**Conveyancers (Trust Account and General) Regulations 2018**

**S.R. No. 62/2018**

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S.R. No. 62/2018

***Conveyancers Act 2006***

**Conveyancers (Trust Account and General) Regulations 2018**

The Lieutenant-Governor as the Governor's deputy, with the advice of the Executive Council, makes the following Regulations:

Dated: 22 May 2018

Responsible Minister:

MARLENE KAIROUZ

Minister for Consumer Affairs, Gaming and Liquor Regulation

ANDREW ROBINSON

Clerk of the Executive Council

Part 1—Preliminary

 1 Objectives

The objectives of these Regulations are to prescribe—

 (a) procedures for the keeping of general trust accounts and trust ledger accounts, controlled money accounts, transit money and other trust records; and

 (b) general matters.

 2 Authorising provision

These Regulations are made under section 188 of the **Conveyancers Act 2006**.

3 Commencement

These Regulations come into operation on
26 May 2018.

4 Revocations

The following Regulations are **revoked**—

 (a) Conveyancers (Professional Conduct and Trust Account and General) Regulations 2008[[1]](#endnote-2);

 (b) Conveyancers (Professional Conduct and Trust Account and General) Amendment Regulations 2010[[2]](#endnote-3);

 (c) Conveyancers (Professional Conduct and Trust Account and General) Amendment (Infringements) Regulations 2010[[3]](#endnote-4);

 (d) Conveyancers (Professional Conduct and Trust Account and General) Amendment Regulations 2015[[4]](#endnote-5).

 5 Definitions

In these Regulations—

***authorised employee*** of a licensee means an employee authorised by the licensee under regulation 6;

***BSB number*** (Bank State Branch number) means the number assigned to identify a particular branch of a particular ADI;

***direct deposit*** means a deposit made by transferring money directly from one account into another without the use of a cheque or cash;

***matter description*** means a brief phrase or expression assigned by a conveyancing business to describe a matter;

***matter reference*** means a number or other reference assigned by a conveyancing business to identify a matter;

***the Act*** means the **Conveyancers Act 2006**.

Part 2—Trust accounts and trust money

Division 1—Authorised employees

 6 Licensee may authorise employee

 (1) A licensee may authorise an employee of the licensee to be an authorised employee for the purposes of these Regulations.

 (2) An authorisation under subregulation (1) must be given by instrument in writing and be signed by the licensee and the employee.

Division 2—Computerised accounting system

 7 Application of Division

This Division applies if a licensee keeps trust records (including records relating to controlled money or transit money) by means of a computerised accounting system.

 8 Licensee must keep chronological record of creation, amendment and deletion of information

 (1) A licensee must keep a record, in accordance with subregulation (2), of the creation, amendment or deletion of specified information in a computerised accounting system.

 (2) A record referred to in subregulation (1) must—

 (a) be in a permanent form; and

 (b) be compiled in chronological sequence; and

 (c) disclose the specified information as it appeared before and after its creation, amendment or deletion.

 (3) In this regulation, ***specified information*** means all of the following—

 (a) client names;

 (b) client addresses;

 (c) matter references;

 (d) matter descriptions;

 (e) ledger account numbers or other descriptions.

 9 Requirements regarding computerised accounting system

(1) The licensee must ensure that the computerised accounting system is not capable of accepting the entry of a transaction resulting in a debit balance to a trust ledger account, unless the system records the transaction at the same time and in a manner that enables the production, in a permanent form, of a separate chronological report of all occurrences of that kind.

 (2) The licensee must ensure that the computerised accounting system is not capable of deleting a trust ledger account unless—

 (a) the balance of the account is zero and all outstanding cheques have been presented; and

 (b) when the account is deleted, a copy of the account is kept in a permanent form.

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

 (4) The licensee must ensure that each page of a printable record is numbered sequentially or is printable in such a way that no page can be removed from the record.

 (5) The licensee must ensure that the computerised accounting system is not capable of amending the particulars of a transaction already recorded, otherwise than by a transaction separately recorded that makes the amendment.

 (6) The licensee must ensure that the computerised accounting system requires input in every field of a data entry screen intended to receive information required by this Part to be included in trust records.

 10 Back-ups

The licensee must ensure that—

 (a) a back-up copy of all records required by this Part is made at least once each month; and

 (b) each back-up copy is kept by the licensee; and

 (c) a complete set of back-up copies is kept in a separate location so that any incident that may adversely affect the records does not also affect the back-up copy.

Division 3—General trust accounts

 11 Establishment and maintenance of general trust account

 (1) For the purposes of section 66(2) of the Act, a licensee must ensure that—

 (a) a general trust account is established in Victoria as soon as practicable after the licensee receives trust money to which Part 5 of the Act applies (other than controlled money or transit money); and

 (b) the account is maintained in Victoria; and

 (c) the name of the account includes—

 (i) the name of the licensee; and

 (ii) the expression "conveyancing business trust account" or "conveyancing business trust a/c".

 (2) Subregulation (1)(c)(ii) does not require the repetition of the words "conveyancing business" if those words form part of the name of the licensee.

 12 Receipting of trust money

 (1) This regulation applies if a licensee receives trust money that is required to be paid into a general trust account.

 (2) The licensee must make out a receipt as soon as practicable—

 (a) after receiving the trust money; or

 (b) in the case of trust money received by direct deposit, after receiving notice or confirmation (in written or electronic form) of the deposit from the relevant ADI.

 (3) The licensee must ensure that the receipt—

 (a) contains the required particulars; and

 (b) is made out in duplicate , unless at the time the receipt is made out those particulars are recorded by a computerised accounting system in the trust account receipts cash book.

 (4) For the purposes of subregulation (3), the required particulars are as follows—

 (a) the date the receipt is made out and, if different, the date the money was received;

 (b) the receipt number;

 (c) the amount of money received;

 (d) the form in which the money was received;

 (e) the name of the person from whom the money was received;

 (f) the name of the client in respect of whom the money was received and the matter description and matter reference;

 (g) the purpose for which the money was received;

 (h) the name of the licensee's conveyancing business, or the business name under which the licensee performs conveyancing work, and the expression "trust account" or "trust a/c";

 (i) the name of the person who made out the receipt.

 (5) The licensee must ensure that the original receipt is given, on request, to the person from whom the trust money was received.

 (6) The licensee must ensure that receipts are consecutively numbered and issued in consecutive sequence.

 (7) The licensee must keep the original receipt if the receipt is cancelled or not delivered.

 13 Deposit records for trust money

 (1) This regulation applies if—

 (a) a licensee receives trust money that is required to be paid into a general trust account; and

. (b) the money is paid into a general trust account by means other than a direct deposit.

 (2) The licensee must—

1. produce a deposit record containing the required particulars to the approved ADI at the time the deposit is made; and
2. make out the deposit record in duplicate, unless at the time the deposit is paid the required particulars are recorded by a computerised accounting system in the trust account deposits book.

 (3) The licensee must keep the duplicate deposit record for each deposit to the general trust account in a deposit book or otherwise securely filed in the order in which the deposits were made.

 (4) For the purposes of subregulation (2)(a), the required particulars are as follows—

 (a) the date of the deposit;

 (b) the amount of the deposit;

 (c) whether the deposit consists of cheques or cash (and the amount of each);

 (d) for each cheque—

 (i) the name of the drawer of the cheque; and

 (ii) the name and branch (or BSB number) of the ADI on which the cheque is drawn; and

 (iii) the amount of the cheque.

 14 Payment by cheque

 (1) If a licensee withdraws trust money from a general trust account by cheque, the licensee must ensure that the cheque—

 (a) is made payable to, or to the order of, a specified person or persons and not to bearer or cash; and

 (b) is crossed "not negotiable"; and

 (c) includes—

 (i) the name of the licensee's conveyancing business; and

 (ii) the expression "conveyancing business" or "conveyancing business trust a/c"; and

 (d) is signed by the licensee, or if the licensee is not available, by an authorised employee of the licensee.

 (2) The licensee must keep a paper copy record of the required particulars, unless those particulars are recorded by a computerised accounting system in the trust account payments cash book at the time the cheque is issued.

 (3) For the purposes of subregulation (2), the following are the required particulars—

 (a) the date and number of the cheque;

 (b) the amount ordered to be paid by the cheque;

 (c) the name of the person to whom the payment is to be made or, if the cheque is made payable to an ADI, the name or BSB of the ADI and the name of the person receiving the benefit of the payment;

 (d) the name of the person on whose behalf the payment was made and the matter reference;

 (e) the ledger account to be debited;

 (f) the purpose for which the payment was made.

 (4) The licensee must keep records relating to payments by cheque (including cheque requisitions) in the order in which the cheques were issued.

 (5) Subregulation (1)(c)(ii) does not require the repetition of the words "conveyancing business" if those words form part of the name or business name of the licensee's conveyancing business.

 15 Payment by electronic funds transfer

 (1) This regulation applies to the withdrawal of trust money from a general trust account by electronic funds transfer.

 (2) An electronic funds transfer must be under the direction of, or with the authority of—

 (a) a licensee; or

 (b) if the licensee is not available, an authorised employee of the licensee.

 (3) The licensee must keep a paper record of the required particulars of each payment, unless those particulars are recorded by a computerised accounting system in the trust account payments cash book at the time the transfer is effected.

 (4) For the purposes of subregulation (3), the required particulars are as follows—

 (a) the date and number of the transaction;

 (b) the amount transferred;

 (c) the name and number of the account to which the amount was transferred and the relevant BSB number;

 (d) the name of the person to whom the payment was made or, if the payment is to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment;

 (e) the name of the person on whose behalf the payment was made and the matter reference;

 (f) the ledger account to be debited;

 (g) the purpose for which the payment was made.

 (5) The licensee must keep records relating to payments by electronic funds transfer (including transfer requisitions) in the order in which the transfers were effected.

 16 Recording transactions in trust account cash books

A licensee who maintains a general trust account must keep the following trust account cash books—

 (a) a trust account receipts cash book in accordance with regulation 17; and

 (b) a trust account payments cash book in accordance with regulation 18.

 17 Trust account receipts cash book

 (1) A licensee must record the following particulars in a licensee's trust account receipts cash book in respect of each receipt of trust money—

 (a) the date the receipt is made out and, if different, the date the money was received;

 (b) the receipt number;

 (c) the amount of money received;

 (d) the form in which the money was received;

 (e) the name of the person from whom the money was received;

 (f) the name of the client in respect of whom the money was received and the matter description and matter reference;

 (g) the purpose for which the money was received;

 (h) the ledger account to be credited.

 (2) The licensee must record the date and amount of each deposit in the general trust account in the trust account receipts cash book.

 (3) The licensee must ensure that the particulars in respect of receipts are recorded—

 (a) in the order in which the receipts are made out; and

 (b) within 5 business days from the day the receipt was made out.

 18 Trust account payments cash book

 (1) A licensee must record the following particulars in the licensee's trust account payments cash book in respect of each payment of trust money by cheque—

 (a) the date and number of the cheque;

 (b) the amount ordered to be paid by the cheque;

 (c) the name of the person to whom the payment is to be made or, if the cheque is made payable to an ADI, the name or BSB of the ADI and the name of the person receiving the benefit of the payment;

 (d) the name of the person on whose behalf the payment was made and the matter reference;

 (e) the ledger account to be debited;

 (f) the purpose for which the payment was made.

 (2) The licensee must record the following particulars in the licensee's trust account payments cash book in respect of each payment of trust money by electronic funds transfer—

 (a) the date and number of the transaction;

 (b) the amount transferred;

 (c) the name and number of the account to which the amount was transferred and the relevant BSB number;

 (d) the name of the person to whom the payment was made or, if the payment is to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment;

 (e) the name of the person on whose behalf the payment was made and the matter reference;

 (f) the ledger account to be debited;

 (g) the purpose for which the payment was made.

 (3) The licensee must ensure that the particulars in respect of payments are recorded—

1. in the order in which the payments are made; and
2. within 5 business days from the day the payment was made.

 19 Recording transactions in trust ledger accounts

 (1) A licensee who keeps a general trust account must keep a separate trust ledger account in relation to each client in each matter for which trust money has been received by the licensee.

 (2) The licensee must record the following particulars, and keep them up to date, in the title of a trust ledger account—

 (a) the name of the person for or on behalf of whom the trust money was paid;

 (b) the person's address;

 (c) the matter in relation to which the trust money was received.

 (3) The licensee must record the following particulars in the trust ledger account in respect of each receipt of trust money for the matter—

 (a) the date a receipt was made out for the money or, if different, the date the money was received;

 (b) the amount of money received;

 (c) the name of the person from whom the money was received;

 (d) the purpose for which the money was received.

 (4) The licensee must record the following particulars in the trust ledger account in respect of each payment of trust money by cheque—

 (a) the date of the cheque;

 (b) the amount ordered to be paid by the cheque;

 (c) the name of the person to whom the payment is to be made or, if the cheque is made payable to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment;

 (d) the purpose for which the payment was made.

 (5) The licensee must record the following particulars in the trust ledger account in respect of each payment of trust money by electronic funds transfer—

 (a) the date of the transaction;

 (b) the amount transferred;

 (c) the name of the account to which the amount was transferred;

 (d) the name of the person to whom the payment was made or, if the payment is to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment;

 (e) the purpose for which the payment was made.

 (6) The licensee must ensure that the following particulars are recorded in the trust ledger account in respect of each transfer of trust money effected by a journal entry—

 (a) the date of the transfer;

 (b) the amount transferred;

 (c) the name of the other trust ledger account from which or to which the money was transferred;

 (d) particulars sufficient to identify the purpose for which the payment was made.

 (7) The licensee must ensure that the transactions relating to trust money are recorded in the trust ledger account in the order in which the transactions occur.

 (8) The licensee must ensure that the particulars in respect of a receipt, payment or transfer of trust money are recorded within 5 business days from the day the receipt was made out, the payment was made or the transfer was effected, as the case requires.

 (9) The licensee must ensure that the trust ledger account balance is recorded in the trust ledger account after each receipt, payment or transfer of trust money.

 20 Journal transfers

 (1) A licensee may transfer trust money held by the licensee by journal entry from one trust ledger account to another trust ledger account, if—

 (a) the licensee is authorised or entitled to withdraw the money and pay it to the other trust ledger account; and

 (b) the transfer has been authorised in writing—

 (i) by the licensee; or

 (ii) if the licensee is not available, by an authorised employee of the licensee.

 (2) The licensee must keep a trust account transfer journal if the licensee transfers trust money by journal entry.

 (3) The licensee must ensure that the following particulars are recorded in the trust account transfer journal in respect of each transfer of trust money by journal entry—

 (a) the date of the transfer;

 (b) the names of all ledger accounts to be debited or credited, including identifying references;

 (c) the amount transferred;

 (d) the purpose for which the transfer is made, the matter reference and a short description of the matter.

 (4) The licensee must ensure that journal pages and entries are consecutively numbered.

 (5) The licensee must keep particulars of the authorisation for each transfer of trust money by journal entry, whether in the trust account transfer journal or in some other way.

 21 Reconciliation of trust records

 (1) A licensee who maintains a general trust account must reconcile the trust records relating to the general trust account.

 (2) The licensee must reconcile the trust records referred to in subregulation (1) as at the end of each named month, from the first day of that named month to the last day of that named month, by preparing—

 (a) a statement—

 (i) reconciling the general trust account balance as shown in the ADI records with the balance of the trust account cash books; and

 (ii) showing the date the statement was prepared; and

 (b) a statement—

 (i) reconciling the balance of the trust ledger accounts with the balance of the trust account cash books; and

 (ii) containing a list of the trust ledger accounts showing the name, identifying the reference and balance of each and a short description of the matter to which each relates; and

 (iii) showing the date the statement was prepared.

 (3) The licensee must prepare the statements within 15 business days after the end of the relevant month.

(4) The licensee must keep the reconciliation statements.

 22 Trust ledger account in name of conveyancing business or licensee

 (1) A licensee must ensure that a trust ledger account maintained in the licensee's name or the conveyancing business's name is used only for the purpose of aggregating in the account, by transfer from other accounts in the trust ledger, money properly due to the licensee for costs.

 (2) A licensee who maintains a trust ledger account referred to in subregulation (1) must ensure that the money in the trust ledger account is withdrawn from the general trust account not later than one month after the day on which the money was transferred to the trust ledger account.

Division 4—Controlled money

 23 Requirements for controlled money accounts

 (1) For the purposes of section 64(2) of the Act, a person may give a direction referred to in section 64(1) of the Act to a licensee if—

 (a) the amount of money to be paid to the licensee exceeds $50 000; or

 (b) the transaction in respect of which the money is to be paid is not to be settled within 60 days of the direction.

 (2) This regulation does not apply to an account established in Victoria before 1 July 2008.

 24 Maintenance of controlled money accounts

For the purposes of section 71 of the Act, the licensee must maintain a controlled money account under an account name that includes the following particulars—

 (a) the name of the licensee;

 (b) the expression "controlled money account" or "CMA/c";

 (c) the purpose of the account;

 (d) particulars that are sufficient to distinguish the account from any other account maintained by the licensee.

 25 Receipt of controlled money

 (1) This regulation applies if a licensee receives controlled money.

 (2) The licensee must operate a separate controlled money receipt system for the receipt of controlled money for all the licensee's controlled money accounts.

 (3) After receiving controlled money, the licensee must make out a receipt as soon as practicable—

 (a) after the controlled money is received; or

 (b) in the case of controlled money received by direct deposit, after the licensee receives notice or confirmation (in written or electronic form) of the deposit from the ADI concerned.

 (4) The licensee must—

 (a) ensure the receipt contains the required particulars; and

 (b) make out the receipt in duplicate, unless at the time the receipt is made out those particulars are recorded by a computerised accounting system in the register of controlled money.

 (5) For the purposes of subregulation (4), the required particulars are as follows—

 (a) the date the receipt is made out and, if different, the date the money was received;

 (b) the amount of money received;

 (c) the form in which the money was received;

 (d) the name of the person from whom the money was received;

 (e) the name of the person on whose behalf the money was received and the matter description and matter reference;

 (f) the purpose for which the money was received;

 (g) the name of, and other details clearly identifying, the controlled money account to be credited, unless the account has not been established by the time the receipt is made out;

 (h) the name of the licensee's conveyancing business, or the business name under which the licensee performs conveyancing work, and the expression "controlled money receipt";

 (i) the name of the person who made out the receipt;

 (j) the receipt number.

 (6) If the controlled money account to be credited has not been established before the receipt is made out, the licensee must ensure that the name of, and other details clearly identifying, the account when established are included on the duplicate receipt (if any).

 (7) The licensee must give the original receipt, on request, to the person from whom the controlled money was received.

 (8) The licensee must ensure that receipts are consecutively numbered and issued in consecutive sequence.

 (9) The licensee must keep the original receipt if the receipt is cancelled or not delivered.

 (10) A receipt is not required to be made out for any interest or other income received from the investment of controlled money and credited directly to a controlled money account.

 26 Withdrawal of controlled money must be authorised

 (1) A withdrawal of money from a controlled money account held by a licensee must be effected by, or under the direction or with the authority of—

 (a) the licensee; or

 (b) if the licensee is not available, an authorised employee of the licensee.

 (2) The licensee must keep a written record of the required particulars of each withdrawal, unless at the time the withdrawal is made those particulars are recorded by a computerised accounting system.

 (3) For the purposes of subregulation (2), the required particulars are as follows—

 (a) the date and number of the transaction;

 (b) the amount withdrawn;

 (c) in the case of a transfer made by electronic funds transfer—the name and number of the account to which the amount was transferred and the relevant BSB number;

 (d) the name of the person to whom payment is to be made or, if the payment is to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment;

 (e) the name of the person on whose behalf the payment was made and the matter reference;

 (f) the purpose for which the payment was made;

 (g) the person or persons effecting, directing or authorising the withdrawal.

 (4) The licensee must ensure that the particulars are—

1. recorded in the order in which the payments are made; and
2. recorded separately for each controlled money account.

 27 Register of controlled money

 (1) A licensee who receives controlled money must maintain a register of controlled money, consisting of the records of controlled money movements for the controlled money accounts of the licensee.

 (2) The licensee must ensure that a separate record of controlled money movements is maintained for each controlled money account.

 (3) The licensee must ensure that a record of controlled money movements for a controlled money account records the following information—

 (a) the name of the person on whose behalf the controlled money is held;

 (b) the person's address;

 (c) particulars sufficient to identify the matter;

 (d) any changes to the information referred to in paragraphs (a) to (c).

 (4) The licensee must ensure that the following particulars are recorded in a record of controlled money movements for a controlled money account—

 (a) the date the controlled money was received;

 (b) the number of the receipt;

 (c) the date the money was deposited in the controlled money account;

 (d) the name of and other details clearly identifying the controlled money account;

 (e) the amount of controlled money deposited;

 (f) details of the deposit sufficient to identify the deposit;

 (g) interest received;

 (h) details of any payments from the controlled money account, including the particulars required to be recorded under regulation 26(2).

 (5) With the exception of interest and other income received in respect of controlled money, the licensee must ensure that particulars of receipts and payments are entered in the register as soon as practicable after the controlled money is received by the licensee or any payment is made.

 (6) The licensee must enter interest and other income received in respect of controlled money in the register as soon as practicable after the licensee is notified of its receipt.

 (7) The licensee must retain as part of the
licensee's trust records all supporting information (including ADI statements and notifications of interest received) relating to controlled money.

 (8) Within 15 business days after each month, the licensee must prepare and keep as a permanent record a statement as at the end of the named month, from the first day of that named month to the last day of that named month, containing a list of the licensee's controlled money accounts showing—

 (a) the name, number and balance of each account in the register; and

 (b) the name of the person on whose behalf the controlled money in each account was held; and

 (c) a short description of the matter to which each account relates; and

 (d) the date the statement was prepared.

Division 5—Transit money

 28 Information to be recorded about transit money

For the purposes of section 73 of the Act, a licensee must, in respect of transit money received by the licensee, record and keep particulars sufficient to identify the relevant transaction and the purpose for which the money is received.

Division 6—Trust money generally

 29 Trust account statements

 (1) A licensee must give a trust account statement to each person for whom or on whose behalf trust money (other than transit money) is held or controlled by the licensee—

 (a) as soon as practicable after completion of the matter to which the ledger account or record relates; or

 (b) as soon as practicable after the person for whom or on whose behalf the money is held or controlled makes a reasonable request for the statement during the course of the matter; or

 (c) except as provided by subregulation (4), as soon as practicable after 30 June in each year.

 (2) The licensee must give a separate statement for—

 (a) each trust ledger account; and

 (b) each controlled money account; and

(c) each record of dealings with the money that is subject to a power to which the licensee or an associate of the licensee is a party and that the licensee is required to keep a record of.

 (3) A trust account statement is to contain particulars of—

 (a) all the information required to be kept under this Part in relation to the trust money included in the relevant ledger account or record; and

 (b) the remaining balances (if any) of the money.

 (4) The licensee is not required to give a trust account statement under subregulation (1)(c) in respect of a ledger account or record if at 30 June—

 (a) the ledger account or record has been open for less than 6 months; or

 (b) the balance of the ledger account or record is zero and no transaction affecting the account has taken place within the previous 12 months; or

 (c) a trust account statement has been provided within the previous 12 months and there has been no subsequent transaction affecting the ledger account or record.

 (5) The licensee must keep a copy of a trust account statement given under this regulation.

 30 Trust account statements for institutional clients

 (1) In this regulation—

***institutional client*** of a licensee means a client of a licensee who is—

1. a public company; or
2. a subsidiary of a public company; or
3. a foreign company; or
4. a subsidiary of a foreign company; or
5. a registered Australian body (within the meaning of the Corporations Act); or

 (f) a financial services licensee (within the meaning of the Corporations Act).

 (2) Regulation 29 does not apply to an institutional client to the extent to which the client directs the licensee not to provide trust account statements under that regulation.

 (3) If the institutional client directs the licensee to provide trust account statements on a basis different from that prescribed by regulation 29, the licensee must supply those statements as directed, except to the extent to which the direction is unreasonably onerous.

 (4) The licensee must keep a copy of a trust account statement given under this regulation.

 31 Withdrawing trust money for costs

 (1) For the purposes of section 77(1)(b) of the Act, the relevant procedures are those set out in subregulation (2) or (3) (as applicable).

 (2) The licensee may withdraw the trust money if—

 (a) before effecting the withdrawal, the licensee gives the person—

 (i) a request for payment, referring to the proposed withdrawal; or

 (ii) a written notice of withdrawal; and

(b) the money—

 (i) is withdrawn in accordance with a costs agreement that authorises the withdrawal; or

 (ii) is withdrawn in accordance with instructions that have been received by the licensee authorising the withdrawal; or

 (iii) is owed to the licensee by way of third party disbursements incurred on behalf of the person.

 (3) The licensee may withdraw the trust money if the licensee has given the person a bill relating to the money and—

 (a) the person—

 (i) has not objected to withdrawal of the money within 7 days after being given the bill; or

 (ii) has objected within 7 days after being given the bill but has not made a complaint to the Director under Part 6.2 of the **Australian Consumer Law and Fair Trading Act 2012** or made an application to VCAT under Chapter 7 of the **Australian Consumer Law and** **Fair Trading Act 2012** within 60 days after being given the bill; or

 (b) the money otherwise becomes legally payable.

 (4) Instructions referred to in subregulation (2)(b)(ii)—

 (a) if given in writing, must be kept as a permanent record; or

 (b) if not given in writing, must be reduced to writing not later than 5 business days after the licensee effects the withdrawal and a copy must be kept as a permanent record.

 (5) For the purposes of subregulation (2)(b)(iii), money is taken to have been paid by the licensee on behalf of the person when the relevant account of the licensee has been debited.

 32 Duration for keeping of trust records

 (1) For the purposes of section 71(5) of the Act, the period for which trust records are to be kept is 7 years commencing immediately after—

 (a) in the case of a trust record referred to in paragraphs (a) to (m) of the definition of ***trust records*** in section 62 of the Act—the only or the last transaction entry in the record; or

 (b) in the case of any other trust record—finalisation of the matter to which the record relates.

 (2) For the purposes of section 80 of the Act, the period for which trust records are to be kept is 7 years commencing immediately after—

 (a) in the case of a trust record referred to in paragraphs (a) to (m) of the definition of ***trust records*** in section 62 of the Act—the only or the last transaction entry in the record; or

 (b) in the case of any other trust record—finalisation of the matter to which the record relates.

Division 7—Miscellaneous

 33 Exemption

The Director may—

 (a) exempt a licensee from complying with any of the provisions of this Part subject to any conditions that may be imposed by the Director; and

 (b) at any time impose a new condition on the exemption, amend or revoke a condition already imposed on the exemption, or revoke the exemption.

Part 3—General

 34 Statutory declaration on ceasing to hold trust money

For the purposes of section 86(4) of the Act, a statutory declaration must be in the form set out in Form 1 in Schedule 1.

 35 Claims against the Fund

For the purposes of section 145(1)(b) of the Act, the prescribed information is the following—

 (a) the name and address of the claimant;

 (b) the name and address of the licensee in respect of whom the claim is made;

 (c) the grounds on which the claim is made;

 (d) the amount of monetary loss suffered by the claimant;

 (e) details of any action taken by the claimant to recover the loss from a source other than the Fund;

 (f) details of any monetary or non-monetary amount recovered in relation to the loss by the claimant from a source other than the Fund.

 36 Disallowance of a claim against the Fund

For the purposes of section 145(5) of the Act, the notice of the Secretary's disallowance of all or part of a claim must be in the form set out in Form 2 in Schedule 1.

 37 Embargo notice

For the purposes of section 168 of the Act, an embargo notice issued by an inspector must be in the form set out in Form 3 in Schedule 1.

 38 Infringement offences and infringement penalties

 (1) For the purposes of section 175(1) of the Act, an offence against a provision of the Act set out in column 1 of Schedule 2 is a prescribed offence in respect of which an infringement notice may be issued.

 (2) For the purposes of section 175(3) of the Act, the prescribed infringement penalty for an offence against a provision set out in column 1 of Schedule 2 is the relevant amount expressed in penalty units set out in column 2 of Schedule 2 in respect of that offence.

Schedule 1—Forms

Form 1

Regulation 34

Conveyancers Act 2006—Statutory declaration on ceasing to hold TRUST money

Section 86

I, [*insert full name*],

of [*insert name of licensee's conveyancing business*]

of [*insert address of licensee's conveyancing business*]

DECLARE THAT:

1 I am or was a licensee who on [*insert date*] ceased to be authorised to receive trust money.

2 I do not now hold any trust money, all such trust money having been applied in accordance with the **Conveyancers Act 2006**.

I acknowledge that this declaration is true and correct and I make it in the belief that a person making a false declaration is liable to the penalties of perjury.

Signed

Full Name [*block letters*]

DECLARED AT [*place*] in the State of Victoria on [*date*]
before:

[*name and address in legible writing, type or stamp below signature*]

A person authorised under section 107A(1) of the **Evidence (Miscellaneous Provisions) Act 1958** to witness the signing of a statutory declaration.

Form 2

Regulation 36

Notice of disallowance of claim for compensation from the Victorian Property Fund

**Conveyancers Act 2006**

Section 145

To: [*insert* *name of claimant*]

of [*insert* *address of claimant*]

The Secretary \*wholly disallows/\*partly disallows your claim for compensation from the Fund.

\*\*The Secretary disallows $ of your claim.

The reasons for the \*disallowance/\*partial disallowance are―

Signed Dated

(For and on behalf of the Secretary of the Department of

Justice and Regulation)

\**Delete if not applicable.*

\*\**Delete if claim wholly disallowed.*

Form 3

Regulation 37

Embargo notice

**Conveyancers Act 2006**

Section 168

1 The item described below has been embargoed under section 168 of the **Conveyancers Act 2006**.

2 Section 168(2) provides that a person who knows that an embargo notice relates to a thing and who without the written consent of the inspector who issued the embargo notice—

(a) sells; or

(b) leases; or

(c) transfers; or

(d) moves; or

(e) disposes of; or

(f) otherwise deals with—

the thing or any part of the thing is guilty of an offence and liable to a penalty not exceeding 60 penalty units.

3 Section 168(3) provides that it is a defence to a prosecution for such an offence to prove that the thing or part of the thing was moved for the purpose of protecting and preserving it.

Description of embargoed item—

This notice has been—

🞏 served on [*insert name*]

🞏 affixed to the item described above

Signature of inspector

Name of inspector

Telephone number Date Time

Schedule 2—Infringement offences and infringement penalties

Regulation 38

| *Column 1**Infringement offence* | *Column 2**Infringement penalty* |
| --- | --- |
| section 16(1) | 6 penalty units |
| section 23(3) | 2·5 penalty units |
| section 34(7) | 6 penalty units |
| section 54(1) | 6 penalty units |
| section 58(2) | 6 penalty units |
| section 59(3) | 6 penalty units |
| section 61 | 6 penalty units |
| section 66(2) | 12 penalty units |
| section 67(3) | 12 penalty units |
| section 69(3) | 12 penalty units |
| section 71(4) | 12 penalty units |
| section 73(2) | 12 penalty units |
| section 80(1) | 12 penalty units |
| section 84(1) | 12 penalty units |
| section 85(1A) | 12 penalty units |
| section 153(1) | 6 penalty units |
| section 153(2) | 6 penalty units |
| section 153(3) | 6 penalty units |

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Endnotes

1. Reg. 4(a): S.R. No. 49/2008 as amended by S.R. Nos 46/2010, 107/2010 and 122/2015. [↑](#endnote-ref-2)
2. Reg. 4(b): S.R. No. 46/2010. [↑](#endnote-ref-3)
3. Reg. 4(c): S.R. No. 107/2010. [↑](#endnote-ref-4)
4. Reg. 4(d): S.R. No. 122/2015.

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**Penalty Units**

These Regulations provide for penalties by reference to penalty units within the meaning of section 110 of the **Sentencing Act 1991**. The amount of the penalty is to be calculated, in accordance with section 7 of the **Monetary Units Act 2004**, by multiplying the number of penalty units applicable by the value of a penalty unit.

The value of a penalty unit for the financial year commencing 1 July 2017 is $158.57.

The amount of the calculated penalty may be rounded to the nearest dollar.

The value of a penalty unit for future financial years is to be fixed by the Treasurer under section 5 of the **Monetary Units Act 2004**. The value of a penalty unit for a financial year must be published in the Government Gazette and a Victorian newspaper before 1 June in the preceding financial year. [↑](#endnote-ref-5)