

13 July 2022

Submission on Remaking rules for property agents: Draft Property and Stock Agents Regulation 2022

Thank you for the opportunity to provide feedback on the changes proposed in the new Property and Stock Agents Regulation 2022. Our comments are relatively brief, focussed on the main changes in relation to:

- Misrepresentation by licensee or registered person by failing to disclose material facts
- Use of a collection agent to collect rent

Please feel free to contact Jemima Mowbray for any further comment or details regarding the submission discussion and recommendations below.

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Disclosure of material facts

RIS Q3. Is the exemption appropriate? If no, please explain why? If yes, please explain why, including whether it will decrease the regulatory burden on real estate agents?

The proposed regulation would exempt real estate agents and assistant real estate agents from the disclosure requirements in section 52(1)(b) of the Property & Stock Agents Act in relation to residential tenancy agreements. We acknowledge that in proposing the exemption the intention is to reduce duplication, as the list of material facts to be disclosed is now also required under the Residential Tenancies Act, and the obligation to disclose is made clear to renters in the Information Sheet that must be provided to renters prior to their signing a residential tenancy agreement.

However, the penalties for failure to disclose under the two Acts - the Property & Stock Agents Act and the Residential Tenancies Act - are not comparable. Under the Property & Stock Agents Act the maximum penalty is 200 penalty units. Under the Residential Tenancies Act 2010 the maximum penalty is 20 penalty units.

This discrepancy in penalties is not justified. We believe the higher penalty that applies under the Property & Stock Agents Act appropriately reflects the community's expectation

regarding the clear obligation a professional managing real estate agent should have to provide a prospective tenant (a consumer) with appropriate information about a rental property. It should be noted that rental housing under a residential tenancy agreement is generally the main or principal place of residence for the tenant and their household. The list of material facts to be disclosed under the proposed Property and Stock Agents Regulation are all relevant considerations for any prospective tenant to make an informed decision about the appropriateness of the property.

If the obligation to disclose was to remain and so the duplication to also remain, we do not believe there to be any increased regulatory burden on a real estate agent as a result of the duplication.

For this reason we do not believe the exemption to be appropriate.

Recommendation

No exemption be provided under the Regulation to real estate agents and assistant real estate agents from the disclosure requirements in section 52(1)(b) of the Act in relation to residential tenancy agreements.

Use of a collection agent to collect rent

RIS 13. Are there any impacts of removing this clause? Why or why not?

The Tenants' Union of NSW is aware of an increasing number of real estate agencies requiring renters to agree to use a third party rent payment (3PRP) service when they sign their tenancy agreement. While there can be some limited benefits for a renter, for most the drawbacks of the services outweigh any benefits. Many renters are given little to no choice regarding use of the service.

The main disadvantage of these services is the fees they charge the renter. These include fees for using the service, and default fees where there has been a problem with payment. Problems with payment is a more likely occurrence than with other payment methods as payment is generally a direct debit arrangement. This means once a renter has agreed to the service they no longer control the timing of payments. Default fees in particular can be quite significant.

In general we believe the fees paid for the collection agency should be borne by the real estate agency who engages them. This is appropriate because the agency is gaining the primary benefit through reduced administrative costs. It is inappropriate that the cost of housing for the tenant is increased as a result. Where the costs of collection outweigh the reduction in the real estate agent's administrative costs, this merely indicates that the business model is flawed.

Currently the clause in Part 2, section 12 of the Property and Stock Agents Regulation reads:

12 Use of collection agent to collect rent

(1) An agent must not use the services of a collection agent to collect rent on behalf of the owner unless the arrangements for the collection and holding of that rent pending its payment to the agent or the owner comply with such guidelines as the Secretary may issue from time to time under this clause (including guidelines requiring rent collected by a collection agent to be paid into and retained in a trust account).

(2) In this clause—

collection agent means a person who collects rent as an agent for and on behalf of a licensee.

We understand this to mean that if no guidelines are published, as is currently the case, the services of a rent collection agent cannot lawfully be engaged. Given the disadvantage experienced by renters who are forced to use these services as they currently practice we believe this to be appropriate. We do not support the removal of the clause in the proposed new Property and Stock Agents Regulation 2022.

We will be providing advice to tenants that an agency cannot lawfully use a collection agent service to collect rent under the current regulations. We believe third party rent payment services would fall under this category.

If it is determined that the services of a rent collection agent should be allowed at some point in the future, we believe appropriate guidelines should be published establishing basic protections in relation to fees and penalties and their general administrative practices to ensure renters are not financially or otherwise disadvantaged by the use of a collection agency. If guidelines are considered, consultation should also appropriately be undertaken with financial and credit experts, such as Financial Rights Legal Centre and the Consumer Action Law Centre.

Recommendation

Part 2, section 12 Use of collection agent to collect rent be retained in the proposed new Regulation.