

Settlement Agents' Code of Conduct Amendment Rules 2016

Made by the Commissioner with the approval of the Minister.

1. Citation

These rules are the *Settlement Agents' Code of Conduct Amendment Rules 2016*.

2. Commencement

These rules come into operation as follows —

- (a) rules 1 and 2 — on the day on which these rules are published in the *Gazette*;
- (b) the rest of the rules — on the day after that day.

3. Rules amended

These rules amend the *Settlement Agents' Code of Conduct 1982*.

4. Rules 6B and 6C inserted

After rule 6A insert:

6B. Costs disclosure

- (1) Before being appointed to act as a settlement agent in relation to a transaction by a party to the transaction (the *client*) as required under section 43 of the Act, a licensee must give a costs disclosure in writing to the client.
- (2) The costs disclosure must disclose the amount (*service amount*) that the client will be charged by the licensee to provide the services that the licensee has agreed to provide to the client in relation to the transaction.
- (3) The service amount must include all fees, commissions, charges and general office disbursements to be charged by the licensee to provide the services that the licensee has agreed to provide to the client in relation to the transaction.
- (4) The following may also be set out or estimated in the costs disclosure but must not be included in the service amount —

- (a) duty chargeable under the *Duties Act 2008*;
- (b) any other tax, duty, fee, levy or charge under a written law;
- (c) fees payable to financial institutions;
- (d) commissions chargeable by an agent, developer or any other third party.

6C. Payment not to exceed service amount unless unforeseen significant change occurs

- (1) A licensee is not entitled to receive payment for a service that exceeds the service amount for that service disclosed in a costs disclosure given under rule 6B unless subrule (2) applies.
- (2) A licensee may receive payment for a service that exceeds the service amount if —
 - (a) there is an unforeseen significant change in the scope of the work required to provide the service; and
 - (b) the licensee informs the client in writing of that change; and
 - (c) the client agrees to the licensee continuing to provide the service; and
 - (d) the amount by which the payment exceeds the service amount is reasonable having regard to that change.

5. Schedule amended

- (1) In the Schedule Form 1 delete:

There is a maximum scale of fees. You may negotiate a fee lower than the prescribed maximum before making an appointment of a settlement agent.

- (2) In the Schedule Form 1 delete:

- (1) I/We* agree to pay the maximum prescribed fee or a lesser fee negotiated with you and all disbursements incurred by you.

and insert:

- (1) I/We* agree to pay up to the service amount disclosed to me/us* under rule 6B of the *Settlement Agents' Code of Conduct 1982*.

D. HILLYARD, A/Commissioner.

M. MISCHIN, Minister for Commerce.
