



New South Wales

# Property and Stock Agents Regulation 2022

under the

Property and Stock Agents Act 2002

[*The following enacting formula will be included if this Regulation is made—*]

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Property and Stock Agents Act 2002*.

Minister for Fair Trading

## Explanatory note

The object of this Regulation is to remake, without substantial changes, the *Property and Stock Agents Regulation 2014*, which is repealed on 1 September 2022 by the *Subordinate Legislation Act 1989*, section 10(2).

This Regulation makes provision for the following—

- (a) requirements relating to the conduct of agency businesses, including the following—
  - (i) the functions of agents and assistant agents,
  - (ii) the rules of conduct to be observed by licensees and holders of certificates of registration in the exercise of their functions,
  - (iii) the content of agency agreements,
  - (iv) the warnings and information to be given by real estate agents when giving financial advice,
  - (v) the scope of professional indemnity insurance,
- (b) requirements for the conduct of auctions, including the following—
  - (i) the making and keeping of the Bidders Record required in connection with auctions of residential property or rural land,
  - (ii) the conditions of sale that apply to a sale by auction,
  - (iii) the notification at an auction of the conditions of sale,
  - (iv) the warnings to be given at an auction about the obligations of bidders,
- (c) requirements relating to the keeping of trust accounts, including the following—
  - (i) the banking of trust money,
  - (ii) the keeping of records of trust money and trust account transactions,
  - (iii) computer systems controls,
  - (iv) the payment of trust money,
- (d) the making and keeping of records by licensees, including the following—

- (i) special requirements for records to be kept by stock and station agents,
  - (ii) special requirements for records to be kept by strata managing agents,
- (e) the requirements that remain applicable to a suspended licence or certificate of registration,
- (f) various exemptions from provisions of the *Property and Stock Agents Act 2002*, including the following—
  - (i) providing for the matters to be taken into account by the Secretary in considering whether to grant an exemption from the provisions that prevent a licensee from exercising functions or providing services on behalf of 2 or more licensees not in partnership with one another,
  - (ii) exemptions from requirements to share commission, the requirement that subagency agreements be in writing and certain other obligations,
- (g) requirements as to levy notices,
- (h) the particulars to be recorded in the Register,
- (i) prescribing offences as penalty notice offences and setting the penalties for the offences,
- (j) prescribing the fees and Compensation Fund contributions to be paid,
- (k) other miscellaneous matters.

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## Property and Stock Agents Regulation 2022

under the

Property and Stock Agents Act 2002

### Part 1 Preliminary

#### 1 Name of Regulation

This Regulation is the *Property and Stock Agents Regulation 2022*.

#### 2 Commencement

This Regulation commences on 1 September 2022.

**Note—** This Regulation replaces the *Property and Stock Agents Regulation 2014*, which is repealed on 1 September 2022 by the *Subordinate Legislation Act 1989*, section 10(2).

#### 3 Definitions

In this Regulation—

**affiliate**, in relation to an entity (the *first entity*), means—

- (a) another entity controlled, within the meaning of the Corporations Act, section 50AA, by the first entity, or
- (b) if the first entity is a body corporate—an entity that is a related entity of the first entity.

**Bidders Record**, for Part 3—see section 13.

**buyer's agent** means—

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

**commercial property agency work** means selling, purchasing, exchanging, leasing, managing or otherwise dealing with property other than residential property or rural land.

**entity** has the same meaning as in the Corporations Act, section 9.

**fee unit**—see Schedule 14, Part 2.

**licensee in charge**—means the holder of a class 1 licence employed under the Act, section 31 to be in charge of a business.

**property**, for Part 3—see section 13.

**related entity** has the same meaning as in the Corporations Act, section 9.

**residential tenancy agreement** has the same meaning as in the *Residential Tenancies Act 2010*.

**the Act** means the *Property and Stock Agents Act 2002*.

**transitional assistant stock and station agent certificate** means a certificate of registration to which the Act, Schedule 1, clause 37(3) applies.

**trust money** has the same meaning as in the Act, Part 7.

*vendor bid*, for Part 3—see section 13.

**Note—** The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

## Part 2 Conduct of agency business

### Division 1 Functions of agents and assistant agents

#### 4 Real estate agent functions—the Act, s 3A

- (1) For the Act, section 3A(1), definition of *real estate agent functions*, the functions—
  - (a) include acting as an auctioneer or agent in relation to a parcel of rural land with an area of 20 hectares or less, and
  - (b) do not include a person undertaking commercial property agency work on behalf of—
    - (i) an affiliate of the person, or
    - (ii) an entity that owns, whether or not together with an affiliate of the entity, a major property holding.
- (2) In this section—  
*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 10,000m<sup>2</sup> or more.

#### 5 Functions real estate agents and assistant real estate agents may exercise—the Act, s 10A

- (1) A real estate agent who holds a class 1 or class 2 licence may exercise all real estate agent functions.
- (2) Despite subsection (1), a real estate agent may not authorise the withdrawal of money from a trust account unless the real estate agent is the licensee in charge of the business to which the trust account relates.
- (3) An assistant real estate agent—
  - (a) may exercise all real estate agent functions other than the functions described in the Act, section 3A(2), definition of *real estate sale or leasing functions*, paragraphs (a) and (b), but
  - (b) may not, in the person's capacity as an assistant real estate agent—
    - (i) enter into a contract for the sale of land, or
    - (ii) enter into an agency agreement or a franchising agreement, or
    - (iii) authorise the withdrawal of money from a trust account.

#### 6 Functions stock and station agents and assistant stock and station agents may exercise—the Act, s 10A

- (1) A stock and station agent who holds a class 1 or class 2 licence may exercise all stock and station agent functions.
- (2) Despite subsection (1), a stock and station agent may not authorise the withdrawal of money from a trust account unless the stock and station agent is the licensee in charge of the business to which the trust account relates.
- (3) An assistant stock and station agent—
  - (a) may exercise all stock and station agent functions other than the function described in the Act, section 3A(2), definition of *real estate sale or leasing functions*, paragraph (b), but
  - (b) may not, in the person's capacity as an assistant stock and station agent—
    - (i) enter into a contract for the sale of land, or



- (ii) enter into an agency agreement, other than an agency agreement relating only to the sale or purchase of livestock, or
  - (iii) enter into a franchising agreement, or
  - (iv) authorise the withdrawal of money from a trust account.
- (4) In this section—  
***stock and station agent functions*** means the functions referred to in the Act, section 3(1), definition of ***stock and station agent***.

## **7 Functions strata managing agents and assistant strata managing agents may exercise—the Act, s 10A**

- (1) A strata managing agent who holds a class 1 or class 2 licence may exercise all strata managing agent functions.
- (2) Despite subsection (1), a strata managing agent may not authorise the withdrawal of money from a trust account unless the strata managing agent is the licensee in charge of the business to which the trust account relates.
- (3) An assistant strata managing agent may exercise all strata managing agent functions, but may not in the person's capacity as an assistant strata managing agent—
  - (a) enter into an agency agreement or a franchising agreement, or
  - (b) authorise the withdrawal of money from a trust account, or
  - (c) affix the seal of the owners corporation.
- (4) In this section—  
***strata managing agent functions*** means the functions referred to in the Act, section 3B(1), definition of ***strata managing agent***.

## **Division 2 General conduct requirements**

### **8 Rules of conduct—the Act, s 37**

- (1) The rules set out in Schedules 1–4 are prescribed for the Act, section 37 as 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.
- (2) Schedules 1–4 apply as follows—
  - (a) Schedule 1 applies to all agents and assistant agents,
  - (b) Schedule 2, Part 1 applies to real estate agents and assistant real estate agents who exercise—
    - (i) real estate sale or leasing functions in relation to the sale or purchase of land, or
    - (ii) business agent functions,
  - (c) Schedule 2, Part 2 applies to real estate agents and assistant real estate agents who exercise—
    - (i) real estate sale or leasing functions in relation to the lease of land, or
    - (ii) on-site residential property manager functions,
  - (d) Schedule 3 applies to stock and station agents and assistant stock and station agents,
  - (e) Schedule 4 applies to strata managing agents and assistant strata managing agents.
- (3) A reference to a ***business*** in Schedule 1 includes a reference to a professional practice.

- (4) A reference to an **agent** in Schedules 1–4 includes a reference to an assistant agent to whom the Schedule applies.

## 9 Contents of agency agreements—the Act, s 55

- (1) For the Act, section 55(2), an agency agreement must comply with the requirements of Schedules 5–12 as to the terms, conditions and other provisions an agency agreement must or must not contain.
- (2) Schedules 5–12 apply as follows—
- (a) Schedule 5 applies to all agency agreements,
  - (b) Schedule 6 applies to an agency agreement under which the agent will act for the seller on the sale of residential property,
  - (c) Schedule 7 applies to an agency agreement under which the agent will act as a buyer’s agent on the purchase of land,
  - (d) Schedule 8 applies to an agency agreement under which the agent will act for the seller on the sale of rural land,
  - (e) Schedule 9 applies to an agency agreement under which the agent will act for the seller on the sale of a business or professional practice,
  - (f) Schedule 10 applies to an agency agreement under which the agent will provide property management services in relation to the leasing of residential property or rural land,
  - (g) Schedule 11 applies to an agency agreement under which the agent will act for the owner of residential property or rural land in relation to the entering into of a lease of the residential property or rural land,
  - (h) Schedule 12 applies to an agency agreement under which the agent will exercise the functions of a strata managing agent.
- (3) An agency agreement—
- (a) must not contain a term, condition or other provision that is inconsistent with a term, condition or other provision the agency agreement is required to contain by this section, but
  - (b) is not otherwise limited by this section in relation to the terms, conditions and other provisions it may contain.
- (4) Subsection (1) does not apply to an agency agreement entered into before the commencement of the Act on 1 September 2003.
- (5) An agency agreement entered into before the commencement of the Act must contain the terms, if any, it was required to contain under the *Property, Stock and Business Agents Act 1941*, section 42AA at the time the agreement was entered into.
- (6) A reference to **property** in Schedules 5–12, other than as a reference to residential property, includes a reference to land.
- (7) A reference to a **business** in Schedule 9 includes a reference to a professional practice.

## 10 Service of agency agreements—the Act, s 55

- (1) For the Act, section 55(3), each of the following methods of service is prescribed as a means by which a copy of an agency agreement may be served on an individual—
- (a) delivering it personally to the individual,
  - (b) leaving it at the individual’s place of residence, or at an address provided in the agency agreement as the individual’s address for service, with a person—
    - (i) who apparently resides there, and

- (ii) who has apparently reached the age of 16 years,
  - (c) sending it by post to the individual—
    - (i) at the individual's residential address or postal address as disclosed in the agency agreement, or
    - (ii) at an address provided in the agency agreement as the individual's address for service,
  - (d) transmitting it electronically to an email address provided in the agency agreement as the individual's address for electronic service.
- (2) For the Act, section 55(3), each of the following methods of service is prescribed as a means by which a copy of an agency agreement may be served on a body corporate—
- (a) delivering it personally to—
    - (i) the secretary of the body corporate, or
    - (ii) another person concerned in the management of the body corporate,
  - (b) leaving it at the body corporate's principal place of business with a person—
    - (i) who is apparently employed there, and
    - (ii) who has apparently reached the age of 16 years,
  - (c) sending it by post to the body corporate at the address of its principal place of business or postal address, as disclosed in the agency agreement,
  - (d) transmitting it electronically to an email address disclosed in the agency agreement.

## **11 Provision of financial and investment advice—the Act, s 46**

- (1) This section applies to financial or investment advice—
- (a) intended to influence the person to whom the advice is given in making a decision about a particular financial or investment decision in connection with the sale or purchase of land, or
  - (b) that could reasonably be regarded as being intended to have the influence referred to in paragraph (a).
- (2) For the Act, section 46, a real estate agent who provides financial or investment advice to a person must provide the following warnings and information to the person—
- (a) a warning that the advice is general advice and its preparation has not taken into account—
    - (i) the individual circumstances of the person, or
    - (ii) the person's objectives, financial situation or needs,
  - (b) for advice provided in connection with the purchase of land—a warning that an intending purchaser should assess the suitability of an investment in the property in light of the purchaser's own needs and circumstances, which the purchaser can do—
    - (i) personally, or
    - (ii) by consulting an appropriately licensed financial adviser,
  - (c) information that discloses the existence and nature of conflicts of interest the agent may have in connection with the provision of the advice, for example, entitlement to commission or referral fees.

**Note—** The Act, section 46 provides that a real estate agent who fails to comply with a requirement to provide information or warning specified in the regulations is guilty of an offence.

## 12 Professional indemnity insurance—the Act, s 22

- (1) A licensee must be insured under a policy of professional indemnity insurance in force in relation to the licensee, or the licensee's employer, that complies with the requirements of this section.  
**Note—** Under the Act, section 22, it is a condition of a licensee's licence that the licensee be insured as required by this section.
- (2) The policy must provide cover for the following types of civil liability arising in the conduct of an agency business—
  - (a) liability arising from acts or omissions of the licensee that constitute—
    - (i) negligence, or
    - (ii) misleading or deceptive conduct, or
    - (iii) breach of professional duty, or
    - (iv) unintentional defamation, or
    - (v) unintentional interference with intellectual property rights,
  - (b) vicarious liability arising from acts or omissions of an employee, agent or other person engaged in the agency business that constitute—
    - (i) negligence, or
    - (ii) misleading or deceptive conduct, or
    - (iii) breach of professional duty, or
    - (iv) defamation for which the claimant is not at fault, or
    - (v) interference with intellectual property rights for which the claimant is not at fault, or
    - (vi) fraud or dishonesty by the employee, agent or other person for which the claimant is not at fault.
- (3) The policy must provide cover of at least—
  - (a) \$1 million for any one claim, and
  - (b) \$3 million in the aggregate for all claims made during the period of insurance.
- (4) The amounts referred to in subsection (3) are inclusive of all costs incurred or payable by the claimant in connection with the claim, including legal costs.
- (5) A licensee is required to be insured under this section only if the licensee engages in activities for which a licence is required under the Act.
- (6) A licensee is not required to be insured under this section in relation to civil liability arising in the conduct of either of the following activities—
  - (a) commercial property agency work in relation to property with a value greater than \$10 million,
  - (b) if the licensee is a corporation—commercial property agency work carried out by the licensee on behalf of an affiliate that has indemnified the licensee against claims in accordance with this section.
- (7) An indemnity provided to a licensee by its affiliate must cover—
  - (a) claims arising from a type of civil liability referred to in this section, and
  - (b) an amount equivalent to the amount of cover that would otherwise be required for claims under this section.
- (8) In this section—  
**agency business** means a business referred to in the Act, section 8(1).  
**civil liability** includes liability for personal injury.

***employer***, of a licensee, means a person who employs or otherwise engages the licensee to perform services for which a licence is required under the Act.

## Part 3 Auctions

### 13 Definitions

In this Part—

**Bidders Record** has the same meaning as in the Act, section 68.

**property** means residential property or rural land.

**vendor bid** means a bid made by or on behalf of the seller.

### 14 Making Bidders Records—the Act, s 68

- (1) The Bidders Record for an auction of property must record the following—
  - (a) the date and place of the auction,
  - (b) the address of the property,
  - (c) the name and licence number of the auctioneer conducting the auction,
  - (d) the name of the owner of the property at the time of the auction,
  - (e) the name and licence number of the selling agent for the auction,
  - (f) if the property is sold at the auction—which of the persons named in the Bidders Record is the successful bidder and the sale price,
  - (g) if the property is not sold at the auction—the highest bid accepted, and the vendor bid, if any, at the auction.

**Note—** A Bidders Record made by a licensee is one of the licensee's records for the Act, Part 8.

- (2) If a person who is registering to bid on behalf of another person will be bidding for the other person as a buyer's agent, the Bidders Record—
  - (a) must record the agent's licence number, and
  - (b) may record the address of the agent's registered office as the agent's address.
- (3) An agent who makes a Bidders Record must ensure only the following persons make entries in the Bidder's Record—
  - (a) the agent who makes the Bidders Record,
  - (b) an employee of the agent acting on behalf of the agent.

Maximum penalty—

- (a) for a corporation—40 penalty units, or
  - (b) otherwise—20 penalty units.
- (4) If more than 1 property is to be offered for sale at an auction sale, a single Bidders Record may be made to apply to 2 or more of the properties to be offered for sale.
- (5) If a single Bidders Record is made to apply to 2 or more properties—
  - (a) the details of a person who will be entitled to bid at the auction of any of the properties are only required to be entered in the Bidders Record once, and
  - (b) the details required by subsections (1) and (2) must be recorded separately in relation to each of the properties.

### 15 Bidders Record exemptions—the Act, ss 4 and 230

- (1) If a person is registering to bid on behalf of a body corporate, the following exemptions apply—
  - (a) an exemption from the requirement under the Act, section 68(2)(b) that the relevant details of the person bidding include the number or other identifier of proof of identity of the body corporate, and

- (b) an exemption from the requirement under the Act, section 69(1)(b) that the letter of authority to bid on behalf of a body corporate specify the number or other identifier of proof of identity for the body corporate, if the letter of authority specifies the Australian Business Number of the body corporate.
- (2) If a person who is registering to bid on behalf of another person will be bidding for the other person under a power of attorney, there is an exemption from the requirement under the Act, section 68(2)(b) that the relevant details of the person bidding include the specified details of the other person.
- (3) If a person who is registering to bid on behalf of another person will be bidding in the capacity of a buyer's agent, there is an exemption from the Act, section 69(1)(b), if details of the person on behalf of whom the agent is to bid are established by the production of a copy of the agency agreement under which the agent will be bidding.

## **16 Keeping Bidders Records—the Act, ss 68 and 104**

- (1) A licensee who acts on the sale of property by auction must make and keep as part of the records the licensee is required to make by the Act, section 104, a record of the following in relation to the licensee who made the Bidders Record for the auction—
  - (a) the name of the licensee,
  - (b) the business address of the licensee,
  - (c) licence number of the licensee.
- (2) If a licensee keeps a Bidders Record in electronic form, the licensee must also keep, as part of the licensee's records about the auction sales to which the Bidders Record relates, a record of details to enable the Bidders Record to be located and accessed in the licensee's electronic records.

## **17 Proof of identity for Bidders Records—the Act, ss 68 and 69**

- (1) The following forms of proof of identity may be used for a person for the purposes of an entry in a Bidders Record—
  - (a) a card or document—
    - (i) issued—
      - (A) by the government or a statutory authority of the Commonwealth, New South Wales or another State or a Territory, or
      - (B) by an authorised deposit-taking institution, and
    - (ii) that shows—
      - (A) the name and address of the person, or
      - (B) the name of the person, if it is accompanied by a statutory declaration by the person as to the person's address,
  - (b) a combination of cards or documents—
    - (i) that show the name and address of the person, and
    - (ii) one of which is issued by—
      - (A) the government or a statutory authority of the Commonwealth, New South Wales or another State or a Territory, or
      - (B) by an authorised deposit-taking institution,
  - (c) a passport or motor vehicle driver's licence issued under the law of a jurisdiction outside Australia that shows the person's name, together with—
    - (i) a card or document that shows the person's address and is issued by an organisation or entity other than the person, or
    - (ii) a statutory declaration by the person as to the person's address.

- (2) If the relevant details of a person are entered in the Bidders Record for an auction of property before the day of the auction or otherwise than at the place the auction is held, the person must not be provided, at the auction, with the identifying number allocated for the purposes of identification at the auction unless the person's identity is established by a proof of identity that may be used for the purposes of an entry in the Bidders Record under the Act, section 69.
- (3) An agent or employee of an agent who provides an identifying number to a person in contravention of subsection (2) is guilty of an offence.  
Maximum penalty—
  - (a) for a corporation—40 penalty units, or
  - (b) otherwise—20 penalty units.

## **18 Conditions of sale by auction—the Act, s 77**

- (1) The following conditions are prescribed as applicable to the sale by auction of land or livestock—
  - (a) the vendor's reserve price must be given in writing to the auctioneer before the auction commences unless the auction relates solely to livestock,
  - (b) a vendor bid must not be made unless the auctioneer has, before the commencement of the auction, announced clearly and precisely the number of vendor bids that may be made,
  - (c) the highest bidder is the purchaser, subject to the reserve price, if any,
  - (d) if there is a disputed bid—
    - (i) the auctioneer is the sole arbitrator, and
    - (ii) the auctioneer's decision is final,
  - (e) the auctioneer may refuse to accept a bid that, in the auctioneer's opinion, is not in the best interests of the vendor,
  - (f) a bidder is taken to be bidding on the bidder's own behalf unless, before bidding, the bidder has given to the auctioneer a copy of a written authority to bid for or on behalf of another person,
  - (g) a bid must not be made or accepted after the fall of the hammer,
  - (h) as soon as practicable after the fall of the hammer the purchaser must sign the agreement for sale, if any.
- (2) The following conditions, in addition to the conditions prescribed by subsection (1), are prescribed as applicable to the sale by auction of residential property or rural land—
  - (a) all bidders must be registered in the Bidders Record and display the identifying number allocated to the person when making a bid,
  - (b) subject to the condition prescribed by subsection (3)(a)—
    - (i) the auctioneer may make only one vendor bid at an auction for the sale of residential property or rural land, and
    - (ii) no other vendor bid may be made by the auctioneer or another person,
  - (c) immediately before making a vendor bid the auctioneer must announce that the bid is made on behalf of the seller or announce "vendor bid".
- (3) The following conditions, in addition to the conditions prescribed by subsections (1) and (2), are prescribed as applicable to the sale by auction of co-owned residential property or rural land or the sale of co-owned residential property or rural land by a seller as executor or administrator—
  - (a) more than one vendor bid may be made to purchase the interest of a co-owner,



- (b) a bid by or on behalf of an executor or administrator may be made to purchase in that capacity,
  - (c) before the commencement of the auction, the auctioneer must announce that bids to purchase the interest of another co-owner or to purchase as executor or administrator may be made by or on behalf of the seller,
  - (d) before the commencement of the auction, the auctioneer must announce the bidder registration number of all co-owners, executors or administrators or a person registered to bid on behalf of a co-owner, executor or administrator.
- (4) The following condition, in addition to the conditions prescribed by subsection (1), is prescribed as applicable to the sale by auction of livestock—

The purchaser of livestock must pay the stock and station agent who conducted the auction, or under whose immediate and direct supervision the auction was conducted, or the vendor, the full amount of the purchase price—

  - (a) if the amount can reasonably be determined immediately after the fall of the hammer—before the close of the next business day following the auction, or
  - (b) if the amount cannot reasonably be determined immediately after the fall of the hammer—before the close of the next business day following determination of the amount, or
  - (c) if some other time for payment is specified in a written agreement between the purchaser and the agent, or the purchaser and the vendor, made before the fall of the hammer—before or at the time specified in the agreement.

## **19 Notification of auction conditions—the Act, s 77**

- (1) A stock and station agent or real estate agent who offers land or livestock for sale by auction must notify the conditions of the sale using a notice—
  - (a) written or printed in English, and
  - (b) that sets out the conditions of the sale clearly and legibly, and
  - (c) that is exhibited in a conspicuous position before and during the auction so as to be clearly visible to, and available for inspection by, a person attending the auction.
- (2) Subsection (3) applies to an auction if—
  - (a) the auction—
    - (i) is for the sale of land or livestock comprising more than 1 lot and is conducted by a stock and station agent or real estate agent, or
    - (ii) is for the sale of livestock comprising more than 1 lot and is conducted by an assistant stock and station agent, and
  - (b) one or more of the conditions of sale for 1 or more of the lots are different from the conditions of sale for all or most of the other lots.
- (3) The agent or assistant stock and station agent may notify the different conditions by reciting the conditions aloud clearly and precisely immediately before offering each relevant lot for sale at the auction.

Maximum penalty—

  - (a) for a corporation—40 penalty units, or
  - (b) otherwise—20 penalty units.

## **20 Warnings about bidders' obligations—the Act, ss 66, 78 and 83**

- (1) The notice required to be given by the Act, section 66(4) must be in the following form—

## **Penalty for dummy bidding**

It is an offence against the *Property and Stock Agents Act 2002* for a person to do one or more of the following—

- (a) make a bid as the seller,
- (b) make a bid on behalf of the seller unless the person is the auctioneer,
- (c) procure another person to make a bid on behalf of the seller.

A bid made with the dominant purpose of benefiting the seller constitutes a bid made on behalf of the seller.

A bid may be found to be a bid made on behalf of the seller even though the seller did not—

- (a) request the bid, or
- (b) know about the bid.

Severe penalties may be imposed on persons convicted of dummy bidding.

- (2) The notice required to be given by the Act, section 78(3) must be in the following form—

## **Penalty for collusive practices**

It is an offence against the *Property and Stock Agents Act 2002* for a person to do one or more of the following as a result of a collusive practice, or to induce or attempt to induce another person by a collusive practice to do one or more of the following—

- (a) to abstain from bidding,
- (b) to bid to a limited extent only,
- (c) to do another act or thing that might prevent free and open competition.

Severe penalties may be imposed on persons convicted of collusive practices.

- (3) The notice required to be given by the Act, section 83(2) must be in the following form—

## **Successful bidders**

The actual successful bidder at an auction sale must give to the auctioneer or an employee of the auctioneer—

- (a) the bidder's name, or
- (b) the name of the person on whose behalf the successful bid was made.

- (4) Each notice —

- (a) must have its contents clearly and legibly written or printed in English, and
- (b) must be exhibited in a conspicuous position before and during the auction so as to be clearly visible to, and available for inspection by, a person attending the auction.

- (5) A notice may be combined with the notice of auction conditions referred to in section 19.

## Part 4 Trust money

### 21 Provision of unique identifying number when opening a trust account—the Act, ss 86 and 91

- (1) A licensee must, when applying to open a trust account at an authorised deposit-taking institution, provide the authorised deposit-taking institution with a unique identifying number obtained from the Department.

Maximum penalty—

- (a) for a corporation—40 penalty units, or
  - (b) otherwise—20 penalty units.
- (2) The authorised deposit-taking institution must use the unique identifying number when lodging monthly returns in accordance with the Act, section 91(1)–(3).

### 22 Receipts for trust money—the Act, s 86

- (1) A licensee must, immediately on receiving trust money, prepare or cause to be prepared a receipt for the trust money.
- (2) When the receipt is prepared—
  - (a) from the trust receipt book—a copy of the entries made on the receipt must be made simultaneously on the machine-numbered duplicate form provided in the book, or
  - (b) otherwise than from a trust receipt book—a copy of the entries made on the receipt must be made simultaneously in the record required to be kept by section 27.
- (3) The following particulars must be shown on the receipt—
  - (a) the date of issue,
  - (b) the number of the receipt in numerical sequence,
  - (c) the name of the licensee and the words “Trust Account”,
  - (d) the name of the person from whom the payment was received,
  - (e) the name and ledger reference number of the person on whose behalf the payment was made,
  - (f) particulars sufficient to identify the transaction in relation to which the money was paid,
  - (g) the amount of money received,
  - (h) whether, or the extent to which, the money was paid in cash or by cheque, by electronic funds transfer or otherwise.
- (4) When a receipt is issued by a licensee for rent collected, the receipt must also show—
  - (a) the date to which rent has been calculated, and
  - (b) the position of the rental account at that date.
- (5) Receipts must be prepared in the numerical order of the series to which they belong.
- (6) The original of a receipt must be issued, on demand, to the person from whom the trust money is received.
- (7) A licensee must keep the following—
  - (a) an original receipt that is not issued to the person from whom the trust money is received,
  - (b) an original receipt that is cancelled after it is prepared,

- (c) duplicate receipts, unless an electronic record of receiving the money was made as soon as practicable after the money was received.

Maximum penalty—

- (a) for a corporation—40 penalty units, or
- (b) otherwise—20 penalty units.

## **23 Receipts for trust money—additional requirements for strata managing agents—the Act, s 86**

If a strata managing agent issues a receipt for a payment received when acting as a strata managing agent, the agent must also show the following particulars on the receipt—

- (a) if the payment is in relation to a contribution referred to in the *Strata Schemes Management Act 2015*, Part 5, Division 2 or the *Community Land Management Act 2021*, Part 5, Division 2—
  - (i) the fact it is made in relation to the contribution, and
  - (ii) a statement identifying the lot number, land or premises in relation to which the liability to make the contribution is imposed, and
  - (iii) if the contribution is a regular periodic contribution—the period in relation to which it is made,
- (b) if the payment was received in relation to more than one matter—the apportionment of the payment between those matters,
- (c) if the receipt is issued from a general trust receipt book—the name of the owners corporation or association for or on behalf of which the payment is received.

Maximum penalty—

- (a) for a corporation—40 penalty units, or
- (b) otherwise—20 penalty units.

## **24 Banking of trust money—the Act, s 86**

A licensee who receives trust money must pay it into the licensee's trust account—

- (a) before the end of the next business day after the day of its receipt, if practicable, or
- (b) if not practicable, as soon as practicable after that day.

Maximum penalty—

- (a) for a corporation—40 penalty units, or
- (b) otherwise—20 penalty units.

## **25 Payment of trust money by cheque or electronic funds transfer—the Act, s 86**

- (1) Trust money must be drawn from a licensee's trust account in accordance with this section.
- (2) Trust money must not be drawn from a licensee's trust account other than—
  - (a) by cheque, or
  - (b) by electronic funds transfer.
- (3) Each cheque must—
  - (a) be machine-numbered in series, and
  - (b) be marked “not negotiable”, and
  - (c) not be payable to cash, and

- (d) be signed by the licensee in charge of the business.
  - (4) The licensee must ensure—
    - (a) cheques are drawn in the numerical order of the series to which they belong, and
    - (b) for each cheque, a record is kept of the following—
      - (i) the number and date of issue of the cheque,
      - (ii) the name of the payee,
      - (iii) the amount of the cheque,
      - (iv) details identifying the ledger account to be debited and the name and ledger reference number of the person on whose behalf the cheque was drawn,
      - (v) the invoice number applicable to the cheque, if one is available to the licensee,
      - (vi) the reason for which the cheque was drawn.
  - (5) A licensee is taken to comply with subsection (4) if—
    - (a) the licensee maintains an accounting system that causes the particulars required by subsection (4) to be entered directly in the cash book required to be kept under section 27, and
    - (b) the particulars are entered at the same time as, and in the same operation as, the cheque is drawn.
  - (6) The licensee must ensure that, for each electronic funds transfer, a record is kept of the following—
    - (a) the name of the person effecting the transfer,
    - (b) the reference number or other particulars sufficient to identify the transfer,
    - (c) the date of the transfer,
    - (d) the name of the payee,
    - (e) the amount transferred to or from each ledger account,
    - (f) details identifying the ledger accounts to be debited and the name and ledger reference number of the person on whose behalf the transfer was made,
    - (g) particulars of the reason for the transfer.
- Maximum penalty—
- (a) for a corporation—40 penalty units, or
  - (b) otherwise—20 penalty units.

## **26 Trust deposits—the Act, s 86**

- (1) If a licensee makes a deposit of money to the licensee's trust account, the licensee must ensure—
  - (a) the relevant deposit book or other written deposit record is produced to the authorised deposit-taking institution when the deposit is made, and
  - (b) the following particulars are entered in the book or record—
    - (i) the date of the deposit,
    - (ii) the amount of the deposit,
    - (iii) whether the deposit consists of cheques, notes or coins,
    - (iv) if cheques are included in the deposit—
      - (A) the name of the drawer, and

- (B) the name and branch of the authorised deposit-taking institution on which the cheque is drawn, and
    - (C) the amount of each cheque,
  - (c) a duplicate of the particulars of each deposit is kept by the licensee.
  - (2) This section does not apply to a deposit of money made directly to a licensee's trust account, electronically or otherwise.
- Maximum penalty—
- (a) for a corporation—40 penalty units, or
  - (b) otherwise—20 penalty units.

## **27 Record of trust account transactions—the Act, s 86**

- (1) A licensee must keep a record of daily receipts and payments of money into and out of the licensee's trust account.
  - (2) The record must be in the form of a cash book in which the pages are consecutively numbered and on the pages of which are shown—
    - (a) the consecutive numbers of receipts issued or cancelled, and
    - (b) the consecutive numbers of cheques drawn or cancelled, and
    - (c) for money received or disbursed by electronic funds transfer—the consecutive reference numbers or other means of identification of the transfers.
  - (3) When money required to be paid into the trust account is received, the licensee must enter into the record—
    - (a) the particulars required by section 22(3)(a), (b) and (d)–(h) to be shown on a receipt for the money, and
    - (b) the date of the deposit of the money to the trust account, and
    - (c) the amount of the deposit.
  - (4) When money is paid out of the trust account, the licensee must enter into the record the particulars—
    - (a) required by section 25(4) to be recorded for a cheque, or
    - (b) required by section 25(6) to be recorded for an electronic funds transfer.
  - (5) At the end of each named month, the licensee must—
    - (a) balance the cash book or other record and—
      - (i) carry forward the balance to the commencement of the next month, or
      - (ii) carry forward the balance to a ledger account provided for the purpose, and
    - (b) prepare a statement reconciling the balance of the licensee's trust account with the balance of the related cash book or other record.
- Maximum penalty—
- (a) for a corporation—40 penalty units, or
  - (b) otherwise—20 penalty units.

## **28 Journal—the Act, s 86**

- (1) A licensee must record in a journal, maintained exclusively for the licensee's trust account, all transfers between accounts in the trust account ledger that are not effected by cheque or electronic funds transfer.
- (2) The recording must include the following—

- (a) the date of the transfer,
  - (b) the amount transferred to and from each ledger account,
  - (c) the names of all ledger accounts to be debited or credited,
  - (d) the relevant reference number or other identification,
  - (e) sufficient particulars to identify the transfer and the reason for the transfer.
- (3) Each transfer, when entered in the journal, must be numbered consecutively.  
Maximum penalty—
  - (a) for a corporation—40 penalty units, or
  - (b) otherwise—20 penalty units.

**29 Trust account ledger—the Act, s 86**

- (1) A licensee must maintain a separate ledger account for trust money received on behalf of or paid to each person on behalf of whom the licensee acts.
- (2) Each ledger account must include—
  - (a) the name of the person on behalf of whom the licensee acts, and
  - (b) a reference number or other identification, and
  - (c) particulars of each transaction affecting the trust money.
- (3) The particulars of a transaction must include the following—
  - (a) the date of the transaction,
  - (b) a description of the transaction,
  - (c) particulars sufficient to identify the trust record originating the transaction,
  - (d) the amount of the transaction,
  - (e) the resulting current balance of account arising from the transaction.  
Maximum penalty—
  - (a) for a corporation—40 penalty units, or
  - (b) otherwise—20 penalty units.

**30 Trust account ledger trial balance—the Act, s 86**

- (1) A licensee must, within 21 days after the end of each named month, prepare a trial balance statement of all ledger accounts current as at the end of the month.
- (2) The trial balance statement must—
  - (a) specify the month to which it refers and the date of its preparation, and
  - (b) list each ledger account that does not have a zero balance at the end of the month by stating—
    - (i) the name of the person on whose behalf the agent acts, and
    - (ii) the reference number or other identification, and
    - (iii) the balance of the account at the end of the month, and
  - (c) show the total of the ledger account balances at the end of the month, and
  - (d) show a comparison between—
    - (i) the total, and
    - (ii) the balance in the cash book reconciled with the balance in the trust account as required by section 27(5)(b).

Maximum penalty—

- (a) for a corporation—40 penalty units, or
- (b) otherwise—20 penalty units.

### **31 Records of trust money to be kept by licensees—the Act, ss 86 and 230**

- (1) A licensee must keep the records required by this Part in a form from which the information can be produced on demand in permanent legible form in English.
- (2) The records must be kept—
  - (a) at the licensee's registered office, or
  - (b) if the licensee's business is conducted at more than 1 place of business—at the place of business where the business to which the records relate was conducted.
- (3) If a computer system is used for the purpose of recording information that is reproduced in the records required by this Part, the licensee must keep the computer system records required by section 33 at the licensee's registered office.
- (4) A licensee must, within 21 days after the end of each month—
  - (a) compile with the records kept by the licensee under this Part the original, or a true copy, of each trial balance statement prepared by the licensee in accordance with section 30 for the month, and
  - (b) maintain a summary of the total of the trust money disclosed in the trial balance statements for the month.

Maximum penalty—

- (a) for a corporation—40 penalty units, or
- (b) otherwise—20 penalty units.

### **32 Records—additional requirements for strata managing agents—the Act, ss 86 and 230**

- (1) A strata managing agent must also keep either—
  - (a) a single trust account ledger in a form permitting each account for an owners corporation or association for or on behalf of which the agent holds money to be physically removed from the ledger, or
  - (b) a separate trust account ledger for each owners corporation or association for or on behalf of which the agent holds money.
- (2) A strata managing agent must ensure each ledger kept for an owners corporation or association contains sufficient information to identify the owners corporation or association for which it is kept.

Maximum penalty—

- (a) for a corporation—40 penalty units, or
- (b) otherwise—20 penalty units.

### **33 Computer systems control—the Act, s 86**

- (1) This section applies if a licensee maintains records for the purposes of this Part using a computer system.
- (2) The licensee must maintain a record of all changes, including creation, amendment or deletion, to the following information—
  - (a) the name of a person on behalf of whom the licensee acts,
  - (b) the address of a person on behalf of whom the licensee acts,



- (c) the code reference number, if any, of a person on behalf of whom the licensee acts,
  - (d) an agency description,
  - (e) a trust account number.
- (3) The record must—
  - (a) disclose the details of the information before and after the change, and
  - (b) be compiled in chronological sequence.
- (4) The licensee must ensure, in relation to a journal—
  - (a) entries balance before being made in the ledger, and
  - (b) journal reference numbers are allocated in sequence under program control.
- (5) The licensee must ensure, in relation to a ledger, that no program—
  - (a) is capable of accepting the entry of a transaction resulting in a debit balance to an account unless a contemporaneous record of the transaction is made in a way that enables the production in permanent legible form, on demand, of a separate chronological report of all occurrences of this kind, and
  - (b) enables the deletion of an account unless—
    - (i) the balance of the account is zero, and
    - (ii) the account, when deleted, is kept as it was immediately before deletion, in a form from which the information can be produced on demand in permanent legible form in English.
- (6) The licensee must also ensure the following—
  - (a) entries in a record produced in visible form appear in chronological sequence,
  - (b) a report, or each page of or entry in a report, is numbered sequentially under program control in a way that enables the completeness of the records required by this Part to be conveniently verified,
  - (c) no amendment to the particulars of a transaction already recorded can be made other than by a separate transaction effecting the amendment,
  - (d) each program requires the mandatory input of data for all data entry fields relating to information required to be recorded by this Part.

Maximum penalty—

- (a) for a corporation—40 penalty units, or
- (b) otherwise—20 penalty units.

## **34 Computer systems back-up requirements—the Act, s 86**

The licensee must ensure, in relation to the records referred to in section 33—

- (a) the following occurs—
  - (i) the records are backed up using electronic means other than cloud technology at least once each month,
  - (ii) the most recent back-up copy is kept in a separate location to the original records to ensure the back-up copy is not affected by fire or a power or disk failure or other incident that affects the original records, or
- (b) the records are backed up using cloud technology through the internet at least once each month.

Maximum penalty—

- (a) for a corporation—40 penalty units, or

- (b) otherwise—20 penalty units.

**35 Exemptions—the Act, ss 90 and 91**

The Act, sections 90 and 91 do not apply to—

- (a) a separate trust account kept on the instructions of a client of a licensee or firm of licensees for the exclusive benefit of the client, or
- (b) a separate trust account opened by a licensee for the exclusive benefit of both the vendor and the purchaser of land.

## Part 5 Records—the Act, ss 104 and 230

### 36 Records and book entries to be in English language

A licensee must ensure the following are in English—

- (a) all written records required to be made or produced by the licensee by the Act and this Regulation, and
- (b) all entries in books of account required to be kept by the licensee by the Act and this Regulation.

Maximum penalty—

- (a) for a corporation—40 penalty units, or
- (b) otherwise—20 penalty units.

### 37 Records of property reports to be kept by real estate agents

- (1) A licensee acting on behalf of a person (the *client*) on the sale of a residential property must make a written record of all reports of which the licensee is aware in relation to—

- (a) a building inspection of the property, or
- (b) an inspection to detect whether or not the property is affected by termites or other pests, or
- (c) an inspection of documents relating to the property under the *Strata Schemes Management Act 2015*, section 182, or
- (d) a certificate as to financial matters under the *Strata Schemes Management Act 2015*, section 184, or
- (e) an inspection of documents relating to the property under the *Community Land Management Act 2021*, Part 10, Division 2.

Maximum penalty—

- (a) for a corporation—40 penalty units, or
- (b) otherwise—20 penalty units.

- (2) The licensee must disclose the records made under this section to a person requesting a copy of the contract for the sale of the residential property.

Maximum penalty—

- (a) for a corporation—40 penalty units, or
- (b) otherwise—20 penalty units.

- (3) The record must contain the following particulars—

- (a) the date on which the property or documents relating to the property were inspected for the purposes of the report,
- (b) whether the person who requested the report be prepared is the client, a prospective purchaser of the property or the licensee,
- (c) the name, business address and telephone number of the person who prepared the report,
- (d) whether the report is or is not available for repurchase by another person requesting a copy of the contract for the sale of the property,
- (e) whether the person who prepared the report is insured under a policy of professional indemnity insurance.

- (4) A licensee is not required to make a record of particulars referred to in subsection (3) that are not known to, or cannot be reasonably obtained by, the licensee.

- (5) For the purposes of this section, or any other law, a licensee is taken to have the authority to make the disclosures required for the purposes of this section.

### **38 Records of livestock bought to be kept by stock and station agents**

- (1) A stock and station agent who buys livestock as an agent, whether or not by auction, must keep a written record of livestock purchases at the agent's registered office.
- (2) The stock and station agent must record the following particulars immediately after purchasing livestock—
  - (a) the date and place of purchase,
  - (b) the mode of purchase,
  - (c) the person for whom the livestock was purchased,
  - (d) the person from whom the livestock was purchased,
  - (e) the total number of livestock purchased,
  - (f) if the livestock was sold by auction—
    - (i) the lot number or numbers, and
    - (ii) the name supplied under the Act, section 83 as the name of the purchaser of each lot of livestock,
  - (g) the price for which the livestock was purchased per kilogram of live weight or per head,
  - (h) if the livestock was purchased on a live weight basis—the details of the live weight weighing,
  - (i) the total price for which the livestock was purchased,
  - (j) a description of the livestock sufficient to identify the livestock.

Maximum penalty—

- (a) for a corporation—40 penalty units, or
- (b) otherwise—20 penalty units.

### **39 Records of livestock sales to be kept by stock and station agents**

- (1) A stock and station agent who sells livestock as an agent, whether or not by auction, or who offers livestock for sale by auction as an agent must keep a written record of the sales at the agent's registered office.
- (2) A stock and station agent must, immediately after being engaged to sell livestock as an agent, record the following particulars for the livestock—
  - (a) the name of the owner of the livestock,
  - (b) the number of livestock to be sold,
  - (c) a description of the livestock sufficient to identify the livestock.
- (3) If the livestock is to be sold by auction, the record must be made for each lot of the livestock and each lot number must be recorded.
- (4) The stock and station agent must also, immediately after selling livestock as an agent, record the following particulars for the livestock—
  - (a) the date and place of the sale,
  - (b) the name of the purchaser or, if the stock was sold by auction, the name supplied under the Act, section 83 as the name of the purchaser and the lot number,
  - (c) the price for which the livestock was sold per kilogram of live weight or per head,

(d) if the livestock was sold on a live weight basis—the details of the live weight weighing,

(e) the total price for which the livestock was sold.

Maximum penalty—

(a) for a corporation—40 penalty units, or

(b) otherwise—20 penalty units.

#### **40 Copy of accounts to be kept as record by strata managing agent**

(1) This section applies to a strata managing agent given 1 of the following notices requiring the agent to deliver certain records or books of account kept by the agent—

(a) a notice under the *Strata Schemes Management Act 2015*, section 181(2),

(b) a notice under the *Community Land Management Act 2021*, section 65.

(2) The strata managing agent must, before delivering the records or books of account—

(a) prepare and keep a true copy of the records or books of account the subject of the notice, and

(b) certify in writing on the copy that the copy is a true copy of the records or books of account.

Maximum penalty—

(a) for a corporation—40 penalty units, or

(b) otherwise—20 penalty units.

#### **41 Records to be prepared by strata managing agent**

(1) This section applies to a strata managing agent who holds or ceases to hold the money in an administrative fund, or a capital works fund, established by—

(a) an owners corporation under the *Strata Schemes Management Act 2015*, Part 5, Division 1, or

(b) an association under the *Community Land Management Act 2021*, Part 5, Division 1.

(2) The agent must prepare and sign a record relating to the management of each fund during the period since the agent—

(a) last started acting as managing agent for the owners corporation or association, or

(b) last prepared a record under this section for the owners corporation or association.

(3) A copy of each record must be provided to the treasurer of the owners corporation or association at the following times—

(a) if the agent ceases to act as managing agent for the owners corporation or association—within 14 days after termination of the agency agreement,

(b) otherwise—at least once in every 3 month period.

(4) Each record, other than a record resulting from the termination of an agency agreement, must be completed no earlier than one month before a copy is provided to the treasurer.

Maximum penalty—

(a) for a corporation—40 penalty units, or

(b) otherwise—20 penalty units.

## **42 Contents of record to be prepared by strata managing agent**

- (1) Each record required to be prepared by a strata managing agent under section 41 must—
  - (a) state the name and address of the owners corporation or association for whom the record is prepared, and
  - (b) specify the period in relation to which the record is prepared, and
  - (c) state the date of the record, and
  - (d) if the record is required because of the termination of an agency agreement—reconcile all receipts and payments with the statements from the relevant authorised deposit-taking institution up to the time of termination.
- (2) Each record must also contain the following particulars for each fund of the owners corporation or association to which the record relates, for the period to which it relates—
  - (a) the amount of contribution to the fund levied for each lot in the scheme,
  - (b) the amount of contribution to the fund paid in relation to each lot,
  - (c) the amount of contribution to the fund levied in relation to each lot but not paid as at the date of the record,
  - (d) the amount of money received into the fund otherwise than as a contribution and a description of the sources of the money,
  - (e) the amount of money—
    - (i) actually expended from the fund on behalf of the owners corporation or association, and
    - (ii) due to be paid from the fund but not actually paid as at the date of the record,
  - (f) the amount of money expected to become due and payable from the fund by the owners corporation or association before the next record is prepared,
  - (g) the amount of money standing to the credit of the fund in an authorised deposit-taking institution and the name of the account at the authorised deposit-taking institution,
  - (h) the amount of money standing to the credit of the fund invested other than in an authorised deposit-taking institution and, if so, where it is invested,
  - (i) the total amount of money standing to the credit of the fund.

## **43 Managing agent to permit strata and association committees to inspect records**

- (1) A strata managing agent must permit, on demand made at a reasonable time, a member of the strata committee of an owners corporation or the association committee of an association for which the agent acts as managing agent to inspect the records or books of account of the owners corporation or association.
- (2) Within 14 days of being appointed by an owners corporation or association to act as managing agent, a strata managing agent must give to the owners corporation or association a written authority that complies with subsection (3).

Maximum penalty—

  - (a) for a corporation—40 penalty units, or
  - (b) otherwise—20 penalty units.
- (3) The written authority must direct the authorised deposit-taking institution or another person or body with which the money of the corporation or association is invested to

disclose to a member of the strata committee or association committee, at the request of the member, information relating to the money.

- (4) If a strata managing agent does not comply with subsection (2), the authorised deposit-taking institution or other person or body with which money of the owners corporation or association is or has been invested may disclose to a member of the strata committee or association committee, at the request of the member, information relating to the money as though subsection (2) had been complied with.

## Part 6 Exemptions

### 44 Licensee in charge of business—the Act, s 31

- (1) The Secretary must take the matters specified in subsection (2) into account when considering whether to grant an exemption from the Act, section 31(4) to authorise the licensee in charge of a business to exercise functions or provide services on behalf of 2 or more licensees not in partnership with one another.
- (2) The Secretary must take the following matters into account—
  - (a) the reasons the exemption is needed,
  - (b) the licensee's previous experience as a licensee in charge,
  - (c) the licensee's capacity to properly supervise the conduct of business of more than 1 licensee,
  - (d) fiduciary safeguards and office systems proposed to be established to provide for accountability to the licensee in charge,
  - (e) whether separate trust accounts are in place for the deposit of trust money received in connection with the business of each licensee for whom the licensee proposes to act,
  - (f) the licensee's capacity to comply with guidelines issued by the Secretary under the Act, section 32(4),
  - (g) the licensee's record in relation to compliance with the conditions of a licence or certificate of registration,
  - (h) the licensee's record in relation to compliance with the provisions of the Act and the regulations under the Act,
  - (i) employer references in relation to the licensee's experience as a licensee in charge.

### 45 Sharing of commission—the Act, ss 3 and 4

- (1) A licensee is exempt from the Act, section 33—
  - (a) if—
    - (i) the transaction relates only to livestock, and
    - (ii) the person with whom the licensee enters into an arrangement or acts in conjunction with in relation to the transaction is a person whose principal place of business is a State or Territory under the law of which a person is not required to be licensed, registered or otherwise authorised to act as an agent in connection with a transaction of that kind, or
  - (b) if the person with whom the licensee enters into an arrangement or acts in conjunction with is a person who is licensed, registered or otherwise authorised under the law of a place outside Australia to act as agent in connection with the transaction.
- (2) For the Act, section 3(1), definition of *corresponding Act*, each of the following Acts is declared to be a corresponding Act—
  - (a) the *Agents Act 2003* of the Australian Capital Territory,
  - (b) the *Agents Licensing Act 1979* of the Northern Territory,
  - (c) the *Property Occupations Act 2014* of Queensland,
  - (d) the *Land Agents Act 1994* of South Australia,
  - (e) the *Property Agents and Land Transactions Act 2016* of Tasmania,



- (f) the *Estate Agents Act 1980* of Victoria,
- (g) the *Real Estate and Business Agents Act 1978* of Western Australia.

**46 Subagency agreements—the Act, s 34**

Each of the following classes of agreement is exempt from the Act, section 34—

- (a) agreements between licensees who are members of a multiple listing organisation,
- (b) agreements between licensees who are parties to a franchise agreement,
- (c) agreements for services relating only to livestock.

**47 Disclosure of material facts—residential tenancy agreements—the Act, s 4**

Real estate agents and assistant real estate agents are exempt from the Act, section 52(1)(b) in relation to entering into residential tenancy agreements.

**48 Agency agreements—the Act, ss 4 and 230**

- (1) An agreement for the performance of services that relate only to livestock is exempt from the Act, section 55.
- (2) A licensee is exempt from the Act, section 55 in relation to services performed by the licensee as a strata managing agent or managing agent—
  - (a) appointed under the *Strata Schemes Management Act 2015*, section 237, or
  - (b) appointed under the *Community Land Management Act 2021*, section 196.

**49 Proposed contract for sale of residential property—the Act, s 63**

The Act, section 63 does not apply to a real estate agent if—

- (a) the agent offers residential property for sale under an agreement between the agent and another licensee to share commission, fees, gains or rewards in relation to the sale, and
- (b) the other licensee —
  - (i) has entered into an agency agreement with the vendor of the property, and
  - (ii) complies with the Act, section 63 in relation to the property.

**50 Exemption for certain visitor information centres or short-term accommodation booking agents—the Act, s 4**

- (1) This section applies to a person who—
  - (a) deals only with licences of land for a period of not more than 2 months other than for residential purposes, and
  - (b) introduces, or arranges for the introduction of, a prospective licensee of land to—
    - (i) the owner of land, or
    - (ii) the agent of the owner of land, and
  - (c) does not accept money for doing so from a licensee of land or prospective licensee of land, and
  - (d) does not otherwise introduce, or arrange for the introduction of, a prospective purchaser, lessee or licensee of land to—
    - (i) a licensee under the Act, or
    - (ii) the owner of land, or
    - (iii) the agent of the owner of land.

- (2) The person is exempt from the Act in relation to acts or omissions by the person in the person's capacity as agent in relation to the introduction, or arranging for the introduction, of a prospective licensee of land to—
  - (a) a licensee under the Act, or
  - (b) the owner of land, or
  - (c) the agent of the owner of land.

**51 Persons acting on behalf of government departments and certain statutory bodies—the Act, s 5**

- (1) For the Act, section 5(1), a person who is authorised to act on behalf of the following is prescribed as a person who is not required to hold a licence under the Act—
  - (a) a government department of the State of New South Wales or the Commonwealth, or
  - (b) a statutory body representing the Crown in right of the State or the Commonwealth.
- (2) The exemption applies only in relation to functions exercised by the person while acting on behalf of the department or statutory body.

## Part 7 Miscellaneous

### 52 Notice of change of registered office—the Act, s 28

For the Act, section 28(4), 14 days is prescribed as the time within which notice of a change in the location of the registered office must be lodged.

### 53 Meaning of “Operating Account”—the Act, s 123

For the Act, section 123, definition of *Operating Account*, the Compensation Fund is prescribed.

### 54 Requests for itemised account—the Act, ss 36 and 101

- (1) A request for an itemised account under the Act, section 36(3) or 101(1) may be served on a licensee by—
  - (a) delivering it personally to the licensee, or
  - (b) leaving it for the licensee at a place of business of the licensee, or
  - (c) sending it by post to the licensee at the address of a place of business of the licensee, or
  - (d) transmitting it electronically to the email address specified by the licensee as an address to which electronic transmissions to the licensee may be sent.
- (2) An itemised account requested under the Act, section 36(3) or 101(1) may be provided to the person who made the request by—
  - (a) delivering it personally to the person, or
  - (b) leaving it for the person—
    - (i) at an address specified as the person’s address in the request, or
    - (ii) if an address is not specified in the request—at an address specified as the person’s address in an agency agreement, or
  - (c) sending it by post to the person—
    - (i) at an address specified as the person’s address in the request, or
    - (ii) if an address is not specified in the request—at an address specified as the person’s address in an agency agreement, or
  - (d) transmitting it electronically to the email address specified by the person as an address to which electronic transmissions to the person may be sent.

### 55 Levies—the Act, s 169

A notice to a licensee to pay a levy imposed under the Act, section 169(1) must be signed by the Secretary and contain the following particulars—

- (a) the amount of the levy payable by the licensee,
- (b) the date by which, and way in which, the levy is payable,
- (c) a note as to the consequences of a failure by a licensee to pay the levy as set out in the Act, section 169(4),
- (d) the date on which the notice was signed by the Secretary.

### 56 Complaints and discipline—the Act, s 192

- (1) For the Act, section 192, the following provisions of the Act are prescribed as provisions that remain applicable to a suspended licence or certificate of registration—
  - (a) section 74,

- (b) section 100,
  - (c) section 107,
  - (d) section 111, except when a receiver or manager has been appointed,
  - (e) section 179,
  - (f) section 184,
  - (g) section 211,
  - (h) section 212.
- (2) The following provisions of this Regulation are prescribed as provisions that remain applicable to a suspended licence or certificate of registration for the Act, section 192—
- (a) section 43,
  - (b) section 54.

## **57 The Register—the Act, s 220**

- (1) The Secretary must enter and keep in the Register details of the following particulars in relation to each licence or certificate of registration issued under the Act—
- (a) the name and business address of the person to whom the licence or certificate of registration is issued,
  - (b) the kind of licence or certificate of registration issued as described in the Act, section 17,
  - (c) the number of the licence or certificate of registration,
  - (d) the date of issue and expiry of the licence or certificate of registration,
  - (e) for a licence issued to a member of a partnership—the name and business address of each licensed member of the partnership,
  - (f) for a corporation licence—the name and business address of each director of the corporation,
  - (g) the cancellation or a current suspension of the licence or certificate of registration,
  - (h) a condition of the licence or certificate of registration under the Act, section 20(1)(a) or (d),
  - (i) the accreditation of the licensee as an auctioneer under the Act, section 21,
  - (j) action taken under the Act, Part 12 against the holder of the licence or certificate of registration that resulted in an adverse finding against the person, together with details of the disciplinary action, if any, taken against the person as a result of the adverse finding,
  - (k) proceedings for an offence under the Act or the regulations under the Act taken against the holder of the licence or certificate of registration that resulted in a conviction for the offence, together with details of the penalty, if any, imposed for the offence,
  - (l) current undertakings given under the Act by the holder of the licence or certificate of registration,
  - (m) the appointment of a manager or receiver under the Act in relation to the licensee,
  - (n) the number of payments made from the Compensation Fund under the Act, Part 10 in relation to a failure to account on the part of the licensee,
  - (o) the suspension of the licence or certificate of registration under the *Fair Trading Act 1987*, section 79A,

- (p) action in the nature of disciplinary action taken under other legislation administered by the Minister against the holder of the licence or certificate of registration that resulted in an adverse finding against the person, together with details of the action, if any, taken against the person as a result of the adverse finding.
- (2) The Secretary must also enter and keep in the Register details of applications for licences or certificates of registration that are refused on the grounds the applicant is not a fit and proper person to hold a licence or a certificate of registration.
- (3) Details entered in the Register—
  - (a) under subsection (1)(j) or (k) must be removed from the Register on the expiration of the period of 10 years after the action or conviction to which they relate, and
  - (b) under subsection (2) in relation to a person must be removed from the Register if the person is subsequently issued a licence or certificate of registration.

**58 Application of Licensing and Registration (Uniform Procedures) Act 2002—the Act, s 17**

The *Licensing and Registration (Uniform Procedures) Act 2002*, Part 2 applies in relation to a licence or certificate of registration subject to the following limitations and modifications—

- (a) an application for the grant of a licence or certificate of registration may only be made by an individual unless the licence is a corporation licence,
- (b) an application for the grant of a corporation licence may only be made by a corporation,
- (c) an application for the grant of a certificate of registration may be made by an individual aged 16 years or more.

**59 Misrepresentation by licensee or registered person by failing to disclose material facts—the Act, ss 4 and 52**

- (1) For the Act, section 52(1)(b), the following kinds of material facts are prescribed—
  - (a) within the last 5 years the property has been subject to flooding from a natural weather event or bush fire,
  - (b) the property is subject to significant health or safety risks,
  - (c) the property is listed on the register of residential premises that contain loose-fill asbestos insulation required to be maintained under the *Home Building Act 1989*, Part 8, Division 1A,
  - (d) within the last 5 years the property was the scene of a crime of murder or manslaughter,
  - (e) within the last 2 years the property has been used for the purposes of the manufacture, cultivation or supply of a prohibited drug or prohibited plant within the meaning of the *Drug Misuse and Trafficking Act 1985*,
  - (f) the property is, or is part of, a building that contains external combustible cladding—
    - (i) to which there is a notice of intention to issue a fire safety order or a fire safety order has been issued requiring rectification of the building regarding the external combustible cladding, or
    - (ii) to which there is a notice of intention to issue a building product rectification order or a building product rectification order has been issued requiring rectification of the building regarding external combustible cladding,

- (g) the property is, or is part of, a building where a development application or complying development certificate application has been lodged under the *Environmental Planning and Assessment Act 1979* for rectification of the building regarding external combustible cladding,
  - (h) one or more of the following orders, within the meaning of the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020*, is in force in relation to the property—
    - (i) a building work rectification order,
    - (ii) a prohibition order,
    - (iii) a stop work order.
- (2) In this section—  
**building product rectification order** has the same meaning as in the *Building Products (Safety) Act 2017*.  
**external combustible cladding** and **fire safety order** have the same meanings as in the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.

## 60 Fees and Compensation Fund contributions—the Act, ss 17A and 230

- (1) The application fees payable for the Act are listed in Schedule 14, Part 1, Column 1.
- (2) The amount of each application fee must be calculated by adding together the various components set out in Schedule 14, Part 1, Columns 2 and 3 for the fee.
- (3) An amount specified in relation to an application fee in Schedule 14, Part 1, Column 3 under the heading **Processing component** is taken to be a fee to cover the costs incurred by the Secretary in processing the application.  
**Note—** This amount is consequently a **processing fee** for the purposes of the *Licensing and Registration (Uniform Procedures) Act 2002*, Part 2. If an application is refused or withdrawn, the applicant is entitled to a refund of all fees paid, other than the processing fee—see that Act, section 22.
- (4) The amount specified in relation to an application fee in Schedule 14, Part 1, Column 4 under the heading **Compensation Fund contribution** is prescribed as the amount of the contribution to the Compensation Fund payable by the applicant for the relevant licence.
- (5) The amount specified in relation to an application fee in Schedule 14, Part 1, Column 5 under the heading **Total** is the total of—
  - (a) the application fees payable by the applicant for the application, and
  - (b) the contribution to the Compensation Fund payable by the applicant for the application, if any.
- (6) An applicant for the grant, renewal or restoration of 2 or more licences, or an applicant for the grant of a licence who is already a licensee, is not liable to pay fees or a Compensation Fund contribution for more than one of the licences that are granted, renewed or restored to expire at the same time.

## 61 Secretary's power to waive, reduce, postpone or refund fees—the Act, s 230

The Secretary may waive, reduce, postpone or refund, in whole or part, a fee payable or paid under the Act or this Regulation if the Secretary is satisfied it is appropriate because—

- (a) the person who is to pay or has paid the fee is suffering financial hardship, or
- (b) special circumstances exist.

**Example of ‘special circumstances’**— circumstances involving a natural disaster or recovery from a natural disaster

## **62 Partial refund of application fees for certain licences and certificates—the Act, s 230**

- (1) This section applies to an application fee for a licence or a transitional assistant stock and station agent certificate with a term of 3 or 5 years, paid by or on behalf of a person who—
  - (a) has surrendered or requested the cancellation of the licence or certificate, or
  - (b) if the fee was paid by or on behalf of an individual—has died.
- (2) A person may apply to the Secretary for a refund of the application fee if the person—
  - (a) paid the application fee, or
  - (b) is applying for or on behalf of the person who paid the application fee, or
  - (c) is the legal representative of a deceased individual who paid the application fee.
- (3) A person is not entitled to make an application under this section if the licence or certificate was surrendered or cancelled as a result of disciplinary or enforcement action.
- (4) A person who makes an application under subsection (2) is—
  - (a) for a licence or certificate with a term of 3 years—entitled to a refund of one-third of the fixed component of the application fee paid for each complete year remaining for the licence or certificate, or
  - (b) for a licence or certificate with a term of 5 years—entitled to a refund of one-fifth of the fixed component of the application fee paid for each complete year remaining for the licence or certificate.
- (5) In this section—

**application fee** means the following—

  - (a) an application fee for the grant of a class 1 licence, class 2 licence or corporation licence,
  - (b) an application fee for the renewal of a class 1 licence, class 2 licence, corporation licence or a transitional assistant stock and station agent certificate,
  - (c) an application fee for the restoration of a class 1 licence, class 2 licence, corporation licence or a transitional assistant stock and station agent certificate.

**fixed component**, of an application fee, is the amount set out in Schedule 14, Part 1, Column 2 in relation to the fee.

## **63 Savings**

An Act, matter or thing that, immediately before the repeal of the *Property and Stock Agents Regulation 2014*, had effect under that Regulation continues to have effect under this Regulation.

## **Schedule 1      General rules of conduct applying to all agents and assistant agents**

section 8

### **1      Knowledge of Act and regulations**

An agent must have a knowledge and understanding of the following as necessary to enable the agent to exercise the agent's functions lawfully—

- (a) the Act and the regulations under the Act,
- (b) other laws relevant to the category of licence or certificate of registration held by the agent, including laws relating to the following—
  - (i) residential tenancy,
  - (ii) fair trading,
  - (iii) competition and consumer protection,
  - (iv) anti-discrimination,
  - (v) privacy.

### **2      Fiduciary obligations**

An agent must comply with the fiduciary obligations arising as an agent.

### **3      Honesty, fairness and professionalism**

- (1) An agent must act honestly, fairly and professionally with all parties in a transaction.
- (2) An agent must not mislead or deceive a party in negotiations or a transaction.

### **4      Skill, care and diligence**

An agent must exercise reasonable skill, care and diligence.

### **5      High pressure tactics, harassment or unconscionable conduct**

An agent must not engage in high pressure tactics, harassment or harsh or unconscionable conduct.

### **6      To act in client's best interests**

An agent must act in the client's best interests at all times unless it would be—

- (a) contrary to the Act or regulations under the Act, or
- (b) otherwise unlawful to do so.

### **7      Confidentiality**

An agent must not use or disclose confidential information obtained while acting on behalf of a client or dealing with a customer, unless—

- (a) the client or customer authorises the disclosure, or
- (b) the agent is permitted or compelled by law to disclose the information.

### **8      To act in accordance with client authority**

- (1) An agent must not act as an agent, or represent that the agent is acting as an agent, on behalf of a person without the person's written authority.
- (2) This section does not apply to a sale solely of livestock.



## **9 To act in accordance with client's instructions**

An agent must act in accordance with a client's instructions unless to do so would be—

- (a) contrary to the Act or regulations under the Act, or
- (b) otherwise unlawful.

## **10 Licensee must ensure employees comply with the Act and regulations**

An agent who is the licensee in charge of a business must take reasonable steps to ensure other licensees or registered persons employed in the business comply with the Act and regulations under the Act.

## **11 Conflicts of interest**

An agent must not accept an appointment to act, or continue to act, as an agent if doing so would place the agent's interests in conflict with a client's interests.

## **12 Referral to service provider**

- (1) An agent who refers a person to a service provider must not falsely represent to the person that the service provider is independent of the agent.
- (2) For this section, a service provider is **independent** of an agent if—
  - (a) the agent receives no rebate, discount, commission or benefit for referring a client or customer to the service provider, and
  - (b) the agent does not have a personal or commercial relationship with the service provider.
- (3) The following are examples of a personal or commercial relationship—
  - (a) a family relationship,
  - (b) a business relationship,
  - (c) a fiduciary relationship,
  - (d) a relationship in which one person is accustomed, or obliged, to act in accordance with the directions, instructions or wishes of the other person.
- (4) If the service provider is not independent of the agent, the agent must disclose to the person—
  - (a) the nature of all relationships, whether personal or commercial, the agent has with the service provider, and
  - (b) the nature and value of all rebates, discounts, commissions or benefits the agent may receive, or expects to receive, by referring the client or customer to the service provider.

## **13 Licensee not to recommend engagement of services of solicitor or licensed conveyancer acting for other party**

- (1) An agent must not recommend that a person engage the services of a solicitor or licensed conveyancer, or a firm of solicitors or licensed conveyancers, if the agent knows the solicitor or licensed conveyancer, or the firm, acts or will be acting for the other party to the agreement concerned.
- (2) Subsection (1) does not prevent an agent recommending that a person engage the services of a solicitor or licensed conveyancer, or a firm of solicitors or licensed conveyancers, if no other solicitor, licensed conveyancer or firm is available.

**Example—** In a remote location.

- (3) If no other solicitor, licensed conveyancer or firm is available, the agent must, in recommending the engagement of the solicitor, conveyancer or firm, advise the person that the solicitor, licensed conveyancer or firm is or will be acting for the other party.

## **14 Inducements**

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.

## **15 Insertion of material particulars in documents**

An agent must not submit or tender a document to a person for signature, or cause or permit a document to be submitted or tendered to a person for signature, unless at the time of submission or tendering of the document all material particulars have been inserted in the document.

## **16 Duty to provide copy of signed documents**

An agent who submits or tenders a document to a person for signature, or who causes or permits a document to be submitted or tendered to a person for signature, must give a copy of the document to the person immediately after the person has signed the document.

## **17 Representations about the Act or regulations**

- (1) An agent must not falsely represent to a person the nature or effect of a provision of the Act or regulations under the Act.
- (2) An agent must not falsely represent to a person, either expressly or impliedly, whether in writing or otherwise, that a particular form of agency agreement or a term of an agency agreement is required by the Act or regulations under the Act.

## **18 Agency agreements must comply with regulations**

An agent must not enter into an agency agreement unless the agreement complies with the applicable requirements of this Regulation relating to agency agreements.

## **19 Agent to pay rental income monthly to landlord**

An agent must pay rental money for each calendar month, less authorised expenses, owing to a landlord under a residential tenancy agreement at the end of each calendar month, unless instructed otherwise by the landlord.

## **20 Licensees and certificate holders not to receive certain gifts or benefits over a certain amount**

The amount prescribed for the Act, section 53F(2)(d) is \$60.

## **21 Rental money and sales money to be in separate trust accounts**

An agent who is the licensee in charge of a business must ensure—

- (a) there are separate trust accounts for rental money and sales money, and
- (b) money from rentals and sales are paid into the appropriate accounts.

## **Schedule 2 Rules specific to real estate agents and assistant real estate agents**

section 8

### **Part 1 Real estate and business sales**

#### **1 Application of Part**

This Part applies to real estate agents and assistant real estate agents who exercise—

- (a) real estate sale or leasing functions in relation to the sale or purchase of land, or
- (b) business agent functions.

#### **2 Preliminary physical inspection of property or business for sale must be conducted by agent**

An agent must not act on behalf of a vendor of a property or business unless the agent has conducted a preliminary physical inspection of the property or business.

#### **3 Sales inspection report required for property or business**

- (1) On completion of the inspection required by this Schedule, section 2, an agent must prepare and give to the vendor a sales inspection report for the property or business.
- (2) The report must be signed by the agent and include the following—
  - (a) the name and address of the vendor,
  - (b) the date of preparation of the report,
  - (c) the agent's name, business address and telephone number,
  - (d) a description of the property or business, including—
    - (i) the address of the property or business, and
    - (ii) other details that may be necessary to enable the property or business to be readily identified, including, for a business, the business name and its Australian Business Number, if relevant,
  - (e) for the sale of property—a description of the fittings and fixtures to be included in the sale,
  - (f) for the sale of a business—
    - (i) a description of inclusions to be included in the sale, including goodwill, plant, fittings, stock in inventory and work in progress, and
    - (ii) details of the encumbrances, if any, affecting the inclusions,
  - (g) the terms and conditions of sale known to the agent, including whether or not vacant possession is to be given,
  - (h) the agent's recommendation as to the most suitable method of sale of the property or business,
  - (i) the agent's estimate of the selling price or price range for the property or business,
  - (j) details of covenants, easements, defects, local government notices or orders affecting the property or business known to the agent,
  - (k) details of special instructions about the marketing and showing of the property or business, if any,
  - (l) the following details relating to the solicitor of the vendor—
    - (i) name and business address,

- (ii) telephone number,
- (iii) address for service of documents.

#### **4 Confirmation of specific instructions—sale of business**

Before or at the time of entering into an agency agreement under which an agent will act for the vendor on the sale of a business, the agent must prepare for inclusion in the agency agreement written confirmation of the specific instructions about the following given to the agent by the vendor before the agreement is entered into—

- (a) inclusions to be included in the sale, including goodwill, plant, fittings, stock in inventory and work in progress, together with details of encumbrances affecting the inclusions, if any,
- (b) arrangements for the transfer to the purchaser of a liability for the leasing or hire purchase of the inclusions,
- (c) the marketing of the business,
- (d) the entitlement of prospective purchasers to inspect the premises of the business and the circumstances under which an inspection can be made,
- (e) the entitlement of prospective purchasers to inspect records, books of account and other documents concerning the business and the circumstances under which an inspection can be made.

#### **5 Vendor to be informed of an offer**

- (1) The agent for the vendor must, unless the vendor has provided written instructions to the contrary, inform the vendor of all offers of purchase as soon as practicable after receiving each offer up until exchange of contracts has taken place.
- (2) If the agent is not going to inform the vendor of an offer, the agent must inform the person who made the offer that the offer will not be submitted to the vendor.
- (3) The agent may inform the vendor of an offer orally or in writing and must identify the party by whom the offer is made.
- (4) If the vendor is informed orally, the agent must provide written confirmation of the information.
- (5) This section does not apply to bids made during an auction.

#### **6 Information to be given when expression of interest deposit paid**

- (1) This section applies if a person intends to pay an expression of interest deposit, before the exchange of contracts, for the proposed purchase of a property or business.
- (2) The agent for the vendor must inform the person of the following, in writing, before the person pays the expression of interest deposit—
  - (a) the vendor has no obligation to sell the property or business,
  - (b) the person has no obligation to buy the property or business,
  - (c) the deposit is refundable if a contract for the sale of the property or business is not entered into.
- (3) The agent must not accept the expression of interest deposit from the person unless the person has provided the agent with a written statement that—
  - (a) is signed by the person, and
  - (b) states that the person—
    - (i) has been given the information specified in subsection (2) by the agent, and

- (ii) understands the information.
- (4) The agent must promptly inform the vendor when an expression of interest deposit has been paid.
- (5) The agent must also—
  - (a) promptly inform the person if a subsequent offer is made to purchase the property or business on which the expression of interest deposit has been paid, and
  - (b) advise the person that the person has the right to make further offers up until exchange of contracts has taken place, and
  - (c) refund the deposit to the person within 14 days if another person enters into a contract for the sale of the property or business.

## **7 Notifying managing agent of appointment to sell residential property or a business**

If an agent accepts an appointment to sell residential property or a business that is leased, the agent must immediately give written notice of the appointment to any agent responsible for managing the property or business.

## **8 Agent must not accept payment for a referral**

An agent for a vendor must not demand or accept a fee or other valuable consideration for referring the vendor to a buyer's agent.

## **9 Bidding on behalf of telephone bidder**

An agent must not bid at an auction on behalf of a person who is giving instructions to the agent by telephone unless the written authority for the agent to bid on behalf of the person contains an acknowledgment that the person has been given a copy of the conditions that apply to the sale.

## **10 Setting aside minimum or reserve price at auction**

If the bidding at an auction does not reach the minimum or reserve price fixed for the property or business by the vendor, the agent conducting the auction must not set aside the price without—

- (a) the express permission of the vendor, or
- (b) the express permission of a person authorised to give permission by the vendor.

## **11 Agent participating in exchange of contracts for residential property or a business**

If an agent participates in the exchange or making of a contract for the sale of residential property or a business, the agent must serve a copy of the contract within 2 business days on—

- (a) each party to the contract, unless paragraph (b) requires the agent to serve a copy of the contract on a solicitor or conveyancer acting for the party, and
- (b) if either of the following applies—the solicitor or conveyancer acting for a party to the contract—
  - (i) the party has notified the agent that a solicitor or conveyancer is acting for the party,
  - (ii) it is apparent from the contract that a solicitor or conveyancer is acting for the party.

## 12 Statement of property details

At the time of entering into an agency agreement with a person on behalf of whom an agent is to act as buyer's agent, the agent must prepare and give the person a statement of property details signed by the agent and specifying the following—

- (a) details known to the agent of the type of property to be purchased,
- (b) details of special instructions about the property to be purchased, including an instruction that vacant possession is required for a rented property.

**Note—** These details can be changed by agreement between the parties or as provided by the agency agreement.

## 13 Person on behalf of whom agent is acting as buyer's agent to be informed of negotiations

- (1) An agent acting as a buyer's agent for a person must keep the person informed of each stage of the negotiation of a purchase price as instructed by the person.
- (2) This section does not apply to bids made during an auction.

## 14 Buyer's agent to obtain best possible purchase price

An agent acting as a buyer's agent must use the agent's best efforts to obtain the best possible purchase price for the buyer.

## 15 Buyer's agent not to exceed maximum purchase price fixed by client in negotiations or at auction

- (1) In negotiations for the purchase of property, an agent acting as a buyer's agent for a person (the *client*) must not exceed the maximum price fixed by the client without—
  - (a) the express written authorisation of the client, or
  - (b) the express written authorisation of a person authorised by the client.
- (2) If the bidding at an auction exceeds the maximum price fixed by the client, the buyer's agent must not continue bidding without—
  - (a) the express written authorisation of the client, or
  - (b) the express written authorisation of a person authorised by the client.

## 16 Information to be given when expression of interest deposit paid

- (1) This section applies to an agent acting as a buyer's agent for a person who intends to pay an expression of interest deposit, before the exchange of contracts, for the proposed purchase of property.
- (2) The agent must inform the person of the following, in writing, before the person pays the expression of interest deposit—
  - (a) the vendor has no obligation to sell the property,
  - (b) the person has no obligation to buy the property,
  - (c) the deposit is refundable if a contract for the sale of the property is not entered into.
- (3) The agent must not accept the expression of interest deposit from the person unless the person has provided the agent with a written statement that—
  - (a) is signed by the person, and
  - (b) states that the person—
    - (i) has been given the information specified in subsection (2) by the agent, and
    - (ii) understands the information.

- (4) The agent must also promptly inform the person if the agent becomes aware of a subsequent offer to purchase the property on which the expression of interest deposit has been paid.

## **17 Agent must not accept payment for a referral**

An agent acting as a buyer's agent for a person must not demand or accept a fee or other valuable consideration for referring the person to a selling agent.

## **Part 2 Property management**

### **18 Application of Part**

This Part applies to real estate agents and assistant real estate agents who exercise—

- (a) real estate sale or leasing functions in relation to the lease of land, or
- (b) on-site residential property manager functions.

### **19 Inspection report**

- (1) An agent must, as soon as practicable after entering into an agency agreement in relation to the management of property, prepare and give to the owner of the property an inspection report for the property.
- (2) The inspection report must be signed by the agent and include the following—
  - (a) the name and address of the owner,
  - (b) the address of the property,
  - (c) the date of preparation of the report,
  - (d) the agent's name, licence number and business address,
  - (e) a description of the exterior and interior condition of the property, including fittings, fixtures, improvements and anything provided with the property,
  - (f) details of work, if any, still to be completed by the owner on the property.

### **20 Inspection of property for rent**

- (1) An agent must accompany a prospective tenant on an inspection of a property.
- (2) An agent must not give the keys to a property to a prospective tenant, even for a short time.
- (3) Subsections (1) and (2) do not apply if written authorisation is given by—
  - (a) the owner, and
  - (b) if the property is currently let—the tenant.

### **21 Maintenance or repairs of rental property**

- (1) An agent managing a rental property must—
  - (a) promptly respond to a request by a tenant for maintenance of, or repairs to, the property, and
  - (b) subject to the instructions of the owner, promptly attend to the request.
- (2) If the owner has instructed that a repair is not to be carried out, the agent must inform the owner if the owner's failure to carry out the repair would constitute a breach of a tenancy agreement in force in relation to the property.

## **22 Breach of tenancy agreement**

An agent managing a rental property must immediately give the owner written notice if the agent becomes aware of a tenant's breach of the tenancy agreement.

## **23 Notifying tenant of appointment to sell**

- (1) This section applies if an agent managing a rental property is aware—
  - (a) the property is listed for sale, or
  - (b) a real estate agent has been appointed to act on the sale of the property.
- (2) The agent must immediately give the tenant written notice of—
  - (a) the intended sale of the property, or
  - (b) the appointment of the real estate agent for the sale of the property and the name and contact details of the agent.

## **24 Final inspection of property**

- (1) An agent must take all reasonable steps to ensure a final inspection of the property, on vacation of the property, is conducted in the presence of the tenant unless otherwise authorised by the tenant.
- (2) Reasonable steps by an agent include—
  - (a) contacting the tenant to discuss suitable times for the inspection, and
  - (b) arranging to meet the tenant at a particular time and place, and
  - (c) meeting the tenant at the arranged time and place.

## **25 Obtaining tenant's signature for rental bond refund**

An agent must not solicit or obtain the signature of a tenant to a document relating to the refund of a rental bond before the termination of the tenancy, unless—

- (a) the document directs the bond to be repaid in full to the tenant, or
- (b) the document directs the bond to be transferred to another tenancy in accordance with the tenant's directions.

## **26 Confirmation of specific instructions—property management services**

- (1) Before or at the time of entering into an agency agreement under which an agent will provide property management services in relation to the leasing of residential property or rural land, the agent must prepare written confirmation of the matters referred to in subsection (2) for inclusion in the agency agreement.
- (2) The written confirmation must state the extent of the agent's authority to exercise the following functions in relation to the management of the property or land and the limitations, if any, on the agent's authority to exercise the functions—
  - (a) obtaining references from prospective tenants, arranging inspections of the property or land by prospective tenants and choosing a tenant,
  - (b) entering into and signing a residential tenancy agreement, or a leasing agreement for rural land, including specifying the term for which the property or land may be let under the agreement,
  - (c) undertaking inspections of the property or land,
  - (d) effecting repairs to and maintaining the property or land, or engaging an appropriately qualified tradesperson for this purpose, including the details of the limitations on expenditure that may be incurred by the agent without obtaining the approval of the owner,



- (e) paying disbursements and expenses incurred in connection with the agent's management of the property or land,
- (f) collecting rent,
- (g) receiving, claiming and disbursing rental bond money,
- (h) serving notices—
  - (i) for breach of the residential tenancy agreement or the leasing agreement for rural land, or
  - (ii) to terminate the residential tenancy agreement or the leasing agreement for rural land,
- (i) undertaking the necessary steps to obtain vacant possession and recover money owing to the owner in relation to the tenancy of the property or land,
- (j) representing the owner in tribunal or court proceedings in relation to the tenancy of the property or land,
- (k) paying accounts for amounts owing in relation to the property or land including the following—
  - (i) water rates and charges,
  - (ii) council rates,
  - (iii) insurance premiums,
  - (iv) maintenance expenses,
  - (v) owners corporation levies,
- (l) advertising the property or land for letting or re-letting,
- (m) reviewing the rent at the end of a tenancy.

## **27 Confirmation of specific instructions—leasing of property or land**

- (1) Before or at the time of entering into an agency agreement under which an agent will act for the owner of a residential property or rural land in relation to the entering into of a lease of the property or land, the agent must prepare written confirmation of the matters referred to in subsection (2) for inclusion in the agency agreement.
- (2) The written confirmation must state the extent of the agent's authority to exercise the following functions in relation to the entering into of the lease of the property or land and the limitations, if any, on the agent's authority to exercise the functions—
  - (a) obtaining references from prospective tenants, arranging inspections of the property or land by prospective tenants and choosing a tenant,
  - (b) entering into and signing a residential tenancy agreement or a leasing agreement for rural land,
  - (c) undertaking an initial inspection of the property or land,
  - (d) collecting the initial rent payment,
  - (e) receiving and disbursing rental bond money,
  - (f) advertising the property or land for letting.

## **Schedule 3 Rules specific to stock and station agents and assistant stock and station agents**

section 8

### **Part 1 Sales**

#### **1 Preliminary physical inspection of the property to be conducted by agent**

- (1) An agent must not act on behalf of a vendor on the sale of a property, including livestock included in the sale, unless the agent has conducted a preliminary physical inspection of the property.
- (2) This section does not apply to a sale solely of livestock.

#### **2 Sales inspection report required for the property**

- (1) On completion of the inspection required by this Schedule, section 1, the agent must prepare and give to the vendor a sales inspection report for the property.
- (2) The report must be signed by the agent and specify the following—
  - (a) the name and address of the vendor,
  - (b) the date of preparation of the report,
  - (c) the agent's name, business address and telephone number,
  - (d) a description of the property, including—
    - (i) the address of the property and other details that may be necessary to enable the property to be readily identified, and
    - (ii) the size of the property in hectares,
  - (e) a description of the services provided to the property or located close to the property including, for example, power, telephone, internet services, mail services and the closest airstrips, schools and rail services,
  - (f) information about the following in relation to the property—
    - (i) details of the type of land or country, including the topography, soils, timber, arable areas and pasture development,
    - (ii) water, including irrigation, dams and rainfall,
    - (iii) its production capacity,
  - (g) a description of fittings and fixtures to be included in the sale of the property,
  - (h) a description of items included in the sale including houses and other accommodation, grain storage, wool sheds, sheep or cattle yards or plant equipment,
  - (i) a description of other items to be included in the sale, including livestock,
  - (j) the terms and conditions of sale known to the agent including whether or not vacant possession is to be given,
  - (k) the agent's recommendation as to the most suitable method of sale of the property,
  - (l) the agent's estimate of the selling price or price range for the property,
  - (m) details of covenants, easements, defects, local government notices or orders affecting the property known to the agent,
  - (n) details of special instructions about the marketing and showing of the property, if any,
  - (o) the following details relating to the solicitor of the vendor—

- (i) name and business address,
- (ii) telephone number,
- (iii) address for service of documents.

### **3 Vendor to be informed of an offer**

- (1) The agent must, unless the vendor provides written instructions to the contrary, inform the vendor of all offers of purchase as soon as practicable after receiving each offer up until exchange of contracts has taken place.
- (2) If the agent is not going to inform the vendor of an offer, the agent must inform the person who made the offer that the offer will not be submitted to the vendor.
- (3) The agent may inform the vendor of an offer orally or in writing and must identify the party by whom the offer is made.
- (4) If the vendor is informed orally, the agent must provide written confirmation of the information.
- (5) This section does not apply to bids made during an auction.

### **4 Information to be given when expression of interest deposit paid**

- (1) This section applies if a person intends to pay an expression of interest deposit, before the exchange of contracts, for the proposed purchase of a property.
- (2) The agent for the vendor must inform the person of the following, in writing, before the person pays the expression of interest deposit—
  - (a) the vendor has no obligation to sell the property,
  - (b) the person has no obligation to buy the property,
  - (c) the deposit is refundable if a contract for the sale of the property is not entered into.
- (3) The agent must not accept the expression of interest deposit from the person unless the person has provided the agent with a written statement that—
  - (a) is signed by the person, and
  - (b) states that the person—
    - (i) has been given the information specified in subsection (2) by the agent, and
    - (ii) understands the information.
- (4) The agent must promptly inform the vendor when an expression of interest deposit has been paid.
- (5) The agent must also—
  - (a) promptly inform the person if a subsequent offer is made to purchase the property on which the expression of interest deposit has been paid, and
  - (b) advise the person they have the right to make further offers up until exchange of contracts has taken place, and
  - (c) refund the deposit to the person within 14 days if another person enters into a contract for the sale of the property.

### **5 Agent must not accept payment for a referral**

An agent for a vendor must not demand or accept a fee or other valuable consideration for referring the vendor to a buyer's agent.

## **6 Bidding on behalf of telephone bidder**

An agent must not bid at an auction on behalf of a person who is giving instructions to the agent by telephone unless the written authority for the agent to bid on behalf of the person contains an acknowledgment that the person has been given a copy of the conditions that apply to the sale.

## **7 Setting aside minimum or reserve price at auction**

If the bidding at an auction does not reach the minimum or reserve price fixed for the property by the vendor, the agent conducting the auction must not set aside the price without—

- (a) the express permission of the vendor, or
- (b) the express permission of a person authorised to give the permission by the vendor.

## **8 Theft of livestock**

An agent who suspects, at an auction for the sale of livestock or at another time, that livestock may have been stolen or otherwise unlawfully obtained, must inform a police officer of the cause of the suspicion as soon as reasonably practicable.

# **Part 2 Property management**

## **9 Inspection report**

- (1) An agent must, as soon as practicable after entering into an agency agreement in relation to the management of property, prepare and give to the owner an inspection report for the property.
- (2) The inspection report must be signed by the agent and include the following—
  - (a) the name and address of the owner,
  - (b) the address of the property,
  - (c) the date of preparation of the report,
  - (d) the agent's name, licence number and business address,
  - (e) a description of the exterior and interior condition of the property, including fittings, fixtures, improvements and anything provided with the property,
  - (f) details of work, if any, still to be completed by the owner on the property.

## **10 Inspection of property for rent**

- (1) An agent must accompany a prospective tenant on an inspection of the property.
- (2) An agent must not give the keys to a property to a prospective tenant, even for a short time.
- (3) Subsections (1) and (2) do not apply if written authorisation is given by—
  - (a) the owner, and
  - (b) if the property is currently let—the tenant.

## **11 Maintenance or repairs of rental property**

- (1) An agent managing a rental property must—
  - (a) promptly respond to a request by a tenant for maintenance of, or repairs to, the property, and
  - (b) subject to the instructions of the owner, promptly attend to the request.

- (2) If the owner has instructed that a repair is not to be carried out, the agent must inform the owner if the owner's failure to carry out the repair would constitute a breach of a tenancy agreement in force in relation to the property.

## **12 Breach of tenancy agreement**

An agent managing a rental property must immediately give the owner written notice if the agent becomes aware of a tenant's breach of the tenancy agreement.

## **13 Notifying tenant of appointment to sell**

- (1) This section applies if an agent managing a rental property is aware—
  - (a) the property is listed for sale, or
  - (b) an agent has been appointed to act on the sale of the property.
- (2) The agent must immediately give the tenant written notice of—
  - (a) the intended sale of the property, or
  - (b) the appointment of the agent for the sale of the property and the name and contact details of the agent.

## **14 Final inspection of property**

- (1) An agent must take all reasonable steps to ensure a final inspection of the property, on vacation of the property, is conducted in the presence of the tenant unless otherwise authorised by the tenant.
- (2) Reasonable steps by an agent include—
  - (a) contacting the tenant to discuss suitable times for the inspection, and
  - (b) arranging to meet the tenant at a particular time and place, and
  - (c) meeting the tenant at the arranged time and place.

## **Schedule 4 Rules specific to strata managing agents and assistant strata managing agents**

section 8

### **1 Co-operation about records, access and transfer**

- (1) If an agent is acting on behalf of a person in the management of property and is advised by another agent that the other agent (the *new agent*) has been engaged to act on behalf of the person in the management of the property, the agent must co-operate with the new agent—
  - (a) in relation to access to the records of the person, including by making the records reasonably available, according to law, and
  - (b) by facilitating the transfer of management functions between the agent and the new agent.
- (2) Subsection (3) applies if an agent is acting on behalf of an owners corporation or association in the management of property and is advised by the owners corporation or association that—
  - (a) the agent is no longer to act on behalf of the owners corporation or association, and
  - (b) no other agent is being appointed.
- (3) The agent must co-operate with the owners corporation or association—
  - (a) in relation to access to the records of the owners corporation or association, including by making the records reasonably available, according to law, and
  - (b) by providing the owners corporation or association with access to the administrative and capital works funds, and
  - (c) by facilitating the transfer of management functions between the agent and the owners corporation or association.

### **2 Confirmation of specific instructions—strata managing agent**

- (1) Before or at the time of entering into an agency agreement under which an agent will exercise the functions of a strata managing agent, the agent must prepare written confirmation of the matters referred to in subsection (2) for inclusion in the agency agreement.
- (2) The written confirmation must state the extent of the agent's authority to exercise the following functions and the limitations, if any, on the agent's authority to exercise the functions—
  - (a) undertaking the financial management of funds and books of account,
  - (b) holding documents and maintaining records relating to the scheme including the strata roll and notices and minutes of meetings,
  - (c) arranging building inspections and reports,
  - (d) effecting repairs to and maintaining common property or engaging an appropriately qualified tradesperson for this purpose, including details of limitations on expenditure that may be incurred by the agent without obtaining the approval of the person on behalf of whom the agent is acting,
  - (e) paying disbursements and expenses incurred in connection with the agent's management of the scheme,
  - (f) arranging insurance cover for the scheme,
  - (g) serving notices to comply with a by-law,

- (h) managing the capital works fund and the administrative fund,
- (i) undertaking steps necessary to recover money owing in relation to levies,
- (j) representing the owners corporation or association in tribunal or court proceedings,
- (k) paying accounts in relation to the scheme, including accounts for water charges, council rates and maintenance,
- (l) arranging and undertaking administrative duties in relation to annual general meetings and other general meetings.

## Schedule 5 Terms applying to all agency agreements

section 9

### 1 Identification of property, business or professional practice

- (1) The agency agreement must—
  - (a) specify the address of the property, business or professional practice to which the agency agreement applies, or
  - (b) contain another description of the property, business or professional practice to clearly identify the property, business or professional practice.
- (2) This section does not apply to an agency agreement to act as a buyer's agent.

### 2 Names of parties to agreement

The agency agreement must specify the names of each of the parties to the agency agreement, including the licensee.

### 3 Information identifying parties

The agency agreement must specify—

- (a) the address of the person on behalf of whom the licensee is acting, and
- (b) the licensee's licence number, and
- (c) the business name, if any, under which the licensee conducts business.

### 4 Authority of the person on behalf of whom the agent will act to enter into agreement

The agency agreement must contain a statement to the effect that the person on behalf of whom the licensee is acting warrants that the person has authority to enter into the agency agreement.

### 5 Authorisation for licensee to act on behalf of person

The agency agreement must contain a term containing particulars of the extent of the authority of the licensee to act as agent on behalf of the person on behalf of whom the licensee is acting in providing services under the agency agreement.

### 6 Period of duration of the agreement

The agency agreement must contain a term indicating—

- (a) the period for which the agency agreement remains in force, or
- (b) that the agency agreement remains in force until terminated.

### 7 Termination of the agreement

If the agency agreement provides for its termination by a party to the agency agreement, the agreement must indicate how and when it may be terminated.

### 8 Reimbursement of licensee

- (1) If the licensee is to be entitled to a sum or reimbursement for expenses or charges incurred by the licensee in connection with services provided under the agency agreement, the agreement must include a term that—
  - (a) states the licensee has this entitlement, and
  - (b) describes the services to which the entitlement relates, and
  - (c) specifies the amount to which the licensee is entitled and when it is payable, and



- (d) states the services and amounts may not be varied except with the written agreement of the person on behalf of whom the licensee is acting.
- (2) Subsection (1)(d) does not apply to an agency agreement for the exercise of the functions of a strata managing agent.

## **9 Remuneration**

- (1) The agency agreement must include a term specifying—
  - (a) the circumstances in which the licensee is entitled to remuneration, by commission or otherwise, for services performed under the agency agreement, and
  - (b) the amount of the remuneration or the way in which it is to be calculated, and
  - (c) when the remuneration is payable.
- (2) If the agency agreement relates to the sale or purchase of residential property and provides for payment of commission to the licensee calculated as a percentage of the sale or purchase price, the term must also specify the amount of the remuneration to which the licensee may be entitled calculated on the basis of a specified estimated sale or purchase price for the property.

## Schedule 6 Terms specific to agency agreement for sale of residential property

section 9

### 1 Exclusive agency and sole agency agreements

- (1) If the agency agreement is an exclusive agency agreement the agreement must include the following statement—  
IMPORTANT—This is an exclusive agency agreement. This means you may have to pay the agent commission even if—
  - (a) you or another agent sell the property, or
  - (b) another agent introduces a buyer who later buys the property.
- (2) If the agency agreement is a sole agency agreement the agreement must include the following statement—  
IMPORTANT—This is a sole agency agreement. This means you may have to pay the agent commission even if—
  - (a) another agent sells the property, or
  - (b) another agent introduces a buyer who later buys the property.
- (3) An agency agreement is an **exclusive agency agreement** if the agreement provides for the agent to be entitled to commission on the happening of an event—
  - (a) whether or not the agent is the effective cause of the happening of the event, and
  - (b) whether or not the client is the effective cause of the happening of the event.
- (4) An agency agreement is a **sole agency agreement** if the agreement provides for the agent to be entitled to commission on the happening of an event, whether or not the agent is the effective cause of the happening of the event, unless the client is the effective cause of the happening of the event.
- (5) A statement required by this section to be included in an agency agreement—
  - (a) must be included in the agreement immediately following the term required by Schedule 5, section 9, and
  - (b) must be no less prominent than that term.

### 2 Warning about other agency agreements

- (1) The agency agreement must include the following statement—  
WARNING—Have you signed an agency agreement for the sale of this property with another agent? If you have, and if either this agreement or the other agreement you have signed is a sole agency agreement or an exclusive agency agreement, you may have to pay 2 commissions.
- (2) A statement required by this section to be included in an agency agreement—
  - (a) must be included in the agreement—
    - (i) immediately following the term required by Schedule 5, section 9, or
    - (ii) immediately following the statement required by this Schedule, section 1, and
  - (b) must be no less prominent than that term or statement.

### **3 Warning if agreement includes a term that a commission is payable**

- (1) If the agency agreement includes a term that a commission is payable even if the sale of the property is not completed, the agency agreement must include the following statement—  
WARNING—The term immediately above provides that a commission is payable under this agreement even if the sale of the property is not completed.
- (2) The statement—
  - (a) must be included in the agreement immediately following the term, and
  - (b) must be no less prominent than the term.

### **4 Fixed term agency agreements**

- (1) If the agency agreement is for a fixed term of more than 90 days, the agreement must include a term that entitles the person on behalf of whom the agent is acting to terminate the agreement—
  - (a) without penalty, and
  - (b) by giving 30 days' written notice to the agent at any time after the end of the first 90 days of the term.
- (2) This section does not apply to an agency agreement on the sale of residential property if the contract for sale provides for the construction by the seller of a dwelling on the land.

### **5 Price at which property is to be offered**

If the agency agreement provides for the residential property to be offered for sale by private treaty, the agreement must specify the price at which the property is to be offered.

### **6 Providing person on behalf of whom the agent is acting with consumer guide**

The agency agreement must include a provision that states—

- (a) whether or not the agent provided the person on behalf of whom the agent is acting with a copy of the approved guide mentioned in the Act, section 56 before the agreement was entered into, and
- (b) if the guide was provided—the date it was provided.

### **7 Cooling-off period**

- (1) The agency agreement must include the following statement—  
COOLING-OFF PERIOD—You (the vendor) have a cooling-off period for this agreement. If you do not wish to continue with this agreement you can cancel it until 5pm on—
  - (a) the next business day, or
  - (b) for an agreement signed on a Friday—the Saturday immediately after.
- (2) A statement required by this section to be included in an agency agreement—
  - (a) must be included in the agreement close to the place where the person on behalf of whom the agent is acting signs the agreement, and
  - (b) must be no less prominent than the other terms of the agreement.

## **8 A sales inspection report to form part of the agreement**

The agency agreement must include a copy of a sales inspection report prepared by the agent and given under Schedule 2, section 3 to the person on behalf of whom the agent is acting.

## **Schedule 7      Terms specific to a buyer's agent agency agreement**

section 9

### **1      Property details**

The agency agreement must include a copy of the statement prepared and given by the agent under Schedule 2, section 12 to the person on behalf of whom the agent is acting.

### **2      Purchase price range**

The agency agreement must specify a price or price range as the maximum price or the price range that the person on behalf of whom the agent is acting is prepared to pay for a property.

## Schedule 8 Terms specific to agency agreement for sale of rural land

section 9

### 1 Exclusive agency and sole agency agreements

- (1) If the agency agreement is an exclusive agency agreement the agreement must include the following statement—  
IMPORTANT—This is an exclusive agency agreement. This means you may have to pay the agent commission even if—
  - (a) you or another agent sell the property, or
  - (b) another agent introduces a buyer who later buys the property.
- (2) If the agency agreement is a sole agency agreement the agreement must include the following statement—  
IMPORTANT—This is a sole agency agreement. This means you may have to pay the agent commission even if—
  - (a) another agent sells the property, or
  - (b) another agent introduces a buyer who later buys the property.
- (3) An agency agreement is an **exclusive agency agreement** if the agreement provides for the agent to be entitled to commission on the happening of an event—
  - (a) whether or not the agent is the effective cause of the happening of the event and
  - (b) whether or not the client is the effective cause of the happening of the event.
- (4) An agency agreement is a **sole agency agreement** if the agreement provides for the agent to be entitled to commission on the happening of an event, whether or not the agent is the effective cause of the happening of the event, unless the client is the effective cause of the happening of the event.
- (5) A statement required by this section to be included in an agency agreement—
  - (a) must be included in the agreement immediately following the term required by Schedule 5, section 9, and
  - (b) must be no less prominent than that term.

### 2 Warning about other agency agreements

- (1) The agency agreement must include the following statement—  
WARNING—Have you signed an agency agreement for the sale of this property with another agent? If you have, and if either this agreement or the other agreement you have signed is a sole agency agreement or an exclusive agency agreement, you may have to pay 2 commissions.
- (2) A statement required by this section to be included in an agency agreement—
  - (a) must be included in the agreement—
    - (i) immediately following the term required by Schedule 5, section 9, or
    - (ii) immediately following the statement required by this Schedule, section 1, and
  - (b) must be no less prominent than that term or statement.

### **3 Warning if agreement includes a term that a commission is payable**

- (1) If the agency agreement includes a term that a commission is payable even if the sale of the property is not completed, the agency agreement must include the following statement—  
WARNING—The term immediately above provides that a commission is payable under this agreement even if the sale of the property is not completed.
- (2) The statement—
  - (a) must be included in the agreement immediately following the term, and
  - (b) must be no less prominent than the term.

### **4 Price at which property is to be offered**

If the agency agreement provides for the property to be offered for sale by private treaty, the agency agreement must specify the price at which the property is to be offered.

### **5 Cooling-off period**

- (1) The agency agreement must include the following statement—  
COOLING-OFF PERIOD—You (the vendor) have a cooling-off period for this agreement. If you do not wish to continue with this agreement you can cancel it until 5pm on—
  - (a) the next business day, or
  - (b) for an agreement signed on a Friday—the Saturday immediately after.
- (2) A statement required by this section to be included in an agency agreement—
  - (a) must be included in the agreement close to the place where the person on behalf of whom the agent is acting signs the agreement, and
  - (b) must be no less prominent than the other terms of the agreement.

### **6 A sales inspection report to form part of the agreement**

The agreement must include a copy of a sales inspection report prepared by the agent and given under Schedule 3, section 2 to the person on behalf of whom the agent is acting.

## Schedule 9 Terms specific to agency agreement for sale of business

section 9

### 1 Exclusive agency and sole agency agreements

- (1) If the agency agreement is an exclusive agency agreement the agreement must include the following statement—  
IMPORTANT—This is an exclusive agency agreement. This means you may have to pay the agent commission even if—
  - (a) you or another agent sell the business, or
  - (b) another agent introduces a buyer who later buys the business.
- (2) If the agency agreement is a sole agency agreement the agreement must include the following statement—  
IMPORTANT—This is a sole agency agreement. This means you may have to pay the agent commission even if—
  - (a) another agent sells the business, or
  - (b) another agent introduces a buyer who later buys the business.
- (3) An agency agreement is an **exclusive agency agreement** if the agreement provides for the agent to be entitled to commission on the happening of an event—
  - (a) whether or not the agent is the effective cause of the happening of the event, and
  - (b) whether or not the client is the effective cause of the happening of the event.
- (4) An agency agreement is a **sole agency agreement** if the agreement provides for the agent to be entitled to commission on the happening of an event, whether or not the agent is the effective cause of the happening of the event, unless the client is the effective cause of the happening of the event.
- (5) A statement required by this section to be included in an agency agreement—
  - (a) must be included in the agreement immediately following the term required by Schedule 5, section 9, and
  - (b) must be no less prominent than that term.

### 2 Warning about other agency agreements

- (1) The agency agreement must include the following statement—  
WARNING—Have you signed an agency agreement for the sale of this business with another agent? If you have, and if either this agreement or the other agreement you have signed is a sole agency agreement or an exclusive agency agreement, you may have to pay 2 commissions.
- (2) A statement required by this section to be included in an agency agreement—
  - (a) must be included in the agreement—
    - (i) immediately following the term required by Schedule 5, section 9, or
    - (ii) immediately following the statement required by this Schedule, section 1, and
  - (b) must be no less prominent than that term or statement.



### **3 Warning if agreement includes a term that a commission is payable**

- (1) If the agency agreement includes a term that a commission is payable even if the sale of the business is not completed, the agency agreement must include the following statement—  
WARNING—The term immediately above provides that a commission is payable under this agreement even if the sale of the business is not completed.
- (2) The statement—
  - (a) must be included in the agreement immediately following the term, and
  - (b) must be no less prominent than the term.

### **4 Sales inspection report to form part of the agreement**

The agreement must include a copy of a sales inspection report prepared by the agent and given under Schedule 2, section 3 to the person on behalf of whom the agent is acting.

### **5 Confirmation of instructions to form part of the agreement**

The agency agreement must include the written confirmation prepared by the agent for the purposes of Schedule 2, section 4 of the specific instructions given to the agent by the vendor before entering into the agreement.

## **Schedule 10 Terms specific to agency agreement for management of residential property or rural land**

section 9

### **1 Extent of agent's authority**

The agency agreement must include the written confirmation, prepared by the agent for the purposes of Schedule 2, section 26, of the extent of the agent's authority to exercise functions in relation to the management of the property or land and the limitations, if any, on the agent's authority to exercise the functions.

### **2 Accounting to the person on behalf of whom the agent is acting in relation to money received**

The agency agreement must specify the following in relation to money received by the agent on behalf of the person for whom the agent is acting—

- (a) the way in which the agent is required to account to the person, and
- (b) the frequency with which the agent is required to account to the person.

## **Schedule 11 Terms specific to agency agreement for the leasing of residential property or rural land**

section 9

### **1 Extent of agent's authority**

The agency agreement must include the written confirmation, prepared by the agent for the purposes of Schedule 2, section 27, of the extent of the agent's authority to exercise functions in relation to the entering into of the lease and the limitations, if any, on the agent's authority to exercise the functions.

### **2 Details about the period of the tenancy, rent and bond**

The agency agreement must specify the following—

- (a) the period of the tenancy,
- (b) the amount of the rent to be paid,
- (c) the rent payment period,
- (d) the amount of the bond to be paid.

## **Schedule 12 Terms specific to agency agreement for the management of strata or community title land**

section 9

### **1 Extent of agent's authority**

The agency agreement must include the written confirmation, prepared by the agent for the purposes of Schedule 4, section 2, of the extent of the agent's authority to exercise the functions of a strata managing agent and the limitations, if any, on the agent's authority to exercise the functions.

### **2 Effect of statutory appointment of managing agent**

The agency agreement must include a term or terms to the effect of the following—

- (a) the agent does not have, and may not, exercise the powers, authorities, duties or functions of the owners corporation, association or strata corporation that are conferred on another strata managing agent or managing agent appointed for the owners corporation, association or strata corporation for the time being under—
  - (i) the *Strata Schemes Management Act 2015*, section 237, or
  - (ii) the *Community Land Management Act 2021*, section 196,
- (b) the agency agreement is terminated if—
  - (i) a strata managing agent or managing agent is appointed under the *Strata Schemes Management Act 2015*, section 237 or the *Community Land Management Act 2021*, section 196, and
  - (ii) the strata managing agent or managing agent is appointed to exercise or perform all the functions of the owners corporation, association or strata corporation,
- (c) the agent is not entitled to remuneration in the form of commission or otherwise in relation to the period after termination of the agency agreement as referred to in paragraph (b),
- (d) the agent is not entitled to a payment, in the nature of a penalty or otherwise, because of the termination of the agency agreement as referred to in paragraph (b).

### **3 Renewal of agreement for fixed term**

- (1) If the agency agreement is for a fixed term, it must not contain a provision that operates to renew the agreement for a subsequent fixed term of more than 3 months unless the agreement also provides for the person on behalf of whom the agent is acting to be able to terminate the agreement, without penalty, by giving 3 months' notice of termination during the subsequent fixed term.
- (2) Subsection (1) does not prevent the person on behalf of whom the agent is acting from agreeing in writing to the renewal of the agreement for a further fixed term.

### **4 Accounting to the person on behalf of whom the agent is acting in relation to money received**

The agency agreement must specify the following in relation to money received by the agent on behalf of the person for whom the agent is acting—

- (a) the way in which the agent is required to account to the person, and
- (b) the frequency with which the agent is required to account to the person.

## **5 Indemnification of strata managing agent prohibited**

An agency agreement under which the agent will exercise the functions of a strata managing agent must not contain a term that indemnifies the agent against a liability to pay a fine arising under the *Strata Schemes Management Act 2015*, section 57(1).

## Schedule 13 Penalty notice offences

### 1 Application of Schedule

- (1) For the Act, section 216—
- (a) each offence created by a provision specified in this Schedule is an offence for which a penalty notice may be issued, and
  - (b) the amount payable for the penalty notice is the amount specified opposite the provision.
- (2) If the provision is qualified by words that restrict its operation to limited kinds of offences or to offences committed in limited circumstances, the penalty notice may be issued only for—
- (a) the limited kind of offence, or
  - (b) an offence committed in those limited circumstances.

Column 1	Column 2	Column 3
Provision	Penalty for an individual	Penalty for a corporation
<b>Offences under the Act</b>		
Section 8(1)	\$1,100	—
Section 9(1)	—	\$2,200
Section 10(1)	\$1,100	—
Section 11(1)	\$550	—
Section 11(2)	\$550	—
Section 12	\$550	—
Section 28(4)	\$550	—
Section 29(1)	\$550	—
Section 29(2)	\$550	—
Section 29(3)	\$550	—
Section 30(1)	\$550	—
Section 30(5)	\$550	—
Section 31(1)	\$1,100	—
Section 31(2)	—	\$2,200
Section 31(3)	\$1,100	\$2,200
Section 31(4)	\$1,100	—
Section 32(2)	\$1,100	—
Section 32(4)	\$1,100	\$2,200
Section 33(1)	\$550	\$1,100
Section 34(3)	\$550	—
Section 35(1)	\$1,100	—
Section 35(2)	\$1,100	—
Section 37(2)	\$550	\$1,100
Section 39(1)	\$550	—

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Property and Stock Agents Regulation 2022 [NSW]  
Schedule 13 Penalty notice offences

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<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision</b>	<b>Penalty for an individual</b>	<b>Penalty for a corporation</b>
Section 40	\$1,100	—
Section 42(1)	\$550	—
Section 42(2)	\$550	—
Section 42(3)	\$550	—
Section 43(1)	\$550	—
Section 44	\$550	—
Section 45	\$550	—
Section 46(2)	\$2,200	—
Section 47(1)	\$2,200	—
Section 48(2)	\$1,100	\$2,200
Section 49(1)	\$2,200	—
Section 49(2)	\$2,200	—
Section 50(1)	\$1,100	—
Section 50(2)	\$1,100	—
Section 52(1)	\$2,200	—
Section 56(1)	\$550	—
Section 58(1)	\$1,100	\$2,200
Section 58(2)	\$1,100	\$2,200
Section 63(2)	\$1,100	—
Section 66(1)	\$2,200	—
Section 67(1)	\$1,100	—
Section 68(1)	\$1,100	—
Section 68(4)	\$1,100	—
Section 69(1)	\$1,100	—
Section 69(3)	\$1,100	—
Section 70(1)	\$1,100	—
Section 71(2)	\$550	—
Section 72A(6)	\$2,200	—
Section 73(1)	\$2,200	—
Section 73(2)	\$2,200	—
Section 73(3)	\$2,200	—
Section 73A(1)	\$2,200	—
Section 73B(1)	\$2,200	—
Section 74(2)	\$2,200	—
Section 78(1)	\$1,100	\$2,200
Section 78(2)	\$1,100	\$2,200

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<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision</b>	<b>Penalty for an individual</b>	<b>Penalty for a corporation</b>
Section 78(3)	\$550	—
Section 79(1)	\$550	\$1,100
Section 79(2)	\$550	\$1,100
Section 80	\$550	—
Section 81(2)	\$550	—
Section 82(2)	\$550	—
Section 83(1)	\$550	—
Section 83(2)	\$550	—
Section 86(1)	\$1,100	—
Section 86(2)	—	\$1,100
Section 86(3)	\$1,100	—
Section 86(4)	\$1,100	—
Section 86(5)	\$1,100	—
Section 89	\$1,100	—
Section 90(1)	\$1,100	—
Section 91(1)	\$1,100	—
Section 91(2)	\$1,100	—
Section 91(3)	\$1,100	—
Section 92	\$1,100	—
Section 93	\$1,100	—
Section 94	\$1,100	—
Section 102(1)	\$1,100	—
Section 102(2)	\$1,100	—
Section 104(1)	\$550	—
Section 104(2)	\$550	—
Section 104(3)	\$550	—
Section 110(1)(a)	\$1,100	—
Section 110(1)(b)	\$1,100	—
Section 110(1)(c)	\$1,100	—
Section 110(1)(d)	\$1,100	—
Section 110(3)	\$110	—
Section 111(1)	\$550	\$1,100
Section 111(3)	\$550	\$1,100
Section 119(1)	\$5,500	—
Section 119(3)	\$1,100	—
Section 120	\$1,100	—



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<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision</b>	<b>Penalty for an individual</b>	<b>Penalty for a corporation</b>
Section 137	\$1,100	—
Section 143(1)	\$1,100	—
Section 145(a)	\$1,100	—
Section 145(b)	\$1,100	—
Section 145(c)	\$1,100	—
Section 145(d)	\$1,100	—
Section 145(e)	\$1,100	—
Section 145(f)	\$1,100	—
Section 163(2)	\$550	—
Section 164	\$1,100	—
Section 184(2)(a)	\$550	—
Section 184(2)(b)	\$550	—
Section 185	\$550	—
Section 202	\$1,100	\$2,200
Section 203	\$550	\$1,100
Section 207(a)	\$1,100	—
Section 207(b)	\$1,100	—
Section 207(c)	\$1,100	—
Section 219(1)	\$550	—
<b>Offences under this Regulation</b>		
Each provision of this Regulation that creates an offence	\$550	\$1,100

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## Schedule 14 Fees and Compensation Fund contributions

section 60

### Part 1 Fees and Compensation Fund contributions payable

Item	Column 1	Column 2	Column 3	Column 4	Column 5
	Type of fee	Fixed component (in fee units)	Processing component (in fee units)	Compensation Fund contribution (in fee units)	Total (in fee units)
1	Application for grant of class 1 licence—				
	(a) for 1 year	2.35	4.26	0.72	7.33
	(b) for 3 years	7.05	4.26	2.16	13.47
	(c) for 5 years	11.75	4.26	3.60	19.61
2	Application for renewal of class 1 licence—				
	(a) for 1 year	2.35	1.42	0.72	4.49
	(b) for 3 years	7.05	1.42	2.16	10.63
	(c) for 5 years	11.75	1.42	3.60	16.77
3	Application for restoration of class 1 licence—				
	(a) for 1 year	2.35	2.84	0.72	5.91
	(b) for 3 years	7.05	2.84	2.16	12.05
	(c) for 5 years	11.75	2.84	3.60	18.19
4	Application for grant of class 2 licence—				
	(a) for 1 year	2.35	2.13	0.36	4.84
	(b) for 3 years	7.05	2.13	1.08	10.26
	(c) for 5 years	11.75	2.13	1.80	15.68
5	Application for renewal of class 2 licence—				
	(a) for 1 year	2.35	0.71	0.36	3.42
	(b) for 3 years	7.05	0.71	1.08	8.84
	(c) for 5 years	11.75	0.71	1.80	14.26
6	Application for restoration of class 2 licence—				
	(a) for 1 year	2.35	1.42	0.36	4.13
	(b) for 3 years	7.05	1.42	1.08	9.55

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Schedule 14 Fees and Compensation Fund contributions

Item	Column 1	Column 2	Column 3	Column 4	Column 5
	Type of fee	Fixed component (in fee units)	Processing component (in fee units)	Compensation Fund contribution (in fee units)	Total (in fee units)
7	(c) for 5 years Application for grant of corporation licence—	11.75	1.42	1.80	14.97
	(a) for 1 year	2.35	6.39	1.44	10.18
	(b) for 3 years	7.05	6.39	3.24	16.68
	(c) for 5 years	11.75	6.39	5.40	23.54
8	Application for renewal of corporation licence—				
	(a) for 1 year	2.35	2.13	1.44	5.92
	(b) for 3 years	7.05	2.13	3.24	12.42
	(c) for 5 years	11.75	2.13	5.40	19.28
9	Application for restoration of corporation licence—				
	(a) for 1 year	2.35	4.26	1.44	8.05
	(b) for 3 years	7.05	4.26	3.24	14.55
	(c) for 5 years	11.75	4.26	5.40	21.41
10	Application for grant of certificate of registration	1.88	0.88	Nil	2.76
11	Application for renewal of transitional assistant stock and station agent certificate—				
	(a) for 1 year	0.47	0.44	Nil	0.91
	(b) for 3 years	1.41	0.44	Nil	1.85
	(c) for 5 years	2.35	0.44	Nil	2.79
12	Application for restoration of transitional assistant stock and station agent certificate—				
	(a) for 1 year	0.47	0.88	Nil	1.35
	(b) for 3 years	1.41	0.88	Nil	2.29
	(c) for 5 years	2.35	0.88	Nil	3.23

Item	Column 1	Column 2	Column 3	Column 4	Column 5
	Type of fee	Fixed component (in fee units)	Processing component (in fee units)	Compensation Fund contribution (in fee units)	Total (in fee units)
13	Application for licence to include accreditation as an auctioneer	Nil	0.71	Nil	0.71
14	Application to combine more than 1 licence	Nil	0.44	Nil	0.44

## Part 2 Adjustment of fees and contributions for inflation

### 1 Definitions

In this Part—

**CPI number** means the Consumer Price Index (All Groups Index) for Sydney published by the Australian Bureau of Statistics in the latest published series of that index.

**financial year** means a period of 12 months commencing on 1 July.

### 2 Calculation of fee unit for purposes of Regulation

(1) For the purposes of this Regulation, a **fee unit** is—

- (a) in the financial year 2022–23—\$107.47, and
- (b) in each subsequent financial year—the amount calculated as follows—

$$\$100 \times \frac{A}{B}$$

where—

**A** is the CPI number for the March quarter in the financial year immediately preceding the financial year for which the amount is calculated.

**B** is the CPI number for the March quarter of 2019.

- (2) The amount of a fee unit is to be rounded to the nearest cent and an amount of 0.5 cent is to be rounded down.
- (3) However, if the amount of a fee unit calculated for a financial year is less than the amount that applied for the previous financial year, then the amount for the previous financial year applies instead.

### 3 Rounding of fee amounts and contributions

- (1) The amount of a fee or contribution calculated by reference to a fee unit, including the amount of a component of a fee, is to be rounded to the nearest dollar.
- (2) An amount of 50 cents is to be rounded down.

### 4 Notice of indexed fees and contributions

- (1) As soon as practicable after the CPI number for the March quarter is first published by the Australian Statistician, the Secretary is required to—

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Property and Stock Agents Regulation 2022 [NSW]  
Schedule 14 Fees and Compensation Fund contributions

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- (a) notify the Parliamentary Counsel of the amount of the fee unit for the next financial year so that notice of that amount can be published on the NSW legislation website, and
  - (b) give public notice on an appropriate government website of the actual amounts of the fees and contributions applying in each financial year resulting from the application of the amount of a fee unit calculated under this Part.
- (2) This Part operates to change an amount of a fee or contribution that is calculated by reference to a fee unit and that change is not dependent on the notification or other notice required by this clause.