



New South Wales

# Property, Stock and Business Agents Amendment (Property Industry Reform) Bill 2017

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The objects of this Bill are as follows:

- (a) to consolidate the number of licences and certificates of registration under the *Property, Stock and Business Agents Act 2002* (the *principal Act*),
- (b) to provide for 2 classes of licence (one of which is required to be held by a licensee in charge of a business) and to permit regulations under the principal Act to specify which functions in the principal Act may be exercised only by the holder of a particular class of licence,
- (c) to permit working experience to be approved as a qualification for a licence or certificate of registration,
- (d) to permit a licence or certificate of registration to be granted for a period of 1 year or 5 years,
- (e) to provide that the offence of an agent failing to disclose a material fact is limited to material facts of a kind prescribed by the regulations under the principal Act,
- (f) to prohibit the holder of a licence or certificate of registration from receiving certain gifts,
- (g) to require the lodgment of auditor's reports,
- (h) to specify circumstances in which a licence or certificate of registration may be suspended for more than 60 days.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act by proclamation.

## Schedule 1      Amendment of Property, Stock and Business Agents Act 2002 No 66

**Schedule 1 [3]** omits a number of definitions from the *Property, Stock and Business Agents Act 2002* (the *principal Act*) and inserts new definitions. This reflects the reduction in the number of licences and certificates of registration under the principal Act, with the removal of separate licences and certificates of registration for business agents and on-site residential property managers and instead consolidating these with real estate agents and the consolidation of community managing agents with strata managing agents. The amendment also reflects a change in terminology for the persons required to hold certificates of registration. These are changed from salespersons or registered managers to assistant agents. Some of the definitions inserted include **agent** (being a real estate agent, stock and station agent or strata managing agent), **assistant agent** (being an assistant real estate agent, assistant stock and station agent or assistant strata managing agent), **regulated functions** (being the functions of an agent) and **real estate agent** (being a person who for reward exercises real estate agent functions in the course of carrying on a business). **Schedule 1 [11], [14], [17], [19], [25], [28], [32]–[34], [37] and [38]** make amendments to give effect to the consolidated licences and certificates of registration and the change of terminology.

**Schedule 1 [8]** inserts proposed sections 3A and 3B into the principal Act. Proposed section 3A sets out the functions that are real estate agent functions. These are functions that were previously the functions of real estate agents (**real estate sale or leasing functions**), business agents (**business agent functions**) and on-site residential property managers (**on-site residential property manager functions**). Proposed section 3B sets out who is a strata managing agent. These include persons exercising functions that were previously those exercised by strata managing agents and community managing agents. **Schedule 1 [4]** makes a consequential amendment.

**Schedule 1 [5], [6] and [9]** make amendments consequential on the removal of the separate business agent licence and the requirement for persons exercising business agent functions to hold a real estate agent licence. **Schedule 1 [1] and [2]** amend the long title and the name of the Act as a consequence of removal of the concept of business agents.

**Schedule 1 [13] and [15]** provide that an agent who holds a licence may be referred to as a licensed agent and an assistant agent who holds a certificate of registration may be referred to as a registered agent.

**Schedule 1 [25]** also permits the **Secretary** (being the Commissioner of Fair Trading) to issue a licence (other than a corporation licence) as a class 1 licence or a class 2 licence. **Schedule 1 [12], [20] and [22]** make consequential amendments.

**Schedule 1 [16]** permits the regulations under the principal Act to prescribe that specified regulated functions may be exercised only by or under the supervision of the holder of a licence or the holder of a licence of a particular class. The regulations may also prescribe that references in the principal Act to the holder of a licence are to be construed as references to the holder of a licence of a particular class.

**Schedule 1 [30]** specifies that the holder of a class 1 licence must be in charge of any business carried on under a licence. This means that if the business owner holds a corporation licence or a class 2 licence, the business owner must employ an individual who holds a class 1 licence of a kind that would permit the employed individual to carry on that business. **Schedule 1 [18]** makes a consequential amendment.

**Schedule 1 [21]** permits the Minister for Innovation and Better Regulation (the **Minister**) to approve specified working experience as a qualification for a licence or certificate of registration.

**Schedule 1 [27]** makes it clear that conditions of a licence or certificate of registration can prohibit the holder from exercising specified functions or functions other than specified functions.

**Schedule 1 [29]** permits a licence or certificate of registration to be granted for a period of 1 year or 5 years.

**Schedule 1 [35]** limits the offence of an agent failing to disclose a material fact to material facts of a kind prescribed by the regulations under the principal Act.

**Schedule 1 [36]** creates an offence (maximum penalty \$2,200) if the holder of a licence or certificate of registration requests or accepts a gift or other benefit in circumstances that may reasonably be considered to give rise to a conflict of interest. Things provided by an employer, under an agency agreement or under a prescribed amount are exempt as are things of a kind prescribed by the regulations under the principal Act.

**Schedule 1 [40]** requires auditors' reports of audits of licensees, former licensees or personal representatives of licensees to be lodged with the Secretary.

**Schedule 1 [41]** specifies circumstances in which a licence or certificate of registration may be suspended for more than 60 days such as in the case of suspensions relating to a failure to lodge an audit report (in which case the suspension may be imposed until the failure is remedied). If the Secretary considers that the grounds for disciplinary action to which the suspension relates are serious, the suspension may be imposed for such time as required to enable the Secretary to investigate the matter. **Schedule 1 [42]** provides that in the case of a suspension of more than 60 days for the purposes of an investigation, the Secretary must, as soon as practicable after imposing the suspension, afford the person who is suspended an opportunity to be heard.

**Schedule 1 [3], [23], [24] and [31]** permit the regulations under the principal Act to prescribe what Acts of other jurisdictions correspond to the principal Act and remove duplicate provisions.

**Schedule 1 [7] and [10]** move a provision relating to notes.

**Schedule 1 [11], [13] and [20]** also replace references to natural persons with references to individuals to make terminology in the principal Act more consistent.

**Schedule 1 [26]** corrects terminology.

**Schedule 1 [39]** omits a provision that has been made redundant by the inclusion of definitions of *association* and *owners corporation* for the whole of the principal Act by Schedule 1 [3].

**Schedule 1 [44]** inserts a number of savings and transitional provisions consequent on the other amendments contained in Schedule 1. **Schedule 1 [43]** updates a Schedule heading.

## **Schedule 2      Consequential amendments to other Acts**

**Schedule 2** contains amendments to other Acts consequential on the change of the name of the principal Act and other amendments contained in Schedule 1.



New South Wales

# Property, Stock and Business Agents Amendment (Property Industry Reform) Bill 2017

## Contents

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	Page
1 Name of Act	2
2 Commencement	2
<b>Schedule 1</b>	
<b>Amendment of Property, Stock and Business Agents Act 2002 No 66</b>	<b>3</b>
<b>Schedule 2</b>	
<b>Consequential amendments to other Acts</b>	<b>15</b>



New South Wales

# Property, Stock and Business Agents Amendment (Property Industry Reform) Bill 2017

No. , 2017

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## A Bill for

An Act to amend the *Property, Stock and Business Agents Act 2002* to make further provision with respect to the regulation of property and stock agents.

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**The Legislature of New South Wales enacts:**

1

**1 Name of Act**

2

This Act is the *Property, Stock and Business Agents Amendment (Property Industry Reform) Act 2017*.

3

4

**2 Commencement**

5

This Act commences on a day or days to be appointed by proclamation.

6

<b>Schedule 1</b>	<b>Amendment of Property, Stock and Business Agents Act 2002 No 66</b>	1
		2
<b>[1] Long title</b>		3
	Omit “property, stock and business”. Insert instead “property and stock”.	4
<b>[2] Section 1 Name of Act</b>		5
	Omit “ <i>Property, Stock and Business</i> ”. Insert instead “ <i>Property and Stock</i> ”.	6
<b>[3] Section 3 Definitions</b>		7
	Omit the definitions of <i>agent</i> , <i>business agent</i> , <i>business salesperson</i> , <i>community managing agent</i> , <i>on-site residential property manager</i> , <i>real estate agent</i> , <i>real estate salesperson</i> , <i>registered community manager</i> , <i>registered manager</i> , <i>registered on-site residential property manager</i> , <i>registered strata manager</i> , <i>regulated functions</i> , <i>stock and station salesperson</i> and <i>strata managing agent</i> from section 3 (1).	8 9 10 11 12
	Insert in alphabetical order:	13
	<i>agent</i> means:	14
	(a) a real estate agent, or	15
	(b) a stock and station agent, or	16
	(c) a strata managing agent.	17
	<i>assistant agent</i> means:	18
	(a) an assistant real estate agent, or	19
	(b) an assistant stock and station agent, or	20
	(c) an assistant strata managing agent.	21
	<i>assistant real estate agent</i> means a person (other than the holder of a real estate agent’s licence) who, as an employee of a real estate agent or a corporation that carries on the business of a real estate agent:	22 23 24
	(a) exercises any real estate agent function, or	25
	(b) engages in any other activity that is prescribed by the regulations for the purposes of this definition.	26 27
	<i>assistant stock and station agent</i> means a person (other than the holder of a stock and station agent’s licence) who, as an employee of a stock and station agent or a corporation that carries on the business of a stock and station agent:	28 29 30
	(a) exercises any of the functions of a stock and station agent, or	31
	(b) engages in any other activity that is prescribed by the regulations for the purposes of this definition.	32 33
	<i>assistant strata managing agent</i> means a person (other than the holder of a strata managing agent’s licence) who, as an employee of a strata managing agent or a corporation that carries on the business of a strata managing agent:	34 35 36
	(a) exercises any of the functions of a strata managing agent, or	37
	(b) engages in any other activity that is prescribed by the regulations for the purposes of this definition.	38 39
	<i>association</i> means a community association, precinct association or neighbourhood association constituted under section 25 of the <i>Community Land Development Act 1989</i> .	40 41 42
	<i>business agent functions</i> —see section 3A (2).	43

<i>class of licence</i> means a class 1 or a class 2 licence.	1
<b>Note.</b> See sections 17 (1A) and 31. A class 1 licence is required for an individual to be a licensee in charge of a business.	2 3
<i>corresponding Act</i> means an Act of another State or a Territory that is declared by the regulations to be a corresponding Act for the purposes of this Act.	4 5 6
<i>function</i> includes a power, authority or duty, and <i>exercise</i> a function includes perform a duty.	7 8
<i>on-site residential property manager functions</i> —see section 3A (2).	9
<i>owners corporation</i> means an owners corporation constituted under the <i>Strata Schemes Management Act 2015</i> .	10 11
<i>real estate agent</i> means a person (whether or not the person carries on any other business) who, for reward (whether monetary or otherwise), exercises real estate agent functions in the course of carrying on a business.	12 13 14
<i>real estate agent functions</i> —see section 3A (1).	15
<i>real estate sale or leasing functions</i> —see section 3A (2).	16
<i>regulated functions</i> means real estate agent functions or the functions of a stock and station agent or a strata managing agent.	17 18
<i>strata managing agent</i> —see section 3B.	19
<b>[4] Section 3 (1), definition of “stock and station agent”</b>	20
Omit “(a)–(d) of the definition of <i>real estate agent</i> ” from paragraph (a).	21
Insert instead “(b)–(e) of the definition of <i>real estate sale or leasing functions</i> in section 3A”.	22 23
<b>[5] Section 3 (2)</b>	24
Omit the subsection.	25
<b>[6] Section 3 (3) (b1)</b>	26
Insert after section 3 (3) (b):	27
(b1) business as an agent for the collection of instalments of principal or interest payable under bills of sale given in respect of businesses or professional practices or under contracts for the sale on terms of businesses or professional practices, or	28 29 30 31
<b>[7] Section 3 (5)</b>	32
Insert after section 3 (4):	33
(5) Notes included in this Act do not form part of this Act.	34
<b>[8] Sections 3A and 3B</b>	35
Insert after section 3:	36
<b>3A Real estate agent functions</b>	37
(1) In this Act, <i>real estate agent functions</i> means any of the following functions:	38
(a) business agent functions,	39
(b) on-site residential property manager functions,	40
(c) real estate sale or leasing functions,	41



but does not include acting as an auctioneer or agent in respect of any parcel of rural land (unless the regulations otherwise provide) or any other function prescribed by the regulations.	1 2 3
(2) For the purposes of this Act:	4
<b>business agent functions</b> means:	5
(a) selling, buying or exchanging or otherwise dealing with or disposing of businesses or professional practices, or any share or interest in or concerning or the goodwill of, or any stocks connected with, businesses or professional practices, or	6 7 8 9
(b) negotiating for the sale, purchase or exchange or any other dealing with or disposition of businesses or professional practices, or any share or interest in or concerning or the goodwill of, or any stocks connected with, businesses or professional practices, or	10 11 12 13
(c) any other function that is prescribed by the regulations for the purposes of this definition.	14 15
<b>on-site residential property manager functions</b> means:	16
(a) acting as an agent for giving possession of residential premises under a lease, licence or other contract, or	17 18
(b) acting as an agent for collecting bonds, deposits, rents, fees or other charges in connection with any such lease, licence or other contract, or	19 20
(c) any other function that is prescribed by the regulations for the purposes of this definition.	21 22
<b>real estate sale or leasing functions</b> means:	23
(a) acting as an auctioneer of land, or	24
(b) acting as agent for a real estate transaction, or	25
(c) acting as agent for inducing or attempting to induce or negotiating with a view to inducing any person to enter into, or to make or accept an offer to enter into, a real estate transaction or a contract for a real estate transaction, or	26 27 28 29
(d) acting as agent for the introduction, or arranging for the introduction, of a prospective purchaser, lessee or licensee of land to another licensed agent or to the owner, or the agent of the owner, of land, or	30 31 32
(e) acting as agent collecting rents payable in respect of any lease of land and otherwise providing property management services in respect of the leasing of any land, or	33 34 35
(f) any other function in connection with land that is prescribed by the regulations for the purposes of this definition.	36 37
<b>Note.</b> This definition is not limited to the selling of land and extends to an agent acting on behalf of the buyer of land (a buyer's agent).	38 39
<b>3B Strata managing agents</b>	40
(1) A person is a <b>strata managing agent</b> for the purposes of this Act if the person (whether or not the person carries on any other business), for reward (whether monetary or otherwise), exercises:	41 42 43
(a) any function of an owners corporation, or	44
(b) any function of an association, or	45
(c) any other function that is prescribed by the regulations for the purposes of this definition.	46 47

(2)	Subsection (1) (a) does not apply to:	1
(a)	a person who:	2
(i)	is the owner of a lot to which the strata scheme for which the owners corporation is constituted relates, or	3
(ii)	is the lessee of a lot to which the leasehold strata scheme for which the owners corporation is constituted relates, or	5
(iii)	is the secretary or treasurer of the strata committee of the owners corporation,	7
	and who exercises or performs only functions of the owners corporation required, by the by-laws in force in respect of the strata scheme or leasehold strata scheme for which the owners corporation is constituted, to be exercised or performed by the secretary or treasurer of that strata committee or of the owners corporation, or	9
(b)	a person who maintains or repairs any property that the owners corporation is required to maintain and keep in repair, or	14
(c)	a person prescribed by the regulations.	16
(3)	Subsection (1) (b) does not apply to:	17
(a)	the proprietor of a lot within the scheme, or	18
(b)	the secretary or treasurer of the association, or	19
(c)	a person who is authorised by the management statement for the scheme to exercise the functions of the secretary or treasurer of the association, or	20
(d)	a person who maintains or repairs any property that the association is required to maintain and keep in repair, or	23
(e)	a person prescribed by the regulations.	24
<b>[9]</b>	<b>Section 5 Exemptions</b>	26
	Omit section 5 (5) and (6). Insert instead:	27
(5)	The following persons may exercise business agent functions without the need to hold a licence or certificate of registration:	28
(a)	a person who holds an Australian financial services licence under the Corporations Act,	29
(b)	a person who is an authorised representative of a financial services licensee within the meaning of Chapter 7 of the Corporations Act.	30
<b>[10]</b>	<b>Section 6 Notes</b>	34
	Omit the section.	35
<b>[11]</b>	<b>Section 8 Agents required to be licensed</b>	36
	Omit section 8 (1)–(3). Insert instead:	37
(1)	An individual must not act as or carry on the business of (or advertise, notify or state that the individual acts as or carries on the business of, or is willing to act as or carry on the business of):	38
(a)	a real estate agent, unless the individual is the holder of a real estate agent’s licence, or	39
(b)	a stock and station agent, unless the individual is the holder of a stock and station agent’s licence, or	40
		41
		42
		43
		44

(c)	a strata managing agent, unless the person is the holder of a strata managing agent's licence.	1
	Maximum penalty: 100 penalty units.	2
(2)	An individual is not entitled to bring any proceeding in any court or tribunal to recover any commission, fee, gain or reward for any service performed by the individual:	3
(a)	as a real estate agent, unless the individual was the holder of a real estate agent's licence, or employed the holder of such a licence, at the time of performing the service, or	4
(b)	as a stock and station agent, unless the individual was the holder of a stock and station agent's licence, or employed the holder of such a licence, at the time of performing the service, or	5
(c)	as a strata managing agent, unless the individual was the holder of a strata managing agent's licence, or employed the holder of such a licence, at the time of performing the service.	6
(3)	This section applies to an individual whether or not the individual is a member of a partnership.	7
<b>[12]</b>	<b>Section 8 (4)</b>	18
	Omit "class of licence". Insert instead "type of licence".	19
<b>[13]</b>	<b>Section 8 (5) and (6)</b>	20
	Omit section 8 (5). Insert instead:	21
(5)	For the purposes of this section, an individual is not considered to carry on a business merely because the individual is a member of a partnership that carries on that business.	22
(6)	An agent who holds a licence may be known as a licensed agent.	23
<b>[14]</b>	<b>Section 10 Assistant agents require certificate of registration</b>	24
	Omit "a real estate salesperson, stock and station salesperson, business salesperson or registered manager" wherever occurring in section 10 (1).	27
	Insert instead "an assistant agent".	28
<b>[15]</b>	<b>Section 10 (3)</b>	30
	Insert after section 10 (2):	31
(3)	An assistant agent who holds a certificate of registration may be known as a registered agent.	32
<b>[16]</b>	<b>Section 10A</b>	33
	Insert after section 10:	34
<b>10A</b>	<b>Functions that can be exercised by holders of licences and certificates of registration</b>	35
(1)	The regulations may prescribe that specified regulated functions may be exercised:	36
(a)	only by the holder of a licence or by the holder of a licence of a particular class, or	37
(b)	only under the supervision (direct or otherwise) of the holder of a licence or of the holder of a licence of a particular class.	38

(2)	The regulations may provide that a reference to the holder of a licence in a provision of this Act is to be construed as a reference to the holder of a particular class of licence.	1 2 3
(3)	The authority granted by a licence or certificate of registration is subject to the regulations.	4 5
<b>[17]</b>	<b>Section 11 Assistant agents must be employed and supervised by licensee</b>	6
	Omit “a real estate salesperson, stock and station salesperson, business salesperson or registered manager” wherever occurring in section 11 (1) and (2).	7 8
	Insert instead “an assistant agent”.	9
<b>[18]</b>	<b>Section 11 (2) (b)</b>	10
	Omit “a licence”. Insert instead “a class 1 licence”.	11
<b>[19]</b>	<b>Section 11 (4)</b>	12
	Omit “a stock and station salesperson”. Insert instead “an assistant stock and station agent”.	13
<b>[20]</b>	<b>Section 14 Eligibility for a licence or certificate of registration</b>	14
	Omit section 14 (1). Insert instead:	15
(1)	An individual is eligible to hold a licence only if the Secretary is satisfied that the individual:	16 17
(a)	is at least 18 years of age, and	18
(b)	is a fit and proper person to hold a licence and each person with whom the individual is in partnership in connection with the business concerned is a fit and proper person to hold a licence, and	19 20 21
(c)	has the qualifications required for the issue of the licence or class of licence, and	22 23
(d)	is not a disqualified person, and	24
(e)	has paid such part of any contribution or levy payable under Part 10 (Compensation Fund) as is due and payable on the granting of the licence.	25 26 27
<b>[21]</b>	<b>Section 15 Qualifications for licence or certificate of registration</b>	28
	Insert after section 15 (2) (d):	29
(e)	specified working experience.	30
<b>[22]</b>	<b>Section 15 (5)</b>	31
	Insert after section 15 (4):	32
(5)	Different qualifications may be approved for different classes of licence.	33
<b>[23]</b>	<b>Section 16 Disqualified persons</b>	34
	Omit “corresponding law” from section 16 (1) (g). Insert instead “corresponding Act”.	35
<b>[24]</b>	<b>Section 16 (3)</b>	36
	Omit the subsection.	37

<b>[25] Section 17 Application of Licensing and Registration (Uniform Procedures) Act 2002</b>	1
Omit section 17 (1). Insert instead:	2
(1) The Secretary may grant the following licences and certificates of registration for the purposes of this Act:	3
(a) real estate agents' licences,	4
(b) stock and station agents' licences,	5
(c) strata managing agents' licences,	6
(d) corporation licences,	7
(e) certificates of registration as an assistant real estate agent,	8
(f) certificates of registration as an assistant stock and station agent,	9
(g) certificates of registration as an assistant strata managing agent.	10
(1A) A licence (other than a corporation licence) may be granted as a class 1 licence or a class 2 licence.	11
<b>[26] Section 20 Conditions—general</b>	12
Omit “a licensee or holder of a certificate of registration” from section 20 (c).	13
Insert instead “the holder”.	14
<b>[27] Section 20 (d)</b>	15
Omit the paragraph and the note to the section. Insert instead:	16
(d) a condition prohibiting the holder:	17
(i) from exercising specified functions, or	18
(ii) from exercising functions in relation to specified activities, or	19
(iii) from exercising functions other than specified functions, or	20
(iv) from exercising functions except in relation to specified activities.	21
<b>[28] Section 23 Special conditions for on-site residential property managers and registered managers</b>	22
Omit the section.	23
<b>[29] Section 25 Duration</b>	24
Omit “1 year” from section 25 (1).	25
Insert instead “the period specified in it (being a period of 1 year or 5 years)”.	26
<b>[30] Section 31</b>	27
Omit the section. Insert instead:	28
<b>31 Holder of class 1 licence to be in charge of business</b>	29
(1) An individual who carries on business under a licence other than a class 1 licence must employ an individual (who holds a class 1 licence of a kind that would authorise the employed individual to carry on that business) to be in charge of that business.	30
(2) A corporation that holds a corporation licence must employ an individual (who holds a class 1 licence of a kind that would authorise the individual to carry on that business) to be in charge of that business.	31

(3)	An individual or corporation that employs the holder of a class 1 licence in accordance with this section must notify the Secretary of the following within 5 business days:	1
	(a) the name and licence number of the holder,	2
	(b) the address of each place of business at which the holder will discharge the holder's duties as a licensee in charge of the business.	3
(4)	The holder of a class 1 licence who is employed in accordance with this section to be in charge of a business must not exercise functions or provide services on behalf of 2 or more licensees (whether corporations or individuals) unless those licensees are in partnership.	4
(5)	The Secretary may grant a person an exemption from a provision of this section. The exemption may be granted unconditionally or subject to conditions. The Secretary may at any time by notice in writing to a person granted an exemption revoke the exemption or vary the conditions of the exemption.	5
(6)	The regulations may specify the matters to be taken into account by the Secretary in considering whether to grant a person an exemption from a provision of this section.	6
	Maximum penalty:	7
	(a) 200 penalty units in the case of a corporation, or	8
	(b) 100 penalty units in any other case.	9
<b>[31]</b>	<b>Section 33 Licensee not to share commission with certain persons</b>	10
	Omit the definition of <i>corresponding Act</i> from section 33 (2).	11
<b>[32]</b>	<b>Section 42 Licensee to keep records of persons employed as assistant agents</b>	12
	Omit "a real estate salesperson, stock and station salesperson, business salesperson or registered manager" from section 42 (1).	13
	Insert instead "an assistant agent".	14
<b>[33]</b>	<b>Section 47 Duty of disclosure to client and prospective buyer of land</b>	15
	Omit "a real estate salesperson" wherever occurring in paragraph (b) of the definitions of <i>buyer's agent</i> and <i>seller's agent</i> in section 47 (3).	16
	Insert instead "an assistant real estate agent".	17
<b>[34]</b>	<b>Section 49 Restrictions on licensee obtaining beneficial interest in property</b>	18
	Omit "A real estate salesperson" from section 49 (2).	19
	Insert instead "An assistant real estate agent".	20
<b>[35]</b>	<b>Section 52 Misrepresentation by licensee or registered person</b>	21
	Omit section 52 (1). Insert instead:	22
(1)	A person (the <i>agent</i> ) who is exercising or performing any function as a licensee or registered person must not induce any other person to enter into any contract or arrangement by:	23
	(a) any statement, representation or promise that is false, misleading or deceptive (whether to the knowledge of the agent or not), or	24

(b)	any failure to disclose a material fact of a kind prescribed by the regulations (whether intended or not) that the agent knows or ought reasonably to know.	1 2 3
	Maximum penalty: 200 penalty units.	4
<b>[36]</b>	<b>Part 3, Division 7</b>	5
	Insert after Division 6 of Part 3:	6
	<b>Division 7      Gifts</b>	7
<b>53F</b>	<b>Licensees and certificate holders not to receive certain gifts or benefits</b>	8
(1)	The holder of a licence or a certificate of registration must not request or accept a gift or other benefit for the holder or for some other person in circumstances that may reasonably be considered to give rise to a conflict of interest.	9 10 11 12
	Maximum penalty: 20 penalty units.	13
(2)	This section does not apply to the following:	14
(a)	anything provided by the employer of the holder,	15
(b)	anything provided in accordance with the terms of an agency agreement or from a client as a gift in gratitude for services provided under an agency agreement,	16 17 18
(c)	anything of a kind prescribed by the regulations for the purposes of this section,	19 20
(d)	anything that has a value that is less than an amount prescribed by the regulations for the purposes of this section.	21 22
(3)	This section does not apply to the requesting or accepting of a gift or other benefit by a strata managing agent (within the meaning of the <i>Strata Schemes Management Act 2015</i> ) in connection with the provision of services as a strata managing agent or the exercise of functions as a strata managing agent.	23 24 25 26
	<b>Note.</b> See section 57 of the <i>Strata Schemes Management Act 2015</i> for an offence relating to the requesting or accepting of gifts by strata managing agents.	27 28
(4)	In this section: <i>gift</i> has the same meaning as it has in Part 6 of the <i>Election Funding, Expenditure and Disclosures Act 1981</i> .	29 30 31
<b>[37]</b>	<b>Section 103 Licensee's records</b>	32
	Omit “, or on which a community managing agent operates on behalf of an association constituted under the <i>Community Land Development Act 1989</i> ” from section 103 (3).	33 34
	Insert instead “or an association”.	35
<b>[38]</b>	<b>Section 109 Additional requirements for strata managing agents</b>	36
	Omit “or community managing agent” wherever occurring in section 109 (1).	37
<b>[39]</b>	<b>Section 109 (3)</b>	38
	Omit the subsection.	39
<b>[40]</b>	<b>Section 111 Requirement for audit</b>	40
	Omit section 111 (1) (b). Insert instead:	41
(b)	lodge the report with the Secretary.	42

<b>[41] Section 196 Power to suspend licence or certificate of registration when show cause notice served</b>	1 2
Omit section 196 (3). Insert instead:	3
(3) A suspension under this section may not be imposed for a period of more than 60 days after the show cause notice is served unless:	4 5
(a) the suspension relates to a failure to lodge an audit report in contravention of section 111 (1) (b)—in which case the suspension may be imposed until the audit report is lodged, or	6 7 8
(b) the Secretary considers that the grounds for disciplinary action to which the suspension relates are serious—in which case the suspension may be imposed for the period that the Secretary reasonably requires to investigate the matter.	9 10 11 12
<b>[42] Section 196 (4)</b>	13
Insert “but must afford a person an opportunity to be heard as soon as reasonably practicable after imposing a suspension under subsection (3) (b) for a period of more than 60 days” after “section”.	14 15 16
<b>[43] Schedule 1, heading</b>	17
Omit “and transitional”. Insert instead “, transitional and other”.	18
<b>[44] Schedule 1</b>	19
Insert after Part 5:	20
<b>Part 6 Provisions consequent on enactment of Property, Stock and Business Agents Amendment (Property Industry Reform) Act 2017</b>	21 22 23
<b>30 Definition</b>	24
In this Part:	25
<i>amending Act</i> means the <i>Property, Stock and Business Agents Amendment (Property Industry Reform) Act 2017</i> .	26 27
<b>31 Recovery proceedings for services performed</b>	28
Section 8 (2), as in force immediately before its substitution by the amending Act, continues to apply in respect of proceedings in relation to services to which that subsection relates that were performed before that substitution.	29 30 31
<b>32 Existing licences and certificates of registration—consequences of renaming certain certificates of registration</b>	32 33
(1) On the substitution of section 17 (1) by the amending Act:	34
(a) a certificate of registration as a real estate salesperson is taken to be a certificate of registration as an assistant real estate agent, and	35 36
(b) a certificate of registration as a stock and station salesperson is taken to be a certificate of registration as an assistant stock and station agent, and	37 38
(c) a certificate of registration as a registered manager is taken to be a certificate of registration as an assistant strata managing agent.	39 40



- (2) Nothing in this clause affects any condition to which a certificate of registration is subject on that substitution or the duration for which any such certificate remains in force. 1  
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- 33 Existing licences and certificates of registration—consequences of merger of business agents, on-site residential property managers and real estate agents into single class of real estate agents** 4  
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- (1) On the substitution of section 17 (1) by the amending Act: 7
- (a) the holder of a business agent’s licence is taken to hold a real estate agent’s class 2 licence that is subject to a condition that the holder exercise no real estate agent functions other than business agent functions, and 8  
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- (b) the holder of an on-site residential property manager’s licence is taken to hold a real estate agent’s class 2 licence that is subject to a condition that the holder exercise no real estate agent functions other than on-site residential property manager functions, and 12  
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- (c) the holder of a real estate agent’s licence is taken to hold a real estate agent’s class 2 licence that is subject to a condition that the holder exercise no real estate agent functions other than real estate sale or leasing functions or on-site residential property manager functions, and 16  
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- (d) the holder of a certificate of registration as a business salesperson is taken to hold a certificate of registration as an assistant real estate agent that is subject to a condition that the holder exercise no real estate agent functions other than business agent functions, and 20  
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- (e) the holder of a certificate of registration that is taken (because of clause 32 (1) (a)) to be a certificate of registration as an assistant real estate agent is taken to hold that certificate subject to a condition that the holder exercise no real estate agent functions other than real estate sale or leasing functions or on-site residential property manager functions, and 24  
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- (f) the holder of a certificate of registration as a registered manager who is employed by the holder of an on-site residential property manager’s licence is taken to hold a certificate of registration as an assistant real estate agent that is subject to a condition that the holder exercise no real estate agent functions other than on-site residential property manager functions. 30  
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- (2) If a person holds more than 1 licence or certificate of registration, only the licence or certificate of registration referred to in this clause is affected by any condition imposed by this clause. 36  
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- (3) The Secretary may, by notice in writing to the holder of a licence or certificate of registration, remove or modify a condition imposed by this clause in order to permit the person to exercise more real estate agent functions but only if the Secretary is satisfied the person is eligible and qualified to exercise those functions. 39  
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- (4) The Secretary may, by notice in writing to a person who, because of this clause, holds more than 1 real estate agent’s licence or certificate of registration as an assistant real estate agent, merge those licences or certificates into a single licence or certificate. 44  
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- (5) 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. 48  
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<b>34 Requirement for audit</b>	1
Section 111 (1) (b), as substituted by the amending Act, applies only to an auditor's report completed after that amendment.	2 3
<b>35 Suspension of licence or certificate of registration</b>	4
Section 196 (3) as substituted by the amending Act extends to permit the suspension of a licence or certificate of registration for more than 60 days even if the grounds for that suspension occurred before that substitution.	5 6 7

<b>Schedule 2</b>	<b>Consequential amendments to other Acts</b>	1
<b>2.1</b>	<b>Agricultural Livestock (Disease Control Funding) Act 1998 No 139</b>	2
	<b>Section 3 Definitions</b>	3
	Omit “stock and station salesperson within the meaning of the <i>Property, Stock and Business Agents Act 2002</i> ” from paragraph (a) of the definition of <i>collection agent</i> .	4 5
	Insert instead “assistant stock and station agent within the meaning of the <i>Property and Stock Agents Act 2002</i> ”.	6 7
<b>2.2</b>	<b>Civil and Administrative Tribunal Act 2013 No 2</b>	8
	<b>Schedules 4, clause 3 (1) and 5, clause 4 (2)</b>	9
	Omit “ <i>Property, Stock and Business Agents Act 2002</i> ” wherever occurring.	10
	Insert instead “ <i>Property and Stock Agents Act 2002</i> ”.	11
<b>2.3</b>	<b>Civil Procedure Act 2005 No 28</b>	12
	<b>Section 122A Definitions</b>	13
	Omit “ <i>Property, Stock and Business Agents Act 2002</i> ” from the definitions of <i>real estate agent</i> and <i>trust account</i> .	14 15
	Insert instead “ <i>Property and Stock Agents Act 2002</i> ”.	16
<b>2.4</b>	<b>Community Land Management Act 1989 No 202</b>	17
	<b>Section 3 Definitions</b>	18
	Omit “ <i>Property, Stock and Business Agents Act 2002</i> , the community managing agent” from the definition of <i>managing agent</i> in section 3 (1).	19 20
	Insert instead “ <i>Property and Stock Agents Act 2002</i> , the strata managing agent”.	21
<b>2.5</b>	<b>Conveyancers Licensing Act 2003 No 3</b>	22
[1]	<b>Sections 3 (definitions of “Compensation Fund or Fund” and “Statutory Interest Account”), 10 (1) (q) and (q1), 27 (3), 54 (3), 57, 93 (1) (c) and 105 (2) (c)</b>	23 24
	Omit “ <i>Property, Stock and Business Agents Act 2002</i> ” wherever occurring.	25
	Insert instead “ <i>Property and Stock Agents Act 2002</i> ”.	26
[2]	<b>Section 87 Definition</b>	27
	Omit the definition of <i>PSBA Act</i> . Insert instead:	28
	<i>PASA Act</i> means the <i>Property and Stock Agents Act 2002</i> .	29
[3]	<b>Sections 88 and 89</b>	30
	Omit “PSBA Act”. wherever occurring. Insert instead “PASA Act”.	31

<b>2.6 Criminal Procedure Act 1986 No 209</b>	1
<b>Schedule 1 Indictable offences triable summarily</b>	2
Omit “ <i>Property, Stock and Business Agents Act 2002</i> ” wherever occurring in clauses 23AAA in Table 1 and 10E in Table 2.	3
Insert instead “ <i>Property and Stock Agents Act 2002</i> ”.	4
<b>2.7 Fair Trading Act 1987 No 68</b>	6
<b>Sections 25I (2) and 79S (6) (b)</b>	7
Omit “ <i>Property, Stock and Business Agents Act 2002</i> ” wherever occurring.	8
Insert instead “ <i>Property and Stock Agents Act 2002</i> ”.	9
<b>2.8 Fair Trading Amendment (Commercial Agents) Act 2016 No 52</b>	10
<b>Schedule 1 Amendment of Fair Trading Act 1987 No 68</b>	11
Omit “ <i>Property, Stock and Business Agents Act 2002</i> ” from proposed section 60L (3) in item [1].	12
Insert instead “ <i>Property and Stock Agents Act 2002</i> ”.	13
<b>2.9 Law Enforcement (Powers and Responsibilities) Act 2002 No 103</b>	14
<b>Schedule 2 Search warrants under other Acts</b>	15
Omit “ <i>Property, Stock and Business Agents Act 2002</i> ”.	16
Insert instead “ <i>Property and Stock Agents Act 2002</i> ”.	17
<b>2.10 Licensing and Registration (Uniform Procedures) Act 2002 No 28</b>	18
<b>[1] Schedule 1 Licences to which Part 2 of Act applies</b>	19
Omit the matter relating to the <i>Property, Stock and Business Agents Act 2002</i> .	20
Insert instead:	21
<b>Property and Stock Agents Act 2002</b>	22
section 17 (1) (a), real estate agent’s licence	23
section 17 (1) (b), stock and station agent’s licence	24
section 17 (1) (c), strata managing agent’s licence	25
section 17 (1) (d), corporation licence	26
section 17 (1) (e), certificate of registration as an assistant real estate agent	27
section 17 (1) (f), certificate of registration as an assistant stock and station agent	28
section 17 (1) (g), certificate of registration as an assistant strata managing agent	29
	30

<b>[2] Schedule 3A Licences and registration to which Part 4A of Act applies</b>	1
Omit the matter relating to the <i>Property, Stock and Business Agents Act 2002</i> .	2
Insert instead:	3
<b>Property and Stock Agents Act 2002</b>	4
section 17 (1) (a), real estate agent's licence	5
section 17 (1) (b), stock and station agent's licence	6
section 17 (1) (c), strata managing agent's licence	7
section 17 (1) (d), corporation licence	8
section 17 (1) (e), certificate of registration as an assistant real estate agent	9
section 17 (1) (f), certificate of registration as an assistant stock and station agent	10
section 17 (1) (g), certificate of registration as an assistant strata managing agent	11
<b>2.11 Pawnbrokers and Second-hand Dealers Act 1996 No 13</b>	12
<b>Section 4 Restrictions on operation of this Act</b>	13
Omit " <i>Property, Stock and Business Agents Act 2002</i> " from section 4 (1).	14
Insert instead " <i>Property and Stock Agents Act 2002</i> ".	15
<b>2.12 Residential (Land Lease) Communities Act 2013 No 97</b>	16
<b>Section 112 Appointing a selling agent</b>	17
Omit " <i>Property, Stock and Business Agents Act 2002</i> " from section 112 (4) (a).	18
Insert instead " <i>Property and Stock Agents Act 2002</i> ".	19
<b>2.13 Residential Tenancies Act 2010 No 42</b>	20
<b>Section 3 Definitions</b>	21
Omit " <i>Property, Stock and Business Agents Act 2002</i> " from the note to the definition of <i>landlord's agent</i> in section 3 (1).	22
Insert instead " <i>Property and Stock Agents Act 2002</i> ".	24
<b>2.14 Retirement Villages Act 1999 No 81</b>	25
<b>Sections 23 (3) (b), 168 (1), note and 202 (1)</b>	26
Omit " <i>Property, Stock and Business Agents Act 2002</i> " wherever occurring.	27
Insert instead " <i>Property and Stock Agents Act 2002</i> ".	28
<b>2.15 Rice Marketing Act 1983 No 176</b>	29
<b>Section 52 Board may act as marketing agent</b>	30
Omit " <i>Property, Stock and Business Agents Act 2002</i> " from section 52 (3).	31
Insert instead " <i>Property and Stock Agents Act 2002</i> ".	32

<b>2.16 Strata Schemes Management Act 2015 No 50</b>	1
<b>[1] Section 4 Definitions</b>	2
Omit the definition of <i>on-site residential property manager</i> from section 4 (1).	3
Insert instead:	4
<i>on-site residential property manager</i> means a real estate agent exercising on-site residential property manager functions within the meaning of the <i>Property and Stock Agents Act 2002</i> .	5 6 7
<b>[2] Sections 49 (1) and (4), 58 (1), 63, 65, 181 (4) (and note) and 237 (4) (a)</b>	8
Omit “ <i>Property, Stock and Business Agents Act 2002</i> ” wherever occurring.	9
Insert instead “ <i>Property and Stock Agents Act 2002</i> ”.	10
<b>2.17 Unclaimed Money Act 1995 No 75</b>	11
<b>[1] Sections 6A and 9A</b>	12
Omit “ <i>Property, Stock and Business Agents Act 2002</i> ” wherever occurring.	13
Insert instead “ <i>Property and Stock Agents Act 2002</i> ”.	14
<b>[2] Part 2A, heading</b>	15
Omit “ <b>Property, Stock and Business Agents Act 2002</b> ”.	16
Insert instead “ <b>Property and Stock Agents Act 2002</b> ”.	17