

Property Industry Reforms



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Property Industry Reforms

Introduction

The reforms will commence on 23 March 2020

The changes will affect over 57,000 property licence and certificate holders, including:

individual licensees (23,000)

certificate holders (26,000)

licensed corporations (8,000)

Licence Categories

New Licence Categories

Real Estate (unrestricted)

Real Estate – Sales and Leasing

Real Estate – Business Broking

Real Estate – On-site Residential Property Management

Stock and Station

Stock and Station/Real Estate (may be conditioned to Sales and Leasing for existing holders)

Stock and Station (stock only)

Strata Management

Current Licence Categories

Only new applicants who have completed the new training package

Real Estate, Buyers Agent, On-site residential property management

Business Broking

On-site Residential Property Management

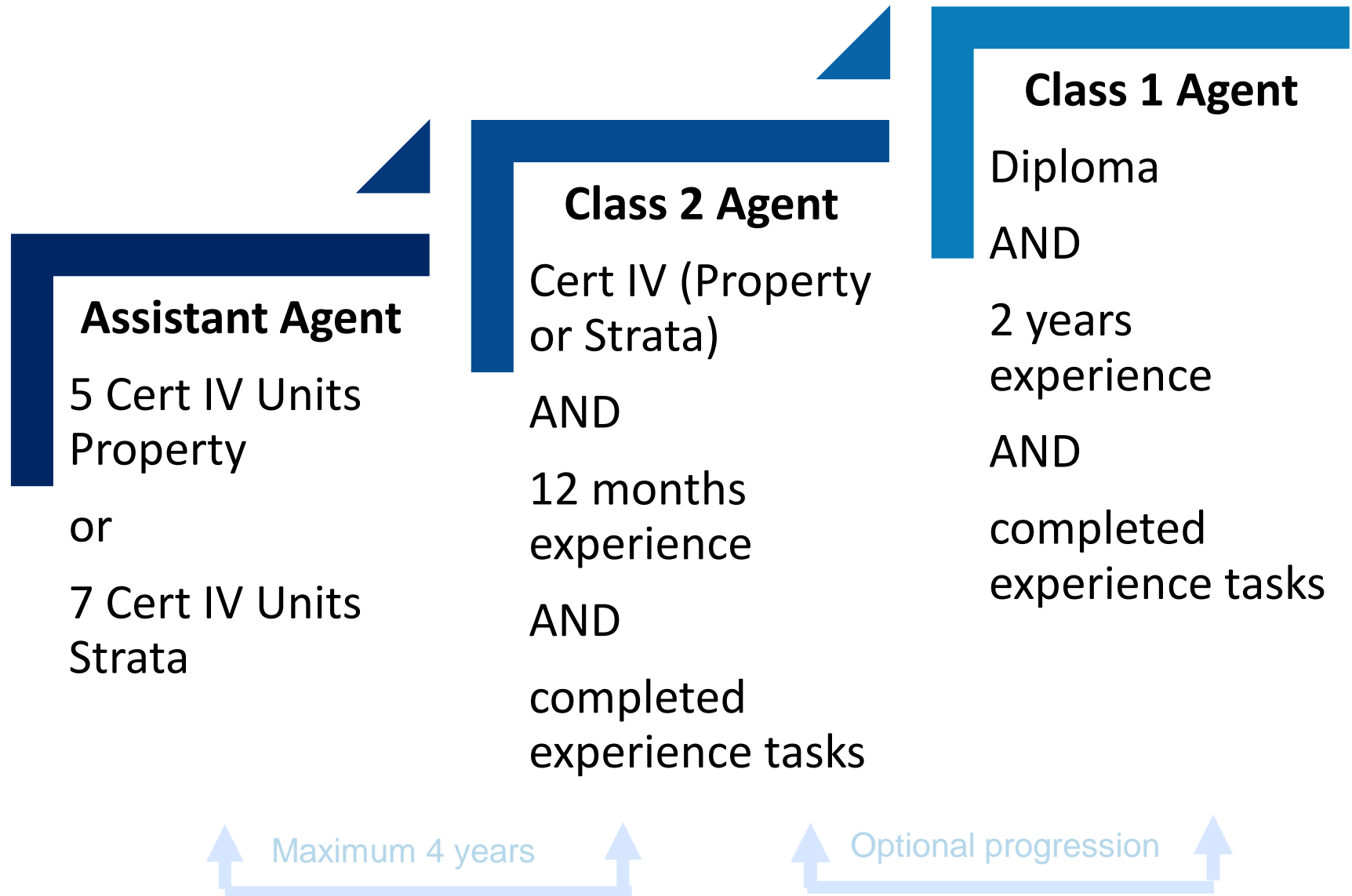
Stock and Station

Persons holding both Stock and Station and Real Estate

Persons who have nominated for a conditional licence

Strata Management

Professional pathway – new entrants



Transition Arrangements

Current Holder (as at 23/03/20)	New Licence	How
Certificate of Registration	Assistant Agent	Automatic. Current certificates will be end-dated to 23 March 2024. No additional fee. 'Opt in' for Stock & Station (Livestock only condition) – renewable certificate
Agent	Class 2 Agent	Automatic. Licence is updated at next renewal
Nominated Licensees in Charge	Class 1 Agent	Nominated LiCs will transition automatically to a Class 1 No additional fee. A person who has held an agent's licence for at least 2 years qualifies and can apply to be granted a Class 1 agent's licence – only for first 12 months – fee applies.

Licence Duration and Fees – Real Estate

Lifetime licence numbers

Retain current licence number

	New Application			Renewal		
	1 year	3 years	5 years	1 year	3 years	5 years
Class 2 Agent	\$501	\$1061	\$1621	\$354	\$914	\$1475
Class 1 Agent	\$758	\$1393	\$2028	\$464	\$1099	\$1734
Company	\$1053	\$1725	\$2434	\$612	\$1284	\$1994
Assistant Agent	\$285 – 4 years			NA		

Key Changes – Roles

Assistant Agent

Cannot enter into:

- a contract for the sale of land;
- an agency agreement (includes sales agreement or property management agreement)
- a franchise agreement

Cannot authorise the withdrawal of money from the trust accounts

Class 2 Agent

Cannot authorise the withdrawal of money from the trust accounts

Class 1 Agent

A Class 1 Agent licence is required to be a nominated LIC.

Only the LIC can authorise the withdrawal of trust funds.

Licensee in charge of the business (S.31 of the Act)

Only a Class 1 Agent can be nominated as a licensee in charge (LIC) of a corporation, partnership or sole trader

Licensee in Charge is still a nominated position

The LIC may be in charge of multiple places of business – no longer required for every geographical location

Only the nominated LIC can authorise the release of money from a nominated trust account.

The LIC is still the primary person responsible for properly supervising the business and can be issued with a penalty notice if they fail to do so

A corporation must document how supervision and trust accounts will be managed.

Guidelines for the proper Supervision of the business

The new Commissioner's Guidelines for the Proper Supervision of the Business of a Licensee under s32 of the Property and Stock Agents Act 2002 consolidate the requirements of the Underquoting Guidelines, Advertising Guidelines, Misrepresentation Guidelines, Fraud Prevention Guidelines and Supervision Guidelines.

Section 32(3) of the Act sets out three specific requirements concerning the licensee's duty to properly supervise a business. These requirements include the following:

- **To properly supervise employees engaged in the business,**
- **To establish procedures designed to ensure that the provisions of the Act and any other laws relevant to the conduct of the business are complied with,**
- **To monitor the conduct of the business in a manner that will ensure as far as possible that those procedures are complied with.**

The supervision guidelines apply to all licence holders under the Act, unless otherwise specified. The principal licensee and their nominated licensees in charge remain liable for breaches of the supervision guidelines.

The failure to comply with a requirement of the guidelines is a contravention of section 32, an offence which carries a penalty up to 200 penalty units (\$22,000) in the case of a corporation or 100 penalty units (\$11,000) in any other case upon prosecution.



- The new Guidelines have been published on the Fair Trading website.

<https://www.fairtrading.nsw.gov.au/housing-and-property/property-professionals/working-as-a-property-agent/rules-of-conduct>

Key Changes - Trust Accounts

Different General Trust Accounts required for Rental and Sales Money

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. (Schedule 1 Clause 22 of the Amendment Regulation)

Rental money owing to a landlord to be paid at the end of each month

The licensee in charge 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. (Schedule 1 Clause 20 of the Amendment Regulation)

- The Licensee in Charge is the only person who can authorise the release of money from the agency's trust accounts. This does not apply to the accounts of the owners corporation (strata).

Key Change - Material Facts

The material facts an agent must disclose when inducing a person to enter into any contract or arrangement are:

- within the last 5 years the property has been subject to flooding from a natural weather event or bush fire
- the property is subject to significant health or safety risks
- the property is listed on the loose-fill asbestos insulation register
- within the last 5 years the property was the scene of a crime of murder or manslaughter,
- within the last 2 years the property has been used to manufacture, cultivate or supply prohibited drugs or plants
- the property is, or is part of, a building that contains external combustible cladding, and
 - there is a notice of intention to issue a fire safety order, or
 - a fire safety order has been issued requiring rectification of external combustible cladding, or
 - 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 external combustible cladding
- the property has a development application or complying development certificate application lodged for rectification of external combustible cladding. (S.54 of the Act)

Key Changes - Gifts and Benefits

Licence and certificate holders must not accept gifts or benefits that may reasonably be considered to give rise to a conflict of interest.

This does not apply to:

- anything provided by the employer of the licence or certificate holder
- a gift in gratitude for services provided under an agency agreement
- anything that has a value that is less than \$60
- some circumstances relating to the provision of services by strata managing agents

Maximum penalty — 20 penalty units

(s. 53F Act; cl. 21 of the Reg)

Powers to suspend a licence or certificate

A licence or certificate of registration can be suspended for a period of more than 60 days after a show cause notice is served if:

- the suspension relates to a failure to lodge an audit report in which case the suspension may be imposed until the audit report is lodged, or
- the grounds for disciplinary action are serious in which case the suspension may be imposed for a reasonable period required to investigate the matter.

(S.196 of the Act)

Continuing Professional Development (CPD)

Assistant Agent

At least 3 units per year from Certificate IV.

At least 18 units within 4 years of the date of issue of the certificate of registration.

Class 2 Agent

6 hours per year, consisting of:

- 3 hours compulsory topics
- 3 hours elective topics (RE and Strata only)

Class 1 Agent

9 hours consisting of:

- 3 hours compulsory topics
- 3 hours elective topics (RE & Strata only)
- 3 hours business related topics

Stock & Station

'Livestock only' Assistant Agents
No CPD in the first year requirements

Stock & Station - 2

3 hours per year, consisting of:

- 3 hours compulsory topics

Stock & Station - 1

6 hours per year, consisting of:

- 3 hours compulsory topics
- 3 hours business related topics

CPD Delivery:

- **Compulsory learning** topics can be delivered by an industry association, government agency or an entity approved by the Minister.
- **Elective learning** can be delivered by any provider in accordance with the outlined topics

FT Web Information

Your licence and authorised functions

Changes to requirements for a nominated licensee-in-charge

Other important changes affecting your business

Licence duration

How do I change my existing licence to the new one?

Applying for, renewing or changing my licence or certificate of registration

What should I do to prepare for the changes?

Enquiries: 133 220

Email: REandP@customerservice.nsw.gov.au



Thank you for your time!