



Regulatory Impact Statement

Proposed Property and Stock Agents Regulation 2022

June 2022

Published by

Better Regulation Division
Department of Customer Service
4 Parramatta Square
12 Darcy Street, Parramatta NSW 2150
www.nsw.gov.au/customer-service

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1. Background

1.1 Why the Regulation is being remade

The Property and Stock Agents Regulation 2014 is due for automatic repeal on 1 September 2022.

Under the *Subordinate Legislation Act 1989*, most regulations are scheduled for automatic repeal after five years to ensure they remain relevant and fit for purpose. Regulations that are due for repeal can be remade (either with or without amendment), have their repeal postponed or be allowed to lapse.

The Department of Customer Service (the Department) plans to remake the current Regulation and has drafted a proposed Property and Stock Agents Regulation 2022 (the proposed Regulation) for consultation.

The proposed new Property and Stock Agents Regulation 2022 will replace the current Property and Stock Agents Regulation 2014 on 1 September 2022.

Remaking the current Regulation requires the preparation of a Regulatory Impact Statement (RIS) and a period of public consultation. This RIS sets out the objectives of the proposed Regulation and options for achieving the objectives, including an assessment of the costs and benefits.

1.2 Matters outside the scope of this consultation

The following matters are outside the scope of this consultation:

- matters covered by the principal Act, the *Property and Stock Agents Act 2002* (the Act),
- the qualifications required for the issue of a licence – set out in the Property and Stock Agents (Qualifications) Order 2019,
- the continuing professional development requirements for licence holders as required under the Act and administered under guidelines issued by the Commissioner for Fair Trading,
- the supervision guidelines issued by the Commissioner for Fair Trading.

This RIS only deals with matters within the scope of the Regulation.

2. Consultation process

2.1 Public consultation

The proposed Regulation and this RIS are publicly available on the NSW Government's Have Your Say consultation website at www.haveyoursay.nsw.gov.au/property-and-stock-agents. They will be available for at least 21 days.

Notice of the public consultation and the availability of the proposed Regulation and the RIS will be published in the NSW Government Gazette, the Daily Telegraph and the Sydney Morning Herald. Copies have been sent directly to the stakeholders listed at **Appendix 1**.

2.2 How to make a submission

Interested organisations and individuals are invited to give feedback or provide a formal submission on any matter relevant to the proposed Regulation, whether or not it is addressed in this RIS.

We would prefer to receive your submission using the online options on the Have Your Say consultation website, or by email in an accessible format. Accessibility is about making documents more easily available to members of the public who have some form of impairment (visual, physical, cognitive). More information on how you can make your submission accessible is available on the WebAIM website at <http://webaim.org/techniques/word/>.

You can provide your input on the proposed Regulation in one of the following ways:

- Completing the online survey on the NSW Government's Have Your Say website at <http://www.haveyoursay.nsw.gov.au/property-and-stock-agents>
- Uploading your written submission at www.haveyoursay.nsw.gov.au/property-and-stock-agents
- Emailing your written submission to: psareg@customerservice.nsw.gov.au
- Posting your written submission to:

Property and Stock Agents Regulation 2022

Policy and Strategy, Better Regulation Division
NSW Department of Customer Service
4 Parramatta Square
12 Darcy Street
PARRAMATTA NSW 2150

The closing date for submissions is 5pm, Wednesday 6 July 2022.

2.3 Confidential submissions

All submissions will be made publicly available on the Have Your Say website. If you do not want your personal details or any part of your submission published, please say this clearly in your submission and tell us why. Automatically generated confidentiality statements are not enough.

Even if you state that you do not want certain information to be published, there may be circumstances where the Government is required by law to release that information - for example, to comply with the *Government Information (Public Access) Act 2009*. It is also a statutory requirement that all submissions are provided to the Legislation Review Committee of NSW Parliament.

2.4 Evaluation of submissions

The Department will carefully consider each submission. If necessary, we will amend the proposed Regulation to address issues raised in the consultation process. If we need more information, we may consult with key stakeholders before finalising the new Regulation.

2.5 Commencement of the new Regulation

Once the new Regulation has been finalised, the Department will submit it to the Governor for approval. Prior to commencing, the new Regulation will be published on the NSW legislation website at www.legislation.nsw.gov.au.

We expect that the new Regulation will commence on 1 September 2022 at which time the current Regulation will be repealed.

3. Objective of the Act and proposed Regulation

3.1 Need for government action

The main purpose of the Regulation is to give legislative support and administrative detail, to enable the operation of the Property and Stock Agents Act. Without it, the Act could not operate as effectively.

The implied objectives of the Act include to:

- provide consumer protections and remedies for consumers who engage agents to purchase, sell, lease, or manage property, including strata schemes,
- establish standards of conduct and competency standards that agents must uphold and meet, to ensure transparency, accountability, and ethical and professional conduct in the industry,
- ensure continuing professional development of agents,
- provide NSW Fair Trading with compliance and enforcement powers, to act against breaches of the legislation.

The provisions in the proposed Regulation are directly related to these implied objectives of the Act. For example, the Regulation prescribes:

- The types of functions that an agent or assistant agent may exercise.
- Rules of conduct for agents and assistant agents when conducting their business and exercising their functions, and the content of agency agreements.
- The making and keeping of a Bidder's Record, and the conditions of an auction sale.
- How trust money and records are to be handled.
- The material facts an agent and assistant agent must disclose about a property.
- Offences under the Act and the Regulation for which penalty notice offences may be issued so that offences do not always need to be prosecuted in court.
- The fees payable for the issue of a licence or certificate of registration, including the compensation fund contributions.

The Department takes a stewardship approach to the administration of all legislation for which it is responsible. As such, property and stock agent laws are subject to ongoing monitoring and review to make sure they are fit for purpose.

3.2 Options for achieving the Act's objectives

In determining how best to achieve the Act's objectives, the following options were considered:

- **Option 1 - Take no action:** Allow the existing Regulation to lapse under the sunset provisions of the *Subordinate Legislation Act 1989* and do not make a replacement Regulation.
- **Option 2 - Maintain the status quo:** Remake the existing Regulation without amendment to maintain the current regime.
- **Option 3 - Make the proposed Regulation:** Remake the existing Regulation with amendments to modernise and improve the current regime.

4. Impact assessment of options

4.1 Criteria used to assess the regulatory options

The following criteria have been used to evaluate the three options:

- The extent to which the option best:
 - supports the implied objectives of the Act,
 - improves transparency and protections for consumers, and
 - improves administrative efficiency.
- The cost effectiveness of each option, in terms of costs and benefits to business, consumers and government.

4.2 Summary and preferred option

Option 3 is the preferred option. Remaking the Regulation with amendments will have the benefit of continuing the current Regulation with the added benefits provided by the changes. While it involves some minor additional costs to business, overall Option 3 will improve consumer protection and transparency and reduce the regulatory burden on business.

Option 2 is not supported. Remaking the Regulation without amendment will not impose any new costs on business, consumers, or government. However, it will not result in any benefits either.

Option 1 is not supported. Allowing the current Regulation to lapse will reduce the effectiveness of the Act and make parts inoperable. This option fails to support the objectives of the Act and would create high costs to consumers and the wider community. It would not be possible to give effect to the intention of the Act without some further action, such as amending the Act.

Table 1: Summary of costs and benefits of each option

	Option	Costs	Benefits	Overall benefit
1	Take no action	High	Low	Negative
2	Maintain status quo	Low	Low - Medium	Neutral
3	Make proposed Regulation	Low	Medium - High	Positive

Table 2: Summary of benefits of each option

Evaluation criteria	Option 1: Take no action	Option 2: Maintain status quo	Option 3: Make proposed Regulation
Supports the implied objectives of the Act	No	Yes	Yes
Improves transparency and protections for consumers	No	No	Yes
Improves administrative efficiency	No	No	Yes

A more detailed assessment of these options is provided in the below sections.

4.3 Assessment of Option 1 – take no action

Option 1, taking no action, would mean that the current Regulation lapses under the sunset provisions of the *Subordinate Legislation Act 1989*. The current Regulation would not be replaced, meaning that the Act would continue to operate without the support of regulations.

This option would not support the implied objectives of the Act. Essential provisions in the Act would be inoperable and it would not be possible to give effect to the Act without further amendment.

For example, agents would not be required to make any disclosures or to act fairly, honestly and in the best interests of a client, or to comply with any other rules of conduct. There would be no requirement for agents to act in accordance with a client's instructions or with the trust account requirements set by the Regulation. Reduced record-keeping requirements would also reduce the accountability and transparency of agent operations and reduce the Department's ability to inspect records to ensure industry compliance.

This option would reduce some regulatory burden for existing agents through reduced operating costs. For example, existing agents would not need to comply with the rules of conduct, record keeping, or trust account processes prescribed in the Regulation.

However, the reduced costs may be countered by increased costs for business from increased uncertainty and loss of business due to reduced consumer confidence in the industry. This option would also increase the regulatory burden on certain industry members. The Regulation provides for exemptions from the Act for travel agents, visitor information centres and short-term accommodation booking agents. If the current Regulation lapsed, persons who fit into these categories would need to apply for a licence to continue to operate.

Without a Regulation, the government's capacity to quickly amend requirements in response to emerging consumer issues and/or changes in industry practice, would be restricted. There could also be an increase in complaints and investigations regarding agents, resulting in higher costs for the government.

Enforcement options would be limited as no penalty notice offences would be prescribed in the Regulations. The administrative benefits and cost savings of penalty notices would be lost as all offences would need to be prosecuted in court and/or be subject to disciplinary action. The level of industry compliance may be reduced because of less enforcement action being taken for minor breaches.

There would also be no means of calculating the fees for licence applications that, in part enables the Department to carry out its functions as regulator and provides for contributions to the Property Services Compensation Fund.

Overall, the potential benefits of reduced business costs are outweighed by the high costs to consumers and the government. It also has potential impact for businesses if consumers are deterred by the substantial risks. For these reasons, option 1 is not supported.

Table 3: Summary of costs and benefits for Option 1

	Businesses	Consumers and public	Government
Costs	<ul style="list-style-type: none"> Administrative and legal costs to: <ul style="list-style-type: none"> assess how to meet requirements of the Act defend action for non-compliance follow the Act where previously exempt Potential loss of business if consumers are deterred by increased risks 	<ul style="list-style-type: none"> Increased financial risks due to lack of transparency over management of trust accounts Increased risks to community due to: <ul style="list-style-type: none"> reduced disclosure obligations reduced conduct and recordkeeping obligations reduced ability to enforce the Act and manage non-compliance 	<ul style="list-style-type: none"> Administration and legal costs to manage: <ul style="list-style-type: none"> likely increase in number of disputes and enquiries assessment of compliance with the Act increasing pressure on the court system staff training Inability to collect fees and contributions to the Compensation Fund
Benefits	<ul style="list-style-type: none"> Cost savings from not having to follow regulations 	<ul style="list-style-type: none"> No identifiable benefits 	<ul style="list-style-type: none"> Administration cost savings from not having to follow regulations

4.4 Assessment of Option 2 – maintain the status quo

The base case for option 2 would involve remaking the current Regulation without amendment when it lapses. This option would result in no additional cost for consumers, business, or the government because the Regulation would be remade without any changes.

The primary benefit of this option is that neither consumers nor business would need to adapt to new regulatory requirements. However, the estimated benefit is low, as the current Regulation does not provide the same benefits to consumers and the industry as the proposed Regulation. The cost saving for industry under this option is also relatively low compared to Option 3.

For these reasons, Option 2 is not supported.

Table 4: Summary of costs and benefits for Option 2

	Businesses	Consumers and general public	Government
Costs	<ul style="list-style-type: none">• No increase or decrease in actual costs• Opportunity loss from:<ul style="list-style-type: none">- Removal of outdated and ambiguous clauses continuing- Removal of duplicative material fact disclosure requirements- Reduction in scope of the Act to commercial property work	<ul style="list-style-type: none">• No increase or reduction in actual costs• Opportunity loss from:<ul style="list-style-type: none">- Increased transparency around expression of interest deposits- Greater agent co-operation with owners corporation or association	<ul style="list-style-type: none">• No increase or reduction in actual costs• Opportunity loss from:<ul style="list-style-type: none">- Removal of obsolete or ambiguous provisions- Having a more modern regulatory regime
Benefits	<ul style="list-style-type: none">• Administration cost savings as no updates to processes or staff training	<ul style="list-style-type: none">• No identifiable benefits	<ul style="list-style-type: none">• Administration cost savings as:<ul style="list-style-type: none">- no updates needed to guidance material for licensees and consumers- no training needed for operational staff

4.5 Assessment of Option 3 – remake the Regulation

Option 3 would involve remaking the Regulation to replace the current Regulation when it lapses.

This option would have a small increase in regulatory requirements and possible associated costs for agents due to:

- additional disclosure requirements,
- the timely return of expression of interest deposits,
- greater cooperation with an owners' corporation.

However, these costs are not estimated to be significant given agents' current obligations. Any staff training or adjustments needed in relation to the new requirement are likely to be minor.

There are no expected additional costs to consumers. There may be minor implementation costs for government, for example through communicating the changes and responding to queries.

Consumers will benefit from greater transparency and improved protections as a result of agents having to disclose information about expression of interest deposits and returning them within 14 days. Also, current requirements for agent co-operation in relation to accessing records and transferring management functions will extend to situations where an owners corporation decides to self-manage.

Business will benefit from reduced regulatory requirements and possible associated costs from the removal of duplicate agent obligations to disclose material facts and reducing the scope of the Act for agents dealing with certain commercial property.

Otherwise, the proposed Regulation continues the current regulatory framework with minor updates to improve its clarity, readability and operation.

For these reasons, Option 3 provides the greatest net benefit to businesses, consumers and government in comparison to the other options. **The preferred option for supporting the objectives of the Act is option 3.**

Table 5: Summary of costs and benefits for option 3

	Businesses	Consumers and general public	Government
Costs	<ul style="list-style-type: none"> • Administrative costs to update processes and train staff 	<ul style="list-style-type: none"> • No identifiable costs 	<ul style="list-style-type: none"> • Administrative costs to update processes and train staff
Benefits	<ul style="list-style-type: none"> • Overall administration cost savings due to removal of duplicate requirements and reduction in scope of the Act and greater clarity with removal of outdated terms 	<ul style="list-style-type: none"> • Greater disclosure requirements to improve transparency • Greater cooperation from agents and the timely return of deposits provides better protection 	<ul style="list-style-type: none"> • Overall administration cost savings due to: <ul style="list-style-type: none"> - Reduced complaints and enquiries related to outdated clauses of the Regulation - Having a more modern regulatory regime

5. Discussion of the proposed Regulation

Submissions are welcome on the whole of the proposed Regulation or on specific provisions or any other relevant issue, whether or not raised in this RIS.

The following discussion points provide greater context for the changes in the proposed Regulation and pose questions for feedback. The proposed Regulation also makes minor amendments to improve the structure and clarity of the proposed Regulation, remove duplication, modernise the language, update references to legislation and remove transitional provisions that no longer apply. These minor changes are not discussed in the RIS.

The appendices summarise the Regulation making powers (**Appendix 2**), compare the current Regulation and the proposed Regulation (**Appendix 3**) and list the key discussion questions (**Appendix 4**).

5.1 Part 1 Preliminary (clauses 1 – 3)

This Part states the name of the proposed Regulation (clause 1), specifies its commencement date (clause 2) and defines certain terms used in the proposed Regulation (clause 3). No significant changes have been made to this Part of the proposed Regulation other than to update the Regulation name, include a commencement date of 1 September 2022 and update the definition of buyer's agent (discussed further below).

5.1.1 Definition of buyer's agent – clause 3

Clause 3(1) of the current Regulation defines a buyer's agent as a real estate agent whose licence is subject to a condition that restricts the holder to acting as a real estate agent for a prospective purchaser of land. This definition was relevant under the previous licensing regime, prior to the March 2020 reforms, where agents acting for a prospective buyer of land held a restricted licence.

Following the commencement of real estate reforms on 23 March 2020, buyer's agents now hold a real estate agent licence without a condition restricting the holder to acting as a buyer's agent. Therefore, the definition in the current Regulation is outdated.

The proposed Regulation amends the current buyer's agent definition, so it aligns with the definition of a buyer's agent in section 47 of the Act. That is, a buyer's agent is:

- (a) real estate agent acting for a prospective buyer or buyer of land, and
- (b) an assistant real estate agent acting, to the extent permitted under the Act and this Regulation, for a prospective buyer or buyer of land.

1. Is the proposed definition of a buyer's agent appropriate?

5.2 Part 2 Conduct of agency business (clauses 4 – 12)

This Part of the proposed Regulation contains provisions outlining:

- the types of functions that an agent or assistant agent may exercise,
- methods of serving an agency agreement,
- information the agent must provide when giving financial and investment advice, and
- requirements for professional indemnity insurance.

It also provides for rules of conduct for agents and assistant agents, and contents of agency agreements, as outlined in the Schedules to the proposed Regulation.

The more substantial changes made to this Part of the proposed Regulation are outlined below. Proposed changes to the Schedules are discussed in sections 5.8 and 5.9 of this RIS.

5.2.1 Definition of major property holding – clause 4

Under clause 4(1)(b)(ii) of the current Regulation, a real estate agent does not include an agent undertaking commercial property agency work on behalf of an entity that owns a major property holding.

Clause 4(2) of the current Regulation defines a major property holding as having a market value of (or over) \$40 million or floor area of (or over) 20,000 square meters. This means agents who solely carry out commercial property agency work for entities that own properties of this size or value do not need to hold a real estate agent licence and are therefore not regulated under the Act.

Feedback from industry indicates that there may be scope to reduce the regulatory burden for real estate agents acting solely in relation to major property holdings if the thresholds are reduced. Reducing the threshold would allow more agents to work without a licence on the basis that the consumer protections provided by the Act are not relevant to this type of commercial work.

The proposed Regulation halves the current thresholds so that a major property holding means property that has:

- (a) an aggregate market value of \$20,000,000 or more, or
- (b) an aggregate gross floor area of 10,000 square metres or more.

2. Are the reduced thresholds appropriate? If no, please explain why? If yes, please explain how the reduced thresholds will decrease the regulatory burden on real estate agents?

5.2.2 Functions that assistant real estate agents may exercise – clause 5

The current Regulation provides that an assistant real estate agent may exercise the functions described in paragraphs (c), (d) and (e) of the definition of *real estate sale or leasing functions* in section 3A(2) of the Act, but may not in the person's capacity as an assistant real estate agent:

- enter into a contract for the sale of land,
- enter into an agency agreement or a franchising agreement, or
- authorise the withdrawal of money from a trust account.

The proposed Regulation (clause 5) ensures that assistant real estate agents performing business agent or on-site residential property management functions are similarly prohibited from entering a contract for the sale of land, entering an agency agreement or franchising agreement, or withdrawing money from a trust account.

5.2.3 Professional indemnity insurance – clause 12

Clause 12(6)(b) of the proposed Regulation includes an amendment to clarify that the exemption from requiring professional indemnity insurance in relation to civil liability applies to a situation where the licensee is a corporation.

5.3 Part 3 Auctions (clauses 13 – 20)

This Part of the proposed Regulation contains provisions about:

- Making and keeping of a Bidder's Record for an auction of residential property or rural land.
- Proof of identity that can be used to identify a person on the Bidder's Record.
- Conditions of a sale by auction of land or livestock, and their notification.
- Form of notices required to be given by the Act.

No substantial changes have been made to this part of the proposed Regulation.

5.4 Part 4 Trust money (clauses 21 – 35)

This Part of the proposed Regulation details how trust money and records are to be kept, handled, and maintained by agents. It includes requirements in relation to:

- providing receipts for trust money,
- the banking of trust money,
- making a deposit,
- keeping records of trust account transactions,

- maintaining trust account ledgers, and
- keeping trust records.

No substantial changes have been made to this Part of the proposed Regulation

5.5 Part 5 Records (clauses 36 – 43)

This Part of the proposed Regulation contains provisions about:

- Keeping of records by agents of property reports, livestock, livestock sales and copies of accounts.
- Requiring strata managing agents to make certain records available to the treasurer of an owners corporation or association on a regular basis.
- Permitting strata and association committee members to inspect records.

The proposed Regulation updates the terminology in clauses 41 and 42 from ‘report’ to ‘record’ to align with terminology used in the Act and throughout Part 5. Otherwise, no other substantial changes have been made to this Part of the proposed Regulation.

5.6 Part 6 Exemptions (clauses 44 – 51)

This Part of the proposed Regulation provides exemptions from the operation of the Act.

The proposed Regulation removes a redundant provision resulting from the March 2020 reforms (clause 44). It also clarifies that if more than one real estate agent is sharing a commission or other reward in relation to a sale, it is the agent that has the agency agreement with the vendor, who is required to comply with section 63 of the Act (clause 49).

Substantial changes to this Part of the proposed Regulation are outlined below.

5.6.1 Exemption from requirement to disclose material facts – clause 47

Under section 52(1)(b) of the Act, an agent or assistant agent must disclose any material facts prescribed by the Regulation that the agent knows, or ought reasonably to know, before inducing a person to enter into a contract or arrangement.

Agents dealing with prospective tenants are also obliged to disclose a list of similar material facts under the *Residential Tenancies Act 2010*. This means real estate agents and assistant real estate agents are required to disclose two overlapping lists of material facts to prospective tenants.

Clause 47 of the proposed Regulation exempts 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. This avoids a double-up on processes and reduces the regulatory burden, as agents will only need to disclose material facts to prospective tenants as required by the *Residential Tenancies Act 2010*.

3. 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?

5.6.2 Exemption for travel agents

The proposed Regulation removes the exemption for travel agents (current clause 45) as it is a redundant provision. The Act clearly outlines the scope of the Act and who is captured by the regulatory regime of the Act. The work carried out by travel agents does not fall within the functions of a real estate agent, stock and stock agent or strata managing agent as currently defined by the Act. Therefore, an exemption for travel agents is not required as they are already excluded by the Act.

4. Is removal of the exemption appropriate? Why or why not?

5.7 Part 7 Miscellaneous (clauses 52-64)

This Part of the proposed Regulation contains provisions about:

- Miscellaneous and administrative matters (clauses 52-57).
- The list of material facts an agent or assistant agent must disclose before inducing a person to enter into a contract or arrangement (clause 59).
- The application fees payable and their components (clause 60).
- The circumstances where fees can be waived, reduced, postponed or refunded (clauses 61 and 62).
- Transitional arrangements (clause 63).

Although no substantial changes have been made to this Part of the proposed Regulation, there is an opportunity to consider whether any additional material facts should be prescribed in the proposed Regulation, or whether there are any issues with the current list of material facts.

5.7.1 Misrepresentation by failing to disclose material facts – clause 59

The list of material facts was introduced in December 2019. The list aims to strike a balance between ensuring that the agent or assistant agent is not unreasonably burdened by disclosure obligations, and the need to protect consumers' right to access important information.

A material fact is a fact that would be important to a reasonable person in deciding whether to proceed with a particular transaction. In a property services context, these include facts which:

- may be sufficiently significant or relevant to influence decisions on whether to buy, sell or rent, and/or
- could impact the market value of a property.

The list of material facts required to be disclosed includes if the property:

- Has been subject to flooding from a natural weather event or bush fire within the last five years.
- Is subject to significant health or safety risks.
- Is listed on the register of residential premises that contain loose-fill asbestos.
- Was the scene of a murder or manslaughter within the last five years.
- Has been used for the manufacture, cultivation or supply of a prohibited drug or prohibited plant.
- Is, or is part of, a building that contains external combustible cladding and certain notices or orders have been issued.
- Is, or is part of, a building where a development application or complying development certificate has been lodged for rectification of the building regarding external combustible cladding.
- Has been issued with a building work rectification order, prohibition order or stop work order under the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020*.

5. Are the current material facts listed in clause 59 adequate? Why or why not?

6. Should additional material facts be included in clause 59? If so, what additional facts should be included and why?

5.8 Rules of conduct (Schedules 1 – 4)

Schedules 1 to 4 list general and specific rules of conduct that apply to agents and assistant agents. Questions for feedback and substantial changes to this Part of the proposed Regulation are outlined below.

5.8.1 Inducements – clause 14 of Schedule 1 General rules of conduct applying to all agents and assistant agents

Under clause 14 of the current and proposed Schedule 1 of the Regulation, an agent must not offer to provide to a person a gift, favour or benefit, whether monetary or otherwise, to induce a third person to engage the services of the agent as agent.

This includes referral programs where an agent offers a reward (such as a payment or discount) to a person who refers a third person to the agent's services.

7. Should the current prohibition against inducements provide an exemption for referral programs? Why or why not?

5.8.2 Expression of interest deposits – clauses 6 and 16 of Schedule 2 Rules specific to real estate agents and assistant real estate agents; clause 4 of Schedule 3 Rules specific to stock and station agents and assistant stock and station agents

The rules of conduct for real estate agents and assistant agents are set out in Schedule 2. The rules of conduct for stock and station agents and assistant agents are set out in Schedule 3.

Under the current Regulation, a vendor's agent must disclose the following information in writing, upon issuing a receipt to a potential buyer who has made an expression of interest deposit:

- that the vendor has no obligation to sell the property or business,
- that the person (potential buyer) has no obligation to buy the property or business, and
- that the deposit is refundable if a contract for the sale of the property or business is not entered into.

The agent must also promptly inform the vendor when a deposit has been paid and promptly inform the potential buyer of any subsequent offers, and that they have a right to make further offers until the exchange of contracts. The same obligations apply to stock and station agents. The disclosure obligations and promptly informing the potential buyer of subsequent offers also applies to a buyer's agent (with their client) in relation to the purchase of property.

An expression of interest deposit is made prior to the exchange of contracts and shows the vendor that the buyer's offer is serious. The current requirements ensure that the potential buyer knows that the expression of interest deposit is not an actual deposit and does not oblige the vendor to sell the property/business to the buyer. It does not oblige the buyer to buy the property/business from the vendor.

Clause 6 of Schedule 2 of the proposed Regulation strengthens the disclosure requirements by:

- Requiring the vendor's agent to disclose the information *before* a potential buyer pays an expression of interest deposit.
- Preventing the vendor's agent from accepting the deposit unless the potential buyer has signed a written statement confirming they have received and understood the information.
- Requiring the vendor's agent to refund the deposit within 14 days if another person enters into a contract for the sale of the property or business.

Following complaints made to NSW Fair Trading in recent years, it is proposed that the disclosure obligations be strengthened. This will ensure consumers receive appropriate information to make informed decisions and have their deposits promptly returned to use on other properties or businesses. The changes also extend to stock and station agents (clause 4, Schedule 3) and buyer's agents (clause 16, Schedule 2) – discussed further below.

Buyer's agents

The Department understands that where a buyer is represented by a buyer's agent, the buyer's agent pays the expression of interest deposit on the property on behalf of their client (the buyer). Therefore, clause 6 requires the vendor's agent to disclose information to the buyer's agent as the person who paid the deposit. Clause 16 then requires the buyer's agent to disclose similar information to their client. However, if the buyer makes the deposit, instead of their agent, the buyer will receive the information twice from the vendor's agent and the buyer's agent.

Clause 16 does not impose a requirement on the buyer's agent to return the deposit to their client within 14 days. Feedback is sought on whether further provisions are required to prevent duplication and/or to ensure the deposit is refunded to the client in a timely manner.

8. Are the proposed expanded disclosure requirements for expression of interest deposits appropriate? Why or why not?

9. Is 14 days a reasonable timeframe for vendor agents to refund the deposit? Why or why not?

10. Should the 14 day requirement apply to a buyer's agent if the buyer's agent paid the deposit on behalf of their client? Why or why not?

11. Is it industry practice for buyer's agents to pay the deposit on behalf of their client?

5.8.3 Application to on-site residential property managers – Part 2, Schedule 2 Rules specific to real estate agents and assistant real estate agents

The rules of conduct in Part 2 (Property Management) of Schedule 2 of the proposed Regulation apply to the extent that they are relevant to the carrying out of on-site residential property manager functions.

As some real estate agent licence holders still have an on-site residential property manager restriction condition on their licence, feedback is sought about the clarity of Part 2, particularly in relation to how these provisions are applied in practice.

12. Is Part 2 of Schedule 2 clear about how the property management rules apply to on-site residential property managers? If not, why not?

5.8.4 Use of collection agent to collect rent – Part 2, Schedule 2 Rules specific to real estate agents and assistant real estate agents; Part 2, Schedule 3 Rules specific to stock and station agents and assistant stock and station agents

The proposed Regulation removes clauses about the use of collection agents to collect rent. The clauses provided that an agent must not use the services of a collection agent unless the arrangements comply with guidelines issued by the Commissioner for Fair Trading. No guidelines have been developed for the purposes of this clause to date.

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

5.8.5 Matters for inclusion in an agency agreement for property management services and leasing of residential property or rural land – clauses 26 and 27 of Schedule 2 Rules specific to real estate agents and assistant real estate agents

Clauses 26 and 27 of Schedule 2 of the proposed Regulation provides for written confirmation in the agency agreement of the agent's authority to undertake certain duties when providing property management services or leasing services. The clauses apply to residential property and rural land only. They do not apply to commercial property.

No major changes have been made to clauses 26 and 27, however feedback is sought about extending the application of the clauses to commercial property.

14. Are clauses 26 and 27 adequate? Why or why not?

15. Should clauses 26 and 27 be extended to apply to the management or leasing of commercial property? Why or why not?

5.8.6 Co-operation about records, access and transfer by strata managing agents and assistant agents – clause 1 of Schedule 4 Rules specific to strata managing agents and assistant strata managing agents

Under the current Regulation, a strata managing agent must cooperate with a new agent by making records available and facilitating the transfer of management functions to the new agent.

Clause 1 of Schedule 4 of the proposed Regulation extends the requirement to co-operate with an owners corporation or association (of a community land scheme) where an agent's contract is terminated and the owners corporation or association has decided to self-manage. The proposed clause also requires the agent to provide the owners corporation or association with access to administrative and capital works funds.

The proposed change implements a recommendation of the 2021 [Report on the Statutory Review of the Strata Schemes Development Act 2015 and Strata Schemes Management Act 2015](#) (the Strata Review Report) to consider extending the current requirement. Submissions to the review also reported instances of owners corporation's having difficulty accessing money in the trust account.

16. Is the proposed update to extend agent co-operation to an owners corporation or association appropriate? Why or why not?

17. Will agents be able to provide owners corporations or associations with access to administrative and capital works funds? If not, why?

5.9 Terms of agency agreements (Schedules 5 – 12) Schedules 5 to 12 outline the terms or conditions that all, or specific, agency agreements must or must not contain. No major changes have been made to Schedules 5 - 12 of the proposed Regulation. However, the section below poses questions for feedback following recommendations from the [Report on the Statutory Review of the Strata Schemes Development Act 2015 and Strata Schemes Management Act 2015](#).

5.9.1 Additional mandatory or prohibited terms – Schedule 12 Terms specific to agency agreement for the management of strata or community title land

Schedule 12 of the proposed Regulation ensures a baseline level of protection and consistency for strata/community title managing agent agreements. It provides for terms that must or must not be contained in an agency agreement including:

- Terms that list the extent of the agent's authority to undertake their duties.
- Terms about the effect of a statutory appointment of a managing agent.
- Terms about the renewal of an agreement for a fixed term.
- Terms about the manner and frequency by which agents must account for money received on behalf of the owners.
- Prohibiting terms that indemnify the managing agent.

The Strata Review Report recommended exploring whether additional mandatory or prohibited terms should be added to Schedule 12. For example, prohibiting unfair terms that benefit strata managing agents at the expense of the owner's corporation or unfair terms that limit liability.

The Strata Review Report also recommended exploring whether additional mandatory terms regarding termination of an agency agreement should be included. This was in response to feedback received that owners corporations have difficulty terminating agreements, with some managing agents refusing to accept a termination.

18. Is the current list of terms included in Schedule 12 adequate? Why or why not?

19. Should additional mandatory or prohibited terms be included in Schedule 12? If so, what terms should be included and why?

20. Do you have examples of unfair terms that should be prohibited? If so, what are they and why should they be prohibited?

21. Should there be mandatory terms about how and when an agency agreement can be terminated? Why or why not?

5.10 Penalty Notice Offences - Schedule 13

Section 216 of the Act permits the Department to issue penalty notices for offences under the Act or the Regulation. Schedule 13 of the proposed Regulation prescribes the offences for which a penalty notice can be issued and the amount of the penalty notice.

Penalty notices provide a faster and more cost-effective option for penalising non-compliance and encouraging changes in agent conduct to ensure compliance with the law. Penalty notices are generally used for contraventions of a more minor nature and the prescribed penalty amounts are significantly lower than the maximum penalties for the offences.

Only minor changes have been made to Schedule 13 to remove references to provisions that have been repealed or are not applicable.

22. Do you support the prescribed penalty notice offences and penalty amounts in the proposed Regulation? Why or why not?

5.11 Fees and Compensation Fund contributions – Schedule 14

The proposed Regulation provides for fees to be calculated as set out in Schedule 14. Part 2 of Schedule 14 provides for the adjustment of future fees for inflation and for the publication of those fees.

The current Regulation will be updated on 1 July 2022 with the fee unit for the 2022-23 financial year. The fee unit is updated each financial year for inflation in accordance with clause 2(1)(b). The 2022-23 fee unit is carried over in the proposed Regulation. Otherwise, no changes have been made to Schedule 14 of the proposed Regulation.

Appendix 1 – List of targeted stakeholders

A copy of the proposed Regulation and this RIS has been provided to key stakeholders. These include, but are not limited to:

Industry associations and bodies

Strata Community Association NSW
Real Estate Industry Partners
Property Owners Association of NSW
Australian Institute of Business Brokers
Australian Resident Accommodation Managers Association
Real Estate Training Solutions
Australian Livestock and Property Agents Association
Real Estate Employer's Federation
Real Estate Institute of NSW
Estate Agents Co-operative
Owners Corporation Network
Property Council of Australia (NSW)
Australian Property Institute NSW
Australian College of Strata Lawyers

Government and other stakeholders

NSW Civil and Administrative Tribunal
Small Business Commissioner
Law Society of NSW

Consumer groups and services

Tenants Union of NSW
Community Legal Centres NSW

Appendix 2 – Regulation making powers

The following table sets out the current regulation making powers in the Act. It also identifies the powers that are used in the proposed Regulation.

Section	Regulation making power under the Act	Scope of the proposed regulation
3(1)	Prescribe activities for ‘assistant real estate agent’, ‘assistant stock and station agent’, ‘assistant strata managing agent’ and ‘stock and station agent’.	Not prescribed.
3(1)	Prescribe Acts that are ‘corresponding Acts’.	Clause 45(2) prescribes various Acts to be ‘corresponding Acts’ for the purpose of section 3(1) of the Act.
3(1)	Prescribe animals that are ‘livestock’ and purposes for the use “rural land”.	Not prescribed.
3A(1)	Prescribe functions that are ‘real estate agent functions’.	Clause 4 lists functions that are to be undertaken by a real estate agent.
3A(2)	Prescribe functions that are ‘business agent functions’.	Not prescribed.
3A(2)	Prescribe functions that are ‘on-site residential property manager functions’.	Not prescribed.
3A(2)	Prescribe functions that are ‘real estate sale and leasing functions’.	Not prescribed.
3B(1)(c)	Prescribe functions that are ‘strata managing agent’ functions.	Not prescribed.
3B(3)(e)	Prescribe that a person is not a strata managing agent on the basis they exercise any function of an association for reward.	Not prescribed.
4(1)	Make provision to exempt a specified person, or a person who is a member of a specified class of persons, from the operation of all or specified provisions of the Act.	<p>Clause 45 lists circumstances where a licensee is exempt from sharing a commission.</p> <p>Clause 47 exempts real estate agents and assistant real estate agents from application of section 52(1)(b) on residential tenancy agreements.</p> <p>Clause 48 (1) provides for an exemption from section 55 where an agreement for performance of services is limited to livestock. Clause 50 provides an exemption for certain visitor information centres or short-</p>

Section	Regulation making power under the Act	Scope of the proposed regulation
		term accommodation booking agents from the operation of the Act. Clause 59 prescribes a list of material facts.
4(2)	Make provisions necessary or convenient in connection with an exemption under section 4(1).	Not prescribed.
5(1)(d)	Prescribe any public authority whose employees are not required to hold a licence or a certificate of registration.	Clause 51 prescribes an exemption for persons acting on behalf of government departments and certain statutory bodies.
5(1)(n)	Prescribe a person or organisation, or a person or organisation of a class, whose employees are not required to hold a licence or a certificate of registration.	Not prescribed.
10A(1)	Prescribe the functions that can only be exercised by holders of licences and certificates of registration of a particular class or that can only be exercised under the supervision of the holder of a licence of a particular class.	Clause 5 prescribes functions that can be exercised by real estate agents and assistant real estate agents. Clause 6 lists functions that may be carried out by a stock and station agent and assistant stock and station. Clause 7 provides functions that strata managing agents and assistant strata managing agents can perform.
10A(2)	Make provision that a reference to the holder of a licence in a provision of the Act is to be construed as a reference to the holder of a particular class of licence.	Not prescribed.
16(1)(p)	Prescribe that any breach of the Act or Regulations is a disqualifying breach.	Not prescribed.
17(4)	Make provision for a licence or certificate of registration as is relevant to the operation of Part 2 of the <i>Licensing and Registration (Uniform Procedures) Act 2002</i> .	Clause 58 lists limitations and modifications from application of Part 2 of <i>Licensing and Registration (Uniform Procedures) Act 2002</i> .
17A(1)	Prescribe the application fee for an application for a licence or certificate of registration.	Clause 60 provides that the fees payable is listed in Column 1 of Part 1 of Schedule 14.
22(1)	Make provision for or with respect to requiring the holder of a licence to be insured under a policy of professional indemnity insurance in force with respect to the licensee or his or her employer.	Clause 12 requires a licensee to be insured under a policy of professional indemnity insurance in force with respect to the licensee, or the licensee's employer.

Section	Regulation making power under the Act	Scope of the proposed regulation
25A(4)(b)	Prescribe a fee for the restoration of a licence.	Clause 60 provides that the fees payable listed in Column 1 of Part 1 of Schedule 14.
26A(2)	Prescribe exceptional circumstances in which the Secretary (that is, the Commissioner for Fair Trading) may grant a certification of registration for a term longer than four years.	Not prescribed.
28(4)	Prescribe the time within which a licensee must lodge notice of any change in the location of the registered office of the licensee with the Secretary.	Clause 52 prescribes 14 days as the time within which notice of any change in the location of the registered office must be lodged.
31(6)	Specify the matters to be taken into account by the Secretary in considering whether to grant a person an exemption from the section 31 requirements regarding licensees in charge.	Clause 44(2) prescribes the matters to be taken into account by the Secretary when considering whether to grant an exemption to the requirements listed in clause 44(1).
33(2)	Prescribe a corresponding Act under which a person is not licenced and is considered as an unlicensed person for the purpose of section 33 (1)	Clause 45(2) lists corresponding Act for the purpose of section 33(2).
34(1)	Prescribe any terms to be included in a con-commercial subagency agreement.	Not prescribed.
34(4)(b)	Prescribe an agreement, transaction, circumstance or person (or a class or description of an agreement, transaction, circumstance or person) as exempt from the section 34 requirements.	Clause 46 prescribes multiple classes of agreements as exempt from section 34.
36(3)	Prescribe for an itemised account of transaction if money has been paid or retained by a licensee	Clause 54 lists how a request for an itemised account can be made and provided.
37(1)	Prescribe rules of conduct to be observed in the course of the carrying on of business or the exercise of functions under a licence or certificate of registration.	Clause 8 provides that the rules set out in Schedules 1–4 are prescribed for the purposes of section 37.
46(1)	Make provision for or with respect to requiring a real estate agent who provides financial or investment advice to a person in connection with the sale or purchase of land to provide to the person specified information or warnings.	Clause 11 lists the specific information and warnings that a real estate agent is required to provide when giving financial or investment advice.
49(6)(d)	Prescribe a relationship that is ‘the relationship of a close relative’.	Not prescribed.

Section	Regulation making power under the Act	Scope of the proposed regulation
52(1)(b)	Prescribe the material facts to be disclosed to a person entering into any contract or arrangement.	Clause 59(1) prescribes a list of material facts.
53F(2)(d)	Prescribe gifts or benefits of a kind or value that licensees and certificate holders are able to request or accept.	Schedule 1, Clause 20 prescribes an amount of \$60.
55(2)	Make provision for regulating the form of agency agreements (including by prescribing standard forms) and the terms, conditions and other provisions that an agency agreement must or must not contain.	Clause 9 provides that an agency agreement must comply with the requirements of Schedules 5–12 as to the terms, conditions and other provisions that an agency agreement must or must not contain.
55(3)	Make provision for how a copy of an agency agreement may be served on a person.	Clause 10 prescribes the methods of service by which an agency agreement may be served on a person.
63(2)	Prescribe places or times that a real estate agent may make the required documents available for inspection before offering residential property for sale.	Not prescribed.
63(7)	Create exceptions to section 63.	Clause 49 creates an exception that applies if the indication, offer or invitation is made under an agreement between licensees to share any commission, fee, gain or reward in respect of the sale.
65(3)	Make provision for authorising the real estate agent to pay to the purchaser the balance of the money following rescission of a contract for the sale of residential property.	Not prescribed.
66(4)	Prescribe the manner and terms in which notice is to be given by an auctioneer of the material parts of section 66 prior to the sale of residential property or rural land by auction.	Clause 20(1) prescribes the form in which notice is to be given.
68(5)	Make provision for conferring an entitlement on a seller of residential property to inspect the Bidders Record for the sale of the property, the manner and form in which a Bidders Record is to be made and kept and the information to be entered into the Bidders Record.	<p>Clause 14 provides for what information needs to be entered into the Bidders Record.</p> <p>Clause 16(2) requires a licensee who keeps a Bidders Record in electronic form to also keep a record of such details as will enable the Bidders Record to be located and accessed.</p>

Section	Regulation making power under the Act	Scope of the proposed regulation
69(2)(c)	Prescribe other proof of identity that may be used for the purposes of an entry in a Bidders Record.	Clause 17 lists various forms of documents or cards that can be used as proof of identity for the purposes of entry in a Bidders Record.
73B(2)(a)	Prescribe other information to be included in a real estate agent's record of the statement of a quote pursuant to section 73B.	Not prescribed.
77(1)	Prescribe conditions that apply to the sale by auction of land or livestock.	Clause 18 provides for certain conditions that are applicable to the sale by auction of land or livestock.
77(2)	Make provision requiring the notification at a sale by auction of land or livestock of any conditions that are applicable to the sale.	Clause 19 requires a stock and station agent or real estate agent to notify conditions of sale through a notice.
78(3)	Prescribe the manner and terms in which notice is to be given by an auctioneer of the material parts of section 78 prior to the sale of land or livestock by auction.	Clause 20(2) prescribes the form in which notice is to be given
81(1)	Prescribe a number of bids (other than one) that the seller or any person on behalf of the seller of auctioneer has the right to make during the sale by auction of livestock.	Not prescribed.
83(2)	Prescribe the manner and terms in which notice is to be given by an auctioneer of the material parts of section 83 prior to the sale of land or livestock by auction.	Clause 20(3) prescribes the form in which notice is to be given
86(7)	Prescribe any additional requirements relating to trust accounts	<p>Clause 21(1) provides that a unique identifying number obtained from the Department should be given to the authorised deposit-taking institution.</p> <p>Clause 22 requires that a receipt be prepared immediately on receiving trust money.</p> <p>Clause 23 lists additional requirements for strata managing agents in preparation of receipts of trust money.</p> <p>Clause 24 makes additional provisions for banking of trust money.</p>

Section	Regulation making power under the Act	Scope of the proposed regulation
		<p>Clause 25 states that cheque or electronic funds transfer can be used to make payment of trust money.</p> <p>Clause 26 lists conditions to follow when making a deposit of money to a trust account.</p> <p>Clause 27 lists how to keep and maintain records of daily trust account transactions.</p> <p>Clause 28 requires a journal to be kept for trust accounts and lists the details that need to be recorded in the journal.</p> <p>Clause 29 makes it mandatory for a licensee to maintain a separate ledger account for trust money.</p> <p>Clause 30 provides a 21-day period after each named month to prepare a trial balance statement of all ledger accounts as at the end of that month.</p> <p>Clause 31 requires licensees to keep records of trust money.</p> <p>Clause 32 lists additional requirements for strata managing agents with regards to keeping records of trust money.</p> <p>Clause 33 prescribes specific requirements for those who maintain records using a computer system.</p> <p>Clause 34 provides for back up requirements if records are maintained using a computer system</p>

Section	Regulation making power under the Act	Scope of the proposed regulation
90(7)	Prescribe that a trust account of a class of trust accounts is exempt from section 90.	Clause 35 exempts certain types of trust accounts from application of section 90 and 91.
91(4)	<p>Make provisions:</p> <ul style="list-style-type: none"> requiring authorised deposit-taking institutions to provide the Secretary with certain information relating to any trust accounts authorising the Secretary to require an authorised deposit-taking institution to provide certain information relating to any trust accounts any associated matter, including the manner and form in which, and the time within which, any such information is to be provided to the Secretary excepting a specified class or classes of trust account from the operation of section 91. 	<p>Clause 21(2) requires authorised deposit-taking institutions to use a unique identifying number obtained from the Department when it lodges its monthly returns in accordance with section 91.</p> <p>Clause 35 exempts certain types of trust accounts from application of section 90 and 91.</p>
101(1)	Prescribe the manner in which a licensee must provide an itemised account of a transaction directly concerning a person in connection with the licensee's business to the person.	Clause 54 prescribes how requests for itemised accounts can be made
104(1)(b)	Require a licensee to make records relating to the licensee's business as a licensee.	<p>Clause 16(1) requires a licensee who acts on the sale of property that is offered for sale by auction to make and keep a record of the name, business address and licence number of the licensee who made the Bidders Record for the auction.</p> <p>Clause 36 prescribes how records and book entries have to be made by licensees.</p> <p>Clause 37 provides for written records of all reports to be kept by real estate agent acting on behalf of a person on the sale of residential property.</p> <p>Clause 38 requires stock and station agents to keep records of livestock that they bought.</p>

Section	Regulation making power under the Act	Scope of the proposed regulation
		<p>Clause 39 lists how to maintain records of livestock sales made by stock and station agents.</p> <p>Clause 40 prescribes circumstances when a strata managing agent may need to provide a copy of the account that are kept as record.</p> <p>Clause 41 provides for records to be prepared by strata managing agent.</p> <p>Clause 42 lists the contents that needs to be recorded made by a strata managing agent.</p> <p>Clause 43 requires managing agents to allow strata and association committees to inspect records within a reasonable time after a request for such inspection has been made.</p>
104(4)	Make provisions for the manner and form in which a record is to be kept pursuant to section 104.	Not prescribed.
123	Prescribe that the definition of 'operating account' in section 123 means a departmental account other than the Department of Fair Trading Operational Account.	Clause 53 prescribes the Compensation Fund as the 'operating account'.
124(1)(f)	Declare a person to be an associate of the licensee or to belong to a class of persons so declared.	Not prescribed.
124(2)(d)	Prescribe a kind of relationship as a prescribed relationship to a licensee or other person.	Not prescribed.
135(a)	Make provision with respect to the accounts that are to be kept in relation to the income accrued, and the expenses incurred, by the manager of a licensee's business in connection with the conduct of the business.	Not prescribed.
135(b)	Make provision with respect to the purposes for which money in any such account that is referred to in section 135(a) may be expended.	Not prescribed.
167(2)(e)	Prescribe the terms and conditions that apply to the Secretary's application of money held in the Compensation Fund for investing in loans to authorised deposit-taking institutions.	Not prescribed.

Section	Regulation making power under the Act	Scope of the proposed regulation
168(2)	Prescribe the amount of contribution to the Compensation Fund paid by a licence applicant at the time of applying for the licence.	Not prescribed.
168(3)	Provide for a single contribution to be paid if a person applies for more than one kind of licence.	Not prescribed.
169 (4)	Prescribe for a notice to be issued if a licensee fails to pay a levy under section 169(1).	Clause 55 prescribes the particulars that are required in a notice issued for purposes of section 169.
175(1)	Prescribe an amount other than \$500,000 as the maximum amount that a person may recover from the Compensation Fund.	Not prescribed.
175(2)	Prescribe an aggregate amount other than \$2,000,000 as the maximum amount that can be recovered by all persons who incur pecuniary loss because of a failure to account, or of related failures to account.	Not prescribed.
189(2)(d)	Prescribe that money held in the Statutory Interest Account may be used to meet the cost of administering any Act in addition to the Act and the <i>Conveyancers Licensing Act 2003</i> .	Not prescribed.
189(2)(g)	Prescribe terms and conditions to apply to the use of money from the Statutory Interest Account to invest in loans to authorised deposit-taking institutions.	Not prescribed.
189(4)	Prescribe anything as being within the definition of 'property services industry' in section 189.	Not prescribed.
191(k)	Specify the grounds for the taking of disciplinary action against a person under the Act.	Not prescribed.
192(3)	Prescribe provisions of the Act or regulations that remain applicable to a suspended licence or certificate of registration.	Clauses 56(1) and 56(2) prescribe the provisions that apply to a suspended licence or certificate of registration.
215(3)	Prescribe a maximum amount other than 100 penalty units that a Local Court may impose for an offence under the Act.	Not prescribed.
216(2)	Prescribe penalties against the Act or regulations that are penalty notice offences.	Schedule 13 Column 1 provides a list of offences for which a penalty notice can be served.
216(4)	Prescribe the amount payable under a penalty notice for the alleged offence.	Column 2 of Schedule 13 and Column 3 of Schedule 13 prescribe the different amounts of penalty for an

Section	Regulation making power under the Act	Scope of the proposed regulation
		individual and corporation respectively.
219(1)(f)	Authorise the disclosure of information obtained in connection with the administration or execution of the Act.	Not prescribed.
220(1)(h)	Prescribe certain particulars to be entered and kept in the Register that must be maintained under section 220.	Clause 57 lists the particulars that need to be entered and kept in the Register.
222(b)	Authorise any person or class of persons to whom the Secretary may delegate the exercise of any function of the Secretary under the Act.	Not prescribed.
225(2)(f)	Authorise methods for a notice or direction in writing that is required or permitted to be given under the Act to be given to a person other than a corporation.	Not prescribed.
225(3)(e)	Authorise methods for a notice or direction in writing that is required or permitted to be given under the Act to be given to a corporation.	Not prescribed.
230(2)	<ul style="list-style-type: none"> a) Prescribe the procedure to be followed in respect of applications under the Act, b) Fix the maximum amount of remuneration to which a licensee is entitled, by way of commission, fee, gain or reward, for services performed by him or her as a licensee, c) Require licensees to display or otherwise publicise or give notice of particulars of their remuneration and prescribe the consequences of a failure to comply with any such requirement, d) Prescribe the accounts and other records to be kept by a licensee and the manner in which they are to be kept, e) Prescribe the conditions applicable to and in respect of the sale by auction of land or livestock, f) Prescribe the manner in which the conditions of the sale by auction of land or livestock must be notified, g) Prescribe a method of service (which may include electronic transmission) of any notice, statement of claim, order or other document authorised or required to be served by or under a provision of this Act, either in addition to or as an alternative to a method of service provided for by the provision concerned, h) Set fees payable under the Act or Regulation, 	<p>Clause 15 prescribes exemptions from certain requirements of Bidders Record under specified circumstances.</p> <p>Clause 31(4) creates an offence for not keeping records of trust money by licensees.</p> <p>Clause 32(2) creates an offence for not adhering to added requirements set out for strata managing agents.</p> <p>Clause 36 creates an offence for not keeping records and book entries in English.</p> <p>Clause 37(1) states that its an offence to not keep written records of all reports by a real estate agent.</p> <p>Clause 37(2) provides that it's an offence if a licensee does not disclose the records made under this clause to a person upon request.</p> <p>Clause 38(2) creates an offence for not maintaining records of livestock bought to be kept by stock and station agents.</p>

Section	Regulation making power under the Act	Scope of the proposed regulation
	<ul style="list-style-type: none"> i) Set the waiver, reduction, postponement or refund by the Secretary of fees payable or paid under the Act or Regulation, j) Prescribe exemptions from the operation of this Act or specified provisions of this Act, k) Allow the waiver or refund of the whole or any part of a fee for any service provided by the Secretary under the Act or Regulation, and l) Create an offence punishable by a penalty not exceeding 40 penalty units in the case of a corporation or 20 penalty units in any other case. 	<p>Clause 39 notes that the failure to keep records of sales of livestock by stock and station agents is an offence.</p> <p>Clause 40 provides that it's an offence if a strata managing agent does not provide a copy of accounts upon service of notice listed in the clause.</p> <p>Clause 41(4) creates an offence if a record is not completed and prepared by strata managing agent at least one month before it is sent to the treasurer, except in the case of a record resulting from termination of an agency agreement.</p> <p>Clause 43(2) provides that failure to give the owners corporation or association a written authority within 14 days of being appointed directing the authorised deposit taking institution or person or body to disclose information related the money that has been invested to the member of the strata committee or association committee upon request will be an offence.</p> <p>Clause 48(2) creates an exemption for application of section 55 when the services performed by the licensees is under an appointment as a strata managing agent or managing agent under the <i>Strata Scheme Management Act 2015</i> or the <i>Community Land Management Act 2021</i> respectively.</p> <p>Clause 60 prescribes that fees and compensation fund contributions are listed in Schedule 14, Part 1.</p> <p>Clause 61 provides that the Secretary can waive, reduce, postpone or refund fee in whole or part.</p> <p>Clause 62 allows for partial refund of the application fees for some licences and certificates.</p>

Appendix 3 – Summary of main changes

The following table sets out the main changes in the proposed Regulation, compared to the current Regulation. It does not include minor updates.

Clause	Current Regulation	Proposed Regulation
Buyer's agent definition	Buyer's agent means a real estate agent whose licence is subject to a condition that restricts the holder to acting as a real estate agent for a prospective purchaser of land.	Amends the definition of a buyer's agent to align with the definition provided in the Act. Buyer's agent means a (a) real estate agent acting for a prospective buyer or buyer of land, and (b) an assistant real estate agent acting, to the extent permitted under the Act and this Regulation, for a prospective buyer or buyer of land.
Major property holding	A real estate agent does not include an agent undertaking commercial property agency work on behalf of an entity that owns a major property holding. Major property holding means property that has: (a) an aggregate market value of \$40,000,000 or more, or (b) an aggregate gross floor area of 20,000 square metres or more.	Amended definition of major property holding means property that has: (a) an aggregate market value of \$20,000,000 or more, or (b) an aggregate gross floor area of 10,000 square metres or more.
Functions that real estate agents and assistant real estate agents may exercise	An assistant real estate agent may exercise the functions described in paragraphs (c), (d) and (e) of the definition of <i>real estate sale or leasing functions</i> in section 3A(2) of the Act, but	This section has been expanded to clarify that assistant agents performing business agent and on-site residential property management functions are prohibited from entering into an

	<p>may not in the person's capacity as an assistant real estate agent:</p> <p>(a) enter into a contract for the sale of land, or</p> <p>(b) enter into an agency agreement or a franchising agreement, or</p> <p>(c) authorise the withdrawal of money from a trust account.</p>	<p>agency or franchising agreement, authorising trust account withdrawals and entering into a contract for the sale of property.</p>
Professional indemnity insurance	Provides for an exemption for corporations from the professional indemnity insurance requirements.	This clause has been amended to clarify that it applies to a situation where the licensee is a corporation.
Misrepresentation by licensee or registered person by failing to disclose material facts	Under section 52(1)(b) of the Act, an agent or assistant agent must disclose any material facts prescribed by clause 54 of the Regulation that the agent knows or ought reasonably to know before inducing a person to enter into a contract or arrangement.	The proposed Regulation exempts 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.
Information to be given when expression of interest deposit paid – vendor's agent	Provides for the information that must be provided and requirements when an expression of interest deposit is made.	The proposed Regulation will strengthen disclosure requirements by requiring that an agent must not accept an expression of interest deposit from a potential buyer unless the buyer has provided a written statement declaring that they have received and understand the disclosures before paying an expression of interest deposit. It also puts in place a 14 day time limit for agents

		to refund the deposit if contracts are exchanged with another buyer.
Information to be given when expression of interest deposit paid – buyer's agent	Provides for the information that must be provided and requirements when an expression of interest deposit is made.	The proposed Regulation will strengthen disclosure requirements by requiring that an agent must not accept an expression of interest deposit from a potential buyer unless the buyer has provided a written statement declaring that they have received and understand the disclosures before paying an expression of interest deposit.
Use of a collection agent to collect rent	This clause provides that services of a collection agent cannot be used unless the arrangements comply with the guidelines issued by the Secretary.	This section has been removed in its entirety from the proposed Regulation. No guidelines have been developed for the purposes of this clause to date. Also, the clause is redundant because a collection agent is required to hold a licence if they are carrying out leasing functions.
Information to be given when expression of interest deposit paid – stock and station agents	Provides for the information that must be provided and requirements when an expression of interest deposit is made.	An agent must not accept an expression of interest deposit from a potential buyer unless the buyer has provided a written statement declaring that they have received and understand the disclosures, before paying an expression of interest deposit. It also puts in place a 14 day time limit for agents to refund the deposit if contracts are exchanged with another buyer.

<p>Co-operation about records, access and transfer by strata managing agents and assistant agents</p>	<p>A strata managing agent must cooperate with a new agent by making records available and facilitating the transfer of management functions to the new agent.</p>	<p>The proposed Regulation extends the requirement to co-operate with an owners corporation or association (of a community land scheme) where an agent's contract is terminated and the owners corporation or association has decided to self-manage. The proposed clause also requires the agent to provide the owners corporation or association with access to administrative and capital works funds.</p> <p>The proposed change implements a recommendation from the 2021 Report on the Statutory Review of the Strata Schemes Development Act 2015 and Strata Schemes Management Act 2015</p>
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Appendix 4 – List of discussion questions in this RIS

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3.	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?	44-51	18
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11.	Is it industry practice for buyer's agents to pay the deposit on behalf of their client?	6 & 16 of Schedule 2 4 of Schedule 3	21
12.	Is Part 2 of Schedule 2 clear about how the property management rules apply to on-site residential property managers? If not, why not?	Part 2, Schedule 2	21
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14.	Are clauses 26 and 27 adequate? Why or why not?	26-27 of Schedule 2	22
15.	Should clauses 26 and 27 be extended to apply to the management or leasing of commercial property? Why or why not?	26-27 of Schedule 2	22

16.	Is the proposed clause extending agent co-operation to an owners corporation or association appropriate? Why or why not?	1 of Schedule 4	23
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