

(Reprint No. 12)

South Australia

CONVEYANCERS REGULATIONS 1995

*These regulations are reprinted pursuant to the Subordinate Legislation Act 1978 and incorporate all amendments in force as at **18 August 2002**.*

REGULATIONS UNDER THE CONVEYANCERS ACT 1994

CONVEYANCERS REGULATIONS 1995

being

No. 109 of 1995: *Gaz.* 25 May 1995, p. 2479¹

as varied by

No. 200 of 1995: *Gaz.* 26 October 1995, p. 1211²

No. 85 of 1996: *Gaz.* 30 May 1996, p. 2656³

No. 259 of 1996: *Gaz.* 23 December 1996, p. 2262⁴

No. 78 of 1997: *Gaz.* 13 May 1997, p. 1862⁵

No. 71 of 1998: *Gaz.* 28 May 1998, p. 2326⁶

No. 120 of 1998: *Gaz.* 28 May 1998, p. 2447⁷

No. 58 of 1999: *Gaz.* 27 May 1999, p. 2806⁸

No. 143 of 1999: *Gaz.* 1 July 1999, p. 55⁸

No. 79 of 2000: *Gaz.* 25 May 2000, p. 2752⁹

No. 192 of 2000: *Gaz.* 17 August 2000, p. 574¹⁰

No. 79 of 2001: *Gaz.* 31 May 2001, p. 2017¹¹

No. 177 of 2001: *Gaz.* 19 July 2001, p. 2722¹²

No. 69 of 2002: *Gaz.* 20 June 2002, p. 2549¹³

No. 19 of 2002: *Gaz.* 18 April 2002, p. 1616¹⁴

- ¹ Came into operation 1 June 1995: reg. 2.
² Came into operation 26 October 1995: reg. 2.
³ Came into operation 1 July 1996: reg. 2.
⁴ Came into operation 3 February 1997: reg. 2.
⁵ Came into operation 1 July 1997: reg. 2.
⁶ Came into operation 1 July 1998: reg. 2.
⁷ Came into operation 28 May 1998: reg. 2.
⁸ Came into operation 1 July 1999: reg. 2.
⁹ Came into operation 1 July 2000: reg. 2.
¹⁰ Came into operation 17 August 2000: reg. 2.
¹¹ Came into operation 1 July 2001: reg. 2.
¹² Came into operation 19 July 2001: reg. 2.
¹³ Came into operation 1 July 2002: reg. 2.
¹⁴ **Came into operation 18 August 2002: reg. 2.**

NOTE:

- Asterisks indicate repeal or deletion of text.
- Entries appearing in bold type indicate the amendments incorporated since the last reprint.
- For the legislative history of the regulations see Appendix.

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Citation

1. These regulations may be cited as the *Conveyancers Regulations 1995*.

Commencement

2. These regulations will come into operation on the day on which the *Conveyancers Act 1994* comes into operation.

Interpretation

3. (1) In these regulations—

"**Act**" means the *Conveyancers Act 1994*;

"**approved scheme**" means the professional indemnity insurance scheme approved by the Commissioner for the purposes of these regulations;

"**professional indemnity insurance**" means insurance against civil liability arising in connection with carrying on business as a conveyancer (whether the liability arises from an act or omission on the part of the insured conveyancer or some other person).

(2) For the purposes of these regulations, a reference to a qualification or subject conferred by a particular institution includes a reference to a qualification or subject of a different name conferred or offered by that institution and certified by that institution to be an equivalent qualification or subject.

Fees

3A. (1) The fees fixed by the Schedule are payable to the Commissioner for the purposes set out in that Schedule.

(2) The Commissioner may waive, reduce or refund a fee (or part of a fee) payable under these regulations if satisfied that it is appropriate to do so in a particular case.

Entitlement to be registered—qualifications

4. For the purposes of section 7(1)(a) of the Act, to be entitled to be registered as a conveyancer a natural person must hold at least one of the following qualifications:

(a) Land Broking Certificate conferred by the Department for Employment, Training and Further Education;

(ab) —

(i) satisfactory completion of (or status granted in) the following subjects forming part of the Certificate IV in Conveyancing conferred by the Department for Employment, Training and Further Education:

(A) Introduction to Conveyancing;

(B) Contract Law;

(C) Commercial Law Principles;

(D) Consumer Law (Conveyancing);

(E) Property Law (Conveyancing) 1;

(F) Property Law (Conveyancing) 2;

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- (G) Mortgages;
 - (H) Lands Titles Office Procedures;
 - (I) Technical Principles;
 - (J) Settlements 1;
 - (K) Accounting for Non-accountants, together with
- (ii) satisfactory completion of (or status granted in) the following subjects forming part of the Advanced Diploma of Conveyancing conferred by the Department for Employment, Training and Further Education:
- (A) Contract Law (Conveyancing) 1;
 - (B) Legal Entities;
 - (C) Trusts and Transmissions;
 - (D) Taxation Law (Property);
 - (E) Legal Drafting;
 - (F) Contract Law (Conveyancing) 2;
 - (G) Technical Drafting;
 - (H) Commercial Leases;
 - (I) Settlements 2;
 - (J) Conveyancing Conduct and Practice;
- (b) degree of Bachelor of Business (Property) conferred by the University of South Australia, including satisfactory completion of (or status granted in) the following subjects:
- (i) Law of Property; and
 - (ii) Conveyancing 1EF; and
 - (iii) Conveyancing 2EF; and
 - (iv) Conveyancing Law EF;
- (c) degree of Bachelor of Business in Property conferred by the University of South Australia, including satisfactory completion of (or status granted in) the following subjects:
- (i) Law of Property; and
 - (ii) Conveyancing 1; and
 - (iii) Conveyancing 2; and

- (iv) Conveyancing Law;
- (d) Graduate Diploma in Property conferred by the University of South Australia, including satisfactory completion of (or status granted in) the following subjects:
 - (i) Conveyancing 1G;
 - (ii) Conveyancing 2G;
 - (iii) Conveyancing Law G;
 - (iv) Property Project M;
 - (v) Property Law 1M;
 - (vi) Property Law 2M.

Annual fee and return

5. (1) For the purposes of section 8(2) of the Act, a registered conveyancer must pay the fee and lodge the return on or before—

- (a) in the case of a registered conveyancer who held a licence as a land broker under the *Land Agents, Brokers and Valuers Act 1973* immediately before the commencement of these regulations—
 - (i) the last day of the month in each year nominated in writing to the conveyancer by the Commissioner; or
 - (ii) if the Commissioner does not nominate a month—31 May in each year;
- (b) in the case of any other registered conveyancer—
 - (i) the last day of the month in each year nominated in writing to the conveyancer by the Commissioner; or
 - (ii) if the Commissioner does not nominate a month—the last day of the month in each year that is the same month as the month in which the conveyancer's registration was granted.

(2) For the purposes of section 8(3) of the Act, the penalty for default in paying the annual fee or lodging the annual return is as set out in the Schedule.

(3) A conveyancer must, on or before the date for lodging an annual return, provide the Commissioner with evidence to the Commissioner's satisfaction that the conveyancer—

- (a) will be insured to the extent required by these regulations for the 12 month period following that date; or
- (b) will not, for the 12 month period following that date, be required under these regulations to be insured.

Maximum penalty: \$2 500.

Notification of change in circumstances

6. (1) If there is any change in—

- (a) the residential address of a registered conveyancer; or
- (b) the business or trading name under which a registered conveyancer carries on business; or
- (c) the address at which a registered conveyancer carries on business; or
- (d) the address of the registered corporate office of a registered conveyancer that is a company,

the conveyancer must, within 14 days after that change, give written notice to the Commissioner of the new address or name (as the case may be).

Maximum penalty: \$2 500.
Expiation fee: \$160.

(1a) A registered conveyancer who is not required to be insured under the approved scheme must, before a change occurs in his or her circumstances that would require the conveyancer to be so insured during the course of the 12 month period following the date for lodging an annual return, provide the Commissioner with evidence to the Commissioner's satisfaction that the conveyancer will be insured to the extent required by these regulations for the balance of that 12 month period.

Maximum penalty: \$2 500.

(2) A registered conveyancer must, within 14 days after ceasing to carry on business as a conveyancer, give written notice to the Commissioner of that fact.

Maximum penalty: \$2 500.
Expiation fee: \$160.

(3) A registered conveyancer must, within 14 days after entering into partnership to carry on business as a conveyancer or ceasing to be in such a partnership, give written notice to the Commissioner of that fact, together with the names of the members of the new or former partnership.

Maximum penalty: \$2 500.
Expiation fee: \$160.

(4) If a person is appointed as a director of a company that is a registered conveyancer, the conveyancer must, within 14 days after the appointment—

- (a) notify the Commissioner in the manner and form approved by the Commissioner of the appointment of the new director; and
- (b) provide the Commissioner with any information required by the Commissioner for the purposes of determining whether the new director meets the requirements for directors under section 7(2) of the Act.

Maximum penalty: \$2 500.
Expiation fee: \$160.

Return of certificate of registration

7. (1) If registration of a person as a conveyancer is surrendered, suspended or cancelled, the person must, at the direction of the Court or the Commissioner, return the certificate of registration to the Commissioner.

Maximum penalty: \$2 500.

Expiation fee: \$160.

(2) If, on an application under section 6 of the Act, a certificate of registration as a conveyancer has been issued to a person but the fee payable in respect of the application has not been paid (whether because of the dishonouring of a cheque or otherwise), the person must, at the direction of the Commissioner, return the certificate of registration to the Commissioner.

Maximum penalty: \$2 500.

Expiation fee: \$160.

(3) The Commissioner may issue to a registered conveyancer a certificate of registration in replacement of a current certificate of registration if satisfied that—

- (a) the current certificate has been lost, destroyed or damaged; or
- (b) any particulars appearing on the current certificate are incorrect.

(4) If the Commissioner issues to a registered conveyancer a replacement certificate of registration, the conveyancer must, at the direction of the Commissioner, return the original (or previous duplicate) certificate of registration to the Commissioner.

Maximum penalty: \$2 500.

Expiation fee: \$160.

Approved professional indemnity insurance scheme

7A. (1) For the purposes of section 9(1) of the Act, the Commissioner may approve a scheme to provide professional indemnity insurance, to an extent provided by the scheme, for the benefit of conveyancers.

(2) The approved scheme—

- (a) must provide for insurance indemnity under a master policy negotiated with the insurer or insurers participating in the scheme; and
- (b) must provide for all persons carrying on business as a conveyancer, or a class or classes of conveyancers, as specified in the scheme, to obtain coverage under the scheme; and
- (c) may provide for the determination and settlement of claims against conveyancers covered by the scheme; and
- (d) may impose on conveyancers covered by the scheme obligations to pay premiums, levies, fees or other charges (which may vary according to factors stipulated in the scheme); and
- (e) may impose, or provide for the imposition of, penalties, sanctions and remedies against conveyancers who fail to comply with their obligations under the scheme; and
- (f) may make any other provision reasonably necessary for, or incidental to, the administration or enforcement of the scheme.

(3) The approved scheme (as amended from time to time with the approval of the Commissioner) is binding on—

- (a) the conveyancers covered by the scheme; and
- (b) the insurer or insurers and other persons to whom the scheme applies.

(4) The Commissioner must keep a copy of the approved scheme (including any amendments to the scheme approved by the Commissioner) available for inspection at the Commissioner's office and must, on request for a copy of the scheme or amendment and payment of the fee, provide such a copy.

(5) In this regulation—

"conveyancer" includes a former conveyancer.

Requirement to be insured

7B. (1) A conveyancer who, according to the terms of the approved scheme, may obtain coverage under the scheme must do so unless the person was, immediately before the commencement of this subregulation, insured under some other professional indemnity insurance policy.

(2) The exemption under subregulation (1) ceases to apply to a conveyancer when the professional indemnity insurance policy under which the conveyancer is insured expires or 12 months after the commencement of subregulation (1), whichever is sooner.

Exemption from trust account provisions for third party cheques

7C. A conveyancer is exempt from the operation of Division 2 of Part 4 of the Act and regulations 10(2) and 14(1)(d) in respect of the receipt and delivery of a cheque by the conveyancer if the cheque—

- (a) is a crossed cheque expressed to be payable to a person or persons not being or including the conveyancer (whether or not it is also expressed to be payable to bearer); and
- (b) is held by the conveyancer for the purpose of delivery to a person to whom the cheque is expressed to be payable (or such a person's agent), and is so delivered.

Payment of interest on trust accounts to Commissioner

8. For the purposes of section 17 of the Act, interest that an ADI is liable to pay in respect of trust money held in a trust account must be paid by the ADI to the Commissioner on—

- (a) 15 January, 15 April, 15 July and 15 October in each year; or
- (b) the fifteenth day of each month in each year.

General duty with respect to records

8A. If a conveyancer uses a computer program to keep records under Division 2 of Part 4 of the Act, the conveyancer must ensure that—

- (a) an electronic copy of all the records is made within 24 hours of any alteration of the records; and

- (b) at least once in each week, an electronic copy of all the records is made and kept in a safe place at a location other than the premises where the computer program is operating; and
- (c) before any information is deleted from the computer records, a hard copy of the information is made and kept by the conveyancer as part of the conveyancer's records; and
- (d) an up-to-date electronic copy of the computer program is made and kept in a safe place at a location other than the premises where the computer program is operating.

Maximum penalty: \$2 500.

Receipt of trust money

9. (1) For the purposes of section 23(2)(a) of the Act, the receipt that a conveyancer must make available to a person making a payment of trust money—

- (a) must be legibly written on a form comprised in a series of consecutively pre-numbered duplicate receipt forms marked with the name of the conveyancer and the words "Trust Account"; and
- (b) must contain the following information:
 - (i) —
 - (A) in the case of a payment made by electronic transfer of funds into a conveyancer's trust account—the date on which the conveyancer makes out the receipt; or
 - (B) in any other case—the date of the payment; and
 - (ii) the name of the person making the payment; and
 - (iii) whether the payment is by cash, cheque, bank cheque or electronic transfer of funds into the conveyancer's trust account and, if the payment is by cheque or bank cheque, the name of the drawer of the cheque; and
 - (iv) the name of the person for whom the money is received; and
 - (v) brief particulars of the purpose of the payment; and
 - (vi) the amount of the payment.

(2) A conveyancer must make out a receipt in accordance with section 23(2) of the Act and this regulation—

- (a) in the case of a payment made by electronic transfer of funds into a conveyancer's trust account—immediately the conveyancer receives official confirmation that the payment has been made (whether that is by way of receipt by the conveyancer of an ADI statement or some other way, whichever occurs sooner); or
- (b) in any other case—immediately on receipt of the payment.

Maximum penalty: \$2 500.

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(3) A conveyancer need not comply with subregulation (1)(a) or section 23(2)(b) of the Act if the conveyancer uses a computer program to make out the receipt and the program—

- (a) automatically produces in chronological sequence consecutively numbered receipts marked with the name of the conveyancer and the words "Trust Account"; and
- (b) automatically makes a separate contemporaneous record of the receipt so that, at any time, a hard copy of the receipt may be produced; and
- (c) requires input in each field of a data entry screen intended to receive information for the purposes of producing the receipt so that each receipt contains all of the information required by subregulation (1)(b).

Payment of trust money

10. (1) A conveyancer must not make a payment of trust money in cash.

Maximum penalty: \$2 500.

(2) When a conveyancer makes a payment of trust money by cheque, the conveyancer—

- (a) must ensure that the cheque is marked with the name of the conveyancer and the words "Trust Account"; and
- (b) must—
 - (i) cause the cheque to be crossed and endorsed "Not negotiable"; or
 - (ii) obtain from the person receiving the cheque a receipt that complies with subregulation (3) and keep the receipt as part of the conveyancer's records; and
- (c) must prepare and keep as part of the conveyancer's records a cheque stub or voucher containing the following information:
 - (i) the date and reference number of the cheque;
 - (ii) the name of the payee;
 - (iii) the client name or reference and brief particulars of the purpose of the payment;
 - (iv) the amount of the cheque.

Maximum penalty: \$2 500.

(3) The receipt must be legible and contain the following information:

- (a) the date and reference number of the cheque; and
- (b) particulars identifying the trust account against which the cheque is drawn; and
- (c) the name of the payee; and
- (d) brief particulars of the purpose of the payment; and
- (e) the amount of the cheque.

(4) When a conveyancer authorises the payment of trust money by electronic transfer of funds, the conveyancer—

- (a) must prepare and keep as part of the conveyancer's records the following information:
 - (i) the date and reference number of the payment;
 - (ii) the name of the payee;
 - (iii) the client name or reference and brief particulars of the purpose of the payment;
 - (iv) the name or style of the ADI account to which the payment is made, its number and the identifying numbers of the receiving ADI and its branch;
 - (v) the amount of the payment; and
- (b) must, on receiving official written confirmation that the payment has been made, keep that confirmation as part of the conveyancer's records.

Maximum penalty: \$2 500.

Keeping of records

11. For the purposes of section 23(1)(c) of the Act, the detailed accounts of receipts and disbursements of trust money to be compiled by a conveyancer must comply with regulations 11A, 11B and 11C.

Cash books

11A. (1) A conveyancer must keep as part of the conveyancer's records—

- (a) a cash receipts book in which the conveyancer records the following information in respect of each receipt of trust money:
 - (i) the date and reference number of the receipt;
 - (ii) the name of the person from whom the money is received;
 - (iii) the client name or reference to which the transaction relates;
 - (iv) brief particulars of the purpose of the receipt;
 - (v) the amount of the receipt; and
- (b) a cash payments book in which the conveyancer records the following information in respect of each payment of trust money:
 - (i) the date and reference number of the cheque or electronic transfer of funds by which the payment was made;
 - (ii) the name of the payee;
 - (iii) the client name or reference to which the transaction relates;
 - (iv) brief particulars of the purpose of the payment;
 - (v) the amount of the cheque or electronic transfer of funds.

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(2) A conveyancer need not keep a cash receipts book or a cash payments book as required by subregulation (1) if the conveyancer uses a computer program to record the information referred to in that subregulation in respect of each receipt or payment of trust money and the program—

- (a) requires input in each field of a data entry screen intended to receive information in respect of a receipt or payment so that all of the information referred to in subregulation (1) is recorded in respect of each receipt and payment; and
- (b) is capable, at any time, of producing—
 - (i) a report of the information in respect of receipts of trust money in the order in which they were received; and
 - (ii) a report of the information in respect of payments of trust money in the order in which they were made.

(3) A conveyancer who uses a computer program as referred to in subregulation (2) must ensure that—

- (a) at the end of each month, hard copies of each of the following reports are produced:
 - (i) a report of the information in respect of receipts of trust money received during that month in the order in which they were received;
 - (ii) a report of the information in respect of payments of trust money made during that month in the order in which they were made; and
- (b) those hard copies are kept as part of the conveyancer's records.

(4) The records of receipts and payments must be made by the conveyancer in accordance with this regulation in the order in which they are received or made, each such record being made within two working days after the receipt or payment in question.

(5) Subregulation (4) does not apply in relation to receipts or payments by way of electronic transfer of funds, a record of which must be made within two working days after the conveyancer receives official confirmation that the transfer has occurred.

Separate trust ledger accounts

11B. (1) A conveyancer must ensure that the conveyancer's trust ledger accounts are kept separately—

- (a) in respect of each of the conveyancer's clients; and
- (b) if the conveyancer performs services for a client in respect of a number of transactions between different parties—in respect of each such transaction.

(2) The conveyancer must record in each of the separate accounts the following details:

- (a) the name and address of the client to whom the accounts relate;
- (b) a brief description of the service provided and the transaction to which the accounts relate;

- (c) in respect of each receipt or disbursement of trust money—
 - (i) the date and reference number of the receipt or disbursement;
 - (ii) the name of the person from whom the money is received or to whom the money is disbursed;
 - (iii) brief particulars of the purpose of the receipt or disbursement;
 - (iv) the amount received or disbursed.

(3) The conveyancer must ensure that any changes in the details referred to in subregulation (2)(a) or (b) are recorded in a manner that enables the changes and the order in which they occurred to be identified.

(4) If the conveyancer transfers money between any of the separate accounts, the transfer must be clearly recorded—

- (a) in both accounts; and
- (b) in a transfer journal,

in sufficient detail that the transfer may be clearly understood.

(5) The records of receipts, disbursements and transfers must be made by the conveyancer in accordance with this regulation in the order in which the receipts, disbursements or transfers are received or made, each such record being made within two working days after the receipt, disbursement or transfer in question.

(6) Subregulation (5) does not apply in relation to receipts or payments by way of electronic transfer of funds, a record of which must be made within two working days after the conveyancer receives official confirmation that the transfer has occurred.

(7) If a conveyancer uses a computer program to keep trust ledger accounts or a transfer journal, the conveyancer must ensure that—

- (a) the program is incapable of—
 - (i) recording a transaction that would result in a debit balance in a trust ledger account unless a separate contemporaneous record of the transaction is also made so that, at any time, a hard copy may be produced of all such transactions in chronological order; and
 - (ii) deleting from its records the information relating to a trust ledger account unless—
 - (A) the balance of the account is zero; and
 - (B) a hard copy of all of the information required under these regulations relating to the account has been produced; and
 - (iii) changing existing information relating to a transaction otherwise than by making a further entry showing a separate transaction to effect the change; and

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- (b) the program automatically inserts consecutive page numbers into any hard copy report produced by use of the program; and
- (c) the program requires input in each field of a data entry screen intended to receive information for the purposes of a trust ledger account or transfer journal so that the entry contains all of the information required by this regulation.

Maximum penalty: \$2 500.

(8) If a conveyancer uses a computer program to keep trust ledger accounts or a transfer journal, the conveyancer must, within two working days of a request from the Commissioner or the conveyancer's auditor, produce hard copies of the trust ledger accounts or transfer journal.

Maximum penalty: \$2 500.

Reconciliation statements

11C. (1) A conveyancer must, at the end of each month, prepare and keep as part of the conveyancer's records—

- (a) a statement reconciling the balance of the conveyancer's cash books, or equivalent computer records, kept under regulation 11A with the balance of the conveyancer's trust account; and
- (b) a statement reconciling the balances of the ledgers comprised in the conveyancer's trust ledger accounts with the balance of the conveyancer's trust account.

(2) The conveyancer is not required to set out a list of individual balances, or the names of the clients on whose behalf money is held, when preparing the statement referred to in subregulation (1)(b).

Transfer of money from trust account to office account

12. A conveyancer who becomes entitled to money held in the conveyancer's trust account in or towards satisfaction of the conveyancer's commission, fees, costs or disbursements must, as soon as practicable and in any event within three months, transfer the money to an account maintained by the conveyancer for receipts other than trust money.

Maximum penalty: \$2 500.

Audit of trust accounts

13. (1) For the purposes of section 24(1)(a) of the Act, the audit period in respect of which a conveyancer must have the accounts and records audited is the period from—

- (a) the end of the conveyancer's last audit period (whether under the Act or the repealed *Land Agents, Brokers and Valuers Act 1973*); or
- (b) in the case of a conveyancer being granted registration—the date of registration,

until—

- (c) two months before the date next occurring on which the conveyancer must lodge an annual return; or
- (d) if the Commissioner fixes some other date at the request of the conveyancer—the date next occurring fixed by the Commissioner.

- (2) In carrying out an audit, the auditor must—
- (a) make checks that will enable the auditor to give an opinion as to whether the conveyancer has, during the period covered by the audit, complied with the Act and these regulations relating to the conveyancer's accounts and records; and
 - (b) ascertain whether a trust account under Division 2 of Part 4 of the Act was kept by the conveyancer during that period; and
 - (c) make a general test examination of any trust account kept by the conveyancer and of the pass books and statements relating to any such account during that period; and
 - (d) make a comparison as to no fewer than two dates (one to be the last day of the period of the audit and one other to be a date within that period selected by the auditor) between—
 - (i) the liabilities of the conveyancer to the conveyancer's clients as shown by the conveyancer's trust ledger accounts and the records kept under these regulations; and
 - (ii) the aggregate of the balances standing to the credit of the conveyancer's trust account; and
 - (e) ask for such information and explanations as the auditor may require for the purposes of this regulation.

(3) For the purposes of section 24(1)(b) of the Act, the statement relating to the audit must be prepared by the auditor and must include all matters relating to the conveyancer's accounts and records that should, in the auditor's opinion, be communicated to the Commissioner and, in particular, deal with each of the following matters:

- (a) whether the accounts and records appear to have been kept regularly and properly written up at all times;
- (b) whether the accounts and records have been ready for examination at the periods appointed by the auditor;
- (c) whether the conveyancer has complied with the auditor's requirements;
- (d) whether, at any time during the period of the audit, the conveyancer's trust account was overdrawn and, if so, the full explanation for that given by the conveyancer;
- (e) whether the conveyancer has, or has had, any debit balances in his or her trust account and the explanation or reason for such a debit given by the conveyancer;
- (f) whether the auditor has received and examined the notice given to the auditor under regulation 14 and the result of that examination;
- (g) whether the conveyancer has complied with section 15 of the Act;
- (h) if the conveyancer uses a computer program to keep the conveyancer's accounts and records—whether the program allows for the accounts and records to be conveniently and properly audited.

(4) The auditor must attach to the auditor's statement a copy of the conveyancer's notice delivered to the auditor under regulation 14(1).

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(5) The auditor must verify the statement by statutory declaration and give a signed copy of the statement to the conveyancer.

- (6) If the auditor in the course of auditing the conveyancer's accounts and records discovers—
- (a) that they are not kept in a manner that enables them to be properly audited; or
 - (b) a matter that appears to the auditor to involve dishonesty or a breach of the law by the conveyancer; or
 - (c) a loss or deficiency of trust money or a failure to pay or account for trust money; or
 - (d) a failure to comply with the Act or these regulations,

the auditor must, as soon as possible, give a report in respect of the discovery to the Commissioner and the conveyancer concerned.

Maximum penalty: \$2 500.

(7) For the purposes of section 24(3)(b) of the Act, a conveyancer must lodge an audit statement or declaration within two months after the end of each audit period.

(8) For the purposes of section 24(4) of the Act, the civil penalty for default in lodging the audit statement or declaration within the time allowed is as set out in the Schedule.

Conveyancer's statement

14. (1) A conveyancer who is required to have accounts and records audited under Division 2 of Part 4 of the Act must, before the completion of the audit, certify—

- (a) under his or her hand; or
- (b) in the case of a firm of conveyancers—under the hands of not less than two partners of the firm; or
- (c) in the case of a conveyancer that is a company—under the hands of not less than two directors of the company or, if the company has only one director, under the hand of that director,

and deliver to the auditor a notice setting out in detail, as of the last day of the period to which the audit relates, particulars of—

- (d) the names of all persons on whose behalf the conveyancer is holding trust money and the amount of the credit of each such person; and
- (e) all negotiable or bearer securities or deposit receipts in the name of the conveyancer which represent money drawn from the conveyancer's trust account and which were held by the conveyancer on that day; and
- (f) —
 - (i) the names of the trust accounts in which the balance of the conveyancer's trust money is lodged and the balances on that date of those accounts; and
 - (ii) if the trust account balances are not in agreement with the balances of the conveyancer's ledger accounts—a statement reconciling those balances.

Maximum penalty: \$2 500.

- (2) The notice must be verified by statutory declaration—
- (a) of the conveyancer; or
 - (b) in the case of a firm of conveyancers—of not less than two of the partners of the firm; or
 - (c) in the case of a conveyancer that is a company—of not less than two directors of the company or, if the company has only one director, of that director.

(3) The conveyancer must give the auditor making the next succeeding audit of the conveyancer's accounts and records—

- (a) at the request of the auditor, a copy of the notice, together with a signed copy of the auditor's statement of the last preceding audit of the conveyancer's accounts and records; or
- (b) if the conveyancer's accounts and records are being audited for the first time or, if for any other reason a copy of the notice cannot be produced for the purpose of the audit—before completion of the audit, a notice containing the same particulars as to money, negotiable or bearer securities and deposit receipts held on the first day of the period to which the audit relates.

Maximum penalty: \$2 500.

Audit when conveyancer ceases to carry on business

15. (1) If a conveyancer ceases to carry on business as a conveyancer, the conveyancer, or, if the conveyancer has died, the conveyancer's personal representative, must—

- (a) cause the conveyancer's accounts and records kept under Division 2 of Part 4 of the Act to be audited and reported on by an auditor for the period from the previous audit up to the date on which the conveyancer's affairs are wound up; and
- (b) submit a copy of the auditor's statement to the Commissioner within four months of the winding up of the conveyancer's affairs or within such further period as the Commissioner may allow.

Maximum penalty: \$2 500.

(2) The relevant provisions of the Act and these regulations apply (subject to such modifications as may be necessary) to the audit and statement required by this regulation.

(3) The conveyancer, or his or her personal representative, must continue to comply with the Act and these regulations as if the conveyancer had not ceased to carry on business until the conveyancer's affairs (so far as they relate to trust money and other matters required to be recorded under these regulations) are properly and finally wound up.

Maximum penalty: \$2 500.

(4) The preceding provisions of this regulation do not apply to a conveyancer who, before ceasing to carry on business, was a member of a firm if all continuing members of the firm and (unless the conveyancer is dead) the conveyancer certify to the Commissioner that the trust money and other matters in respect of which records are required to be kept under these regulations are under the proper administration and control of the continuing partners or some of them.

(5) In this regulation—

"conveyancer" includes a former conveyancer.

Audit and report, etc., for firm operates for each partner

16. An audit of accounts and records kept by a firm of conveyancers and the auditor's statement and attached notice relating to the firm's accounts and records will be taken to operate as an audit, statement and notice in respect of each conveyancer who is a member of the firm.

Certain persons may not audit accounts and records of conveyancer

17. A person must not audit the accounts and records of a conveyancer if the person—

- (a) is, or has been within two years, an employee or partner of the conveyancer; or
- (b) is an employee of another conveyancer actually carrying on business as a conveyancer; or
- (c) is, himself or herself, a conveyancer carrying on business as a conveyancer.

Maximum penalty: \$2 500.

Indemnity fund

18. For the purposes of section 31(2)(c) of the Act, money standing to the credit of the indemnity fund may be applied in payment of amounts approved by the Minister towards the cost of—

- (a) the advisory service relating to trust accounts conducted by the Australian Institute of Conveyancers South Australian Division Inc. for the benefit of conveyancers, including the preparation and publication of manuals and other materials as part of that service;
- (b) the advisory service relating to conveyancing conducted by the Australian Institute of Conveyancers South Australian Division Inc. for the benefit of members of the public, including the preparation and publication of brochures and other materials as part of that service;
- (c) the educational program known as the Professional Development Program conducted by the Australian Institute of Conveyancers South Australian Division Inc. for the benefit of conveyancers;
- (d) a review of the curriculum of the Land Broking Certificate course offered by the Department for Employment, Training and Further Education.

Claimant's entitlement to compensation and interest

19. For the purposes of section 39(2) of the Act, the rate of interest by which a claimant's entitlement to compensation is to be increased is 5% per annum.

SCHEDULE

Fees

1. Application fee for registration (s. 6(1)(b) of the Act) \$ 175
2. Registration fee—payable before registration under Part 2 of the Act—
 - (a) for a natural person \$ 215
 - (b) for a body corporate \$ 322

If the period between the grant of the registration and the next date for payment of a fee under section 8 of the Act is less than or more than 12 months, a pro rata adjustment is to be made to the amount of the additional fee by applying the proportion that the length of that period bears to 12 months.

3. Annual fee (s. 8(2)(a) of the Act)—
 - (a) for a natural person \$ 215
 - (b) for a body corporate \$ 322

If the period between a date for payment of a fee under section 8 of the Act and the next date for payment of the fee under that section (as nominated by the Commissioner) is less than or more than 12 months, a pro rata adjustment is to be made to the amount of the fee by applying the proportion that the length of that period bears to 12 months.

4. Default penalty fee (s. 8(3) of the Act) \$ 114
5. Civil penalty for default (s. 24(4) of the Act) \$ 356
6. Fee for replacement of certificate of registration \$ 16

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APPENDIX**LEGISLATIVE HISTORY****Transitional Provisions**

(Transitional provision from Regulation No. 259 of 1996, reg. 4)

4. A regulation varied or revoked by these regulations will continue to apply (as in force immediately prior to the variation or revocation coming into operation) to an expiation notice issued under the varied or revoked regulations.

Legislative History

(entries in bold type indicate amendments incorporated since the last reprint)

Regulation 3(1):	definition of "approved scheme" inserted by 120, 1998, reg. 3 definition of "professional indemnity insurance" inserted by 120, 1998, reg. 3
Regulation 3A:	inserted by 71, 1998, reg. 3
Regulation 4:	varied by 120, 1998, reg. 4
Regulation 5(1):	varied by 177, 2001, reg. 3
Regulation 5(2):	varied by 85, 1996, reg. 3; 78, 1997, reg. 3; 71, 1998, reg. 4
Regulation 5(3):	inserted by 120, 1998, reg. 5
Regulation 6(1) and (2):	varied by 259, 1996, reg. 3 (Sched. cl. 8); 120, 1998, reg. 9
Regulation 6(1a):	inserted by 120, 1998, reg. 6(a)
Regulation 6(3):	varied by 259, 1996, reg. 3 (Sched. cl. 8); 120, 1998, reg. 9
Regulation 6(4):	inserted by 120, 1998, reg. 6(b); substituted by 177, 2001, reg. 4
Regulation 7:	varied by 259, 1996, reg. 3 (Sched. cl. 8); 120, 1998, reg. 9; varied and redesignated as reg. 7(1) by 177, 2001, reg. 5(a), (b)
Regulation 7(2) - (4):	inserted by 177, 2001, reg. 5(b)
Regulations 7A and 7B:	inserted by 120, 1998, reg. 7
Regulation 7C:	inserted by 192, 2000, reg. 3
Regulation 8:	varied by 143, 1999, reg. 3 (Sched. cl. 3); substituted by 19, 2002, reg. 3
Regulation 8A:	inserted by 19, 2002, reg. 3
Regulation 9:	varied by 143, 1999, reg. 3 (Sched. cl. 3); varied and redesignated as reg. 9(1) by 19, 2002, reg. 4(a)-(d)
Regulation 9(2) and (3):	inserted by 19, 2002, reg. 4(d)
Regulation 10(1) and (2):	varied by 120, 1998, reg. 7
Regulation 10(4):	inserted by 19, 2002, reg. 5
Regulation 11:	substituted by 19, 2002, reg. 6
Regulations 11A - 11C:	inserted by 19, 2002, reg. 6
Regulation 12:	varied by 120, 1998, reg. 7
Regulation 13(3):	varied by 19, 2002, reg. 7
Regulation 13(6):	varied by 120, 1998, reg. 9
Regulation 13(8):	varied by 71, 1998, reg. 5
Regulation 14(1):	varied by 120, 1998, reg. 8(a), 9
Regulation 14(2):	varied by 120, 1998, reg. 8(b)
Regulation 14(3):	varied by 120, 1998, reg. 9
Regulation 15(1) and (3):	varied by 120, 1998, reg. 9
Regulation 17:	varied by 120, 1998, reg. 9
Regulation 18:	varied by 200, 1995, reg. 3
Schedule:	varied by 85, 1996, reg. 4; 78, 1997, reg. 4; 71, 1998, reg. 6; substituted by 58, 1999, reg. 3; 79, 2000, reg. 3; 79, 2001, reg. 3; varied by 177, 2001, reg. 6; substituted by 69, 2002, reg. 3