

AUCTIONEERS AND AGENTS ACT 1941—REGULATION

(Arising out of amendments to the Act)

NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Auctioneers and Agents Act 1941, has been pleased to make the Regulation set forth hereunder.

ROBERT WEBSTER, MLC
Minister for Housing.

Commencement

1. This Regulation commences on 1 May 1993.

Amendments

2. The Auctioneers and Agents Regulations are amended:
 - (a) by omitting from Regulation 1 (2) the words “the Auctioneers and Agents Regulations” and by inserting instead the words “the Property, Stock and Business Agents Regulations 1941”;
 - (b) by omitting from Regulation 2 the definition of “the Act” and by inserting instead the following definition:

“**the Act**” means the Property, Stock and Business Agents Act 1941.
 - (c) by omitting from Regulation 16 (4) (a) and (5) (a) the matter “\$2” wherever occurring and by inserting instead the matter “\$10”;
 - (d) by omitting from Regulation 16 (4) (b) and (5) (b) the matter “\$10” wherever occurring and by inserting instead the matter “\$40”;

- (e) by omitting from Regulation 16A (1) (b) the matter “clause (5)” and “clause (4)” and by inserting instead, respectively, the matter “clause 5” and “clause 4”;
- (f) by omitting from the Notices set out in Regulation 48A and clause 26 (2) of Schedule 2 the words “the Auctioneers and Agents Act 1941” and by inserting instead the words “the Property, Stock and Business Agents Act 1941”;
- (g) by inserting after Regulation 46 the following Regulations:

Fees etc. to be displayed

46A. (1) A licensee whose business activities include acting as an agent in respect of any of the following:

- the sale or purchase of residential property (whether by auction or otherwise)
- the leasing of residential property
- the management of residential property

must display at each separate place of the licensee’s business a guide to the licensee’s fees and commissions and to the expenses for which he or she will require to be reimbursed.

(2) The guide must state that the fees, commissions and expenses are subject to negotiation.

(3) The guide must be displayed in such a way that it is visible to, and may be read by, a member of the public visiting the place of business.

Details of fees etc. to be given before agreement signed

46B. (1) Before entering into an agreement relating to the sale, purchase, leasing or management of residential property, a licensee must furnish the other party to the proposed agreement with a printed guide to the licensee’s fees and commissions and to the expenses for which the licensee will require to be reimbursed.

(2) The guide must state that the fees, commissions and expenses are subject to negotiation.

(3) The guide must also be provided to any person who requests it.

- (h) by inserting after Regulation 49 the following Regulation:

Licensing under corresponding Act

49A. For the purposes of section 39A (2) of the Act, each of the following Acts is declared to be a corresponding Act:

- Estate Agents Act 1980, Victoria
- Auctioneers and Agents Act 1971, Queensland

- Land Agents, Brokers and Valuers Act 1973, South Australia
 - Real Estate and Business Agents Act 1978, Western Australia
 - Auctioneers and Real Estate Agents Act 1991, Tasmania
 - Agents Licensing Act, Northern Territory
 - Agents Act 1968, Australian Capital Territory
- (i) by omitting Regulation 70;
- (j) by omitting Regulation 71 (4) (e) and (5) (e);
- (k) by inserting after Regulation 71 (5) the following clause:
- (5A) For the purposes of section 42AA (1) of the Act, in addition to the terms prescribed by clause (1) and clause (4) or (5) (as appropriate), the prescribed terms in relation to an agreement in respect of **the sale of residential property** are:
- (a) a term specifying that the licensee cannot act on behalf of the principal in respect of the sale of residential property unless the licensee has a copy of the proposed contract of sale in respect of the property available for inspection; and
 - (b) a term specifying both the way in which the licensee's remuneration is to be calculated (together with the dollar amount of that remuneration in relation to the licensee's estimate of the selling price of the land) and an estimate of the amount of expenses or charges the licensee expects to incur and for which he or she is entitled under the agreement to be reimbursed.
- (1) by omitting from the heading to Form No. 26B in Schedule 1 the words "AUCTIONEERS AND AGENTS ACT 1941" and by inserting instead the words "PROPERTY, STOCK AND BUSINESS AGENTS ACT 1941";
- (m) by omitting from the heading to Schedule 4 the words "**AUCTIONEERS AND AGENTS ACT 1941**" and by inserting instead the words "**PROPERTY, STOCK AND BUSINESS AGENTS ACT 1941**";
- (n) by omitting from the matter appearing under the heading "SECTION 45" in Schedule 4 the words "the Auctioneers and Agents Act 1941" and by inserting instead the words "the Property, Stock and Business Agents Act 1941".

Repeal

3. The Auctioneers and Agents (Remuneration) Regulation 1981 is repealed.

EXPLANATORY NOTE

The object of this Regulation is to amend the Auctioneers and Agents Regulations in consequence of the commencement of certain provisions of the Auctioneers and Agents (Amendment) Act 1992 previously left uncommenced and to reflect the changes made by them.

In particular, the Regulation reflects the following alterations:

- the change of the title of the Auctioneers and Agents Act 1941 to the “Property, Stock and Business Agents Act 1941” (clause 2 (a), (b), (f) and (l)–(n))
- the amendment of section 23 (10A) (a) of the Act (clause 2 (i))
- the entitlement of a licensee to share commission etc. with a person licensed under the corresponding law of another State or Territory (clause 2 (h))
- the deregulation of real estate agents’ fees (clause 3) and the power to make regulations requiring licensees to publicise particulars of their remuneration (clause 2 (g) and (k))

The Regulation also:

- increases the fees payable for application for renewal of registration under the Act (clause 2 (c) and (d))
- makes consequential amendments (clause 2 (i)) and corrects cross-references (clause 2 (e)).

The Regulation is made under sections 39A (2) (as inserted by Schedule 3 to the Auctioneers and Agents (Amendment) Act 1992), 42AA (1) and 92 (the general regulation-making power) of the Act.