)	\$550
