

# Conveyancers Licensing Regulation 2006

[2006-707]



New South Wales

## Status Information

### Currency of version

Historical version for 8 December 2006 to 30 June 2007 (accessed 14 October 2024 at 21:07)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**  
[Conveyancers Licensing Amendment \(Fees\) Regulation 2007 \(252\)](#) (GG No 80 of 15.6.2007, p 3736)  
(not commenced — to commence on 1.7.2007)

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 15 June 2007

# Conveyancers Licensing Regulation 2006



New South Wales

## Contents

<b>Part 1 Preliminary</b> .....	5
1 Name of Regulation .....	5
2 Commencement .....	5
3 Definition .....	5
4 Meaning of “Operating Account” .....	5
<b>Part 2 Licensing</b> .....	5
5 Fees for licence .....	5
6 Professional indemnity insurance: section 15 .....	6
<b>Part 3 Conduct of conveyancing business</b> .....	6
7 Section 20 exemptions—person in charge at place of business .....	6
8 Rules of conduct .....	8
9 Conduct of other businesses .....	8
10 Obligation to disclose certain matters to client .....	8
11 Itemised account .....	8
<b>Part 4 Resolution of costs disputes</b> .....	9
12 Notifying Tribunal of costs dispute .....	9
13 Fee for notifying Tribunal of costs dispute .....	9
14 Costs of assessment .....	10
15 Application for determination of costs dispute .....	10
16 Fee for application for determination of costs dispute .....	10
17 Transfer of proceedings to or from other courts or tribunals .....	10

<b>Part 5 Trust money</b> .....	11
<b>Division 1 General</b> .....	11
18 Definitions .....	11
19 Keeping of records generally .....	11
20 Specific records to be kept by licensees .....	12
21 Computer records .....	12
22 Statements of account .....	13
23 Receipt and withdrawal of money for costs and disbursements .....	15
<b>Division 2 Trust accounts</b> .....	16
24 Banking of trust money .....	16
25 Receipts for trust money .....	16
26 Payment of trust money .....	17
27 Trust deposits .....	18
28 Cash book record of trust account transactions .....	18
29 Journal .....	20
30 Trust account ledger .....	20
31 Trust account ledger trial balance .....	20
32 Signing of cheques or effecting electronic funds transfers—trust account .....	21
33 Account in the name of a licensee .....	22
<b>Part 6 Records</b> .....	23
34 Records that licensees must keep .....	23
35 Period for which records must be retained .....	23
36 Records and book entries to be in English language .....	23
<b>Part 7 General</b> .....	24
37 The Register .....	24
38 Complaints and discipline .....	25
39 Modification of Licensing and Registration (Uniform Procedures) Act 2002 .....	25
40 Corporate licensees .....	25
41 Penalty notice offences and penalties .....	26
<b>Part 8 Transitional provisions</b> .....	26

<b>Division 1 Preliminary</b> .....	26
42 Definitions .....	26
<b>Division 2 Transitional provisions relating to controlled money</b> .....	26
43 Part 5 and controlled money .....	26
44 Manner of dealing with controlled money .....	26
45 Controlled money not transferred to trust account .....	27
<b>Division 3 Other transitional provisions</b> .....	27
46 Audit period .....	27
47 Approved policy of professional indemnity insurance .....	27
<b>Schedule 1 Forms</b> .....	27
<b>Schedule 2 Fees</b> .....	28
<b>Schedule 3 Rules of conduct</b> .....	28
<b>Schedule 4 Penalty notice offences</b> .....	35

# Conveyancers Licensing Regulation 2006



New South Wales

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the [Conveyancers Licensing Act 2003](#).

DIANE BEAMER, M.P., Minister for Fair Trading

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the [Conveyancers Licensing Regulation 2006](#).

### 2 Commencement

This Regulation commences on 15 December 2006.

### 3 Definition

(1) In this Regulation:

**the Act** means the [Conveyancers Licensing Act 2003](#).

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

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

### 4 Meaning of “Operating Account”

The departmental account known as the Compensation Fund is prescribed for the purposes of the definition of **Operating Account** in section 90 of the Act.

## Part 2 Licensing

### 5 Fees for licence

(1) Certain of the fees payable for the purposes of the Act are listed in Column 1 of Schedule 2.

(2) The amount of each fee is to be calculated by adding together the various

components set out in Columns 2 and 3 of Schedule 2 in relation to that fee.

- (3) An amount specified in relation to an application fee in Column 3 of Schedule 2 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 2 of the *Licensing and Registration (Uniform Procedures) Act 2002*.

- (4) Despite subclause (2), the amount of the fixed component of an application fee for the grant of a licence of less than 12 months duration is a proportionate amount of the amount specified in relation to that fee in Column 2 of Schedule 2 under the heading **Fixed component**, calculated on a monthly basis with part of a month being treated as a whole month.

**Note—**

Section 89 of the *Conveyancers Licensing Act 2003* provides that an applicant for a licence is liable to pay the contribution to the Compensation Fund, and any levy for that Fund, required to be paid from time to time under section 168 or 169 of the *Property, Stock and Business Agents Act 2002*. Regulations made under that Act specify the amount of the contribution payable by the applicant for the licence concerned. That amount (and any levy) is payable in addition to the amount of an application fee prescribed by this Regulation.

## **6 Professional indemnity insurance: section 15**

- (1) A licensee must be insured under a policy of professional indemnity as provided in subclause (2).
- (2) A licensee is insured as required by this clause if:
  - (a) the licensee is insured under a policy of professional indemnity insurance in force with respect to the licensee or his or her employer, being a policy, or a policy of a kind, that is approved by the Minister for the time being by order published in the Gazette, or
  - (b) the licensee carries out conveyancing work only in the licensee's capacity as an employee of a complying law practice.
- (3) In this clause, **complying law practice** means a law practice within the meaning of the *Legal Profession Act 2004* that complies with the requirements of Part 3.3 (Professional indemnity insurance) of that Act.

## **Part 3 Conduct of conveyancing business**

### **7 Section 20 exemptions—person in charge at place of business**

- (1) The following matters are to be taken into account by the Director-General in considering whether to grant an exemption from any provision of section 20 of the Act that will authorise a licensee to be the person in charge of business (**the licensee-in-**

**charge**) at more than one place of business of a licensee or to exercise functions or provide services on behalf of two or more licensees at a place of business:

- (a) reasons why the exemption is needed,
- (b) the licensee's previous experience as licensee-in-charge at a place of business of a licensee,
- (c) the licensee's capacity to comply with any guidelines issued by the Director-General under section 21 (3) of the Act,
- (d) the licensee's record in relation to compliance with:
  - (i) the conditions of a licence held at any time by the licensee under the Act, the 1992 Act or the 1995 Act, and
  - (ii) the provisions of the Act under which the licence was held and the provisions of the regulations under the Act concerned, and
  - (iii) the relevant provisions of the [Legal Profession Act 1987](#) or the [Legal Profession Act 2004](#) (or both), and the relevant provisions of the regulations under the Act concerned,
- (e) employer references in relation to the licensee's experience as a licensee-in-charge.

(2) The following additional matters are to be taken into account by the Director-General in considering whether to grant an exemption from section 20 (1), (2) or (3) of the Act that will authorise a licensee to be the person in charge of business (**the licensee-in-charge**) at more than one place of business of a licensee:

- (a) the licensee's capacity to properly supervise the conduct of business at more than one place of business,
- (b) office systems proposed to be established at each place of business concerned to provide for accountability to the licensee-in-charge at each of those places of business,
- (c) proposed staffing and office management arrangements at each place of business concerned,
- (d) whether there is a centralised trust account for the deposit of trust money received in connection with the businesses for which the licensee will be the licensee-in-charge pursuant to the exemption.

(3) The following additional matters are to be taken into account by the Director-General in considering whether to grant an exemption from section 20 (4) of the Act that will authorise a licensee employed as the person in charge of business (**the licensee-in-**

**charge**) at a place of business to exercise functions or provide services on behalf of two or more licensees at that place:

- (a) the licensee's capacity to properly supervise the conduct of business of more than one licensee,
- (b) fiduciary safeguards and office systems proposed to be established to provide for accountability to the licensee-in-charge,
- (c) whether separate trust accounts are in place for the deposit of trust money received in connection with the business of each licensee for whom the licensee proposes to act pursuant to the exemption.

(4) In this clause:

**1992 Act** means the [Conveyancers Licensing Act 1992](#).

**1995 Act** means the [Conveyancers Licensing Act 1995](#).

## **8 Rules of conduct**

The rules set out in Schedule 3 are prescribed for the purposes of section 22 of the Act as rules of conduct to be observed in the course of the conduct of a conveyancing business or the exercise of functions under a licence.

## **9 Conduct of other businesses**

For the purposes of section 28 of the Act, a licensee who conducts a conveyancing business, or who is employed in the conduct of a conveyancing business, is prohibited from conducting, or being employed in the conduct of, the business of an agent (within the meaning of the [Property, Stock and Business Agents Act 2002](#)).

## **10 Obligation to disclose certain matters to client**

For the purposes of section 36 of the Act, a licensee who is to carry out both conveyancing work and work that is not conveyancing work for a client must disclose to the client, in accordance with Division 5 of Part 3 of the Act:

- (a) the fact that some of the work to be carried out is not conveyancing work, and
- (b) the nature of the work that is not conveyancing work.

## **11 Itemised account**

- (1) A request for an itemised account under section 67 of the Act may be served on the licensee concerned by:
  - (a) delivering it personally to the licensee, or
  - (b) leaving it for the licensee at a place of business of the licensee, or



- (c) sending it by post to the licensee at the address of a place of business of the licensee, or
  - (d) sending it by facsimile transmission to a number specified by the licensee (in correspondence or otherwise) as a number to which facsimile transmissions to the licensee may be sent.
- (2) An itemised account requested under section 67 of the Act may be provided to the person who made the request by:
- (a) delivering it personally to the person, or
  - (b) leaving it for the person at an address specified as the person's address in the request, or
  - (c) sending it by post to the person at an address specified as the person's address in the request, or
  - (d) sending it by facsimile transmission to a number specified by the person (in correspondence or otherwise) as a number to which facsimile transmissions to the person may be sent.

## **Part 4 Resolution of costs disputes**

### **12 Notifying Tribunal of costs dispute**

For the purposes of section 43 (1) of the Act, a notification to the Tribunal of a costs dispute must be made:

- (a) in writing and in accordance with the requirements (for the making of applications to the Tribunal) of Part 3 of the *Consumer, Trader and Tenancy Tribunal Regulation 2002*, and
- (b) within 60 days after the licensee has delivered to the client concerned a bill or account of costs (being a bill or account in relation to the costs the subject of the dispute).

### **13 Fee for notifying Tribunal of costs dispute**

- (1) For the purposes of section 43 (2) of the Act, the prescribed fee to accompany a notification to the Tribunal of a costs dispute is the amount prescribed for the time being under clause 10 (1) (c) (i), (ii) or (iii) of the *Consumer, Trader and Tenancy Tribunal Regulation 2002* (whichever is applicable).
- (2) A person is exempt from section 43 (2) of the Act to the extent that the Tribunal (in considering that there are special reasons for so doing):
  - (a) directs that a fee that would otherwise be required to be paid by the person under section 43 (2) of the Act be waived wholly or in part, or

(b) postpones the time for payment by the person of the whole or part of any such fee.

- (3) A direction by the Tribunal referred to in subclause (2) (a) may include a direction that any part of the fee waived that has been paid be refunded.
- (4) The Tribunal may make any postponement referred to in subclause (2) (b) subject to any conditions the Tribunal may think fit to impose.

#### **14 Costs of assessment**

For the purposes of section 45 of the Act, if the Tribunal refers a costs dispute to an independent expert for assessment, the parties are to bear the costs of the assessment in such manner as may be ordered by the Tribunal.

#### **15 Application for determination of costs dispute**

For the purposes of section 47 of the Act, an application to the Tribunal for the determination of a costs dispute must be made in writing and in accordance with the requirements of Part 3 of the [Consumer, Trader and Tenancy Tribunal Regulation 2002](#).

#### **16 Fee for application for determination of costs dispute**

- (1) For the purposes of section 47 of the Act, the prescribed fee to accompany an application to the Tribunal for determination of a costs dispute is the amount prescribed for the time being under clause 10 (1) (c) (i), (ii) or (iii) of the [Consumer, Trader and Tenancy Tribunal Regulation 2002](#) (whichever is applicable).
- (2) A person is exempt from section 47 of the Act to the extent that the Tribunal (in considering that there are special reasons for so doing):
- (a) directs that a fee that would otherwise be required to be paid by the person under section 47 of the Act be waived wholly or in part, or
- (b) postpones the time for payment by the person of the whole or part of any such fee.
- (3) A direction by the Tribunal referred to in subclause (2) (a) may include a direction that any part of the fee waived that has been paid be refunded.
- (4) The Tribunal may make any postponement referred to in subclause (2) (b) subject to any conditions the Tribunal may think fit to impose.

#### **17 Transfer of proceedings to or from other courts or tribunals**

- (1) For the purposes of section 50 (2) of the Act:
- (a) proceedings are to be transferred by order of the court hearing the costs dispute, and

- (b) notice of the transfer is to be given to the Registrar of the Tribunal by the registrar of the court hearing the costs dispute, and
  - (c) all documents relating to the proceedings in the custody of the court hearing the costs dispute are to be transferred by the registrar of the court to the Registrar of the Tribunal.
- (2) On receipt of such a notice of transfer and accompanying documents, the Registrar must serve on all of the parties a notice fixing a date and time for the holding of the hearing or a directions hearing in relation to the proceedings.

## **Part 5 Trust money**

### **Division 1 General**

#### **18 Definitions**

- (1) In this Part:

**associate**, in relation to a licensee, has the same meaning as it has in Part 8 of the Act.

**cash book** means the record required to be kept under clause 20 (c).

**trust money** has the same meaning as it has in Part 5 of the Act.

**trust receipt book** means the record required to be kept under clause 20 (a).

**viewable form**, in relation to a record, means a form that enables the production of the record, on demand, in permanent legible form in the English language.

- (2) A reference in this Part to a trust account is a reference to a trust account required to be maintained by section 53 of the Act.

#### **19 Keeping of records generally**

- (1) A licensee must keep the records required by this Part in viewable form.
- (2) A licensee must keep the records concerned (including any records kept by means of a computer system) at the place of business where the licensee conducts the conveyancing business under the licence.
- (3) A licensee who conducts a conveyancing business under the licence at more than one place of business is taken to comply with subclause (2) if the licensee:
- (a) keeps the records relating to business transacted at a particular place of business at that place of business, or
  - (b) keeps the records relating to the business transacted at each place of business at

one place of business specified in a written notice given to the Director-General.

- (4) A licensee must, within 21 days after the end of each month:
- (a) compile with the records kept by the licensee under this Part the original, or a true copy, of the trial balance statement prepared by the licensee in accordance with clause 31 for that month, and
  - (b) maintain a summary of the total of trust money disclosed in the trial balance statements for that month.

Maximum penalty: 40 penalty units in the case of a corporation or 20 penalty units in any other case.

## **20 Specific records to be kept by licensees**

Every licensee must keep the following records:

- (a) a trust receipt book containing the duplicates of all receipts issued from that book (the duplicates being machine-numbered consecutively to correspond with the machine-numbered receipts),
- (b) a deposit book of an authorised deposit-taking institution referred to in section 53 (1) (c) showing all deposits made by the licensee into the trust account or some other written or electronic record showing those deposits,
- (c) a trust account cash book or some other written or electronic record of all receipts of amounts required to be paid into, and of all payments made from, the trust account.

## **21 Computer records**

- (1) A licensee who keeps records for the purposes of this Part by means of a computer system must comply with this clause.

Maximum penalty: 40 penalty units in the case of a corporation or 20 penalty units in any other case.

- (2) The licensee must keep a record, compiled in chronological sequence, of all changes (by creation, amendment or deletion) to any of the following information, showing the details of the information before and after the change:
- (a) client name,
  - (b) client address,
  - (c) matter number,
  - (d) matter description,
  - (e) client number,

(f) trust account number.

(3) The licensee must ensure that computer programs relating to ledgers:

- (a) are not 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 viewable form of a separate chronological report of all such occurrences, and
- (b) are not capable of amending the particulars of a transaction already recorded otherwise than by a separate transaction effecting the amendment, and
- (c) are not capable of deleting an account unless:
  - (i) the balance of the account is zero, and
  - (ii) when the account is deleted, a record of the account will be retained in viewable form.

(4) The licensee must also ensure the following:

- (a) that each computer program requires input in each field of a data entry screen intended to receive information that this Regulation requires to be included in trust records,
- (b) that entries in the ledger of a journal balance before further entries are made,
- (c) that journal reference numbers are allocated in sequence by the computer program,
- (d) that entries in a record retained in viewable form appear in chronological sequence,
- (e) that a report, or each page of or entry in a report, is numbered in sequence by the computer program in a manner that enables easy verification of the completeness of the records that this Regulation requires to be kept,
- (f) that a back-up copy of all records that this Regulation requires to be kept that are kept by means of a computer system is made on a computer disk or magnetic tape, or by other electronic means, at least once in every four weeks,
- (g) that the most recent back-up copy is kept in such a place that any incident (such as a power or disk failure) that could adversely affect the records would not also affect the back-up copy.

## **22 Statements of account**

- (1) A licensee must, in accordance with this clause, furnish to each person for whom or on whose behalf money is held by the licensee a separate statement of account in

respect of the ledger account maintained for the person.

(2) The statement of account must be furnished:

(a) within 14 days after the licensee receives a written request for the statement, and

(b) within 21 days after each of the following:

(i) completion of the matter to which the ledger account relates,

(ii) the closure and removal of the account from the relevant ledger,

(iii) except as provided by subclause (4)—31 March and 30 September in each year.

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

(a) the money received and held 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.

(4) A licensee is not required to furnish a statement of account under subclause (2) (b) (iii) 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 (5) waiving compliance with the requirement and has not received notice of revocation of the waiver.

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

(a) may, by written notice to the licensee in accordance with Form 1, waive compliance by the licensee with the requirements of subclause (2) (b) (iii), and

(b) may, by further written notice to the licensee, revoke the waiver.

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

Maximum penalty: 40 penalty units in the case of a corporation or 20 penalty units in any

other case.

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

- (1) This clause prescribes, for the purposes of section 53 (3) (a) of the Act, the procedure to be followed by a licensee to permit the licensee to withdraw or receive, from trust money, money due to the licensee for costs.
- (2) The licensee:
  - (a) must have disclosed, in accordance with Division 5 of Part 3 of the Act, the costs and other matters required to be disclosed under section 36 of the Act to the person from whom the licensee has received trust money, or
  - (b) must be able to claim, in terms of section 39 of the Act, that the disclosure was not required because, in the circumstances, it was not reasonable to require it.
- (3) However, a licensee who complied with Part 11 of the *Legal Profession Act 1987*, or with Part 3.2 of the *Legal Profession Act 2004*, in relation to trust money received by the licensee before the commencement of Part 5 of the *Conveyancers Licensing Act 2003* is taken, for the purposes of section 53 (3) (a) of the Act, to have complied with subclause (2) in respect of so much of that money as is still held by the licensee on that commencement.

**Note—**

Section 16 of the *Conveyancers Licensing Act 1995* provided that Part 11 of the *Legal Profession Act 1987* applied to the fees charged by a licensee in the same way as it applied to the costs charged by a solicitor, subject to such modifications as were prescribed by the regulations (no modifications were prescribed). Part 11 dealt with costs, including disclosures as to costs. On the repeal of the *Legal Profession Act 1987*, Part 11 was replaced by Part 3.2 of the *Legal Profession Act 2004* and the reference in section 16 of the *Conveyancers Licensing Act 1995* was updated accordingly—see clause 179 of, and Schedule 6 to, the *Legal Profession Regulation 2005*.

- (4) The licensee must deliver to the person a bill or account of the costs together with written notice that, unless the person objects, the licensee intends to withdraw the money and to apply it towards payment of the bill or account at the expiration of 30 days after the delivery.
- (5) One of the following circumstances must apply:
  - (a) the person has authorised in writing the withdrawal or receipt,
  - (b) the period of 30 days specified in the notice accompanying the bill or account has expired without the person having made an objection,
  - (c) the person, having made an objection within that specified period, has not, within the time limited by clause 12, notified the Tribunal of a dispute in relation to the costs concerned.

## **Division 2 Trust accounts**

### **24 Banking of trust money**

A licensee who receives trust money must pay it into the licensee's trust 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.

Maximum penalty: 40 penalty units in the case of a corporation or 20 penalty units in any other case.

### **25 Receipts for trust money**

- (1) A licensee must cause a receipt to be prepared in accordance with this clause immediately after the licensee receives trust money for or on behalf of any person.
- (2) The following particulars must be shown on each receipt:
  - (a) the date of issue,
  - (b) the number of the receipt,
  - (c) the name of the licensee, or (if appropriate) the business name under which the licensee conducts the conveyancing business, and the words "Trust Account",
  - (d) the name of the person from whom the payment was received,
  - (e) the name and ledger reference number of the person on whose behalf the payment was made,
  - (f) particulars sufficient to identify the transaction in respect of which the money was paid,
  - (g) the amount of money received and whether (or the extent to which) it was paid in cash or by cheque, by electronic funds transfer or otherwise.
- (3) A copy of the particulars shown on the receipt must be made simultaneously:
  - (a) on the machine-numbered duplicate form provided in the trust receipt book (if the receipt is issued from that book), or
  - (b) in the cash book (if the receipt is issued otherwise than from the trust receipt book).
- (4) Receipts must be prepared in the numerical order of the series to which they belong.
- (5) The original of a receipt must be issued, on demand, to the person from whom the



trust money is received.

(6) A licensee must retain:

- (a) any original receipt that is not issued to the person from whom the trust money is received, and
- (b) any original receipt that is cancelled after it is prepared, and
- (c) duplicate receipts (except in the case of receipts referred to in subclause (3) (b)).

Maximum penalty: 40 penalty units in the case of a corporation or 20 penalty units in any other case.

## **26 Payment of trust money**

(1) A licensee must ensure that trust money is not drawn from the licensee's trust account otherwise than by cheque or electronic funds transfer in accordance with this clause (including the record keeping requirements of this clause).

Maximum penalty: 40 penalty units in the case of a corporation or 20 penalty units in any other case.

(2) Each cheque must:

- (a) be machine numbered in series, and
- (b) be marked "not negotiable", and
- (c) not be payable to cash, and
- (d) contain the name of the licensee, or (if appropriate) the business name under which the licensee conducts the conveyancing business, and the words "Trust Account", and
- (e) be signed by the licensee or another person authorised by or under clause 32 to sign the cheque.

(3) The licensee must ensure that cheques are drawn in the numerical order of the series to which they belong and that for each cheque a record is kept of:

- (a) the number and date of issue, the payee and the amount of the cheque, and
- (b) details identifying the ledger account to be debited and the name and ledger reference number of the person on whose behalf the cheque was drawn, and
- (c) the reason for which the cheque was drawn.

(4) The licensee must ensure that a record of the following is kept in relation to each electronic funds transfer:

- (a) the name of the person effecting the transfer and, if the transfer is effected under the direction of some other person or under an authority delegated under clause 32, the name of the person under whose direction or delegation the transfer is effected,
- (b) the reference number or other particulars sufficient to identify the transfer, the date of the transfer, the payee and the amount transferred to or from each ledger account,
- (c) details identifying the ledger accounts to be debited and the name and ledger reference number of each person on whose behalf the transfer was made,
- (d) particulars of the reason for the transfer.

## **27 Trust deposits**

- (1) A licensee who makes a deposit of money to the licensee's trust account must ensure:
  - (a) that the relevant deposit book or other written deposit record is produced to the bank when the deposit is made, and
  - (b) that the following particulars are entered in the book or record:
    - (i) the date of the deposit,
    - (ii) the amount of the deposit,
    - (iii) whether the deposit consists of cheques, notes or coins,
    - (iv) if cheques are included in the deposit, the name of the drawer, the name and branch of the bank on which the cheque is drawn and the amount of each cheque, and
  - (c) that a duplicate of the particulars of each deposit is retained by the licensee.

Maximum penalty: 40 penalty units in the case of a corporation or 20 penalty units in any other case.

- (2) This clause does not apply to a deposit of money made directly to a licensee's trust account (except a deposit made by the licensee), electronically or otherwise.

## **28 Cash book record of trust account transactions**

- (1) A licensee must keep in the cash book, in accordance with this clause, a record of daily receipts and payments of money into and out of the licensee's trust account.
- (2) The pages of the cash book must be consecutively numbered.
- (3) The cash book must show the following:

- (a) the consecutive numbers of receipts issued or cancelled,
  - (b) the consecutive numbers of cheques drawn or cancelled,
  - (c) in the case of money received or disbursed by means of electronic funds transfer, the consecutive reference numbers or other means of identification of the transfers.
- (4) The particulars of payments of money into and out of a licensee's trust account that are required by this clause must be entered in the cash book as soon as is practicable after the receipt or payment of the money concerned.
- (5) When money required to be paid into the trust account is received, the licensee must enter the following particulars in the cash book:
- (a) the date of issue of the receipt,
  - (b) the number of the receipt,
  - (c) the name of the person from whom the payment was received,
  - (d) the name and ledger reference number of the person on whose behalf the payment was made,
  - (e) particulars sufficient to identify the transaction in respect of which the money was paid,
  - (f) the amount of money received and whether (or the extent to which) it was paid in cash or by cheque, by electronic funds transfer or otherwise,
  - (g) the date of the deposit of the money to the trust account,
  - (h) the amount of the deposit.
- (6) When money is paid out of the trust account, the licensee must enter into the cash book the particulars required by clause 26 (3) to be recorded for a cheque or required by clause 26 (4) to be recorded for an electronic funds transfer.
- (7) At the end of each named month, the licensee must balance the cash book and either:
- (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.
- (8) The licensee must, at the end of each named month, prepare a statement reconciling the balance of the licensee's trust account with the balance of the related cash book.

Maximum penalty: 40 penalty units in the case of a corporation or 20 penalty units in any other case.

## **29 Journal**

- (1) A licensee must record, in accordance with this clause, in a journal maintained exclusively for the licensee's trust account, all transfers between accounts in the trust account ledger that are not effected by cheque or electronic funds transfer.
- (2) The recording must include the following:
  - (a) the date of the transfer,
  - (b) the amount transferred to and from each ledger account,
  - (c) the names of all ledger accounts to be debited or credited,
  - (d) the relevant reference number or other identification,
  - (e) sufficient particulars to identify the transfer and the reason for the transfer.
- (3) Each transfer, when entered in the journal, is to be numbered consecutively.

Maximum penalty: 40 penalty units in the case of a corporation or 20 penalty units in any other case.

## **30 Trust account ledger**

- (1) A licensee must maintain, in accordance with this clause, a separate ledger account for trust money received on behalf of or paid to each client.
- (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.
- (3) Those particulars must include the following:
  - (a) the date of the transaction,
  - (b) a description of the transaction,
  - (c) particulars sufficient to identify the trust record originating the transaction,
  - (d) the amount of the transaction,
  - (e) the resulting current balance of account arising from the transaction.

Maximum penalty: 40 penalty units in the case of a corporation or 20 penalty units in any other case.

## **31 Trust account ledger trial balance**

- (1) A licensee must, within 21 days after the end of each named month, prepare, in accordance with subclause (2), a trial balance statement of all ledger accounts current as at the end of that month.

(2) The trial balance statement must:

- (a) specify 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 the 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 account as required by clause 28 (8).

Maximum penalty: 40 penalty units in the case of a corporation or 20 penalty units in any other case.

### **32 Signing of cheques or effecting electronic funds transfers—trust account**

- (1) A licensee that is a corporation or who is a sole proprietor or a partner has authority to sign a cheque (a **trust cheque**) drawn on, or to effect an electronic funds transfer (a **trust EFT**) from, the licensee's trust account.
- (2) A licensee in charge of a place of business has authority to sign a trust cheque or effect a trust EFT.
- (3) A licensee who has authority otherwise than as a delegate to sign trust cheques or effect trust EFTs may delegate that authority:
  - (a) if the licensee is a corporation, to one or more directors of the corporation each of whom is a licensee, and to not more than 2 employees at each place of business of the corporation, or
  - (b) if the licensee is a sole proprietor or a partner, to not more than 2 employees at each place of business of the sole proprietor or partnership, or
  - (c) if the licensee is a person in charge of a place of business, to not more than 2 employees at the place of business.
- (4) The delegation must be in writing and signed by the licensee and the delegate and may be revoked by the delegator by giving written notice of revocation to the delegate.
- (5) A delegation in force under this clause authorises the delegate to sign trust cheques or effect trust EFTs to which the delegation relates:
  - (a) (except in the case of a delegation by a licensee that is a corporation) only if the delegator is unable to sign the cheque or effect the transfer with due expedition because of his or her being sick or injured or absent for good reason, and

(b) subject to such terms and conditions (whether relating to the value of the cheques or transfers or the number of signatories or not) as may be stated in the instrument of delegation.

(6) This clause does not remove any additional prohibition or restriction on the signing of trust cheques or the effecting of trust EFTs made by the constitution or the terms of the partnership agreement of any company or partnership concerned.

(7) A licensee who purports to delegate his or her authority to sign a trust cheque or effect a trust EFT otherwise than in accordance with this clause is guilty of an offence.

(8) A person who signs a trust cheque or effects a trust EFT purporting to do so as the delegate of a licensee but who has not been authorised to do so in accordance with this clause is guilty of an offence.

Maximum penalty (subclauses (7) and (8)): 40 penalty units in the case of a corporation or 20 penalty units in any other case.

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

(1) A licensee may maintain in his or her trust account 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 account 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 in other like capacity.

(2) A licensee must withdraw money held in an account under subclause (1) (a) not later than 21 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 payments—not later than 6 months after the date on which the money was credited to the account.

Maximum penalty: 40 penalty units in the case of a corporation or 20 penalty units in any other case.

## **Part 6 Records**

### **34 Records that licensees must keep**

- (1) A licensee must keep the following records relating to any transaction carried out by the licensee or the licensee's employees in connection with conveyancing work carried out by them:
  - (a) originals or copies of all documents evidencing the transaction concerned (for example, agreements, conveyances, transfers, leases and mortgages) and all associated documents (for example, documents required by law to be attached to contracts for the sale of land, inspection reports, requisitions on title and responses to such requisitions),
  - (b) originals or copies of all other documents and records maintained, issued or received by the licensee or the licensee's employees (for example, letters, file notes, invoices and settlement sheets).
- (2) The licensee must ensure that the records required to be kept under subclause (1) in relation to a transaction are kept in a separate file (relating only to that transaction) for the client concerned.

Maximum penalty: 40 penalty units in the case of a corporation or 20 penalty units in any other case.

### **35 Period for which records must be retained**

- (1) A licensee must retain a record required to be kept under clause 34 or Part 5 (including any such record the possession of which the licensee has lawfully acquired as a consequence of a transfer to the licensee of a conveyancing business) for at least 6 years after it is made and provide for its safe keeping throughout that time.

Maximum penalty: 40 penalty units in the case of a corporation or 20 penalty units in any other case.

- (2) However, subclause (1) does not apply to the licensee if the record has passed to the lawful possession of another licensed conveyancer or a solicitor as a consequence of the transfer of the licensee's conveyancing business.

### **36 Records and book entries to be in English language**

A licensee must ensure that all written records required to be made or produced by the licensee, by the provisions of the Act or this Regulation, are in the English language.

Maximum penalty: 40 penalty units in the case of a corporation or 20 penalty units in any other case.

## Part 7 General

### 37 The Register

- (1) The Director-General is to enter and keep in the Register required to be maintained under section 162 of the Act details of the following particulars in respect of each licence issued under the Act:
  - (a) the name and business address of the person to whom the licence is issued,
  - (b) the number of the licence,
  - (c) date of issue and expiry,
  - (d) in the case of a licence issued to a member of a partnership, the name and business address of each licensed member of the partnership,
  - (e) in the case of a corporation licence, the name and business address of each director of the corporation,
  - (f) the cancellation or any current suspension of the licence,
  - (g) any condition of the licence under section 14 (a)-(d) of the Act,
  - (h) action taken under Part 9 (Complaints and disciplinary action) of the Act against the licensee that resulted in an adverse finding against the licensee, together with details of any disciplinary action taken against the licensee as a result of that adverse finding,
  - (i) proceedings for any offence under the Act or this Regulation taken against the licensee that resulted in a conviction for any such offence, together with details of any penalty imposed for the offence,
  - (j) current undertakings given under the Act by the licensee,
  - (k) the appointment of a manager or receiver under the Act in respect of the licensee,
  - (l) the number of payments made from the Compensation Fund under Part 10 of the *Property, Stock and Business Agents Act 2002* in respect of any failure to account of the licensee,
  - (m) the suspension of the licence under section 64A of the *Fair Trading Act 1987*,
  - (n) action in the nature of disciplinary action taken under any other legislation administered by the Minister against the licensee that resulted in an adverse finding against the licensee, together with details of any action taken against the licensee as a result of that adverse finding.
- (2) The Director-General is also to enter and keep in the Register details of any



application for a licence that is refused on the ground that the applicant is not a fit and proper person to hold a licence.

- (3) Details entered in the Register under subclause (2) in respect of a person whose application is so refused are to be removed from the Register on the subsequent grant of a licence to the person.
- (4) Details entered in the Register under subclause (1) (h) or (i) are to be removed from the Register on the expiration of the period of 10 years after the action or conviction to which they relate.

### **38 Complaints and discipline**

The following provisions of the Act are prescribed as provisions that remain applicable to a suspended licence for the purposes of section 133 (3) of the Act:

- (a) section 66 (Director-General may require information),
- (b) section 72 (Power to require production of licensee's records),
- (c) sections 75 (Requirement for audit) and 77 (Statutory declaration required where no money held or received on behalf of another person), except when a receiver or manager has been appointed,
- (d) section 88 (Claims can be made against Compensation Fund) to the extent that it applies section 179 of the *Property, Stock and Business Agents Act 2002* (Production of documents),
- (e) section 95 (Powers of a manager),
- (f) section 152 (Fraudulent conversion and false accounts of money received by licensee),
- (g) section 153 (Fraudulent accounts for expenses, fees and other charges).

### **39 Modification of *Licensing and Registration (Uniform Procedures) Act 2002***

Section 10 (Applications for restoration of licences) of the *Licensing and Registration (Uniform Procedures) Act 2002* does not apply in respect of a licence that has been cancelled under Part 9 (Complaints and disciplinary action) of the *Conveyancers Licensing Act 2003*.

### **40 Corporate licensees**

A licensee that is a corporation meets any obligation it may have under section 77 of the Act if the requisite statutory declarations are made and lodged in accordance with that section by:

- (a) if the corporation has only one director—the director of the corporation, or

- (b) if the corporation has more than one director—any two directors of the corporation.

#### **41 Penalty notice offences and penalties**

For the purposes of section 158 of the Act:

- (a) each offence created by a provision specified in Column 1 of Schedule 4 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 Schedule 4 or, if the person alleged to have committed the offence is a corporation and a greater penalty is specified in Column 3 of Schedule 4, the amount specified in Column 3 of Schedule 4.

### **Part 8 Transitional provisions**

#### **Division 1 Preliminary**

##### **42 Definitions**

In this Part:

**controlled money** means money that, immediately before the repeal of the former Act, was controlled money within the meaning of that Act.

**the former Act** means the [Conveyancers Licensing Act 1995](#).

**the former Regulation** means the [Conveyancers Licensing Regulation 2001](#).

**the 2003 Act** means the [Conveyancers Licensing Act 2003](#).

#### **Division 2 Transitional provisions relating to controlled money**

##### **43 Part 5 and controlled money**

Part 5 of the 2003 Act does not apply to controlled money held by a licensee immediately before the repeal of the former Act unless the controlled money is transferred to a trust account in accordance with clause 44 (1) (a).

##### **44 Manner of dealing with controlled money**

- (1) A licensee who was holding controlled money immediately before the repeal of the former Act must:
- (a) with the written approval of the person on whose behalf the licensee is carrying out the relevant conveyancing work, open a separate trust account for the benefit of that person and transfer the controlled money to that trust account, or
- (b) deal with, and account for, the money in accordance with the former Act and the former Regulation, as provided by clause 45.

Maximum penalty: 40 penalty units in the case of a corporation or 20 penalty units in any other case.

- (2) On being transferred to a trust account as provided by subclause (1) (a), the controlled money concerned becomes trust money within the meaning of Part 5 of the 2003 Act.

#### **45 Controlled money not transferred to trust account**

Despite the repeal of the former Act and the former Regulation, the following provisions of that Act and that Regulation continue to apply, as if they had not been repealed, to and in respect of controlled money:

- (a) sections 25–28 of, and the relevant definitions in the Dictionary to, the former Act,
- (b) clauses 3 (Definitions) and 29 (Delegation) and Divisions 1 (General), 3 (Controlled money) and 4 (Registered company auditor’s report) of Part 4 (Trust money and controlled money) of, and Schedule 1 (Forms) to, the former Regulation.

### **Division 3 Other transitional provisions**

#### **46 Audit period**

Despite section 76 of the 2003 Act, the period beginning on 1 April 2006 and ending on 30 June 2007 is taken to be the audit period in respect of the first audit required to be made (and the auditor’s report on that audit required to be submitted) under section 75 of the 2003 Act.

#### **47 Approved policy of professional indemnity insurance**

The policy for professional indemnity insurance approved by the Minister by the [Conveyancers Licensing Amendment \(Vero Insurance\) Order 2006](#) is taken to be a policy approved by the Minister under clause 6 (2) (a).

**Note—**

The policy of professional indemnity insurance approved by the Minister by the [Conveyancers Licensing Amendment \(Vero Insurance\) Order 2006](#) covers the period from 1 July 2006 to 30 June 2007.

### **Schedule 1 Forms**

(Clause 3 (2))

#### **Form 1 Waiver**

(Clause 22)

([Conveyancers Licensing Act 2003](#))

([Conveyancers Licensing Regulation 2006](#))

To  
Licensed Conveyancer,

[address]

Re:

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

I/We am/are aware that while you continue to hold my/our money I/we am/are entitled to receive from you a periodical statement of account in accordance with the provisions of clause 22 of the [Conveyancers Licensing Regulation 2006](#), 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 22 (2) (b) (iii) of the Regulation.

\*This waiver continues until [specify date] unless revoked earlier in writing.

\*This waiver continues until revoked in writing.

Signature:

Date:

\* Delete as appropriate.

## Schedule 2 Fees

(Clause 5)

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Nature of fee payable</b>	<b>Fixed component</b>	<b>Processing component</b>
Application fee for grant of licence	\$179	\$162
Application fee for renewal of licence	\$179	\$53
Application fee for restoration of licence	\$179	\$107
Application fee for replacement of licence	nil	\$35

## Schedule 3 Rules of conduct

(Clause 8)

### 1 Knowledge of Act and this Regulation

A licensee must have a knowledge and understanding of the Act and this Regulation, and such other laws as may be necessary to enable the licensee to exercise his or her functions as a conveyancer lawfully.

### 2 Honesty, fairness and professionalism

- (1) A licensee must act honestly, fairly and professionally with all parties in a transaction.
- (2) A licensee must not misinform or otherwise mislead or deceive any parties in negotiations or a transaction.

**3 Skill, care and diligence**

A licensee must exercise reasonable skill, care and diligence.

**4 Fiduciary obligations**

A licensee must comply with the fiduciary obligations arising from the licensee's activities as a conveyancer.

**5 To undertake only work within competence**

A licensee must not accept instructions to act as a conveyancer unless the licensee is competent to perform the conveyancing work concerned.

**6 To perform work promptly**

A licensee must only accept instructions to act as a conveyancer if he or she reasonably expects to be able to carry out the conveyancing work concerned reasonably promptly.

**7 To act in client's best interests**

A licensee must act in the client's best interest at all times unless it would be contrary to the Act or this Regulation or otherwise unlawful to do so.

**8 To communicate regularly with client**

A licensee must communicate regularly with a client to ensure that the client is kept up to date with the progress of the client's matter.

**9 To act in accordance with client's instructions**

A licensee must act in accordance with a client's instructions unless it would be contrary to the Act or this Regulation or otherwise unlawful to do so.

**10 To confirm client's oral instructions in writing**

A licensee must ensure that oral instructions (other than those of a trivial nature) received from a client are confirmed with the client in writing as soon as possible after they are received.

**11 Conflicts of interest**

A licensee must not accept instructions to act, or continue to act, as a conveyancer for a client if doing so would place the licensee's interests in conflict with the client's interests.

**12 Acting for more than one party to a transaction**

(1) A licensee may only act for more than one party to a transaction if the licensee discloses in writing to each party that the licensee is intending to act for the others, and each party consents in writing to the licensee so acting.

- (2) If a licensee who is acting for more than one party cannot continue to act for all of the parties without acting in a manner contrary to the interests of one or more of them, the licensee must cease to act for all of the parties.
- (3) The disclosure referred to in subclause (1) must indicate that, as a consequence of acting for more than one party to the transaction:
  - (a) the licensee may be prevented from:
    - (i) disclosing to each party all information within the licensee's knowledge that is relevant to the transaction, and
    - (ii) giving advice to one party that is contrary to the interests of the other, and
  - (b) the licensee will cease to act for all parties if the licensee would, otherwise, be obliged to act in a manner contrary to the interests of one or more of them.

### **13 Confidentiality**

A licensee must not, at any time, use or disclose any confidential information obtained while acting on behalf of a client unless:

- (a) the client authorises disclosure, or
- (b) the licensee is permitted or compelled by law to disclose the information.

### **14 Noting of instructions, enquiries and telephone conversations**

- (1) A licensee must make a written record of the following communications (other than those of a trivial nature):
  - (a) all instructions received from the licensee's clients and advice given,
  - (b) all telephone conversations made or received in connection with conveyancing work,
  - (c) all enquiries made in connection with conveyancing work and responses given.
- (2) The record must be in the form of a file note and be kept on the file of the client to whom the conveyancing work relates.
- (3) The record must be retained for at least six years after it is made.
- (4) A record required to be kept under this rule may be maintained in electronic form, provided it can be produced in a permanent legible form in the English language.

### **15 Referral to service provider**

- (1) A licensee who refers a client or prospective client to a service provider must not falsely represent to the client or prospective client that the service provider is

independent of the licensee.

- (2) A service provider is considered to be **independent** of a licensee if:
  - (a) the licensee receives no rebate, discount, commission or benefit for referring a client or customer to the service provider, and
  - (b) the licensee does not have a personal or commercial relationship with the service provider.
- (3) The following are examples of a personal or commercial relationship:
  - (a) a family relationship,
  - (b) a business relationship,
  - (c) a fiduciary relationship,
  - (d) a relationship in which one person is accustomed, or obliged, to act in accordance with the directions, instructions or wishes of the other person.
- (4) If the service provider is not independent of the licensee, the licensee must disclose to the client or prospective client:
  - (a) the nature of any relationship, whether personal or commercial, the licensee has with the service provider, and
  - (b) the nature and value of any rebate, discount, commission or benefit the licensee may receive, or expects to receive, by referring the client or prospective client to the service provider.
- (5) In this rule:

**service provider** means a person who provides a service in relation to a conveyancing transaction (for example, a building inspector, pest inspector, valuer, surveyor, insurer, mortgage originator, mortgage broker or another licensee).

## 16 Inducements

A licensee must not offer to provide to any other person any gift, favour or benefit, whether monetary or otherwise, in order to induce any third person to engage the services of the licensee as conveyancer in respect of any matter.

## 17 Soliciting through false or misleading advertisements or communications

- (1) A licensee must not solicit clients or customers through advertisements or other communications that the licensee knows or should know are false or misleading.
- (2) A licensee must not include any matter (including any statement, slogan or logo) on stationery or business cards used in connection with conveyancing work that the

licensee knows or should know is false or misleading.

### **18 Termination of licensee's services**

A licensee must complete the conveyancing work in respect of which the licensee has accepted instructions to act for a client unless:

- (a) the licensee and the client have otherwise agreed, or
- (b) the client terminates the services of the licensee, or
- (c) the licensee terminates the provision of services to the client by giving 14 days written notice to the client.

### **19 Transfer of conveyancing work**

If:

- (a) a licensee ceases to act for a client before completing the conveyancing work in respect of which the licensee has accepted instructions to act for a client, and
- (b) the client instructs another licensee or a solicitor to take over the conduct of the client's conveyancing work,

the first-mentioned licensee must, within 14 days after receipt of a direction in writing from the client, deliver to the second-mentioned licensee or the solicitor all relevant documents to which the client is entitled and any information that is necessary for the proper conduct of the client's conveyancing work.

### **20 Transfer of conveyancing business**

- (1) If a licensee intends to transfer the whole or part of the licensee's conveyancing business (including clients' work in progress) to another licensee or a solicitor, the first-mentioned licensee must give each client 14 days written notice of the following:
  - (a) the intended transfer of documents to the licensee or solicitor acquiring the business, unless a contrary direction is received from the client,
  - (b) the client's right to give to the first-mentioned licensee a contrary direction in relation to the conduct of the client's affairs and the delivery of the client's documents.
- (2) If the licensee holds money on behalf of the client in trust, the notice referred to in subclause (1) must also advise the client of the following:
  - (a) the balance of money held on the client's behalf,
  - (b) the licensee's intention to transfer the relevant account to the licensee or solicitor acquiring the business, unless advised by the client to the contrary,



(c) the client's right to give to the first-mentioned licensee a contrary direction as to the manner in which the licensee should deal with the account on the client's behalf.

(3) Nothing in this rule limits the operation of any other legislative provisions applicable to the trust money held by the licensee.

## **21 Conducting another business**

(1) A licensee who engages in the conduct of another business concurrently with the conduct of the licensee's conveyancing business must ensure the following:

(a) that the other business is not of such a nature that the licensee's involvement in it would be likely to impair, or conflict with, the licensee's duties to clients in the conduct of the conveyancing business,

(b) that separate and independent files, records and accounts are maintained in respect of the conveyancing business and of the other business,

(c) that the licensee ceases to act for a client of the conveyancing business if the licensee's interest in the other business is likely to conflict with the client's interests.

(2) A licensee is taken to be engaged in the conduct of another business if the licensee, or an associate:

(a) is entitled, at law or in equity, to an interest in the assets of the business which is significant or of relatively substantial value, or

(b) exercises any material control over the conduct and operation of the business, or

(c) has an entitlement to a share of the income of the business which is substantial, having regard to the total income which is derived from the business.

## **22 Independence of licensee advising on loan or security documents**

(1) A licensee must provide competent, independent and disinterested advice in advising a proposed signatory to documents creating a loan or a security interest (***loan or security documents***).

(2) The licensee must not act for the lender in the transaction to which the loan or security documents relate.

(3) The licensee must not advise a proposed signatory to loan or security documents in any circumstances where the interests of any signatory or proposed signatory to the documents conflict with those of the licensee or with those of any other client of the licensee.

### 23 Advising proposed signatories on loan or security documents

- (1) A licensee must advise a proposed signatory to documents creating a loan or security interest (**loan or security documents**) of those matters that the licensee, in exercising the professional skill and judgment called for in the circumstances of the particular case, considers appropriate.
- (2) Without limiting the generality of subclause (1), when advising a proposed signatory who is to be a borrower or a security provider referred to as a borrower in loan or security documents (**the borrower**), the licensee must, where applicable, advise the borrower of the following:
  - (a) that by signing the documents the borrower will be liable for regular payments of interest and repayment of the amount of the loan at the due date,
  - (b) that if the borrower fails to make any payment on time, the lender can charge a higher rate of interest, and the lender's costs of rectifying that failure,
  - (c) that if the borrower fails to comply with any of the terms and conditions of the loan including the obligations to pay principal or interest:
    - (i) the lender can sue the borrower personally, and
    - (ii) the lender may take possession of the borrower's property and, after notice, sell it to recover the amount owing together with interest and other costs including conveyancer's costs, the costs of selling the property and the costs of maintaining the property, and
    - (iii) if the proceeds of sale of the borrower's property are insufficient to satisfy the debt to the lender, the lender can sue the borrower for the deficit,
  - (d) that if the *Consumer Credit (New South Wales) Code* applies, additional obligations, rights and remedies may apply as set out in the loan documents.
- (3) A licensee giving independent advice to a proposed borrower must obtain the borrower's written acknowledgment of the independent advice.
- (4) Without limiting the generality of subclause (1), when advising a proposed signatory who is to be a third party mortgagor, guarantor, surety mortgagor or indemnifier providing security for the borrower (**the guarantor**), the licensee must, where applicable, advise the guarantor of the following:
  - (a) that if the borrower fails to make any payment on time, the guarantor will be liable to remedy that failure, and that could involve the guarantor in payment to the lender of all amounts owed by the borrower to the lender including principal, interest, default interest and the lender's costs of rectifying the default,
  - (b) that if the guarantor fails to remedy any failure by the borrower to comply with

the terms and conditions of the loan in any way, including the obligation to pay principal, interest, default interest, or other charges:

- (i) the lender can sue the guarantor personally, and
  - (ii) the lender can take possession of the guarantor's property secured to the lender and, after notice, sell it to recover the amount owing together with interest and other costs including conveyancer's costs, the costs of selling the property and the costs of maintaining the property, and
  - (iii) if the proceeds of sale of the guarantor's property are insufficient to satisfy the debt to the lender, the lender can sue the guarantor for the deficit,
- (c) if the guarantor is a proposed signatory to documents under which the guarantor's liability can be increased, of that fact and the extent of the possible increase, and of any restriction or limitation of the guarantor's rights or obligations in relation to the security and any other party to the documents,
- (d) that the lender can exercise the lender's rights against the guarantor even if the lender has not pursued the borrower,
- (e) that the liability of the guarantor is limited to a specified sum, or is unlimited (whichever is the case) and may be affected by cross guarantees,
- (f) that if the *Consumer Credit (New South Wales) Code* applies, additional obligations, rights and remedies may apply as set out in the loan documents.
- (5) A licensee giving independent advice to a proposed guarantor must obtain the guarantor's written acknowledgment of the independent advice.
- (6) In any case, a licensee advising a proposed signatory (whether a proposed borrower or a proposed guarantor) must advise the proposed signatory of the following:
- (a) that the licensee does not profess any qualification to give financial advice,
  - (b) that if the proposed signatory has any questions about any financial aspect of the transaction or the loan or security documents, the proposed signatory should consult an accountant or other financial counsellor of the proposed signatory's choice before signing the documents.

## Schedule 4 Penalty notice offences

(Clause 41)

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision</b>	<b>Penalty</b>	<b>Penalty</b>

**Offences under the Act**

section 6 (1)	\$1,100	
section 19 (1)	\$550	
section 19 (3)	\$550	
section 20 (1)	\$1,100	\$2,200
section 20 (2)	\$1,100	\$2,200
section 20 (3)	\$1,100	\$2,200
section 20 (4)	\$1,100	\$2,200
section 21 (1)	\$1,100	\$2,200
section 24 (1)	\$550	
section 25	\$1,100	
section 26 (1)	\$1,100	\$2,200
section 27 (1)	\$1,100	\$2,200
section 28 (2)	\$1,100	\$2,200
section 29 (5)	\$550	
section 31 (1)	\$550	
section 31 (2)	\$550	
section 31 (3)	\$550	
section 32	\$550	
section 33	\$550	
section 35	\$1,100	
section 36 (1)	\$1,100	\$2,200
section 53 (6)	\$1,100	
section 53 (7)	\$1,100	
section 56	\$1,100	
section 58	\$1,100	
section 59	\$1,100	
section 60	\$1,100	
section 64 (6)	\$550	
section 68 (1)	\$1,100	
section 74 (1) (a)	\$1,100	

section 74 (1) (b)	\$1,100	
section 74 (1) (c)	\$1,100	
section 74 (1) (d)	\$1,100	
section 74 (3)	\$110	
section 75 (1) (a)	\$550	\$1,100
section 75 (1) (b)	\$550	\$1,100
section 75 (3)	\$550	\$1,100
section 77	\$550	
section 83 (1)	\$5,500	
section 83 (3)	\$1,100	\$1,100
section 84	\$1,100	
section 110 (1)	\$1,100	
section 112 (a)	\$1,100	
section 112 (b)	\$1,100	
section 112 (c)	\$1,100	
section 112 (d)	\$1,100	
section 112 (e)	\$1,100	
section 130 (2)	\$550	
section 143	\$1,100	\$2,200
section 144	\$220	\$440
section 161 (1)	\$220	
<b>Offences under this Regulation</b>		
clause 19 (1)	\$550	\$1,100
clause 19 (2)	\$550	\$1,100
clause 19 (4)	\$550	\$1,100
clause 21 (1)	\$550	\$1,100
clause 22 (1)	\$550	\$1,100
clause 22 (6)	\$550	\$1,100
clause 24	\$550	\$1,100
clause 25 (1)	\$550	\$1,100
clause 25 (6)	\$550	\$1,100

clause 27 (1) (b)	\$550	\$1,100
clause 28 (1)	\$550	\$1,100
clause 28 (5)	\$550	\$1,100
clause 28 (6)	\$550	\$1,100
clause 29 (1)	\$550	\$1,100
clause 30 (1)	\$550	\$1,100
clause 31 (1)	\$550	\$1,100
clause 32 (7)	\$550	\$1,100
clause 32 (8)	\$550	\$1,100
clause 34 (1)	\$550	\$1,100
clause 34 (2)	\$550	\$1,100
clause 35 (1)	\$550	\$1,100
clause 36	\$550	\$1,100