



New South Wales

Property, Stock and Business Agents Amendment Regulation 2019

under the

Property, Stock and Business Agents Act 2002

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

KEVIN ANDERSON, MP
Minister for Better Regulation and Innovation

Explanatory note

The object of this Regulation is to amend the *Property, Stock and Business Agents Regulation 2014* as follows—

- (a) to prescribe the functions that may be exercised by holders of licences or certificates of registration,
- (b) to provide rules of conduct that must be observed in the course of the carrying on of business or the exercise of functions under a licence or certificate of registration,
- (c) to prescribe the material facts an agent must disclose when inducing a person to enter into any contract or arrangement,
- (d) to prescribe fees payable for applications relating to licences and certificates of registration,
- (e) to make amendments of a savings and transitional nature,
- (f) to make minor amendments consequent on the commencement of the *Property, Stock and Business Agents Amendment (Property Industry Reform) Act 2018*.

This Regulation is made under the *Property, Stock and Business Agents Act 2002*, including sections 3A, 10A, 17A, 37, 52(1)(b), 216 and 230 (the general regulation-making power) and clause 1 of Schedule 1.

Property, Stock and Business Agents Amendment Regulation 2019

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Property, Stock and Business Agents Act 2002

1 Name of Regulation

This Regulation is the *Property, Stock and Business Agents Amendment Regulation 2019*.

2 Commencement

This Regulation commences on 23 March 2020 and is required to be published on the NSW legislation website.

Schedule 1 Amendment of Property, Stock and Business Agents Regulation 2014

[1] **Clause 1 Name of Regulation**

Omit “*Property, Stock and Business*”. Insert instead “*Property and Stock*”.

[2] **Clause 3 Definitions**

Omit “*Property, Stock and Business*” from the definition of *the Act* in clause 3(1).

Insert instead “*Property and Stock*”.

[3] **Clause 3(1)**

Insert in alphabetical order—

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

[4] **Clauses 4–4C**

Omit clause 4. Insert instead—

4 Real estate agent functions

- (1) For the purposes of the definition of *real estate agent functions* in section 3A(1) of the Act, those functions—
 - (a) include acting as an auctioneer or agent in respect of 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) For the purposes of this clause—

major property holding means property that has—

 - (a) an aggregate market value of \$40,000,000 or more, or
 - (b) an aggregate gross floor area of 20,000 square metres or more.

4A Functions that real estate agents and assistant real estate agents may exercise

- (1) A real estate agent who holds a class 1 or class 2 licence may exercise all real estate agent functions.
- (2) Despite subclause (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 may exercise the functions described in paragraphs (c), (d) and (e) of the definition of *real estate sale or leasing functions* in section 3A(2) of the Act, but may not in the person’s capacity as an assistant real estate agent—
 - (a) enter into a contract for the sale of land, or
 - (b) enter into an agency agreement or a franchising agreement, or
 - (c) authorise the withdrawal of money from a trust account.

4B Functions that stock and station agents and assistant stock and station agents may exercise

- (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 subclause (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 may exercise all stock and station agent functions, but may not in the person's capacity as an assistant stock and station agent—
 - (a) perform any function described in paragraph (b) of the definition of *real estate sale or leasing functions* in section 3A(2) of the Act, or
 - (b) enter into a contract for the sale of land, or
 - (c) enter into an agency agreement (other than an agency agreement that relates only to the sale or purchase of livestock) or a franchising agreement, or
 - (d) authorise the withdrawal of money from a trust account.
- (4) In this clause—
stock and station agent functions means the functions referred to in the definition of *stock and station agent* in section 3(1) of the Act.

4C Functions that strata managing agents and assistant strata managing agents may exercise

- (1) A strata managing agent who holds a class 1 or class 2 licence may exercise all strata managing agent functions.
- (2) Despite subclause (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 clause—
strata managing agent functions means the functions referred to in the definition of *strata managing agent* in section 3B(1) of the Act.

[5] Clause 7

Omit the clause. Insert instead—

7 Rules of conduct

- (1) The rules set out in Schedules 1–3 and 6 are prescribed for the purposes of section 37 of the Act 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, with those Schedules applying as follows—

- (a) Schedule 1 applies to all agents and assistant agents (in addition to any other Schedule or Schedules that may be applicable to the particular agent or assistant agent),
 - (b) Part 1 of Schedule 2 applies to real estate agents and assistant real estate agents who perform real estate sales or leasing functions in relation to the sale or purchase of land or business agent functions,
 - (c) Part 2 of Schedule 2 applies to real estate agents and assistant real estate agents who perform real estate sale or leasing functions in relation to the lease of land or on-site residential property manager functions,
 - (d) Schedule 3 applies to stock and station agents and assistant stock and station agents,
 - (e) Schedule 6 applies to strata managing agents and assistant strata managing agents.
- (2) A reference to an **agent** in Schedules 1–3 or 6 includes a reference to a assistant agent to whom the Schedule applies.
 - (3) A reference to a **business** in Schedule 1 includes a reference to a professional practice.
- [6] Clauses 8(1)(h), 21, 23(9) and 38, clause 6 of Schedule 6, clause 8(2) of Schedule 7 and clause 1 of Schedule 14**
Omit “or community managing agent” wherever occurring.
- [7] Clause 16 Notification of auction conditions**
Omit “, or a stock and station salesperson” from clause 16(2).
Insert instead “, or an assistant stock and station agent”.
- [8] Clause 16(2)**
Omit “or salesperson”. Insert instead “or assistant stock and station agent”.
- [9] Clause 17 Warnings about bidders’ obligations**
Omit “*Property, Stock and Business Agents Act 2002*” wherever occurring in clause 17(1) and (3).
Insert instead “*Property and Stock Agents Act 2002*”.
- [10] Clause 21, heading**
Omit “and community managing agents”.
- [11] Clause 24 Payment of trust money by cheque or electronic funds transfer**
Omit clause 24(2)(e). Insert instead—
(e) be signed by the licensee in charge.
- [12] Clause 24(5)(a)**
Omit the paragraph. Insert instead—
(a) the name of the person effecting the transfer, and
- [13] Clause 31 Signing of cheques or effecting electronic funds transfers—trust account**
Omit the clause.

[14] Clause 37, heading

Insert “strata” after “prepared by”.

[15] Clause 37(1)

Omit “A managing agent”. Insert instead “A strata managing agent”.

[16] Clause 37(8)

Omit the subclause.

[17] Clause 46A Exemption for persons acting as real estate agents for certain properties

Omit the clause.

[18] Clauses 54 and 55

Insert after clause 53—

54 Misrepresentation by licensee or registered person by failing to disclose material facts

- (1) For the purposes of section 52(1)(b) of the Act, 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 that is required to be maintained under Division 1A of Part 8 of the *Home Building Act 1989*,
 - (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 any 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.
- (2) In this clause—

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 Regulation 2000*.

55 Transitional provision for certain existing licences

- (1) On the substitution of section 17(1) of the Act by the *Property, Stock and Business Agents Amendment (Property Industry Reform) Act 2018*—
- (a) the holder of a stock and station agent’s licence is taken to hold a stock and station agent’s class 2 licence, and
 - (b) the holder of a strata managing agent’s licence is taken to hold a strata managing agent’s class 2 licence.
- (2) Nothing in this clause prevents a person from exercising a function that the person was lawfully authorised to exercise immediately before the commencement of this clause.
- Note.** See clause 33 of Schedule 1 to the Act for other licences and certificates of registration.

[19] Schedule 1, heading

Omit “licensees and registered persons”. Insert instead “agents and assistant agents”.

[20] Schedule 1, clauses 20–22

Insert after clause 19—

20 Agent to pay rental income monthly to landlord

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

21 Licensees and certificate holders not to receive certain gifts or benefits over a certain amount

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

22 Rental money and sales money to be in separate trust accounts

An agent who is the licensee in charge of a business must ensure that there are separate trust accounts for rental money and sales money and that money from rentals and sales are paid into the appropriate accounts.

[21] Schedule 2, heading

Omit the heading. Insert instead—

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

[22] Schedule 2, Part 1, heading

Omit the heading. Insert instead—

Part 1 Real estate and business sales

[23] Schedule 2, clause 1A

Insert before clause 1—

1A Application of Part

This Part applies to real estate agents and assistant real estate agents who perform real estate sales or leasing functions in relation to the sale or purchase of land and business agent functions.

[24] Schedule 2, clauses 1, 2, 4 and 5

Insert “or business” after “property” wherever occurring.

[25] Schedule 2, clause 1

Omit “person on the sale”. Insert instead “vendor”.

[26] Schedule 2, clause 2(a) and (k)

Omit “person on behalf of whom the agent is acting” wherever occurring.

Insert instead “vendor”.

[27] Schedule 2, clause 2(d)

Insert “including the business name and its Australian Business Number where relevant,” after “identified,”.

[28] Schedule 2, clause 2(e)

Insert “and, for business sales, a description of inclusions to be included in the sale such as goodwill, plant, fittings, stock in inventory and work in progress, together with details of any encumbrances affecting those inclusions,” after “property,”.

[29] Schedule 2, clause 3A

Insert after clause 3—

3A Confirmation of specific instructions—sale of business

- (1) Before or at the time of entering into an agency agreement under which an agent will act for the vendor on the sale of the business, the agent must prepare for inclusion in the agency agreement written confirmation of any specific instructions given to the agent by the vendor before the agreement is entered into about any of the following—
 - (a) inclusions to be included in the sale such as goodwill, plant, fittings, stock in inventory and work in progress, together with details of any encumbrances affecting those inclusions,
 - (b) arrangements for the transfer to the purchaser of any liability for the leasing or hire purchase of any of those 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 such 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 such an inspection can be made.
- (2) The written confirmation may be prepared and be included as part of the agency agreement.

[30] Schedule 2, clauses 6 and 9

Insert “or a business” after “residential property wherever occurring”.

[31] Schedule 2, clause 6

Insert “or business” after “managing the property”.

[32] Schedule 2, clauses 9A–9F

Insert after clause 9—

9A 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 that is signed by the agent and specifies the following—

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

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

9B 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 clause does not apply to bids made in the course of an auction.

9C 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, without breaching standards of ethical conduct or engaging in conduct that is contrary to good agency practice.

9D Buyer’s agent not to exceed maximum purchase price fixed by client in negotiations or at auction

- (1) In negotiations for the purchase of a 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 the express written authorisation of the client or a person authorised by the client.
- (2) When the bidding at an auction exceeds the maximum price fixed by the client, the agent must not continue bidding without the express authorisation of the client or a person authorised by the client.

9E Information to be given when expression of interest deposit paid

- (1) An agent acting as a buyer’s agent for a person must inform the person of the following if the person pays an expression of interest deposit in respect of the proposed purchase of a property prior to the exchange of contracts—
 - (a) that the vendor has no obligation to sell the property,
 - (b) that the person has no obligation to buy the property,
 - (c) that the deposit is refundable if a contract for the sale of the property is not entered into.
- (2) The information must be provided in writing and may be provided on the receipt issued by the vendor or the vendor’s agent.

- (3) An agent acting as a buyer's agent for a person must promptly inform the person if the agent becomes aware of any subsequent offers to purchase the property on which the expression of interest deposit has been paid.

9F 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.

[33] Schedule 2, clause 10A

Insert before clause 10—

10A Application of Part

This Part applies to real estate agents and assistant real estate agents who perform real estate sale or leasing functions in relation to the lease of land or on-site residential property manager functions.

[34] Schedule 2, clause 12(1)

Omit "A licensee". Insert instead "An agent".

[35] Schedule 2, clauses 18 and 19

Insert after clause 17—

18 Confirmation of specific instructions—property management services

Before or at the time of entering into an agency agreement under which an agent will provide property management services in respect of the leasing of residential property or rural land, the agent must prepare for inclusion in the agency agreement written confirmation of the extent of the agent's authority to undertake the following duties in connection with the management of the property or rural land and any limitations on the agent's authority to undertake those duties—

- (a) obtaining references from prospective tenants, arranging inspections of the property by prospective tenants and choosing a tenant,
- (b) entering into and signing a residential tenancy agreement (specifying the term for which the property may be let),
- (c) undertaking inspections of the property,
- (d) effecting repairs to and maintaining the property or engaging tradespersons to do so and detailing 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,
- (f) collecting rent,
- (g) receiving, claiming and disbursing rental bond money,
- (h) serving notices for breach of the residential tenancy agreement or to terminate the residential tenancy agreement,
- (i) undertaking the necessary steps to obtain vacant possession and recover any money owing to the owner in relation to the tenancy of the property,
- (j) representing the owner in any tribunal or court proceedings in respect of the tenancy of the property,

- (k) paying accounts for amounts owing in relation to the property (for example, water rates and charges, council rates, insurance premiums, maintenance expenses and owners corporation levies),
- (l) advertising the property for letting or re-letting,
- (m) reviewing the rent at the end of a tenancy.

19 Confirmation of specific instructions—leasing of property

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 residential property or rural land, the agent must prepare for inclusion in the agency agreement written confirmation of the extent of the agent's authority to undertake the following duties in connection with the entering into of the lease of the property or rural land and any limitations on the agent's authority to undertake those duties—

- (a) obtaining references from prospective tenants, arranging inspections of the property by prospective tenants and choosing a tenant,
- (b) entering into and signing a residential tenancy agreement,
- (c) undertaking an initial inspection of the property,
- (d) collecting the initial rent payment,
- (e) receiving and disbursing rental bond money,
- (f) advertising the property for letting.

[36] Schedule 3, heading

Omit the heading. Insert instead—

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

[37] Schedule 3, clause 7A

Insert after clause 7—

7A Theft of livestock

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

[38] Schedules 4 and 5

Omit the Schedules.

[39] Schedule 6, heading

Omit the heading. Insert instead—

**Schedule 6 Rules specific to strata managing agents and
assistant strata managing agents**

[40] Schedule 6, clauses 2–5

Omit the clauses.

- [41] Schedule 6, clause 6(h)**
 Omit “sinking fund”. Insert instead “capital works fund”.
- [42] Schedule 9 Terms specific to a buyer’s agent agency agreement**
 Omit “clause 1 (Statement of property details) of Schedule 5” from clause 1.
 Insert instead “clause 9A of Schedule 2”.
- [43] Schedule 11 Terms specific to agency agreement for sale of business**
 Omit “clause 3 of Schedule 4” wherever occurring in clauses 4 and 5.
 Insert instead “clause 3A of Schedule 2”.
- [44] Schedule 11, clause 6**
 Omit “clause 2 of Schedule 4”. Insert instead “clause 2 of Schedule 2”.
- [45] Schedule 12 Terms specific to agency agreement for management of residential property or rural land**
 Omit “clause 4 of Schedule 6” from clause 1. Insert instead “clause 18 of Schedule 2”.
- [46] Schedule 13 Terms specific to agency agreement for the leasing of residential property or rural land**
 Omit “clause 5 of Schedule 6” from clause 1. Insert instead “clause 19 of Schedule 2”.
- [47] Schedule 14 Terms specific to agency agreement for the management of strata or community title land**
 Omit “sinking fund” from clause 1(h). Insert instead “capital works fund”.
- [48] Schedule 15 Penalty notice offences**
 Omit the matter relating to section 111(1)(a) and (b). Insert instead—
- | | | |
|----------------|-------|---------|
| Section 111(1) | \$550 | \$1,100 |
|----------------|-------|---------|
- [49] Schedule 15**
 Omit the matter relating to section 111(4).
- [50] Schedule 16 Fees and Compensation Fund contributions**
 Omit Part 1. Insert instead—

Part 1 Fees and Compensation Fund contributions payable

Item	Column 1 Type of fee	Column 2 Fixed component (in fee units)	Column 3 Processing component (in fee units)	Column 4 Compensation Fund contribution (in fee units)	Column 5 Total (in fee units)
1	Application for grant of class 1 licence—				

Item	Column 1 Type of fee	Column 2 Fixed component (in fee units)	Column 3 Processing component (in fee units)	Column 4 Compensation Fund contribution (in fee units)	Column 5 Total (in fee units)
	(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
	(c) for 5 years	11.75	1.42	1.80	14.97
7	Application for grant of corporation licence—				
	(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—				

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

[51] Schedule 16, clause 2(1)(a)

Omit “2017–18”. Insert instead “2019–20”.

[52] Schedule 16, clause 2(1)(b)

Omit “2017”. Insert instead “2019”.

[53] Schedule 16, clause 2, editorial note

Omit the editorial note.