



New South Wales

# Valuers Regulation 2005

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*.

JOHN HATZISTERGOS, M.L.C.,  
Minister for Fair Trading

## Explanatory note

The object of this Regulation is to prescribe the following matters under the *Valuers Act 2003* (*the Act*):

- (a) that certain licences and entitlements under the *Fisheries Management Act 1994* are taken to be property for the purposes of the Act (clause 4),
- (b) matters relating to disqualification from registration as a valuer under the Act (clause 5),
- (c) fees payable under the Act (clauses 6 and 8 and Schedule 1),
- (d) additional particulars that must be kept in the Register under the Act (clause 7),
- (e) rules of conduct that must be observed by a valuer in the course of his or her practice as a valuer (clauses 9 and 10 and Schedule 2),
- (f) the offences under the Act that are to be penalty notice offences and their penalty notice amounts (clause 11 and Schedule 3),
- (g) matters of a savings and transitional nature consequent on the commencement of the Act and the repeal of the *Valuers Registration Act 1975* (clause 12 and Schedule 4),
- (h) other miscellaneous matters (clauses 1–3).

This Regulation is made under the *Valuers Act 2003*, including section 48 (the general regulation making power).

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## Valuers Regulation 2005

under the

Valuers Act 2003

### Part 1 Preliminary

#### 1 Name of Regulation

This Regulation is the *Valuers Regulation 2005*.

#### 2 Commencement

This Regulation commences on 31 March 2005.

#### 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: section 3

(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.

## 2005 No 115

Clause 5 Valuers Regulation 2005

Part 2 Registration

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## Part 2 Registration

### 5 Disqualification from registration: section 9

The Director-General may determine that the fact that a person is in partnership as a valuer with a disqualified person should be ignored for the purposes of section 9 (1) (h) of the Act 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) The fees payable for the purposes of the Act are the application fees listed in Column 1 of Schedule 1.
- (2) The amount specified in relation to an application fee in Column 4 of Schedule 1 under the heading "Total" is the total of the fees payable in respect of the application by the applicant.
- (3) The amount of each application fee is calculated by adding together the various components set out in Columns 2 and 3 of Schedule 1 in relation to that fee.
- (4) An amount specified in relation to an application fee in Column 3 of Schedule 1 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*.

### 7 Register: section 14

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

### 8 Maximum fee: section 15 (4)

For the purposes of section 15 of the Act, the maximum fee that the Director-General may direct to be paid for the restoration under section 15 (4) of the Act of a cancelled registration is \$683.

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**9 Rules of conduct: section 17**

For the purposes of section 17 of the Act, the rules set out in Schedule 2 are prescribed as rules of conduct that must be observed by a valuer in the course of his or her practice as a valuer.

## **2005 No 115**

Clause 10 Valuers Regulation 2005

Part 3 Complaints and disciplinary action

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### **Part 3 Complaints and disciplinary action**

#### **10 Grounds for disciplinary action: section 19**

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 Regulation.

## **Part 4 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 3 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 3 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 Savings and transitional provisions**

Schedule 4 has effect.

## 2005 No 115

Valuers Regulation 2005

Schedule 1 Fees

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### Schedule 1 Fees

(Clause 6)

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
<b>Nature of fee payable</b>	<b>Fixed component</b>	<b>Processing component</b>	<b>Total</b>
Application fee for 3 year registration as a valuer	\$525	\$158	\$683
Application fee for renewal of registration	\$525	\$52	\$577
Application fee for restoration of registration	\$723	\$52	\$775
Application fee for a replacement of lost, damaged or destroyed certificate of registration	—	\$34	\$34



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## Schedule 2 Rules of conduct

(Clause 9)

### 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 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 subrule (1) are to be provided to the client by hand, post 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.

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Valuers Regulation 2005

Schedule 2 Rules of conduct

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- (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.

**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 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).

## 2005 No 115

Valuers Regulation 2005

Schedule 3 Penalty notice offences

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### Schedule 3 Penalty notice offences

(Clause 11)

<b>Column 1</b>	<b>Column 2</b>
<b>Provision</b>	<b>Penalty</b>
<b>Offences under the Act</b>	
section 6	\$1,100
section 7	\$2,200
section 13	\$550
section 16	\$550
section 30	\$550
section 34	\$1,100
section 38 (1)	\$550

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## Schedule 4 Savings and transitional provisions

(Clause 12)

### Part 1 Preliminary

#### 1 Definitions

In this Schedule:

*the 1975 Act* means the *Valuers Registration Act 1975*.

*the 2003 Act* means the *Valuers Act 2003*.

### Part 2 Provisions consequent on enactment of the 2003 Act

#### 2 The Register

As soon as practicable after the commencement of this clause, the Director-General is to compile the Register from the relevant information and particulars entered in the register kept under section 12 of the 1975 Act in respect of registered real estate valuers immediately before that commencement.

#### 3 Registration as valuer

- (1) A person who is registered as a practising real estate valuer under the 1975 Act immediately before the commencement of this clause is on that commencement taken to be registered under the 2003 Act.
- (2) Registration of a person under the 2003 Act:
  - (a) is subject to the same conditions (if any) as the person's registration under the 1975 Act was subject immediately before that commencement, and
  - (b) remains in force (unless it is sooner suspended or cancelled) for the balance of the period that it would have remained in force under the 1975 Act.

#### 4 Fees

A fee paid or which remains unpaid under a provision of the 1975 Act immediately before its repeal is taken, on commencement of the relevant provision of the 2003 Act, to have been paid or to remain unpaid under the provision of the 2003 Act that corresponds to that provision and is taken to have been so paid or to so remain unpaid for or in relation to the same period as that which applied to the fee under the 1975 Act.

**5 Pending applications for registration**

- (1) The 1975 Act continues to apply as if it had not been repealed to and in respect of an application for registration under a provision of the 1975 Act that was pending immediately before its repeal.
- (2) A certificate of registration issued under a provision of the 1975 Act pursuant to subclause (1) is taken to have been issued or renewed immediately before the repeal of the provision.

**6 Appeals to the Land and Environment Court**

- (1) An appeal to the Land and Environment Court under section 23 of the 1975 Act relating to a registered real estate valuer that was pending immediately before the repeal of that Act is to be continued and disposed of as if, except as provided by subclause (2), the 2003 Act had not been enacted.
- (2) The decision of the Court on any such appeal is final, and binding on the Director-General and the appellant and for the purposes of the 2003 Act is taken to be the final decision of the Director-General.

**7 Complaints relating to previous conduct**

A complaint, inquiry or investigation may be made under the 2003 Act with respect to conduct or any other matter or thing that occurred before, or partly before and partly after, the commencement of the provisions of the 2003 Act under which the complaint, inquiry or investigation is made.

**8 Continuity of disciplinary action under 1975 Act**

Any finding, order, direction, decision or determination under section 20 (Proceedings before the Director-General against real estate valuers) of the 1975 Act is, to the extent that it had any operation immediately before the commencement of this clause, taken to have been made under the corresponding provision of the 2003 Act and is to be given effect to accordingly.

**9 Construction of certain references**

On and from the commencement of this clause, a reference in any Act, in any instrument made under any Act (other than this Regulation) or in any other instrument of any kind:

- (a) to the register under the 1975 Act is to be read as a reference to the Register under the 2003 Act, and
- (b) to the registration of a person as a registered real estate valuer under the 1975 Act is to be read as a reference to the registration of the person as a valuer under the 2003 Act.

BY AUTHORITY